



**Professional Engineers
Ontario**

Council Meeting

519th Meeting of Council
of Professional Engineers Ontario

to be held on
Thursday, June 21, 2018
5:30 p.m. – reception
6:00 p.m. – dinner
7:00 – in-camera plenary session

Friday, June 22, 2018
7:45 – 8:45 a.m. – breakfast
9:00 a.m. – 4:00 p.m.

PEO Council Chambers
8th Floor
40 Sheppard Avenue West
Toronto, Ontario

Thursday, June 21, 2018

1. Reception – 5:30 p.m. to 6:00 p.m.
Dinner – 6:00 p.m. to 7:00 p.m.
(8th Floor Dining Room)

2. In-Camera Plenary Session – 7:00 p.m. to
9:00 p.m. (8th Floor Council Chambers)

Legal Briefing (in-camera) Interim
Registrar only. No staff.

APPROVAL OF AGENDA

Purpose: To approve the agenda for the meeting.

Motion(s) to consider: (requires a simple majority of votes cast to carry)

That:

- a) the agenda, as presented to the meeting at C-519-1.1, Appendix A be approved; and*
- b) the Chair be authorized to suspend the regular order of business.*

Prepared by: Dale Power, Secretariat Administrator

Appendices:

- Appendix A – 519th Council meeting agenda



C-519-1.1
Appendix A

Agenda

519th Meeting of the Council Professional Engineers Ontario

Date: Friday, June 21-22, 2018
Time: Friday – 9:00 a.m. – 4:00 p.m.
Place: PEO Offices – 8th Floor Council Chambers **OR** Dial-in: 1-888-866-3653
 40 Sheppard Avenue West Participant Code: 9394319#
 Toronto, Ontario

Thursday, June 21 – 7:00 p.m. – 9:00 p.m.

	Spokesperson
IN-CAMERA PLENARY SESSION	
Legal Briefing (in-camera) Interim Registrar only. No staff.	Chair/Zuccon

Friday, June 22 – 9:00 a.m. – 4:00 p.m.

CALL TO ORDER			
1. APPROVAL OF AGENDA		Spokesperson/ Moved by	Type
1.1	APPROVAL OF AGENDA	Chair	Decision
2. PRIORITY ITEMS		Spokesperson/ Moved by	Type
2.1	2019 BUDGET ASSUMPTIONS	Councillor Chan	Decision
2.2	REPORT ON YEAR ONE OF THE PEAK PROGRAM	Councillor Spink	Decision
2.3	BY-LAW CHANGE – LIFE MEMBER DEFINITION	Councillor Houghton	Decision
2.4	ELECTION MATTERS – ISSUES REPORT AND PROCEDURES	Past President Dony	Decision
2.5	COUNCIL EXPERIENCE REQUIREMENTS FOR ELECTED OFFICER POSITIONS	Councillor Chong	Decision
2.6	COMMITTEES/TASK FORCES TERMS OF REFERENCE	Councillor Chan	Decision
2.7	TERMS OF REFERENCE FOR THE SUCCESSION PLANNING TASK FORCE (SPTF)	Councillor Spink	Decision
2.8	ALIGNMENT OF PEO EDUCATION COMMITTEE TERMS OF REFERENCE	Councillor Spink	Decision

2.9	PEO'S INDEMNIFICATION INSURANCE FOR COUNCILLORS	Councillor Spink	Decision
2.10	ADVERTISING POLICY FOR CHAPTER PROVIDED CONTINUING KNOWLEDGE ACTIVITIES	Councillor Turnbull	Decision
2.11	RISK ITEMS	Councillor MacCumber	Decision
2.12	ENGINEERING CO-OP STUDENT PILOT	Councillor Hidalgo	Decision
2.13	ENGINEERING JOB POSTING WITH NO P.ENG. REQUIREMENTS	Councillor Hidalgo	Decision
3. <u>CONSENT AGENDA</u>		Spokesperson/ Moved by	Type
3.1	OPEN SESSION MINUTES – 517 TH COUNCIL MEETING – MARCH 23, 2018	Chair	Decision
3.2	OPEN SESSION MINUTES – 518 TH COUNCIL MEETING – APRIL 21, 2018	Chair	Decision
3.3	CANADIAN ENGINEERING ACCREDITATION BOARD (CEAB) ACCREDITATION DECISIONS	Past President Dony	Decision
3.4	PEO SYLLABI	Past President Dony	Decision
3.5	APPOINTMENT OF ADDITIONAL MEMBERS TO THE 2018-2019 CENTRAL ELECTION AND SEARCH COMMITTEE	Past President Dony	Decision
3.6	APPROVAL OF CEDC APPLICATIONS	Councillor Hidalgo	Decision
3.7	CHANGES TO THE 2018 PEO COMMITTEES AND TASK FORCES MEMBERSHIP ROSTER	Councillor Chan	Decision
4. <u>IN-CAMERA</u>		Spokesperson/ Moved by	Type
4.1	PEO COMPLIANCE WITH FARPACTA	R. Steinecke	Information
4.2	IN-CAMERA MINUTES – 517 TH COUNCIL MEETING – MARCH 23, 2018	Chair	Decision
4.3	IN-CAMERA MINUTES – 518 TH COUNCIL MEETING – APRIL 21, 2018	Chair	Decision
4.4	HRC UPDATE	President Brown	Information
4.5	HRC CONSULTANT SELECTION TO ASSIST REGISTRAR RECRUITMENT PROCESS	Councillor Jackson Kouakou	Decision
4.6	DENIED LICENSING APPLICATIONS FOR EMPLOYED ENGINEERING PROFESSIONALS	Councillor Hidalgo	Decision
4.7	PEAK TRADEMARK	President-elect Hill	Decision
4.8	DISCIPLINE COMMITTEE – DECISIONS AND REASONS	Linda Latham	Information
4.9	LEGAL UPDATE	Linda Latham	Information
4.10	PEO'S ANTI-WORKPLACE HARASSMENT AND VIOLENCE POLICIES – COUNCILLOR VIOLATIONS, IF ANY	Chair	Information

5. <u>INFORMATION ITEMS</u>		Spokesperson/ Moved by	Type
ONGOING ITEMS			
5.1	COUNCILLOR ITEMS	Chair	Information
5.2	PROPOSED ENGINEERS CANADA BY-LAW AMENDMENT	Chair	Information
<p>Please note that in order to streamline the agenda, Committee reports will no longer be included in the agenda package. Committee Chairs are asked to submit their written reports to the Secretariat for posting on the Council SharePoint site prior to each Council meeting. These reports will not be discussed at the meeting unless a Councillor or an EC Director asks to address a specific item contained within the written report.</p>			

Councillors Code of Conduct

Council expects of itself and its members ethical, business-like and lawful conduct. This includes fiduciary responsibility, proper use of authority and appropriate decorum when acting as Council members or as external representatives of the association. Council expects its members to treat one another and staff members with respect, cooperation and a willingness to deal openly on all matters.

PEO is committed that its operations and business will be conducted in an ethical and legal manner. Each participant (volunteer) is expected to be familiar with, and to adhere to, this code as a condition of their involvement in PEO business. Each participant shall conduct PEO business with honesty, integrity and fairness and in accordance with the applicable laws. The Code of Conduct is intended to provide the terms and/or spirit upon which acceptable/unacceptable conduct is determined and addressed.

At its September 2006 meeting, Council determined that PEO volunteers should meet the same obligations and standards regarding conduct when engaged in PEO activities as they are when engaged in business activities as professional engineers.

[s. 2.4 of the Council Manual]

2018-19 Council Committee Meeting/Mailing Schedule

2018-19 Council Mailing Schedule

2018

Meeting #		Meeting Date	Initial BN Due Date – Members at Large	Initial BN Due Date – Councillors/ Staff	Initial Agenda Mailing Date	Supp. Agenda ¹ Due Date	Supp. Agenda Mailing Date
519	Council	June 21-22	June 1	June 5	June 8	June 12	June 15
520	Council	Sept. 20-21	Aug. 31	Sept. 4	Sept. 7	Sept. 11	Sept. 14
521	Council	Nov. 15-16	Oct. 26	Oct. 30	Nov. 2	Nov. 6	Nov. 9

2019

Meeting #		Meeting Date	Initial BN Due Date – Members at Large	Initial BN Due Date – Councillors/ Staff	Initial Agenda Mailing Date	Supp. Agenda ¹ Due Date	Supp. Agenda Mailing Date
522	Council	Feb. 7-8	Jan. 18	Jan. 22	Jan. 25	Jan. 29	Feb. 1
523	Council	Mar. 21-22	March 1	March 5	March 8	March 12	March 15
524	Council	May 4 ²	April 12	April 16	April 19	April 23	April 26

¹ - requires the approval of the Chair or Registrar

² - new Councillors to be invited as soon as information is available.

Upcoming Events

Date	Event	Location
October 24, 2018	Queen's Park Day	Toronto
October 26, 2018	Committee Chairs Workshop	PEO Offices
November 17, 2018	Chapter Leaders Conference	Hilton Toronto Airport
November 17, 2018	Ontario Professional Engineers Award (OPEA)	Toronto International Centre

2019 BUDGET ASSUMPTIONS

Purpose: To approve the assumptions for preparation of the 2019 operating and capital budgets.

Motions to consider: (requires a simple majority of votes cast to carry)

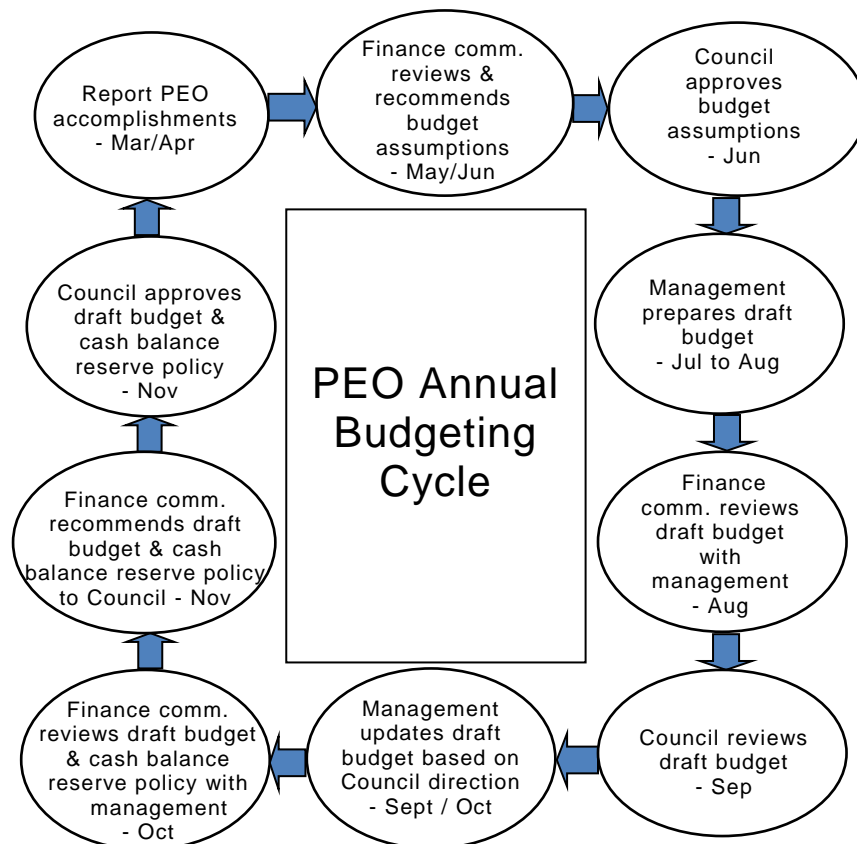
1. That the 2019 Budget Assumptions presented to Council as C-519-2.1, Appendix A and as recommended by the Finance Committee, be approved.
2. That the Interim Registrar be directed to initiate the budgeting process, per PEO's Budgeting Cycle, to present the 2019 operating budget and capital budgets at the September 2018 Council meeting based on the approved assumptions.

Prepared by: Chetan Mehta, Director - Finance

Motion Sponsor: Councillor Michael Chan, P. Eng. – Chair, Finance Committee

1. Need for PEO Action

As per the approved business planning cycle, Council is required to approve the budget assumptions for the next financial year in June. A combination of inputs from concerned domain experts, Council directives, and a trend analysis of historical data are used to generate the budget assumptions. A schematic of PEO's budgeting cycle is shown in the figure below.



2. Proposed Action / Recommendation

The Finance Committee met on June 5, 2018 and recommended that the budget assumptions, as set out in the attached Appendix A, be approved by Council.

3. Next Steps (if motions approved)

PEO Finance will facilitate the planning and budgeting activities and provide necessary support to the departments and committees to accomplish the following:

1. Using the approved 2019 budget assumptions, staff will develop the 2019 operating and capital budgets to reflect the funding needs of various essential purposes and committees, using PEO's Activity-based budgeting process.
2. The first draft of the 2019 budgets will be presented to the Finance Committee in late August (or early September) 2018 for its input and recommendations.
3. The draft 2019 operating and capital budgets, after incorporating feedback from the Finance Committee, will be presented to Council for information and feedback at its September 2018 meeting.
4. Direction and changes recommended by Council at the September 2018 meeting will be incorporated into the draft 2019 budgets which will then be presented again to the Finance Committee for review and feedback in October 2018.
5. After a second-round Finance Committee review sometime in October 2018, the final draft of the 2019 operating and capital budgets will be presented to Council in November 2018 for approval to provide funding for PEO's 2019 operations.

4. Policy or Program contribution to the Strategic Plan

The costs of programs approved by Council will be factored into the budgets.

5. Financial Impact on PEO operating budget (for five years)

Year	Expected spend	Explanation
2019	TBD	Information awaited

6. Peer Review & Process Followed

Process Followed	On Jun 5, 2018 the FIC met with staff to review the 2019 operating and capital budget assumptions. Staff were asked several questions by the FIC on the assumptions and after extensive discussion, these were approved by the FIC with a minor change to allow for changes as more information / data on various projects and spend items becomes available.
Council Identified Review	Council is required to approve these assumptions to allow staff to commence with the preparation of the 2019 operating and capital budgets.
Actual Motion Review	On June 5, 2018, the Finance Committee approved the 2019 draft budget assumptions and recommended that these be presented to Council for approval.

7. Appendices

- Appendix A – 2019 Operating and Capital Budgets Assumptions



Professional Engineers
Ontario

Professional Engineers Ontario

2019 Operating and Capital Budget Assumptions

Reviewed by FIC on June 5, 2018

2019 Budget Assumptions

Reviewed by FIC on June 5, 2018

This document presents key assumptions for revenues, operating expenses and capital expenses related to PEO's 2019 operating and capital budgets.

A. General Assumptions

In line with previous years, Council-directed projects will be funded from the operating reserve.

B. Capital Expenditure Assumptions

PEO's capital expenditures in 2019 are expected mainly to be for the following:

IT projects

To ensure that end of life issues are addressed and to maintain the day to day operations at PEO, capital costs expected to be in the range of \$1M. These costs exclude labour and associated licensing fees.

Building improvements – recoverable

Repairs/upgrades to common areas of the building costing approximately \$300,000 as recommended by BGIS in the Asset Funding Needs Report updated in 2018.

Facilities

Furniture/filing cabinet additions and/or replacements worth approximately \$20,000.

C. Revenue Assumptions

Based on prior member statistics and current trends, the budget assumptions for the 2019 budget are:

1. Membership levels, fees and dues

- All fees, including P.Eng. fees, EIT fees, application fees, registration fees, limited licence fees and provisional licence fees, are expected to remain unchanged for the tenth consecutive year and continue to be the lowest in Canada.
- The Financial Credit program will continue; i.e. qualified applicants will be given a waiver of the P.Eng. application fee and first-year EIT fees. This will have an impact on the EIT annual fee and P.Eng. application fee revenues.
- Net growth rate for full-fee P.Eng. members of 1 per cent to 1.5 per cent.
- Net growth rate for retirees and partial fee members of 3 per cent to 4 per cent.
- Miscellaneous revenue from enforcement-related activities, regulatory recoveries, and administrative fees will be factored in the 2019 budget.

2. Investment income

PEO's fund manager does not predict returns over a twelve-month cycle but given PEO's portfolio which has over 65 per cent in fixed income instruments and the expected increase in interest rates in the foreseeable future, returns over 4 per cent are unlikely. The return for the year ended December 31, 2017 was 4.16 per cent.

3. Advertising income

It is difficult to project a reasonable range for 2019 advertising revenues at this time in large part due to the uncertainty associated with the return of the digital edition of Engineering Dimensions as the default option, as Council decided in February 2018. Beginning with the July/August 2018 issue, licence holders and EITs will be sent the digital edition of the magazine by email unless the print edition has been requested. It is not yet clear how current and potential advertisers will react to this change, as printed versions of publications are typically more appealing to advertisers than digital ones. Later this year, PEO will also

2019 Budget Assumptions

Reviewed by FIC on June 5, 2018

be reviewing its options for advertising sales agents for 2019, which adds further uncertainty to any potential forecast.

4. Rental income from 40 Sheppard

Inducements for approximately 2,500 sf on the 8th floor would be \$50 psf and 6 months of free rent, occupancy anticipated at the end of the 4th quarter in 2019. Approximately 7,500 sf of the 4th floor was leased to The Ontario Film Authority. Occupancy is scheduled for October 1, 2018 and the term of the lease is ten years with an additional renewal term of 5 years. PEO is in negotiations with a law firm to lease the remainder of the space available on the 4th floor and we expect an executed lease within the next month. Inducements for approximately 6,700 sf on the 2th floor would be \$30 psf and 6 months of free rent, occupancy anticipated at the end of the 3rd quarter in 2019. Recovery income should remain in line with total recoverable expenses and slippage should occur only to the extent of any vacancies.

D. Expense Assumptions

1. Salaries

Salaries in 2019 to be budgeted to increase by 3.5 per cent supported by salary market research data. This increase is comprised of:

- 2.5 per cent for a Consumer Price Index (CPI) adjustment; and
- 1 per cent for a merit/equalization pool.

2. Benefits

Benefits include health, vision and dental benefits. For the budget, a premium increase of 2.5 per cent (same as in 2018) has been assumed based on the information received from the benefits provider.

3. PEO pension plan

The pension plan contribution for 2019 will be based on the three-year mandatory funding valuation conducted by PEO's actuary, Conduent Consultants. Based on the inputs provided by Conduent Consultants, employer costs are projected to be no more than 23 per cent of gross salary in comparison to 19.1 per cent for 2018.

4. Statutory deductions

These include Canada Pension Plan (CPP), Employer Health Tax (EHT) and Employment Insurance (EI). For 2019, it is anticipated that CPP will increase to 5.10 per cent (from 4.95 per cent change from 2018), EHT remains at 1.95 per cent (no change from 2018) and EI is expected to remain the same at 2.5 per cent (2.5 percent in 2018).

5. Other assumptions

- The non-labour / programs spending increase is assumed to be at the forecast inflation of 2.5 per cent and all programs will be subject to evaluation.
- Chapter spending may vary outside of the range of the forecasted inflation rate, depending on a review of chapter business plans for 2019, chapter bank balances and regional business demands.
- The Engineers Canada assessment rate is expected to remain unchanged.
- It is expected that the nature and volume of complaint, discipline, and enforcement files, as well as claims against PEO will remain consistent with previous years.
- These assumptions may be revised as more information / data on various projects and spend items become available.

2019 Budget Assumptions

Reviewed by FIC on June 5, 2018

6. 40 Sheppard

These expenses include operating expenses (recoverable and non-recoverable) and financing expenses. Total recoverable tenant expenses are expected to increase by less than 3 per cent. Other non-recoverable expenses, comprising of mostly broker and legal fees, will increase in 2019 as leases are renewed.

Briefing Note – Decision

Report on Year 1 of the PEAK program

Purpose: To inform Council of the results of the first year of operation of the PEAK program and to receive direction to begin planning and to include for third year operation of the program in the 2019 budget.

Motion(s) to consider: (requires a simple majority of votes cast to carry)

1. That Council receive the Report on Year 1 of the PEAK Program.
2. That Council direct the Interim Registrar to begin planning for the third year of operation of the PEAK program and to include for this continuation of the program in the 2019 budget.

Prepared by: Bernard Ennis, P.Eng.
Moved by: Councillor Marilyn Spink, P.Eng.

1. Need for PEO Action

- At its meeting on November 18, 2016, Council received the report of the Continuing Professional Competence Program Task Force and directed the Registrar to move forward with implementation of the program that was scheduled to begin on March 31, 2017.
- Council also passed the following motion:

That Council direct the Registrar to provide a report to Council at its June 2018 meeting providing information on the first-year of operation of the PEAK program and providing recommendations to Council on the next steps.
CARRIED
- That report is attached to this briefing note as Appendix A.

2. Proposed Action / Recommendation

- The second year of the PEAK program began on April 2, 2018 and is currently underway. That phase of the program will conclude on April 1, 2019 at which time Year 3 should begin in order to ensure a seamless continuation of the program.
- The report proposes that planning for Year 3 of the program begin immediately so that the cost of program operation and improvement will be included in the 2019 budget.
- There are no policy, financial or legal implications associated with motion 2.

3. Next Steps

- PEO staff could begin planning for Year 3 of the PEAK program and would present that plan as part of the budget approval process in November 2018.

4. Policy or Program contribution to the Strategic Plan

- This decision contributes directly to Strategic Objective 1: Refine the delivery of the PEAK program as it authorizes planning of ongoing improvements to the PEAK program including, but not limited to, development and implementation of a new on-line ethics module, refinement of the user experience and data gathering capabilities, continuation of the communications outreach and engagement with licence holders, and assessment and improvement of the collected data.

5. Financial Impact on PEO Budgets (for five years)

This direction does not authorize any expenditures. Planning as called for in Motion 2 will be done as part of the annual budgeting process.

	Operating	Capital	Explanation
Current to Year End	\$	\$	
2 nd	\$	\$	
3 rd	\$	\$	
4 th	\$	\$	
5 th	\$	\$	

6. Peer Review & Process Followed

Process Followed	<ul style="list-style-type: none"> • N/A
Council Identified Review	<ul style="list-style-type: none"> • N/A
Actual Motion Review	<ul style="list-style-type: none"> • N/A

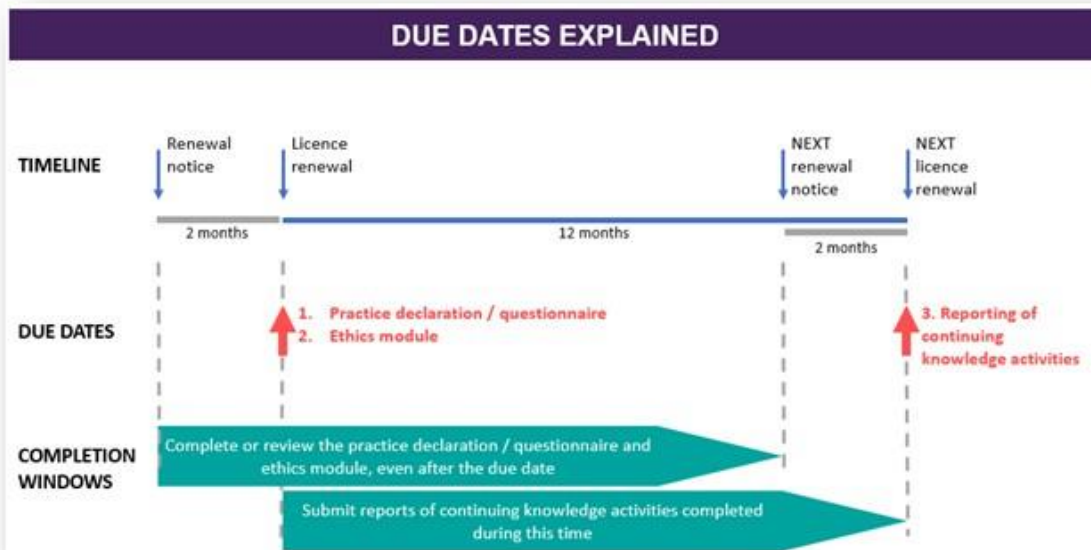
7. Appendices

- Appendix A – Report on Year 1 of the PEAK Program

Report on Year 1 of the PEAK Program

On April 30, 2018 the PEAK program completed its first year of operation. This report provides a summary of the actions taken since the program began and of the results achieved.

A more comprehensive document is being prepared that provides complete information on the PEAK program including its development history, design principles and specifications, business practice rules, lessons learned and a description of how the program is intended to support PEO's regulatory mandate. This document is intended to be the authoritative guide to the program and should be available this fall.



The PEAK program went live on March 31, 2017. The first group of licence holders asked to participate were those sent fee renewal notices on April 1, 2017. Since renewal notices are sent out approximately 60 days prior to the date of licence expiry, these notices went to licence holders with May 31, 2017 licence renewals. Consequently, the first full year of PEAK participation and data collection covered the period of April 01, 2017 to April 30, 2018.

Licence holders are asked to complete the practice declaration and practice evaluation questionnaire prior to their renewal date, though they may complete these elements at any time during the following 12 months. However, these elements will be shown as INCOMPLETE for those who do not complete these elements by their fee renewal date.

Since program participants have a year to report continuing knowledge activities, the first reporting cycle will be completed on April 30, 2019. At this time, only one renewal cycle group (May 31, 2017 – May 31, 2018) has completed the full 12-month reporting cycle.

PEO has engaged in an active and continuing communications campaign regarding the program. By May 31, 2018 PEO staff have provided 59 presentations about the PEAK program to Chapters, engineering firms, technical associations and other interested parties. Staff have also responded to over 1,000 on-line or phone inquiries about the program.

What is PEAK?

The primary function of a professional regulatory association is quality assurance of the professional services provided by its licence holders. There are five mechanisms through which this is achieved.

First, a regulatory body is responsible for licensing only those who have the appropriate qualifications. To do so, the regulatory body must set the minimum standards for entry into the profession such as academic qualifications, experience requirements, and evidence of good character. The regulatory body then assesses applicants to ensure that they have met these qualification standards before they are licensed to practice.

A regulatory body must also set expectations of proper professional behaviour through guidelines, standards and code of ethics. Anyone who holds a licence to practice a profession is expected to comply with the rules governing that profession. For a self-regulated profession, it is the regulatory association that defines the rules that set out the basic standards of skilled and ethical practice.

The regulatory body is also the authority that enforces those rules. So, a professional association is expected to receive and deal with complaints against practitioners and to discipline those that do not comply with the ethical and technical standards of the profession.

The regulatory body must also protect the public, and the profession, from people who falsely claim to be professional engineers or who illegally practice by taking enforcement actions.

Finally, it is not enough to deal with the bad actors within the profession. A professional regulatory body should also ensure that all licence holders continue to be competent to provide quality services throughout their careers. Most regulators accomplish this by setting requirements for continuing professional development, conducting practice reviews, regularly monitoring the actions of the regulated professionals, and assessing public perceptions of the profession.

Almost all professional regulatory bodies recognize that a combination of mandatory professional development and practice reviews is the most appropriate means of meeting the regulatory goal of assuring the public that licence holders continue to maintain their professional engineering competence. Unlike the complaints and discipline process, continuing professional development and practice reviews are proactive mechanisms intended to inform licence holders of best practices adopted by other professionals and alert them when they may not be compliant with the practices of their more competent colleagues.

Unlike the continuing professional development programs mandated by other professional regulatory bodies, the PEAK program doesn't assume all licence holders have the same need for continuous maintenance and upgrading of skills and knowledge. For example, practitioners moving their practice into

a different area of engineering or practitioners who have a senior level of responsibility for engineering work likely require more continuing knowledge than a practitioner who has been in the same role for many years. On the other hand, practitioners who work in environments where their work output is subject to stringent quality management procedures will not need to take action as individuals to maintain the quality of their professional engineering services.

Rather than mandate that all practitioners conform to the same competence maintenance requirements, the PEAK program recommends a specific number of hours a practitioner should commit to continuing knowledge activities during the 12 months following the fee renewal date based on the information collected through the practice evaluation questionnaire. This questionnaire acts like a practice review carried out by licence holders themselves using questions like those that would be asked by an auditor. This questionnaire provides an indication of whether practitioners have adopted and are using best professional practices. Those who have adopted best practices that contribute to risk mitigation and control of the quality of professional engineering services are rewarded with reductions in their recommendation regarding the number of hours they should commit to continuing knowledge activities.

The gamification aspect of the program, that is, the fact that recommended hours of continuing knowledge activity is reduced when best practices are employed, is intended to encourage practitioners to adopt best practices that may be appropriate to their workplace.

PEAK uses PEO's directory of licence holders to inform the public whether licence holders (professional engineers and limited licence holders) participated in the PEAK program for the current licence year. PEAK posts information such as whether licence holders are currently practising professional engineering in Ontario and which PEAK program elements they have completed.

In summary, PEAK is a multi-faceted program that

- encourages practitioners to take steps to maintain their competency
- informs practitioners of the best practices for maintaining high quality of professional services
- facilitates practitioners' reflection on the state of their practice environment
- publicizes practitioners' commitment to the ensuring public trust in the profession, and
- collects information that is of vital importance to PEO.

Results So Far

As of April 30, 2018, 27,283 licence holders (33% of total licence renewals) completed at least the first element of the PEAK program, the practice declaration. According to the declarations, 76% of PEO licence holders are practising professional engineering. Approximately 93% of these practitioners have completed the practice evaluation questionnaire and received a recommendation for the number of hours they should commit to continuing knowledge activities over the next 12 months. Of those receiving a recommendation, 23% have reported some continuing knowledge activities. Since program participants have a year to report continuing knowledge activities, the first reporting cycle will be completed on April 30, 2019. At this time only one renewal cycle group (May 31, 2017 – May 31, 2018) has completed the full 12-month reporting cycle. These basic statistics for the first year of PEAK are summarized in the following table:

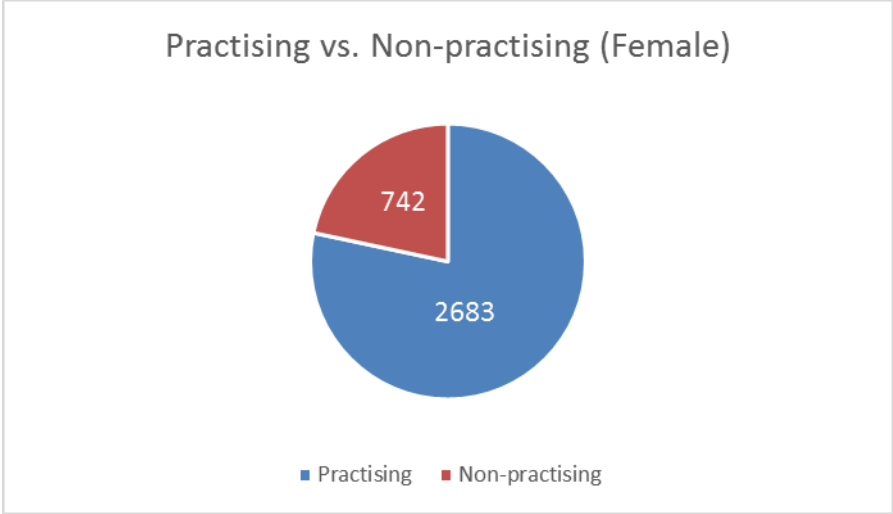
	YEAR 1 P.Eng.s and LLs – by numbers –	YEAR 1 P.Eng.s and LLs – by percentages –
Licences renewed (P.Engs and LLs)	82,139	-
Declared a practice status	27,283	33% of renewals
Practising	20,884	76.5% of all declarations
Completed Questionnaire	19,311	92.5% of practising
Reporting Activities	4,502	23% of full questionnaire
Non-practising	6,399	23.5% of all declarations
Completed Ethics Module	16,813	61.5% of all declarations

The numbers for Cycle 1 (from March 31, 2017 to April 30, 2018)

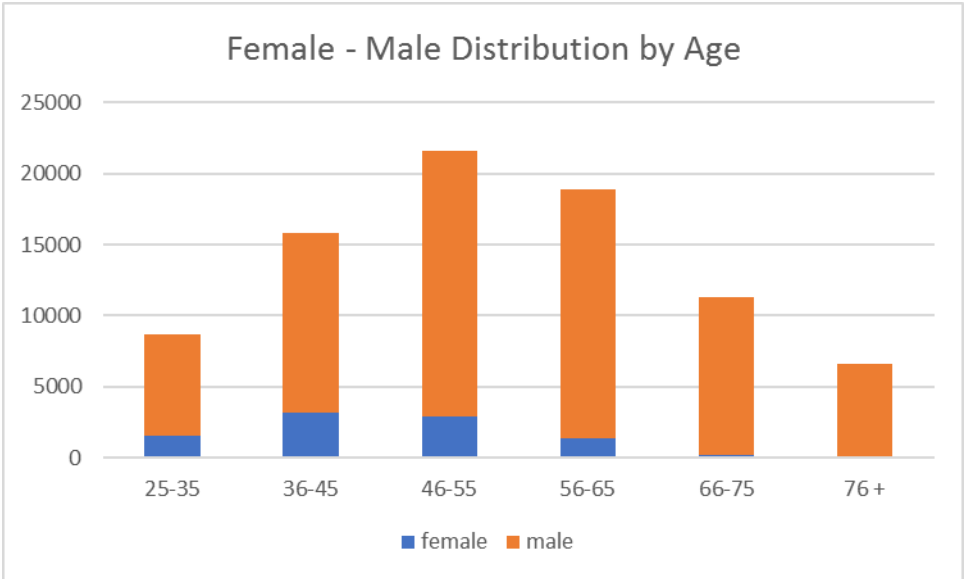
Since the data from the PEAK program is collected in Aptify as part of the record for each licence holder the data can be parsed in various ways. For instance, the following data was obtained by accessing the gender and age records for all licence holders who had participated in the program.

Female Licence Holders Stats By the end of April 30, 2018		Female Participation Stats March 31, 2017 to April 30, 2018	
AGE Range	Female Total	Total Participated	Participation Rate
25 - 35	1581	636	0.40
36 - 45	3135	1209	0.39
46 - 55	2856	1120	0.39
56 - 65	1394	414	0.30
66 - 75	205	36	0.18
76 and above	69	10	0.14
Total	9240	3425	0.37

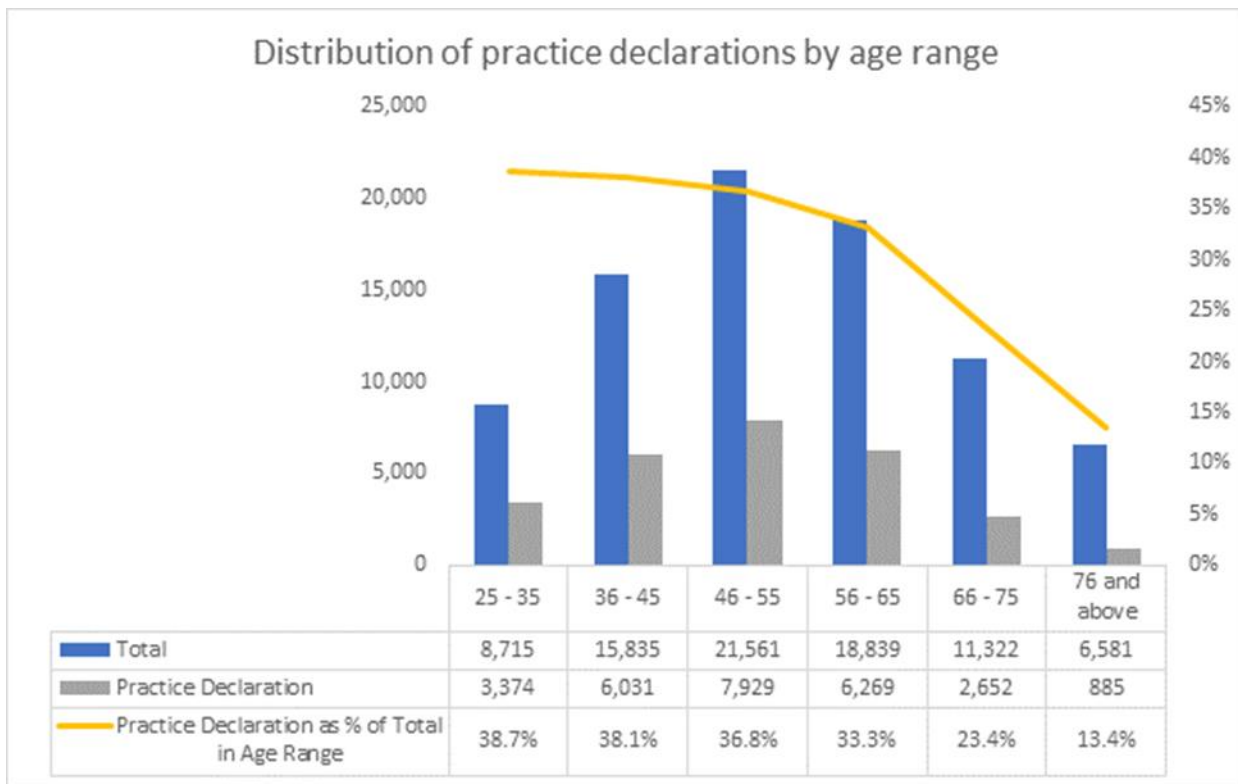
Combining this information with the responses to the PEAK practice declaration, the percentage of practising female licence holders was found to be 72.3%.



The demographics survey associated with the practice declaration and the practice evaluation questionnaire collected data on twenty-two pieces of information. This data can be readily cross-indexed with data available through Aptify. For instance, from Aptify we can obtain the distribution of all licence holders by age group and gender.



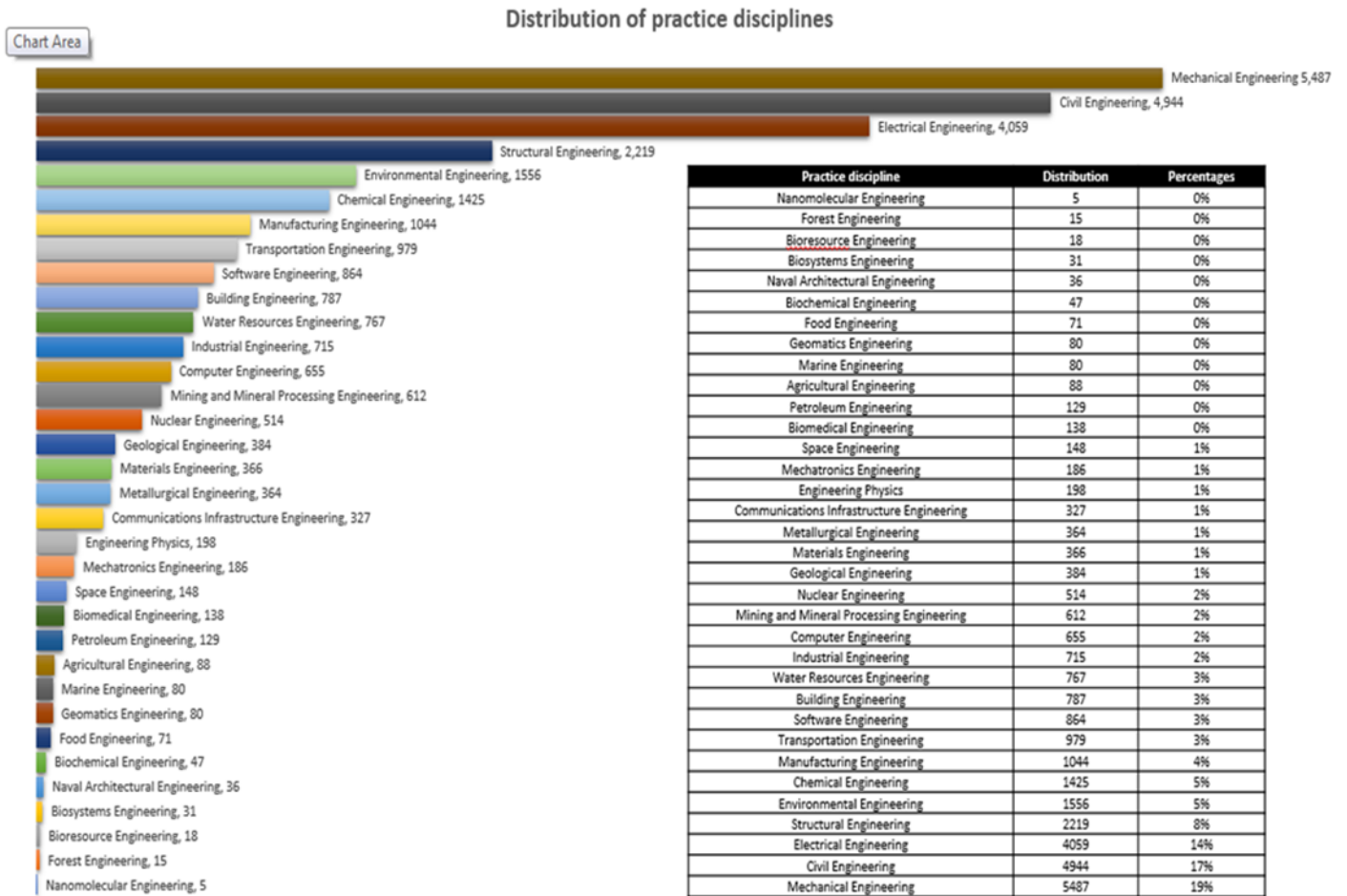
Combining this data with data collected through the PEAK program we can find participation in the program as a function of age group. [Note: participation in the program is defined as completion of at least the first element, the practice declaration]



As further evidence of the type of data that is being provided by the PEAK program see the information on the number of licence holders engaged in practice in each of the disciplines provided in the chart below. The information presented here refers to practitioners' actual area or discipline of practice rather than the academic discipline that is recorded in the Aptify registry data. This provides a more accurate record of the actual capabilities of the engineering profession in Ontario. For instance, according to the practitioner's directory, which searches through academic disciplines listed in the registry, there are no practitioners in nanomolecular engineering. However, according to the self-described practice disciplines reported through the PEAK program there are five practitioners in this area. Similarly, the practitioner's directory reports that there are 605 software engineers, but according to the PEAK program there are at least 865 (and this is from a sample of less than a third of all PEO licence holders). Though we have not done the analysis yet, it is possible to use the registry data and the PEAK data to determine the number of practitioners who have migrated from one area of engineering to another over their career. Using the information collected through PEAK we are also able to provide data on the number of practitioners who practice in one, two, or more disciplines.

This type of information is crucially important to Council and to other parties including the provincial government. For instance, during the inquiry following the Algo Mall collapse, the provincial government requested data from PEO regarding the number of practising structural engineers in Ontario, data which PEO could not provide. The information is extremely important for PEO policy purposes. For instance, the Professional Standards Committee often wants to know how many practitioners practice in a particular area of engineering in order to determine whether resources should be committed to producing a particular standard or guideline. This information would also be very helpful in finding subject matter

experts who are practicing in specific engineering disciplines. For instance, when the PSC sends out a guideline for public consultation, they could target the request for comments directly to practitioners in the appropriate discipline rather than relying on a general e-blast or a notice in *Engineering Dimensions*.



Validation

All data collection processes that allow the population to decide for themselves whether to participate can be subject to self-selection bias or non-response bias. Though it seems reasonable that the greater the participation rate the less chance of such bias occurring, there is no generally accepted agreement on how large the sample must be in order to eliminate self-selection bias. Some studies have argued that at least an 80% participation rate is required, while others have shown that self-selection bias is eliminated with participation rates as low as 20%. Self-selection bias seems to depend a variety of issues including the sensitivity of the participant to the issue being studied and the benefits to be gained from participation in the survey.

Self-selection bias may be an issue to consider in relying on PEAK collected data. Concern has been raised that practising licence holders are more likely to participate in the program and, for instance, that this is

biasing the data regarding the ratio between practising and non-practising. PEO staff have taken some steps to test the accuracy of the data by comparing PEAK collected data with data collected in other ways.

The chart above (“Distribution of practice declarations by age range”) suggests that practitioners who are most likely to be retired and therefore non-practising are less likely to participate in the PEAK program. Therefore, it is likely that the PEAK program under-reports the number of non-practising licence holders. Though it is currently not possible to accurately determine the amount of this under-reportage we can estimate the extent of any discrepancy. PEAK indicates 23.5% of licence holders are not practising. From Aptify data, the number of licence holders statutorily prohibited from practising – those who are on fee remission – is known to be 18.9% of members. Other licence holders would be classified as non-practising if they are practising in another profession or are employed in a non-engineering position such as business management or teaching. Information of this kind is not available through Aptify, which is why the data made available through the PEAK program is important. However, if the PEAK data is accurate, the difference between the PEAK value for non-practising and the known number of fee remission licence holders allows for approximately 4.6% of the membership (approximately 3800) to be employed but not practising engineering. Some may think that this number is low, however, that could be based on an inaccurate perception of practice status. The PEAK program has been diligent in educating licence holders that they are practising if the work they do is covered by the definition in the *Professional Engineers Act*. Practising status is not dependent on employment by a Certificate of Authorization firm or using one’s seal. However, the number of practising licence holders will not be accurately known until either a validation study is undertaken or there is a much higher PEAK participation rate.

Benefits of the PEAK Program

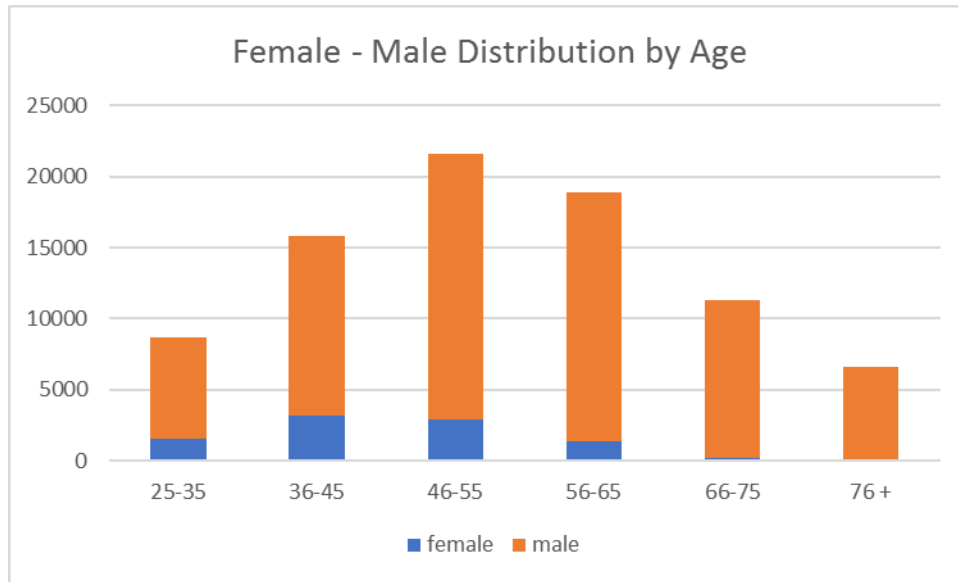
The PEAK program has shown itself to be beneficial to both the association and to individual licence holders.

Participation in the various PEAK program elements is publicly reported in the practitioner directory. Some engineering firms have reported to PEO that they are including this information in their marketing materials as it demonstrates their commitment to ongoing professional development. One firm suggested that participation in the program could be included as part of performance reviews within engineering organizations since it provides the firm with both objective criteria for review of individual practitioners and good public relations for the firm.

Information is crucial to making knowledgeable and appropriate regulatory policy decisions. In the past there was little post-licensure contact with licence holders and no organized effort by PEO to collect data from and about them. In the past PEO could not readily gather data about licence holders, engineering practice, or the world of engineering in Ontario. Data needed to be gathered by market research firms conducting telephone interviews on small samples. The PEAK program is an essential and less expensive tool to address this information shortfall.

Through the questionnaire, PEO collects much needed data about the practice of professional engineering in Ontario, data that has never been accurately acquired before. For instance, we are learning how many licence holders practice in each of the recognized disciplines of engineering. We are learning how many licence holders practice in 1, 2 or more disciplines. We are collecting data about the distribution of practitioners by age and years of practice, information that will enable PEO to determine if the professional cadre, as a whole, is getting older, a fact that has implications for both PEO policy and the profession’s ability to provide the engineering services needed in Ontario.

Gathering and analyzing information is a fundamental to the creating good policy within PEO. For instance, looking at the distribution of male and female licence holders in each age range, it is easy to observe that PEO may encounter a future problem due to the demographics of licence holders. The data confirms perception that young engineers are not seeking licensure.



The largest cohort (26%) of licence holders are in the 46-55 age range and 44% of all PEO licence holders are over 55 years old. It is not likely that engineers obtain a licence to practice professional engineering in mid- to late-career. Therefore, there is little likelihood that the number currently in the 25-35 year-old cohort will increase with time. These age-related facts are important pieces of data. For instance, this data provides an indication that membership numbers and revenue may drop significantly in the future as current licence holders retire, die or resign.

The data also confirms that licensure does not seem to be important for younger engineers, especially when this data is compared with the fact that the number of engineering degrees conferred has been steadily increasing.

The type of information that is most useful to PEO is information about the current status of practitioners. Unfortunately, PEO has not had an ongoing connection to its licence holders. Information is collected only during the admissions process and, except for collection of the annual fee, there is no post-licensure contact with licence holders and no updating of information.

Year 2 Program Improvements and Planned Activities

At its November 2017 meeting, Council approved a budget that included \$272,750 for year 2 operation of the PEAK program to April 30, 2019. This amount covers the cost charged by the external vendor (VocalMeet) for server hosting, course development, user fees, technical support and platform upgrades.

During the 2nd year many refinements have been made to the program. Staff conducted surveys of those who had completed the various elements of the program to get user reactions and identify impediments and concerns that might be reducing the number of program completions. The information obtained has been used to design and implement program upgrades.

A new ethics module was introduced on April 2, 2018. PEO and VocalMeet (the ethics module provider) have developed an integrated platform that will allow single-sign-on for users (previously a separate registration was required when entering the VocalMeet site). The questionnaire for practising licence holders is not changing. However, a survey will be added for non-practising licence holders to learn why they are not practising and whether they intend to return to practice.

During 2018-19, staff will focus communication and promotion efforts on firms employing professional engineers. Several large consulting firms reported that they found the PEAK program to be a useful marketing tool since there was a public record of participation by their employees in continuing knowledge activities. PEO efforts to increase member participation in the program will focus on communicating benefits such as these to Certificate of Authorization holding firms.

Many chapters offer seminars and other activities that have a technical education component. Some chapters have been advertising these events as PEAK compliant or have awarded PEAK certificates. A policy on Chapter Event Advertising has been prepared that will address concerns that have been raised about chapter events being identified as PEAK compliant or PEAK certified.

As noted above, the data collected through the PEAK program may be subjected to self-selection bias. Consequently, at this time, that data must be used judiciously for policy decision purposes or in communications to the public or government. For this reason, PEO should conduct a validation project such as a small but scientifically accurate telephone survey of those who are currently program non-participants in order to assess the validity of the data currently collected.

Recommendations

The PEAK program commenced only one year ago and has succeeded in providing PEO with useful data as noted in this report. However, given that a full operational cycle, including the associated CKA reporting cycle, of the program is not complete, it would be premature to consider the question of mandatory rollout now. Therefore, no recommendation is being made about the referendum question.

The only recommendation being made is to continue with the project through Year 3, to improve the program and communication efforts, to improve the data collection processes, and to consistently apply the collected data to policy decisions within PEO.

Council Actions

Council is being asked to decide on continuation of the program into year 3 (2019-2020). This would require the extension of the hosting contract with the vendor, VocalMeet, and development of a third ethics module. The estimated cost for VocalMeet provided services is \$300,000 which will be included in the 2019 operational budget. The budget may also include for future validation studies, as well as specific program communications and engagement projects intended to improve participation rates.

Briefing Note–Decision-By-Law Change

C-519-2.3

BY-LAW CHANGES TO DEFINITION OF “LIFE MEMBER”

Purpose: To reinstate the definition of “life member”, who is exempt from paying annual licence fees, as having been a president of the Association.

Motion(s) to consider: (requires a 2/3 majority of votes cast to carry)

That Council makes the following by-law which will take effect immediately when passed:

Section 39(5) of By-law No. 1 is revoked and replaced with the following:

39. (5) Every Member who has been a President of the association shall be designated as a “Life Member” and is exempt from the requirement to pay the annual fee referred to in Section 39(4).

[These changes to the By-Law are made under the authority of Section 8(1) para. 16 and section 8(2) of the *Professional Engineers Act*]

Prepared by: Jordan Max, Manager, Policy, Tribunals & Regulatory Affairs Department

Moved by: Councillor Gary Houghton, P.Eng., Chair, Legislation Committee

1. Need for PEO Action

- On February 2, 2018, Council approved changes to By-Law No. 1 to add all fees formerly listed in Regulation 941 (see C-516-2.1). The fee amounts were not changed.
- However, in the process of reviewing the necessary by-law amendments, section 39(5) was amended to read:

39. (5) Every Life Member is exempt from the requirement to pay the annual fee referred to in Section 39(4).

This language removed the requirement that to qualify as a “life member” one needed to have been a President of the association.

- Prior to February 2, 2018, section 39(6) of By-Law No. 1 read as follows:

39. (6) Notwithstanding the foregoing provisions, every Member who has been a President of the association shall be designated as a “Life Member” and exempt from the requirement to pay the annual membership fee prescribed in section 39(2).

- Upon further policy review by staff, it appears that the removal of past presidency as the qualification for Life Member was unwarranted, and therefore the Legislation Committee is proposing to reinstate the past president qualification in the definition of “life member” in the By-Law. The Committee also advises that as this is a correction to

a status quo ante, subsequent member confirmation of the by-law change as per section 8(3) of the *Professional Engineers Act* is not required.

- The Legislation Committee has reviewed the draft of the By-Law change prepared by Richard Steinecke and is satisfied that it matches the former definition.

2. Proposed Action / Recommendation

- That Council approves the change to the definition of “life member” in section 39(5) of By-Law No. 1, effective immediately, to reinstate the restriction to past presidents of the Association as it existed prior to February 2, 2018.

3. Next Steps (if motion approved)

- Following Council’s approval of By-law changes to add all fees, the by-law is effective immediately and the by-law will be reprinted and posted on the website and in Engineering Dimensions. Since the By-Law changes does not amend the fee amount, there are no implementation issues. It will have no impact on the current or future past presidents of the Association.

4. Policy or Program contribution to the Strategic Plan

- This change to By-Law No. 1 will enable it to meet its regulatory mandate under the *Professional Engineers Act* by giving Council the authority to set its fees.

5. Financial Impact on PEO Budgets (for five years)

- There are no additional operating nor capital costs for passing this By-Law change, as there are no changes to any current fee amounts. The revised By-Law will be posted on PEO’s website.

	Operating	Capital	Explanation
Current to Year End	\$0	\$0	This By-Law change will not impact PEO’s budget.
2 nd	\$0	\$0	
3 rd	\$0	\$0	
4 th	\$0	\$0	
5 th	\$0	\$0	

6. Peer Review & Process Followed

Process Followed	<ul style="list-style-type: none"> • At its 516th meeting on February 2, 2018, Council passed the following motion: That Council approve changes to By-Law No. 1 to establish fee amounts currently contained in Regulation 941, and various updated references as presented to the meeting at C-516-2.1, Appendix A, to take effect immediately when passed. • The Legislation Committee reviewed and approved the draft By-law change at its June 8, 2018 meeting
Council Identified Review	<ul style="list-style-type: none"> • As this is a correction of a prior-approved Council motion to implement an already-approved legislation change, no additional stakeholder consultation or review is required.
Actual Motion Review	<ul style="list-style-type: none"> • The motion was reviewed by the Legislation Committee at its June 8, 2018 meeting and approved.

7. Appendices - NONE

2018 ELECTION MATTERS

Purpose: To approve the recommendations of the 2018 Central Election and Search Committee (CESC) and to approve various other matters related to the conduct of the 2018 Council Elections.

Motion(s) to consider: (requires a simple majority of votes cast to carry)

That Council, with respect to the 2019 Council election:

- a) approve the recommendations contained in the 2018 Central Election and Search Committee Issues Report as presented to the meeting at C-519-2.4, Appendix A;
- b) approve the 2019 Voting Procedures, as presented to the meeting at C-519-2.4, Appendix B;
- c) approve the 2019 Election Publicity Procedures, as presented to the meeting at C-519-2.4, Appendix C;
- d) approve the 2019 Nomination Form as presented to the meeting at C-519-2.4, Appendix D;
- e) approve the 2019 Nomination Acceptance Forms for President-Elect, Vice-President, Councillor-at-Large and Regional Councillor as presented to the meeting at C-519-2.4, Appendix E,
- f) appoint the Regional Election and Search Committees (RESC) for each Region,
- g) appoint the Junior Regional Councillor in each Region (Serge Robert, P.Eng., Guy Boone, P.Eng., Keivan Torabli, P.Eng., Gary Houghton, P.Eng., Lisa MacCumber, P.Eng.) as Chair of the RESC for their Region.

Prepared by: Ralph Martin – Manager, Secretariat

Moved by : Bob Dony, P. Eng., Past President

1. Need for PEO Action

Members of Council are to be elected annually in accordance with sections 2 through 26 of Regulation 941 under the *Professional Engineers Act*.

In accordance with the Protocol for Annual Review of Election Procedures, the Central Election and Search Committee (CESC) undertook a review of the procedures for the conduct of the 2016 Council Elections. PEO convention requires that Council approve voting procedures and election publicity procedures, which form part of the voting procedures, for its annual elections. All recommendations approved by the CESC have been incorporated into the Voting and Election Procedures and the 2019 Council Elections Guide, as the case may be, and will be amended, if required, as per Council's decisions at the meeting.

The CESC Issues report deals with a number of issues including:

- Electronic signatures be allowed on Nomination forms;
- Amend the voting platform to provide a summary and confirmation of voters selection before the vote is actually cast;
- Update the Candidate Travel Allowance
- Candidates be required to use a more structured template to present their bio and platform material

S. 13(1) and 13(2) of Regulation 941 requires Council to appoint a Regional Election and Search Committee (RESC) for each Region composed of the Chair of each Chapter in the Region and appoint the Junior Regional Councillor in each Region as the Chair of the RESC for that Region.

2. Proposed Action / Recommendation

That Council approve the motions noted above.

3. Next Steps (if motion approved)

The approved 2019 Voting Procedures and 2019 Election Publicity Procedures would be published on PEO’s website and in the July/August issue of *Engineering Dimensions*. The 2019 Council Elections Guide will be updated reflecting the Council approved changes to the Voting and Publicity procedures.

4. Policy or Program contribution to the Strategic Plan

Approving policies for the 2019 PEO Council Election is related to Objective 9 in the 2018-2020 Strategic Plan

5. Financial Impact on PEO Budgets (for five years)

	Operating	Capital	Explanation
Current to Year End	\$0	\$0	
2 nd	\$	\$	
3 rd	\$	\$	
4 th	\$	\$	
5 th	\$	\$	

6. Peer Review

Comments were collected from stakeholders such as the Regional Election and Search Committee (RESC) Chairs, Returning Officers, the Official Elections Agent, the Registrar, the Chief Elections Officer, senior PEO staff and others during the Council election and are reflected in the Issues Report.

7. Appendices

- Appendix A – Central Election and Search Committee Issues Report
- Appendix B – Draft 2019 Voting Procedures
- Appendix C – Draft 2019 Election Publicity Procedures
- Appendix D – Nomination Form
- Appendix E – i) – Nomination Acceptance Form – President-Elect
 ii) – Nomination Acceptance Form – Vice-President
 iii) – Nomination Acceptance Form - Councillor-at-Large
 iv) – Nomination Accpetance Form – Regional Councillor

Central Election and Search Committee Issue Report
2018 Council Elections

Item	Issue	Background	Recommendation
1.	<p>Are non-cursive signatures acceptable?</p> <p>A nomination form was submitted that substituted a cursive signature for a graphically designed one.</p>	<p>There is no definition of “signed”.</p> <p>Regulation 14(3)(a) states that “A nomination under subsection (1) [at large positions] and (2) [regional Councillor positions] is not valid unless it is, (a) signed by all the nominators...”</p>	<p>Recommendation: The CESC is currently developing/investigating use of an electronic form.</p> <p>Rationale: There is no definition of what a signature is and the CESC is attempting to determine what constitutes a signature</p>
2.	<p>Should electronic signatures be allowed for nomination forms?</p>	<p>The 2017 CESC Issues Report directed staff to research options for electronic signatures on nomination forms with the thought that allowing for electronic signatures would make it easier for candidates to complete the nomination forms.</p> <p>Staff presented three options to the CESC at their March meeting and sent two test forms to the members of the Committee to used and provide feedback.</p>	<p>Recommendation: Yes. [VP s.6]</p> <p>Rationale: They are currently allowed.</p>
3.	<p>Can a candidate who has withdrawn his or her candidacy re-instate the nomination?</p>	<p>The Voting Procedures are silent on this matter.</p>	<p>Recommendation: Amend S.18 of the current Voting Procedures to state that a nomination, once withdrawn, may not be re-instated.</p> <p>Rationale: To provide clarity on whether a withdrawn nomination may be re-instated.</p>

Item	Issue	Background	Recommendation
			<p>Recommendation: If the CESC decides to accept a reinstatement, a new nomination petition form should be submitted. [VP s.18]</p> <p>Rationale: To confirm that members who signed the original form support a reinstatement.</p>
4.	I am curious to why there is no place for "honors and awards". Participation is covered, but quality of participation is as important, and I would like to know about it, especially for the executive candidates. (Member comment)	<p>S.5 of the Election Publicity Procedures: “Candidates have the option of using one of two templates to present their election material in <i>Engineering Dimensions</i>. Option 1: Candidates using the blank template will have discretion over the presentation of their material, including but not limited to, font style, size and effects....” Option 2: Candidates using the fillable template must provide responses to the questions provided in the allotted space. The presentation of the fillable template is fixed and no modifications will be permitted.”</p>	<p>Recommendation: Maintain status quo</p> <p>Rationale: Candidates are provided with a limited amount of space in the fillable template in which to present their platforms. Including space for honours and awards on the fillable template would further limit their space for this purpose. They can use the blank template and include this information if they wish.</p>
5.	There is no provision for accepting nomination forms or publicity material (including eblast material) beyond the deadline if it can be proved it was sent before the deadline.	<p>Voting Procedure #18: “Nomination papers are to be submitted only by email for tracking purposes. Forms will not be accepted by any other format (e.g. – personal delivery, courier, fax or regular mail). Candidates should allow sufficient item for their emails to go through the system to ensure that the completed papers are, in fact, received by the Chief Elections Officer by 4:00 pm on December 1, 2017 deadline. <u>In the event of a dispute as to when the forms were</u></p>	<p>Recommendation: Amend the last line of Voting Procedures 18. to read:</p> <p>In the event of a dispute as to when the forms were sent vs received, they will be accepted only if a candidate can provide the Chief Elections Officer with a copy of his/her email to PEO sent from his/her computer indicating a sent time before the deadline. [VP s.18]</p>

Item	Issue	Background	Recommendation
		<p><u>sent vs received, a candidate can provide the Chief Elections Officer with a copy of his/her email to PEO that would indicate the time the nomination forms were sent from his/her computer.”</u></p> <p>There is no similar provision in the Election Publicity Procedures.</p>	<p>Rationale: To clarify the circumstances under which nomination forms may be accepted past the deadline.</p> <p>Recommendation: Amend Election Publicity Procedure 8. and Schedule A thereto to include the above recommendation for the Voting Procedures.</p> <p>Recommendation: Amend Election Publicity Procedures 14. by stating that the material must be submitted by the deadline as set out in the <i>Important Dates to Remember</i> and include a paragraph similar to the above recommendation for receiving material beyond the deadline.</p> <p>Rationale: To provide for an honest technical delay in material reaching PEO within the timeframe specified.</p>
6.	E-blast material is being submitted that does not always conform to the specifications.	<p>The Election Procedures do not specify how the material is to be submitted – i.e. as part of an email message or in a Word document.</p> <p>Staff is tacitly prohibited from amending material in any way and even to develop a Word document from an email message is considered to be tampering.</p>	<p>Recommendation: Amend the Election Publicity Procedures to specify that e-blast messages must be submitted in Word document only; it must not be included as part of the message in the transmission email. [EPP s.15]</p> <p>Recommendation: Where the email message is received in a font different in size or style but complies with the specifications in all other respects, the Chief Elections Officer may authorize staff to change only the size and font style so that the material conforms to specifications.</p>

Item	Issue	Background	Recommendation
			<p>Recommendation: Explicitly state that staff is prohibited from amending material in anyway, except with the written permission of the candidate or as per the recommendation above,</p> <p>Rationale: To clarify how material is to be submitted and how it may be changed to conform to the specifications.</p> <p>Authorizing the Chief Elections Officer to authorize staff to make font style and size changes when the material conforms in all other respects is expedient when time is of the essence in receiving and preparing the material for distribution.</p>
7.	Voting/Election Publicity Procedures are inconsistent with the Communications Policy.	<p>There is no prohibition in either of the Procedures prohibiting Councillors from endorsing, or not endorsing, candidates.</p> <p>The Internal Communications Policy, Official Spokespeople, found in the Council Manual, page page. 141, states: <i>Official spokespeople (i.e. Councillors) may use their positions to encourage candidates to stand for PEO office and members to participate in the election process, but may not endorse candidates for PEO election.</i></p>	<p>Recommendation: Amend the Election Publicity Procedures to be consistent with the Internal Communications Policy as it relates to elections. [EPP s.21]</p> <p>Rationale: The Policy prohibiting members of Council from officially endorsing candidates ensures that there is no perception that Council is trying to interfere with or influence the election process. Further, the operation of Council could be less collegial – new Councillors may have a less favourable view of their new colleagues – if they had publicly endorsed opposing candidates during the election.</p>

Item	Issue	Background	Recommendation
8.	Unsolicited email. One candidate in particular sent unsolicited emails to many voters, many of whom complained and asked PEO if there is a way to stop the sender from continuing to send them; they feel harassed.	<p>Voters are being harassed by emails from some candidates and are seeking a way to stop them.</p> <p>Members have been advised there is no prohibition from candidates sending unsolicited campaign emails to members from candidate-compiled public email databases. When the CEO received a complaint of this nature, the candidate is requested to remove the recipient from their distribution list.</p>	<p>Recommendation: Status quo.</p> <p>Rationale: PEO does not have the authority to interfere with candidate email distribution lists properly obtained from public sources.</p>
9.	There was no summary at the end of the voting site to permit voters to confirm that their selections were what they intended – i.e. the voter didn't inadvertently make an error when selecting a candidate.		<p>Recommendation: Amend the voting platform to provide for a summary and confirmation of voter selection before the vote is actually cast.</p> <p>Rationale: To allow voters to confirm their voting preferences to ensure they have cast their vote as intended.</p>
10.	There is no breakdown of candidate votes by chapter.	The results currently shown on the website weekly are by total chapter votes in each region and does not include the number of votes each candidate has received weekly.	<p>Recommendation: Maintain Status Quo.</p> <p>Rationale: The weekly update should only provide information on the number of votes cast by chapter.</p>
11.	Increased ISP and SPAM filters preventing the delivery of voting credentials	On Friday February 23, 2018, over 70,000 emails were sent to license holders with their ID and PIN numbers required to vote. Email providers such as Hotmail.com have increased security in the last year in order to prevent eblasts from filling up the inboxes of their customers. As a result, thousands of	<p>Recommendation: That the Official Election Agent continue to spool out the emails containing ID and PIN numbers over a 48-hour period and that PEO inform license holders prior to voting opening to notify them that it may take two days for them to receive their voting credentials.</p>

Item	Issue	Background	Recommendation
		<p>emails containing the ID and PIN numbers were directed to the junk or spam folders of license holders instead of their inboxes.</p> <p>When it became evident that the emails containing the election information were not being delivered, the Official Election Agent suggested that for the election reminders they would spool out the emails in random and smaller batches over a 48-hour period rather than sending them all at one time. As a result, of spooling, the election information went to inboxes rather than junk or spam boxes.</p> <p>At the March CESC meeting, President Dony suggested messaging on PEO's website and possibly sending an eblast to inform voters that while voting for the 2019 Council election begins at 12:00 pm on January 25 that they should not expect to receive their credentials immediately due to increased ISP and SPAM filters.</p>	<p>Rationale: Spooling out the voting credentials increases the number of emails that are received by license holders and PEO must make voters aware that although voting has opened that they may have to wait up to two days to receive their credentials.</p>
12.	Updating the Candidate travel allowance.	<p>For the 2017 Council Election, the Regional Councillors Committee (RCC) developed a formula to calculate the maximum amount for a travel allowance to subsidize Candidate travel to Chapter events.</p> <p>The maximum amounts for Candidate travel set for the 2017 Council Election were employed for the 2018 PEO Council Elections as well. Candidates expressed</p>	<p>Recommendation: That the RCC review the travel allowance for the 2019 Council Election and report to Council at the September 2018 meeting.</p> <p>Rationale: Travel allowances for Candidates to attend Chapter events should be reviewed on an annual basis.</p>

Item	Issue	Background	Recommendation
		their concern that the maximum allowable expenses for travel did not increase for the 2018 Council Election	
13.	Should PEO provide candidates with a more structured template for their bio and platform material.	<p>The 2017 CESC Issues Report that was presented to Council at the June 2017 meeting contained a recommendation that a more structured template for candidate bio and platform material would present that material in a more uniformed manner. Staff were directed to develop a more structured template for candidate bio and platform material. A template was developed that is similar to the one used by OSPE for their board elections.</p> <p>At the June 2017 meeting, Council voted to provide Candidates with the option of a structured and non-structured template to present their bio and platform material. As a result, some Candidates used the structured template while others used the unstructured version.</p>	<p>Recommendation: That Candidates be required to use the structured template to present their bio and platform material. [EPP Schedule A]</p> <p>Rationale: A more structured template for candidates to present their bio and platform material will assist voters in comparing candidates. A more structured template would assist candidates listing their awards and would help direct candidates to use the correct size and font style.</p>
14.	Problems were experienced with the timing and notice for the 2018 Regional All Candidate meetings.	Issues related to the timing, notice and budget for the 2018 Regional All Candidate meetings.	<p>Recommendation: That the RCC consider how to improve the process for the Regional All Candidate meetings</p> <p>Rationale: Regional All Candidate meetings provide candidates with the opportunity to reach voters and they need to be operated in an effective manner.</p>
15.	There were delays in the second candidate eblast related the increased	Some voters did not receive the second candidate eblast in a timely manner.	Recommendation: That Communications investigate means of avoiding this problem in the future.

Item	Issue	Background	Recommendation
	throttling and SPAM filtering by ISP's and carriers.		Rationale: Candidates want to ensure their material is sent out to voters in a timely manner.

**2019 Voting Procedures
for Election to the 2019-2020 Council of the
Association of Professional Engineers Ontario (PEO)**

The 2019 voting and election publicity procedures were approved by the Council of PEO in June 2018. Candidates are responsible for familiarizing themselves with these procedures. Any deviation could result in a nomination being considered invalid. Candidates are urged to submit nominations and election material well in advance of published deadlines so that irregularities may be corrected before the established deadlines. Nominees' names are made available as received; all other election material is considered confidential until published by PEO.

1. The schedule for the elections to the 2019-2020 Council is as follows:

Date nominations open	October 22, 2018
Date nominations close	4:00 p.m. - November 30, 2018
Date PEO's membership roster will be closed for the purposes of members eligible to automatically receive election material ¹	January 11, 2019
Date a list of candidates and voting instructions will be sent to members	no later than January 18, 2019
Date voting will commence	on the date that the voting packages are sent to members, no later than January 18, 2019
Date voting closes	4:00 p.m. February 22, 2019

All times noted in these procedures are Eastern Time.

2. Candidates' names will be listed in alphabetical sequence by position on the list of candidates sent to members and on PEO's website. However, the order of their names will be randomized when voters sign in to the voting site to vote.
3. A person may be nominated for only one position.
4. Nomination papers are to be submitted only by email (elections@peo.on.ca) for tracking purposes. Forms will not be accepted in any other format (e.g. – fax, personal delivery, courier, regular mail).
5. Only nomination acceptance and nomination forms completed in all respects, without amendment in any way whatsoever will be accepted.
6. Signatures on nomination forms can be hand signed or electronic.

¹ Members licensed after this date may call in and request that election information be mailed to them by regular mail, or, upon prior written consent by the member for use of his/her email address, via email, or via telephone

7. Signatures on nomination papers do not serve as confirmation that a member is formally endorsing a candidate.
8. Candidates will be advised when a member of the Central Election and Search Committee has declared a conflict of interest should an issue arise that requires the consideration of the Committee.
9. An independent agency has been appointed by Council to receive, control, process and report on all cast ballots. This "Official Elections Agent" will be identified to the Members with the voting material.
10. If the Official Elections Agent is notified that an elector has not received a complete election information package, the Official Elections Agent shall verify the identity of the elector and may either provide a complete duplicate election information package to the elector, which is to be marked "duplicate", by regular mail or email or provide the voter's unique control number to the voter and offer assistance via telephone. In order to receive such information via email, the elector must provide prior written consent to the use of his or her email address for this purpose.
11. Council has appointed a Central Election and Search Committee to:
 - encourage Members to seek nomination for election to the Council as president-elect, vice president or a councillor-at-large;
 - assist the Chief Elections Officer as may be required by him or her;
 - receive and respond to complaints regarding the procedures for nominating, electing and voting for members to the Council;
 - conduct an annual review of the elections process and report to the June 2018 Council meeting.
12. Council has appointed a Regional Election and Search Committee for each Region to:
 - encourage Members residing in each Region to seek nomination for election to the Council as a regional councillor.
13. Candidates for PEO Council may submit expense claims. The travel allowance to enable Candidates to travel to Chapter events during the period from the close of nominations to the close of voting will be based on the distance between chapters and the number of chapters in each region. Such travel expenses are only reimbursed in accordance with PEO's expense policy.
14. Council has appointed an independent Chief Elections Officer to oversee the election process and to ensure that the nomination, election and voting are conducted in accordance with the procedures approved by Council.
15. The Chief Elections Officer will be available to answer questions and complaints regarding the procedures for nominating, electing and voting for members to the Council. Any such complaints or matters that the Chief Elections Officer cannot resolve will be forwarded by the Chief Elections Officer to the Central Election and Search Committee for final resolution. Staff is explicitly prohibited from handling and resolving complaints and questions, other than for administrative purposes (e.g. forwarding a received complaint or question to the Chief Elections Officer).
16. On or before the close of nominations on December 1 , 2017, the President will appoint three Members or Councillors who are not running in the election as Returning Officers to:
 - approve the final count of ballots;

- make any investigation and inquiry as they consider necessary or desirable for the purpose of ensuring the integrity of the counting of the vote; and
 - report the results of the vote to the Registrar not later than March 10, 2018.
17. Returning Officers shall receive a per diem of \$250 plus reasonable expenses to exercise the duties outlined above.
 18. Nomination papers are to be submitted only by email for tracking purposes. Forms will not be Accepted by any other format (e.g. – personal delivery, courier, fax or regular mail). Candidates should allow sufficient itemm for their emails to go through the system to ensure that the completed papers are, in fact, received by the Chief Elections Officer by 4:00 pm on December 1, 2017 deadline. In the event of a dispute as to when the forms were sent vs received, a candidate can provide the Chief Elections Officer with a copy of his/her email to PEO that would indicate the time the nomination forms were sent from his/her computer. A nomination once withdrawn, may not be re-instated.
 19. If a candidate withdraws his or her nomination for election to PEO Council prior to the preparation of the voting site, the Chief Elections Officer shall not place the candidate’s name on the voting site of the Official Elections Agent or on the list of candidates sent to members and shall communicate to Members that the candidate has withdrawn from the election. If the candidate withdraws from the election after the electronic voting site has been prepared, the Chief Elections Officer will instruct the Official Elections Agent to adjust the voting site to reflect the candidate’s withdrawal.
 20. A newly-completed nomination petition form, in addition to a new acceptance form, when a candidate changes his/her mind on the position sought.
 21. In the event a Chapter holds an All Candidate meeting, the Chapter must invite all Candidates for which voters in that region are eligible to vote to the meeting.
 22. Voting will be by electronic means only (internet and telephone). Voting by electronic means will be open at the same time the electronic election packages are sent out.
 23. All voting instructions, a list of candidates and their election publicity material will be sent to members. All voters will be provided with detailed voting instructions on how to vote electronically. Control numbers or other access control systems will be sent to members by email after the election package has been sent out. The Official Elections Agent will send out an eblast with the control numbers (PINs) every Monday during the election period. Election material sent to members electronically or by mail will contain information related to the All Candidates Meetings.;
 24. Verification of eligibility, validity, or entitlement of all votes received will be required by the Official Elections Agent. Verification by the Official Elections Agent will be by unique control number to be provided to voters with detailed instructions on how to vote by the internet and by telephone.
 25. The Official Elections Agent shall keep a running total of the electronic ballot count and shall report the unofficial results to the Chief Elections Officer who will provide the candidates with the unofficial results as soon as practically possible.
 26. Voters need not vote in each category to make the vote valid.

27. There shall be an automatic recount of the ballots for a given candidate category for election to Council or by-law confirmation where the vote total on any candidate category for election to Council between the candidate receiving the highest number of votes cast and the candidate receiving the next highest number of votes cast is 25 votes or less for that candidate category or where the votes cast between confirming the by-law and rejecting the by-law is 25 votes or less.
28. Reporting of the final vote counts, including ballots cast for candidates that may have withdrawn their candidacy after the opening of voting, to PEO will be done by the Returning Officers to the Registrar, who will advise the candidates and Council in writing at the earliest opportunity.
29. Certification of all data will be done by the Official Elections Agent.
30. The Official Elections Agent shall not disclose individual voter preferences.
31. Upon the direction of the Council following receipt of the election results, the Official Elections Agent will be instructed to remove the electronic voting sites from its records.
32. Election envelopes that are returned to PEO as undeliverable are to remain unopened and stored in a locked cabinet in the Document Management Centre (DMC) without contacting the member until such time as the election results are finalized and no longer in dispute.
33. Elections Staff shall respond to any requests for new packages as usual (i.e.: if the member advises that he/she has moved and has not received a package, the member is to be directed to the appropriate section on the PEO website where the member may update his/her information with DMC).
34. DMC staff shall advise Elections Staff when the member information has been updated; only then shall the Elections Staff request the Official Elections Agent to issue a replacement package with the same control number.
35. Elections Staff are not to have access to, or control of, returned envelopes.
36. After the election results are finalized and no longer in dispute, the Chief Elections Officer shall authorize the DMC to unlock the cabinet containing the unopened returned ballot envelopes so that it may contact members in an effort to obtain current information.
37. After the DMC has determined that it has contacted as many members whose envelopes were returned as possible to obtain current information or determine that no further action can be taken to obtain this information, it shall notify the Elections Staff accordingly and destroy the returned elections envelopes.
38. Nothing in the foregoing will prevent additions and/or modifications to procedures for a particular election if approved by Council.
39. The All Candidate Meetings will take place the week of January 7, 2019

40. All questions from, and replies to, candidates are to be addressed to the Chief Elections Officer:

By e-mail: elections@peo.on.ca

By Letter mail: Chief Elections Officer
c/o Professional Engineers Ontario
101 – 40 Sheppard Avenue West
Toronto, ON M2N 6K9

The Election Publicity Procedures form part of these Voting Procedures.

2019 Election Publicity Procedures
for Election to the 2019-2020 Council of the
Association of Professional Engineers Ontario (PEO)

Important Dates to Remember

Deadline for receipt of publicity materials for publication in <i>Engineering Dimensions</i> and on the PEO website, including URLs to candidates' own websites	4:00 p.m. – December 10, 2018
Deadline for submission of candidate material to eblast to members	1. January 14, 2019 – 1 st eblast 2. January 28, 2019 – 2 nd eblast 3. February 11, 2019 – 3 rd eblast
Dates of eblasts to members	1. January 21, 2019 2. February 4, 2019 3. February 19, 2019
Date of posting period	January 22, 2018 to February 23, 2018
Dates of voting period	12:00 p.m. January 18, 2019 to 4:00 p.m. February 22, 2019.

Note: All times indicated in these procedures are Eastern Time

1. Names of nominated candidates will be published to PEO's website as soon as their nomination is verified.
2. Names of all nominated candidates will be forwarded to members of Council, chapter chairs and committee chairs, and published on PEO's website, by December 3, 2018
3. Candidates will have complete control over the content of all their campaign material, including material for publication in *Engineering Dimensions*, on PEO's website, and on their own websites. Candidate material is readily available to the public and should be in keeping with the dignity of the profession at all times. Material will be published with a disclaimer. The Chief Elections Officer may seek a legal opinion prior to publishing/posting of any material if the Chief Elections Officer believes campaign material could be deemed libelous. The Chief Elections Officer has the authority to reject the campaign material if so advised by legal counsel.
4. Candidate material may contain personal endorsements provided there is a clear disclaimer indicating that the endorsements are personal and do not reflect or represent the endorsement of PEO Council, a PEO chapter or committee, or any organization with which an individual providing an endorsement is affiliated.
5. Candidates are required to use a structured template provided by PEO to present their I for publishing in *Engineering Dimensions*, including but not limited to font style, size and effects, and are each allocated the

equivalent of one-half page, including border, in *Engineering Dimensions* (6.531 inches wide x 4.125 inches in height) in which to provide their election material. A template for this purpose is included in Schedule A of these procedures. If candidate submissions do not include a border, one will be added, as shown on the template. If submissions exceed the bordered one-half page, they will be mechanically reduced to fit within the border.

6. Candidates will be permitted to include a photograph within their one-half page. Only photographs taken within the last five years will be accepted.
7. All material for publishing on PEO's website and in *Engineering Dimensions* must be submitted to the Chief Elections Officer at elections@peo.on.ca in accordance with Schedule A attached. Candidates shall not use the PEO logo in their election material.
8. Candidates' material for publication in *Engineering Dimensions* and on the website, including URLs to candidates' own websites, must be forwarded to the Chief Elections Officer at the association's offices or via email at elections@peo.on.ca no later than December 10, 2018 at 4:00 p.m. and in accordance with Schedule A attached. Candidate material will be considered confidential, and will be restricted to staff members required to arrange for publication, until published on PEO's website. All candidates' material will be published to PEO's website at the same time. . In the event of a dispute as to when the forms were sent vs received, a candidate can provide the Chief Elections Officer with a copy of his/her email to PEO that would indicate the time the nomination forms were sent from his/her computer. A nomination once withdrawn, may not be re-instated.
9. If campaign material is submitted by a candidate without identifying information, PEO staff are authorized to contact the candidate and ask if he/she wishes to resubmit material. If campaign material is received by the Chief Elections Officer and returned to the candidate for amendment to comply with the Election Publicity Procedures, and the amended material is not returned within the prescribed time, staff will publish the material with a notation explaining any necessary amendments by staff.
10. Candidate publicity material will be published as a separate insert in the January/February 2018 issue of *Engineering Dimensions* and to PEO's website in January 2018 and included in any hardcopy mailing to eligible voters with voting instructions. Links to candidate material on PEO's website will be included in any electronic mailing to eligible voters.
11. Candidates may publish additional information on PEO's website, provided they email their material to the Chief Elections Officer in the format set out in Schedule A. This material must be received by the Chief Elections Officer no later than December 10, 2018.
12. Candidates may submit updates to their material on PEO's website once during the posting period. Any amendments to a candidate's name/designations are to be considered part of the one-time update permitted to their material during the posting period. Candidates may include links to PEO publications, but *not* a URL link to a third party, in their material on PEO's website. Links to PEO publications are not considered to be to a third party. For clarity, besides links to PEO publications, the only URL link that may be included in a candidate's material on PEO's website is a URL link to the candidate's own website.
13. Candidates may post more comprehensive material on their own websites, which will be linked from PEO's website during the posting period. Candidates may include active links to their social media accounts (Facebook, Twitter, LinkedIn, etc.) in material appearing in *Engineering Dimensions*, published on PEO's election site (i.e. the 1000-word additional information candidates' may submit), or included in an eblast of candidate material.

14. PEO will provide three group email distributions to members of candidate publicity material beyond the material published in *Engineering Dimensions*. Material to be included in an eblast must be submitted to the Chief Elections Officer at elections@peo.on.ca in accordance with Schedule A. . In the event of a dispute as to when the forms were sent vs received, they will be accepted only if a candidate can provide the Chief Elections Officer with a copy of his/her email to PEO sent from from his/her computer indicating a sent time before the deadline
15. All material for the eblast messages must be submitted in a Word document only and must not be included as part of the message in the transmission email. Where the email message is received in with a font size or style that is different from the specifications but otherwise meets all the requirements, the Chief Elections Officer may authorize staff to change only the size and font of the material so it conforms to specifications. Staff are prohibited from amending material in any way except with the written permission of the candidate.
16. Candidates are responsible for responding to replies or questions generated by their email message.
17. The Chief Elections Officer is responsible for ensuring that all candidate material (whether for *Engineering Dimensions*, PEO's website, or eblasts) complies with these procedures. Where it is deemed the material does not satisfy these procedures, the Chief Elections Officer will, within three full business days from receipt of the material by the association, notify the candidate or an appointed alternate, who is expected to be available during this period by telephone or email. The candidate or appointed alternate will have a further three full business days to advise the Chief Elections Officer of the amendment. Candidates are responsible for meeting this deadline. Should a candidate fail to re-submit material within the three-business-day period, the candidate's material will be published with a notation explaining any necessary amendments by staff.
18. PEO will provide candidates the opportunity to participate in All Candidate Meetings, which will be held at PEO Offices during the week of January 8, 2018. The All Candidate Meetings will be video recorded for posting on PEO's website. On the day of the first All Candidates Meeting, an eblast will be sent to members announcing that these video recordings will be posted on the PEO website within two business days.
19. Caution is to be exercised in determining the content of issues of membership publications published during the voting period, including chapter newsletters. Editors are to ensure that no candidate is given additional publicity or opportunities to express viewpoints in issues of membership publications distributed during the voting period from January 18, 2019 until the close of voting on February 22, 2019 beyond his/her candidate material published in the January/February issue of *Engineering Dimensions*, and on the PEO website. This includes photos (with or without captions), references to, or quotes or commentary by, candidates in articles, letters to the editor, and opinion pieces. PEO's communications vehicles should be, and should be seen to be, nonpartisan. The above does not prevent a PEO publication from including photos of candidates taken during normal PEO activities – e.g. licensing ceremonies, school activities, GLP events, etc., provided there is no expression of viewpoints. For greater clarity, no election-specific or election-related articles, including Letters to the Editor and President's Message, are to be included in *Engineering Dimensions* during the voting period. *Engineering Dimensions* or other PEO publications may contain articles on why voting is important.
20. Chapters may not endorse candidates, or expressly *not* endorse candidates, in print, on their websites or through their list servers, or at their membership meetings or activities during the voting period. Where published material does not comply with these procedures, the Chief Elections Officer will cause the offending material to be removed if agreement cannot be reached with the chapter within the time available.

21. Councillors may use their positions to encourage candidates to stand for PEO office and members to participate in the election process, but may not endorse candidates for PEO election.
22. Candidates may attend Chapter annual general meetings and network during the informal portion of the meeting. Candidates are permitted to attend Chapter functions in their current official capacity but are prohibited from campaigning while operating in their official capacity.
23. The Central Election and Search Committee is authorized to interpret the Voting and Election Publicity guidelines and procedures, and to rule on candidates' questions and concerns relating to them.


These Election Publicity Procedures form part of the Voting Procedures.

Schedule A - 2019 Elections Publicity Procedures

Specifications for Candidate Materials

Publication Format (candidate statements in <i>Engineering Dimensions</i> and PEO website)	<p>Candidates are required to use the fillable template and must provide responses to the questions provided in the allotted space. The completed template must be submitted as a PDF document.</p> <p>Portraits must be submitted separately, as specified in the portraits section below, and will be added to the template by PEO staff.</p> <p>The presentation of the fillable template is fixed and modifications will be permitted.</p> <p>The template dimensions are 6.531 inches wide and 4.125 inches in height.</p> <p>The profile template will be available on PEO's elections website, www.peovote.ca</p> <p>Note: Candidate material may contain personal endorsements provided there is a clear disclaimer indicating that the endorsements are personal and do not reflect or represent the endorsement of PEO Council, a PEO chapter or committee, or any organization with which and individual providing an endorsement is affiliated.</p>
Photographs	<p>Photographs must be at least 5" x 7" in size if submitted in hard copy form so that they are suitable for scanning ("snapshots" or passport photographs are not suitable.)</p> <p>Only pictures taken in the last five years will be accepted.</p> <p>If submitted in digital form, they must be JPEG-format files of at least 300 KB but no more than 2MB.</p> <p>Candidates can submit a digital photo at the specifications noted, or hard copy as noted, and preferably both. In case the digital file is corrupted or not saved at a sufficiently high resolution, publications staff can rescan the photo (hard copy) to ensure it prints correctly, as indicated on the PDF.</p>
PEO Website (candidates' additional information)	<p>Candidates may publish additional information on PEO's website by submitting a Word or Word-compatible file of no more than 1000 words, and no more than three non-animated graphics in JPEG or GIF format. Graphics may not contain</p>

	<p>embedded material.</p> <p>Candidates may post additional material on their own websites, which will be linked from PEO’s website. URLs for candidates’ websites must be active by December 11, 2017.</p> <p>Candidates may include links to PEO publications but <i>not</i> a URL link to a third party in their material that is to be posted on PEO’s website. Links to PEO publications are not considered to be to a third party. For clarity, the only URL link that may be included in a candidate’s material on PEO’s website is the URL to the candidate’s own website. Candidates may include active links to their social media accounts (Facebook, Twitter, LinkedIn, etc.)</p> <p>[Update based on Issues Report item 13]</p>
Deadline for <i>Engineering Dimensions</i> and website additional information submissions	Candidates' material for publication in <i>Engineering Dimensions</i> and on PEO’s website must be forwarded to the Chief Elections Officer at (elections@peo.on.ca) by December 10, 2018 at 4:00 p.m.
Eblast material	Candidates are permitted a maximum of 300 words for email messages. Messages are to be provided in 11 pt. Arial font; graphics are not permitted. For clarity, a “graphic” is an image that is either drawn or captured by a camera.
Deadline eblasts to members	Candidates' material for eblasts to members must be forwarded to the Chief Elections Officer at (elections@peo.on.ca): By January 14– for eblast on January 21 By January 28 – for eblast on February 4 By February 11– for eblast on February 19
Help	Candidates should contact the Chief Elections Officer (elections@peo.on.ca) if they have questions about requirements for publicity materials.

	Name:	Candidate statement:
	Employer and position:	
	Degree(s), school(s) attended, year(s) of graduation:	
	Employment history:	
	Participation on PEO Council, committee/task forces, chapters:	
	Other professional affiliations and community service:	
Years of registration in Ontario:		



NOMINATION FORM

I, the undersigned, being a member of Professional Engineers Ontario (PEO), do hereby nominate and endorse <name of candidate> as a candidate for the position of <Council office> in the 2019 PEO Council elections.

It is my understanding that the candidate I am nominating is a Canadian citizen or has the status of a permanent resident of Canada, is currently living in Ontario, and in the case of nomination for the position of Regional Councillor also resides in the region in which he/she is being nominated, and is willing to serve if elected.

I further attest that:

- (i) I have known the candidate for at least two years;
- (ii) I have reviewed the roles and responsibilities for the position of <Council office> as published on PEO's website;
- (iii) On the basis of personal experience of the candidate, I believe he/she possesses the desired attributes of a PEO Councillor in the position of <Council position>.

Name of Nominator _____
(as it appears in PEO's Register)

Nominator's PEO Licence Number _____

Nominator's Address _____

Nominator's Region _____

Nominator's Signature _____



NOMINATION ACCEPTANCE FORM

President-elect

THIS FORM MUST BE COMPLETED AND SUBMITTED BY NOVEMBER 30, 2018 AT 4:00PM

I, _____, hereby agree to stand as a candidate for election as **President-Elect** in the 2019 elections for Council of Professional Engineers Ontario (PEO), and not to withdraw my candidacy except under exceptional circumstances. If elected, I further agree to serve on Council for a three-year term (2019-2022). I am a Canadian citizen or have the status of a permanent resident of Canada, and am currently residing in Ontario.

I declare that the information in this nomination acceptance form and in all other information provided to PEO in support of my nomination and election to PEO Council is true and complete to the best of my knowledge. I understand that a false statement or misrepresentation could result in disciplinary action under the *Professional Engineers Act*.

I declare that I have read and understand Sections 1 and 2 of the *Council Manual*, as published on PEO's website, in particular Sections 1.4 – PEO's Core Values, 2.2 - Duties and Responsibilities of Councillors at Law; 2.3 - Duties Under By-Law No. 1; and 2.4 – Councillors' Code of Conduct, and agree to act in accordance with these sections in carrying out my duties as a Councillor if elected to PEO Council.

I declare that I have familiarized myself with the roles and responsibilities of the office of President-elect, and that I am adequately prepared to serve in that capacity.

I hereby agree to accept the results of the election as verified by PEO's Returning Officers.

Signature: _____ Date: _____

PLEASE PRINT OR TYPE YOUR NAME AND DESIGNATIONS AS YOU WISH THEM TO APPEAR ON PEO'S WEBSITE AND IN PRINT

NAME AND DESIGNATIONS: _____

PEO LICENCE NO. _____

PREFERRED MAILING ADDRESS: _____

TELEPHONE: BUS: _____ HOME: _____

FAX: BUS: _____ HOME: _____

PUBLIC E-MAIL ADDRESS: _____

Candidates are required to provide an e-mail address to be used and made public for election purposes only.



NOMINATION ACCEPTANCE FORM

Vice President

THIS FORM MUST BE COMPLETED AND SUBMITTED BY NOVEMBER 30, 2018 AT 4:00PM

I, _____, hereby agree to stand as a candidate for election as **Vice President** in the 2019 elections for Council of Professional Engineers Ontario (PEO), and not to withdraw my candidacy except under exceptional circumstances. If elected, I further agree to serve on Council for a one-year term (2019-2020). I am a Canadian citizen or have the status of a permanent resident of Canada, and am currently residing in Ontario.

I declare that the information in this nomination acceptance form and in all other information provided to PEO in support of my nomination and election to PEO Council is true and complete to the best of my knowledge. I understand that a false statement or misrepresentation could result in disciplinary action under the *Professional Engineers Act*.

I declare that I have read and understand Sections 1 and 2 of the *Council Manual*, as published on PEO's website, in particular Sections 1.4 – PEO's Core Values, 2.2 - Duties and Responsibilities of Councillors at Law; 2.3 - Duties Under By-Law No. 1; and 2.4 – Councillors' Code of Conduct, and agree to act in accordance with these sections in carrying out my duties as a Councillor if elected to PEO Council.

I declare that I have familiarized myself with the roles and responsibilities of the office of Vice President, and that I am adequately prepared to serve in that capacity.

I hereby agree to accept the results of the election as verified by PEO's Returning Officers.

Signature: _____ Date: _____

PLEASE PRINT OR TYPE YOUR NAME AND DESIGNATIONS AS YOU WISH THEM TO APPEAR ON PEO'S WEBSITE AND IN PRINT

NAME AND DESIGNATIONS: _____

PEO LICENCE NO. _____

PREFERRED MAILING ADDRESS: _____

TELEPHONE: BUS: _____ HOME: _____

FAX: BUS: _____ HOME: _____

PUBLIC E-MAIL ADDRESS: _____

Candidates are required to provide an e-mail address to be used and made public for election purposes only.



NOMINATION ACCEPTANCE FORM

Councillor at Large

THIS FORM MUST BE COMPLETED AND SUBMITTED BY NOVEMBER 30,2018 AT 4:00PM

I, _____, hereby agree to stand as a candidate for election as **Councillor at Large** in the 2019 elections for Council of Professional Engineers Ontario (PEO), and not to withdraw my candidacy except under exceptional circumstances. If elected, I further agree to serve on Council for a two-year term (2019-2021). I am a Canadian citizen or have the status of a permanent resident of Canada, and am currently residing in Ontario.

I declare that the information in this nomination acceptance form and in all other information provided to PEO in support of my nomination and election to PEO Council is true and complete to the best of my knowledge. I understand that a false statement or misrepresentation could result in disciplinary action under the *Professional Engineers Act*.

I declare that I have read and understand Sections 1 and 2 of the *Council Manual*, as published on PEO's website, in particular Sections 1.4 – PEO's Core Values, 2.2 - Duties and Responsibilities of Councillors at Law; 2.3 - Duties Under By-Law No. 1; and 2.4 – Councillors' Code of Conduct, and agree to act in accordance with these sections in carrying out my duties as a Councillor if elected to PEO Council.

I declare that I have familiarized myself with the roles and responsibilities of the office of Councillor at Large, and that I am adequately prepared to serve in that capacity.

I hereby agree to accept the results of the election as verified by PEO's Returning Officers.

Signature: _____ Date: _____

PLEASE PRINT OR TYPE YOUR NAME AND DESIGNATIONS AS YOU WISH THEM TO APPEAR ON PEO'S WEBSITE AND IN PRINT

NAME AND DESIGNATIONS: _____

PEO LICENCE NO. _____

PREFERRED MAILING ADDRESS: _____

TELEPHONE: BUS: _____ HOME: _____

FAX: BUS: _____ HOME: _____

PUBLIC E-MAIL ADDRESS: _____

Candidates are required to provide an e-mail address to be used and made public for election purposes only.



NOMINATION ACCEPTANCE FORM

Regional Councillor

THIS FORM MUST BE COMPLETED AND SUBMITTED BY NOVEMBER 30, 2018 AT 4:00PM

I, _____, hereby agree to stand as a candidate for election as

_____ **Regional Councillor** in the 2019 elections for Council of Professional Engineers Ontario (PEO), and not to withdraw my candidacy except under exceptional circumstances. If elected, I further agree to serve on Council for a two-year term (2019-2021). I am a Canadian citizen or have the status of a permanent resident of Canada, and am currently residing in Ontario in the region in which I stand for election.

I declare that the information in this nomination acceptance form and in all other information provided to PEO in support of my nomination and election to PEO Council is true and complete to the best of my knowledge. I understand that a false statement or misrepresentation could result in disciplinary action under the *Professional Engineers Act*.

I declare that I have read and understand Sections 1 and 2 of the *Council Manual*, as published on PEO's website, in particular Sections 1.4 – PEO's Core Values, 2.2 - Duties and Responsibilities of Councillors at Law; 2.3 - Duties Under By-Law No. 1; and 2.4 – Councillors' Code of Conduct, and agree to act in accordance with these sections in carrying out my duties as a Councillor if elected to PEO Council.

I declare that I have familiarized myself with the roles and responsibilities of the office of Regional Councillor, and that I am adequately prepared to serve in that capacity.

I hereby agree to accept the results of the election as verified by PEO's Returning Officers.

Signature: _____ Date: _____

PLEASE PRINT OR TYPE YOUR NAME AND DESIGNATIONS AS YOU WISH THEM TO APPEAR ON PEO'S WEBSITE AND IN PRINT

NAME AND DESIGNATIONS: _____

PEO LICENCE NO. _____

PREFERRED MAILING ADDRESS: _____

TELEPHONE: BUS: _____ HOME: _____

FAX: BUS: _____ HOME: _____

PUBLIC E-MAIL ADDRESS: _____

Candidates are required to provide an e-mail address to be used and made public for election purposes only.

Briefing Note – Decision – Regulation Change

COUNCIL EXPERIENCE REQUIREMENTS FOR ELECTED PEO OFFICER POSITIONS

Purpose: To re-instate Council experience requirements for candidates seeking the positions of President-Elect and Vice President (elected or appointed).

Motion(s) to consider: (requires a 2/3 majority of votes cast to carry, since its implementation involves a Regulation amendment)

That Council approve the policy intent to reinstate the experience requirements for election or appointment to the offices of Vice President and President-Elect that were in effect prior to the 2008 Council elections, and that the Central Election and Search Committee work with the Legislation Committee on drafting the required changes to Ontario Regulation 941.

Prepared by: George Comrie, P.Eng., on behalf of the Central Election and Search Committee (CESC)

Moved by: Councillor Thomas Chong, P.Eng. – Chair, CESC

1. Need for PEO Action

Prior to the 2008 Council elections, PEO's election regulations (formerly in Section 7 of O. Reg. 941 – see Appendix A) prescribed that:

- candidates for election to the office of President-Elect must have already served for at least two (2) years on the Council before assuming the office of President-elect; and
- candidates for election or appointment as Vice President must have served at least one (1) year on Council before assuming the office of Vice President.

By resolution of Council, these and other constraints were removed in April, 2008 with the intent of widening access to the officer positions.

Since the removal of the Council experience requirements for Vice President and President-elect in 2008, there have been several candidates for these positions without Council experience. (Some, in fact, had no or minimal PEO volunteer experience of any kind.) This places the organization at risk that its senior elected officers may lack the necessary PEO-specific domain knowledge and skill to provide effective leadership and to garner the respect and support of their Council colleagues, the membership, and the public at large.

Historically, with very few exceptions, candidates for election as President-elect or Vice-President have come from the ranks of current regional Councillors or Councillors-at-Large. This may be viewed as a logical succession, with the entry point to Council service being typically the role of a regional councillor. This succession model is consistent with that of most boards of directors, in which it would be rare for a new member of the board to assume an executive or chair position, regardless of the individual's experience on other boards. Candidates for officer positions are typically expected to have already served on the board for some period of time, during which they will have become familiar with the work and functioning of the board, and will have had opportunities to demonstrate their leadership and collaboration skills to their colleagues. This is generally accepted as good board governance practice. PEO chapter executives and committees tend to follow a similar succession model as well.

It is critical for a President to have earned the confidence and respect of Council before assuming office. PEO is a complex organization. It takes time to learn the basics of PEO's mandate/governance and the rhythms of Council's agenda in order to provide effective leadership to Council. It also takes time to build effective working relationships with Council colleagues.

While their duties and responsibilities are not as clearly defined, the Vice Presidents are members of PEO's Executive Committee, and figure in the hierarchy of officers to replace a President who becomes indisposed while in office.

Recently, Council approved changes to Regulation 941 based on recommendations from its *Council Term Limits Task Force* to impose term limits on Councillors to increase Council turnover and provide more opportunities for other non-incumbent candidates. The changes were subsequently approved by Cabinet on February 22, 2018 to come into effect on July 1, 2018. At the same time, the Task Force recommended – and Council endorsed – the need for more formal succession planning to accompany the term limits in the interest of making PEO's leadership succession more intentional.

While there is no guarantee that candidates with Council experience will perform better in officer positions than those without, it is highly likely that someone who has completed one or two terms on Council will have a better understanding of PEO core business and the roles and responsibilities of a Councillor than someone newly elected. Most new PEO Councillors report steep learning curves in their first term on Council. In addition, the opportunity to develop productive working relationships with one's Council colleagues is invaluable for those seeking the senior leadership positions.

Experience requirements for those seeking officer positions are consistent with Council's established direction to improve PEO's leadership succession. Permitting candidates to run for senior office without requisite experience is antithetical to the notion of succession planning.

2. Proposed Action / Recommendation

That Council experience requirements for candidates running for the positions of President-Elect and Vice President be re-instated so that candidates for election to the office of President-Elect must have served at least two years on Council and candidates for election or appointment to the office of Vice President must have served at least one year on Council.

3. Next Steps (if motion approved)

- PEO's Legislation Committee will work with staff in the Legislative Counsel Office in the Ministry of the Attorney General to draft the necessary Regulation changes for Council approval.

4. Policy or Program Contribution to the Strategic Plan

Re-instituting Council experience requirements for the President-Elect and Vice President positions supports Objective 7 in the 2018-2020 Strategic Plan:

Redefine the volunteer leadership framework—PEO-specific leadership values will be consistently practiced by volunteers, and promoted through recruitment, training, mentorship, term limits, succession planning and evaluation.

5. Financial Impact on PEO Budgets (for five years)

	Operating	Capital	Explanation
Current to Year End	\$0	\$0	
2 nd	\$	\$	
3 rd	\$	\$	
4 th	\$	\$	
5 th	\$	\$	

No impact on PEO staffing requirements. Current administrative staff who support the Central Election and Search Committee will continue to verify council experience for nominees seeking to be elected or appointed as Vice President or President-elect.

6. Peer Review & Process Followed

Process Followed	The Central Election and Search Committee reviewed the history related to the experience requirement as part of their process to make recommendations to Council for improvement of the PEO Council Election process.
Council Identified Review	In accordance with PEO's Regulatory Change Policy, the Legislation Committee in November, 2017 reviewed the working paper proposing this change and determined that an amendment to Regulation 941 would be required to implement it.
Actual Motion Review	The Central Election and Search Committee (CESC) reviewed the experience requirement issue and voted to develop a briefing note with a motion to re-instate the experience requirement for candidates standing for the positions of President-Elect and Vice President. The Briefing Note was reviewed and amended at CESC's meeting on May 9 th , 2018.

7. Appendices

- Appendix A – Section 7 of Ontario Regulation 941 as it existed prior to the 2008 amendments.

**EXCERPT FROM ONTARIO REGULATION 941
As of April 30, 2007**

7. (1) No Member is eligible to be nominated for election as president-elect unless the Member has served for at least two full years as a member of the Council prior to the date on which the Member would take office as president-elect. R.R.O. 1990, Reg. 941, s. 7 (1).

(2) No person is eligible to be nominated for election or appointment as a vice-president unless the person has served for at least one full year as a member of the Council prior to the date on which the person would take office. R.R.O. 1990, Reg. 941, s. 7 (2).

(3) For the purposes of subsections (1) and (2),

“full year” means a period commencing at the close of business of an annual meeting of Members and terminating at the close of business of the next following annual meeting. R.R.O. 1990, Reg. 941, s. 7 (3).

Note: On May 1, 2007, section 7 is revoked. See: O. Reg. 157/07, ss. 1, 14.

COMMITTEE / TASK FORCE TERMS OF REFERENCE

Purpose: To approve committee and task force Terms of Reference, work plans and human resources plans.

Motion(s) to consider: (requires a simple majority of votes cast to carry)

That Council approves the Discipline Committee (DIC) Terms of Reference as presented at C-519-2.6, Appendix A.

Prepared by: Viktoria Aleksandrova, Committee Coordinator

Moved by: Councillor Michael Chan. P.Eng.

1. Need for PEO Action

One of the roles of Council, as identified in the *Committees and Task Forces Policy* (Role of Council, Item 3), is to approve committee/task force mandates, Terms of Reference, annual work plans, and annual human resources plans.

In accordance with the *Committees and Task Forces Policy – Reference Guide* (Sections 2.5 and 3.2), the Discipline Committee (DIC) submitted its revised Terms of Reference to the Advisory Committee on Volunteers (ACV) for review and comment. The ACV approved the document at its May 24, 2018 meeting.

2. Proposed Action / Recommendation

That Council approve the submitted Terms of Reference, as presented.

3. Next Steps (if motion approved)

The approved document will be posted on the PEO website.

4. Policy or Program contribution to the Strategic Plan

The motion regarding Committee / Task Force Terms of Reference is related to Objective 9 in the 2018-2020 Strategic Plan.

5. Financial Impact on PEO Budgets (for five years)

Not applicable

6. Peer Review & Process Followed

Process Followed	<ul style="list-style-type: none"> The final version of the DIC Terms of Reference was submitted to People Development in March 2018. In accordance with the <i>Committee and Task Force Policy – Reference Guide</i> (Sections 2.5 and 3.2), the Terms of Reference document was submitted to the Advisory Committee on Volunteers (ACV) for review and comment.
Council Identified Review	N/a
Actual Motion Review	<ul style="list-style-type: none"> The ACV approved the revised DIC Terms of Reference at its May 24, 2018.

7. Appendix

- Appendix A – Discipline Committee (DIC)
 - i) Terms of Reference

**TERMS OF REFERENCE
DISCIPLINE COMMITTEE (“DIC”)**

Issue Date: November 2015

Review Date: March 13, 2018

Approved by Council:

Review by: Committee

<p>Mandate</p>	<p>The mandate of the DIC is set out in section 28 of the <i>Professional Engineers Act</i> (“PEA”), and consists of the following duties under subsection 28(1):</p> <p>(a) when so directed by the Council, the Executive Committee or the Complaints Committee of Professional Engineers Ontario (the Association), hear and determine allegations of professional misconduct or incompetence against a member of the Association or a holder of a Certificate of Authorization, a temporary licence, a provisional licence or a limited licence;</p> <p>(b) hear and determine matters referred to it under section 24, 27.1 or 37 of the PEA; and</p> <p>(c) perform such other duties as are assigned to it by the Council.</p>
<p>Legislated Mandate</p>	<p>The DIC’s legislated mandate also includes the powers under subsection 28(4) of the PEA to, among other things, suspend or revoke a licence or certificate of authorization, impose terms, conditions, limitations or restrictions on a licence or certificate of authorization, reprimand, and impose a fine up to a maximum of \$5,000.</p>
<p>Objective</p>	<p>a. To hear and determine matters fairly and expeditiously, and</p> <p>b. To develop the adjudication skills of DIC members.</p>
<p>Constituents and Competencies</p>	<p>The stakeholders of the DIC are the members and holders who are directed or referred to it, the Association, the Tribunals Office, the other members of the Association and holders of Certificates of Authorization, the DIC members, and the people of Ontario.</p> <p>Before sitting on a DIC panel, DIC members are required to have comprehensive knowledge of:</p> <p>a. Sections 27 to 30 of the PEA</p> <p>b. Section 72 of Regulation 941.</p> <p>Within a year of being appointed to the DIC, members are also required to have comprehensive knowledge of:</p> <p>a. The Rules of Procedure of the DIC</p> <p>b. The DIC Handbook, and</p> <p>c. The applicable provisions of the <i>Statutory Powers and Procedures Act</i>.</p> <p>DIC members who preside over a panel and draft the panel’s Decision and Reasons must be skilled in performing these roles.</p> <p>The training costs and experience requirements require that most DIC members continue to serve on the DIC for several years to enable the Association to recoup its investment.</p>
<p>Measurements Describing the</p>	<p>a. DIC Decisions and Reasons are Fair, and as far as possible: manifestly so.</p> <p>b. DIC Decisions and Reasons rendered within the applicable guidelines – target of 90%.</p>

<p>Success of the Objective</p>	<p>c. DIC decisions, if appealed, are confirmed by the courts – target of 100%., d. DIC members attend training to competently execute their responsibilities on a discipline panel – target of 100% for new members in their first year and 75% for all members in all subsequent years, completing all training prescribed for their roles within 2 years.</p>
<p>Limit of Operational Responsibilities</p>	<p>The DIC carries out the duties and exercises the powers set out in sections 28 to 30 of the PEA and the applicable provisions of the <i>Statutory Powers Procedure Act</i>. The DIC complies with all Association policies and guidelines except when, in the opinion of the DIC, doing so would compromise the independence of the DIC.</p>
<p>Recruitment</p>	<p>DIC members are appointed by Council. This normally occurs at the Council meeting immediately following the Annual General Meeting of the Association.</p> <p>When members are appointed by the Lieutenant Governor-In-Council, the Attorney General, elected to Council, or when they self-identify their interest in serving on the DIC, the DIC Chair considers whether they are suitable to serve on the DIC.</p> <p>Members of the Association who self-identify that they are interested in serving on the DIC may do so through the People Development Department of the Association.</p>
<p>Reporting Requirements</p>	<p>The primary reporting mechanism for the DIC is its Decisions and Reasons. A copy of each Decision and Reasons issued by the DIC is retained permanently by the Tribunals Office.</p> <p>The Chair submits an annual report on the activities of the DIC to the Registrar by January 15 of the following year, and provides an updated Human Resources Plan and Work Plan.</p>
<p>Time Commitments</p>	<p>The DIC meets at least annually to conduct its business and train its members. These meetings and training sessions take six hours, on a weekday.</p> <p>Hearings occur regularly; their duration varies from one day to many days. Hearings usually start at 9:30 a.m. on a weekday. Some hearings have long adjournments. Each DIC member is expected to volunteer for at least two (2) hearing panels per year, and to attend one DIC meeting per year.</p> <p>The average time requirement for each member of the DIC is 12 days and includes time sitting on hearing panels, time attending DIC meetings and training, time on subcommittees and time drafting Decision and Reasons. LGAs and lay members are generally required to contribute more days than other DIC members.</p>
<p>Term Limits for Committee Chair and Vice-Chair</p>	<p>The Chair and Vice-Chair are elected annually for a one-year term at the November DIC meeting. The Chair and Vice-Chair may be re-elected to their positions to serve a maximum of two (2) years. To ensure continuity, it is desirable that the Vice-Chair move to the Chair's position once the Chair's term of service ends. Once the Chair and/or Vice-Chair have served for the maximum time for their respective positions, they are not eligible for re-election to those positions. The Chair, once having served as Chair, may only serve as a DIC member.</p>
<p>Term Limits for Committee Members</p>	<p>Given the DIC's legislated mandate, and its reliance on the experience and expertise of its members in carrying out its mandate, Council imposes no term limit on DIC membership.</p>

<p>Succession Planning</p>	<p>The Nominating sub-committee, led by the DIC Vice-Chair, and including at least two experienced adjudicators and/or past Chairs, selects at least two willing and capable candidates for leadership. These candidates are nominated for election as Vice-Chair.</p> <p>Given the convention of two-year terms for Vice-Chairs followed by two years as Chair, and the work of the nominating sub-committee that runs concurrently, the DIC aims to have a six-year horizon of succession.</p>
<p>Selection and Duties of Chair and Vice-Chair</p>	<p>The DIC elects its Chair and Vice-Chair from among its members every year at its November meeting with a majority vote usually by secret ballot.</p> <p>The DIC Chair is usually the previous DIC Vice-Chair. The DIC may remove the Chair with a super majority of 75% of the members at a DIC meeting.</p> <p>Under subsection 27(5) of the PEA, when a matter is referred to the DIC for hearing and determination, the Chair may, within 90 days of the referral:</p> <ol style="list-style-type: none"> a. Select a panel of members to represent the DIC. b. Designate one member of the panel to act as Chair. c. Refer the matter to the panel for hearing and determination, and d. Set a date, time and place for the hearing. <p>The Chair is responsible for establishing a panel as soon as possible after the referral and for setting the earliest hearing date possible.</p> <p>The Vice-Chair assists the Chair by performing assigned tasks other than those set out in subsection 27(6) of the PEA. As per subsection 27(4) of the PEA, the Vice-Chair may exercise any power, duty or function of the Chair, if the Chair is absent or unable to act. In the event that the Chair becomes incapacitated or when the Chair knows that they will become incapable of exercising a power, performing a duty or fulfilling a function, then the DIC may name a new Chair for the balance of the term of the absent Chair or until the Chair becomes capable of resuming their duties, depending upon the circumstances.</p>
<p>Special Projects</p>	<p>Pursuant to subsection 28(1)(c) of the PEA, the DIC shall “perform such other duties as are assigned to it by Council.” Other committees appointed by Council that consider issues occasionally solicit input from the DIC. Such requests are considered on a case-by-case basis to avoid compromising the independence of the DIC.</p> <p>The DIC standing subcommittees are the:</p> <ol style="list-style-type: none"> a. DIC Handbook review subcommittee, and b. DIC Nominating subcommittee.
<p>Membership</p>	<p>Council appoints members of the DIC. Membership changes can occur throughout the year, but typically occur annually on the agenda of Council.</p> <p>As set out in subsection 27(1) of the PEA, the DIC is composed of:</p> <ol style="list-style-type: none"> 1. At least one elected member of the Council. 2. At least one member of the Association who is,

	<ul style="list-style-type: none"> i. A member of the Council appointed by the Lieutenant Governor in Council, or ii. Not a member of the Council, and approved by the Attorney General. <p>3. At least one person who is,</p> <ul style="list-style-type: none"> i. A member of the Council appointed by the Lieutenant Governor in Council under clause 3 (2) (c), or ii. Neither a member of the Council nor a member of the Association, and approved by the Attorney General. <p>4. At least three members of the Association each of whom has at least 10 years experience in the practice of professional engineering.</p> <p>A constraint on DIC membership is that its members cannot be a member of the Association’s Complaints Committee or be in a position that involved them in the investigation of a complaint of a matter referred to the DIC.</p> <p>The presence of one of each of the persons listed under paragraphs 1, 2, 3 and 4 of subsection 27(1) of the PEA constitutes quorum for the DIC (subsection 27(2) of the PEA).</p> <p>In respect of quorum for DIC panels, recently amended subsection 27(5)(a) of the PEA states that the Chair may:</p> <p>(a) Select a panel from among the members of the Committee that includes at least one of each of the persons appointed under paragraphs 2, 3 and 4 of subsection (1) and that may include on or more of the persons appointed under paragraph 1 of that subsection.</p>
Staff Support	Tribunals Office
Committee Advisor	Deputy Registrar, Tribunals and Regulatory Affairs (Johnny Zuccon, P.Eng.)

SUCCESSION PLANNING TASK FORCE – TERMS OF REFERENCE

Purpose: To approve the Succession Planning Task Force (SPTF) Terms of Reference

Motion(s) to consider: (requires a simple majority of votes cast to carry)

That Council approve the Succession Planning Task Force Terms of Reference as presented to the meeting at C-519-2.7, Appendix B.

Prepared by: Ralph Martin, Manager, Secretariat

Moved by: Councillor Marilyn Spink, P.Eng.

1. Need for PEO Action

At the June 2017 meeting, Council approved the creation of the Succession Planning Task Force (SPTF) as part of the recommendations (Appendix A) made by the Council Term Limits Task Force (CTLTF). Recommendations 15 in the CTLTF report stated;

The SPTF will develop a comprehensive plan with schedule, future operating expenses of search and training modules, candidate targets, media programme to educate members etc.

Council approved a \$60,000 annual budget for the SPTF and directed that on completion of its work that the task force would be replaced by the Succession Planning Committee (SPC). The SPTF is to provide Council with a final report 18 months after being struck.

A draft Terms of Reference was presented to the Executive Committee at the October 30, 2017 meeting. The Committee directed staff to amend the Terms of Reference such that the key duties of the SPTF are to provide oversight and coordination with respect to the implementation of the Succession Planning recommendations. The amended SPTF Terms of Reference was peer reviewed by the Advisory Committee on Volunteers (ACV) at its March 8, 2018 meeting. The ACV recommended that the SPTF Terms of Reference be presented to Council

At the March 2018 Council meeting, then Vice President Hill and Councillor Spink indicated that they would revise the draft Terms of Reference and present them at the June Council meeting.

Therefore, Council is being asked to approve the SPTF Terms of Reference (Appendix B).

2. Proposed Action / Recommendation

That Council approve the SPTF Terms of Reference.

3. Next Steps (if motion approved)

The SPTF will begin development of a work plan to provide oversight and coordination with respect to the implementation of the Succession Planning recommendations.

4. Policy or Program contribution to the Strategic Plan

The creation of the SPTF is related to Objective 7 in the 2018-2020 Strategic Plan.

5. Financial Impact on PEO Budgets (for five years)

	Operating	Capital	Explanation
Current to Year End	\$45,000	\$	Funded from Surplus Fund (Council discretionary funds)
2 nd	\$45,000	\$	
3 rd		\$	
4 th		\$	
5 th		\$	

6. Peer Review & Process Followed

Process Followed	<p>Council approved striking the Succession Planning Task Force at the June 23, 2017 meeting.</p> <p>At the March 2018 Council meeting, then Vice President Hill and Councillor Spink indicated that they would revise the draft Terms of Reference and present them at the June Council meeting.</p>
Council Identified Review	<p>The SPTF Terms of Reference was peer reviewed by the Executive Committee on October 30, 2017 and the Advisory Committee on Volunteers on March 8, 2018.</p> <p>The revised Terms of Reference (Appendix B) has not been peer reviewed.</p>
Actual Motion Review	<p>Recommendation 15 of the CTLTF report stated;</p> <p><i>The SPTF will develop a comprehensive implementation plan with schedule, future operating expenses of search and training modules, candidate targets, media programme to educate members etc.</i></p>

7. Appendices

- Appendix A – Council Term Limits Task Force Recommendations
- Appendix B – Succession Planning Task Force Terms of Reference

Council Term Limits Task Force (CTLTF) Revised Recommendations for Succession Planning and Term Limits

SUCCESSION PLANNING

1. Council must identify the skills and experience that the best Councillors would exhibit.
2. Council undertakes a gap analysis on an annual basis to identify weaknesses in the current Council make-up, and identifies appropriate criteria for strengthening the team
3. The search committee employs the defined skills list to find suitable candidates in the engineering community and the PEO volunteer community.
4. PEO must develop a leadership program and provide training opportunities for interested candidates to upgrade their skill sets in the areas that are deemed of value.
5. A Future Leaders Symposium should be held yearly or bi-annually to introduce PEO, the organization and leadership possibilities within the organization, to young and new volunteers.
6. The electorate must be educated on the necessary skills and competencies to look for in Council candidates.
7. The engineering public must be educated on the importance of Council's role in regulating the profession. This may increase interest of suitable candidates to aspire for service to their profession.
8. PEO must work with engineering employers to encourage ways to facilitate their employees to consider service to the profession.
9. A determination must be made if it is possible to remove barriers that impede certain volunteers of a specific demographic (specifically age and family status) from serving on Council
10. PEO must set aside money for training and possibly employer compensation.
11. The Council Manual should be updated and be more complete so that it can be used for information and training on the expected roles, responsibilities and time commitments as a councillor.
12. A mentorship program should be set up for new Councillors.
13. HRC must share our skills competencies guideline with the Public Appointments Secretariat. It is hoped that the Lieutenant-Governor Appointed Councillors (if staggered in time) may help fill skills gaps.
14. A new six (6) member Succession Planning Task Force (SPTF) be created to develop a detailed implementation plan to implement the recommendations for

the Succession Planning program to search, train and educate the members. It is too important to assign to an existing committee.

15. The SPTF will develop a comprehensive implementation plan with schedule, future operating expenses of search and training modules, candidate targets, media programme to educate members etc.
16. Upon completion of it's work, the SPTF will be replaced by a Succession Planning Committee (SPC) to maintain the programme and manage its evolution in future years.
17. The composition of the SPTF will include a member who has served as President in the past (and has had experience on the Central Election and Search Committee and the Human Resources Committee), a member of the CTLTF and a member who has served on Advisory Committee on Volunteers. Three additional members with previous Council experience are also recommended.
18. The SPTF will convene monthly meetings and prepare a final report within 18 months of being formed.
19. Upset budget for the SPTF is at least \$60,000: including money for consultants \$25k, travel \$10k, meetings, \$10k, other \$5k, the SPTF is tasked with providing a work plan and detailed budget for the first Council meeting after forming, for Council's review and consideration.
20. Staff support expenses are external to this budget figure.
21. Succession Planning is to be an ongoing programme for PEO to develop Council leadership from this time forward. An annual budget for various components of the Succession Planning strategy is required.

TERM LIMITS

22. A Member in good standing is eligible to serve one term only in the positions of President-Elect, President and Past President. When a member has finished their service as President-elect, President and Past President, they are not eligible to serve in any capacity on Council until the member has not been on Council for at least 6 years.
23. A member is eligible to serve as Vice- President once in any 10-year period subject to the above restriction if the member has also served as President.
24. A general member of Council (Regional Councillor and Councillor at Large) is limited to six years on Council, or seven years if elected in an interim capacity to finish another member's partial term. This limit applies whether the member serves as Regional Councillor, Councillor at Large or Lieutenant Governor Appointee (LGA). Thus, someone may serve for three 2-year terms as a Regional Councillor; or three 2-year terms as a Councillor at Large or six years as an LGA (whether that be two 3-year terms or three 2 year terms) or a

combination thereof. Once a member has reached these limits, whether the service is as a Regional Councillor, Councillor at Large or LGA or combination thereof, the member is not eligible to run for Council as a general member (Regional Councillor or Councillor at Large) until the member has not been on Council for at least 6 years. However, the member is still eligible to serve as Vice President or President in accordance with recommendations 22 and 23.

- 25.** If the member has served for less than the above maximum term limits and has not been on Council for 6 years, the member is eligible to run thereafter for any position on Council subject to the above term limits.
- 26.** For the next election cycle, include in the election material, information on recommended term limits for each position and provide information on all candidates' service on Council to date.
- 27.** Entrench in our governing legislation the recommended term limits as specified above.

Terms of Reference Succession Planning Task Force (SPTF)

Issue Date:
Approved by: Council

Review Date: N/A
Review by: N/A

Legislated and other Mandate approved by Council	To develop Terms of Reference and a comprehensive implementation plan for the Succession Planning Committee, based on succession planning recommendations approved by Council at its June 23, 2017 meeting.
Key Duties and Responsibilities	<ol style="list-style-type: none"> 1. Develop an Implementation Plan for succession planning, based on Council approved succession planning recommendations 1 to 13. 2. Prepare Terms of Reference for the Succession Planning Committee that will implement succession planning as per Council approved recommendation 16. 3. Task Force deliverables include the above Terms of Reference and Implementation Plan for the proposed Succession Planning Committee. The Implementation Plan shall include key recommendations, a schedule, a maintenance & oversight process and potential operating expenses. 4. Engage key stakeholders through meetings and the peer review process in the development of the plan. Stakeholders shall include, at a minimum, the Central Election and Search Committee (CESC), the Human Resources Committee (HRC), the Advisory Committee on Volunteers (ACV) and the Equity and Diversity Committee (EDC). 5. Utilize the services of a governance consultant to assist the task force in determining best practice for succession planning at PEO. The consultant will also support the TF in drafting its report and in providing expert opinion to Council during presentation of the report.
Constituency, Number & Qualifications of Committee/Task Force Members	<p>The task force shall consist of five (5) members as follows:</p> <ul style="list-style-type: none"> • a past member of the CTLTF, • a current or past member of the ACV, • three members at large of PEO.

	<p>Preferably, members should collectively bring the following experience or background:</p> <ul style="list-style-type: none"> • experience in the governance of non-profit organizations, • current or past experience on a chapter executive (at least one person), • at least one person in their early career, • no more than two members in their later career (not including retirees), • at least two members being from outside the GTA.
Qualifications and election of the Chair	The Chair should have experience dealing with the governance issues that will be required to implement succession planning and managing the production of TF deliverables. The Chair is to be elected from among the members of the task force in accordance with Wainberg's Society Meetings, By-Law No. 1, section 25(4) and Committee and Task Force Policy.
Qualifications and election of the Vice Chair	The Vice Chair should have the experience needed to take over from the Chair when required and to support the Chair in preparing the TF deliverables. The Vice Chair is to be elected from among the members of the task force in accordance with Wainberg's Society Meetings, By-Law No. 1, section 25(4) and Committee and Task Force Policy.
Peer Review	<p>The final report of the TF shall be reviewed by the following committees:</p> <ul style="list-style-type: none"> • Legislation Committee (LEC) • Central Election and Search Committee (CESC) • Advisory Committee on Volunteers (ACV) • Equity and Diversity Committee (EDC) • Human Resources Committee (HRC) <p>The TF shall present its recommendations to Council in a plenary session to obtain feedback from councillors for consideration for its final report.</p>
Term Limits for Chair, Vice Chair and Committee members	The task force is to be stood down following the submission of its final report to Council. Given the TF's limited lifetime, term limits are not applicable for the Chair and Vice Chair.
Quorum	In accordance with Wainberg's Society Meetings and By-Law No. 1, section 25(1), quorum for the purpose of having the meeting's decisions be considered binding is at least 50 per cent of the task force's membership present at the meeting.
Meeting Frequency & Time Commitment	The task force will meet at the call of the Chair. Meetings of the TF shall be held monthly during its active life. Meetings of sub-groups assigned to specific tasks shall be held more frequently depending on workload

	requirements. More frequent meetings may be required during the report preparation and review period.
Operational Time Frame	The task force will commence its work upon approval of its Terms of Reference and shall deliver its final report to Council no later than eighteen (18) months following its inception.
Budget	\$60,000 annually, prorated by number of months of operation in a given budget year.
Committee advisor	Scott W. Clark, LL.B., Chief Administrative Officer
Committee support	Ralph Martin, Manager, Secretariat

Briefing Note – Decision

ALIGNMENT OF PEO EDUCATION COMMITTEE TERMS OF REFERENCE

Purpose: To ensure that resources in both staff & volunteer time and money spent by the EDU committee, aligns, supports and adds value to PEO achieving it’s Regulatory Mandate.

Motion(s) to consider: (requires a simple majority of votes cast to carry)

1. To direct PEO’s Education Committee (EDU) to re-write their Terms of Reference to align with PEO’s 2018-2020 Council Approved Strategic Plan and to ensure their Terms of Reference maps to the objects outlined in the Professional Engineers Act.

2. The revised EDU Terms of Reference to be submitted in time to be reviewed by Council at it’s November, 2018 meeting.

Prepared by: Councillor Marilyn Spink, P.Eng.

Moved by: Councillor Marilyn Spink, P.Eng.

1. Need for PEO Action

Does PEO Council know it is getting regulatory value for regulatory dollars spent on “Education Outreach” activities delivered by PEO Volunteers, activities which are supported by an already burdened staff? Is it PEO’s role to educate children or adults? How does PEO currently measure the impact or effectiveness of resources spent on “Education Outreach” activities at the Committee & Chapter level? Do the type of “Education” activities delivered “Protect, Engage & Advance” our profession? If these volunteers are not formally trained or no quality metrics on program delivery exist, could PEO “Education Outreach” activities be doing more damage than good to our profession? Is there an alternate approach that EDU could take to be more aligned with PEO’s regulatory mandate that would add more value and be more effective in fulfilling PEO’s regulatory mandate? See the Principal and Additional Objects from the Professional Engineers Act below. I don’t have the answers but perhaps the Education Committee does. Let’s give them a chance to disrupt themselves!

Principal object

The principal object of the PEO is to regulate the practice of professional engineering and to govern its members, holders of certificates of authorization, holders of temporary licences, holders of provisional licences and holders of limited licences in accordance with this Act.

Additional objects

For the purpose of carrying out its principal object, PEO has the following additional objects:

1. To establish, maintain and develop standards of knowledge and skill among its members.
2. To establish, maintain and develop standards of qualification and standards of practice for the practice of professional engineering.

3. To establish, maintain and develop standards of professional ethics among its members.
4. To promote public awareness of the role of PEO (Note: This is not promotion of Professional Engineers)
5. To perform such other duties and exercise such other powers as are imposed or conferred on PEO by or under any Act. R.S.O. 1990, c. P.28, s. 2 (4).

2. Proposed Action / Recommendation

Give EDU Volunteers and Committee Leaders a 4 month time frame to chart EDU's future with a revised Terms of Reference that supports PEO's regulatory mandate.

3. Next Steps (if motion approved)

The EDU will be notified and advised of the deadline.

4. Policy or Program contribution to the Strategic Plan

The EDU could potentially align with all of PEO's Strat Plan Objectives.

1. Refine the delivery of the PEAK program— PEO's Practice Evaluation and Knowledge (PEAK) program will be continually refined through increased outreach efforts and streamlining to ensure all licence holders participate.
2. Heighten delivery and awareness of PEO's enforcement efforts—PEO will better understand where, how and by whom professional engineering is being performed in Ontario, and under what conditions.
3. Enhance PEO's public image—PEO will be commonly recognized as the regulator of professional engineering in Ontario.
4. Engage chapters as a valuable regulatory resource—PEO chapters will operate as "branch offices" or delivery of regulatory outreach programs.
5. Increase influence in matters regarding the regulation of the profession—PEO will establish a co-regulator relationship with key provincial government ministries to collaboratively advance public safety protection, and will clearly define the circumstances under which an engineering licence is required.
6. Augment the applicant and licence holder experience—PEO will address any perceived barriers and friction points between itself and its applicants and licence holders, and build "customer satisfaction" into all its regulatory processes and initiatives.
7. Redefine the volunteer leadership framework— PEO-specific leadership values will be consistently practiced by volunteers, and promoted through recruitment, training, mentorship, term limits, succession planning and evaluation.
8. Create a seamless transition from student member to EIT to licence holder—PEO will establish coordinated and integrated systems and outreach programs to allow engineering students to seamlessly proceed through the licensure process.

9. Enhance corporate culture—PEO will consistently evaluate and review the presence of its core values in the performance of staff and volunteer activities, as well as regulatory decisions.

5. Financial Impact on PEO Budgets (for five years)

	Operating	Capital	Explanation
Current to Year End	\$-40,000	\$	If EDU is put on hold for one year possible savings of 40,000. If value is proven with New Terms of Reference, financial impact can be accessed then.
2 nd	\$	\$	
3 rd	\$	\$	
4 th	\$	\$	
5 th	\$	\$	

If program is not designated as ending in less than five years (such as creating a Task Force), subsequent years will be assumed to be similar to the fifth year of funding.

6. Peer Review & Process Followed

Process Followed	<ul style="list-style-type: none"> • Not applicable but timely after our recent Council retreat on metrics and value for regulatory dollars spent
Council Identified Review	<ul style="list-style-type: none"> • N/A
Actual Motion Review	<ul style="list-style-type: none"> • N/A

7. Appendices

- Appendix A – Current EDU Terms of Reference
- Appendix B – Council approved 2018-2020 Strategic Plan

Terms of Reference Education Committee (EDU)

Issue Date:
Approved by:

Review Date:
Review by: Council

<p>Legislated and other Mandate approved by Council</p>	<p>Whereas, there has been a recent declining interest among students in STEM-related careers, and whereas, identified root causes for this decline include image of science, perception of careers, curriculum, teacher experience and gender-based perceptions, therefore, the Education Committee (EDU) commits:</p> <ul style="list-style-type: none"> • To be a leader and value-added influence in the development of education policy, curriculum, and outreach such that high school graduates will have the necessary knowledge, skill, and motivation to succeed in an engineering program. • To support PEO's Envisioned Future (Source: "PEO Envisioned Future", C-459-6.6, Appendix A, approved by Council Sept. 2009) as it relates to "Public awareness of the role of the Association" (PEA Sect 2 (4)4 – <i>Additional Object</i>). • To "support and encourage public information and interest in the past and present role of professional engineering in society" in PEA Sect 8(20).
<p>Key Duties and Responsibilities</p>	<p>The EDU Key Duties and Responsibilities are to support the PEO Envisioned Future and are an important portion of the EDU Terms of Reference. EDU addresses science, math and technology literacy and other educational issues of relevance to PEO leading up to (but not including) the University / College educational level. The key duties of the Education Committee are:</p> <p>1.0 Chapters: Provide support for PEO Chapters to achieve their education outreach goals. The PEO Education committee plans and helps PEO chapters implement valuable learning activities for aspiring engineers, which aids the long-term health of the profession.</p> <p>2.0 Equity and Diversity: Ensure that principles of equity and diversity are reflected in key activities (i.e. French translations of booklets and brochures) supported by the committee.</p> <p>3.0 Guidance to PEO Council on education-related policy: Research and articulate proposed positions on elementary and secondary school education - mathematics, sciences and technology in particular and recommend same to Council. In addition, research and articulate proposed positions on continuing competence training for professional engineers.</p> <p>4.0 Strategic Relationships: Establish productive relationships with other organizations whose objects are complimentary.</p> <p>5.0 Program Development:</p> <ul style="list-style-type: none"> • To increase public awareness of the engineering profession by educating Ontarians on the important roles and valuable contributions of professional engineers and of the self-regulating engineering profession in society.

	<ul style="list-style-type: none"> ➤ <i>One key input to the overall PEO “regulatory” process is elementary and secondary education (with particular emphasis on STEM education in the academic preparation for aspiring engineers).</i> • To encourage STEM education from an early age as a matter of sound public policy. <ul style="list-style-type: none"> ➤ <i>Elementary and secondary engineering education is very important to PEO in the overall context of public safety and protecting the public interest.</i> • To encourage and assist young people in making informed career choices related to science, technology, and engineering. <ul style="list-style-type: none"> ➤ <i>PEO needs to be certain that there remains a steady flow of talented and skilled individuals into the regulatory framework for engineers in order to keep society safe and are necessary conditions for the continued existence of a self-regulating engineering profession which promotes a viable economy in Ontario.</i> • To advise government and the public on educational requirements (e.g. curriculum) for the knowledge economy in general and for engineering in particular. <p>This may include (but is not limited to) the following:</p> <p>5.1 Reaching out to the public - Support holding public events that promote awareness of and the importance of science, technology, engineering and math education (STEM).</p> <p>5.2 Reaching out to the teachers - Support holding information sessions for teachers (as required).</p> <p>5.3 Hard skills development – Focus on “Thinking Skills” and “Lifelong Learning” as the key essential skills for our future engineers.</p> <p>5.4 Soft skills development - Focus on Integrity, Work Ethic, Teamwork and Accountability as crucial work habits for our future engineers.</p>
<p>Constituency, Number & Qualifications of Committee/Task Force Members</p>	<p>a) Committee Chair: Elected by EDU committee members and approved by Council.</p> <p>b) Vice-Chair: Elected by EDU committee members to meet the key duties and responsibilities of the committee.</p> <p>c) Members: Members must have an interest in pre-university education and in providing tools for use by the larger engineering population, such as Chapters. The size of the committee is between 7 and 11 members (including 1 student representative). In November of each year a roster of members shall be presented for council’s approval. After Council has approved the annual roster, committees may change members without Council approval; however, the changes must be approved by the CEO/Registrar. As per policy, the CEO/Registrar shall inform Council of any in-year changes.</p> <p>d) Sub-committees: Committees may appoint subcommittees to assist in completing their work. Sub-committees operate under the guidance of the committee chair. Rosters of subcommittee members shall be maintained. Sub-committee members do not have to be members of the full committee,</p>

	<p>or even members of PEO; however, the subcommittee chair should be a member of the committee to ensure continuity and a communication link. The committee's annual roster should also contain a list of subcommittee members. As per policy, the committee should notify the CEO/Registrar of any in-year changes to ensure appropriate insurance coverage.</p> <p>e) Meeting attendance policy: Members may be removed from the Committee after three (3) successive meetings has been missed where no regrets have been sent and no reports have been submitted.</p> <p>f) The committee works closely with PEO chapter education coordinators.</p>
<p>Qualifications and election of the Chair</p>	<p>In accordance with the <i>Committees and Task Forces Policy</i>, the election of Chair shall take place either at the last or first committee meeting of the calendar year.</p> <p>Election will be handled by voting (simple majority of attendees). The Chair must be a member of PEO and in good standing.</p> <p>The Chair is appointed by Council, based on their skill and experience to run the committee. Succession planning should be considered in the appointment of a new Chair.</p> <p>Elected committee chairs must be approved by Council prior to their officially taking office as chair. Chairs elected, but not confirmed by Council, may act as chair-designate in order for the work of the committee to continue.</p> <p>Annual Work Plan: By September 30th of each year, the Chair, shall prepare a committee-approved annual work plan for the following year. The work plan will include milestones, anticipated outcomes, deliverables, and a continuous improvement component. This will be presented to Council at the following January meeting.</p> <p>Reports: The Chair shall collaborate with the Council Liaison and Committee Advisor in preparation of brief written reports on committee activities for Council meetings as required.</p>
<p>Qualifications and election of the Vice Chair(s)</p>	<p>In accordance with the <i>Committees and Task Forces Policy</i>, the election of Vice Chair shall take place either at the last or first committee meeting of the calendar year.</p>
<p>Duties of Vice Chair(s)</p>	<p>To act as a sounding board for Chair, budget watchdog, trainer and guide for new members, participate in succession planning, chair meetings in absence of Chair.</p>
<p>Term Limits for Committee Chair and Vice Chair</p>	<p>The Chair and Vice Chair are elected annually for a one-year term, from January to December. The Chair and Vice Chair may be re-elected to their positions to serve a maximum of three (3) consecutive years. To ensure continuity, it is desirable that the Vice Chair moves to the Chair's position, once the Chair's term of service is expired. Once the Chair and/or Vice Chair have served for the maximum term for their respective positions, they are not eligible for reappointment to those positions. The Chair, once having served as Chair, may only serve as a general committee member thereafter to the maximum ten (10) years of cumulative committee service.</p>

Term Limits for Committee Members	Committee members are appointed for a one-year term, from January to December. Committee members may be re-appointed, but shall retire from the committee for at least six (6) years after ten (10) years of cumulative committee service.
Succession Planning	Note: All committees must have a succession plan, approved by Council, to ensure the orderly transition of the position of chair and vice chair as well as provide for the renewal of the committee's membership and on-boarding of new committee members.
Quorum	50% of the total committee membership plus 1.
Meeting Frequency & Time Commitment	<p>Approximately 6-8 full committee meetings per year (or greater as required) with 4-6 face-to-face meetings scheduled annually. PEO sponsored teleconferencing is possible. Each meeting is approximately 2 hours in length.</p> <p>Total time commitment per member is about 5 hours per month, totaling about 60 hours per year.</p> <p>Sub-committees will periodically meet via PEO sponsored teleconferencing.</p> <p>Other communication is primarily via email.</p> <p>Motions may be made and approved by email, subject to the motion being later ratified at a committee meeting and recorded in the meeting minutes.</p>
Operational year time frame	January to December of a given year.
Committee Advisor	Manager, Engineering Intern Programs

2018-2020
STRATEGIC PLAN

C-519-2.8
Appendix B

PROTECT

ENGAGE

ADVANCE



Professional Engineers
Ontario

PEO's 2018-2020 STRATEGIC PLAN

This plan builds on the success of its predecessor and provides the direction for PEO Council to set policies and goals to guide the association. The three focus areas and nine strategic objectives set by this plan will determine the priorities for our programs and activities, and assist PEO staff and volunteers in their implementation.

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PEO 2017-2018 Council Executive Committee members (left to right): Bob Dony, PhD, P.Eng., F.I.E.E., F.E.C., President; George Comrie, M.Eng., P.Eng., C.M.C., F.E.C., Past President; and David W. Brown, P.Eng., BDS, C.E.T., M.C.S.C.E., President-elect.



OUR IDENTITY

Our Mandate

Established on June 14, 1922, PEO is the licensing and regulating body for professional engineering in the province. PEO operates under the authority of the *Professional Engineers Act* to serve and protect the public interest by setting and upholding high academic, experience and professional practice standards for the engineering profession.

Individuals licensed by PEO are the only people permitted by law to undertake and assume responsibility for engineering work in Ontario.

Our Mission

Regulate and advance the practice of engineering to protect the public interest.

Our Vision

The trusted leader in professional self-regulation.

Our Core Values


PEO's core values are intended to inform the behaviour of its members, staff, and volunteer leaders.


- Accountability
- Respect
- Integrity
- Professionalism
- Teamwork


STRATEGIC PLANNING PROCESS


Development of PEO's 2018-2020 Strategic Plan began early in 2015 and concluded with the approval of the final plan by Council in the fall of 2017. Along the way, numerous consultation sessions were held with stakeholders—including PEO volunteers, staff, government ministries and our partners in the engineering community.






Public awareness of what PEO does (and does not do)



Communication to public and members



Consistency, clarity and efficiency in regulatory processes and decisions


Proactive and widespread enforcement activities


Transparency and public accountability about complaints and discipline processes


Government relations


Breadth and quality of stakeholder engagement


Use of technology across the organization

-THE PLAN- BY THE NUMBERS

3
year plan

28
consultation sessions

Over
400
strategic objectives proposed

3
final focus areas

9
final strategic objectives

FOCUS AREAS

Our 2018-2020 Strategic Plan is the result of three years of research, collaboration and engagement to ensure we remain relevant and responsive to our stakeholders. The plan has three areas of focus.

Protecting the Public Interest

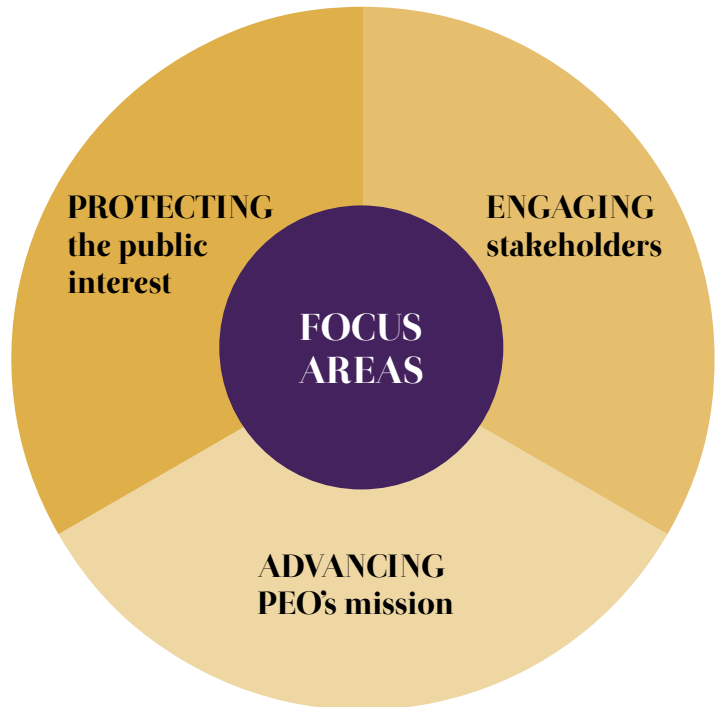
PEO will focus its resources on regulatory functions that help protect the public interest. We will strive for excellence by rigorously and objectively reviewing the effectiveness and efficiency of all our regulatory instruments and operations in the public interest.

Engaging Stakeholders

PEO will communicate with stakeholders to identify current and emerging regulatory issues, gain a better understanding of professional practice issues and those who play a part in them, and seek collaborative solutions.

Advancing PEO's Mission

PEO will continuously monitor and research relevant changes in government, professional regulation and engineering practice to anticipate, plan for, and adapt to changes.



STRATEGIC OBJECTIVES

The nine strategic objectives identified under three focus areas in the plan summarize what we want to achieve as an organization over the next three years. These objectives were selected and prioritized through a lens of relevance and value added.

PROTECTING THE PUBLIC INTEREST

1. Refine the delivery of the PEAK program—PEO’s Practice Evaluation and Knowledge (PEAK) program will be continually refined through increased outreach efforts and streamlining to ensure all licence holders participate.

2. Heighten delivery and awareness of PEO’s enforcement efforts—PEO will better understand where, how and by whom professional engineering is being performed in Ontario, and under what conditions.

ENGAGING STAKEHOLDERS

3. Enhance PEO’s public image—PEO will be commonly recognized as the regulator of professional engineering in Ontario.

4. Engage chapters as a valuable regulatory resource—PEO chapters will operate as “branch offices” for delivery of regulatory outreach programs.

5. Increase influence in matters regarding the regulation of the profession—PEO will establish a co-regulator relationship with key provincial government ministries to collaboratively advance public safety protection, and will clearly define the circumstances under which an engineering licence is required.

ADVANCING PEO’S MISSION

6. Augment the applicant and licence holder experience—PEO will address any perceived barriers and friction points between itself and its applicants and licence holders, and build “customer satisfaction” into all its regulatory processes and initiatives.

7. Redefine the volunteer leadership framework—PEO-specific leadership values will be consistently practiced by volunteers, and promoted through recruitment, training, mentorship, term limits, succession planning and evaluation.

8. Create a seamless transition from student member to EIT to licence holder—PEO will establish coordinated and integrated systems and outreach programs to allow engineering students to seamlessly proceed through the licensure process.

9. Enhance corporate culture—PEO will consistently evaluate and review the presence of its core values in the performance of staff and volunteer activities, as well as regulatory decisions.

2018-2020 STRATEGY MAP



MISSION

Regulate and advance the practice of engineering to protect the public interest.

VISION

The trusted leader in professional self-regulation.

CORE VALUES

Accountability, Respect, Integrity, Professionalism, Teamwork

FOCUS AREAS

STRATEGIC OBJECTIVES

PROTECTING THE PUBLIC INTEREST

- Refine the PEAK program
- Heighten delivery and awareness of PEO's enforcement efforts

ENGAGING STAKEHOLDERS

- Enhance PEO's public image
- Engage chapters as a valuable regulatory resource
- Increase influence in matters regarding the regulation of the profession

ADVANCING PEO'S MISSION

- Augment the applicant and licence holder experience
- Redefine the volunteer leadership framework
- Create a seamless transition from student member to EIT to licence holder
- Enhance corporate culture



Professional Engineers

Professional Engineers

40 Sheppard Ave W



Professional Engineers
Ontario

40 Sheppard Avenue West, Suite 101
Toronto, ON M2N 6K9

Tel: 416 224-1100 or 800 339-3716
Fax: 416 224-8168 or 800 268-0496

Enforcement Hotline: 416 840-1444
or 800 339-3716 Ext. 1444

www.peo.on.ca

PEO'S INDEMNIFICATION INSURANCE FOR COUNCILLORS

Purpose: To build understanding of Councillors' (Directors') and Officers' Indemnification Insurance Coverage.

Motion(s) to consider: (requires a simple majority of votes cast to carry)

That Council Direct the Registrar to develop an ongoing process:

- 1) To review current Councillor indemnification insurance and determine if the type and level of coverage is adequate
- 2) To recommend to Council a sustainable process for review of indemnification insurance moving forward including but not limited to frequency of reviewed, depth of the review that should be undertaken and how to report to Council
- 3) To develop a process to educate new, existing and future Councillors on the topic of their Indemnification insurance coverage using example scenarios of how a claim might be triggered
- 4) To report back to Council on the above by the September 2018 Council Meeting

Please refer to attached background information for reference.

Prepared by: Councillor Marilyn Spink, P.Eng.

Moved by: Councillor Marilyn Spink, P.Eng.

1. Need for PEO Action

While the following had been edited it is generally excerpts taken directly from "Director's Duties in Canada 5th Edition" – see appendix.

"PEO Councillors (aka Directors) have significant responsibilities, but so do people in many other jobs, volunteer or not. There is a big difference between the need to take your role seriously and to be vigilant, and the need to be worried. Most of the time, Councillors can function in a "responsible and vigilant" mode. They should have little need to lie awake at night if they have (justified) confidence in the Senior Management Team; if they receive and scrutinize suitable information; if Council and its committees are suitably staffed, engaged, and focused; and if Council and Committee meetings are effective.

That being said, some directors of non profit corporations, which PEO is, have been criticized (and sanctioned, in some cases) for their alleged failures in fulfilling their fiduciary duty by not being able to clearly demonstrate the "due diligence" needed to meet a "duty of care" in their roles as directors of their organizations. Councillor's exposure to potential personal liability is rare.

Directors and officers of corporations will not be liable for a breach of their duty of care owed to the corporation if they act prudently and on a reasonably informed basis. Perfection is not demanded; rather, the court will examine whether an appropriate degree of prudence and diligence was brought to bear when making a decision. Decisions that boards make must be reasonable in light of the circumstances in which the decision was made. A common test may be; was the decision made in a situation where the decision-making process was careful and rigorous?

Council must be comfortable that it is receiving the right information in a timely manner; that it is spending adequate meeting time on risk management; that management is candid with the board; and, in general, that it has confidence in management and the committees which report to it.

Finally, the board must be confident that adequate arrangements are in place (suitable advice has been sought, board processes are proper, **effective indemnification and directors' and officers' insurance are in place**) to protect the board if things do go wrong.

Beyond all this, there is no substitute for directors who are alert to warning signs that something may be wrong. The following truncated list applicable to PEO is illustrative of some signals that increased vigilance may be in order:

- Corporate governance processes are not being followed
- Significant agreements are made with other organizations without proper Council oversight (or worse, discovered after the fact);
- there is an unusually high turnover of employees or health concerns;
- the board becomes aware that internal processes of any sort (from financial compilation, procurement procedures or licensing processes) could be inadequate
- Board members have a sense of discomfort with the corporate culture
- the focus is always reactive, or implementing current Council initiatives but there is no accountability for what was promised in the past
- the board receives express warnings of trouble. Warnings of this sort are far more frequent than one might presume. They come in the form of warnings from advisers (for instance, auditors or financial controls), from members of management (particular board members tend to bond with particular management, who often share concerns with their “director friend”), from formal whistleblower or code of conduct processes, or from other directors (directors sometimes consult one another to assess whether their personal discomfort seems to be warranted).

If even one of these signs appears, it is time for Councillors to get out of a “business-as-usual” mode. Often if there is any sign of trouble, the trouble is far worse than is feared, and the directors should not lose any time in beginning to investigate the problem(s).

2. Proposed Action / Recommendation

- Registrar will arrange for this review to be done internally or by an external SME and report back with recommendations, schedule and financial implications.

3. Next Steps (if motion approved)

- The Registrar will prepare a report and communicate with Council throughout the re implement the motion
- Identify who will be consulted in the implementation of the motion(s) and how will they be consulted
- Identify any assumptions, external dependencies or constraints on PEO’s ability to move ahead (e.g. additional budget allocation, impacts on Reserve, requires Act, Regulation or By-Law changes)

4. Policy or Program contribution to the Strategic Plan

- **Strategic Plan Objective #7. Redefine the volunteer leadership framework**— PEO-specific leadership values will be consistently practiced by volunteers, and promoted through recruitment, training, mentorship, term limits, succession planning and evaluation.
- **Strategic Plan Objective #9. Enhance corporate culture**—PEO will consistently evaluate and review the presence of its core values in the performance of staff and volunteer activities, as well as regulatory decisions.

5. Financial Impact on PEO Budgets (for five years)

- Unknown, this is the point of the exercise. Financial implications after the review will be determined and made clear.

	Operating	Capital	Explanation
Current to Year End	\$ 20,000	\$	To hire a SME to prepare this report? Not an insurance company as they could have a conflict of interest.

6. Peer Review & Process Followed

Process Followed	<ul style="list-style-type: none"> • None at this time. The Registrar's report will be reviewed by Council before action is taken or resources spent.
Council Identified Review	<ul style="list-style-type: none"> • Not applicable at this time.
Actual Motion Review	<ul style="list-style-type: none"> • This is a house keeping item for any well-functioning high performing board.

7. Appendices

Appendix A – 20 Questions Directors Should Ask about Directors' and Officers' Indemnification and Insurance - SECOND EDITION 2014 Chartered Professional Accountants of Canada

Appendix B - Liability Indemnification and Insurance for Directors of Not-for-Profit Organizations By Brian Rosenbaum, LL.B. Supplement to *20 Questions Directors Should Ask about Directors' and Officers' Liability Indemnification and Insurance*

Appendix – C - *Director's Duties in Canada, 5th Edition*. This publication has become the *de facto* standard resource for Canadian Directors. Two chapters excerpts are included: **Chapter 29, Protecting Yourself as a Director**: This chapter explains when Directors should get worried; **Chapter 30, Indemnification and Insurance**: In this chapter, Mr. Reiter explains key D&O insurance terms, types of coverage and the insurance procurement process.

Appendix D - Directors' Liability: A Discussion Paper on Legal Liability, Risk Management and the Role Of Directors in Non-Profit Organizations "According to the 2000 NSGVP, about 41 percent of Canadian volunteers serve on boards and committees. Despite their deep commitment to countless causes and organizations many board members may be unaware of the legal ramifications of their volunteer work. Personal liability has become an area of increased concern for board members of not-for-profit organizations. This important resource informs board members about their legal duties and obligations, and offers them a practical 'prevention checklist' to help minimize personal liability. 1st edition © Volunteer Canada, 2002. All rights reserved. Credit to: Volunteer Canada, 330 Gilmour St., Ottawa, Ontario, K2P 0P6 Tel: 1-800-670-0401 or (613) 231-4371 E-mail: volunteer.canada@sympatico.ca www.volunteer.ca

20 Questions Directors Should Ask about Directors' and Officers' Indemnification and Insurance **SECOND EDITION**

Richard A. Shaw, Q.C., ICD.D



20 Questions
Directors Should Ask about
**Directors' and Officers'
Indemnification and Insurance**
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Preface

Directors and officers have a responsibility to exercise due diligence while overseeing the activities of the corporations they serve. An individual serving as a director or an officer of a publicly listed corporation is exposed to a myriad of potential liabilities imposed by federal and provincial legislation and common law. It is irresponsible for an individual to consider serving as a director or an officer without inquiring about the protection a corporation has in place to shield directors and officers from personal liability for failure to satisfy the many duties and responsibilities imposed on them.

The Risk Oversight and Governance Board of the Chartered Professional Accountants of Canada (CPA Canada) developed *20 Questions Directors Should Ask about Directors' and Officers' Indemnification and Insurance* to help directors and officers assess the effectiveness of a corporation's indemnification as well as director and officer (D&O) insurance programs. For each question, there is a brief explanatory background and some recommended practices, which will aid readers to better understand topics such as the importance of having D&O insurance programs in place; when and how to seek advice from insurance and legal professionals; and what to include in a corporation's by-laws.

Introduction

Protecting a director or officer from the risk of personal liability is not merely a matter of having an effective indemnification and insurance program in place. Such protection begins with a corporation having the appropriate governance structure and processes that allow decisions to be made in a manner that reduces the risk of directors' being exposed to personal liability.

This publication will focus on the critical elements of a protection program for directors and officers. The provisions of the *Canada Business Corporations Act* (CBCA) will serve as the reference corporate statute for the enabling provisions pertaining to directors' and officers' indemnification and insurance. Similar, if not nearly identical, enabling provisions are found in provincial corporate statutes.

Fiduciary Duty and Duty of Care

The CBCA imposes two principal duties upon directors (as well as officers):

- to act honestly and in good faith, with a view to the best interests of the corporation (this is commonly known as the “fiduciary duty”), and
- to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances (this is commonly known as the “duty of care.”)

The relationship between the board of directors and a corporation is a fiduciary one. The board is a fiduciary in the sense that it has a scope of authority that enables it to act unilaterally in the beneficiary's interest.

The beneficiary, namely the corporation, is peculiarly vulnerable to, or at the mercy of, the fiduciary. It is important to note that in Canada, the corporation — not its shareholders — is the beneficiary.

As fiduciaries, directors must fulfil various duties and obligations:

- The directors' personal interests must be subordinated to those of the corporation.
- The directors must act in the interests of the corporation as a whole, rather than in the interests of any particular shareholder, group of shareholders or other stakeholders, such as creditors, employees, the community, the environment or the government. In making its decisions however, the board should give consideration to these interests to better inform its decision making.
- Nominee directors may not consider the interests of their nominating shareholder to the exclusion of other interests. They too, must act in the best interests of the corporation and not in the best interests of their nominating shareholder.
- Directors are not permitted to enter into engagements which have, or may have, a conflict between their personal interests and the interests of the corporation—unless they disclose their interests in the material contract or transaction involving the corporation and abstain from voting in respect of the matter (subject to limited exceptions).
- Directors must maintain the confidentiality of information which comes to them as a director of the corporation.

The duty of care requires that a director employ the skill and knowledge that they possess. Those who possess greater knowledge or skill therefore, may be subject to a higher standard of care than those possessing less. The director must be diligent in attending to the affairs of the corporation by reading relevant materials, attending board and committee meetings and briefings, and becoming knowledgeable about the corporation's business. Appropriate decision-making processes must be followed. Board decisions will be protected by the business judgment rule when the proper process and procedures have been followed.

Under the business judgment rule, there is a presumption of the soundness of the decisions made by the board and the courts generally will not review board decisions in hindsight. Factors that may establish that the duty of care has not been met include:

- the directors' failure to act prudently and in an informed manner in making their decision
- the directors making the decision were not independent and free of any conflict of interest
- the decision had no reasonable corporate purpose
- the decision was made in haste

Said one court: “The court looks to see that the directors made a reasonable decision, not a perfect decision. Provided the decision taken is within a range of reasonableness, the court ought not to substitute its opinion for that of the board even though subsequent events may have cast doubt on the board’s determination. As long as the directors have selected one of several reasonable alternatives, deference is accorded to the board’s decision.”¹

The decision-making process is the determining factor, rather than the decision itself. There needs to be recorded evidence of the information reviewed and of the process followed by the board in reaching its decision, to demonstrate that the directors have satisfied the fiduciary duty and the duty of care imposed by statute.

Other Statutory Liabilities

Apart from the general nature of the fiduciary duty and duty of care obligations imposed under corporate legislation, many other statutory liabilities are imposed on directors and officers under legislation that deals with income tax, pension, employment insurance, employment standards, environmental protection, health and safety, among others.

A current listing of major federal and provincial statutes that impose liability on directors exceeds 50 pages and references more than 40 statutes. This suggests the need for a proper indemnity and insurance program for those serving as directors.

A Word of Caution

Where the conduct of a board of directors is particularly wanting, directors may still be deemed personally liable and be required to pay personally, even where insurance is in place to cover the payments. This is one of the lessons of the collapse of Enron in 2001 and Worldcom in 2002. Directors from both companies had to pay damages from their own pockets, despite there being sufficient coverage under the directors’ and officers’ insurance maintained by the two corporations to pay the amounts. Enron directors paid US\$13 million of a US\$168 million settlement; WorldCom directors paid US\$24.5 million of a US\$60.5 million settlement. It was a condition of the settlements that the directors contribute from their personal resources rather than being absolved entirely from the insurance available to them.

¹ *Maple Leaf Foods v. Schneider* (1998), 42 O.R. (3rd) 177 (Ontario Court of Appeal) at p. 192.

Questions Directors Should Ask about Indemnification and Insurance

Set forth below are 20 questions that directors may ask in order to assess the effectiveness of a corporation's indemnification and directors' and officers' insurance (D&O insurance) programs. The questions also serve as a checklist.

The questions are organized into several groups. Questions 1 and 2 outline the principal elements of indemnification and D&O insurance programs and address the engaging of appropriate insurance and legal advisors. Questions 3, 4 and 5 deal with the indemnification elements contained in a corporation's by-laws and indemnification agreements, the limitations of those elements in protecting directors and officers, and the reasons why D&O insurance provides the best protection. The remaining questions concern D&O insurance, and end with Question 20, which speaks to two significant sources of directors' and officers' liability: environmental legislation; and the recently proclaimed Canadian Anti-Spam Legislation.²

1. How often should the corporation's indemnification program and D&O insurance program be examined in detail and what outside advisors should be engaged to assist in the review?

A corporation should have an experienced D&O insurance broker engaged on an ongoing basis. The broker will be responsible for reviewing annually the corporation's D&O insurance coverage and policy wording, in recognition of the rapidly evolving insurance marketplace and expansions of coverage

² The official title of the legislation is: An Act to promote the efficiency and adaptability of the Canada economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act.

in recent years. Coverage should also be reviewed by the broker when there is a significant change in the corporate risk profile, such as in situations of rapid growth, engaging in merger and acquisition activity, moving from a private to a public company, listing on a U.S. stock exchange or deteriorating financial conditions.

Knowledgeable legal counsel should be engaged in connection with any material change in insurance coverage, or in statutory provisions governing indemnification and D&O insurance, but, in any event, at least once every five years. The very detailed wording of a D&O insurance policy needs to be reviewed carefully by an expert, and changes in wording must be negotiated with the insurers where required.

For a better understanding of the indemnity and insurance programs, it is helpful to have the insurance broker and legal counsel review them either with a board committee responsible for the management of risk, or with the board as a whole. Doing so will help give individual directors comfort that the proper programs are in place.

2. What are the elements of an indemnification and D&O insurance program?

There are four elements to a well-crafted directors' and officers' indemnification and insurance program:

- statutory enabling provisions (CBCA)
- by-laws of the corporation
- indemnification agreements
- D&O insurance

Section 124(1) of the CBCA provides that a corporation may indemnify a director or officer of the corporation, a former director or officer or another individual who acts or acted at the corporation's request as a director or officer, or an individual acting in a similar capacity of another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgement, reasonably incurred by an individual in respect of any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the corporation or other entity.

Section 124(3) of the CBCA imposes two conditions precedent (collectively the “conditions precedent”) on the corporation’s ability to indemnify:

- The individual must have satisfied their fiduciary duty.
- In a criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that their conduct was lawful.

The corporation may advance defence costs to a director or officer, subject to the individual’s repaying the amounts advanced if the individual fails to satisfy the conditions precedent.

Where the action against the directors or officers is brought by the corporation or on behalf of the corporation (such as a derivative lawsuit by shareholders of the corporation), the corporation must first obtain court approval to indemnify a director or officer or to advance defence costs, subject to the conditions precedent being met by the individual.

A director or officer has a right to indemnity from the corporation in respect of an action where the individual seeking indemnity fulfils the conditions precedent and is not judged by the court or other competent authority to have committed any fault or omitted to do anything that the individual ought to have done.

The CBCA permits a corporation to purchase insurance for the benefit of its directors and officers against any liability these individuals may incur while acting as a director or officer of the corporation, or while acting as a director, officer, or in a similar capacity, of another entity, if they act or acted in that capacity at the corporation’s request.

The corporation or any entitled person or entity may apply to a court for an order approving an indemnity and the court may so order.

3. What should be provided in the corporation's by-laws pertaining to indemnification of directors and officers?

CBCA s.124(1) permits a corporation to indemnify its directors and officers, but this is not mandatory. The by-laws of the corporation must contain a section requiring the corporation to indemnify the directors and officers to the fullest extent permitted by the CBCA and the law. The right to indemnification under the by-laws is also subject to the conditions precedent being satisfied. If the conditions precedent are not met, any monies advanced for defence costs must be repaid.

4. What is the purpose of an indemnification agreement between the corporation and each of its directors and officers? What standard terms and conditions does the indemnification agreement contain?

In addition to the by-law provisions, an indemnification agreement should be entered into between the corporation and each of its directors and officers. The indemnification agreement creates an easier mechanism for enforcing the indemnification obligation in a court of law. It also addresses a number of other important obligations, including the corporation's maintenance of D&O insurance coverage. An indemnification agreement obligates the corporation to indemnify the director or officer to the fullest extent permitted by the CBCA and the law, and to advance defence costs when they are required. In accordance with the CBCA, the indemnity is subject to the conditions precedent being met, and defence costs must be repaid if the individual fails to satisfy the conditions precedent. Where the corporation does not honour its indemnification obligation, an individual may bring action in a court of law to enforce the indemnification agreement.

In most instances, it would be expected that a corporation would meet its indemnity obligation. A director or officer may be particularly at risk should a hostile board of directors be appointed following a contested take-over or merger. The new board may choose not to honour or to delay honouring the corporation's indemnity obligations under the by-laws and the indemnification agreement.

An indemnification agreement should include the following standard terms and conditions:

- The individual agrees to serve as a director or officer.
- The corporation's obligation to indemnify to the fullest extent permitted by the CBCA and the law, subject to the conditions precedent being met.
- The corporation undertakes to apply at its expense for any court approval required to effect any indemnification.
- The corporation will advance all costs that the director or officer incurs in investigating or defending any action or proceeding, subject to amounts being repaid if it is ultimately determined that the individual was not entitled to be indemnified for all or any portion of such amounts.
- The corporation undertakes to contest and defend any claim against the director or officer at the corporation's expense, subject to the corporation being reimbursed to the extent the director or officer was not entitled to have the corporation incur such expenses on their behalf.
- A provision grossing up the indemnified amount for any taxable benefit or other tax or levy incurred on the indemnified amount.
- The obligation of the corporation to purchase and maintain D&O insurance while the individual remains a director or officer and for a minimum of six years after leaving office, containing such customary terms and conditions and in such amounts as are available to the corporation on reasonable commercial terms having regard to the cost of the insurance and size of the business and operations of the corporation.

5. What are the limitations of indemnification under the by-laws and indemnification agreement and why does D&O insurance provide the most reliable protection to directors and officers?

The table below compares the availability of indemnification and D&O insurance in various critical circumstances.

Circumstance	Indemnification	D&O Insurance
Insolvency of corporation	Unavailable	Available while the term of the policy continues
Hostile takeover: failure or delay by new board in honouring indemnification or action by new board against former directors and officers	Directors at risk of paying legal costs in the first instance	Run-off D&O insurance provides protection (See Question 19)
Need for directors to repay defence costs	Repayment required if conditions precedent not met	Conditions precedent do not apply
Fines and penalties	May be reimbursed by corporation if director had reasonable grounds for believing the conduct was lawful	May be paid by insurance where permitted by law

In summary, D&O insurance provides the most reliable protection available to directors and officers. Subject to the exclusionary clauses in the D&O policy, the benefits of D&O insurance include:

- it is available when the corporation is insolvent
- the conditions precedent need not be satisfied
- payments are not dependent upon the actions of a hostile board.

Defence costs, settlements and judgements will be paid under the D&O insurance to the extent that the limits of liability are available to make such payments.

6. What does a D&O insurance program look like and what insurance coverages are provided by a D&O insurance policy?

A typical D&O insurance program is schematically represented below:



The three principal insurance coverages provided by a D&O insurance policy are:

- a. Side A coverage: Payment on behalf of each of the insured persons of all loss for which they are not indemnified by the insured organization, and which the insured persons become legally obligated to pay as a result of any claim made against them during the policy period for a wrongful act committed, or attempted or allegedly committed, or attempted by such person before or during the policy period. The Side A coverage is normally expressed by the insurer as being non-rescindable. Despite being expressed as non-rescindable, the coverage is still subject to the various exclusionary clauses in the policy.
- b. Side B coverage: Payment on behalf of the insured organization of all loss for which the insured organization grants indemnification to each insured person, as permitted or required by law, which the insured person has become legally obligated to pay as a result of

any claim first made against them, individually or otherwise, during the policy period for a wrongful act committed, attempted, or allegedly committed or attempted by such person before or during the policy period.

- c. Side C coverage (or “entity coverage”): Coverage for loss incurred by an insured organization as a result of any securities claim first made against it during the policy period.

As illustrated above, the D&O insurance program will be structured with a base policy over which will be layered excess coverage policies and a top layer known as “difference in conditions” coverage (DIC coverage). The DIC coverage is available to directors and officers only (see Question 16).

“Insured organization” will be defined to include the parent organization and all subsidiaries. Where the business includes entities other than subsidiary corporations—such as partnerships, limited partnerships, limited liability companies or joint ventures—care must be taken to determine that the definition of “insured organization” extends to and includes all such entities. With joint ventures, coverage may be limited to the insured organization’s personnel serving the joint venture.

“Insured persons” will include directors and officers of the insured organization. Again, where there are entities other than corporations within the insured organization, make certain that the definition extends to all persons exercising roles similar to that of director and officer of a corporation. It is also common, particularly with publicly listed corporations, for “insured persons” to include:

- an employee, where the employee is named as a co-defendant with a director or officer
- the most senior individual in investor relations who acts on behalf of the insured organization
- a spouse or common-law partner of an insured person, where the claim is made against them due to their status as spouse or common-law partner, or for their interest in property which is being sought for recovery of claims against an insured person
- any director or officer of an insured organization in respect of claims made against them while serving in an outside directorship of a not-for-profit outside entity at the request of the insured organization, or as part of the duties regularly assigned to the insured person by the insured organization
- an employee in respect of an employed lawyer’s claim

- other individuals in a position of authority, such as de facto directors, advisory board members or executives in foreign jurisdictions, who may not be officers, but are seen to be in positions of authority

7. How much D&O liability coverage (limit of liability) should be obtained? Which insurers should be chosen to underwrite the coverage?

An experienced D&O insurance broker will work with an organization to determine the appropriate amount (i.e., the limit of liability) of D&O liability insurance to purchase. This will depend on the organization's size, its corporate governance framework, market capitalization and share-price volatility, the jurisdictions where it carries on business, and the practice in its, or similar, industries, as well as premium considerations. The broker will also provide advice on the creditworthiness of the insurers writing the coverage, their claims paying reputation, underwriting appetite and longevity.

It is also incumbent on the broker to obtain competitive premium quotes to assure that the corporation is not paying excessive amounts for its coverage. Any significant amount of D&O insurance consists of two components: a base policy; and one or more excess policies, which will be layered on top of the base policy. Typically, all of the policies will be issued by different insurers (although the same insurer sometimes shows up at more than one position in the layered stack of insurers). In large public corporations, it is not uncommon to see limits of liability of \$100 million or more, particularly if the corporation is publicly traded in the United States, as this significantly increases directors' and officers' liability exposure.

When determining the appropriate limit of liability it is important to recognize that loss includes defence costs. Significant defence costs are common in actions against directors and officers.

8. What are appropriate deductibles under a D&O policy?

There should be no deductible amounts payable by directors or officers for Side A coverage. If the organization does not, or cannot, honour its indemnification obligation to its directors and officers, the D&O Policy should provide coverage without any deductible being paid by the directors or officers.

For Side B and Side C coverage, there will always be a deductible amount to be paid by the insured organization, the amount of which will depend on the organization's size as well as its and the insured persons' comfort levels with the amount of the deductible. For larger organizations, the deductible may reach millions of dollars. Larger deductibles will result in somewhat smaller premiums.

9. At what point should coverage under a D&O policy commence? Or, when should a claim be covered by the D&O policy?

When coverage under a D&O policy begins is dependent on the definition of "claim" in the policy. In the definition of "claim" in many policies, the D&O coverage begins only upon some formal action being initiated against the directors or officers, such as a:

- written demand for monetary damages
- civil proceeding commenced by the service of a complaint or similar pleading
- criminal proceeding commenced by the return of an indictment
- a formal administrative or regulatory proceeding commenced by the filing of notice of charges, formal investigative order or similar document.

These definitions of a claim would not provide coverage if, for example, an informal investigation or inquiry or extradition proceedings were to be initiated against an insured person. Such coverages are available sometimes for an additional premium.

10. How is “loss” defined, and what kind of loss is, and is not, normally covered under a D&O policy?

“Loss” is defined as the amount an insured becomes legally obligated to pay as a result of any claim made against the insured for wrongful acts and will contain a non-exclusive list of included claims and a list of excluded claims.

To be covered under a D&O policy, a claim must meet the definition of loss, and include allegations of “wrongful acts.” (Note: The included list is a non-exclusive list and is expressed as “including but not limited to.”)

- compensatory damages
- punitive, exemplary or multiplied damages, fines or penalties (including civil penalties under the *Corruption of Foreign Officials Act* of Canada and the *Foreign Corrupt Practices Act* of the U.S.), if and to the extent insurable under the law
- judgments, including pre-judgment and post-judgment interest
- settlements
- defence costs
- amounts payable for misrepresentations in prospectuses or offering memorandums

The following items will likely appear on a typical exclusionary list:

- costs to comply with an order for non-monetary or injunctive relief (but this coverage is available for an additional premium)
- amounts not insurable under the applicable law
- excess consideration paid by the insured organization to purchase assets or securities
- taxes (but this exclusion will not apply (i) to Side A coverage if the tax is imposed on the insured person in connection with an insolvency proceeding, to the extent the tax is insurable under the applicable law or (ii) to tax that is payable to Canada or a province where an insured person becomes personally liable to make such payment based solely on the insured organization’s failure to pay the tax). This latter item protects directors from having to pay payroll, pension and employment withholdings where the corporation fails to remit them to the government.
- costs incurred in cleaning up, containing, treating, detoxifying, neutralizing, assessing the effects of, testing for, or monitoring pollutants. These events may be dealt with under a separate pollution policy.

“Wrongful acts” that will trigger the D&O coverage include any error, misstatement, misleading statement, act, omission, neglect or breach of duty committed, attempted or allegedly committed or attempted by any insured person in their insured capacity. Also included is any matter claimed against an insured person solely by reason of their serving in an insured capacity. This latter category also covers statutory liabilities for withholdings that are to be paid to the government.

11. How long is the term of a D&O policy? What is the meaning of a “claims made” policy?

D&O policies are issued for a term of one year and must be renewed at the end of each one-year term. The standard policy allows each party to terminate it before the term expires. Many policies provide that the insurer may terminate on 60 or 90 days' notice. With such a clause, a corporation's D&O policy may disappear at the behest of the insurer on very short notice. This clause should be amended to provide that the insurer may terminate early only for non-payment of premiums. The insured organization should have the ability to terminate early, or both parties may terminate on mutual agreement.

A claims-made policy only provides coverage for claims that are made or reported by an insured within the term of the policy. There will normally be an additional grace period of 30 to 60 days after the term ends within which a claim that arose during the one-year term must be reported. The grace period may vary, depending on whether or not the D&O policy has been renewed for a subsequent year. It is possible to obtain an extended reporting period of up to one year by paying an additional premium. The extended reporting period will allow coverage for claims arising prior to the policy's expiry date and reported during the extended reporting period. Concerns about the claims-made nature of the policy are normally alleviated by the insured organization's renewing the policy from year to year. Where the D&O policy is not renewed, it may be advisable to pay the premium for the extended reporting period or consider obtaining a run-off D&O policy (see Question 19).

12. What are the customary coverage exclusions in a D&O policy?

Customary coverage exclusions may be broadly grouped into three categories:

- a. Items that are unindemnifiable and uninsurable at law.

Included in this category are directors' and officers' liability for insider trading, fraud and other crimes, and except where insurance is permitted by law, fines and penalties. The exclusion should only apply where a final, non-appealable adjudication has been made that insider trading, fraud or other crime has occurred. Corporate by-laws and indemnity agreements generally provide coverage for criminal or administrative actions or proceedings and fines and penalties, provided that the individual had reasonable grounds for believing their conduct was lawful.

- b. Items that are indemnified by the company but generally excluded under a D&O policy, because they usually can be insured using a different type of policy, include:
 - i. bodily injury, mental or emotional distress or property damage, which can be managed with general liability insurance
 - ii. breach of fiduciary duty with respect to pensions or other employee benefit plans which can be managed with fiduciary liability insurance
 - iii. pollution, which can be managed with separate pollution coverage, although the D&O policy will usually provide coverage for: (x) pollution claims brought by a shareholder of the insured organization without the assistance of any insured person in their own right or as a derivative claim on behalf of the insured organization and (y) defense costs for pollution claims, except where the claim is brought in the United States, where the insured organization is not permitted or required, or due to financial impairment fails or refuses, to indemnify the insured person

- iv. Claims brought by an insured person against another insured organization or an insured person (the “insured vs. insured” exclusion). This exclusion is based upon the risk of collusion between the insured parties. Customary exceptions to the exclusion are: financial impairment of the insured organization (which includes the appointment of a receiver, liquidator, trustee or similar official), a derivative action by the insured organization against an insured person where such action is brought without the assistance of an insured person or where the insured person is no longer acting in an insured capacity (usually requiring that a period of time has elapsed since the person so acted).

13. What is the purpose of severability clauses in a D&O policy?

The D&O policy is intended to provide protection to directors and officers in their individual capacities as if a separate policy had been issued in favour of each individual. To assure that this is the case, the policy must contain severability clauses which provide that no fact pertaining to or knowledge possessed by an insured person shall be imputed to any other insured person in order to determine if coverage is available and that no declaration or statement in the written application for coverage or knowledge possessed by any insured person shall be imputed to any other insured person for the purpose of determining if coverage is available or an exclusion applies. Where the policy contains entity coverage, the knowledge of a small group of senior officers—generally the chief executive officer and chief financial officer—will be imputed to the corporation in determining if coverage is available to the corporation.

14. What insurance coverages, in addition to the protection for claims against directors and officers, might be included in a D&O policy? Is there a risk to directors and officers in adding these additional coverages?

A D&O policy is purchased to protect directors and officers where the corporation is unable to indemnify them and to protect the corporation's balance sheet when it is obligated to indemnify the directors and officers. That protection is capped at the limit of liability of the D&O policy. When other insurance coverages are added to the D&O policy, payment under those coverages may erode the limits of liability available to the directors and officers.

The most common additional insurance coverage included in a D&O policy for a publicly traded corporation is Side C coverage. This coverage protects the corporation against securities law claims made against the corporation. Given the nature of the coverage, a securities law claim could substantially erode the limits of liability available to the directors and officers. There are arguments for and against the inclusion of Side C coverage. In support of the coverage is that a securities law claim may severely impair the corporation financially and the coverage will help to protect the continued viability of the corporation. This would be particularly true in the case of companies with smaller market capitalizations. On the other hand, it may be argued that shareholders who sue the corporation for securities law violations should look to the corporation's assets for recovery, not a D&O policy.

Side C coverage may encourage securities lawsuits against the corporation and prolong the time needed to defend or settle a lawsuit. With no entity coverage in place, shareholders successfully suing the corporation, rather than benefitting from the windfall of Side C coverage, will experience the same diminution in value of their investment as other non-suing shareholders.

Another coverage often seen in D&O policies relates to employment claims, and deals with claims against the insured persons by a past, present or prospective employee relating to employment matters. This coverage might be better dealt with in a separate employment-practices policy. Furthermore, particularly in light of the introduction of secondary-market civil liability in securities legislation in Canada, the "insured persons" category has expanded to include additional individuals, such as employed lawyers providing professional services and the senior investor relations person.

Care must be taken to ensure that in adding the additional insurance coverages or expanding the categories of insured persons, there is not a risk of a material erosion of the limits of liability intended to protect directors and officers.

Where the D&O policy provides coverages in addition to protection against directors' and officers' liability, the policy must include a "priority of payments" clause. This clause gives priority to the payment of claims under the Side A coverage, where the amount of losses being claimed for under the various policy coverages exceeds the limits of liability or remaining limits of liability under the policy.

15. What is the purpose of an allocation clause in a D&O policy? May the allocation be pre-determined?

Where a claim includes a loss that is covered under the D&O policy and a loss that is not covered—due to either covered and uncovered persons, or covered and uncovered matters, being included in the claim—the allocation clause establishes how the insurer determines what portion of the loss will be covered under the policy. It is best to have the proportion of covered loss as high as possible which can be accomplished through the use of a predetermined allocation clause.

In the absence of a predetermined allocation clause, the insureds and the insurer will use their best efforts to agree upon an allocation between covered loss and uncovered loss and if no agreement is reached, the insurer will advance as incurred the portion of defence costs which the insurer decides is covered until otherwise negotiated, arbitrated or judicially decided.

To avoid an arbitrary determination by the insurer, insert a predetermined allocation clause into the policy. With publicly traded corporations, it is common in respect of the Side B coverage to have an 80 per cent allocation to covered loss for securities losses (including securities defence costs). For loss other than securities loss, there would be an 80 per cent allocation to cover loss for defence costs (except if the insured organization is bankrupt, in which case no defence costs will be allocated to the insured organization). For losses, other than defence costs, the parties are to use their best efforts to allocate such amount based upon the relative legal and financial exposures of the parties to such matters and in the case of the settlement of such a claim, based also on the relative benefits to the parties from such settlement.

The predetermined allocation will avoid arguments and delays when a claim is made.

16. What is the purpose of Side A “difference in conditions” coverage (commonly called “DIC coverage”)?

As illustrated in Question 6, a D&O insurance program is normally structured in layers, with one insurer providing a base limit of liability coverage and other insurers providing excess limits of liability coverage. For instance, a program with a \$100-million maximum limit of liability may have a base coverage of \$25 million by one insurer, with additional insurers providing successive excess layers of coverage of, for example, \$25 million, \$20 million, \$20 million and \$10 million. The top layer (or sometimes more than one top layer) of coverage, \$10 million, in this instance, will often be a DIC policy.

The DIC policy only provides protection to the directors and officers where there is no other protection available. It is designed to provide coverage to directors and officers where:

- the insured organization fails to or is unable to indemnify the directors or officers and the limits of liability of the underlying policies have been exhausted
- coverage under an underlying policy is not available according to the terms of that policy
- an underlying insurer wrongfully denies coverage or has gone bankrupt
- coverage under an underlying policy is rescinded
- there is a wrongful delay in the flow of either indemnity amounts or insurance proceeds

In each of these events, the DIC policy and its limits of liability will “drop down” to provide the coverage that is otherwise unavailable.

DIC policies feature fewer exclusions-from-coverage clauses than base or excess policies and are particularly valuable in ensuring that directors and officers will have the insurance they need—and that they will not have to dig into their own pockets to hire counsel to reach a negotiated settlement of the claim against them. In the above example, directors and officers would at least be assured that there will be \$10 million available to them should all else fail. That would in many circumstances be sufficient funding for directors and officers to reach a negotiated settlement.

17. What is meant by a “follow form” policy?

A D&O program is made up of a base-coverage layer with various excess coverage layers above it provided by different insurers. The D&O policies of the excess insurers are known as “follow form” policies. These policies have, or should have, the same terms and conditions and contain the same exclusions as the base policy, with the exception that the coverage will begin only when one or more limits of liability under the policy or policies in the lower levels of the policy stack have been exhausted. As “follow form” is the goal, it is important that the excess policies be reviewed by legal counsel or others knowledgeable in D&O insurance coverage to assure that they meet the criteria, and if they do not, to understand the coverage gaps created by any differences. Many programs will use the same policy wording for each layer to ensure conformity of coverage.

Given its purpose, a DIC policy does not “follow form.”

18. What coverage will the D&O policy provide to directors and officers of newly acquired subsidiaries or to directors and officers of a subsidiary that is sold by the parent organization?

Directors and officers of a newly acquired subsidiary of an insured organization will only have D&O coverage under the acquiring corporation's policy with respect to wrongful acts committed, attempted or allegedly committed or attempted after the subsidiary is acquired. Coverage may be extended to wrongful acts that occurred prior to the acquisition date upon the insured organization completing and filing an application for such coverage and likely paying an additional premium. When the amount paid to acquire the subsidiary exceeds a set percentage (at least 10 per cent, but often 25 per cent) of the total assets of the parent organization, the parent organization is required to file a written notice of the acquisition with the insurer and may have to pay any additional premium required by the insurer.

Similarly, where a subsidiary is disposed of by a parent organization, coverage continues for the directors and officers of that subsidiary, but only for claims for wrongful acts committed or attempted or allegedly committed or attempted prior to the date such organization ceased to be a subsidiary.

19. What is “directors’ and officers’ run-off insurance,” and under what circumstances should it be obtained?

Directors’ and officers’ run-off insurance covers directors and officers of an insured organization that has been taken over by or merged into another entity, and continues for a defined period of time. It is most commonly found in situations involving takeovers or mergers of publicly traded corporations or entities.

Where a publicly listed corporation (the “target”) is taken over by or merged with another corporation or entity, many if not all of the target’s directors and officers will step down upon completion of the acquisition. Departing directors and officers will need protection for liabilities arising prior to their stepping down. This protection usually comes in two forms:

- a. The acquiring corporation or entity provides a written indemnity to each departing director or officer for claims arising against them in their capacity as directors or officers prior to the date of acquisition. This indemnity may be unlimited in time or time-limited, and if the latter, the time limit will normally range from three to six years.
- b. A run-off D&O insurance policy, the insurance premiums of which may be paid for by either the acquiring entity or the target. A run-off D&O insurance policy provides D&O insurance coverage for the departed directors and officers for wrongful acts committed or allegedly committed prior to the acquisition date. The policy will have a multi-year term (generally from three to six years), and the entire premium is paid up front. With such a policy, care must be taken with the wording of the insured vs. insured exclusion from coverage.

In a friendly takeover or merger, the acquisition agreement will protect target directors and officers from claims being made by the acquirer (other than for fraud or deliberate acts). But in a hostile takeover, that will likely not be the case; nor is there likely to be an indemnity from the acquiring entity. It is important, then, to limit the insured vs. insured exclusion as much as possible, or consider setting funds aside in some other manner for the benefit of directors and officers should the exposure continue.

In a friendly takeover, the acquirer will most likely act as the liaison with the insurer for the run-off insurance. In a hostile situation, this will need to be dealt with by one or more departing directors or officers of the Target.

A corporation might consider purchasing run-off D&O insurance if it decides not to renew its D&O coverage with a particular insurer. A new insurer may be reluctant to provide D&O coverage for claims arising prior to the commencement date of the new D&O policy, or there may be a significant additional premium cost. Run-off D&O insurance with the existing carrier may be less expensive and easier to obtain.

20. What coverage is available under a D&O policy for: a) claims under environmental legislation; and b) claims under Canada's Anti-Spam Legislation (CASL)?

Environmental Claims

The recent Northstar Aerospace Canada case in Ontario illustrates the severity of personal liability that may be visited upon directors and officers in an environmental claim. The firm's directors and officers personally paid \$4.75 million (in addition to \$800,000 already spent on remediation work) to settle clean-up orders issued against them by the Ontario Ministry of Environment following the bankruptcy of Northstar Aerospace Canada.³

As noted in Question 12, above, a D&O insurance policy limits coverage in respect of pollution or environmental matters. Generally the coverage is limited to defence costs for a shareholder action or, where the corporation is not permitted or required or, due to financial impairment, fails or refuses to indemnify the directors or officers. The policy typically contains: a bodily injury/property damage exclusion; a pollution exclusion; and a remediation-cost exclusion. Remediation costs for environmental claims are more appropriately covered under a stand-alone environmental policy. Paying the premium for the policy requires the corporation to be solvent. Such a policy is unlikely to cover non-indemnified losses incurred by directors and officers following a bankruptcy.

³ For more information, see Janet McFarland, "Former Northstar directors, officers reach deal with Ontario over cleanup; Former directors will personally provide \$4.75-million toward remediation of polluted land at Cambridge, Ont., site", *The Globe and Mail* (28 October 2013) online: The Globe and Mail, www.theglobeandmail.com/report-on-business

We understand that, as of this writing, efforts are underway to work with insurance markets to create appropriate D&O wording to address environmental remediation liability, where the insured organization is unable to do so due to insolvency. There has been some success to date in obtaining such coverage in DIC policies.

Environmental legislation, although somewhat similar, will vary from jurisdiction to jurisdiction. The potential environmental liabilities that may be faced by directors and officers need to be understood in each jurisdiction where the corporation does business. For example, the *Quebec Environmental Quality Act* provides that, where a corporation or one of its agents, mandataries or employees commits an offence under that Act, directors and officers are presumed to have committed the offence unless it can be established that they exercised due diligence and took all necessary precautions to prevent the offence. The onus is on directors and officers to prove their innocence once the offence has occurred.

Where the corporation and its directors and officers are exposed to significant environmental liability, appropriate environmental policies and environmental management systems need to be in place in order to reduce the exposure and assist in establishing a due diligence defence for the corporation and its directors and officers. In addition, if appropriate or sufficient insurance is not available, other avenues—such as establishing a trust to which monies are contributed for the purpose of meeting ongoing environmental remediation requirements—may need to be explored. Any such trust will need to be protected from the claims of creditors should the corporation go bankrupt.

Care must be taken that the environmental policies and environmental management system, together with the D&O policy and other environmental insurance coverage, meets the issues arising in the particular jurisdictions in which the corporation does business.

Canada's Anti-Spam Legislation (CASL)

Canada's Anti-Spam Legislation (CASL) came into force July 1, 2014.⁴ The law is directed at eliminating unsolicited electronic communications and is broadly applicable to any commercial communication received in Canada, irrespective of the communication's point of origin. Canadians and foreign companies doing business in Canada are required to obtain consent prior to sending electronic communication.

The legislation, which will be enforced by the Canadian Radio and Television Commission (CRTC), is accompanied by an administrative monetary penalty regime, with penalties of up to \$1 million for individuals and \$10 million for organizations. These penalties may be imposed on directors and officers, subject to a due diligence defence, if they directed, authorized, assented, acquiesced to, or participated in such violation. Directors and officers are liable for violations committed by a corporation's employees while acting in the scope of their employment.

CASL also creates a private right of action (beginning in 2017), subject to a three-year limitation period, for recipients of commercial communications to seek damages in the Federal Court of Canada.

In the absence of specific exclusions, D&O insurance will be available to deal with an investigation by the CRTC, or a private action for alleged non-compliance. These policies bar coverage for wilful violations of a statute or law where finally so adjudicated by a court of law. If directors or officers wilfully commit, or cause others to wilfully commit, violations of CASL, they will not be covered, and any amounts paid out for defence costs will have to be repaid.

Security holders of publicly traded corporations targeted by the CRTC may bring action against directors and officers if there has been a loss of shareholder value. D&O policies customarily will respond to such claims. Fines and penalties may or may not be covered under the D&O policies, depending on wording.

Corporations are advised to consult with their insurance brokers and legal counsel to determine the extent of the CASL coverage provided under their D&O policies.

⁴ Canada's Anti-Spam Law ("CASL"): It's the Law on July 1, 2014—Questions for Directors to Ask; www.cpacanada.ca/CASL

Conclusion

A properly tailored directors' and officers' indemnification and insurance program will provide the needed protection from the personal liabilities that may arise from serving in those roles. Ensuring that the right program is in place begins with having a knowledgeable insurance broker engaged and an active program to review and update the coverage as required to accommodate any legislative and other changes. This needs to be combined with periodic legal reviews of indemnification agreements and D&O policies to provide assurance that the program is effective in providing the needed protection. This document serves as a checklist for assessing your corporation's program to determine the effectiveness of its coverage.

About the Author

Richard A. Shaw, Q.C., ICD.D, was a senior partner in the Business Law Group of McCarthy Tétrault LLP in Calgary, Alberta until his retirement from the firm in December 2010. His legal practice broadly included corporate governance, corporate finance, mergers and acquisitions, securities law, director and officer liabilities, indemnification and insurance and acting as an advisor to boards of directors and board committees. Through his professional corporation, he continues to provide legal advisory services in these practice areas.

Richard has extensive experience with respect to corporate governance practices in Canada, having served as a director on the national board of the Institute of Corporate Directors and the chair of its Calgary Chapter. He is a lecturer in the Director Education and MBA Programs at the Haskayne School of Business at the University of Calgary and has served as Chair of the Board of Governors of Mount Royal University. He is the Chair of Inter Pipeline Ltd. and is a director of Enmax Corporation and serves as the lead independent member on the Alberta Securities Commission. In the past, he has served as a Governor and Acting Vice Chair of the Glenbow Museum and as a director of Theatre Calgary.

Richard expresses his appreciation to Ms. Catherine Richmond, Senior Vice President and Account Executive, AON Risk Solutions, for reviewing this document from the perspective of an experienced director and officer insurance broker and providing many helpful comments and corrections.



CPA

CHARTERED
PROFESSIONAL
ACCOUNTANTS
CANADA

277 WELLINGTON STREET WEST
TORONTO, ON CANADA M5V 3H2
T. 416 977.3222 F. 416 977.8585
WWW.CPACANADA.CA

ISBN-13: 978-1-55385-893-5




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Directors' Liability: A Discussion Paper on Legal Liability, Risk Management and the Role Of Directors in Non-Profit Organizations

Funding for this resource is provided by the Government of Ontario,
Ministry of Citizenship – Voluntarism Initiatives

According to the 2000 NSGVP, about 41 percent of Canadian volunteers serve on boards and committees. Despite their deep commitment to countless causes and organizations many board members may be unaware of the legal ramifications of their volunteer work. Personal liability has become an area of increased concern for board members of not-for-profit organizations. This important resource informs board members about their legal duties and obligations, and offers them a practical 'prevention checklist' to help minimize personal liability.

Financial support for the development of this resource was provided by the Government of Ontario through the Ontario Screening Initiative. 

The views expressed herein are those of the author and do not necessarily reflect those of Voluntarism Initiatives Unit, the Ministry of Citizenship or the Government of Ontario.

1st edition
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Volunteer Canada
330 Gilmour St.,
Ottawa, Ontario, K2P 0P6
Tel: 1-800-670-0401 or (613) 231-4371
E-mail: volunteer.canada@sympatico.ca
www.volunteer.ca



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1. Introduction

According to the 2000 National Survey of Giving, Volunteering and Participating, over 40 percent of Canadian volunteers hold positions on boards and committees.¹ Despite their deep commitment to the effective governance of voluntary organizations, many board members are unaware of the legal ramifications of their volunteer work. As our society becomes more litigation-oriented, the public expects non-profit organizations to be more accountable and businesslike in managing their affairs. Volunteer board members are right to be concerned about their personal liability.

Directors' Liability A Discussion Paper on Legal Liability, Risk Management and the Role of Directors in Non-Profit Organizations informs board members about their legal responsibilities and provides practical suggestions for managing risks and minimizing personal liability. Although this discussion paper contains legal information, it does not provide legal advice. Neither its authors nor Volunteer Canada are in a position to determine whether organizations or individuals have fulfilled their legal duties or satisfied the applicable standard of care in every circumstance. Individuals and organizations seeking specific advice should consult with a lawyer.

This discussion paper is not intended to deter people from volunteering as board members with their favourite voluntary organization or charity. Risk and responsibility are facts of life, and every activity we undertake involves a certain amount of risk. The volunteer director needs to understand the risks involved in the position so that he or she can act reasonably and appropriately. The purpose of this paper is to raise awareness of the legal risks facing directors, and to offer directors and organizations some practical suggestions for minimizing these risks.

2. What is an organization?

Organizations come in a variety of types and sizes, under a variety of names. In this discussion paper, the generic term 'organization' is used. Some organizations are small with no staff and no office, some have a few staff, and some are large entities with many staff and volunteers.

An organization can be 'unincorporated,' and thus have no legal status, or it can be 'incorporated' as a corporation under federal or provincial statutes. This corporation can be for-profit (that is, organized to pursue commercial objectives), or it can be non-profit (that is, organized to fulfill benevolent or charitable purposes).

A non-profit organization can be referred to as:

- a club;
- an association;
- a society;
- a corporation;
- a league, or
- a committee (as in the Canadian Olympic Committee).

¹ Statistics Canada. *Caring Canadians, Involved Canadians: Highlights from the 2000 National Survey of Giving, Volunteering and Participating* (Ottawa: Minister of Industry, 2001), p. 41. To download the full report,

3. *What is a board?*

Some organizations are governed by administrative or ‘hands-on’ boards while others are led by policy-governing boards. Both boards may be called a board of directors, a board of governors or a board of trustees. The responsibility of an organization’s board is to:

- provide leadership and direction to the organization; and
- govern the affairs of the organization on behalf of its shareholders (in the case of a for-profit corporation) or its members (in the case of a non-profit organization).

4. *What is a director?*

A director is an individual who is a member of a governing board of an organization. Directors of non-profit organizations are volunteers and are rarely paid for their services, while directors of for-profit corporations are usually compensated. As a rule, directors are elected or appointed to their positions on the board. They may also be officers, where an officer fulfills certain corporate roles and functions (such as those duties of a ‘president,’ ‘treasurer’ or ‘secretary’ of the organization). Officers can also be senior staff persons, and in rare circumstances, staff persons can also be directors.

Regardless of the name, size, or type of organization, the role of the director remains fairly constant. Directors and officers of non-profit organizations are responsible for governing the affairs of the organization on behalf of its members. Directors and officers have a relationship of ‘trust’ with the members of the organization, and it is from this trust relationship that certain important legal duties arise.

5. *Legal duties of directors*

The basic responsibility of directors is to represent the interest of the members in directing the affairs of the organization, and to do so within the law. This legal duty is described in statutes (such as the *Canada Corporations Act*, provincial business incorporation statutes and provincial societies or non-profit organization statutes) and has been expanded and interpreted in the common law.

In representing the members of the organization and acting as their ‘trustee,’ directors have three basic duties:

1. The duty of *diligence*: this is the duty to act reasonably, prudently, in good faith and with a view to the best interests of the organization and its members;
2. The duty of *loyalty*: this is the duty to place the interests of the organization first, and to not use one’s position as a director to further private interests;
3. The duty of *obedience*: this is the duty to act within the scope of the governing policies of the organization and within the scope of other laws, rules and regulations that apply to the organization.

It is important to note that the duties of directors of non-profit organizations are essentially no different than the duties of directors of for-profit corporations. These duties extend broadly, and are owed to:

- the organization as a whole:

- the organization's members, participants, clients, staff and volunteers;
- other directors; and
- anyone else who may be affected by the decisions of the board and the activities of the organization, including the general public.

These three duties are discussed more fully below.

5.1 *Duty of diligence*

Diligent directors always act prudently and in the best interests of the organization. When performing their duties as directors, they are expected to exercise the same level of care that a reasonable person with similar abilities, skills and experience would exercise in similar circumstances. If a director has a special skill or area of expertise, such as an accountant or lawyer would have, he or she has a duty to achieve a standard of care that corresponds to his or her professional abilities.

Directors have a responsibility to act cautiously and to try to anticipate the consequences of their decisions and actions before they undertake them. They are honest and forthright in their dealings with members, with the public and with each other. Directors are also well-informed about the activities and finances of the organization. They have an obligation to foresee potential risks inherent in a situation and to take reasonable steps to manage those risks.

5.2 *Duty of loyalty*

Directors are required to put the interests of the organization first. These interests will always take precedence over any other interest, including a director's personal interests. As well, directors who are involved in more than one organization may find that they cannot be loyal to both.

Loyal directors will avoid putting themselves in a situation of a conflict of interest. When this is unavoidable, they will act properly in disclosing the conflict and ensure that they play no part in discussing, influencing or making decisions relating to that conflict.

Confidentiality is also an important aspect of the duty of loyalty. Directors have an obligation to keep organizational business private, and to not discuss certain matters with people outside the organization. Confidential matters may include:

- information about personnel; and
- information about clients served by the organization, the organization's finances or legal matters.

A board acts as one entity. Loyal directors support the decisions of the board, even if they might not personally agree with the decisions and might not have voted to support the decisions in the board meeting.

5.3 *Duty of obedience*

Nearly all non-profit organizations are 'private tribunals' (that is, autonomous organizations that have the power to write rules, make decisions and take actions that affect their members and participants). Legally, private tribunals are recognized as having a contractual

relationship with their members. This relationship is defined in the organization's governing documents, which include:

- its constitution;
- bylaws;
- policies, and
- rules and regulations.

Directors have a duty to comply with the organization's governing documents, and to ensure that staff and committees of the organization do as well. Over time, organizations may move away from their legal purpose, and policies may become out of date and no longer reflect the practices of the organization. Obedient directors ensure that governing documents remain current and accurate, and oversee the process that is used to amend and update governing documents.

Directors also have a duty to obey external laws and rules that are imposed upon organizations. A wide range of laws and statutes apply to corporations and individuals: the obedient director ensures that the organization complies with these. In particular, an organization that is an employer has many statutory responsibilities to its employees. These responsibilities include:

- paying wages;
- providing paid time off for holidays;
- making deductions from wages and remitting these to the government;
- providing a safe workplace; and
- protecting employees from discrimination and harassment.

6. *Liability of directors*

A director who fails to fulfill his or her duties as outlined above may be liable. The term 'liability' refers to the responsibility of directors and organizations for the consequences of conduct that fails to meet a pre-determined legal standard. Usually, the term 'consequences' refers to damage or loss experienced by someone, and being responsible for such consequences means having to pay financial compensation.

Liability arises in the following three situations:

1. When a law (*statute*) is broken. The consequences of breaking a law are:
 - paying a fine;
 - having restrictions placed on one's rights or privileges; or
 - being imprisoned.
2. When a *contract* is breached or violated, where a contract is a legally enforceable promise between two or more parties. The consequences of breaching or violating a contract are:
 - correcting the breach through some form of performance or service; or
 - paying financial compensation.
3. When an act, or a failure to act, whether intentionally or unintentionally, causes injury or damage to another person (*tort*). The consequence of intentionally or unintentionally injuring or damaging another person is:
 - payment of a remedy in the form of financial compensation.

These three situations are discussed more fully below.

6.1 *Statute*

There are a variety of federal and provincial statutes that impose liability on directors in specific circumstances relating to managing the affairs of the organization. Thus, directors have specific statutory obligations relating to:

- the election and appointment of directors and officers;
- calling meetings of members;
- paying taxes to government and submitting employment-related remittances;
- keeping minutes of meetings of directors and members;
- reporting and disclosing prescribed information about the corporation to authorities;
- paying wages and salaries;
- maintaining a safe workplace; and
- activities of the organization that cause pollution or other environmental damage.

6.2 *Contract*

Directors are responsible for ensuring that the organization's contractual obligations are fulfilled. This includes contracts with employees and independent contractors.

6.3 *Tort*

Directors are responsible for ensuring that they, as well as the organization's volunteers and staff, do not behave negligently. Negligence refers to the duty that we all have to ensure the safety of those persons affected by our actions. Directors, volunteers and staff are at all times expected to act in a reasonably diligent and safety-conscious manner so that others affected by our actions (for example, fellow employees, volunteers, participants, clients, the public) will not face an unreasonable risk of harm.

The concept of negligence also applies to 'wrongful acts'—these are:

- errors;
- omissions; and
- actions or decisions that harm others, not through damaging their property or their physical person, but through interfering with their rights, opportunities or privileges.

Wrongful acts relate primarily to how directors govern the organization, manage its funds, supervise its staff and make decisions that affect members, clients and the public.

7. *Indemnification*

Clearly, volunteer directors take on a range of legal responsibilities and face many potential liabilities. Non-profit organizations recognize that this can be quite daunting. As a result, it is almost universal practice for these organizations to 'indemnify' their directors for liabilities that they might incur in carrying out their duties as directors. To 'indemnify' means to put someone back in the same financial position as they were in before. An indemnified director would be compensated for the following:

- legal fees:

- fines that were paid under a statute;
- a financial settlement that resulted from a lawsuit; or
- any other legal obligation that a director was required to fulfill.

Incorporated organizations are required by law to indemnify their directors for such losses. There is no such obligation imposed upon unincorporated groups, but most groups do offer indemnities because it is a good policy to do so. Just remember: the indemnification is only as good as the organization's financial ability to pay it. This is where insurance comes in (see *Directors' and officers' liability insurance* in section nine of this discussion paper).

8. *Avoiding liability through risk management*

There is risk inherent in everything we do. Volunteers, employees and directors of organizations must always be mindful of risks—this means examining situations cautiously and thinking ahead to the potential consequences of decisions and actions. Most people manage risks most of the time, and they do so instinctively. However, it is always a good idea to take steps ourselves, and to encourage others to think about risks and risk management more systematically.

The process of risk management is a simple three-part activity. It involves:

1. looking at a situation and asking what can go wrong and what harm could result;
2. identifying practical measures that can be taken to keep such harm from occurring; and
3. if harm does occur, identifying practical measures that can be taken to lessen the impacts of harm and pay for any resulting damage or losses.

The practical measures that can be taken to manage risks fall into four categories:

- assume the risk (decide that the risk is minor and do nothing);
- reduce the risk (find ways to change people's behaviour or the environment in which people work so that the degree of risk is reduced);
- eliminate the risk (choose *not* to do something); and
- transfer the risk (accept the risk but transfer the liability associated with it to someone else through a written contract).

Every organization will face different risks and will plan and implement different measures to deal with these risks. The measures that are taken to manage risks are usually those that would be taken by any other prudent and reasonable person having the same skills, knowledge and experience as ourselves. This is why the practice of risk management is based in large part on common sense and is linked to the concept of 'standard of care.' These measures will tend to revolve around:

- training and educating staff and volunteers;
- enforcing reasonable rules;
- inspecting and maintaining facilities and equipment;
- screening and supervising staff and volunteers;
- properly documenting meetings and decisions; and
- meeting all statutory reporting requirements.

The final section of this discussion paper provides some practical measures that organizations, and individual directors, can take to manage the risks and liabilities faced by directors.

9. *Directors' and officers' liability insurance*

This section deals with insurance—a common risk management measure and one that is particularly important in minimizing directors' liability. Insurance is one of many techniques used to manage risks—it involves transferring the liability associated with a risk to another party by means of a written contract. In the case of insurance, the party that the risk is transferred to is the insurance company, and the written contract is the insurance policy. Transferring risks through written contracts is a very common business practice.

Directors' and officers' insurance is like general liability insurance, and covers costs that the directors and officers of an organization might become legally obligated to pay as a result of damages to another party. However, unlike a general liability insurance policy that covers losses arising from physical injury or property damage, directors' and officers' liability insurance covers only those losses arising from a director's own 'wrongful acts.'

In such an insurance policy, a wrongful act is defined as:

- an error;
- a misstatement;
- a misleading statement, act, omission; or
- other breach of duty by an insured person in his or her insured capacity.

The purpose of this insurance is to provide the financial backing for the indemnity that the organization provides to its directors. Directors' and officers' liability insurance is a fairly recent risk exposure for many non-profit organizations. The risk is not so much that a director will be found guilty of a wrongful act, but simply that there will be an allegation of a wrongful act. Although few claims against directors are substantiated and fewer of these result in large financial awards, the cost of defending any claim can be significant. This is where directors' and officers' insurance tends to prove its value.

Directors' and officers' insurance policies vary, and there is no standard level of coverage.

Importantly, many of these policies *exclude* coverage for:

- directors acting outside the scope of their duties as they are described in this discussion paper, including any actions that are dishonest, fraudulent or criminal;
- breach of contract, including wrongful dismissal of employees;
- fines and penalties under a statute or regulation; and
- complaints under a human rights code, including a complaint of discrimination, harassment or sexual harassment.

Insurance is a complex subject, and directors' and officers' insurance is especially so. For more information on this subject, consult with a lawyer or an insurance representative.

10. *Incorporation*

In this discussion paper, organizations have been described as being either incorporated or not incorporated. Many associations, societies, community groups and sport clubs are not

incorporated and thus have no legal status. Yet the legal status of an organization can have a significant effect on the potential liability of directors, as described below.

The incorporation of an organization under a federal or provincial statute establishes the organization as a legal entity (almost an ‘artificial person’) that exists independently as separate and distinct from its members. This legal entity can:

- own property in its own name;
- acquire rights, obligations and responsibilities;
- enter into contracts and agreements; and
- sue and be sued as if it were a real person.

An unincorporated organization is not a separate legal entity and has no legal status apart from that of its members. While carrying out their duties on behalf of the members, directors can be held personally and jointly liable for the activities of the organization. For example, an unincorporated entity cannot enter into contracts of its own, so the directors or officers who execute the contract on behalf of the organization might be held to that contract in their personal capacities. Likewise, a third party cannot sue the organization (as it is not a legal entity) but can, and likely would, sue the directors collectively and individually.

An incorporated organization offers directors the protection of what is termed the ‘corporate veil.’ As a separate legal entity, the organization is one step removed from the directors and members. Lawsuits must be brought against the corporation, and directors of such corporations are, to a large extent, protected from liability for actions they took in their capacity as directors.

The minor costs and inconveniences of incorporation are far outweighed by the benefits that such incorporation provides to the members and directors. Incorporation can sometimes be the best, simplest and least expensive risk management measure for an organization to take.

Incorporation notwithstanding, it must be noted that directors of corporations may be held personally liable, in their capacities as directors, for unpaid wages, holiday pay, employee benefits and taxes. This is of concern to directors of organizations who have large numbers of employees, especially if the organization is experiencing financial difficulties and may be unable to meet payroll and tax obligations.

11. Protecting yourself as a director

There is no substitute for knowledgeable governance and thoughtful risk management, and the organization that manages its affairs in a conscientious and responsible manner will reduce its directors’ liability risks considerably. Nonetheless, the following practical tips will be helpful to all directors.

Before accepting a directorship with an organization, you should:

- Think about your reasons for becoming a director. Be sure you have the time, interest and commitment to do the job well.
- Learn as much as you can about the organization. What is its mission? What activities does it undertake? How is it perceived in the community?
- Ask for a written job description for the position of director.
- Educate yourself about your legal duties as a director by reading a discussion paper such as this one.

- Look at the composition of the entire board, and satisfy yourself that it can govern effectively and provide competent direction to committees, staff and volunteers within the organization.
- Confirm that the organization indemnifies its directors (either through its bylaws, through policy or by means of a written contract) and that it carries directors' and officers' liability insurance. Ask about the scope of coverage and any exclusions to this insurance.

Once you have accepted a directorship, managing your personal liability risks is an ongoing process. The following guidelines will help you to take steps to manage these risks as they relate to issues such as policy, finances, meetings, personnel, and training.

11.1 Meetings

- Attend meetings, be prepared to discuss the items on the agenda and participate fully in decision-making.
- Provide your reports to the board in written form.
- Ensure that minutes reflect abstentions from votes, votes for and votes against motions.
- If you have any real or perceived conflict of interest, declare it when the issue first arises, and do not vote, participate in or influence the decision-making process. Have your disclosure recorded in the meeting minutes.
- Do not rush important decisions. Ensure that board members receive meeting materials in ample time to digest them. If important information is lacking, postpone the decision until this information can be obtained.
- Keep your own personal copies of key documentation and minutes of controversial meetings.

11.2 Finances

- Take an interest in finances by reviewing regular financial reports, and approving and monitoring the organization's annual budget.
- Use a professional, independent accountant to perform an annual audit of the organization's finances.
- Know who is authorized to sign cheques and for what amount.
- Do not be shy about asking questions and seeking clarification on financial matters from staff.
- With the assistance of your auditor, develop a list of statutory reporting requirements and assign a staff person or director to monitor that these requirements are being fulfilled.

11.3 Contracts

- Ensure that all contracts the organization enters into are carefully reviewed by staff or by counsel.
- When the organization partners with other entities on joint projects, or enters into agreements be sure that all terms and conditions are clearly expressed in a written contract, and that risks and liabilities are appropriately shared.

11.4 Policy

- Ask for a copy of the organization's policy manual. If the organization does not have a policy manual, develop a work plan for staff (or others, as appropriate) to prepare one.
- Be familiar with the content of the organization's constitution and bylaws. If they are out of date, or no longer adequately reflect the mandate and activities of the organization, then undertake to update them.
- On important matters and for decisions that have the potential to adversely affect someone, ensure that the organization's policies are adhered to as written. If the policy is unsuitable for dealing with the particular circumstance, then take steps to change the policy for the future.
- Commit staff and volunteer time and financial resources to developing risk management policies.

11.5 Personnel

- Ensure that all staff and volunteer positions have written job descriptions.
- Insist that the organization develop a clear personnel policy and ensure that staff evaluations are performed at least annually or as required by the policy.
- Be sure that suitable screening measures are in place for those staff and volunteer positions that involve interaction with children, youth, seniors or other vulnerable persons in positions of trust.

11.6 Insurance

- Ask for copies of the organization's insurance policies and become familiar with their scope of coverage.
- Consider asking the insurance broker to meet with the board and make a brief presentation on these policies.

11.7 Training

- Support professional development for staff and training for volunteers.
- Encourage the board to engage in training. Bring in a board development instructor or a facilitator to help the board improve its effectiveness.
- Offer board members training opportunities in association with board meetings or annual general meetings.
- Commit resources to the development and updating of board and staff orientation materials.
- Leave aside a short portion of every board meeting to allow the board to evaluate its effectiveness in conducting the meeting and making governance decisions.

11.8 General

- If the organization is unincorporated, consider incorporation. As a risk management measure it is well worth the expense and inconvenience.
- If you suspect that something is not right, go with your intuition and check it out! Be curious. Remember, as a director you will be held responsible for circumstances and

situations you *ought* to have known about, whether or not you actually did know about them.

- Do not speak negatively about the organization to the public. Publicly support the board's decisions, even if you might have voted against the majority of directors.
- If the organization needs to deal with a complex matter in which staff or directors lack expertise, consider the services of an outside professional (for example, a lawyer, financial advisor, human resources consultant, risk management specialist, or engineer).

12. *Summary*

There are tens of thousands of voluntary organizations and charities in Canada that undertake important work in every community in the country. Volunteer board members are to be applauded and supported for their willingness to take on the responsibilities associated with directorships and the corresponding risks.

This discussion paper is meant to inform directors of the legal dimensions of their voluntary contribution. It is Volunteer Canada's view that an informed director is a more confident and competent director.

The most widely available, most effective and least expensive risk management technique is common sense. Voluntary organizations can capitalize on this common sense by:

- recruiting capable board members and well-qualified staff;
- providing an orientation program for all new people;
- putting on paper clear job descriptions and sound policies;
- supporting professional development at all levels of the organization; and
- creating an organizational culture that emphasizes and rewards risk management thinking and behaviour.

Common sense arises from a mix of knowledge and experience. Most people become directors because they have abundant experience with an organization or the cause to which it is committed, or because they feel that they can bring professional and work-related experience to a rewarding voluntary position. This experience, coupled with the knowledge that can be gained from this discussion paper, will well equip directors to perform their duties effectively and capably.

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Ontario Ministry of the Attorney General website

<http://www.attorneygeneral.jus.gov.on.ca>

United Way of Canada / Centraide Canada website

<http://www.unitedway.ca>

Voluntary Sector Roundtable (VSR) website (the VSR website is hosted and maintained by United Way of Canada / Centraide Canada—see web listing above)

<http://www.vsr-trsb.net/main-e.html>

Volunteers and the Law: A guide for volunteers, organizations and boards. (a web document prepared by the People's Law School)

<http://www.publiclegaled.bc.ca/volunteers>



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Today's moderator, Barry Reiter, Chair, Corporate Governance & Director Protection Group at Bennett Jones LLP, recently wrote a publication entitled *Director's Duties in Canada, 5th Edition*. This publication has become the *de facto* standard resource for Canadian Directors. Two chapters are included:

- **Chapter 29, Protecting Yourself as a Director:** This chapter explains when Directors should get worried; describes practical steps around documentation and disclosure; choices of insurance; in addition to describing typical pitfalls Statutory Civil Liability for Misrepresentations of Continuous Disclosure Materials and Insider Trading.
- **Chapter 30, Indemnification and Insurance:** In this chapter, Mr. Reiter explains key D&O insurance terms, types of coverage and the insurance procurement process.

These chapters provide a small window to the valuable content in *Director's Duties in Canada, 5th Edition*. Everyone ordering this book will also receive complimentary access to a recorded webinar from February 11, 2013, *Corporate Governance: Beyond the Basics*, hosted by Mr. Reiter and his colleagues.

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Edited by:

David Iggulden, B.A., M.L.S.

Library and Archives Canada Cataloguing in Publication

Reiter, Barry J., 1948–
Directors' duties in Canada/Barry Reiter. — 5th ed.

Previous ed. published as Directors' duties in Canada

Includes table of cases and index.

ISBN 978-1-55496-581-6

1. Directors of corporations — Legal status, laws, etc. — Canada. I. Title.

KE1402.R45 2009 346.71'06642 C2009-905659-5 KF1423.R45 2009

ISBN 978-1-55496-581-6

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Typeset by CCH Canadian Limited.
Printed in the United States of America.

D E D I C A T I O N

To Karen.

ABOUT THE AUTHOR

Barry Reiter

Barry Reiter is a senior partner in the Toronto office of Bennett Jones LLP. Barry's practice focuses on corporate governance, development, and finance.

As Chair of the Bennett Jones LLP Corporate Governance and Director Protection Practice, Barry regularly advises boards, directors, directors' committees, and management on corporate governance and risk management issues. He is an experienced director and has chaired boards and a variety of board committees.

As Chair of the Bennett Jones LLP Technology, Media, and Entertainment Practice, Barry has extensive experience in all aspects of the law relevant to the life cycle of a technology business. His practice includes the protection of intellectual property rights, representation of start-up, growth, and mature businesses and private equity sources, domestic and international distribution arrangements, strategic alliances, partnerships, and joint ventures, licensing, private and public financings, stock exchange listings, and mergers and acquisitions.

Formerly a law professor at the Faculty of Law, University of Toronto (1974–1982), Barry has published books on a variety of legal topics (including joint ventures, contracts, the legal process, and real estate) and many articles on corporate governance, boards of directors, and advisory boards. Barry is recognized in many peer-rating listings, including the *Lexpert® Guide to the 100 Most Creative Lawyers in Canada*.

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¹ Lead Author, Barry Reiter, Senior Partner and Chair of the Corporate Governance and Director Protection Group, Bennett Jones LLP.

² This book uses the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (“CBCA”) as the base corporate legislation, discussed generally. We have attempted to identify significant legislative differences in effect in Ontario, Alberta, and British Columbia. The *Securities Act* (Ontario), R.S.O. 1990, c. S.5 (“OSA”) is used as the base securities legislation. We have attempted to identify significant legislative differences in effect in Alberta and British Columbia.

I. Introduction

In previous chapters, we have discussed specific areas of director responsibility, and suggestions for dealing with them. This Chapter focuses on steps directors can take to protect themselves more generally. We look first at the liability of directors and officers under Canadian securities laws for misrepresentations in continuous disclosure materials, and what steps can be taken to limit this liability. We proceed to consider insider trading rules that are applicable to both public and private companies. We then provide practical advice about how an individual director can act to minimize personal exposure generally. This includes a discussion of how directors can do their jobs well, what degree of vigilance is necessary, what should be considered signs of trouble (suggesting the need for closer scrutiny), and what steps should be implemented to protect against liability that may exist despite all of these steps.

II. Statutory Civil Liability for Misrepresentations in Continuous Disclosure Materials

A. Introduction

Several provincial governments have enacted legislation that makes it easier for investors in the secondary market to bring civil actions against issuers and their directors in certain circumstances. For example, December 31, 2005 amendments to the OSA³ permit investors in the secondary market to sue (on a class action basis) the issuer and other potential defendants, including the directors of the issuer, for a misrepresentation in an issuer's continuous disclosure record or for a failure to make timely disclosure.⁴ Comparable provisions were introduced into the Alberta *Securities Act* ("ASA") on December 31, 2006⁵ and into the *Securities Act* of British Columbia ("SABC") effective July 4, 2008.⁶

³ OSA, *ibid.*

⁴ *Ibid.*, ss. 138.1–138.14.

⁵ R.S.A. 2000, c. S-4, the relevant provisions are found at ss. 211.01–211.095, and came into force on December 31, 2006.

⁶ R.S.B.C. 1996, c. 418, the relevant provisions are found at ss. 140.1–140.7. British Columbia had previously enacted a liability regime that differed substantially from the schemes under the OSA and the ASA; however, this regime was never brought into force.

IV. When Directors Should Get Worried

A. Introduction

Directors have significant responsibilities, but so do people in many other jobs. There is a big difference between the need to take your role seriously and to be vigilant, and the need to be worried. Most of the time, directors can function in a “responsible and vigilant” mode. They should have little need to lie awake at night if they have (justified) confidence in management; if they receive and scrutinize suitable information; if the board and its committees are suitably staffed, engaged, and focused; and if board and committee meetings are effective.

That being said, so many companies have failed in spectacular fashion in the recent past, and directors have been criticized (and sanctioned, in some cases) for their alleged failures to prevent the crashes. When is this criticism fair? When should directors get worried?

B. General

Directors are not criminal investigators charged with responsibility for probing beneath apparently supportable assurances to uncover purposeful frauds⁶⁷ (although sometimes, directors’ concerns can lead them to involve other experts in investigations of this sort). But directors must develop and operate suitable risk management strategies to ensure that nothing short of planned criminal behaviour should cause surprising, serious damage.⁶⁸ These strategies can involve structured and intentional risk management programs or they can simply require capable directors to be alert to warning signs.

Having a risk management strategy of any sort will typically require the board to implement assessment, measurement, and management processes. These may include developing and measuring progress against a business plan and annual budget, understanding the business (including the industry and the company’s place in it), and being aware of changes (in the macro-environment, market, competitors, and regulations) that could affect the company. The board must also monitor risks relating to management, including ensuring that the right people (in terms of competence, integrity,

⁶⁷ In ongoing regulatory, criminal, and class action civil proceedings against Sino-Forest Corporation and various of its directors and officers, the protagonists have alleged fraud and other impropriety. After over a year of forensic investigation by agencies on several continents, the facts remain unclear. Expectations about what directors should know, and about what they should be liable for, should respect the limited nature of what directors can realistically know about complex businesses, particularly where purposeful fraud is alleged: purposeful fraud is about ensuring that there is no transparency.

⁶⁸ See Chapter 25.

and teamwork) are running the business, that succession plans are sound, and that formal risk management procedures (suitable check and balance processes, a chief risk officer function, and suitable internal control processes — now formalized through *Sarbanes-Oxley*⁶⁹ 404 audits or equivalents, for some companies) are in place. The board must be comfortable that it is receiving the right information in a timely manner; that it is spending adequate meeting time on risk management; that management is candid with the board; and, in general, that it has confidence in management. Finally, the board must be confident that adequate arrangements are in place (suitable advice has been sought, board processes are proper, effective indemnification and directors' and officers' insurance are in place) to protect the board if things do go wrong.

Beyond all this, there is no substitute for directors who are alert to warning signs that something may be wrong. The following list is illustrative of some signals that increased vigilance may be in order:

- corporate governance processes are not being followed (scheduled meetings are cancelled, improperly authorized actions are taken, management is secretive);
- management does not deliver information in a timely manner;
- related party dealings are proposed (or worse, discovered after the fact);
- there are surprises in financial results or in other business results (key customer losses, changes in deals). A financial restatement is necessary. Particular note should be taken if surprises occur regularly;
- there is an unusually high turnover of employees;
- when the board requests information, management is evasive, provides only selective information, or unduly delays providing information;
- management is unavailable to the board (either it will not respond to the board's inquiries, or management personnel, other than the CEO, are discouraged from contact with the directors);
- the board becomes aware that internal control processes of any sort (from financial compilation to contract signing procedures) are inadequate (the intended purpose of *Sarbanes-Oxley* 404 audits);

⁶⁹ *Sarbanes-Oxley Act of 2002*, Pub. L. No. 107-204, 116 Stat. 745 ("Sarbanes-Oxley").

- board members have a sense of discomfort with the corporate culture or with the candour of any employee (on the theory that what is observed anywhere often reflects the leadership culture at the top);
- the focus is always on the next great product, deal, or sale. There is no accountability for what was promised last time; and
- the board receives express warnings of trouble. Warnings of this sort are far more frequent than one might presume. They come in the form of warnings from advisers (for instance, in auditors' annual reports on issues with management or financial controls), from members of management (particular board members tend to bond with particular executives, who often share concerns with their "director friend"), from formal whistleblower or code of conduct processes, or from other directors (directors sometimes consult one another to assess whether their personal discomfort seems to be warranted).

If even one of these signs appears, it is time for the directors to get out of a "business-as-usual" mode. Often if there is any sign of trouble, the trouble is far worse than is feared, and the directors should not lose any time in beginning to investigate the problem(s).⁷⁰

C. Defences

(i) Due Diligence

The most important advice for all directors and officers is to exercise due diligence. It is very unlikely that a director or officer will be held liable if appropriate time was spent and care was taken when he or she made a decision. The director will have met the statutory standard and will have the benefit of the business judgment rule (discussed below) to protect against liability for what may turn out to have been a bad decision. Due diligence includes ensuring that there is timely, adequate, and appropriate information on which to base a conclusion. For significant decisions (for example, a merger transaction or any other company-altering transaction), one board meeting to approve the transaction may not be sufficient; rather, a number of meetings as the transaction develops, with significant input from outside experts (including lawyers and financial advisers), will likely be required. Appropriate reliance on experts can also be a defence to liability in and of itself, in addition to aiding in the establishment of the due diligence defence (though the recent Supreme Court of Canada decision in *Peoples*⁷¹ appears

⁷⁰ For a more detailed analysis on due diligence investigations, see Chapter 11 and Chapter 27.

⁷¹ *Peoples Department Stores Inc. (Trustee of) v. Wise*, [2004] 3 S.C.R. 461 ("*Peoples*").

to require the use of outside experts for this defence to be available).⁷² An ongoing practice directors and officers should implement is to understand in detail the risks their corporation faces and to ensure that satisfactory preventative measures are in place. Some boards have a "Risks in the Business" item as a standard agenda item at all board meetings.⁷³ While the focus (in terms of assessing whether or not boards have paid adequate attention) for the past few years has been on accounting and internal control issues, executive compensation and corporate disclosure policies are significant issues about which many relevant stakeholders are currently sensitive and which (along with conflicts of interest, control party behaviours, and related party transactions) are at the core of many pending civil class actions.

(ii) Business Judgment Rule

The business judgment rule was strongly supported by the Supreme Court of Canada in *Peoples*. Under that rule, directors and officers will not be liable for a breach of their duty of care owed to the corporation if they act prudently and on a reasonably informed basis. Perfection is not demanded; rather, the court will examine whether an appropriate degree of prudence and diligence was brought to bear on a decision. *Peoples* also stated that the decision itself must be reasonable in light of the circumstances in which it was made.⁷⁴ However, a court is likely to find this requirement to have been met in a situation where the decision-making process was careful and rigorous.⁷⁵

More recently, in the *BCE* decision, the Supreme Court of Canada reaffirmed the business judgment rule. Provided that a decision was reached by exercising business judgment in a reasonable way, the court will accord judicial deference to the directors' decision.⁷⁶

While procedures of this sort may shield directors from ultimate substantive liability, they do not stop unhappy shareholders, creditors, employees, regulators, the media, or others from commencing proceedings or publishing reports and impugning directors' actions and reputations.

⁷² *Ibid.* at paras. 77-78.

⁷³ See the example meeting agenda template included as Appendix I to Chapter 5.

⁷⁴ *Peoples*, *supra* note 71 at para. 67.

⁷⁵ To determine what constitutes a careful and rigorous decision-making process, please see Chapter 2, section III. B. "Due Diligence and the Business Judgment Rule".

⁷⁶ *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 ("BCE").

D. Practical Steps Directors Should Take

(i) Corporate Governance Practices

Peoples, *BCE*, and the Delaware decision in *Disney*⁷⁷ show that good corporate governance practices can protect directors from substantive liability (although they each had the directors embroiled in expensive litigation for years). Though these cases may not agree on the weight to be placed on a failure to implement corporate governance practices, the existence and use of good governance practices are always beneficial. The only “downside” to establishing practices of this sort is that they will set the bar against which the directors’ actions will be measured. Therefore, it is important to establish standards you plan to meet.

(ii) Establish a Record

To establish the due diligence defence, it is important to keep a convincing record of deliberations that were made and actions that were taken. An effective record includes the maintenance of a thoughtful collection of board and committee minutes. This does not mean that a comprehensive transcript should be kept; rather, meeting minutes should indicate the major topics of discussion and the important factors that were considered in reaching decisions. Board materials, correspondence, presentations, and similar evidence of the process involved in reaching a decision should also (generally) be maintained.⁷⁸

(iii) Disclosure Policies and Disclosure Committees

As discussed above, directors and officers of public companies have begun to face statutory personal liability for misrepresentations in public disclosure and for the failure to make timely disclosure of material events. CEOs and chief financial officers (“CFO”) also risk potential personal liability for their certifications of the accuracy of their company’s public disclosure. The discussion above about due diligence is equally applicable to these liability risks (and, in fact, there is an affirmative statutory due diligence defence to disclosure liability in the legislation). In addition, companies should adopt a disclosure policy to ensure that a process is in place so that material developments are brought to the attention of senior officers and directors in a timely fashion. Companies should also consider the creation

⁷⁷ *Brehm v. Eisner (In Re The Walt Disney Company Derivative Litigation)*, 906 A.2d 27 (Del. 2006) (“*Disney*”).

⁷⁸ For a more detailed analysis on establishing records, see Chapter 12.

of a disclosure committee⁷⁹ that is specifically charged with ensuring that companies comply with their disclosure obligations. These steps will both reduce the likelihood of a disclosure violation occurring and, where a violation has occurred, increase the likelihood that a director or officer can rely on the due diligence defence.⁸⁰

(iv) Managing Conflicts

Another key area of director risk is conflicts of interest. Where conflicts exist, due diligence and business judgment may not be enough; a court or a regulator is much more likely to examine the underlying fairness of the transaction. Accordingly, directors and officers must be sure to carefully examine all details and underlying facts before approving a transaction involving or benefiting insiders of the corporation.⁸¹ At a minimum, transactions of this sort must be addressed by a committee of independent board members (this is required in some cases). Even then, directors must be scrutinizing and challenging, and they should consider obtaining advice from external advisers separate from the advisers normally retained by the corporation who may owe undue allegiance to management or a conflicted principal shareholder. Enron is one example of a situation where a conflict of interest (in this case, off-balance sheet transactions involving members of management) was brought to the attention of the board, but certain details likely to affect approval of the transactions were not. These details involved compensation to some investors (including other employees of the corporation, some of whom received huge short-term returns for little or no risk), guarantees provided by the corporation, and the identities of all of the investors (some of whom were spouses or others who had close relationships with management).⁸² Conflict situations (including even such routine ones as executive compensation) require a board to be particularly careful.

Other similar sources of claims include related party transactions and dealings in controlled (whether by equity or superior voting share) companies. Directors must be vigilant in ensuring that there is neither fact nor appearance of impropriety in dealings between related or control parties and the company. This issue can arise, for instance, in the context of a lease from or a commercial deal involving a controlling shareholder. It arises

⁷⁹ In constituting a disclosure committee, there should be enough people on the committee to ensure that there will be knowledge about all important developments affecting the company (e.g., the CFO, head of sales, internal counsel). There is sometimes a question of whether the disclosure committee should consist of management only or should include one or more directors. The practice probably tends more to management only, but each company should assess the issue for itself.

⁸⁰ Please see section IV. C. (i), "Due Diligence", above.

⁸¹ *Hollinger Inc. v. Hollinger International Inc.*, 858 A.2d 342 (Del. Ch. 2004) ("*Hollinger*").

⁸² *Hollinger* is a similar example, closer to home.

frequently in agreements between members of a corporate group, as for instance where the parent provides management services to group members.

(v) Record Keeping

The subject of minutes and record keeping for boards of directors has received considerable discussion over the last few years. Judges have commented on the sparseness of minutes in circumstances where further facts are explored and directors purport to recall matters that were not adequately reflected in the minutes. For example, in *Van Gorkom*,⁸³ the Court relied heavily on the corporate minutes as evidence in rejecting the board's claim that it had placed conditions on a tender offer but where there was no reference in the minutes to conditions of this sort. The Supreme Court of Delaware held that "... the facts of record do not support the defendants' argument The minutes of the Board meeting make no reference to any of this."⁸⁴

A broader issue of record keeping is inconsistencies. Partial minutes or partial notes that are kept individually by directors can do more harm than good where the notes disagree or conflict and reflect only a portion of a debate and do not adequately illustrate the conclusion and resolution of the matter. Directors can certainly keep notes during the course of a meeting—it will assist them in preparing minutes or in considering draft minutes presented for approval. However, the ultimate focus of the board on this should be to ensure that the minutes reflect the issues raised, the substantive aspect of discussions, and the questions, along with the resolutions and reasons for decisions. The very heart of the director's fiduciary duty is to act on an informed and reasonable basis. Minutes should reflect both the information behind and the reasons for a director's action. When the minutes have been finalized and approved, it is usually appropriate for directors to dispose of their notes.⁸⁵

For this advice, as with all advice, there are exceptions. Where a director is in a situation involving the director's loss of confidence in management or in other board members and it appears that conflict or litigation is likely, the director may wish to keep his or her own notes of discussions with management and/or other directors for the purposes of preparing a record, particularly where the director is unable to cause the formal minutes to reflect the facts as he or she sees them. Where a director is starting to keep his or her own notes in this way, it is likely that independent counsel

⁸³ *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985) ("*Van Gorkum*").

⁸⁴ *Ibid.* at 878.

⁸⁵ It is important to remember that the notes taken by individual directors at meetings are not privileged. Therefore, should litigation arise, individual director's notes that vary, contradict, or are incomplete when compared to the finalized and approved meeting minutes can be problematic.

should also be consulted privately to determine an appropriate course of independent action for the director.

Issues relating to the taking and keeping of minutes are addressed in detail in Chapter 12.

E. Indemnification and Insurance

Unfortunately, acting in accordance with best practices may not deter a determined plaintiff from filing a suit, no matter how frivolous. Restatements, mergers and acquisitions announcements, drops in stock price, and “surprises” (such as fundamentally changed guidance) will often trigger suits. Directors are entitled to, and should ensure that, appropriate indemnification and insurance are in place. Directors should not be out-of-pocket when they have acted diligently in attempting to discharge their duties.

Despite the existence of mandatory statutory and the usual bylaw indemnification (that typically only repeats the legislated indemnification), directors should insist on separate indemnification agreements with the corporation to ensure that effective indemnification is made available in a meaningful and timely way. The indemnification permitted by the corporate statutes is only permissive in some respects (the mandated indemnification is narrower), and many issues can arise in accessing indemnification. These include such matters as when indemnity payments will be made (before or after the director is out of pocket?), burdens of proof, whether there will be payment for a director who attends discoveries or regulatory proceedings, requirements to maintain insurance, directors' and the corporations' rights to settle proceedings, etc.

With respect to directors' and officers' insurance, there is often a conflict between the interests of management (in minimizing premiums) and those of directors (in obtaining suitable coverage for service that is not highly remunerated in the first place). While breadth of coverage may be desirable, it includes a number of risks. First, the number of covered individuals and entities is large and the total insurance pool is potentially shared among the group, meaning that a claim and the need to fund defence costs or substantive liability for any group member may (subject to sublimit or priority of payment arrangements) deplete the insurance, so that it will not be available to others. A misrepresentation in the insurance application by, for example, a fraudulent or negligent officer could result in rescission of the policy as against all insureds.

These are but some of the important issues associated with director indemnification and insurance. These topics are canvassed in greater detail in the next Chapter.

CHAPTER 30

INDEMNIFICATION AND INSURANCE^{1,2}

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As we have demonstrated repeatedly throughout this book, directors' exposure to potential personal liability is substantial. Directors can attempt to mitigate risk by performing their duties to the best of their ability, but the board's responsibility is a collective one and, as some of the worst corporate scandals have demonstrated, there is little that one director, or all directors, can do to thwart purposeful and calculated deception by determined management. The reputational risk that ensues may be irretrievable, although demonstrated diligence and effective communication are certainly beneficial.

Beyond this, corporate failures, and the interest in holding directors responsible for them, can lead to regulatory exposure and penalties,

¹ Lead author, Barry Reiter, Senior Partner and Chair of the Corporate Governance and Director Protection Group, Bennett Jones LLP.

² This book uses the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 ("CBCA") as the base corporate legislation, discussed generally. We have attempted to identify significant legislative differences in effect in Ontario, Alberta, and British Columbia. The *Securities Act* (Ontario), R.S.O. 1990, c. S.5 ("OSA") is used as the base securities legislation and we have attempted to identify significant legislative differences in effect in Alberta and British Columbia.

individual and class civil actions,³ and even criminal liability.⁴ Careful indemnification and directors' and officers' ("D&O") insurance programs can provide considerable protection to directors, beginning with ensuring that they receive timely advice and a vigorous defence, and then by addressing substantive liabilities that may ensue.⁵ As this Chapter will demonstrate, the issues involved in establishing suitable programs are complicated, and conflicts abound. It is becoming more and more common for boards, and individual directors, to engage their own independent counsel to guide them through the process of developing these programs.

I. Indemnification

When directors' liability is asserted, directors have recourse to at least one, and typically two, sources of financial protection: corporate indemnities and D&O liability insurance.

³ Exposure to liability can vary by jurisdiction depending on the applicable limitations period legislation. For instance, s. 4 of the Ontario *Limitations Act, 2002*, being Schedule B to the *Justice Statute Law Amendment Act, 2002*, S.O. 2002, c. 24, states: "Unless this Act provides otherwise, a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered". There are special scenarios in which the limitation period is extended, but not beyond the ultimate limitation period set out in s. 15(2): "No proceeding shall be commenced in respect of any claim after the 15th anniversary of the day on which the act or omission on which the claim is based took place." Compare this to the British Columbia *Limitation Act*, R.S.B.C. 1996, c. 266, s. 3 and to the Alberta *Limitations Act*, R.S.A. 2000, c. L-12, s. 3, which share the general limitation period of two years, although neither Act has the ultimate limitation period of 15 years. In Alberta, the maximum limitation period is 10 years after the claim arose, unless the claimant knew or ought to have known in the circumstances "(i) that the injury for which the claimant seeks a remedial order had occurred, (ii) that the injury was attributable to conduct of the defendant, and (iii) that the injury, assuming liability on the part of the defendant, warrants bringing a proceeding" (s. 3(1)). For examples of such class actions, see *Newby v. Lay (In Re Enron Corp. Sec. Derivative & ERISA Litig.)*, 258 F. Supp. 2d 576, 597-98 (S.D. Tex. 2003); *In Re WorldCom, Inc. Sec. Litig.*, 354 F. Supp. 2d 455, 465-66 (S.D.N.Y. 2005); and *In Re Hollinger Int'l, Inc. Sec. Litig.*, 2006 U.S. Dist. LEXIS 47173 (N.D. Ill. June 28, 2006); and for discussion on D&O liability insurance in the wake of Enron and WorldCom, see Bernard Black, Brian Cheffins, and Michael Klausner, "Outside Director Liability" (2006), 58 *Stan. L. Rev.* 1055.

⁴ Following the deaths of 26 miners in Nova Scotia, amendments to the *Criminal Code*, R.S.C. 1985, c. C-46 in 2004 expanded the scope of corporate criminal liability. Examples of such amendments include: expanding the scope of liability so that the term "organization" includes all forms of associations, instead of just corporations (s. 2); creating criminal liability when a person knowingly procures credit, the payment of money, the making of a loan, and other similar actions, based on a false statement of an organization's financial condition (s. 362(1)(d)); bringing the organization on as a party when, in the case of negligence, any representative acting in the scope of its authority is a party (s. 22.1). These amendments came about, in part, to protect workers and create workplace safety, but they also could have consequences in the environmental liability context. Further, personal liability for directors exists under both federal and provincial environmental statutes; see *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33, s. 280, which imposes liability on directors even where the corporation has not been prosecuted, and the Ontario *Environmental Protection Act*, R.S.O. 1990, c. E.19, s. 194, which does the same.

⁵ Barry Reiter, "Indemnification and Insurance for Directors and Officers", *Corporate Governance Report* 2:2 (June 2007).

Corporate statutes generally permit and require corporations to indemnify present and past directors for corporate acts. The CBCA is typical in providing the following:

124. (1) A corporation may indemnify a director or officer of the corporation, a former director or officer of the corporation or another individual who acts or acted at the corporation's request as a director or officer, or an individual acting in a similar capacity, of another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the corporation or other entity.

(2) A corporation may advance moneys to a director, officer or other individual for the costs, charges and expenses of a proceeding referred to in subsection (1). The individual shall repay the moneys if the individual does not fulfil the conditions of subsection (3).

(3) A corporation may not indemnify an individual under subsection (1) unless the individual

(a) acted honestly and in good faith with a view to the best interests of the corporation, or, as the case may be, to the best interests of the other entity for which the individual acted as director or officer or in a similar capacity at the corporation's request; and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual had reasonable grounds to believing that the individual's conduct was lawful.

(4) A corporation may with the approval of a court, indemnify an individual referred to in subsection (1), or advance moneys under subsection (2), in respect of an action by or on behalf of the corporation or other entity to procure a judgment in its favour, to which the individual is made a party because of the individual's association with the corporation or other entity as described in subsection (1) against all costs, charges and expenses reasonably incurred by the individual in connection with such action, if the individual fulfils the conditions set out in subsection (3).

(5) Despite subsection (1), an individual referred to in that subsection is entitled to indemnity from the corporation in respect of all costs, charges and expense reasonably incurred by the individual in connection with the defence of any civil, criminal, administrative, investigative or other proceeding to which the individual is subject because of the individual's association with the corporation or other entity as described in subsection (1), if the individual seeking indemnity

- (a) was not judged by the court or other competent authority to have committed any fault or omitted to do anything that the individual ought to have done; and
 - (b) fulfils the conditions set out in subsection (3).
- (6) A corporation may purchase and maintain insurance for the benefit of an individual referred to in subsection (1) against any liability incurred by the individual
- (a) in the individual's capacity as a director or officer of the corporation; or
 - (b) in the individual's capacity as a director or officer, or similar capacity, of another entity, if the individual acts or acted in that capacity at the corporation's request.

Until recently, corporations typically provided additional indemnification by incorporating the permissive indemnity language of section 124(1) and the mandatory indemnity language of section 124(5) into their bylaws. Generally, these bylaw indemnities did no more than to adopt the language in the statute, replacing permissive language ("may") with mandatory language (such as "shall"). In an era when claims against directors were rare and indemnification provisions were looked to infrequently, indemnities of this sort were thought to be adequate.

Times have changed. With the explosion of director liability claims, corporations, directors, and their advisers have focused on indemnity provisions and have often found bylaw indemnifications to be unsatisfactory. Bylaw indemnities that mirror the statutory language do not provide clarity as to their scope with respect to regulatory or criminal liability at the informal investigation stage that typically precedes formal charges. These indemnities lack clarity with respect to the amount of expenses that will be reimbursed, the timing of payment, and the burden of proof with respect to director claims. They do not address questions about a director's independent right to counsel, the coverage of directors who sit on subsidiary or community boards at the request of the corporation, the ability of the director or the company to settle a dispute (and if so, on what terms), or requirements of the corporation to procure and maintain D&O insurance. While these issues are important to a current director of a financially solvent company, they become even more significant to a director who may have limited influence on the way in which the corporation will address indemnity issues, such as, for instance, a former director (particularly one who participated in a hostile takeover defence that was lost) or a director of a corporation in the control of a trustee in bankruptcy. These indemnities also require the director to enforce them (ultimately by litigation that is funded by the director), and since they are set out in the corporate bylaws

that may be amended unilaterally by the corporation (at least to the point where the mandatory indemnification requirements apply),⁶ they may not be available when needed.

Accordingly, it has become a much more common practice, and almost the universal practice for directors who are independently represented in the director protection process for directors to request and to be protected by contractual indemnities, which are individual, written contracts, between the indemnifying corporation and each director (and, typically, most of the senior corporate executives). Leadership is required for a suitable contractual indemnification program to be introduced and implemented. This leadership may come from an individual director, general counsel, the corporate secretary, the corporate governance committee, or the chair of the board, or it may emerge through the D&O procurement process (described below). Conflicts abound in this process. As directors are seeking protection for themselves,⁷ there are often issues about the extent to which indemnification will apply to non-independent or management directors (or to management in general), and the general counsel or corporate secretary (who may also receive contractual indemnification) is often in the unenviable position of being influential in these matters.⁸

There are four main limitations to a contractual indemnity. First, the indemnity is only as good as the corporation providing it: a director indemnified by an insolvent corporation ranks as an unsecured creditor. One possible protection for a director is to seek a supporting (or even primary) indemnity from a major shareholder or parent corporation (or a trust fund of cash to be held for the benefit of directors).

Second, an indemnity is only permitted by corporate statutes when a director acts honestly and in good faith with a view to the best interests of the corporation. If a director breaches his or her fiduciary duty, or is not

⁶The latter issue was illustrated dramatically in the 2008 Delaware decision in *Schoon v. Troy Corp.*, 948 A.2d 1157 (Del. Ch. 2008). There, the Court supported the actions of the board in amending bylaw protection so that it would no longer apply to former directors, despite the fact that a dispute was brewing at the time between Troy Corp. and a recently retired director. However, section 145(f) of the Delaware General Corporation Law was amended in 2009 to address this decision. This provision now prevents amendments from being made to the corporation's certificate of incorporation or bylaws, after the event for which advancement or indemnification is sought, that would disentitle the director from indemnification or advancement. There are no equivalent provisions in Canadian legislation.

⁷Directors are entitled to vote on and to approve indemnification and D&O proposals. The CBCA, s. 120(5)(b) is typical in providing: "(5) A director required to make a disclosure under subsection (1) shall not vote on any resolution to approve the contract or transaction unless the contract or transaction . . . (b) is for indemnity or insurance under s. 124".

⁸*Manitoba (Securities Commission) v. Crocus Investment Fund*, 2006 MBQB 19, 18 C.B.R. (5th) 143 (Man. Q.B.); aff'd at 2007 MBCA 36, 31 C.B.R. (5th) 1 (Man. C.A.) ("*Crocus*").

acting in the best interests of the corporation, the corporation is prohibited from indemnifying the director.⁹

Third, a corporation that is suing a director (whether directly or in a derivative action)¹⁰ may not indemnify the director for costs without the approval of the court. A Manitoba case demonstrated that this limitation may extend beyond the specific case in which a corporation is suing its own director, and that the courts have discretion in deciding whether directors with a potential right to indemnification are entitled to payment for ongoing defence costs (rather than awaiting the completion of proceedings). *Crocus*,¹¹ a factually complex case, laid out important rules regarding the Court's discretion in deciding whether corporations will be allowed to indemnify their directors, the scope of that indemnity, and potential mitigating factors. The following points were made:

- A court should allow for indemnification to be provided on an ongoing basis where the corporation is solvent, and where there is an absence of evidence showing that the former directors and officers failed to meet the criteria of having acted honestly and in good faith with a view to the best interests of the corporation, and that they had reasonable grounds for believing that their conduct was lawful. If a failure to meet one of these criteria is later proved by evidence, the directors must repay the company.
- A mere allegation of bad faith or dishonesty in respect of a director or officer will not forfeit the right to indemnity since good faith is assumed in the absence of evidence to the contrary.
- The court may, in certain circumstances, impose a cap in respect of the amount of indemnity payments to be made to a director or officer.
- The existence or non-existence of insurance, and the position of any insurer with respect to coverage, are irrelevant to the question of entitlement to indemnification under a corporate bylaw.¹²

Fourth, a corporation can only indemnify a director for fines in a criminal or administrative proceeding if the director had reasonable grounds for believing that the impugned conduct was lawful, and even then courts have sometimes suggested prohibiting indemnities of this sort as

⁹ *Catalyst Fund General Partners I Inc. v. Hollinger Inc.* (2006), 79 O.R. (3d) 288 (Ont. C.A.) (“*Hollinger*”).

¹⁰ *Cytynbaum et al. v. Look et al.*, 2012 ONSC 4578 (Ontario Superior Court, September 28, 2012, Patillo J).

¹¹ *Crocus*, *supra* note 8.

¹² *Hollinger*, *supra* note 9.

contrary to public policy. This issue arose in *R. v. Bata Industries Ltd.*,¹³ a well-known environmental liability case. The *Bata* case involved charges against the company and three of its directors for the improper storage of solvents in barrels outside a shoe factory. The directors, two of whom were convicted, were charged with failing to exercise reasonable care. The Ontario Court of Justice (Provincial Division) fined the two Bata directors \$12,000 each, and the company itself was fined \$120,000. As well, the company was ordered not to indemnify the directors for their fines. On appeal, the Ontario Court (General Division) reduced the fines, but refused to remove the probation order that prevented Bata from indemnifying the directors for the fines against them. However, the Ontario Court of Appeal, while acknowledging the public policy argument that the punitive effect of a fine may be lost if the director is not forced to pay it, ruled that a probation order was not the correct means by which to prohibit the indemnification of Bata's directors. The Court of Appeal held that the corporate statutes, in this case the Ontario *Business Corporations Act*,¹⁴ contain appropriate limitations with respect to the indemnification of directors. Osborne JA stated:

If Bata is to be prohibited from indemnifying the directors, in my view, the prohibition should occur by virtue of s. 136, not by virtue of a prohibition order under the *Provincial Offences Act*. According to s. 136(1), indemnification is permitted if the directors acted honestly, in good faith and in the reasonable belief that their conduct was lawful. If the directors failed to meet these requirements, the prohibition order is superfluous because Bata is prohibited from indemnifying them under s. 136(1). If they did act honestly, in good faith and in the reasonable belief that their conduct was lawful, the prohibition order contradicts the legislative scheme of the Ontario *Business Corporations Act*.¹⁵

Several of these themes were developed further in the recent Ontario case of *Cytrynbaum v. Look*.¹⁶ There, the management and directors of Look (who came into these roles after Look had effected a substantial asset sale) caused Look to sue former officers and directors with respect to bonus, equity payouts and litigation indemnity payments that had been made to them or for their benefit.

¹³ (1992), 9 O.R. (3d) 329 (Ont. Prov. Ct.) ("*Bata One*"); fines reduced on appeal (1993), 14 O.R. (3d) 354 (Ont. Gen. Div.) ("*Bata Two*"); probation order preventing the indemnification of directors by the company removed on appeal (1995), 25 O.R. (3d) 321 (Ont. C.A.) ("*Bata Three*") (collectively, the "*Bata Cases*").

¹⁴ R.S.O. 1990, c. B-16.

¹⁵ *Bata Three*, *supra* note 13, at 330.

¹⁶ *Supra* note 10.

The former officers and directors claimed that they were entitled, under Look's bylaws and under contractual indemnities, to interim advancement from Look of their legal fees and expenses in defending the action brought by Look.

The Court held that section 124 of the CBCA provides a "comprehensive code of general application" regulating indemnification of present and former directors and officers. On its clear and unambiguous meaning, that section applies to both derivative and direct actions, and so was applicable here, which position the Court found to be consistent with a sound policy of court supervision of indemnification and advancement where officer or director misconduct is alleged as a basis for denying indemnification. Even if the indemnification contracts purported to deny that supervisory role, it is not possible to do that: according to the Court, nothing could exclude the court's discretion to approve advancement under section 124(4). The Court went on to examine the evidence and determined that it presented a strong *prima facie* case that many of the officers and directors had acted *mala fides*, in their own self-interests and not with a view to the interests of Look. Accordingly, interim advancement was denied to these individuals.

The *Cytrynbaum* decision demonstrated many of the issues around indemnities, whether contractual or otherwise. It is possible that some of these may be addressable through insurance or through indemnity trusts, although policy wordings on Side A coverage, and exclusions based on gaining a benefit to which the insured was not entitled (especially if based on an in fact test), together with the potential for certain coverages to be voided on the basis of being contrary to public policy, mean that considerable care will need to be taken in attempting to craft effective protection programs.

A form of contractual indemnification can be found in the Appendix at the end of this Chapter.¹⁷

II. Insurance

Corporate statutes permit corporations to obtain and pay for D&O insurance for the benefit of their directors and officers. Section 124(6) of the CBCA is typical:

6. A corporation may purchase and maintain insurance for the benefit of an individual referred to in subsection (1) against any liability incurred by the individual

¹⁷ This form is a useful guide in identifying important indemnification issues. The form should not be used without the advice of a competent professional.

- (a) in the individual's capacity as a director or officer of the corporation; or
- (b) in the individual's capacity as a director or officer, or similar capacity, of another entity, if the individual acts or acted in that capacity at the corporation's request.¹⁸

Until corporate scandals led to significant claims on D&O insurance policies, and to results that were sometimes surprising, directors paid little attention to their D&O insurance coverage. If they asked about it at all, it was to inquire about whether the corporation had D&O insurance, what the upper (dollar) limit of coverage was, and what the deductible was. Directors seemed to assume that D&O insurance was a commodity in respect of which the terms and details of particular policies were both similar and unremarkable.

In much of the litigation that arose out of the biggest corporate scandals, directors learned that there could be significant benefit to paying attention to the details. Directors found that their coverage was voided by the fraudulent activities of corporate officers (of which they were completely unaware). They found that insurance limits could be used up in the defence of these corporate officers so that it was unavailable when the time came for the directors to defend themselves. They found that trustees in bankruptcy could claim the proceeds of insurance as corporate assets and thus deny or delay the claims of directors to the insurance proceeds (that were needed to allow the directors to defend themselves in litigation or regulatory proceedings).

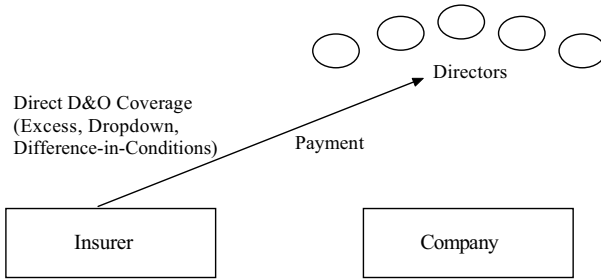
"Surprises" of this sort, coupled with increasing director liability and directors' recognition of the extent of their exposure, have required directors to become more familiar with D&O insurance. An overview of D&O insurance programs, together with a discussion of some of the most important D&O insurance program features, follows.

A. Key D&O Insurance Terms

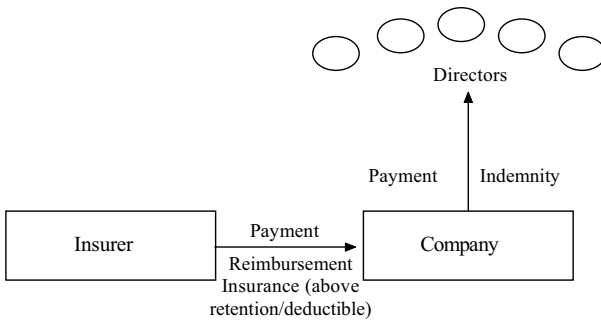
The following terms are important to understanding D&O insurance.

- **Side A Coverage.** A typical director would assume that his or her D&O insurance provides this type of coverage. It represents a direct promise by the insurer to pay the director in respect of a certain type of loss. Side A coverage is represented schematically in the following diagram:

¹⁸ CBCA, *supra* note 2, s. 124(6).

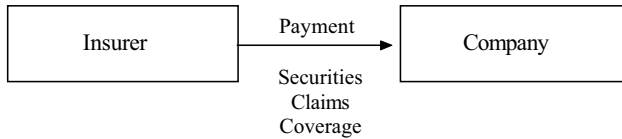


- **Side B Coverage.** Side B coverage refers to the promise of the insurer to reimburse the company (typically above a deductible or “retention” amount) in respect of amounts that the company has paid on account of its statutory, bylaw, or contractual indemnification of directors. Side B coverage, which is really balance sheet protection of the company, is shown schematically as follows.



- **Side C Coverage.** Side C coverage refers to the promise of the insurer to indemnify the company itself in respect of securities claim liability. One might be excused for wondering why Side C coverage is considered to be D&O insurance (although successful defence of the company will often be consistent with exoneration of the directors). Side C coverage became a “throw-in” item at a point in the early 2000s when D&O insurance premiums were very high. At that time, Side A and Side B coverage that was available was restricted, and insurers were looking for a way to provide something that might be seen to be attractive to companies without really involving much insurer risk. However, particularly since the enactment of sections 138.1–138.14 of the OSA, Side C coverage has increased in importance. These statutory provisions provide for unlimited liability of the corporation in many circumstances, and the inclusion of a Side C insured as part of an insurance pool shared with a Side A

insured is a significant consideration. Side C coverage is represented schematically in the following diagram:



- **Primary Coverage.** Primary coverage refers to the first layer of insurance coverage. Typically, D&O insurance is in a “stack”, with the primary insurer providing the largest amount of coverage and having the most meaningful role in the claims process and directors’ defence.
- **Excess Coverage.** Excess coverage refers to insurance that is “above” the primary insurance in the stack. Excess insurance may either “follow form”, meaning that it is available simply as an additional amount on the same terms as those on which primary insurance proceeds are available, or it may be “drop-down” or “difference-in-conditions” coverage, meaning that the excess coverage will respond in (some) circumstances in which the primary coverage might not.
- **Claims-Made Basis.** D&O insurance is typically written for a one-year period. It responds to claims that are made during the currency of the policy. Accordingly, if some corporate act occurs in year one, but is not discovered and no claim is made until year two, the D&O insurer that is in place in year two will be responsible (if anyone is) for responding to the loss, rather than the insurer whose insurance was in place in year one.
- **Run off/Tail/Extended Reporting Period (“ERP”).** These are terms that refer to insurance that can be procured to deal with the fact that D&O insurance is written on a claims-made basis. For instance, an extended reporting period provides for an extended period of time, after a policy has otherwise expired, during which a company or director may report a claim discovered or made subsequently, and may have a (now otherwise lapsed) policy respond in respect of that claim.
- **Rescission.** Rescission refers to the right of an insurer to declare a policy void, typically on the basis of a misrepresentation in the insurance application. In recent years, the most common application of

rescission (or threats of rescission) has been in the context of companies whose financial situation turns out to be significantly different from what was represented in financial statements that were incorporated by reference into the insurance application. Financial differences may arise from innocent acts that require restatements of financial information or from restatements required in consequence of fraud. In the most extreme case, directors may find themselves without D&O coverage when they need it most, in consequence of the malfeasance of corporate officers who set out to deceive them as well as the investing public.¹⁹

- **Imputation.** “Imputation” is related to the issue of severability. To what extent are the various insureds expected to have read the insurance application? To what extent is the knowledge of any particular insured imputed to another, particularly for the purpose of denying coverage to the imputee? It is quite unrealistic to expect (for instance) independent directors to review in detail (or to fully assess) an insurance application that may include many schedules and years of financial statements. It is common to obtain a non-imputation provision in the insurance program so that the knowledge of, for instance, a responsible executive may be imputed to the corporation for the purpose of its Side B and Side C coverage, but that knowledge is not imputed to a Side A insured, other than one who has actual knowledge of a misrepresentation. Considerable attention is required to the precise wording of provisions of this sort, to avoid surprising results.
- **In Fact Determination/Final Adjudication.** Several provisions of insuring agreements require a determination that there is or is not coverage for a particular claimant or for a certain type of loss in the circumstances. These provisions can be drafted to allow the insurer to make a first instance determination (subject to a claimant’s right to sue on the basis of a contrary view), to make a factual determination on some basis, or to agree to be bound by a preliminary or a final non-applicable determination reached by a court or an alternative dispute resolution process. For instance, insurance may be stated to

¹⁹ In *Cutter & Buck, Inc. v. Genesis Ins. Co.*, 144 Fed. Appx. 600 (9th Cir. Wash. 2005) (“*Cutter*”), the United States Court of Appeals for the Ninth Circuit upheld a district court decision holding that the insurer’s rescission of a corporation’s D&O insurance policies was valid. The Ninth Circuit held that the district court had applied Washington law properly in interpreting the severability provision to impute to all directors and officers the misrepresentations knowingly made by the lone officer who had signed the application materials so that the insurer had a right to rescind the insurance policies. In the case of Nortel’s restatement of financial results, the insurer threatened to rescind the insurance policy against all officers and directors, but ultimately relented and covered the innocent directors, rescinding against allegedly malfeasant management only.

be available to a broad group of insureds, but with an ability to terminate coverage of a so-called “black hat” (such as an executive who perpetrated a purposeful fraud). It is in the interests of “white hats” (innocent insureds) that insurance limits not be “wasted” on black hats (for instance, executives who have formally admitted their guilt). On the other hand, it is in the interests of all insureds that insurance proceeds (particularly for ongoing defence costs) be available at least until there is a formal admission or “adequate” finding that an insured should not be covered. There is a variety of approaches to the question of when coverage should cease, and to the issue of how the determination should be made that an event has occurred that should cause coverage to cease.

- **Severability.** Severability refers to provisions in D&O coverage that prevent the actions or inactions of some insureds from affecting the insurance rights of other insureds. Carefully drafted severability provisions will ensure that, even if the insurance coverage can be voided against (for instance) executives who purposefully produced false financial information, the coverage cannot be voided against directors who were unaware of the scheme. Minor differences in wording can cause severability clauses to be very effective or useless.
- **Cancellation.** Cancellation refers to the right of the insurer to terminate the insurance policy without cause during the currency of the one-year policy period. Cancellation rights are often found in D&O policies, although many of them require 30 or 60 days’ notice by the insurer. Rights of this sort can be exercised at times that are most inopportune. They can often be negotiated out of insurance programs.
- **Insured versus Insured Exclusion.** Most insurance coverage includes provisions that deny coverage when the claim involves one insured suing another (management against the directors; the directors against each other; the directors of the parent suing the directors of a subsidiary; etc.). Provisions of this sort are designed to prevent collusion between insureds, but they can operate in surprising ways from the perspective of those insureds. These exclusions can sometimes be modified in primary coverage and can often be restricted or eliminated completely in difference in conditions coverage.
- **Major Shareholder Exclusion.** Most insurance programs include provisions denying insurance coverage when the claims arise from a suit by a major (25 per cent or even 10 per cent) shareholder as plaintiff. These exclusions can be modified or eliminated by

negotiation (or addressed in excess or difference-in-conditions policies), but they can produce surprising results where they have not been addressed.

- **Loss.** This is a key term in most D&O programs, as insurance proceeds are typically accessible in respect of a “loss” that is suffered by an “insured person”. It is therefore important to understand what sorts of liabilities qualify as “loss”. For instance, punitive damages or regulatory or criminal penalties are not usually included. Similarly, some defence costs may not qualify as loss. Many insurance programs today will count as loss the costs of the investigation and the defence once a formal regulatory charge (a “Wells notice”) has been noticed to or brought against a director. However, many programs will not cover the costs of informal investigations that are often significant and that continue for lengthy periods before formal charges are brought.
- **Defence Costs.** An important component of loss is the determination of “defence costs”. Particularly with respect to Side A insureds, substantive liability is far less likely than defence costs exposure. Accordingly, it is important to review insurance programs to understand when defence costs will be advanced by the insurer. While some programs will pay defence costs only as indemnities (after the fact) and after the commencement of formal proceedings (as, for instance, by the laying of a complaint or a formal charge by a regulator), it is often possible to negotiate for (at least) a sublimit for expense advances with respect to early stage informal investigations. Careful preparation for and handling of informal matters may prevent very substantial expense that can come with the initiation and prosecution of formal proceedings.
- **Priority of Payment.** Directors do not tend to find themselves in trouble on their own. Claims against directors usually arise in conjunction with claims against management or when the corporation is in financial difficulty. Accordingly, claims against D&O proceeds can be made by the directors themselves, by management (which may include management that has been accused or found guilty of misconduct), and by receivers and trustees in bankruptcy (who may be seeking the proceeds of insurance as corporate assets in priority to the claims of directors). Priority issues can be complicated when potential claims against the insurance proceeds exceed total insurance limits, but they can be addressed to provide clarity in the most

likely situations if they are negotiated as part of the insurance procurement process.

- **Presumptive Indemnification.** Most insurance programs include provisions stating that insured parties are presumed to be indemnified by the company to the maximum extent permitted by law. This can have the effect of creating a deductible with respect to Side A claims, even if the company has not paid up on an indemnity. These clauses typically provide carve-outs for financially troubled companies and where a company is legally prohibited from paying on the indemnity (for instance, an indemnification found to be against public policy). It is important for individual insureds to ensure that their actual indemnities tie into the presumed extent.

With this background, we turn now to issues regarding the kind of insurance to be obtained and the process for obtaining it.

B. Types of Insurance Coverage

As should be apparent from the definitions discussion above, D&O insurance is not a commodity. It is important for all parties involved in an insurance program to understand the coverage that is sought and to shape the program to suit their particular requirements.

Typically, insurance programs include Side A and Side B and, in many cases, Side C coverage. Particularly in the context of a (typical) policy that includes broad definitions of “loss” and “insured person”, programs of this sort mean that directors are sharing their insurance coverage with all of the other individuals and corporate insureds who might ultimately make a claim on the policy. This fact has implications for the coverage limits that might be appropriate (a higher limit, given that people beyond just the directors might be claimants against the policy), but given the massive liabilities that have resulted in cases of corporate fraud, it is probably likely that almost no limit that makes sense in terms of premium cost will be satisfactory to protect directors completely.

This issue continues to be very much on directors’ minds due to the civil liability for secondary market disclosure provisions in the OSA.²⁰ Accordingly, directors, corporations, and their advisers now consider a variety of approaches to insurance programs. At one extreme, corporations that are highly solvent may choose to forego Side C coverage entirely and self-insure in respect of securities claims (thus taking themselves out of the insurance pool that includes directors, and the corporation only with

²⁰ OSA, *supra* note 2, s. 138.

respect to reimbursement of indemnity payments made to directors). As well, much innovative use is being made of Side A coverage, particularly Side A difference-in-conditions programs. Policies that protect only the directors, or only the independent directors, eliminate other potential insureds from the pool and avoid many of the issues directors face when lumped in with others. Side A difference-in-conditions policies typically include strong severability language (to reflect the non-involvement of directors in the insurance application itself, and in executive malfeasance that may occur subsequently) and eliminate or significantly pare back exclusions, such as the insured versus insured or major shareholder exclusions that might otherwise apply with respect to typical primary Side A, B, or C coverage.

The issues noted in the definitions above should all be addressed as part of the insurance procurement process. In this regard, it is important to consider a long-standing, and complicated, practice in the industry. Insureds and insurers usually deal through insurance brokers in the procurement process. Various coverage plans are discussed with the broker, and agreed upon in the course of the process. Ultimately, coverage is bound and a premium is paid. However, typically, the actual insurance policy documentation is not delivered for weeks or even months after binding. Unfortunately, when claims are subsequently made and then litigated or arbitrated, careful attention is paid to the particular words of the policy, and slight variations can have very significant results.²¹ It is, therefore, important for the various substantive points to be settled in language that is provided, reviewed, and fully understood as being the binding insurance contract language, before any insurance program is finally accepted. It is also important to note that insurance policies are contracts often litigated before judges with no particular background in D&O insurance. The usual approaches to interpretation of contracts apply so that apparently unacceptable drafts should not be accepted just because they are in a D&O contract.

There are many subsidiary, substantive points that may lead to discussion during the procurement process. These range from questions about conditions precedent to the insured bringing a suit on the policy to questions about what happens if a claim is brought against an insured person and

²¹ In *Cutter*, *supra* note 19, the severability language was not broad enough to prevent the rescission of the contract against the innocent directors and officers. In the case of *In Re HealthSouth Corp. Ins. Litig.*, 308 F. Supp. (2d) 1253 at 1280 (N.D. Ala. 2004), the District Court distinguished *Cutter*, in which the severability provision had provided that misrepresentations made with an actual intent to deceive or that were material would void the policy in its entirety and that material information known to the person who signed the application could be imputed to the other insureds. The Court held that the severability language in HealthSouth's policy, by contrast, was effective in providing that the right of each insured to coverage was to be determined separately, so that rescission was permissible only on an individual basis.

an uninsured person or is brought in respect of an insured and uninsured loss (so-called “allocation” issues). Directors will benefit from the involvement of a knowledgeable and experienced insurance broker who is adequately independent and thus able to provide the advice that a variety of interested parties with somewhat differing interests may require. Because brokers are typically engaged by management, whom they regard as their client (and whose interests are sometimes unduly weighted towards reduced premium (and broker’s) cost to the detriment of other issues), boards often seek their own independent legal advice on the substance of these issues and on the process issues discussed below.

The limits of coverage (and sublimits that may apply with respect to particular types of losses, such as professional liability claims, pollution claims, and employment claims), the deductible amounts that may apply with respect to these claims, and the prices of the various types of coverage are all substantive matters requiring care and attention. Typically, companies consider types of coverage, limits, and deductibles by “benchmarking” to peers. This benchmarking may involve comparing the insurance programs that are offered against those disclosed in public disclosures of companies of a similar size or by companies in the same industry, or it may involve a more sophisticated analysis using proprietary models used by insurance brokers (often tying coverage limits to the amount of settlements in class actions ranked by stock value drops associated with financial restatements or other bad corporate developments). Given the complexities of Side A, Side B, and Side C coverage, and the interplay among them, great care must be taken in understanding what insurance amounts will be available to directors in which circumstances. Issues such as the identity of the insurer, its solvency, its commitment to the sector, the location of its assets, and its reputation in claims settlement process are also significant.

C. Insurance Procurement Process

The insurance procurement process used to be the private preserve of a risk or treasury officer or, in a smaller company, the chief financial officer (“CFO”). Recently, directors have become much more interested and involved in the process. There can be conflicts between a management goal of keeping D&O insurance costs to a minimum and the goal of ensuring that directors and officers are properly protected. Directors should, and now often do, want to have a voice in issues such as inclusion or non-inclusion of particular officers as insureds, definition of loss, and how Side A, Side B, and Side C coverage should be structured.

The best processes begin with the careful selection of a broker knowledgeable and experienced in the D&O field, typically after presentations have been made by several qualified brokers, and with consultation between management and an involved board committee (usually audit or corporate governance) to settle the choice. The insurance broker should be selected on the basis of expertise, adequate independence, and value for money (brokers are paid on either a commission basis or, increasingly, a retainer with bonus basis). The broker, management, and board committee should establish a “wish list” of insurance coverage points that they would like to procure in the initial insurance or renewal process. The broker should then work with the insurers and management, involving the board committee as appropriate, to advance discussions to the point at which a definitive program can be proposed by the broker and supported by management. That program, as it is ultimately supported by the relevant board committee, should then be taken to the full board for final decision. Today, the broker, management process leader, and independent counsel to the board are often requested to attend the board meeting to discuss the process and substantive elements of the program. There are tradeoffs and conflicts that must be understood by all parties affected.

It is also important to note that insurance programs tend to improve over the years, as a well-governed company delivers claim-free results to an insurer committed to the D&O sector. This fact has a variety of implications. It may be important to select an insurer with an eye to the future, as well as to current value and policy terms. It may also be worth addressing a policy concern with a D&O excess policy this year, rather than changing insurers, and pursuing enhancements every year.

Increasingly, directors or committees have chosen to engage independent counsel to act for them in the process. Retainers of this sort reflect appreciation of the conflicts that may be involved (brokers tend to be “selected” by management, to whom they may be unduly deferential in making choices; the CFO may have premium cost only as a priority), and the need for significant expertise and experience in structuring an effective program.

The past few years have witnessed a “soft” insurance market, in which enhanced coverage may be available at reduced cost. Many insurers are willing to customize coverage programs as a selling feature. It is important that the procurement process be administered by a person or group that is able to take advantage of this market condition.

It is also worth noting that “self-help” protective mechanisms, while not yet common, have been adopted and implemented by some companies.

These programs involve the creation and funding of a segregated trust that is administered by a trustee (other than the company), typically under the direction of a committee of the board or of certain named directors. The fund exists as a dedicated pool of money available to fund defence costs and awards against directors. The fund may be available generally for these purposes or it may be available only if corporate indemnity or insurance funds are not provided promptly following a director's request. Funds of this sort (which are often used in the context of companies at risk of insolvency) may be particularly helpful where a change of control is anticipated (where those with whom directors have been dealing to date may not be the same individuals as those with whom they will be dealing in the future). While there is a variety of complexities and judgments required in establishing this sort of "self-help insurance fund", it is permissible to do so, and it may be beneficial in certain circumstances.

III. Conclusion

Directors' and officers' indemnification and insurance deserve careful attention. The nature and form of corporate indemnification should be addressed in detail. D&O insurance coverage is not a commodity but a complex product and service. Inherent conflicts influence the procurement process. Many provisions of a D&O policy can be negotiated, and careful attention should be paid to the ultimate contract terms. Policy wording matters, especially if disputes end in arbitration or litigation. Partners in the process matter, and they should include a quality insurance broker, carefully chosen insurers, and independent, expert legal advisers. It takes time for a process of the sort described above to be implemented. An insurance procurement process should commence early enough to permit the negotiations and deliberations that may be required. Directors may want to consider and implement self-help insurance arrangements in appropriate cases.

A P P E N D I X

Director and Officer Indemnification Agreement

THIS INDEMNIFICATION AGREEMENT (the “**Agreement**”) is made as of this _____ day of _____ 201____, between _____ (the “**Corporation**”), a corporation incorporated under the [**Canada Business Corporations Act**] – **OR** – [**Business Corporations Act (Ontario)**] and _____ (the “**Indemnified Party**”).

RECITALS:

A. The Board of Directors of the Corporation (the “**Board**”) has determined that the Corporation should act to assure the Indemnified Party of reasonable protection through indemnification against certain risks arising out of service to, and activities on behalf of, the Corporation to the extent permitted by law.

NOW THEREFORE the parties agree as follows:

1. Indemnification. The Corporation will, subject to Section 2, indemnify and save harmless the Indemnified Party and the heirs and legal representatives of the Indemnified Party to the fullest extent permitted by applicable law:

1.1 from and against all Expenses (as defined below) sustained or incurred by the Indemnified Party in respect of any civil, criminal, administrative, investigative, or other Proceeding (as defined below) to which the Indemnified Party is made a party by reason of being or having been a director or officer of the Corporation; and

1.2 from and against all Expenses sustained or incurred by the Indemnified Party as a result of serving as a director or officer of the Corporation in respect of any act, matter, deed or thing whatsoever made, done, committed, permitted, or acquiesced in by the Indemnified Party as a director or

officer of the Corporation, whether before or after the effective date of this Agreement, and whether or not related to a Proceeding.

“Expenses” means all costs, charges, damages, awards, settlements, liabilities, fines, penalties, statutory obligations, professional fees and retainers, and other expenses of whatever nature or kind, provided that any such costs, charges, professional fees, and other expenses shall be reasonable.

“Proceeding” will include a claim, demand, suit, proceeding, inquiry, hearing, discovery, or investigation, of whatever nature or kind, whether threatened, anticipated, pending, commenced, continuing, or completed, and any appeal, and whether or not brought by the Corporation.

2. Entitlement to Indemnification.

2.1 The rights provided to an Indemnified Party hereunder will, subject to applicable law, apply without reduction to an Indemnified Party provided that: (a) the Indemnified Party acted honestly and in good faith with a view to the best interests of the Corporation or other entity described in Section 2.3; and (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Indemnified Party had reasonable grounds for believing that his or her conduct was lawful.

2.2 This indemnity will not apply to: (a) claims initiated by the Indemnified Party against the Corporation or any subsidiary except for claims relating to the enforcement of this Agreement; (b) claims initiated by the Indemnified Party against any other person or entity unless the Corporation or other party described in Section 2.3 has joined with the Indemnified Party in or consented to the initiation of that Proceeding; and (c) claims by the Corporation for the forfeiture and recovery by the Corporation of bonuses or other compensation received by the Indemnified Party from the Corporation due to the Indemnified Party's violation of applicable securities or other laws. To the extent prior court or other approval is required in connection with any indemnification obligation of the Corporation hereunder, the Corporation will seek and use all reasonable efforts to obtain that approval as soon as reasonably possible in the circumstances.

2.3 The indemnities in this Agreement also apply to an Indemnified Party in respect of his or her service at the Corporation's request as: (a) an officer or director of another corporation; or (b) a similar role with another entity, including a partnership, trust, joint venture, or other unincorporated entity.

3. Presumptions/Knowledge.

3.1 For purposes of any determination hereunder the Indemnified Party will be deemed, subject to compelling evidence to the contrary, to have acted in good faith and/or in the best interests of the Corporation.

The Corporation will have the burden of establishing the absence of good faith.

3.2 The knowledge and/or actions, or failure to act, of any other director, officer, agent, or employee of the Corporation or any other entity will not be imputed to the Indemnified Party for purposes of determining the right to indemnification under this Agreement.

3.3 The Corporation will have the burden of establishing that any Expense it wishes to challenge is not reasonable.

4. Notice by Indemnified Party. As soon as is practicable, upon the Indemnified Party becoming aware of any Proceeding which may give rise to indemnification under this Agreement other than a Proceeding commenced by the Corporation, the Indemnified Party will give written notice to the Corporation. Failure to give notice in a timely fashion will not disentitle the Indemnified Party to indemnification.

5. Investigation by Corporation. The Corporation may conduct any investigation it considers appropriate of any Proceeding of which it receives notice under Section 4, and will pay all costs of that investigation. Upon receipt of reasonable notice from the Corporation, the Indemnified Party will, acting reasonably, cooperate fully with the investigation provided that the Indemnified Party will not be required to provide assistance that would prejudice: (a) his or her defence; (b) his or her ability to fulfill his or her business obligations; or (c) his or her business and/or personal affairs. The Indemnified Party will, for the period of time that he or she cooperates with the Corporation with respect to an investigation, be compensated by the Corporation at the rate of \$_____ per day (or partial day) plus out-of-pocket Expenses actually incurred by or on behalf of the Indemnified Party in connection therewith, provided that the Indemnified Party will not be entitled to the *per diem* if he or she is employed as an officer of the Corporation on such day.

6. Payment for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that the Indemnified Party is, by reason of the fact that the Indemnified Party is or was a director or officer of the Corporation or another entity, or acting in a capacity similar to an officer or director of another entity, at the Corporation's request, a witness or participant other than as a named party in a Proceeding, the Corporation will pay to the Indemnified Party all out-of-pocket Expenses actually and reasonably incurred by or on behalf of the Indemnified Party in connection therewith. The Indemnified Party will also be compensated by the Corporation at the rate of \$_____ *per diem* (or partial day) provided that the Indemnified Party will not be entitled to the *per diem* if he or she is a full-time employee of the Corporation on such day.

7. Expense Advances. The Corporation will, upon request by the Indemnified Party, make advances (“Expense Advances”) to the Indemnified Party of all amounts for which the Indemnified Party seeks indemnification under this Agreement before the final disposition of the relevant Proceeding. Expense Advances may include anticipated Expenses. In connection with such requests, the Indemnified Party will provide the Corporation with a written affirmation of the Indemnified Party’s good faith belief that the Indemnified Party is legally entitled to indemnification, along with sufficient particulars of the Expenses to be covered by the proposed Expense Advance to enable the Corporation to make an assessment of its reasonableness. The Indemnified Party’s entitlement to such Expense Advance will include those Expenses incurred in connection with any Proceeding by the Indemnified Party against the Corporation seeking an adjudication or award pursuant to this Agreement. The Corporation will make payment to the Indemnified Party within 10 days after the Corporation has received the foregoing information from the Indemnified Party. All Expense Advances for which indemnification is sought must be reasonable and Expense Advances must relate to Expenses anticipated within a reasonable time of the request.

The Indemnified Party will repay to the Corporation all Expense Advances not actually required and will repay all Expense Advances if it is determined by a court of competent jurisdiction in a final judgment which has become non-appealable that the conditions of Section 2 are not met. Any Expense Advances to be repaid in accordance with the foregoing will bear interest from the date of applicable final judgment at the prime rate prescribed from time to time by the _____ Bank. If requested by the Corporation, the Indemnified Party will provide a written undertaking to the Corporation confirming the Indemnified Party’s obligations under the preceding sentence as a condition to receiving an Expense Advance.

8. Indemnification Payments. Subject to Section 2 and with the exception of Expense Advances which are governed by Section 7, the Corporation will pay to the Indemnified Party any amounts to which the Indemnified Party is entitled hereunder promptly upon the Indemnified Party providing the Corporation with reasonable details of the claim. The Corporation will, forthwith after any request for payment to or for an Indemnified Party, seek any court approval that may be required to permit payment. If the conditions of Section 2 are not met, the Corporation will not be required to pay the Indemnified Party any amounts pursuant to this indemnification and, further, the Indemnified Party will repay all amounts paid thereto by the Corporation pursuant to this indemnification.

9. Right to Independent Legal Counsel. If the Indemnified Party is named as a party or a witness to any Proceeding, or the Indemnified Party is questioned or any of his or her actions, omissions, or activities are in any way

investigated, reviewed, or examined in connection with or in anticipation of any actual or potential, to any Proceeding, the Indemnified Party will be entitled to retain independent legal counsel at the Corporation's expense to act on the Indemnified Party's behalf to provide an initial assessment to the Indemnified Party of the appropriate course of action for the Indemnified Party. The Indemnified Party will be entitled to continued representation by independent counsel at the Corporation's expense beyond the initial assessment, unless the parties agree that there is no conflict of interest between the Corporation and the Indemnified Party that necessitates independent representation.

10. Settlement. The parties will act reasonably in pursuing the settlement of any Proceeding. The Corporation may not negotiate or effect a settlement of claims against the Indemnified Party without the consent of the Indemnified Party, acting reasonably. The Indemnified Party may negotiate a proposed settlement without the consent of the Corporation. The Corporation will consider in good faith in the best interests of the Corporation whether or not to consent to any such proposed settlement and will advise the Indemnified Party of its determination on a timely basis. If the Corporation advises the Indemnified Party that it does not consent to the settlement **[provided the settlement is expressly stated to be made by the Indemnified Party on his or her own behalf without any admission of liability by [the Indemnified Party and/or] the Corporation]**, the Indemnified Party may nonetheless effect the settlement, but the Corporation will not be liable for indemnification under this Agreement with respect to any such settlement.

11. Directors' & Officers' Insurance. The Corporation will ensure that its liabilities under this Agreement, and the potential liabilities of the Indemnified Party that are subject to indemnification by the Corporation pursuant to this Agreement, are at all times supported by a directors' and officers' liability insurance policy (the "Policy") that has been approved by the Board. As may be required by the Policy, the Corporation will immediately notify the Policy's insurers of any occurrences or situations that could potentially trigger a claim under the Policy and will promptly advise the Indemnified Party that the insurers have been notified of the potential claim. If the Corporation is sold or enters into any business combination or other transaction as a result of which the Policy is terminated and not replaced with a substantially similar policy equally applicable to the Indemnified Party, the Corporation will cause runoff "tail" insurance to be purchased for the benefit of the Indemnified Party with substantially the same coverage for the balance of the six-year term set out in Section 21 without any gap in coverage. The Corporation will provide to the Indemnified Party a copy of each policy of insurance providing the coverages contemplated by this Section promptly after coverage is obtained, and evidence of each annual

renewal thereof, and will promptly notify the Indemnified Party if the insurer cancels, makes material changes to coverage, or refuses to renew coverage (or any part of the coverage).

12. Arbitration. Except as otherwise required by applicable law, all disputes, disagreements, controversies, or claims arising out of or relating to this Agreement, including, without limitation, with respect to its formation, execution, validity, application, interpretation, performance, breach, termination, or enforcement will be determined by arbitration before a single arbitrator under the *Arbitration Act, 1991* (Ontario). The arbitrator will be selected by _____ or _____, having regard to the nature of the dispute (legal, financial, or other). The arbitrator will determine the rules for the arbitration, including, based on the outcome of the arbitration, the breakdown between the Corporation and the Indemnified Party of the costs for conducting the arbitration.

13. Tax Adjustment. Should any payment made pursuant to this Agreement, including the payment of insurance premiums or any payment made by an insurer under an insurance policy, be deemed to constitute a taxable benefit or otherwise be or become subject to any tax or levy, then the Corporation will pay any amount necessary to ensure that the amount received by or on behalf of the Indemnified Party, after the payment of or withholding for tax, fully reimburses the Indemnified Party for the actual cost, expense or liability incurred by or on behalf of the Indemnified Party. However, the foregoing sentence will not apply to any compensation paid as *per diem* to the Indemnified Party pursuant to Sections 5 or 6.

14. Cost of Living Adjustment. The \$_____ *per diem* payable pursuant to Sections 5 and 6 will be adjusted to reflect changes from the date of this Agreement in the All-items Cost of Living Index for Toronto prepared by Statistics Canada or any successor index or government agency.

15. Governing Law. This Agreement will be governed by the laws of the Province of _____.

16. Priority and Term. This Agreement will supersede any previous agreement between the Corporation and the Indemnified Party dealing with this subject matter, and will be deemed to be effective as of the date that is the earlier of (a) the date on which the Indemnified Party first became a director or officer of the Corporation; or (b) the date on which the Indemnified Party first served, at the Corporation's request, as a director or officer, or an individual acting in a capacity similar to a director or officer, of another entity.

17. Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule or law or public policy, all other conditions and provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal

substance of this Agreement is not affected in any manner materially adverse to either party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the provisions of this Agreement are fulfilled to the fullest extent possible.

18. Binding Effect: Successors and Assigns. This Agreement shall bind and inure to the benefit of the successors, heirs, executors, personal and legal representatives, and permitted assigns of the parties hereto, including any direct or indirect successor by purchase, merger, consolidation, or otherwise to all, substantially all or a substantial part of the business or assets of the Corporation, by written agreement in form and substance reasonably satisfactory to the Indemnified Party, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Corporation would be required to perform if no such succession had taken place. Subject to the requirements of this Section 19, this Agreement may be assigned by the Corporation to any successor (whether direct or indirect, and whether by purchase, merger, consolidation, or otherwise) to all, substantially all, or a substantial part of the business or assets of the Corporation. This Agreement may not be assigned by the Indemnified Party.

19. Covenant. The Corporation hereby covenants and agrees that it will not take any action, including, without limitation, the enacting, amending, or repealing of any bylaw, which would in any manner adversely affect or prevent the Corporation's ability to perform its obligations under this Agreement.

20. Parties to Provide Information and Cooperate. The Corporation and the Indemnified Party shall from time to time provide such information and cooperate with the other as the other may reasonably request in respect of all matters under this Agreement.

21. Survival. The obligations of the Corporation under this Agreement, other than Section 11, will continue until the later of: (a) 15 years after the Indemnified Party ceases to be a director or officer of the Corporation or any other entity in which he or she serves in a similar capacity at the request of the Corporation; and (b) one year after the final termination of all Proceedings commenced prior to the expiration of such 15-year period with respect to which the Indemnified Party is entitled to claim indemnification hereunder. The obligations of the Corporation under Section 11 of this Agreement will continue for six years after the Indemnified Party ceases to be a director of the Corporation or any other entity in which he or she serves in a similar capacity at the request of the Corporation.

22. Independent Legal Advice. The Indemnified Party acknowledges that the Indemnified Party has been advised to obtain independent legal advice with respect to entering into this Agreement that the Indemnified Party has obtained such independent legal advice, and that the Indemnified Party is entering into this Agreement with full knowledge of the contents hereof, of the Indemnified Party's own free will and with full capacity and authority to do so.

23. Execution and Delivery. This Agreement may be executed by the parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles together will constitute one and the same agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

[Corporation]

by:

Name:

Title:

Authorized Signing Officer

Witness Signature

[Director/Officer]

Witness Name

Directors' Duties in Canada, 5th Edition

Corporate governance continues to be a very hot topic, as directors' actions and omissions come under increasing scrutiny from regulators, stakeholders, the media, and observers.

The 5th Edition of *Directors' Duties in Canada* is a completely updated, enhanced and practical guide to what directors' duties are, best practices in discharging those duties, and how directors can protect themselves from embarrassment and liability.

The book includes consideration of:

- directors' duties in the context of public and private companies, Crown corporations, and not-for-profit organizations
- directors' duties with respect to employment laws, pension plans, and mutual funds
- risk management issues, including financial and operational, information technology, intellectual property, insolvency, environmental, and social media risks
- proxy contests, including consideration of why they begin, how to avoid them, how to prepare for them, and how to fight them to win
- how to build a great board, and what a director candidate should consider before accepting an invitation to join a board
- shareholder rights plans (poison pills) and other defensive tactics, and directors' responsibilities generally in the context of hostile takeover bids
- special committees and how to operate them effectively
- director-level considerations in corporate finance
- what corporate social responsibility means to and for directors today
- internal investigations and how to conduct them
- the roles of the corporate secretary and of minutes in the governance and director protection process
- actionable precedents, including sample board and committee mandates, key governance policies, and board evaluation templates
- best practices for directors in determining to join or resign from a board, in obtaining satisfactory indemnification, and directors' and officers' insurance

About the Author

Barry Reiter's practice focuses on corporate finance, development, and governance.

Barry advises boards, directors, and management on governance issues. As Chair of the Bennett Jones LLP Corporate Governance and Director Protection Practice, he is an experienced director and has chaired boards and a variety of board committees. Formerly a law professor at the Faculty of Law, University of Toronto (1974-1982) and recognized as one of Canada's 100 Most Creative Lawyers, Barry has published books and articles on corporate governance, advisory boards, joint ventures, contracts, real estate, and the legal process.

Bennett Jones LLP has over 400 legal professionals in Calgary, Toronto, Edmonton, Ottawa, Beijing, Dubai, Abu Dhabi, and Doha. Their professional practice encompasses virtually every sector of business, industry, and government.



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www.cch.ca

Book No. 4854
ISBN 978-1-55496-466-6



Liability Indemnification and Insurance for Directors of Not-for-Profit Organizations

By Brian Rosenbaum, LL.B.

Supplement to *20 Questions Directors Should Ask about Directors' and Officers' Liability Indemnification and Insurance*

This document is a supplement to the publication *20 Questions Directors Should Ask about Directors' and Officers' Liability Indemnification and Insurance* commissioned by the Risk Management and Governance Board of the Canadian Institute of Chartered Accountants and written by Richard J. Berrow (the "Briefing").

The analysis in the Briefing is principally directed at corporations operated on a for-profit basis. Although much of its content is applicable to directors and officers of non-profit organizations, there are some distinct differences in the manner in which these individuals are statutorily permitted to be indemnified. As well, the typical non-profit directors' and officers' (D&O) liability insurance policy is somewhat different than a for-profit policy.

The Briefing should be read alongside this supplement to fully understand the insurance and indemnification issues non-profit directors and officers face.

DISCLAIMER

This publication is provided for general information and convenience only, and does not constitute legal advice. The law governing directors' and officers' liability, indemnity and insurance varies from jurisdiction to jurisdiction and is subject to change, and legal advice must always be tailored to the situation at hand. The wordings of directors' and officers' insurance policies vary widely among insurers and are also subject to change, as do insurer practices. Readers should seek appropriate, qualified professional advice about any particular situation before acting or omitting to act based upon any information provided through this publication.

Not-for-Profit Organizations Task Force:

Dan Cornacchia, FCA, Chair
L. Robin Cardozo, FCA, ICD.D
Sue Matthews, CA, ICD.D
Lyn McDonell, CAE, C.Dir
Giles Meikle, FCA
Larry Murray, FCA
S. Harlan Schonfeld, CA, CIRP
Catherine Smith, ICD.D., F.I.C.B.

Indemnification

What does Indemnification mean?

Indemnification is a legal term which means “to pay the costs of or to reimburse another person for costs incurred”.

In the context of a non-profit corporation, indemnification would involve the payment by the corporation of the legal costs, expenses, settlements and judgments of a director or officer, provided that they:

- arise out of his or her acts or omissions while acting within the capacity of a director or officer, and
- are the subject of actual or threatened legal proceedings.

If, for example, a director was sued along with the corporation by an ex-employee for wrongful termination, the corporation might pay the costs of hiring a lawyer for the director, conducting an investigation on behalf of the director and any other reasonable expenses necessary to adequately defend the director in the lawsuit, depending on any statutory or contractual rights and conditions. If the director was found to be personally liable to pay damages to the ex-employee, the corporation would pay those damages on the director’s behalf, unless the director’s conduct breached a statutory or contractual condition disentitling him or her to that indemnification.

What determines a director’s right to indemnification?

The legislation under which the organization is incorporated sets out the statutory right of a director or officer to indemnification.

In the case of directors and officers in the for-profit sector, their statutory rights to indemnification are set out in the *Canada Business Corporations Act* (CBCA)¹ or equivalent provincial business corporation statutes.

Directors and officers of non-profit organizations (NPOs) are subject to different legislation in determining their rights to indemnification. The business form the NPO takes and the jurisdiction in which it operates largely determine the applicable statutes. Determining which statutory provisions directors and officers are subject to can be a confusing and difficult process. This document summarizes various federal and provincial statutes.

It must be noted however, that despite any statutory provisions allowing for the indemnification of non-profit directors and officers, many NPO executives and board members may not benefit from such indemnification due to the organization’s limited financial resources.

See questions one through four of the Briefing.

¹ *Canada Business Corporations Act*, R.S.C. 1985, c. C-44

Federal Non-Profit Organizations

Federal Non-Profit Corporations

National non-profit organizations are often incorporated under the *Canada Corporations Act* (CCA)². Directors of CCA organizations may, with the consent of the organization's members, be indemnified for all costs, charges and expenses incurred as a result of any action, suit or proceeding commenced against them arising in the execution of their duties³.

Differences between the Canada Corporations Act and the Canada Business Corporations Act

The standard by which directors of NPOs incorporated under the CCA can be indemnified differs significantly from the standard applicable to for-profit corporations under the CBCA in terms of prohibitions, scope and advancement of funds.

Prohibitions

Under the CCA, a director may not be indemnified for costs, charges and expenses incurred by such director's own willful neglect or default.⁴ In contrast, the CBCA prohibits indemnification if directors and officers have not acted honestly and in good faith with a view to the best interests of the corporation (or in the case of criminal or quasi-criminal proceedings, if the director did not have reasonable grounds for believing his or her conduct was lawful).⁵ It is not entirely clear which of the contrasting prohibitions is wider. There may be some instances in which a director's willful neglect is not contrary to the best interests of the organization. Similarly, not every violation of a directors' and/or officers' duty to act honestly and in good faith with a view to the best interests of the corporation involves an act of willful neglect or default. This issue may soon be resolved by new legislation discussed below.

Scope

Unlike the CBCA, wherein current and former directors and officers have statutory rights to indemnification, the rights to indemnification under the CCA may be limited to current directors.⁶ The indemnification provisions in the CCA are permissive in nature allowing the non-profit organization to indemnify its current directors subject to shareholder approval. There does not seem to be any right of indemnification granted to officers or former directors.⁷ It may be that officers and former directors of federally incorporated non-profit organizations will have to look to contractual rights or the common law for their indemnification.

² *Canada Corporations Act*, R.S.C. 1970, c. C-32

³ CCA, s.93

⁴ CCA, s.93(b)

⁵ CBCA, s.124 (3)

⁶ CCA, s.93(a)

⁷ There is no mention of former directors in the CCA indemnification provision, as there is in the CBCA section. Further, director is defined in s. 3(1) as including "any person occupying the position of director by whatever name he is called". The use of the present tense of the verb "occupy" supports the position that only current directors are entitled to indemnification under the CCA. There is also no express right to indemnification granted to officers, nor does the definition of "director" include officers, as is common in some similar provincial statutes.

Advancement of Funds

The CBCA and a number of provincial statutes allow for the advancement of funds without a director or officer having to wait until some sort of adjudication or ruling is made with regard to the appropriateness of his or her conduct. There are also provisions in many of those statutes that allow for-profit corporations to indemnify their directors and officers for costs and expenses in investigative proceedings.

In contrast, there is no express provision in the CCA permitting payment of funds to a director for costs, charges and expenses incurred prior to a determination that such director's conduct does not disentitle him or her to that indemnification, nor is there any provision permitting indemnification for costs and expenses in investigative proceedings.

Future changes to the provisions of the CCA

The CCA may undergo some significant changes in the very near future. On January 28, 2009, Bill C-4, *An Act respecting not-for-profit corporations and certain other corporations*,⁸ was tabled in the House of Commons. If the Bill in its current form should become law, the indemnification rights of non-profit corporations' directors and officers will closely resemble those of directors and officers of for-profit corporations, in that:

- the standard of conduct prohibiting indemnification under the Bill mirrors that of the CBCA,
- former directors as well as officers will be permitted to be indemnified, and
- non-profit organizations will be entitled to advance costs to their directors and officers prior to a determination in a proceeding.⁹

The broadening of statutory indemnification rights of non-profit directors and officers proposed in the Bill will certainly enhance the ability of non-profit organizations to attract and retain qualified talent for their management teams and boardrooms.

Federal Non-Profit Associations

A federal non-profit organization could alternatively be organized, pursuant to the *Canada Cooperatives Act*¹⁰, as an association, in which case the indemnification provisions are very similar to those contained in the CBCA.¹¹

Provincial Non-Profit Organizations

Provincial Non-Profit Corporations

Non-profit organizations also may be incorporated under provincial legislation. Although there are many similarities under the various provincial statutes with respect to director and officer indemnification, there are also significant differences, some of which are discussed below.

8 Bill C-4, *An Act respecting not-for-profit corporations and certain other corporations*, 2nd Sess., 40th Parl., 2009

9 Bill C-4, s.152

10 *Canada Cooperatives Act*, S.C. 1998, c.1

11 *Canada Cooperatives Act*, s.113

- **Ontario:** In Ontario, the *Corporations Act* (Ontario) (OCA)¹² sets out the indemnification rights of directors and officers.¹³ The provision in the OCA is very similar to that in the CCA, except that under the OCA, *officers* are also expressly granted the right of indemnification.
- **British Columbia:** In British Columbia, the *Society Act* (BCSA)¹⁴ permits indemnification of directors and former directors, but is silent as to officers. It also requires court approval prior to indemnification, and that the costs, charges and expenses be reasonably incurred by the director.
- **Quebec:** The *Companies Act* (Quebec)¹⁵ has language similar to Ontario's CCA but the conduct disentitling directors and officers to indemnification is slightly different¹⁶.
- **Saskatchewan:** Saskatchewan has, perhaps, the most progressive provincial legislation dealing with director and officer indemnification. The *Non-Profit Corporations Act, 1995*¹⁷ permits broad indemnification to directors and officers, similar to that in the CBCA.
- **Alberta and other provinces:** In many provinces, such as Alberta, the legislation is silent as to when, how and to whom indemnification can be granted.¹⁸

Provincial Non-Profit Associations and Condominium Corporations

Directors and officers of NPOs incorporated provincially as co-operatives are subject to the indemnification provisions of legislation such as Ontario's *Co-operative Corporations Act*.¹⁹ NPOs can also take the form of condominium corporations, in which case director and officer indemnification could be subject to the provisions of provincial condominium acts.²⁰

Specially-Formed Non-Profit Associations

There are also some non-profit corporations that have come into being pursuant to a special Act of Parliament.²¹ The rights to indemnification of directors and officers of these types of NPOs are often determined specifically by the enabling statute.

12 *Corporations Act*, R.S.O. 1990, c. C. 38

13 OCA, s.80

14 *Society Act*, R.S.B.C. 1996, c. 433

15 *Companies Act*, R.S.Q., c. C-38

16 *The Quebec Act* states that directors and officers are entitled to indemnification "except such costs, charges and expenses as are occasioned by his own fault". This is slightly different than the "willful neglect" standard contained in the CCA.

17 *Non-Profit Corporations Act, 1995*, S.S. 1995, c. N-4.2

18 *Companies Act*, R.S.A. 2000, c. C-21 and *Societies Act*, R.S.A. 2000, c. S-14

19 *Co-operative Corporations Act*, R.S.O. 1990, c. C.35

20 *Ontario's Condominium Act, 1998*, S.O. 1998, c. C-19 has indemnification provisions, whereas equivalent legislation in Alberta and British Columbia does not.

21 One such recent example is the *Asia-Pacific Foundation of Canada Act* (R.S.C. 1985, c. A-13) which provides for indemnification of Asia Pacific Foundation directors and officers pursuant to section 16.3

Note regarding Not-for-Profit Organizations as Trusts

NPOs may also be organized as trusts. In that case, the powers and duties of trustees are set out in the trust document, provincial trustees' legislation and the common law. Much of this discussion regarding indemnification and insurance will not apply to trustees of charitable trusts.

Charities

The discussion above has been based on NPOs in a general sense. If an NPO is designated as a charity, additional criteria could apply in determining when indemnification of the NPO's directors and officers is permissible. For example, in Ontario, under the *Charities Accounting Act*²², directors and officers may be indemnified only when they have acted honestly and in good faith in performing their duties, and only when such indemnification does not impair a person's right to bring an action against them or unduly impair the carrying out of the non-profit organization's charitable or public purpose. A charity is also not permitted to indemnify its directors or officers if doing so would result in rendering the charitable corporation insolvent.

The charity's board of directors must consider a number of factors before giving an indemnity to or purchasing insurance for a director or officer:

- The degree of risk to which the director or officer is or may be exposed.
- Whether, in practice, the risk cannot be eliminated or significantly reduced by means other than the indemnity or insurance.
- Whether it advances the administration and management of the property held by the charity to give the indemnity or insurance.²³

Why is contractual indemnification important?

Due to the fact that indemnification provisions governing directors and officers of NPOs are generally not as broad as those contained in for-profit statutes and merely permit, rather than require, the organization to indemnify its directors and officers, it is vitally important for directors and officers of NPOs to seek contractual indemnification agreements with their organizations. Even where indemnification is required under the organization's by-law provisions, it is prudent to obtain a contractual indemnification agreement since by-law provisions can be amended or repealed without the consent or knowledge of a former director or officer.²⁴

22 *Charities Accounting Act*, R.S.O. 1990, c. C.10

23 *Charities Accounting Act*-Ontario Regulation 4/01 section 2 (5)

24 *Schoon v Troy Corp.*, C.A. 2362-VCL (Del. Ch., March 28, 2008)

Insurance

Typical Coverage

Entity Coverage

As discussed in question nine of the Briefing, publicly-traded companies often purchase D&O insurance that includes coverage for their own liability with respect to securities claims. However, there is more opportunity for broader entity coverage at a reasonable cost for non-profit organizations. Non-profit D&O insurance policies often include coverage for employment practices liability (EPL) for claims made against “insured persons” and the NPO itself. When purchasing D&O insurance, non-profit organizations must ensure that there is a broad definition of “wrongful act” in the policy that does not unduly limit this EPL coverage.

Definition of Insured Person

One other significant difference between the non-profit and for-profit D&O insurance policies is the manner in which “insured persons” is defined. As mentioned in question nine of the Briefing, a for-profit D&O policy generally limits insured persons to past, present and future directors and officers. Non-profit organizations often utilize the skills and talents of volunteers, part-time workers and students to achieve their goals. The non-profit policy reflects that reality by containing a broader definition of “insured persons” to typically include employees, volunteers, part-time workers and students within coverage.

Limits

NPOs generally purchase significantly lower insurance limits than for-profit enterprises. This may be due to a misconception that NPOs face fewer exposures than for-profit companies. Although large, publicly-traded corporations certainly face substantially greater exposures than the typical NPO, and the discussion of limits in question six of the Briefing may not be entirely applicable to NPOs, non-profit corporations generally face the same types of operating risks as many private, for-profit corporations.

Given that NPOs are often not well-funded and may not be in a position to fully indemnify their directors and officers, the purchase of inadequate insurance limits is unwise. If significant claims are made against the NPO, its directors, officers and employees, modest limits could be insufficient to cover defence costs for all covered parties, let alone any settlement amounts or judgments.

Deductibles

There is generally no deductible for coverage afforded to insured individuals under a non-profit D&O policy. However, as is the case in private-sector policies, there are generally deductibles for coverage afforded to the NPO itself, both its own separate coverage and for the NPO's obligation to reimburse its directors and officers. The good news for NPOs is that deductibles or retentions in non-profit policies tend to be much lower than those in policies catering to for-profit organizations. Deductible amounts can be as low as \$1000, and in some cases insurers are even prepared to underwrite the policy without any deductibles. This is quite different than in the for-profit situation discussed in question seven of the Briefing.

Exclusions

Generally speaking, the exclusions present in a non-profit D&O insurance policy are essentially the same as those in a for-profit D&O policy. They include:

- claims made alleging personal misconduct such as fraud, criminal activity, willful breaches of the law and the gaining of illegal profit, and
- claims arising from bodily injury, property damage and pollution.

NPO policies are more likely than for-profit policies to contain professional services exclusions. It is important to consider the impact of such an exclusion when a board member or officer of the NPO holds some sort of professional designation, and as part of his or her duties to the organization, provides supervisory as well as professional advice. In such situations, a broadly drafted personal services exclusion can certainly limit coverage in ways not contemplated by the NPO and its directors and officers when a claim is based primarily on negligent supervision and only incidentally on professional advice.

Professional services exclusions may be triggered when a director who holds a professional designation goes beyond his or her oversight role and provides what could be construed as professional advice to the NPO, for example:

- a lawyer who takes an active role in the management of litigation against the organization
- an accountant who takes an active role in compiling the organization's financial statements

In for-profit policies designed for publicly-traded corporations, a number of exclusions deal with issues arising out of securities claims. Needless to say, this is not a concern for NPOs.

See question ten of the Briefing.

Control of Defence

Duty to defend coverage — under this type of coverage, the insurer must defend claims made against insured persons and the insured organization, and bears the costs of the defence.

Duty to indemnify coverage — under this type of coverage, the insured person and/or organization are responsible for mounting their own defence to claims against them, and then seek to recover defence costs from the insurer.

The majority of non-profit D&O insurance policies are written on a duty-to-defend basis and obligate the insurer to defend covered claims made against insured persons and the insured organization. Generally, duty-to-defend coverage is considered broader than duty-to-indemnify insurance (more common in the for-profit sector) because it imposes a higher threshold on the insurer to defend the insured with respect to covered claims.

However, when the policy has duty-to-defend provisions, the insured often gives up much of its rights to appoint or choose counsel as well as instruct counsel during the course of the litigation. For NPOs, especially those without legal departments, this is not a large concern. However, for NPOs that employ experienced general counsel who may wish to play a large role in influencing litigation strategy, duty-to-defend policies can be somewhat restrictive with respect to control of the litigation. In these types of cases, it may be advisable for the NPO to seek coverage on a duty to indemnify policy similar to those procured by for-profit corporations and discussed in question 18 of the Briefing. This will give the NPO more control over the defence, subject to restrictions including the selection of counsel and the insurer's right to associate and participate in the action.

Where to find more information

CICA Publications on governance

The Not-for-Profit Series*

20 Questions Directors of Not-for-profit Organizations Should Ask about Fiduciary Duty

20 Questions Directors of Not-for-profit Organizations Should Ask about Governance

20 Questions Directors of Not-for-profit Organizations Should Ask about Risk

20 Questions Directors of Not-for-profit Organizations Should Ask about Strategy and Planning

The 20 Questions Series*

20 Questions Directors and Audit Committees Should Ask about IFRS Conversions

20 Questions Directors Should Ask about Building a Board

20 Questions Directors Should Ask about CEO Succession

20 Questions Directors Should Ask about Codes of Conduct

20 Questions Directors Should Ask about Crisis Management

20 Questions Directors Should Ask about Crown Corporation Governance

20 Questions Directors Should Ask about Director Compensation

20 Questions Directors Should Ask about Directors' and Officers' Liability Indemnification and Insurance

20 Questions Directors Should Ask about Executive Compensation

20 Questions Directors Should Ask about Governance Assessments

20 Questions Directors Should Ask about Internal Audit (2nd ed)

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20 Questions Directors Should Ask about Management's Discussion and Analysis (2nd ed)

20 Questions Directors Should Ask about Responding to Allegations of Corporate Wrongdoing

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20 Questions Directors Should Ask about their Role in Pension Governance

20 Questions Directors Should Ask about Special Committees

20 Questions Directors Should Ask about Strategy (2nd ed)

* Available for purchase in hard copy or free download at www.rmgb.ca

About the Author

Brian Rosenbaum is the Director of the Legal and Research Practice within the Financial Services Group of Aon Reed Stenhouse. His department provides risk transfer solutions to many of Canada's most prominent corporate executives and boards. An authority on insurance matters dealing with management liability, Brian contributes regularly to industry publications such as the Institute of Corporate Directors Newsletter, the CCH Canadian Limited Directors' Manual and the Canadian Compensation and Benefits Reporter published by Thomson Carswell. In addition, he has made numerous presentations to corporate management teams and boards, as well as to organizations such as the Canadian Corporate Counsel Association and the Institute of Corporate Directors. Brian is also a sought after speaker for conferences on issues related to management liability and insurance and is often quoted in publications such as Business Insurance Magazine.

Prior to entering the insurance industry, Brian developed continuing legal education programs with an emphasis on management liability insurance, worked in private practice, and was General Counsel of a Toronto-based group of companies. Brian is a graduate of Osgoode Hall Law School and a member of the Ontario Bar.

ISBN-13: 978-1-55385-424-1



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Advertising Policy for Chapter Provided Continuing Knowledge Activities

Purpose: Council is asked to approve a policy for Chapter advertising related to seminars and other continuing knowledge activities.

Motion(s) to consider: (requires a simple majority of votes cast to carry)

That Council approve the Advertising Policy for Chapters as presented to the meeting at C-519-2.10, Appendix A.

Prepared by: Bernard Ennis, P.Eng., Director, Policy and Professional Affairs

Moved by: Councillor Warren Turnbull, P.Eng.

1. Need for PEO Action

The following motion was made at the Regional Councillors Committee (RCC) meeting on Saturday, April 7, 2018:

MOTION 8

To direct Staff to develop a policy detailing the proper usage of the word PEAK for chapter event advertising. Moved by I. Bhatia. Seconded by L. Hildalgo.

Motion CARRIED.

Chapters often hold events that provide the type of technical information and training that would qualify as continuing knowledge activities suitable for reporting under the PEAK program.

Chapters should not be discouraged from providing these events. However, for various reasons PEO has decided not to endorse or otherwise identify any continuing knowledge activities as suitable for

First, a basic principle of the PEAK program is the idea that each practitioner is allowed to decide what continuing knowledge activity is relevant to keeping themselves current. Identifying certain activities as PEAK applicable would indicate that those activities not so identified are not applicable. Second, if PEO did allow providers to identify their offerings as PEAK applicable, this would appear to be an endorsement by PEO, an endorsement that we can't really guarantee without checking out each of the offerings. The work involved in seeing whether these courses were actually applicable would be tremendous.

Since PEO will not endorse any continuing knowledge activities, chapters, being arms of PEO, should not endorse or identify any activities as PEAK applicable.

2. Proposed Action / Recommendation

Staff requests that Council approve the attached proposed PEAK Advertising Policy for Chapters.

3. Next Steps (if motion approved)

The approved policy would be distributed to the chapter executives and posted in the PEAK section of the PEO website. Chapters would be expected to adhere to this policy when promoting chapter events.

4. Policy or Program contribution to the Strategic Plan

- Strategic Objective 1 – Refine PEAK Program
- Strategic Objective 4 – Engage Chapters as a valuable regulatory resource

5. Financial Impact on PEO Budgets (for five years)

	Operating	Capital	Explanation
Current to Year End	\$	\$	Not applicable
2 nd	\$	\$	Not applicable
3 rd	\$	\$	Not applicable
4 th	\$	\$	Not applicable
5 th	\$	\$	Not applicable

6. Peer Review & Process Followed

Process Followed	As noted this issue was discussed at a meeting of the Regional Councillors, who approved the policy.
Council Identified Review	Not applicable
Actual Motion Review	Not applicable

7. Appendices

- Appendix A – PEAK Program – Chapter Event Advertising



C-519-2.10
Appendix A

PEAK Program – Chapter Event Advertising	Date of Policy: XXXXX
	Approved by: XXXXX
	Review Date: XXXXX

Policy Statement	Chapter event advertising and promotional materials cannot claim or suggest that the event qualifies for PEAK credits or that attendees will be eligible for PEAK hours.
Purpose	The PEAK Program – Chapter Event Advertising policy clarifies restrictions on advertising and promoting chapter events intended as continuing knowledge activities.
Application and Scope	This policy sets out requirement for PEO chapter executives to review and ensure that chapter event advertising and promotional materials do not suggest that specific continuing knowledge activities have been accredited by PEO as PEAK compliant educational offerings.
Definitions	<p>Chapter event – refers to any event organized by a PEO chapter.</p> <p>Monitoring of content – refers to the regular review of advertising and promotional content related to Chapter events.</p>
Policy specific issues or considerations	<p>The PEAK program recognizes continuing knowledge activities that are learning sessions with technical knowledge and focus on maintaining or enhancing engineering competence. PEO provides guidance on the three types of continuing knowledge activities that can be reported to the PEAK program.</p> <p>PEO does not validate specific continuing knowledge activities or endorse activity providers as being eligible for the PEAK program. Practising licence holders are asked to determine their own needs based on their practice and pursue relevant continuing knowledge opportunities, then report these activity hours to PEO using the online reporting tool in their Member Portal account.</p>

	<p>This item explains that certain chapter-organized events can count towards a PEO licence holder’s PEAK activity hours. The licence holder makes this determination and they choose whether to count the event.</p> <p>Advertising and promotional material for chapter events shall not state or suggest that PEO or the PEAK program has endorsed, accredited, evaluated or authorized the event as a continuing knowledge activity or that the event is PEAK applicable.</p> <p>Advertising and promotional materials for chapter events shall not claim that the event qualifies for PEAK credits or that attendees will be eligible for PEAK hours.</p>
Procedures	<p>The chapter chair, or delegated chapter volunteer, shall review all event advertising and promotional material to ensure PEAK related references are in compliance with this policy.</p> <p>When the Manager, Chapters finds any chapter advertising that fails to comply with this policy, the Manager shall notify the chapter chair. The chapter chair shall halt the non-compliant advertising and shall, if necessary, distribute correction notices.</p>
Other Policies	N/A
Responsibility	<p>The Manager, Chapter shall monitor chapter event advertising to ensure that it complies with this policy.</p> <p>Chapter chairs have primary responsibility for implementation of this policy.</p> <p>Chairs shall ensure that all chapter volunteers advertising or promoting chapter events are aware of, and comply with, this policy.</p>

RISK ITEMS

Purpose: *To confirm PEO staff and volunteer compliance with the requirements under the Accessibility for Ontarians with Disabilities Act, and associated regulations, the Occupational Health and Safety Act, and associated regulations, and the PEO Anti-Workplace Violence and Harassment Policy.*

Motion(s) to consider:

1. That the registrar prepare a report outlining compliance points and identify any gaps related to policies, procedures and training with the Accessibility for Ontarians with Disabilities Act and O. Reg. 191/11 Integrated Accessibility Standards (IASR). The report should include both staff and volunteer activity requirements, internal and external to PEO, including chapters, by September, 2018.
2. That the registrar prepare a report outlining compliance and identify any gaps related to policies, procedures and training requirements under the *Occupational Health and Safety Act*, O. Reg. 297/11 Occupational Health and Safety Awareness and Training, and Regulation 851 Industrial Establishments. The report should include a summary and identify any gaps related to PEO, including both staff and volunteer activity requirements, internal and external to PEO including the chapters, by September, 2018. The report should also confirm compliance or identify any gaps with the existing PEO Anti-Workplace Violence and Harassment Policy, including those related to training.

Prepared by: Councillor Lisa MacCumber, P.Eng.

Moved by: Councillor Lisa MacCumber, P.Eng.

1. Need for PEO Action

- In order to be identified as a leader in self-regulation, Council and the Registrar are responsible to ensure PEO complies with any existing legislation and regulations. This includes requirements under the *Occupational Health and Safety Act (OHSA)*, and *Accessibility for Ontarians with Disabilities Act (AODA)*. PEO must provide for safe work procedures, ensure safety in the physical environment or workplace, and have procedures in place for informing workers of potentially violent situations or people and training in these procedures for employees and volunteers. In addition, PEO should also include emergency procedures and emergency contact information are in place.
- Under OHSA, Workers are considered to be both paid and unpaid employees (volunteers). A Joint Health and Safety committee is required at a workplace at which 20 or more workers are regularly employed (Section 2 a). As well, the employer shall ensure that a written occupational health and safety policy is prepared and reviewed at least annually, and a program is developed and maintained to implement that policy (section 25). In addition, there is a requirement to carry out such training programs for workers and committee members as may be prescribed (section 26 and O. Reg. 297/13).
- In addition, under OHSA section 32.0.1, the employer must prepare a policy with respect to workplace violence and harassment and review the policies as often as is necessary, but at least annually, and provide training.

- Under IASR, section 3 (1) PEO is required to develop, implement and maintain policies governing how the organization achieves or will achieve accessibility through meeting its requirements. Under s. 4(1), PEO is required to establish, implement, maintain and document a multi-year accessibility plan, post the plan on the website and review and update the plan at least once every five years.
- Under section 7. (1), PEO is responsible to ensure that training is provided on the requirements of the accessibility standards and on the *Human Rights Code* as it pertains to persons with disabilities to all persons who are an employee of, or a volunteer with, the organization as soon as practicable, and that records are maintained related to the training. Any changes to policies require ongoing training.
- Under IASR, Part II, Information and Communications Standards, PEO is required to provide accessible formats for communications. Under s. 13 (1), PEO is required to provide emergency procedures, plans or public safety information in an accessible format. Under s. 14, websites are required to be made accessible according to world wide standards.
- Under IASR, Part III, Employment Standards, PEO is under obligation to provide supports to any employees requesting supports for recruitment, communications, emergency management, accommodation plans, career progression, performance management, and redeployment.
- Additional requirements are regulated in reference to Design of Public Spaces, Parking, Maintenance, Obtaining Services, Customer Service and Compliance.

2. Proposed Action / Recommendation

1. Prepare a report outlining compliance and identify any gaps under AODA.
2. Prepare a report outlining compliance and identify any gaps under OHSA.
3. If any gaps are identified within the reports, recommend a possible plan and steps to undertake to ensure PEO, Chapters & Committees to become compliant, including development or implementation of training programs and procedures.
4. Develop a procedure to prepare and educate volunteers and staff on Emergency Plans and to collect emergency contact information in light of the recent tragic events in North York if there is a gap identified.

Note: full policy, financial and legal implications should be outlined in this section or attached in appendices

3. Next Steps (if motion approved)

- Registrar to provide reports to council for review to determine next steps if there are gaps identified in the reports.

4. Policy or Program contribution to the Strategic Plan

- **7. Redefine the volunteer leadership framework** - PEO-specific leadership values will be consistently practiced by volunteers, and promoted through recruitment, training, mentorship, term limits, succession planning and evaluation.
- **9. Enhance corporate culture** - PEO will consistently evaluate and review the presence of its core values in the performance of staff and volunteer activities, as well as regulatory decisions.

4. Financial Impact on PEO Budgets (for five years)

- Unknown, Financial implications will be made clear following review of the report.

	Operating	Capital	Explanation
Current to Year End	\$25000	\$0	To hire an SME to prepare reports if required.
2 nd	\$0	\$0	
3 rd	\$0	\$0	
4 th	\$0	\$0	
5 th	\$0	\$0	

6. Peer Review & Process Followed

Process Followed	<ul style="list-style-type: none"> • None at this time. The Registrar’s report will be reviewed by Council before action is taken.
Council Identified Review	<ul style="list-style-type: none"> • None at this time. The Registrar’s report will be reviewed by Council before action is taken or resources spent.
Actual Motion Review	<ul style="list-style-type: none"> • This is a housekeeping item.

7. Appendices

- Appendix A – PEO Anti Workplace Violence and Harassment Policy (last review – February 2016)
 - http://www.peo.on.ca/index.php/ci_id/27834/la_id/1.htm
- Appendix B – *Ontario Occupational Health and Safety Act* link
 - <https://www.ontario.ca/laws/statute/90o01>
- Appendix C – O. Reg. 297/13: Occupational Health and Safety Awareness and Training link
 - <https://www.ontario.ca/laws/regulation/130297>
- Appendix D – R. R. O. 1990, Reg. 851: Industrial Establishments link
 - <https://www.ontario.ca/laws/regulation/900851>
- Appendix E – *Ontario Accessibility for Ontarians with Disabilities Act* link
 - <https://www.ontario.ca/laws/statute/05a11>
- Appendix F – O. Reg. 191/11: Integrated Accessibility Standards link
 - <https://www.ontario.ca/laws/regulation/110191>
- Appendix G – Case Dismissed over Failure to Accommodate
 - <http://www.lawtimesnews.com/author/michael-mckiernan/case-dismissed-over-failure-to-accommodate-15807/>



PEO POLICY NUMBER: *Policy numbers will be assigned after Policy and Procedures Manual is completed.*

PEO Anti-Workplace Violence and Harassment Policy	Date of Policy: February 7, 2014
	Approved by: Council
	Review Date: February, 2016

Policy Statement	<ul style="list-style-type: none"> Professional Engineers Ontario (PEO) believes that all employees, volunteers, licence holders, engineering interns, applicants and visitors deserve to be treated with dignity and respect. PEO is committed to providing a safe work environment free from violence for all employees and volunteers. PEO is committed to providing a work environment that encourages inclusiveness and will not tolerate harassment and/or discrimination based on race, ancestry, place of origin, colour, religion, ethnic origin, citizenship, creed, sex, sexual orientation, disability, age, marital status, family status, pardoned criminal offenses or any other legally-protected characteristic.
Purpose	<p>The purpose of this policy is:</p> <ol style="list-style-type: none"> to provide a framework for identifying and responding to any risks or incidents of violence in the workplace; to establish a procedure for reporting incidents of violence and for making and responding to complaints of violence in the workplace; to outline responsibilities of PEO employees and volunteers with respect to incidents of violence or harassment in the workplace; to establish a framework to eliminate inappropriate conduct at the earliest possible stage; to establish a procedure for making and responding to complaints of harassment or any other inappropriate behavior that could be considered harassment or discrimination. to meet the requirements of the Ontario <i>Occupation Health and Safety Act, 1990 (OHS)</i>. Part III.0.1 – Violence and Harassment s.32.
Application and Scope	<p>This policy applies to all employees and volunteers of PEO whether they are at PEO offices, away on PEO business, attending PEO-sponsored events or similar activities connected with their engagement with PEO.</p> <p>This policy prohibits acts of violence and/or behavior that is or could be construed to be harassment and/or discrimination toward PEO employees, volunteers, licence holders, engineering interns, applicants and visitors.</p>

<p>Definitions</p>	<p>Bullying – can include such tactics as verbal, nonverbal, psychological, physical abuse and humiliation. Bullying typically involves repeated incidents or a pattern of behavior that is intimidating, offensive, degrading or humiliating for a particular person or group of people.</p> <p>Councillor – refers to any current member of Council, elected or appointed.</p> <p>Discrimination – means a deliberate action or decision to exclude a person or group from equal access to employment opportunities based on a characteristic protected by law, such as sex, race, colour, ancestry, national origin, sexual orientation, age, disability, or marital status.</p> <p>Employee – refers to any person on staff at PEO, including temporary and contract personnel</p> <p>Harassment – engaging in a course of vexatious comment or conduct that is known, or ought to be known, to be unwelcome. For the purpose of this policy, harassment shall also include sexual harassment, discrimination and bullying as defined below.</p> <p>Sexual harassment – unwelcome sexual advances, requests for sexual favours, and verbal or physical conduct of a sexual nature when:</p> <ol style="list-style-type: none"> a) submission to or rejection of such advances, requests, or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions, or of securing a volunteer position, or b) such advances, requests, or conduct have the purpose or effect of unreasonably interfering with an associate’s work performance by creating an intimidating, hostile, humiliating, or sexually offensive environment. This definition applies to males and females, whether they are of the same or opposite sex. <p>Volunteer – refers to any member serving on a PEO committee or task force and all Chapter volunteers.</p> <p>Workplace violence – The Ontario Occupational Health and Safety Act defines workplace violence as:</p> <ul style="list-style-type: none"> • the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker; • an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker; or, • a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker. <p>Some of the types of violence that workers could experience in the workplace include hitting, pushing, physical assault, sexual assault, stalking, criminal harassment, robbery, or threats of violence.</p> <p>For the purpose of this policy, workplace violence also includes but is not limited to:</p> <ul style="list-style-type: none"> • Shoving, bullying, stalking or standing in a manner that is intended to intimidate; • Yelling at someone, name calling and swearing; • Veiled and/or open threats of harm;
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	<ul style="list-style-type: none"> • Aggressive or threatening hand gestures; • Displaying objects in a manner that suggests it will be used as a weapon; • Throwing objects; • Damaging property or utilizing property (such as a vehicle) in an aggressive and dangerous manner; • Threats of vandalism, sabotage and/or arson; <p>Inappropriate references to violent world events.</p>
<p>Controlling risks of workplace violence</p>	<p>PEO will make every effort to assess and mitigate the risks of workplace violence as follows:</p> <ul style="list-style-type: none"> • PEO will provide for safe work procedures. • PEO will ensure safety in the physical environment or employees’ workplace. • PEO will put procedures in place for informing or advising workers and tenants of potentially violent situations or people. • PEO employees will be trained on the workplace violence policy. • PEO will provide contact information for reporting incidents of violence. • PEO will have emergency procedures in place.
<p>Workplace Violence - General</p>	<p>PEO prohibits acts or threats of violence in the workplace or in other settings in which PEO employees, volunteers, licence holders, engineering interns, applicants and visitors find themselves in connection with their engagement with PEO. Such acts or threats will not be tolerated on PEO premises at any time. Firearms, weapons and explosives of any kind are strictly prohibited.</p> <p>PEO will intervene in all situations involving workplace violence. PEO will take prompt action, up to and including termination, against any employee or volunteer who engages in any threatening behavior or acts of violence or who uses obscene, abusive or threatening language or gestures, while conducting PEO business on or off PEO property at any time.</p> <p>When dealing with employees, volunteers, licence holders, engineering interns, applicants, and visitors to PEO facilities, PEO will take appropriate action to help prevent violence and/or threats of violence from occurring in the PEO workplace. Such action may include, but is not limited to, notifying the police or other law enforcement personnel and prosecuting violators, where appropriate.</p> <p>Every manager responsible for the management or supervision of other staff and Councillors, Chapter Executives, Committee, Task Force and Working Group Chairs responsible for the leadership of a group of volunteers is accountable for maintaining a work environment that is free from violence. This accountability includes:</p> <ul style="list-style-type: none"> • Communicating this policy to all employees and volunteers. • Refraining from threatening, implicitly or explicitly, any kind of violence or perceived violence under any and all circumstances. • In addition to the legal requirement to report violent behavior or

	<p>incidents, managers, Councillors, Chapter Executives, Committee, Task Force and Working Group Chairs who receive a complaint, observe a violent incident or are otherwise aware of violent behavior are required to notify the Director, People Development immediately.</p>
<p>Domestic Violence</p>	<p>If PEO becomes aware, or ought reasonably to be aware, that domestic violence that would likely expose an employee to physical injury may occur in the workplace, PEO shall take every precaution reasonable in the circumstances for the protection of the worker. (<i>OHS</i>A s.32.0.4)</p>
<p>Workplace Harassment - General</p>	<p>PEO prohibits harassment in the workplace or in other settings in which employees and volunteers find themselves in connection with their engagement with PEO. PEO will not tolerate harassment by or towards employees or volunteers who are on PEO premises at any time.</p> <p>PEO will address all incidents of harassment that occur on PEO premises or at PEO-sponsored events. PEO will take prompt action, up to and including termination or, in the case of licence holders, the Complaints and Discipline Process under the <i>Professional Engineers Act</i>, against any employee or volunteer who engages in the harassment of others, while conducting PEO business on or off PEO property at any time.</p> <p>When dealing with employees, volunteers, licence holders, engineering interns, applicants, and visitors to PEO facilities, PEO will take appropriate action to help prevent situations of harassment from occurring in the PEO workplace. Such action may include, but is not limited to prosecuting violators, where appropriate.</p> <p>Every manager responsible for the management or supervision of staff and Councillors, Chapter Executives, Committee, Task Force and Working Group Chairs responsible for the leadership of a group of volunteers is accountable for maintaining a work environment that is free from harassment. This accountability includes:</p> <ul style="list-style-type: none"> • Communicating this policy to all employees and volunteers and assuring that they are not subjected to insulting, degrading, or exploitive treatment. • Refraining from any deliberate action or decision to exclude from or deny access to any person or group equal access to employment opportunities or benefits or volunteer appointments, based on sex, race, colour, ancestry, national origin, sexual orientation, age, disability, or marital status. • Refraining from threatening or insinuating, implicitly or explicitly, that an employee’s or volunteer’s submission to sexual or other similar or related advances will positively or negatively impact the employee/ volunteer’s performance evaluation, wages, advancement potential, assigned duties, hours worked or any other conditions of employment, career development or volunteering. • Refraining from establishing or encouraging inappropriate personal

	<p>relationships with subordinates, which may result in a real or perceived impact on the subordinate’s employment relationship.</p> <ul style="list-style-type: none"> • In addition to the legal requirement to report, managers, Councillors, Chapter Executives, Committee, Task Force and Working Group Chairs who receive a complaint, observe inappropriate behavior or are otherwise aware of inappropriate behavior are required to notify the Director, People Development immediately.
Procedures	<p>This policy includes the following procedures:</p> <ul style="list-style-type: none"> • Appendix A – PEO Anti-Workplace Violence Program: Procedures for dealing with an employee • Appendix B – PEO Anti-Workplace Violence Program: Procedures for dealing with a volunteer. • Appendix C – PEO Anti-Workplace Violence Program: Council Conduct Review Procedure. • Appendix D – PEO Anti-Workplace Harassment Program: Procedures for dealing with an employee. • Appendix E – PEO Anti-Workplace Harassment Program: Procedures for dealing with a volunteer. • Appendix F – PEO Anti-Workplace Harassment Program: Council Conduct Review Procedure.
Paramourncy	<p>This policy is required under the Ontario <i>Occupation Health and Safety Act</i>, 1990 (<i>OHS</i>A). Part III.0.1 – Violence and Harassment s.32. and is paramount over all other PEO policies.</p>
Responsibility	<ul style="list-style-type: none"> • The Registrar and the Director, People Development have administrative and functional responsibility for the maintenance and implementation of this policy. • Compliance with this policy is the responsibility of all PEO employees and volunteers. It is expected that employees and volunteers who are aware of incidents harassment will report such incidents to the Director, People Development or the Registrar.
Legal Recourse	<p>No part of this policy will at any time prevent a victim of workplace harassment or discrimination from taking legal action with regard to the incident.</p>

APPENDIX A: PEO Anti-Workplace Violence Program	
Procedures for dealing with an Employee	
Summoning Assistance	<ul style="list-style-type: none"> • PEO will provide contact information of who to notify in case of witnessing a violent incident. • Anyone witnessing a violent incident taking place must assess whether there is a need to contact law enforcement officials for immediate assistance. • PEO will have emergency procedures in place.
Reporting incidents of workplace violence	<ul style="list-style-type: none"> • Employees shall advise their direct manager and/or the Director, People Development of any and all incidents of workplace violence which they witness, or of which they have knowledge. • Employees are urged to advise their direct manager and/or the Director, People Development of any and all incidents of workplace violence in which they are involved. • If necessary, law enforcement officials will be contacted. • If the complaint is resolvable between the employee and the alleged wrongdoer, the Director, People Development will help to facilitate the resolution if possible. • For violent behavior by staff against PEO employees, volunteers, licence holders, engineering interns, applicants and visitors to PEO; any unresolvable complaint must be reported to the Registrar. • Where required by law, all incidents of violence will be reported to law enforcement authorities.
Filing a complaint	<ul style="list-style-type: none"> • Any employee who has been or feels they are at risk of being the victim of workplace violence, is encouraged to file a complaint with PEO. The complaint may be filed with the employee's direct manager, with the Director, People Development or with the Registrar. • Any employee who has witnessed an incident of workplace violence against PEO employees, volunteers, licence holders, engineering interns, applicants and visitors to PEO, must report the incident to PEO. The complaint may be filed with the employee's direct manager, with the Director, People Development or with the Registrar. • Employees who have been victims of workplace violence are urged not to confront the alleged wrongdoer. • Employees who have been victims of workplace violence have the option to press charges against the alleged wrongdoer in addition to reporting the incident to the responsible people identified above. • If an employee feels that they are at risk of violence being done to them by another employee or volunteer, they are encouraged to report this concern to their direct manager, the PEO Director, People Development, or to the Registrar. Each of these individuals is required to act on any report received.

<p>Investigation Process</p>	<p>All managers, supervisors, Directors, Deputy Registrars and the Chief Administrative Officer, Councillors, Committee and Chapter Chairs are required to report any concerns or issues brought to their attention regarding the risk of workplace violence. In the case that the complaint is against a PEO employee:</p> <ul style="list-style-type: none"> • All allegations of violence will be investigated in as timely and as fairly a manner as possible. • Confidentiality will be maintained as much as possible. • Where the Registrar believes on reasonable and probable grounds that an employee has committed an act of violence, the Registrar may appoint an independent investigator to investigate the matter. • The appointed investigator will report all findings to the Registrar. • For the purposes relevant to the subject matter of an investigation under this policy, the person appointed to make the investigation may inquire into and examine all relevant records relevant to the investigation. • No person shall obstruct a person appointed to make an investigation under this policy or withhold any information or records relevant to the investigation. • Investigations may include interviews with individuals filing the complaint; witnesses of the event and with the alleged wrongdoer. • Employees and volunteers who are asked to participate in an investigation are expected to cooperate, unless doing so would increase the risk of the alleged violence. • Decisions will be made based on consideration of all relevant facts and evidence. • Decisions will be made based on PEO policies and with the intent of assuring a work environment free from violence for all PEO employees, volunteers, licence holders, engineering interns, applicants and visitors. • If necessary, PEO will not hesitate to seek the assistance of law enforcement officials or of legal counsel. • The outcomes of all PEO investigations of harassment in the workplace must be reported to the individual(s) against whom the harassment was committed; and to the alleged wrongdoer(s) and, if required, to all affected PEO employees and volunteers. If either party is a volunteer, the report for the volunteer will be provided by the Human Resources Committee. If either party is an employee, the report for the employee will be provided by the Registrar. • Should the matter be reported to law enforcement officials, PEO will not implement an investigation that will in any way be prejudicial to any ongoing legal investigation. • An employee may refuse to work if he/she has reason to believe that the work environment is not safe and puts him/her at risk of workplace violence.
<p>Disciplinary Action</p>	<ul style="list-style-type: none"> • When an employee has been found to have been engaged in conduct that violates this policy, PEO will take all warranted disciplinary and/or

	<p>corrective action. This action may include but is not limited to: Counselling; progressive discipline up to and including termination of employment; other forms of action that PEO deems appropriate or that are required by law, including the PEO Complaints and Discipline process under the <i>Professional Engineers Act</i> for employees who are licence holders.</p> <ul style="list-style-type: none"> • Any employee who brings forth a complaint in bad faith will be subject to discipline, up to and including termination of employment and including the PEO Complaints and Discipline process under the <i>Professional Engineers Act</i> for employees who are licence holders. • Any employee, who fails to take appropriate action when made aware of violence in the workplace, including reporting their knowledge of such delay, will be subject to discipline, up to and including termination of employment including the PEO Complaints and Discipline process under the <i>Professional Engineers Act</i> for employees who are licence holders. • Any employee in the possession of weapons including, but not limited to guns, knives, explosives and other objects that could cause bodily harm will be subject to immediate dismissal, expulsion from the premises and notification of law enforcement officials, and will also be subject to the PEO Complaints and Discipline Process under the <i>Professional Engineers Act</i> for employees who are licence holders. <p><u>NOTE:</u> Employees should never attempt to intervene directly in physically dangerous or violent situation or altercations, however, such situations should be immediately reported to management and co-operation in a subsequent investigation process will be expected.</p>
<p>False Claims and non-reporting</p>	<p>PEO will take all warranted disciplinary or corrective action against any employee who deliberately makes false and/or malicious allegations of violence against another individual, up to and including termination of employment and/or the Complaints and Discipline Process under the <i>Professional Engineers Act</i> for employees who are licence holders.</p> <p>PEO will take all warranted disciplinary or corrective action against any employee who has witnessed incidents of workplace violence against another individual at PEO and does not report the incident.</p>
<p>Training</p>	<p>Employees will be trained to make them familiar with this policy and program. It is a requirement of employment for employees to successfully complete the training provided within three months of their start date.</p>

APPENDIX B: PEO Anti-Workplace Violence Program	
Procedures for dealing with a volunteer	
Summoning Assistance	<ul style="list-style-type: none"> • PEO will provide contact information of who to notify in case of witnessing a violent incident. • Anyone witnessing a violent incident taking place must assess whether there is a need to contact law enforcement officials for immediate assistance. • PEO will have emergency procedures in place.
Reporting incidents of workplace violence	<ul style="list-style-type: none"> • Volunteers must advise their Committee Chair, Chapter Chair and/or the Director, People Development and/or the Registrar of any and all incidents of violence at PEO of which they have knowledge; which they witness or in which they are involved. • The Director, People Development and the Registrar must report to Council any and all incidents of violence committed by or against any volunteer. • Where required by law, all incidents of violence will be reported to law enforcement authorities.
Filing a complaint	<ul style="list-style-type: none"> • Any volunteer who has been or feels they are at risk of being the victim of workplace violence, is encouraged to file a complaint with PEO. The complaint may be filed with an employee's direct manager, with the Director, People Development or with the Registrar or with a Committee Chair or Councillor. • Any volunteer who has witnessed an incident of workplace violence against PEO employees, volunteers, licence holders, engineering interns, applicants and visitors to PEO, must report the incident to PEO. The complaint may be filed with an employee's direct manager, with the Director, People Development or with the Registrar or with a Committee Chair or Councillor. • Volunteers who have been victims of workplace violence have the option to press charges against the alleged wrongdoer in addition to reporting the incident to the responsible people identified above. • If a volunteer feels that they are at risk of violence being done to them by an employee or another volunteer, they are encouraged to report this concern to the PEO Director, People Development, or to the Registrar. Each of these individuals is required to act on any report received.
Investigation Process	<p>All incidents of workplace violence, whether experienced or witnessed, must be reported.</p> <p>All managers, supervisors, Directors, Deputy Registrars and the Chief Administrative Officer, volunteers, Chapter Chairs, Committee Chairs and Councillors are required to report any concerns or issues brought to their</p>

	<p>attention regarding the risk of workplace violence. In the case that the complaint is against a PEO volunteer:</p> <ul style="list-style-type: none"> • All allegations of violence will be investigated in as timely and as fairly a manner as possible. • Confidentiality will be maintained as much as possible. • Where the Registrar believes on reasonable and probably grounds that a volunteer has committed an act of violence, the Registrar may appoint an independent investigator to investigate the matter. • The appointed investigator will report all findings to the Registrar. • For the purposes relevant to the subject matter of an investigation under this policy, the person appointed to make the investigation may inquire into and examine all relevant records relevant to the investigation. • No person shall obstruct a person appointed to make an investigation under this policy or withhold any information or records relevant to the investigation. • Investigations may include interviews with individuals filing the complaint; witnesses of the event and with the alleged wrongdoer. • PEO employees, volunteers, licence holders, engineering interns, applicants and visitors who are asked to participate in an investigation are expected to cooperate, unless doing so would increase the risk of the alleged violence. • Decisions will be made based on consideration of all relevant facts and evidence. • Decisions will be made based on PEO policies and with the intent of assuring a work environment free from violence for all PEO employees, volunteers, licence holders, engineering interns, applicants and visitors. • If necessary, PEO will not hesitate to seek the assistance of law enforcement officials or legal counsel. • The outcomes of all PEO investigations of violence in the workplace must be reported to the individual(s) against whom the violence was committed; and to the alleged wrongdoer(s) and, if required, to all affected PEO employees and volunteers. If either party is a volunteer, the report for the volunteer will be provided by the Human Resources Committee. If either party is an employee, the report for the employee will be provided by the Registrar. • Should the matter be reported to law enforcement officials, PEO will not implement an investigation that will in any way be prejudicial to any ongoing legal investigation. • Findings of any investigations of volunteers under this policy shall be reported to Council and the Registrar.
<p>Disciplinary Action</p>	<ul style="list-style-type: none"> • Any volunteer found to have been engaged in conduct that violates this policy will be subject to discipline, up to and including termination of volunteer appointment and/or the Complaints and Discipline Process under the <i>Professional Engineers Act</i> for volunteers who are licence holders.

	<ul style="list-style-type: none"> • Any volunteer who brings forth a complaint in bad faith will be subject to discipline, up to and including termination of volunteer appointment and/or the Complaints and Discipline Process under the <i>Professional Engineers Act</i> for volunteers who are licence holders. • Any volunteer, who fails to take appropriate action when made aware of violence in the workplace, including reporting their knowledge of such delay, will be subject to discipline, up to and including termination of volunteer appointment and/or the Complaints and Discipline Process under the <i>Professional Engineers Act</i> for volunteers who are licence holders. • Any volunteer in the possession of weapons including, but not limited to guns, knives, explosives and other objects that could cause bodily harm will be subject to immediate termination of volunteer appointment, expulsion from the premises and the authorities will be notified and the Complaints and Discipline Process under the <i>Professional Engineers Act</i> for volunteers who are licence holders. <p>NOTE: Volunteers should never attempt to intervene directly in physically dangerous or violent situation or altercations, however, such situations should be immediately reported to management and co-operation in a subsequent investigation process will be expected.</p>
<p>False Claims and non-reporting</p>	<p>PEO will take all warranted disciplinary or corrective action against any volunteer who deliberately makes false and/or malicious allegations of violence against another individual, up to and including termination of volunteer appointment and/or the Complaints and Discipline Process under the <i>Professional Engineers Act</i> for volunteers who are licence holders. PEO will take all warranted disciplinary or corrective action against any volunteer who has witnessed incidents of workplace violence against another individual at PEO and does not report the incident.</p>
<p>Training</p>	<p>Volunteers will be trained to make them familiar with this policy and program. It is a requirement of engagement for a volunteer position that all volunteers must successfully complete the training provided, within three months of their appointment. Current volunteers will be required to successfully complete training provided within six months of offering the training.</p>

APPENDIX C:	PEO Anti-Workplace Violence Program
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COUNCIL CONDUCT REVIEW PROCEDURE

Council will have a standing item on its in-camera agenda to deal with conduct concerns to deal with issues where it is reported that a member of Council may have violated PEO's workplace harassment and workplace violence policies.

Procedure

1. The Chair will ask Councillors and the Registrar if anyone has any matters related to the conduct of a Councillor related to the workplace harassment and workplace violence policies that he/she wishes to discuss.
2. The Councillor and/or Registrar will report the specific conduct that is alleged to violate the policy. The supporting material for review by members of Council may be provided at the meeting or in advance of the meeting.
3. The Councillor, who is subject to the concern, will be provided with an opportunity to provide his/her comments.
4. If the breach was minor and the Councillor agrees that his/her conduct was out of line a simple apology to members of Council and the offended parties along with a commitment to try to avoid a repeat of such inappropriate conduct ends the matter.
 - a. To be appropriate, the Councillor and/or Registrar raising the issue will be asked if he/she accepts the apology and is prepared to move on.
5. Should the Councillor disagree that his/her conduct was out of line, the Councillor raising the concern may:
 - a. Accept the explanation and thank the Councillor for the clarification, or
 - b. Identify that he/she still finds the conduct to be inappropriate and ask Council to vote if it found the conduct to be inappropriate.
6. Council will then reflect on the discussion and materials to ensure that they are fair and that its decision is either reasonably supported by the evidence or a reasonable application of Council's expected standard in the circumstances. If the majority of Council finds the conduct:
 - a. to violate either of the workplace harassment and workplace violence policies, the offending member of Council will be subject to discipline, up to and including disqualification from Council¹ or other forms of action that PEO deems appropriate or that may be required by law.
 - b. to not violate either of the workplace harassment and workplace violence policies, the matter is concluded. However, should Council determine that the employee or volunteer brought forth a complaint in bad faith, that person may be subject to discipline, up to and including termination of employment or volunteer appointment or other forms of action that PEO deems appropriate or that may be required by law.

Note: Nothing in the above procedure prevents a member of Council from pursuing other remedies regarding the matter.

¹ Subject to the approval of an amendment to Regulation 941.
Anti-Workplace Violence and Harassment Policy – February 2014

APPENDIX D: PEO Anti-Workplace Harassment Program

Procedures for dealing with and employee

Filing a complaint

Any employee who feels that they have been the victim of harassment and/or discrimination is encouraged to file a complaint with PEO. Any employee who has witnessed harassment and/or discrimination against PEO employees, volunteers, licence holders, engineering interns, applicants and visitors must file a report of the incident with PEO. The complaint may be made or the incident reported to the employee's direct manager, with the Director, People Development or the Registrar.

If an employee is comfortable, he/she may confront the alleged wrongdoer directly and advise that the behavior is objectionable, unwelcome and must cease immediately.

In all cases, the employee making the complaint must report the behavior to:

- their supervisor/chair or any other member of management with whom they feel comfortable;
- Director, People Development;
- Registrar

The contacts listed above are also available to discuss any concerns the employee may have and to provide them with information about the policy or complaint process.

Investigation Process

All managers, supervisors, Directors, Deputy Registrars and the Chief Administrative Officer, Councillors, Committee and Chapter Chairs are required to report any concerns or issues brought to their attention regarding the workplace harassment and/or discrimination to the Director, People Development and the Registrar. In the case that the complaint is against a PEO employee (for volunteers see Appendix B):

- All allegations of harassment/discrimination will be investigated in a timely and as fairly a manner as possible.
- Confidentiality will be maintained as much as possible.
- Where the Registrar believes on reasonable and probably grounds that an employee has committed an act of harassment/discrimination, the Registrar may appoint an independent investigator to investigate the matter.
- The appointed investigator will report all findings to the Registrar.
- For the purposes relevant to the subject matter of an investigation under this policy, the person appointed to make the investigation may inquire into and examine all relevant records relevant to the investigation.
- No person shall obstruct a person appointed to make an investigation

	<p>under this policy or withhold any information or records relevant to the investigation.</p> <ul style="list-style-type: none"> • Investigations may include interviews with individuals filing the complaint; witnesses of the event and with the alleged wrongdoer. • Employees and volunteers who are asked to participate in an investigation are expected to cooperate, unless doing so would increase the risk of the alleged harassment/discrimination. • Decisions will be made based on consideration of all relevant facts and evidence. • Decisions will be made based on PEO policies and with the intent of assuring a work environment free from harassment/discrimination for all PEO employees, volunteers, licence holders, engineering interns, applicants and visitors. • Outcomes of PEO investigations of workplace harassment/discrimination will be reported to the individual(s) against whom the harassment/discrimination was committed; to the alleged wrongdoer(s) and, if required, to all affected PEO employees and volunteers by the Registrar and/or the Director, People Development. If either party is a volunteer, outcomes will be reported to them by the Human Resources Committee. • Should the matter be reported to law enforcement officials, PEO will not implement an investigation that will in any way be prejudicial to any ongoing legal investigation.
Disciplinary Action	<p>When it has been determined by an investigation that an employee has engaged in inappropriate conduct, PEO will take all warranted disciplinary and/or corrective action. This action may include but is not limited to:</p> <ul style="list-style-type: none"> • Counselling; • Progressive discipline up to and including termination of employment. • Other forms of action that PEO deems appropriate or that are required by law including, in the case of employees who are licence holders, the Complaints and Discipline Process under the <i>Professional Engineers Act</i>.
False Claims and non-reporting	<p>PEO will take all warranted disciplinary or corrective action against any employees who deliberately make false and/or malicious allegations of harassment and/or discrimination against another individual.</p> <p>PEO will take all warranted disciplinary or corrective action against any employees who has witnessed incidents of harassment and/or discrimination against another individual at PEO and do not report the incident.</p>
Training	<p>Employees will be trained to make them familiar with this policy and program. It is a requirement of employment for employees to successfully complete the training provided within three months of their start date.</p>

APPENDIX E: PEO Anti-Workplace Harassment Program	
Procedures for dealing with a volunteer	
Filing a complaint	<p>Any volunteer who feels that they have been the victim of harassment and/or discrimination, is encouraged to file a complaint with PEO. Any volunteer who has observed harassment and/or discrimination against PEO employees, volunteers, licence holders, engineering interns, applicants and visitors is required to report the incident to PEO. The complaint may be made or the incident reported to the volunteers' Committee Chair and/or the Director, People Development and/or the Registrar</p> <p>If a volunteer is comfortable, he/she may confront the alleged wrongdoer directly and advise that the behavior is objectionable, unwelcome and must cease immediately.</p> <p>In all cases, the volunteer making the complaint must report the behavior to:</p> <ul style="list-style-type: none"> • the supervisor/chair or any other member of management with whom the volunteer feels comfortable; • Director, People Development; • Registrar <p>The contacts listed above are also available to discuss any concerns the volunteers may have and to provide information to the volunteer about the policy or complaint process.</p>
Investigation Process	<p>All managers, supervisors, Directors, Deputy Registrars and the Chief Administrative Officer, Councillors, Committee and Chapter Chairs are required to report any concerns or issues brought to their attention regarding the workplace harassment and/or discrimination to the Director, People Development and the Registrar. In the case that the complaint is against a PEO volunteer (for employees see Appendix A):</p> <ul style="list-style-type: none"> • The Registrar will forward the complaint to the Human Resources Committee. • All allegations of harassment/discrimination will be investigated in as timely and as fairly as possible. • Confidentiality will be maintained as much as possible. • Where the Registrar believes on reasonable and probable grounds that a volunteer has committed an act of harassment/discrimination, the Registrar may appoint an independent investigator to investigate the matter. • The appointed investigator will report all findings to the Registrar. • For the purposes relevant to the subject matter of an investigation under this policy, the person appointed to make the investigation may inquire into and examine all relevant records relevant to the investigation. • No person shall obstruct a person appointed to make an investigation

	<p>under this policy or withhold any information or records relevant to the investigation.</p> <ul style="list-style-type: none"> • Investigations may include interviews with individuals filing the complaint; witnesses of the event and with the alleged wrongdoer. • Employees and volunteers who are asked to participate in an investigation are expected to cooperate, unless doing so would increase the risk of the alleged harassment/discrimination. • Decisions will be made based on consideration of all relevant facts and evidence. • Decisions will be made based on PEO policies and with the intent of assuring a work environment free from harassment/discrimination for all PEO employees, volunteers, visitors and applicants. • Outcomes of PEO investigations of workplace harassment/ discrimination will be reported to the individual(s) against whom the harassment/discrimination was committed; to the alleged wrongdoer(s) and, if required, to all affected PEO employees and volunteers by the Human Resources Committee. If either party is a employee outcomes will be reported to them by the Registrar and/or the Director, People Development. • Should the matter be reported to law enforcement officials, PEO will not implement an investigation that will in any way be prejudicial to any ongoing legal investigation.
Disciplinary Action	<p>When it has been determined by an investigation that a volunteer has engaged in inappropriate conduct, PEO will take all warranted disciplinary and/or corrective action. This action may include but is not limited to:</p> <ul style="list-style-type: none"> • Counselling; • Termination of volunteer appointment. • Other forms of action that PEO deems appropriate, including the Complaints and Discipline process under the <i>Professional Engineers Act</i> for volunteers who are licence holders. • Other forms of action that may be required by law.
False Claims and non-reporting	<p>PEO will take all warranted disciplinary or corrective action against any volunteer who deliberately makes false and/or malicious allegations of harassment and/or discrimination against another individual.</p> <p>PEO will take all warranted disciplinary or corrective action against any volunteer who has witnessed incidents of harassment and/or discrimination against another individual at PEO and does not report the incident.</p>
Training	<p>Volunteers will be trained to make them familiar with this policy and program. It is a requirement of engagement for a volunteer position that all volunteers must successfully complete the training provided, within three months of their appointment. Current volunteers will be required to successfully complete training provided within six months of offering the training.</p>

COUNCIL CONDUCT REVIEW PROCEDURE

Council will have a standing item on its in-camera agenda to deal with concerns where it is reported that a member of Council may have violated PEO's anti-workplace harassment and anti-workplace violence policies.

Procedure

7. The Chair will ask Councillors and the Registrar if anyone has any matters related to the conduct of a Councillor related to the workplace harassment and workplace violence policies that he/she wishes to discuss.
8. The Councillor and/or Registrar will report the specific conduct that is alleged to violate the policy. The supporting material for review by members of Council may be provided at the meeting or in advance of the meeting.
9. The Councillor, who is subject to the concern, will be provided with an opportunity to provide his/her comments.
10. If the breach was minor and the Councillor agrees that his/her conduct was out of line a simple apology to members of Council and the offended parties along with a commitment to try to avoid a repeat of such inappropriate conduct ends the matter.
 - b. To be appropriate, the Councillor and/or Registrar raising the issue will be asked if he/she accepts the apology and is prepared to move on.
11. Should the Councillor disagree that his/her conduct was out of line, the Councillor raising the concern may:
 - a. Accept the explanation and thank the Councillor for the clarification, or
 - b. Identify that he/she still finds the conduct to be inappropriate and ask Council to vote if it found the conduct to be inappropriate.
12. Council will then reflect on the discussion and materials to ensure that they are fair and that its decision is either reasonably supported by the evidence or a reasonable application of Council's expected standard in the circumstances. If the majority of Council finds the conduct:
 - a. to violate either of the workplace harassment and workplace violence policies, the offending member of Council will be subject to discipline, up to and including disqualification from Council² or other forms of action that PEO deems appropriate or that may be required by law.
 - b. to not violate either of the workplace harassment and workplace violence policies, the matter is concluded. However, should Council determine that the employee or volunteer brought forth a complaint in bad faith, that person may be subject to discipline, up to and including termination of employment or volunteer appointment or other forms of action that PEO deems appropriate or that may be required by law.

Note: Nothing in the above procedure prevents a member of Council from pursuing other remedies regarding the matter.

² Subject to the approval of an amendment to Regulation 941.
Anti-Workplace Violence and Harassment Policy – February 2014

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Case dismissed over failure to accommodate

June 4, 2018 | Written By Michael McKiernan



Employment lawyer Jeffrey Burttt faced allegations he breached the Rules of Professional Conduct, but a tribunal found the Law Society of Ontario did not accommodate his disability and dismissed the discipline case.

A Toronto lawyer has had the discipline case against him dismissed in a ground-breaking tribunal decision that found the Law Society of Ontario failed in its duty to accommodate his disability under the province's Human Rights Code.

Employment lawyer Jeffrey Burttt faced allegations that he breached the Rules of Professional Conduct by failing to co-operate with the law society's investigation, but he argued that he was incapable of responding due to a mental health condition that caused him to "freeze" in the face of regulatory requests.

In *Law Society of Ontario v. Burttt*, Bencher Larry Banack, sitting alone, sided with the lawyer, noting that investigators had access to medical assessments from a previous disciplinary encounter with Burttt that should have tipped them off about the need to approach his case differently from a routine case.

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"Had the Law Society acted on the medical reports in its possession, this matter may have evolved differently," Banack wrote in his May 15 decision. "In this unique factual circumstance, I have accepted the defence and dismiss the application."

Daniel Naymark, who assisted Burt during the three-day hearing as duty counsel, says the previous Law Society Tribunal jurisprudence on the LSO's duty to accommodate members' disabilities was "under-developed and outdated."

"Panels have acknowledged its existence in a couple of cases, but then [they] didn't go on to apply it," he says.

"This is the first time it's been dealt with in an in-depth way and in which the failure to accommodate has been recognized as a substantive defence to a conduct application.

"I wouldn't be surprised if we saw failure to accommodate raised more often as a defence, but what I hope the decision does is to bring greater attention to mental illness and to prompt better accommodation by the law society that will avoid the need for raising the defence in the first place," Naymark adds.

LSO spokeswoman Susan Tonkin would say only that the law society "is reviewing the decision."

Burt's troubles began in 2015 with an earlier discipline matter, when he was reprimanded for failing to co-operate with a law society investigation. As part of those proceedings, the law society commissioned psychological and medical reports that explained how his depressive symptoms led to him feeling frozen in relation to dealing with the regulator, despite his ability to continue to run a successful law practice.

The lawyer complied with a psychiatric treatment plan ordered by the LSO, but he was back on the society's radar in 2016 following a fresh client complaint. Burt repeatedly called the investigator assigned to ask for extensions to his time to reply, explaining his difficulties dealing with his own depression and the health of his terminally ill father.

Banack wrote that Burt's non-compliance would have been entirely predictable had the investigator reviewed the previous medical reports and that the LSO "ought to have considered fashioning a different methodology" to get the information it needed to assess the complaint.

The decision commended a second investigator assigned to the case for his offer to downscale its request of Burt, but the offer was ultimately withdrawn in favour of formal discipline.

In his decision, Banack called on the law society to formalize the ad hoc system that connected Burt with Naymark in the first place, noting that his critical findings were "directly attributable" to Naymark's efforts.

"It is now time for the Society to implement a funded, permanent duty counsel system for the benefit of all licensees," the bench wrote. "The Law Society should not be complacent with its reliance on an institutionalized Volunteer Duty Counsel programme. The very serious potential outcomes of a discipline proceeding, which include licence revocation, should not depend upon the vagaries of a volunteer lawyer being available and able to fulfill the duties of counsel in opposition to the well-funded, full-time, professional group of Discipline Counsel trained by and working for the Law Society."

William Trudell, who frequently represents lawyers facing disciplinary proceedings, hails Banack's ruling as "profoundly significant."

"It addresses two phenomenally important issues that we see on a daily basis, which are mental illness and unrepresented lawyers," he says.

"We've been waiting for a decision like this for years. It should be greeted with a hallelujah, and it would be disgraceful if it sits on the shelf."

Trudell says freezing is an exceptionally common response to a complaint letter from the law society, and he predicts regulatory costs would go down if they contained an instruction from the LSO to the subject lawyer to obtain counsel, either privately or via a formal duty counsel system.

Naymark suggests the situation could be improved by extending LawPRO coverage to include the defence of regulatory proceedings, modeled on the professional indemnity provider for Canadian physicians and surgeons.

"It's such a burden on a lawyer to deal with these cases himself or herself and potentially pay out hundreds of thousands of dollars from their own pockets," he says. "If the lawyer in this case had counsel all along, it would never have played out the way it did. It would have been dealt with in a couple of weeks."

Banack rejected the law society's argument that Burt was reasonably accommodated during the investigation, concluding that it needed to explore options beyond time extensions to meet its obligation to accommodate to the point of undue hardship, including but not limited to oral interviews or electronic access to the lawyer's documents.

"Overcoming mental illness brought on by depression is an enormous challenge that can be exacerbated by external hurdles created, for example, by a regulator's laser-like focus on protecting the public interest without acknowledging that such protection may in fact be achieved by alternative and perhaps more effective means," Banack wrote.

Toronto lawyer Darryl Singer says the unique facts of the case may limit its applicability to other lawyers, but he remains encouraged by it.

"The earlier you can fix the law society with knowledge of your condition, the better, because it should now impact how the investigation proceeds," Singer says.

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COMMENTS

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LSO will review good character requirements

A proposal to have a working group review the good character requirements by the Law Society of Ontario has been withdrawn after the LSO indicated its willingness to take on the project of its own accord.

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Glassdoor ordered to turn over user information

BY DOMINIQUE LAM
Toronto Staff Writer

A Glassdoor Inc. must turn over user information to a former employer, a court has ruled. The Ontario Superior Court of Justice ordered the company to provide names and contact information of former employees who had used the website to find out about the company's financial health.

The former employer, a private company, had filed a motion to compel Glassdoor to disclose the names and contact information of its former employees who had used the website to find out about the company's financial health. The court ruled in favour of the former employer, ordering Glassdoor to provide the information.

The court's decision is significant because it is the first time a court has ordered a company to disclose the names and contact information of its former employees who had used a website to find out about the company's financial health.

The court found that Glassdoor had a duty to disclose the information because it had a duty to provide accurate information to its users. The court also found that Glassdoor had a duty to protect the privacy of its users.



Photo: [Name] / [Agency]

Case dismissed over failure to accommodate



A former employee who had the right to work in a particular position was not accommodated by his employer. The Ontario Superior Court of Justice has dismissed a motion to compel the employer to provide the employee with the position.

The employee had filed a motion to compel the employer to provide him with the position. The court found that the employer had a duty to accommodate the employee, but it had failed to do so.

The court's decision is significant because it is the first time a court has dismissed a motion to compel an employer to provide a former employee with a position.

The court found that the employer had a duty to accommodate the employee, but it had failed to do so. The court also found that the employee had a duty to accept the position.

The court's decision is significant because it is the first time a court has dismissed a motion to compel an employer to provide a former employee with a position.

The court found that the employer had a duty to accommodate the employee, but it had failed to do so. The court also found that the employee had a duty to accept the position.

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ENGINEERING CO-OP STUDENT PILOT

Purpose: To support a pilot project for PEO to hire an Engineering Coop. Student under supervision of the PEO Grand River Chapter and managed by PEO chapter management. Key projects and other details for student and pilot are described below in this briefing note.

Motion(s) to consider: (requires a simple majority of votes cast to carry)

For PEO Council to support a pilot project, managed by RCC, to hire an Engineering Coop. Student under the supervision of the PEO Grand River Chapter Chair and Vice-Chair and managed by PEO Chapter management. Results of this pilot to be reported back to PEO Council.

Prepared by: Councillor Lola M Hidalgo, Jane Simmons (Vice-Chair, Grand River Chapter), Erica Lee Garcia (Chair, Grand River Chapter)

Moved by: Councillor Lola M Hidalgo, P.Eng.

1. Need for PEO Action

- At the 2017 at the Chapter Leaders Conference, the idea of hiring an engineering student and/or EIT to support Chapters was brought forward by PEO Councillor Roydon Fraser.
- Western Regions Chapters expressed interest in leading this pilot at the February Western Region Congress.
- This was discussed at RCC and in general RCC was supportive but needed more details regarding what the role, workload, etc for student would be.
- Given the timing process between RCC meetings, Congresses and PEO Council meeting, we are bringing this as a motion to PEO Council (which includes RCC members) since the PEO Grand River Chapter needs direction to prepare accordingly, should PEO Council be supportive of this motion.
- PEO activities at the grass-roots levels, including engineering graduates, are mainly supported by volunteers. Although this is good and supports PEO's self-regulated status, volunteers cannot always fulfill their duties as a full-time employed staff could. Also the target of this motion being an engineering student is already busy with school work and other activities and would not be able to allocate her/his time in a full-time manner for activities proposed in this motion.
- There appears to be a disconnect between PEO Council/PEO and engineering students to understand factually why engineering students are successful at getting licensed.
- PEO needs to stay relevant and current with the next generation of engineering professionals.

2. Proposed Action / Recommendation

The intent is to develop a future program that other PEO Chapters could use if the pilot results.

One of the key project work identified for the student would be for the student to develop metrics for chapters and PEO staff's use to measure how efficient Chapters are in delivering regulatory activities.

A second key project work identified is for student to conduct survey and outreach to provincial engineering students community. The engineering student could even develop a data-gathering exercise such as using a block-chain-type of approach were we would have access to Big Data and not just small data. The end product could be to develop communication material and/or report to reach-out to a generation we in PEO Council or PEO Headquarters don't always hear from.

A third key project could be help PEO build an app.

The engineering student would work closely with the PEO Grand River executives and also help them with leading events and their Chapter Board activities.

The engineering student would work from PEO Headquarters.

The engineering student would be hired by following PEO hiring policies.

The engineering student would act as an effective liaison between the PEO Grand River Chapter executive and PEO Headquarters staff.

The estimate is based on University of Waterloo's website regarding average co-op earnings of a student to be \$13,800 per work term. In addition to these fees, additional commuting and other expenses were estimated in a conservative manner.

3. Next Steps (if motion approved)

- Communicate to RCC / PEO Staff PEO Council's position and/or allocate funds accordingly.
- Communicate at Western Region Congress accordingly.
- Work with PEO Human Resources, PEO Chapter Management and PEO Grand River to develop job description for student to be hired for a Fall co-op placement.
- PEO Chapter Management, PEO Grand River Chapter and others (councilors, etc) to develop workload, job performance evaluation and pilot evaluation metrics and report back to RCC on a monthly basis and at the end of the pilot
- Pilot results to be communicate to PEO Council.

4. Policy or Program contribution to the Strategic Plan

#4 Engage chapters as a valuable regulatory resource

- PEO Chapters are the arms of PEO. PEO Chapters should be equipped to help PEO achieve its vision and mandate.

#5 Increase influence in matters regarding the regulation of the profession

- Currently engineering students are underrepresented with PEO regulatory efforts

#9 Enhance corporate culture

- Corporate culture should speak to all levels and spectrums of the engineering profession

5. Financial Impact on PEO Budgets (for five years)

	Operating	Capital	Explanation
Current to Year End	\$	\$20,000	Funded from Surplus Fund (Council discretionary funds)
2 nd	\$	\$	
3 rd	\$	\$	
4 th	\$	\$	
5 th	\$	\$	

If program is not designated as ending in less than five years (such as creating a Task Force), subsequent years will be assumed to be similar to the fifth year of funding.

6. Peer Review & Process Followed

Process Followed	<ul style="list-style-type: none"> • CLC • Western Region Congress • Discussed with PEO Chapter Manager and Human Resources Director • Various teleconference calls with PEO Grand River Chapter Vice-Chair • Discussed at RCC
Council Identified Review	<ul style="list-style-type: none"> • As described above
Actual Motion Review	<ul style="list-style-type: none"> • This motion is the results of the above-noted stakeholders

7. Appendices

- Appendix A: Website reference: <https://uwaterloo.ca/hire/how-to-hire/co-op/student-earnings>

ENGINEER JOB POSTING WITH NO P.ENG REQUIREMENTS

Purpose: To increase PEO’s relevance as a regulator of engineering in the Province of Ontario. “Use of Title Engineer”

Motion(s) to consider: (requires a simple majority of votes cast to carry)

To direct PEO Enforcement and Communications staff to develop a recommendation to communicate with employers using social media (and job search websites such as indeed, etc) recruiting engineers, to work in Ontario, without specifying that a P.Eng is required.

1. To direct PEO’s Enforcement Committee to work with PEO Enforcement & Communications staff to develop an approach to educate people, who are in roles recruiting & hiring “Engineers”, about use of title “Engineer”. That is, to communicate widely that “Engineer” is a protected title and if they are hiring an “Engineer” they must also request that the candidate must be licensed with the provincial Engineering Regulator.

2. The Enforcement Committee is to report back to Council in 6 months with the recommended approach(es) and associated cost implications.

Prepared by: Councillor Lola M Hidalgo with recommendations (via email) from PEO Councillors: Marilyn Spink, Marisa Sterling and Warren Turnbull

Moved by: Councillor Lola M Hidalgo, P.Eng.

1. Need for PEO Action

- Employers are advertising postings to hire “Engineers” however, the title engineer often does not appear to be linked with a P.Eng licence requirement or even an engineering undergraduate degree (at times).
- PEO needs to stay relevant as a regulator and if employers are not asking for a P.Eng for “Engineer” roles then engineering graduates may be reluctant to seek licensure.

Process Followed	<ul style="list-style-type: none">• Sent email to PEO Council colleagues. General support for discussion.
Council Identified Review	<ul style="list-style-type: none">• N/A
Actual Motion Review	<ul style="list-style-type: none">• N/A

7. Appendices

- Appendix A – Recent Print Screens from LinkedIn

Showing 9,090 results Sort by: Post date Split View

Create search alert

Software Engineer
Adobe
Ottawa, CA
16 alumni work here
New

Product Specialist (English & Spanish)
Broadsign
Montreal, Canada Area
20 alumni work here
New · Easy Apply

Shift Engineer/Maintenance Worker 5 - UBCH, GFS, LGH
Vancouver Coastal Health
Vancouver, CA
Be an early applicant
New

Intermediate Project Engineers or Facilities...
Upside Engineering Ltd.
Calgary, CA

Design, architect and develop systems that provide high- volume messaging solutions across multiple channels.

- Be a technical leader for a team of engineers developing solutions for the platform.
- Partner with product management and other key stakeholders in defining the solutions for the market.
- Partner closely with the data platform team to define technical requirements and ensure timely completion of deliverable.
- Evolve existing solutions to leverage the most relevant technologies and provide valuable outcomes.

What You Need To Succeed

- B.S or above degree in Computer Science or a related technical field.
- At least 5 years of experience working with messaging systems and big data technologies.
- At least 3 years of experience implementing solutions using Restful Services using Java and/or Python
- Proven experience in database technologies including understanding complex data models.
- Restful web service development in Java or Python.
- Excellent written and communication skills.

Nice to have

- Experience with big data services on the cloud, e.g AWS EMR, Azure
- Experience with Microsoft Visual C++
- Experience with Apache Spark
- Familiarity with UI frameworks

At Adobe, you will be immersed in an exceptional work environment that is

Messaging

Showing 9,090 results Sort by: Post date Split View

Create search alert

Software Engineer
Adobe
Ottawa, CA
16 alumni work here
New

Product Specialist (English & Spanish)
Broadsign
Montreal, Canada Area
20 alumni work here
New · Easy Apply

Shift Engineer/Maintenance Worker 5 - UBCH, GFS, LGH
Vancouver Coastal Health

requirements and ensure timely completion of deliverable.

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Nice to have

- Experience with big data services on the cloud, e.g AWS EMR, Azure
- Experience with Microsoft Visual C++
- Experience with Apache Spark
- Familiarity with UI frameworks



Intermediate/Senior Civil Engineer

Randstad Canada · London, Ontario, Canada

New · Posted 1 hour ago · 4 views

Save

Easy Apply



Job description

On behalf of our Engineering Consulting client, Randstad Engineering is searching for an **Intermediate/Senior Civil Engineer** with experience in a variety of sectors and technical services.

The focus of this role is to service public and private clients across Ontario, where there are a variety of current and future infrastructure servicing, land development and traffic/transportation projects at various stages of development.

If you enjoy an environment where people are valued and treated almost like family this could be the perfect long term opportunity to elevate your professional career.

Key Responsibilities:

- Project management and senior design responsibility of a variety of projects within the London and surrounding area including commercial, industrial and residential sites

Contact the job poster



Christine House 2nd
Branch Manager at Randstad E...
London, Canada Area

PREMIUM

Send InMail

Seniority Level

Mid-Senior level

Industry

Civil Engineering

- Ensure appropriate QA/QC practices are implemented, consistent with company practices
- Involvement with local area municipal clients on civil infrastructure, storm water and transportation projects
- Providing leadership and technical guidance to junior and support staff
- Taking an active interest and role in Community involvement consistent with company values

Qualifications:

- Civil Engineering Degree or Similar Civil Design related Education is required
- 5+ years of experience as a Civil Engineer in Consulting Firms with portfolio is required
- Accurate knowledge of provincial and municipal review processes is required
- Demonstrated experience in community involvement is required
- Proficient with Microsoft Office Suite is required

If this sounds like the your next long term opportunity please email me your resume directly to [**christine.house@randstad.ca**](mailto:christine.house@randstad.ca)



Software Quality Assurance Engineer - Temporary Full-time



AMD · Markham, CA

New · Posted 2 hours ago · 7 views

Save

Apply

Job description

What You Do At AMD Changes Everything

At AMD, we push the boundaries of what is possible. We believe in changing the world for the better by driving innovation in high-performance computing, graphics, and visualization technologies – building blocks for gaming, immersive platforms, and the data center.

Developing great technology takes more than talent: it takes amazing people who understand collaboration, respect, and who will go the “extra mile” to achieve unthinkable results. It takes people who have the passion and desire to disrupt the status quo, push boundaries, deliver innovation, and change the world. If you have this type of passion, we invite you to

As a Key Member Of The Software Quality Assurance Team, You Will

Perform Key Tasks In The Software QA Lifecycle, Which Includes

- Develop and drive execution of a comprehensive, highly effective test automation strategy for complex new technology and new product introduction projects
- Convert feature specification into test cases (manual and automated) that will cover different types of testing - boundary, negative, functional, etc.
- Define/implement automation tools/script for feature validation
- Validate new products/new SW features before releasing to customers

Qualifications And Experience

- Bachelor in Computer Science, Computer Engineering or equivalent degree plus 0-3 years relevant hands-on experience in high tech industry working in software development, software QA or test automation
- Demonstrated work on Windows and Linux operating systems; Android knowledge an asset
- Strong software development, programming and test automation knowledge; demonstrated understanding of SW QA process & methodology

Seniority Level

Entry level

Industry

Semiconductors

Employment Type

Full-time

Job Functions

Quality Assurance



Sales Engineer

Modern Technical Staffing Inc. · Scarborough, Ontario, Canada

New · Posted 5 hours ago · 8 views



Save

Easy Apply

Job description

Senior Sales Account Executive: HVAC/Building Energy Management

Exciting opportunity to join an already established international company, in a brand-new division focusing on Energy Upgrades, HVAC Performance Management and Optimization Solutions to large corporate accounts across Ontario.

You will be responsible for identifying large scale corporate facilities

Contact the job poster




Jeremy Goldberg 2nd
Vice President, Operations at ...
Toronto, Canada Area

PREMIUM

Send InMail

Qualifications

- All candidates will have 8+ years of direct professional selling experience within the HVAC, Building Services and Building Energy industry with direct experience selling to large scale corporate clients
- 5+ years selling energy upgrades, performance management and optimization solutions
- Valid degree in Mechanical or Electrical Engineering and those candidates who are a registered Professional Engineer and have their MBA are preferred.
- Ability to manage all aspects of the sales cycle including prospecting, proposal management, contracting and client success
- Demonstrated success in building strong relationship with global customers and a verifiable record of meeting or exceeding targets
- Domestic and international travel will be required.




Senior Field Service Engineer

Eaton · Ottawa

New · Posted 5 hours ago · 6 views

[Save](#) [Apply](#)



Eric can refer you
Get referred to **increase your chances** of landing an interview.

[Ask for a referral](#)

Job description

Eaton's Electrical Engineering Services and Systems division is currently seeking a Senior Power Systems Controls Engineer to join our team. This position is based at our Ottawa or Montreal Canada facility.

Contact the job poster



Shannon Giovengo

Eaton has in place accessibility policies for accommodating employees with disabilities. If you are selected for an interview and require accommodations, please let the recruiter or hiring manager know so that we can work to make reasonable adjustments that best suit your needs. Accessibility information may be found at:
<http://www.eatoncanada.ca/EatonCA/OurCompany/Accessibility/index.htm>

Desired Skills and Experience

Required (Basic) Qualifications:

- Bachelor's degree in engineering from an accredited institution (Electrical/Computer/Systems Engineering)
- Minimum of 3 years of experience working with PLC's and power systems experience.
- Legally authorized to work in Canada without company sponsorship.
- No relocation is offered. Candidates must reside within 80km of the locations listed.



Solutions Engineer, ELD Product – Oakville, ON. / Full Time
GEOTAB · Oakville, CA



New · Posted 5 hours ago · 50 views

Save

Apply

Job description

ELD Engineer Location: Oakville, Ontario Reporting to: **Solutions Engineering Manager, ELD** Start Date: **ASAP** Date Posted: **April 2018**

Who is Geotab: Imagine hundreds of thousands of vehicles driving across the globe 24/7. Next, imagine that you collected rich location, engine and vehicle behaviour data on each vehicle through a plug and play device.

Our customers have the power to take this data and provide valuable insight toward their businesses because of the Geotab platform. Geotab is one of the leading telematics technology companies in the world and is

Seniority Level

Entry level

Industry

Information Technology and Services

Computer Software

Financial Services

- Acquire knowledge of the FMCSA's ELD mandate and Hours of Service regulations
- Lead and manage the QA process within the ELD team to ensure new patches, and builds are tested thoroughly prior to release in production
- Assist in debugging development cases, and helping the Development Team investigate the root causes of problems in a timely manner
- Gather metrics in Google Sheets based upon development cases with Development Team, and use this information to analyze trends and patterns
- Learn and create notebooks using Python to visualize ELD traction rate, and create interesting metrics

Experience/Skills Required:

- Bachelor of Engineering or other related degree
- Exposure to writing SQL queries and analyzing data
- Intermediate knowledge of Microsoft Excel (specifically macros)
- Basic knowledge and application of JavaScript
- Strong aptitude in understanding technical and business requirements
- Minimum 1 year of telematics or related experience is an asset
- Google BigQuery experience is an asset
- Expertise with Google business products - proficiency in Sheets, Documents, Slides is an asset
- Valid Ontario driver's license

What makes our staff passionate about Geotab?



Software Engineer

Moody's Analytics · Toronto, CA

New · Posted 6 hours ago · 17 views



Save

Apply

Job description

The Role

Role/Responsibilities

As a Software Engineer you will be part of an actuarial team working with actuarial programmers to build new features in a high performance computing application. You will also be responsible for assisting with ongoing maintenance of the code and assisting internal clients with issues related to AXIS.

Your role will entail working independently alongside actuaries and system developers:

Seniority Level

Not Applicable

Industry

Financial Services

Employment Type

Full-time

Job Functions

Engineering ,
Information Technology

Job Req ID

12956BR

City

Toronto

Regular/Temporary

Regular

Entity

Moody's Analytics (MA)

Line of Business

Enterprise Risk Solutions (ERS)

Qualifications

Qualifications & Skills

- Degree in Computer Science or Software Engineering
 - Strong hands on experience in C++ development
 - Excellent understanding of algorithm designs
 - Experience to database technologies and SQL knowledge, an asset
 - Good communication and interpersonal skills
 - Strong analytical and debugging skills
 - Experience or exposure to embedded database engines, an asset
 - Prior experience developing financial applications in the actuarial field, an asset
-



Software Development Engineer - Alexa Language Technologies

Amazon · Toronto, CA

New · Posted 6 hours ago · 5 views

Save

Apply



Job description

Job Description

Are you customer-obsessed and interested in Speech and Language Understanding? Do you find creating cutting-edge voice control in the automotive market exciting? If so, the Alexa team is looking for a talented engineer to help revolutionize our voice-forward experience. Alexa is the Amazon service that powers the groundbreaking Echo family of devices, Fire TV, tablets, third party Alexa providers, and soon, cars! We believe voice is the most natural user interface for interacting with technology across many domains; we are inventing the future.

Seniority Level

Mid-Senior level

Industry

Computer Software ,
Information Technology and Services
,
Internet

Employment Type

Full-time

We're working hard, having fun, and making history; come join us!

Basic Qualifications

- Bachelor's degree in computer science or a related field
- At least 5+ years work experience
- Expertise in C++, or a similar modern programming language
- Solid expertise in data structures and algorithms
- Obsession with quality, operational excellence, and customer experience
- Strong problem solving and analytical abilities
- Strong verbal and written communication skills and an ability to work in a team environment

Preferred Qualifications



Safety & Reliability Engineer

BOMBARDIER · Kingston, CA

New · Posted 7 hours ago · 9 views

Save

Apply



2 connections can refer you

Get referred to **increase your chances** of landing an interview.

[Ask for a re](#)

Job description

SAFETY & RELIABILITY ENGINEER

REQUISITION NUMBER: TPRS-CAKI01699657

Description

At Bombardier, our employees work together to evolve mobility worldwide

Seniority Level

Entry level

Industry

Information Technology and

Mechanical or Industrial Eng

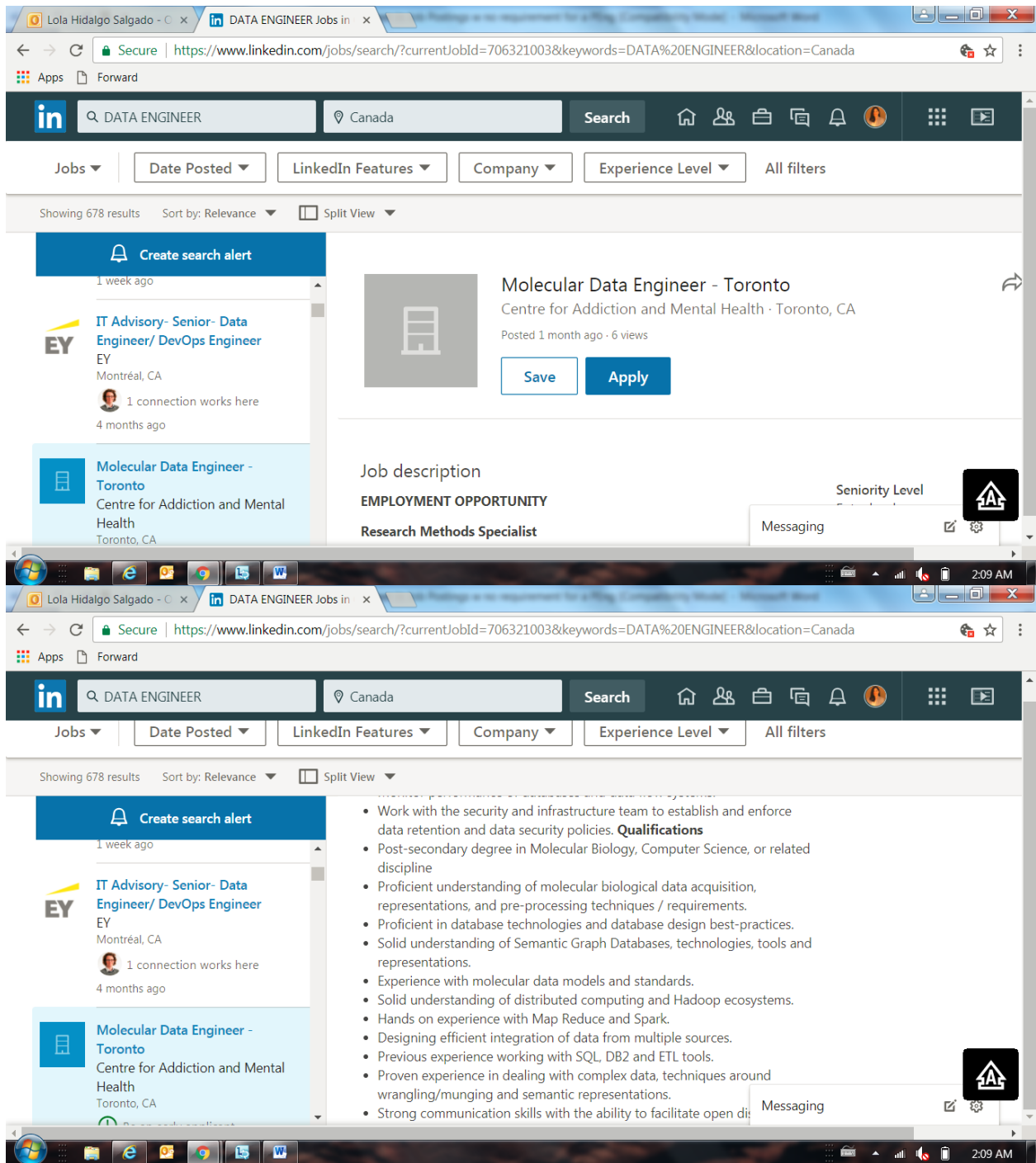
- Calculate risks/penalties and provide recommended strategy for bid negotiation;
- Determine the scope of the Safety program and impacts to established safety processes for each bid; Prepare Group risk assessment forms for Safety;
- Determine the independent safety assessor strategy and other stakeholders in the safety program strategy, and work to establish this foundation in the bid phase;
- Prepare RAM/LCC Section 1.2.7 of Blue Book for each bid, and work with bid team and Group RAM/LCC counterpart to obtain overall Group mandate for 1.2.7;
- Provide support for Reliability and Safety technical tasks for the various projects when necessary.

As Our Ideal Candidate

- You hold a Bachelor Degree in a related Engineering discipline;
- You are familiar with reliability and safety processes and standards;
- You own excellent communication skills to present complex technical concepts and ideas clearly.

We thank all applicants for their interest; however, only those under consideration will be contacted.

Join us at jobs.bombardier.com



The screenshot shows a LinkedIn job search page for a 'Senior Data Engineer, Data Innovation' position at RBC in Toronto, CA. The page is viewed from a browser window with the URL <https://www.linkedin.com/jobs/search/?currentJobId=643714763&keywords=DATA%20ENGINEER&location=Canada>. The search results show 678 results, sorted by Relevance. The job listing includes the RBC logo, the job title, location, and a 'Posted 2 months ago - 23 views' timestamp. There are 'Save' and 'Apply' buttons. Below the job listing, it states '4 connections can refer you' and provides a link to 'Ask for a referral'. A 'Messaging' button is also visible. The 'Must Haves' section lists the following requirements:

- Strong technical acumen with experience in Hadoop ecosystem, SQL scripting and an understanding of Relational Databases
- Building the feature library using SQL transforms and Python scripts to feed into machine learning models and Test & Learn platform for 'Next Best Offer' campaigns
- Build and support complex dashboards using scripting languages like Java and Python, Spark SQL for data access and CSS/HTML for front-end visualization to enable 'Test and Learn' platform for 'Next Best Offer'
- Design workflow management tool to streamline processes and workflows and proactively identify gaps and issues
- Experience in analytical database marketing, business analytics, big data or related marketing analytics role
- Experience in working with big data and relational databases and data analysis techniques

CONSENT AGENDA

Purpose: To approve the items contained in the consent agenda

Motion(s) to consider: (requires a simple majority of votes cast to carry)

That the consent agenda be approved.

Prepared by: Dale Power, Secretariat Administrator

Routine agenda items that may be approved without debate are included in a consent agenda and may be moved in a single motion. However, the minutes of the meeting will reflect each item as if it was dealt with separately. Including routine items on a consent agenda expedites the meeting.

Items included on the consent agenda may be removed and dealt with separately if they contain issues or matters that require review.

Please review the minutes ahead of time for errors or omissions and advise Dale Power (416-224-1100, extension 1130 or dpower@peo.on.ca) if there are any required revisions prior to the meeting so that the minutes, when presented, may be considered within the consent agenda.

The following items are contained in the consent agenda:

- 3.1 Minutes – 517th Council Meeting – March 23, 2018
- 3.2 Minutes – 518th Council Meeting – April 21, 2018
- 3.3 Canadian Engineering Accreditation Board (CEAB) Accreditation Decisions
- 3.4 PEO Syllabi
- 3.5 Appointment of Additional Members to the 2018-2019 Central Election and Search Committee
- 3.6 Approval of CEDC Applications
- 3.7 Changes to the 2018 PEO Committees and Task Forces Membership Roster

OPEN SESSION MINUTES – 517th Council Meeting – March 23, 2018

Purpose: To record that the minutes of the open session of the 517th meeting of Council accurately reflect the business transacted at that meeting.

Motion to consider: (requires a simple majority of votes cast to carry)

That the minutes of the 517th meeting of Council, held March 23, 2018, as presented to the meeting at C-519-3.1, Appendix A, accurately reflect the business transacted at that meeting.

Prepared by: Dale Power, Secretariat Administrator

1. Need for PEO Action

In accordance with best business practices, Council should record that minutes of an open session of a meeting of Council accurately reflect the business transacted at a meeting.

2. Current Policy

Section 25(1) of By-Law No. 1 states that meetings of PEO are to be governed by *Wainberg's Society Meetings*. Rule 27.5 of *Wainberg's* states that "There is no legal requirement to have minutes verified, but it is considered good practice. The motion does not by itself ratify or adopt the business transacted; it merely verifies the minutes as being correct [a correct record of the discussions held and decisions made at the meeting]."

3. Appendices

- Appendix A - Minutes – 517th Council open session meeting – March 23, 2018



Minutes

C-519-3.1
Appendix A

The 517th MEETING of the COUNCIL of PROFESSIONAL ENGINEERS ONTARIO (PEO) was held at PEO Offices, 40 Sheppard Avenue West, Toronto, Ontario on Friday, March 23, 2018 at 9:00 a.m.

- Present:
- B. Dony, P.Eng., President and Council Chair
 - G. Comrie, P.Eng., Past President
 - D. Brown, P.Eng., President-Elect
 - N. Hill, P.Eng., Vice President (Elected)
 - M. Spink, P.Eng., Vice President (Appointed)
 - C. Bellini, P.Eng., Councillor at Large
 - G. Boone, P.Eng., Eastern Regional Councillor
 - M. Chan, P.Eng., Lieutenant Governor-In-Council Appointee
 - T. Chong, P.Eng., East Central Regional Councillor
 - D. Chui, P.Eng., West Central Regional Councillor
 - L. Cutler, P.Eng., Lieutenant Governor-In-Council Appointee
 - R.A. Fraser, P.Eng., Councillor at Large
 - L. Hidalgo, P.Eng., Western Regional Councillor [minutes 11948 to 11979 only]
 - G. Houghton, P.Eng., Western Regional Councillor
 - Q. C. Jackson, Barrister & Solicitor, Lieutenant Governor-In-Council Appointee
 - T. Kirkby, P.Eng., Lieutenant Governor-In-Council Appointee
 - L. Lederman, Q.C., Lieutenant Governor-In-Council Appointee
 - T. Olukiyesi, P.Eng., Lieutenant Governor-In-Council Appointee
 - D. Preley, P.Eng., Northern Regional Councillor
 - K. Reid, P.Eng., Councillor at Large
 - N. Rush, C.E.T., Lieutenant Governor-In-Council Appointee
 - N. Takessian, P.Eng., East Central Regional Councillor
 - W. Turnbull, P.Eng., Western Regional Councillor
 - M. Wesa, P.Eng., Northern Regional Councillor
- Regrets:
- I. Bhatia, P.Eng., Eastern Regional Councillor
- Staff:
- J. Zuccon, P.Eng., Interim Registrar
 - S. Clark, LL.B., Chief Administrative Officer and Corporate Secretary
 - C. Mehta, Director, Finance
 - M. Price, P.Eng., Deputy Registrar, Licensing and Registration
 - D. Smith, Director, Communications
 - D. Manico-Daka, Manager, Information Technology
 - R. Martin, Manager, Secretariat
 - D. Power, Secretariat Administrator
 - N. Axworthy, Editor, Engineering Dimensions
 - J. Chau, Manager, Government Liaison
 - J. Max, Manager, Policy
 - B. St. Jean, Executive Assistant

- Guests:
- A. Bergeron, PEO Director, Engineers Canada [minutes 11944 to 11974 only]
 - H. Brown, Brown & Cohen [minutes 11944 to 11974 only]
 - L. MacCumber, Incoming West Central Regional Councillor [minutes 11944 to 11974 only]
 - B. Matthews, CEO, Consulting Engineers of Ontario [minutes 11944 to 11974 only]
 - C. Sadr, Engineers Canada Director candidate [minutes 11944 to 11948 only]
 - S. Perruzza, Chief Executive Officer, OSPE [minutes 11944 to 11974 only]
 - C. Roney, President, Engineers Canada [minutes 11944 to 11974 only]
 - R. Shreewastav, PEO Director, Engineers Canada [minutes 11944 to 11974 only]
 - S. Stewart, Auditor, Deloitte LLP [minutes to 11944 to 11947 only]
 - M. Winterburn, Brown & Cohen [minutes 11944 to 11947 only]

On Thursday evening, Council held a plenary session to receive presentations regarding Engineers Canada Annual General Meeting, the Public Information Campaign (PIC) and PEO's Leadership Development Program.

Council convened at 9:00 a.m. Friday, March 23, 2018.

CALL TO ORDER

Notice having been given and a quorum being present, the Chair called the meeting to order.

11944

APPROVAL OF AGENDA

Moved by Councillor Chong, seconded by Councillor Takessian:

That:

- a. the agenda, as presented to the meeting at C-517-1.1, Appendix A be approved; and**
- b. the Chair be authorized to suspend the regular order of business.**

CARRIED

11945

PRESIDENT/REGISTRAR'S REPORT

J. Zuccon advised that the Registrar's Weekly Update was sent on March 22, 2018. He provided a brief update on the work staff have done to date on the 2018-2020 Strategic Plan. The plan was approved by Council in November 2017. Letters to a select number of committees were sent out in mid-January to solicit strategies to achieve one or more of the plan's nine strategic objectives by June 30th. Since then, J. Max, Manager, Policy, has been assigned as the lead resource to assist these committees and staff advisors with responding to the requests for strategy inputs. J. Zuccon advised that it was decided to extend this to include all committees and task forces and as reported in his weekly updates, three webinars were held to provide some background information and guidance to committee chairs and vice chairs. In addition, J. Max has offered to attend any committee meeting as a resource for their strategy inputs.

J. Zuccon reported that several committees have already taken him up on his offer, some in collaboration with other committees. All submitted strategies will be evaluated against the criteria developed by the Senior Management Team (SMT). The plan is to provide an

update on this process to Council at the June workshop, including the evaluation criteria that was used.

In concert with this process, the Finance Committee will be asked to review the budget submissions associated with any strategy and provide its recommendations to Council as part of the 2019 budget approval process. The overall process is on target for meeting the June 30 deadline for strategy inputs.

The Senior Management Team has reviewed the 2015-2017 Strategic Plan and confirmed that 95 have been completed. The remaining strategies were filtered according to whether they could be dealt with operationally or if they should carry over into the 2018-2020 Strategic Plan.

Strategies that would be completed as part of PEO operations include those related to new and revised guidelines, IT upgrades and ERC interview training; strategies that will make their way into the new plan include those associated with the PEAK program, the Public Information Campaign, the online licensing project, the website redesign and enforcement. Budgets have already been approved for a number of these items.

PEO's governing legislation and its by-laws require that Council approve the audited financial statements of the Association for presentation to members at PEO's Annual General Meeting and that the statements be published on PEO's website for access to all members.

It was confirmed that the defined benefit pension plan is separately funded from the assets and separately trustee'd as well. It was also noted that the defined pension plan was closed to any new employees as of May 1, 2006 and that any employees hired after that could participate in a defined contribution pension plan.

Moved by Councillor Preley, seconded by Councillor Chong:

That Council:

- a) approve the Audited Financial Statements for the year ended December 31, 2017, and the Auditor's report thereon, as presented to the meeting at C-517-2.1, Appendix A; and**
- b) authorize the President and President-elect to sign the Audited Financial Statements on Council's behalf.**

CARRIED

**11946
2017 AUDITED FINANCIAL STATEMENTS**

**11947
RECOMMENDATION OF AN AUDITOR FOR
2018**

Council is required to recommend the appointment of an auditor for 2018 to members at the upcoming Annual General Meeting for their approval.

Moved by Councillor Preley, seconded by Councillor Takessian:

That Council recommend to members at the April 2018 Annual General Meeting, the appointment of Deloitte LLP as PEO's auditor for 2018 to hold office until the next annual meeting or until their successor is appointed.

CARRIED

**11948
APPOINTMENT OF PEO DIRECTOR TO
ENGINEERS CANADA BOARD**

President Dony passed the gavel to President-elect Brown.

President-elect Brown recognized C. Roney whose term as an Engineers Canada Director will expire as of the Engineers Canada Annual General Meeting in May. He noted that C. Roney has been a strong voice on behalf of PEO and thanked him for his service on behalf of Council.

President Dony read out the names of the seven nominees who were Councillor Bellini, Councillor Chong, Nick Colucci, Past President Comrie, President Dony, Councillor Kirkby and Changiz Sadr. Each candidate was permitted to give a two-minute presentation. President-Elect Brown read a written statement submitted by N. Colucci. C. Sadr and Councillor Kirkby withdrew their nomination. The remaining candidates, C. Bellini, T. Chong, G. Comrie and B. Dony spoke to their candidacy.

Moved by President Dony, seconded by Councillor Chan:

That Christian Bellini, P.Eng. be appointed as a PEO Director to the Engineers Canada Board of Directors, for a three-year term effective as of the 2018 Engineers Canada Annual General Meeting.

CARRIED

Moved by Councillor Kirkby, seconded by Councillor Takessian:

That the ballots for the appointments of the PEO Directors to the Engineers Canada Board of Directors be destroyed immediately.

CARRIED

President-elect Brown returned the gavel to President Dony.

**11949
COMMITTEE/TASK FORCES TERMS OF
REFERENCE – ERC AND RCC**

One of the roles of Council, as identified in the *Committees and Task Forces Policy* (Role of Council, Item 3), is to approve committee/task force mandates, Terms of Reference, annual work plans, and annual human resources plans.

In accordance with the *Committees and Task Forces Policy – Reference*

Guide (Sections 2.5 and 3.2), various committees submitted their respective Terms of Reference to the Advisory Committee on Volunteers (ACV) for review and comment.

At its March 8, 2018 meeting, the ACV reviewed the revised Terms of Reference documents and provided comments which were identified in the appendices.

In response to a comment that the Strategic Plan objectives do not appear to be included in the Terms of Reference it was noted that all committees have been tasked with aligning their workplans with the Strategic Plan and that modifications related to this should be coming forward in the future.

It was noted that the Experience Requirements Committee (ERC) Terms of Reference include succession planning for the Chair and Vice Chair but not the committee itself and that this should be looked at going forward.

Moved by Councillor Bellini, seconded by Councillor Wesa:

That Council:

- a. approve the Experience Requirements Committee (ERC) Terms of Reference and ERC subcommittee Terms of Reference as presented at C-517-2.4, Appendices A(i) and (ii).**
- b. Approve the Regional Councillors Committee (RCC) Terms of Reference as presented at C-517-2.4, Appendix B.**

CARRIED

**11950
SUCCESSION PLANNING TASK FORCE –
TERMS OF REFERENCE**

Council feedback was solicited. It was the general consensus that the Succession Planning Task Force Terms of Reference required greater clarity regarding the purpose and expectations of the task force. There was also concern regarding the prescriptive nature of the terms of reference and task force composition as presented. Another concern related to having solutions without first identifying the problems. Councillors were asked to provide further feedback to S. Clark by March 30th.

President Dony advised that the feedback would be taken into consideration during the re-write of the Successional Planning Task Force Terms of Reference and that the revised document would be presented at the June Council meeting. Councillor Spink and Vice-President Hill offered their assistance.

**11951
GOVERNANCE WORKING GROUP PHASE 1**

The following motion was passed at the November 17, 2017 Council meeting;

– TERMS OF REFERENCE

“That Council directs the President to develop terms of reference for the Phase 1 - GWGP1 incorporation elements outlined in Section 3 of this briefing note.”

Section 3 stated;

The GWGP1 will examine opportunities for PEO Council & Committees to be more efficient, to save volunteer & staff time and PEO resources, and to be considered a modern regulator in order to ensure PEO remains relevant as the Regulator of Engineers in Ontario.

It was confirmed that the \$40,000 allocated for the GWGP1 could be divided into multiple years to reflect when the expenses occurred. The task force could submit a request to Council for additional funds if required.

Further to a query regarding the processes related to how Chapters work with PEO committees and Council, S. Clark referred to item one under Key Duties and Responsibilities wherein it states, “proactively evaluate and understand if there are any risks or problems with the current governance model of PEO” and that this includes Chapters. He advised that the Secretariat will be supporting this working group and will carry this message forward.

Moved by Councillor Bellini, seconded by Vice-President Hill:

That Council approve the Terms of Reference for the Governance Working Group Phase 1 as presented to the meeting at C-517-2.6, Appendix A.

CARRIED

Moved by Councillor Fraser, seconded by Councillor Lederman:

That the following words be struck from Point 2 “and to provide introductory education to Council.”

MOTION WITHDRAWN

Moved by Councillor Bellini, seconded by Vice-President Hill:

That Council approve the Terms of Reference for the Governance Working Group Phase 1 as presented and as amended at the meeting at C-517-2.6, Appendix A.

CARRIED

**11952
CHANGES TO THE 2018 PEO COMMITTEES
AND TASK FORCES MEMBERSHIP ROSTER**

Moved by Councillor Bellini, seconded by Councillor Wesa:

That Council approve changes to the 2018 PEO Committees and Task

Forces Membership Roster as presented to the meeting at C-517-2.7, Appendix A.

CARRIED

**11953
ENGINEERS CANADA ANNUAL GENERAL
MEETING**

The agenda of the May 2018 Engineers Canada Annual General Meeting of Members (the regulators, represented by their President) will present three governance improvements issues.

1. Members will be asked to modify the Articles of Continuance to replace the existing Purpose in Section 6 with the new Ten Purposes (Appendix A). Members can vote to modify, defeat the motion to modify, or they can amend the motion and change the Purposes before approving the modification.
2. Members will be asked to modify the Engineers Canada Bylaws to insert a new clause into Section 4 to introduce term limits for Directors. The modification will provide that Directors shall be limited to two 3-year terms, unless they are elected President-elect in which case an additional 3-year term is possible. Members can accept the motion to introduce term limits, defeat the motion, or modify the motion to introduce different term limits.
3. Regarding Board size, the Engineers Canada Board will submit two plans to the Members via email following the Board's April teleconference. It will then be up to the Members to decide what to do with those plans. Any Member may put a motion on the May 2018 Engineers Canada Annual General Meeting of Members agenda to discuss this, and that motion could say whatever the Member requests.

C. Roney, responding to a request for confirmation that the regulators will be engaging Engineers Canada regarding national programs as noted as item four under Engineers Canada Purposes, advised that it is part of the guiding principles that Engineers Canada will not do anything without the direction and approval of the regulators. This will be part of the strategic plan which is approved by the members.

B. Dony confirmed that there is no blanket acceptance on CEAB and that while Engineers Canada accredits, it is up to the regulator to agree with that accreditation or not. PEO Council determines acceptance on a yearly basis. It was requested that a footnote be added to this particular purpose for clarity.

Moved by President-elect Brown, seconded by Councillor Takessian:

That Council supports the ten purposes of Engineers Canada as presented to the meeting at C-517-2.8, Appendix A.

CARRIED

Moved by President-elect Brown, seconded by Councillor Olukiyesi:

That Council supports modifying the Engineers Canada Bylaws to provide for term limits for Engineers Canada Directors of two 3-year terms, unless they are elected President-elect in which case an additional 3-year term is possible.

CARRIED

Councillor Fraser opposed

Moved by Past President Comrie, seconded by Councillor Reid:

That Council does not support Options 1 or 2 with respect to Engineers Canada Board size and that Council supports that the status quo be maintained.

CARRIED

11954

ENHANCEMENTS TO COUNCIL ELECTION PROCEDURES

In the past several years some members with limited or no prior PEO volunteer experience and/or leadership experience with other similar organizations, have become candidates for election to Council. A competent governing Council is critical for PEO to fulfill its regulatory mandate to “serve the public interest”. Having a system in place to communicate minimum requirements and how candidates measure up to those minimum requirements, can help nominators with their endorsement decisions and can help voters to select the most qualified candidates to represent them at the Council table.

It was proposed that PEO Council direct CESC to look into this issue and develop a list of minimum qualifications by Council position, together with recommendations as to how these qualifications should be applied, before nominations commence for the 2019 Council election cycle.

Moved by Councillor Takessian, seconded by Past President Comrie:

- a. That PEO Council direct the Central Election & Search Committee (CESC) to suggest a list of minimum recommended qualifications for each elected Council position, that will:**
- b. assist PEO members in deciding whether or not to seek nomination,**
- c. assist PEO members whether or not to support a nomination,**
- d. assist PEO members when voting, and be published with Council voting Materials together with recommended modifications to PEO's nomination and election procedures and forms that will encourage members to assess potential nominees and candidates**

against these qualifications.

DEFEATED

<u>For</u>	<u>Against</u>	<u>Abstain</u>
D. Brown	G. Boone	C. Bellini
D. Chui	M. Chan	T. Chong
G. Comrie	L. Cutler	T. Olukiyesi
Q. Jackson	R. Fraser	D. Preley
M. Spink	L. Hidalgo	
N. Takessian	N. Hill	
W. Turnbull	G. Houghton	
	T. Kirkby	
	L. Lederman	
	K. Reid	
	N. Rush	
	M. Wesa	

**11955
ON-LINE LICENSING PORTAL TASK FORCE**

At the July 29, 2017 Regional Councillors Committee meeting (RCC), the councillors were reviewing the chapter open issues and noticed an unusual number of open issues (either newly opened or existing) that is pertaining to PEO licensing process.

Licensing professional engineers is one of the regulatory functions that PEO must do well. RCC is very concerned with the number of open issues raised by the different chapters from different regions as a result.

While the RCC understands this is outside of the scope of the RCC terms of reference, the issues were nevertheless raised by the chapters during regional congresses. Thus, RCC needs to provide a response to the chapters.

The online licensing portal project can probably address most of the issues raised as they are experienced by existing EITs seeking licensure, and even covered off some of the improvement suggestions to the overall PEO licensing process, RCC still feel that the perceived poor customer service aspect of our licensing process still requires improvement or it could undermine the potential for success for the online licensing portal project. To ensure the online licensing portal project has the best chance to succeed, and that RCC's concern is addressed, RCC felt that it is necessary to create a task force to oversee the Online Licensing Portal Project.

RCC, during its discussion on this matter, agreed on the following:

- This task force is NOT to interfere with the execution of the online licensing portal project.
- The role of this task force is to work in parallel with the Online Licensing Portal project team to make sure that we improve customer service in all steps of the portal so that the online application for licensure is conducive to a fair, timely, professional and customer centric process.

It was recommended that the task force include RCC members.

Moved by Councillor Preley, seconded by Councillor Boone:

That Council:

- Create the online licensing portal task force to co-operate in conjunction with the online licence portal project execution to address and improve upon specific customer service issues.**
- Direct the Registrar to initiate the formation of this task force including but not limited to establishing a budget of \$15,000 for its operation, drafting the terms of reference and proposed work plan.**

CARRIED

For

C. Bellini
 G. Boone
 M. Chan
 T. Chong
 D. Chui
 L. Cutler
 R. Fraser
 L. Hidalgo
 N. Hill
 G. Houghton
 Q. Jackson
 T. Kirkby
 L. Lederman
 D. Preley
 K. Reid
 N. Rush
 M. Spink
 N. Takessian
 M. Wesa

Against

G. Comrie
 T. Olukiyesi
 W. Turnbull

Abstain

D. Brown

**11956
 COMMITTEE/TASK FORCES ANNUAL
 WORK AND HUMAN RESOURCES PLAN –**

Moved by Councillor Bellini, seconded by Councillor Chong:

That Council approve the Awards Committee (AWC) Human Resources

AWARDS COMMITTEE

Plan as presented to the meeting at C-517-2.11, Appendix A.

CARRIED

**11957
ANNUAL GENERAL MEETING ROTATION
PROPOSAL**

Once every third year, the PEO AGM is held in a non-Central Region area. While this incurs additional expense to PEO, it is done for inclusivity of PEO's outer region volunteers and members. At present, the host city is selected through a bidding process that invites all chapters to submit a bid to host. This system is time- and resource-consuming for PEO volunteers and staff, and when a chapter is not selected it is very disappointing and the result is wasted time. Cognizant of the value of volunteers' time to the association, it is proposed that this bidding process be eliminated in lieu of a more equitable rotation basis.

Moved by Councillor Hidalgo, seconded by Councillor Chan:

That Council approves the proposed Regional Rotation Protocol for the AGM as presented to the meeting at C-517-2.12, section 2.

CARRIED

**11958
BUILDING CAPACITY FOR RESILIENCY**

At its February 2018 meeting, Council passed the following motion:

That Council:

- a) *approve the Proposal for Organizational Resilience and Succession Planning at PEO as presented to the meeting at C-516-2.6, Appendix A;*
- b) *approve a budget of \$350,000 for 2018 (\$300,000 in operations and \$50,000 in capital), and \$600,000 annually thereafter to fund the proposal.*

During the discussion, although Councillors were generally supportive of the initiative in spirit, the following points were raised:

- Difficult to attract talent to Toronto, salary is not high enough to attract high performers
- Would prefer number to be three, not five
- Step in the right direction, suggest an external company come in to look at what is needed to see if the numbers are right
- Have concerns about over staffing. Maybe 2, not 5
- Are there any efficiencies where we can save some money? Is there any slack that can be improved?
- Support in spirit but trying to solve too many problems with just one approach. May create two tiers of employees (fast tracked to management). What about a program for existing employees where there is rotation so not limited to five people.
- Support the motion in spirit, feel it is necessary. We need to build capacity. I like a phased in approach over a couple of years
- Maybe change motion "subject to Management review results",

need a proper review.

In light of the above comments, Management proposed that implementation of the Organizational Resilience and Succession Plan, as approved on February 2, 2018, be postponed in order to allow staff to investigate the potential benefits of engaging a senior human resource professional to perform a comprehensive analysis of PEO's current staffing resiliency and to develop a sustainable human resources management plan that aligns with the 2018-2020 Strategic Plan.

Moved by Councillor Fraser, seconded by Councillor Hill:

That Council agrees to postpone the implementation of the Organizational Resilience and Succession Plan, as approved on February 2, 2018, to allow staff to investigate the potential benefits of engaging a senior human resource professional to perform a comprehensive analysis of PEO's current staffing resiliency and to develop a sustainable human resources management plan that aligns with the 2018-2020 Strategic Plan.

CARRIED

**11959
ADDRESSING SAFETY & SECURITY FOR
PEO'S OUTREACH ACTIVITIES**

PEO is a people business and its success relies on the work of a large group of enthusiastic volunteers. While many volunteer organizations such as Hockey Canada, Scout's Canada and First Robotics; who have volunteers who work with youth; have established safety and volunteer screening policies, PEO does not. PEO is responsible, by law, to do everything reasonable to provide a safe and secure environment for participants in its programs, activities and events. Implementation of a screening process would help to with the selection of high quality volunteers and ensure the safety of PEO volunteers and participants, especially youth, who engage with PEO outreach activities and help to close this gap.

A potential element of this program, but not limited to, could be to require on-line Vulnerable Sector Screening. The purpose of this type of screening is to identify individuals - wanting to be involved with PEO activities - who may pose a risk to the organization and its participants.

There was consensus that since the motion called for the development of a process to ensure the safety and security of volunteers and participants who engage with PEO's various outreach activities, that a budget amount was not required and should be removed from the briefing note.

Moved by Vice-President Spink, seconded by Councillor Takessian:

That Council direct the RCC to develop a process to ensure the safety and security of volunteers and participants who engage with PEO's

various outreach activities.

CARRIED

**11960
POLICY – REGULATORY COMPLAINTS
AGAINST PEO VOLUNTEERS AND
PROFESSIONAL STAFF**

Council was advised that a proposed policy was first considered by Council at its February 9, 2018 meeting. Council elected to table the item and a revised policy was to be brought to the March 2018 meeting subject to completing an environmental scan of what best practices in this area were currently deployed by other engineering regulators across the country, as well as other provincial regulators.

It is expected that once input is received from other regulators that a revised policy will be brought to Council for its consideration at the June 2018 Council meeting.

**11961
APTIFY UPGRADE UPDATE**

M. Wehrle advised that the Aptify software is currently being upgraded to the most recent version since the current version is no longer supported by the manufacturer. This will also facilitate the implementation of an online licensing process.

**11962
ON-LINE LICENSING UPDATE**

Follow-up meetings with each of the three vendors that bid on the RFP were held. There will be additional meetings and discussion up until the end of April to clarify their proposals and finalize their bids.

The On-Line System RFP consists of three main components which is a portal, a database which is currently Aptify and a Document Management System, followed by the incorporation of the Licensing Business Requirements into the database.

Three significant issues emerged through the RFP process and the discussions with the potential vendors as follows:

1. Is a Document Management System required for the On-Line Licensing System?
2. Should the Licensing Business Requirements be in the database or in the portal?
3. Should the database continue to be Aptify?

M. Price advised that given the above three significant issues that he, as business sponsor, would be recommending at the June Council meeting that a third party external consultant, with expertise in specifying and implementing license holder management systems be engaged to evaluate the proposals and to recommend a preferred overall solution for the Online Licensing System.

M. Price advised that there was a significant variance in the bids that were received. There were no bids submitted for the entire project, just components of the project. Meetings are scheduled in early April with

each of the vendors to clarify their submission. It was suggested that when the third party external consultant evaluates the proposals, one of the options should be to re-issue the RFP due to some of the issues that have been identified.

Moved by Councillor Fraser, seconded by Councillor Boone:

That the Portal Task Force can advise but not interfere with the on-line licensing on-line licensing RFP process and not interfere with the implementation process.

CARRIED

The On-Line Licensing RFP will be provided to Council as requested.

**11963
PRACTICE EVALUATION AND KNOWLEDGE
PROGRAM (PEAK) UPDATE**

B. Ennis provided a status update which included highlights. The Practice Evaluation and Knowledge Program (PEAK) will have completed its first year of operation on March 31, 2018. A full report will be provided to Council at its June 2018 meeting.

B. Ennis advised that the Ethics Module 2 is complete and would be going live on April 2, 2018.

It was noted that the PEO logo was absent on the PEAK advertising provided in the agenda package. D. Smith advised that some of the material provided was designed as internal publications but that the external advertising would be revisited to ensure that it is properly branded.

Vice-President Spink asked if the program was trademarked and if not, whether it should be. B. Ennis replied that this had never been discussed by the CP2 Task Force. This item will be added to the Council Action List.

**11964
CONSENT AGENDA**

Moved by Councillor Takessian, seconded by Councillor Kirkby:

That the Consent Agenda be approved as presented.

CARRIED

Included on the consent agenda:

- 3.1 Minutes – 516TH Council meeting – February 2, 2018
- 3.2 Approval of CEDC Applications

[Note: minutes 11965 to 11966 reflect the motions provided in the briefing notes presented to the meeting.]

**11965
MINUTES –516th COUNCIL MEETING –**

That the minutes of the 516th meeting of Council, held February 2, 2018, as presented and amended to the meeting at C-517-3.1,

FEBRUARY 2, 2018

**Appendix A, accurately reflect the business transacted at that meeting.
CARRIED**

**11966
APPROVAL OF CEDC APPLICATIONS**

1. That Council approve the exemption from examinations and the applications for designation as Consulting Engineer as presented to the meeting at C-517-3.2, Appendix A, Section 1.

2. That Council approve the applications for re-designation as Consulting Engineer as presented to the meeting at C-517-3.2, Appendix A, Section 2.

3. That Council grant permission to use the title “Consulting Engineers” (or variations thereof) to the firms as presented to the meeting at C-517-3.2, Appendix A, Section 3.

CARRIED

**11967
LEGISLATION COMMITTEE UPDATE**

A written report was provided.

**11968
REGIONAL COUNCILLORS COMMITTEE
(RCC) UPDATE**

A written report was provided.

Several issues were brought forward, budget cuts and Canada’s Anti-Spam Legislation (CASL).

Councillor Turnbull, RCC Chair, advised that the budget cuts will be discussed at the April 7, 2018 RCC meeting.

The Interim Registrar will be attending the April 7, 2018 RCC meeting to provide options regarding Canada’s Anti-Spam Legislation (CASL).

**11969
OSPE-PEO JOINT RELATIONS COMMITTEE
(JRC) UPDATE**

There was no report since there has not been an OSPE-PEO Joint Relation Committee meeting since the February Council meeting.

**11970
ENGINEERS CANADA UPDATE**

A written report was provided.

**11971
GOVERNMENT LIAISON COMMITTEE
UPDATE**

A written report was provided.

**11972
STATISTICS – COMPLAINTS, DISCIPLINE,
LICENSING AND REGISTRATION UPDATE**

Councillor Reid advised that she developed a quad chart to show metrics going forward which she submitted to the Interim Registrar. The purpose is to enhance the statistical information already provided to Council, i.e. maximum discipline time, maximum complaints, etc.

**11973
PROFESSIONAL STANDARDS COMMITTEE**

A written report was provided.

UPDATE

11974 COUNCILLOR ITEMS

a. National Engineering Month

Councillor Boone referred to the special efforts of volunteers during National Engineering Month.

b. Public Information Campaign (PIC)

Council Fraser noted that consideration of this campaign should be included into the next budget cycle. Vice President Spink advised that a peer review is pending and the final report will not likely be presented to Council until September.

c. Official Endorsement of Engineers' Canada 30 by 30 by PEO

Councillor Hidalgo asked if PEO has officially endorsed 30 by 30. President Dony replied yes. OSPE, who are the champions of this initiative, have created a 30 by 30 action plan. PEO's role in this has yet to be defined.

Vice-President Spink asked if a letter was sent to Engineers Canada advising of PEO's endorsement. This will be looked into.

d. Action List

President-elect Brown advised that an Action List will be provided to Council as of the June 2018 Council meeting.

Moved by Councillor Takessian, seconded by Councillor Boone:

That Council move in-camera.

CARRIED

11975 IN-CAMERA SESSION

While in-camera, Council:

- a) Approved the revised in-camera agenda
- b) verified the in-camera minutes from the 516TH meeting of Council held February 2, 2018 as presented and amended;
- c) approved the French version of Regulation 941
- d) approved Council vacancies
- e) approved the GLP RFP service provider
- f) discussed the appointment of the Complaint Review Councillor
- g) withdrew the Succession Planning Task Force appointments pending further refinements of the terms of reference
- h) approved the Governance Work Group Phase 1 appointments
- i) received the HRC Update
- j) received the 2018 PEO Engineers Canada Directors Evaluation
- k) received decisions and reasons of the Discipline Committee;
- l) received a legal update on legal actions in which PEO is involved;
- m) noted there were no issues reported regarding PEO's Anti-Workplace and Violence Policy

**11976
FILLING COUNCILLOR VACANCIES**

The following item was moved from the in-camera agenda into open session:

That Council appoints Ramesh Subramanian, P.Eng., as Northern Regional Councillor to fill the vacancy created by the resignation of Councillor Preley. Such appointment to take effect at the close of business of the 2018 PEO AGM in accordance with section 26(1) of the Professional Engineers Act.

CARRIED

That Council appoints Serge Robert, P.Eng., as Northern Regional Councillor to fill the vacancy created by the resignation of Councillor-elect Krawczyk. Such appointment to take effect at the close of business of the 2018 PEO AGM in accordance with section 26(1) of the Professional Engineers Act.

CARRIED

**11977
GLP RFP SERVICE PROVIDER SELECTION**

The following item was moved from the in-camera agenda into open session:

That Council approves the selection of Brown and Cohen Communications and Public Affairs Inc. as the service provider for government relations services and authorize the Registrar and President to engage in their services with an annual contract renewable for a maximum term of three (3) years.

CARRIED

**11978
COMPLAINTS REVIEW COUNCILLOR
APPOINTMENT(S)**

The following item was moved from the in-camera agenda into open session:

That the Complaints Review Councillor not be a member of the Discipline Committee.

CARRIED

**11979
GOVERNANCE WORKING GROUP PHASE 1
APPOINTMENTS**

The following items was moved from the in-camera agenda into open session:

That Council approve the appointment of Lew Lederman, Q.C., Roydon Fraser, P.Eng., Katherine Crewe, P.Eng., Marilyn Spink, P.Eng., George Comrie, P.Eng., Jim Grey, P.Eng. and Gillian Julien, P.Eng., to the Governance Working Group Phase 1.

CARRIED

There being no further business, the meeting concluded.

These minutes consist of seventeen pages and minutes 11944 to 11979 inclusive.

B. Dony, P.Eng., Chair

S. Clark, LL.B., Chief Administrative Officer and
Corporate Secretary

DRAFT

OPEN SESSION MINUTES – 518th Council Meeting – April 21, 2018

Purpose: To record that the minutes of the open session of the 518th meeting of Council accurately reflect the business transacted at that meeting.

Motion to consider: (requires a simple majority of votes cast to carry)

That the minutes of the 518th meeting of Council, held April 21, 2018, as presented to the meeting at C-519-3.2, Appendix A, accurately reflect the business transacted at that meeting.

Prepared by: Dale Power, Secretariat Administrator

1. Need for PEO Action

In accordance with best business practices, Council should record that minutes of an open session of a meeting of Council accurately reflect the business transacted at a meeting.

2. Current Policy

Section 25(1) of By-Law No. 1 states that meetings of PEO are to be governed by *Wainberg's Society Meetings*. Rule 27.5 of *Wainberg's* states that "There is no legal requirement to have minutes verified, but it is considered good practice. The motion does not by itself ratify or adopt the business transacted; it merely verifies the minutes as being correct [a correct record of the discussions held and decisions made at the meeting]."

3. Appendices

- Appendix A - Minutes – 518th Council open session meeting – April 21, 2018



Minutes

C-519-3.2
Appendix A

The 518th MEETING of the COUNCIL of PROFESSIONAL ENGINEERS ONTARIO (PEO) was held at the Westin Harbour Castle, Toronto, Ontario on Saturday, April 21, 2018 at 3:00 p.m.

- Present:
- D. Brown, P.Eng., President and Council Chair
 - B. Dony, P.Eng., Past President [minutes 11980 to 11985 only]
 - N. Hill, P.Eng., President-elect
 - M. Sterling, P.Eng., Vice-President (Elected)
 - K. Reid, P.Eng., Councillor at Large
 - I. Bhatia, P.Eng., Eastern Regional Councillor
 - G. Boone, P.Eng., Eastern Regional Councillor
 - M. Chan, P.Eng., Lieutenant Governor-In-Council Appointee
 - T. Chong, P.Eng., East Central Regional Councillor
 - L. Cutler, P.Eng., Councillor at Large
 - R. A. Fraser, P.Eng., Councillor at Large
 - L. Hidalgo, P.Eng., Western Regional Councillor
 - Q. C. Jackson, Barrister & Solicitor, Lieutenant Governor-In-Council Appointee [minutes 11980 to 11987 only]
 - L. Lederman, Q.C., Lieutenant Governor-In-Council Appointee
 - L. MacCumber, P.Eng., West Central Regional Councillor
 - T. Olukiyesi, P.Eng., Lieutenant Governor-In-Council Appointee
 - S. Robert, P.Eng., Northern Regional Councillor
 - N. Rush, C.E.T., Lieutenant Governor-In-Council Appointee
 - M. Spink, P.Eng., Lieutenant Governor-In-Council Appointee
 - R. Subramanian, P.Eng., Northern Regional Councillor [minutes 11980 to 11987 only]
 - K. Torabi, P.Eng., East Central Regional Councillor
 - W. Turnbull, P.Eng., Western Regional Councillor
 - G. P. Wowchuk, P.Eng., Councillor at Large
- Regrets:
- G. Houghton, P.Eng., Western Regional Councillor
 - T. Kirkby, P.Eng., Lieutenant Governor-In-Council Appointee
- Staff:
- J. Zuccon, P.Eng., Interim Registrar
 - C. Mehta, Director, Finance
 - L. Latham, Deputy Registrar, Regulatory Compliance
 - D. Smith, Director, Communications
 - M. Wehrle, Director, Information Technology
 - B. Ennis, P.Eng., Director, Policy and Professional Affairs
 - R. Martin, Manager, Secretariat
 - D. Power, Secretariat Administrator

CALL TO ORDER

Notice having been given and a quorum being present, President Brown called the meeting to order.

**11980
APPROVAL OF AGENDA**

Moved by Councillor Hidalgo, seconded by Councillor Turnbull:

That:

- a) the agenda, as presented to the meeting at C-518-1.1, Appendix A be approved; and**
- b) The Chair be authorized to suspend the regular order of business.**

CARRIED

**11981
SPECIAL RULES OF ORDER**

Section 25(1) of By-Law No. 1 requires that all meetings of the association are to be governed by *Wainberg's Rules of Order*. These rules may be amended by passing *Special Rules of Order*, which supersede *Wainberg's*, and which remain in effect only until the close of business at the next Annual General Meeting.

Adopting *Special Rules* provides guidance on how to deal with certain situations that arise in meetings where PEO convention varies from the rules contained in its parliamentary authority, *Wainberg's Rules of Order*, or on which *Wainberg's* is silent.

Adopting *Special Rules* also provides consistency on how such matters may be handled at all meetings of the association.

Section 25(3) of By-Law No. 1 requires that, at the first meeting of Council following the Annual General Meeting, all *Special Rules*, which were in force immediately before the close of business at the Annual General Meeting, are to be presented to Council for adoption and/or amendment, if it so wishes.

Moved by Councillor Subramanian, seconded by Councillor Chong:

That the Special Rules of Order, as presented to the meeting at C-518-2, Appendix A, be approved effective immediately and to remain in effect until the close of business at the 2019 Annual General Meeting.

Moved by Councillor Reid, seconded by Councillor Fraser:

That the main motion be amended to read:

That the Special Rules of Order, as presented to the meeting at C-518-2, Appendix A, be approved effective immediately and to remain in effect until the close of business at the 2019 Annual General Meeting as amended by adding item 6. Approving Large Value Motions – A two thirds majority vote is required to pass a

motion that exceeds \$300,000 expenditure in a calendar year beyond the approved capital and operating budgets and 7. PEO Council Actions Table – Outstanding motions and action items that are raised at PEO Council sessions shall be added to an Action Table. To add action to the table, a member of the Council is required to indicate it should be an action.

Moved by Vice-President Sterling, seconded by Councillor Hidalgo:

That proposed Special Rule “6. Approving Large Value Motions” be tabled to the June 21-22, 2018 Council meeting.

CARRIED

Council then voted on the main motion as amended.

That the Special Rules of Order, as presented to the meeting at C-518-2, Appendix A, be approved effective immediately and to remain in effect until the close of business at the 2019 Annual General Meeting be approved as amended by adding item 7. PEO Council Actions Table – Outstanding motions and action items that are raised at PEO Council sessions shall be added to an Action Table. To add an action to the table, a member of the Council is required to indicate it should be an action.

CARRIED

[Secretariat Note: The above motions required a two-thirds majority of votes cast to carry].

**11982
APPOINTMENT OF COUNCIL MEETING
CHAIR**

President Brown passed the gavel to Past President Dony.

The Chair stated that, at its February 2011 meeting, Council approved a process for selecting a Council Meeting Chair that requires Council to annually appoint its Meeting Chair at the first Council meeting following the Annual General Meeting.

The Chair advised that President Brown had indicated his willingness to serve as Council Meeting Chair and asked for further nominations. None being received, he declared nominations closed.

Moved by Councillor Reid, seconded by Councillor Turnbull:

That Council approve the acclaimed appointment of President Dave Brown, P.Eng. as Council Meeting Chair for the 2018-2019 Council year or until his successor is appointed.

CARRIED

Past President Dony returned the gavel to President Brown as newly elected Council Meeting Chair.

**11983
APPOINTMENT OF REGIONAL
COUNCILLORS COMMITTEE CHAIR**

The Chair stated that Council was being asked to approve the Chair of the Regional Councillors Committee (RCC) for the ensuing Council year in accordance with the Committees and Task Forces Policy.

Moved by Councillor Turnbull, seconded by Councillor Reid:

That Councillor Warren Turnbull, P.Eng., be appointed as Chair of the Regional Councillors Committee, effective immediately and to hold office until the close of business at the 2019 Annual General meeting.

CARRIED

**11984
APPOINTMENT OF VICE PRESIDENT**

The Chair stated that Section 3(1)2 of Regulation 941 under the *Professional Engineers Act* requires that Council appoint a Vice President from among its Councillors who are members of the Association at a meeting to be held after the close of business and on the day of the Annual Meeting of members or within thirty days thereafter. Non-member Lieutenant Governor-in-Council appointees are ineligible from serving as Vice President under this Regulation.

The Chair announced the names of Councillors who had indicated their willingness to serve as Vice President and asked for further nominations. There being none, he declared the nominations closed.

In keeping with the procedures for appointing Councillors to board positions, the Chair advised that voting would be by electronic vote in accordance with Special Rule #4.

Each candidate consented to serving and was invited to address the meeting.

An electronic vote was then conducted to select the Vice President.

Moved by Councillor Chong, seconded by Councillor Fraser:

That Council accept the result of the electronic vote for the Vice-President and approve the appointment of Councillor Kelly Reid, P.Eng., as Vice President (appointed) for the 2018-2019 Council year.

CARRIED

**11985
APPOINTMENT OF COUNCILLORS TO
EXECUTIVE COMMITTEE**

Section 28.(1)(e) of Regulation 941 under the Professional Engineers Act requires that Council appoint one or more other members of Council, in addition to the president, president-elect, immediate past president and the two vice presidents, to serve on the Executive Committee.

Section 28.(1.1) of Regulation 941 requires that at least one member appointed by the Lieutenant Governor be appointed to the Executive Committee.

Appointments are to be made in accordance with the process approved by Council at its September 2016 meeting for Board Committee appointments and the Special Rules. The Human Resources Committee met on April 4, 2018 and did not make recommendations for positions on the Executive Committee in order to provide Council the opportunity to make a full decision.

The Chair announced the names of Councillors who had indicated their willingness to serve on the Executive Committee and asked for further nominations. When the final list of nominations had been determined, he declared the nominations closed.

In keeping with the procedures for appointing Councillors to Board positions, the Chair advised that voting would be by electronic vote in accordance with Special Rule #4.

Each candidate consented to serving and was invited to address the meeting.

Moved by Councillor Lederman, seconded by Councillor Robert:

That Council appoint LGA Councillor Michael Chan, P.Eng., to the Executive Committee for the 2018-2019 Council year.

CARRIED

Moved by Councillor Turnbull, seconded by Councillor Hidalgo:

That Council appoint one other Councillor to the Executive Committee for the 2018-2019 Council year.

CARRIED

Councillor Lederman withdrew his name as a candidate for the one other Councillor position to the Executive Committee. The remaining candidates addressed the meeting.

Moved by Councillor Lederman, seconded by Councillor Hidalgo:

That one additional Council member, Councillor Ishwar Bhatia, P.Eng., be appointed as a member of the Executive Committee for the 2018-2019 Council year.

CARRIED

**11986
APPOINTMENT TO HUMAN RESOURCES**

The Chair announced the names of Councillors who had indicated their willingness to serve on the Human Resources Committee and

COMMITTEE

asked for further nominations. Councillor MacCumber and Vice-President Reid withdrew their name from the list of candidates. When the final list of nominations had been determined, he declared the nominations closed.

In keeping with the procedures for appointing Councillors to the Human Resources Committee, the Chair advised that voting would be by electronic vote in accordance with Special Rule #4.

Each candidate consented to serving and was invited to address the meeting.

An electronic vote was then conducted to select the two members of the Human Resources Committee for the 2018-2019 Council year.

Moved by Vice-President Reid, seconded by Councillor Turnbull:

That Councillors Qadira Jackson, LL.B. and Marilyn Spink, P.Eng., be appointed as members to the Human Resources Committee for the 2018-2019 Council year.

CARRIED

11987 APPOINTMENT TO BOARD COMMITTEES

Annually, Council appoints the requisite number of Councillors to Board Committees and representatives to the OSPE-PEO Joint Relations Committee.

Appointments are to be made in accordance with the process approved by Council at its September 2016 meeting for Board Committee appointments and the Special Rules. The Human Resources Committee met on April 4, 2018 and made its recommendations which were provided to Council. In determining its recommendations, the Human Resources Committee (HRC) reviewed the submitted board committee preferences of Councillors, their respective backgrounds, the need to balance committee continuity with succession planning, Councillor workloads, Councillor involvement with other committees and external appointments as well as committee terms of reference.

Councillor Cutler referred to the HRC's' recommendation that he serve on the Audit Committee. He indicated that his first choice was the Finance Committee and that this was his preference. During the course of discussion, Councillor Hidalgo volunteered to relinquish her position on the Finance Committee as recommended by the HRC in order to allow Councillor Cutler to serve on that committee. She indicated her willingness to serve on the Audit Committee.

Moved by Councillor Subramanian, seconded by Councillor

Olukiyesi:

That, as recommended by the Human Resources Committee, the Audit Committee be composed of five Council members and that Councillors Ishwar Bhatia, P.Eng., Thomas Chong, P.Eng., Guy Boone, P.Eng., and Lola Hidalgo, P.Eng., be appointed as members to the Audit Committee for the 2018-2019 Council year.

CARRIED

Moved by Councillor Robert, seconded by Councillor Turnbull:

That, as recommended by the Human Resources Committee, Councillors Michael Chan, P.Eng., Lorne Cutler, P.Eng., Tim Kirkby, P.Eng., and Kelly Reid, P.Eng., be appointed as members to the Finance Committee for the 2018-2019 Council year.

CARRIED

Councillor Jackson withdrew her name from the HRC recommended list to serve on the Legislation Committee. Councillor Torabi withdrew his name from the list of candidates. Councillor Chong consented to having his name stand as a candidate.

Moved by Councillor Chan, seconded by Councillor Hidalgo:

That, as recommended by the Human Resources Committee, Councillors Thomas Chong, P.Eng., Lola Hidalgo, P.Eng., Gary Houghton, P.Eng., Lisa MacCumber, P.Eng., and Gregory Wowchuk, P.Eng., be appointed as members to the Legislation Committee for the 2018-2019 Council year.

CARRIED

Moved by Councillor Robert, seconded by Councillor Turnbull:

That, as recommended by the Human Resources Committee, Councillor Roydon Fraser, P.Eng., and Vice-President Marisa Sterling, P.Eng., be appointed as members to the OSPE-PEO Joint Relations Committee for the 2018-2019 Council year.

CARRIED

Moved by Councillor Turnbull, seconded by Councillor Spink:

That Council move in-camera.

CARRIED

**11988
IN-CAMERA SESSION**

While in-camera, Council:

- a) Approved the 2018 Ontario Professional Engineers Award Nominees
- b) Moved the appointment of the Complaints Review Councillor

into open session

**11989
REQUEST FROM THE CANADIAN
ENGINEERING ACCREDITATION BOARD
(CEAB) NOMINATING COMMITTEE**

At the request of the Canadian Engineering Accreditation Board (CEAB) Nominating Committee, PEO confirms that:

- Dr. Robert Dony, P.Eng. is a member in good standing with the Association.
- The Association has no objection to the appointment of Dr. Robert Dony, P.Eng. as Vice Chair of the Canadian Engineering Accreditation Board (CEAB) for a one-year term, in accordance with the CEAB Terms of Reference, Section 5.10.

The Board, based on recommendations from the AB Nominating Committee, appoints the chair and the vice-chair, both for a period of one year. The chair automatically becomes past-chair following the completion of their term. The terms of office may be extended to a maximum of two years. Appointments are effective July 1 of the year of appointment. The vice-chair is normally appointed chair following his or her term as vice-chair.

The recommendation from the CEAB Nominating Committee will be made to the Board on May 25, 2018 that Dr. Robert Dony be appointed as vice-chair. The recommendation from the Nominating Committee includes confirmation that the regulator has no objection to the appointment. Therefore, the Nominating Committee has requested a response from PEO confirming no objections to Dr. Robert Dony, P.Eng. being appointed as CEAB Vice Chair.

Councillor Lederman advised that he would like an information session explaining accreditation and suggested that this would be a good topic for an upcoming plenary session. This will be added to the action list.

**11990
COUNCILLOR ITEMS**

a) Action List

Responding to a query, President Brown explained that the action list is a document owned by Council and would be similar to a committee action list. He advised that he would like to bring a draft to the June Council meeting.

Vice-President Reid suggested that the action list be included in each Council agenda package and that it include action owners and timelines for completion. Councillor Olukiyesi suggested that in addition to tabled items, that a list of ideas be included in the action list as well.

President Brown noted that the action list could also be sent out

with the Disposition of Motions.

b) Revisit Chapter Funding

Councillor Bhatia advised that the RCC will be requesting that Council revisit Chapter funding at the June Council meeting in an attempt to rebalance some of the Chapters inequities.

c) Suggested Issues For Council Consideration

Councillor Fraser suggested that the following issues be considered by Council in the coming year:

- Relevancy
- Value-added
- Communication
- Entrepreneurs
- Globalization
- Whistle Blowing
- Natural Scientists
- Privacy/Security
- Artificial Intelligence/Internet of Things/Autonomous Vehicles

**11991
COMPLAINTS REVIEW COUNCILLOR
APPOINTMENT**

This item was moved from the in-camera session to open session.

Moved by Councillor Fraser, seconded by Councillor Wowchuk:

That Council moves the following in-camera motion appointing Qadira Jackson to the position of Complaints Review Councillor into open session, *“That Qadira Jackson be appointed Complaints Review Councillor on condition of her resignation from the Discipline Committee.”*

CARRIED

There being no further business, the meeting concluded.

These minutes consist of nine pages and minutes 11980 to 11991 inclusive.

D. Brown, P.Eng., Chair

R. Martin, Manager, Secretariat

CANADIAN ENGINEERING ACCREDITATION BOARD (CEAB) - ACCREDITATION DECISIONS

Purpose: To approve the list of academic programs that have been accredited (by CEAB) and that meet the intent of Section 33.(1) 1.i. of the Regulations.

Motion(s) to consider: (requires a simple majority of votes cast to carry)

That Council approve the list of academic programs as presented to the meeting at C-519-3.3, Appendix A, that have been accredited (by CEAB) and that meet the intent of Section 33.(1) 1.i. of the Regulations.

Prepared by: Moody Farag, P.Eng., Manager, Admissions

Moved by: Bob Dony, P.Eng., Past President

1. Need for PEO Action

At the November 2007 Council meeting, Council passed the following motion regarding the Licensing Process Task Force (LPTF) Implementation Plan:

That the Registrar, in consultation with the Licensing Process Task Force, be authorized to prepare an implementation plan for the above recommendations as approved by Council, and to finalize the necessary amendments to the Regulations, for approval by Council.

Item A1.1 of the LPTF Implementation Plan states as follows:

That Council approve annually, or more often if required, the list of academic programs that are accredited (by CEAB) and that meet the intent of Section 33.(1) 1. i. of the Regulations.

2. Proposed Action / Recommendation

That Council approve the list of engineering academic programs that were accredited by CEAB during the 2016-2017 Academic year (Appendix A).

3. Next Steps (if motion approved)

PEO licensing applicants that have graduated from the CEAB accredited programs will be deemed to meet PEO's academic requirements for licensure.

4. Policy or Program contribution to the Strategic Plan

- The CEAB Accreditation Decisions are related to Objective 9, in the 2018-2020 Strategic Plan

5. Financial Impact on PEO Budgets (for five years)

	Operating	Capital	Explanation
Current to Year End	\$0	\$0	
2 nd	\$0	\$0	
3 rd	\$0	\$0	
4 th	\$0	\$0	
5 th	\$0	\$0	

6. Peer Review & Process Followed

Process Followed	<ul style="list-style-type: none">• Not applicable
Council Identified Review	<ul style="list-style-type: none">• Not applicable
Actual Motion Review	<ul style="list-style-type: none">• Not applicable

7. Appendices

- Appendix A – List of academic programs that are accredited (by CEAB) – 2016-2017 Academic year.

PROGRAMS ACCREDITED BY CEAB
2016-2017 Academic Year

UNIVERSITY	PROGRAM(S) VISITED	DATE OF VISIT
Université du Québec en Outaouais (Gatineau, Québec)	Génie informatique (Computer engineering)	October 23 – 25, 2016
Dalhousie University (Halifax, Nova Scotia)	Materials Engineering	October 23 – 25, 2016
The University of British Columbia (Vancouver, British Columbia)	Environmental Engineering	November 6 – 8, 2016
University of Northern British Columbia (Prince George, British Columbia)		November 3 – 4, 2016
University of Calgary (Calgary, Alberta)	Energy Engineering	November 6 – 8, 2016
Université Laval (Québec, Québec)	Génie industriel (Industrial Engineering)	November 6 – 8, 2016
British Columbia Institute of Technology (Burnaby, British Columbia)	Mechanical Engineering	November 13 – 15, 2016
McGill University (Montréal, Québec)	Bioresource Engineering Chemical Engineering Civil Engineering Computer Engineering Electrical Engineering Materials Engineering Mechanical Engineering Software Engineering	November 13 – 15, 2016
University of Prince Edward Island (Charlottetown, Prince Edward Island)	Sustainable Design Engineering	December 3 – 6, 2016
York University (Toronto, Ontario)	Electrical Engineering	January 22 – 24, 2017
University of Western Ontario (London, Ontario)	Mechatronic Systems Engineering	January 22 – 24, 2017
Memorial University of Newfoundland (St. John's, Newfoundland)	Civil Engineering Computer Engineering Electrical Engineering Mechanical Engineering Ocean and Naval Architectural Engineering Process Engineering	January 28 – 31, 2017
Conestoga College Institute of Technology and Advanced Learning (Cambridge, Ontario)	Electronic Systems Engineering	February 26 – 28, 2017
University of Victoria (Victoria, British Columbia)	Civil Engineering	February 26 – 28, 2017
Simon Fraser University (Burnaby, British Columbia)	Engineering Science (focused visit)	March 14 – 15, 2017

PEO SYLLABI – Environmental Engineering and Geological Engineering Syllabi

Purpose: To approve the revised Environmental, and Geological Engineering PEO Syllabi.

Motion(s) to consider: (requires a simple majority of votes cast to carry)

That the PEO-revised Environmental and Geological Engineering Syllabi be approved for use as of the December 2018 technical examinations sitting.

Prepared by: Moody Samuel Farag, P.Eng., Admissions Manager

Moved by: Bob Dony, P.Eng., Past President

1. Need for PEO Action

The Academic Requirements Committee (ARC) is mandated to assess non-CEAB applicants' academic preparation to determine if they meet PEO's academic requirements for licensure. It does so by comparing the applicant's transcripts and courses studied to a syllabus of a particular academic discipline. Most syllabi are developed and maintained by the Engineers Canada Canadian Engineering Qualifications Board (CEQB), which PEO then adopts for its own examinations. The CEQB recently revised the Environmental and Geological Engineering syllabi to 2018, which are included under Appendices A and B. These were reviewed and approved by the ARC at its April 2018 meeting and will become effective as of the December 2018 technical examinations sitting.

2. Proposed Action / Recommendation

That Council approve the revised Environmental and Geological Engineering Syllabi for technical examinations, effective December 2018.

3. Next Steps (if motion approved)

- If approved by Council, PEO would advise the other provincial engineering associations of the implementation of the new syllabi.
- Identify any assumptions, external dependencies or constraints on PEO's ability to move ahead (e.g. additional budget allocation, impacts on Reserve, requires Act, Regulation or By-Law changes)

4. Policy or Program contribution to the Strategic Plan

The academic requirements for licensure under section 33.(1)1. of Regulation 941 are:

- i. A bachelor's degree in an engineering program from a Canadian university that is accredited to the Council's satisfaction, or
- ii. Equivalent engineering educational qualifications recognized by the Council.

The ARC evaluates the education of applicants who did not graduate from a program accredited by the CEAB by comparing it to the approved PEO syllabi for the applicant's discipline to determine if they meet section (ii) of the regulation.

PEO also sets the National Technical Examinations for all provincial engineering associations except Quebec.

Having Council approve the syllabi is in keeping with the recommendations of the Licensing Process Task Force. It will assist in providing applicants with further clarity as to the requirements they must meet for licensure.

5. Financial Impact on PEO Budgets (for five years)

The syllabi changes will have no financial impact to PEO.

	Operating	Capital	Explanation
Current to Year End	\$0	\$0	
2 nd	\$0	\$0	
3 rd	\$0	\$0	
4 th	\$0	\$0	
5 th	\$0	\$0	

6. Peer Review & Process Followed

Yes, staff of the licensing and registration department as well as the chair of the Academic Requirements Committee were consulted during development of the motion.

Process Followed	<ul style="list-style-type: none"> Describe the specific policy development route followed: include the dates of each step of the process; describe the purpose of each step taken. Include how the motion was initiated (i.e. Council initiated; committee initiated; etc.); and Identify which committees or other stakeholders were involved
Council Identified Review	<ul style="list-style-type: none"> Include direction provided by Council regarding who was to be consulted, at what stage and by what method, date direction provided, date of consultations, date issue is to be brought back to Council and who is to incorporate the comments received as a result of the consultation into any final report.
Actual Motion Review	<ul style="list-style-type: none"> Include chronology of events and motion history; provide dates and meeting numbers when the issue or motion was presented to Council or the Executive Committee. Indicate who reviewed the motion; describe how the motion was reviewed (written comments; meetings; survey; etc.) Include the status of the approval (i.e. approve, disapprove, abstain, not asked, etc.). List all identified relevant stakeholders that were not involved in the motion review. Identify the peer group, how they were consulted and what feedback they provided.

7. Appendices

- App A – 2018 Environmental Syllabus
- App B – 2018 Geological Syllabus

ENVIRONMENTAL ENGINEERING EXAMINATIONS

INTRODUCTION

Each discipline examination syllabus is divided into two examination categories: compulsory and elective. A full set of Environmental Engineering examinations consists of seventeen, three-hour examination papers and an engineering report. Candidates will be assigned examinations based on an assessment of their academic background. Examinations from discipline syllabi other than those specific to the candidates' discipline may be assigned at the discretion of PEO's Academic Requirement Committee.

Information on examination scheduling, textbooks, materials provided or required, and whether the examinations are open or closed book, will be provided by PEO's Examination Centre.

BASIC STUDIES

04-BS-1 Mathematics

Calculus, Vector, and Linear Algebra: Applications involving matrix algebra, determinants, eigenvalues; first and second order linear ordinary differential equations, Laplace transforms. Vector algebra; vector functions and operations; orthogonal curvilinear coordinates; applications of partial derivatives, Lagrange multipliers, multiple integrals, line and surface integrals; integral theorems (Gauss, Green, Stokes). Power series.

04-BS-2 Probability and Statistics

Concepts of probability, events and populations, probability theorems, concept of a random variable, continuous and discrete random variables, probability distributions, distributions of functions of a random variable, sampling and statistical estimation theory, hypothesis testing, simple regression analysis.

04-BS-3 Statics and Dynamics

Force vectors in two- and three-dimensions, equilibrium of a particle in two- and three-dimensions; moments and couples; equilibrium of rigid bodies in two- and three-dimensions; centroids, centres of gravity; second moment of area, moment of inertia; truss, frame and cable static analysis; friction. Planar kinematics of particles and rigid bodies; planar kinetics of particles and rigid bodies; work and energy, impulse, and momentum of particles and rigid bodies.

04-BS-4 Electric Circuits and Power

Basic laws, current, voltage, power; DC circuits, network theorems, network analysis; simple transients, AC circuits. Impedance concept, resonance; use and application of phasors and complex algebra in steady-state response; simple magnetic circuits; basic concepts and performance characteristics of transformers; an introduction to diodes and transistors; rectification and filtering; simple logic circuits.

04-BS-5 Advanced Mathematics

Series Solutions of Differential Equations: Series solutions of ordinary differential equations, boundary value problems and orthogonal functions, Fourier series.

Numerical Methods: Use of computers for numerical solution of engineering problems, including techniques involving library subroutines and spreadsheets. Approximations and errors, interpolation, systems of linear and non-linear algebraic equations, curve fitting, numerical integration and differentiation, and ordinary differential equations.

04-BS-6 Mechanics of Materials

Definitions of normal stress, shearing stress, normal strain, shearing strain; shear force and bending moment diagrams; members subjected to axial loading; members subjected to torsional loading; compound stresses, Mohr's circle; deformation of flexural and torsional members; failure theories; elastic and inelastic strength criteria; columns.

04-BS-7 Mechanics of Fluids

Fluid characteristics, dimensions and units, flow properties, and fluid properties; the fundamentals of fluid statics, engineering applications of fluid statics; the one-dimensional equations of continuity, momentum, and energy; laminar and turbulent flow, flow separation, drag and lift on immersed objects; wall friction and minor losses in closed conduit flow; flow of incompressible and compressible fluids in pipes; dimensional analysis and similitude; flow measurement methods.

04-BS-10 Thermodynamics

Thermodynamic states of simple systems; the laws of thermodynamics; equilibrium, PVT and other thermodynamic diagrams; equation of state; compressibility charts and steam tables; calculation of property changes; enthalpy; applications of thermodynamics, cycles, reversibility; thermodynamics of phase changes, Gibbs phase rule, gas-vapour mixtures.

04-BS-11 Properties of Materials

Properties of materials for mechanical, thermal and electrical applications. Atomic bonding, solid solutions, crystallisation. Equilibrium phase diagrams, applications to steel and aluminium alloys, heat treatments. Structure and special properties of polymers and ceramic materials. General characteristics of metallic composites, polymeric composites and concrete. Introduction to materials in hostile environments: corrosion, creep at high temperature, refractory materials, subnormal temperature brittle fracture.

04-BS-12 Organic Chemistry

Principles of organic chemistry developed around the concepts of structure and functional groups. The main classes of organic compounds. Properties of pure substances. Introduction to molecular structure, bond types, properties, synthesis and reactions, reaction mechanisms, as a means of systematizing organic reactions.

04-BS-13 Biology

Cellular reproduction, growth, and differentiation; metabolism and bioenergetics of living cells; cell structure and function related to the material properties of plant and animal tissues; introductory microbiology — characteristics and classification of microorganisms; interactions of microorganisms with man in the natural world; kinetics and mathematical models of microbial growth; engineered biological systems such as bio-reactors, bio-instrumentation, and waste treatment systems.

04-BS-14 Geology

The structure of the earth, plate tectonics, earthquakes and igneous activity. Minerals and rocks including their formation, identification, basic properties, and classification. Processes of weathering, erosion, transport, and deposition of geological materials and their results of significance to engineering. Occurrence, flow, and quality of groundwater. Introductory aspects of structural geology including faulting, folding, and the overall formation of discontinuities and their effect on the engineering properties of rock masses. Aerial photography and geological maps.

04-BS-15 Engineering Graphics and Design Process

Engineering drawing: Orthographic sketching. Standard orthographic projection. Principal views, selection and positioning of views. Visualization. Conventions and practices. First and second auxiliary views. Basic descriptive geometry. Section views, types, hatching conventions. Basic dimensioning requirements. Tolerance for fits and geometry control. Detail drawings and assembly drawings, other drawings and documents used in an engineering organization. Bill of materials. Fasteners and welds. Design process and methods. Project management & teamwork. Requirements and function analysis in design. Conceptual design and testing. Concept evaluation design factors such as: cost, quality, manufacturability, safety, etc. Systems modelling & design detail.

GROUP A**COMPULSORY EXAMINATIONS (SIX REQUIRED)****18-Env-A1 Principles of Environmental Engineering**

Population, economic growth, industrialization, urbanization and energy-use, as causes of environmental pollution. Mass and energy balance for environmental engineering systems under steady state and unsteady state conditions. Physical and transport properties of homogeneous and heterogeneous mixtures. Contaminant partitioning and transport in air, water and solids. Characteristics of particles, chemistry of solutions and gases, material balances, reaction kinetics, microbiology and ecology, as related to the environment. Application of environmental principles (technical and non-technical) to: water resource management, water and wastewater treatment, air pollution control, solid waste management, environmental impact assessment, and environmental ethics. Thermal pollution, noise pollution, greenhouse effect, acid precipitation, ozone depletion, air toxics, and ground-level ozone and fine particulates (photochemical smog). Sustainable development, life cycle analysis, and principles of environmental quality objectives, standards and guidelines. Soils as a treatment system.

18-Env-A2 Hydrology and Municipal Hydraulics Engineering

Components and processes of natural hydrologic systems. Precipitation and snow melt, runoff, infiltration, storm frequency and duration analysis, conceptual models of runoff, stream flow and hydrograph analysis, frequency and probability with application to precipitation, floods and droughts; evaporation and evapotranspiration. Hydraulics of closed pipe systems and open channel flow including flow under uniform and gradually varied conditions, sediment transport. Water distribution systems, storage reservoirs and wastewater collection systems, pipe networks and network design, sanitary sewer and storm water collection system design, basic pumps/prime movers, urban drainage and runoff control. Climate change, its impact on the design of drainage systems and the need for integration of ecological considerations.

18-Env-A3 Geotechnical and Hydrogeological Engineering

Soil composition, properties, identification and classification. Particle size distribution. Seepage and permeability. Concepts of pore water pressure and effective stress. Compressibility. Capillary pressure and hydraulic head. Principles of effective stress, stress-deformation and strength characteristics of soils, consolidation, compaction, slope stability, infiltration, stress distribution with soils and settlements.

Fundamental physics and properties of groundwater flow in porous geologic material; anisotropy, heterogeneity. Introduction to the theory of groundwater flow; groundwater flow equations and patterns, recharge and discharge, flow nets, aquifer pumping, two-phase flow, well hydraulics and non-aqueous phase liquids. Numerical modeling concepts. Aquifer development and management. Wellhead protection. Impact of surface activities and over pumping on aquifer quality.

18-Env-A4 Water and Wastewater Engineering

Characteristics of water: physical, chemical and biological parameters, standard methods of water analyses, impact in streams and treatment of urban and agricultural runoff, population forecasting, prediction of water demand and wastewater generation, water and wastewater quality, water and wastewater treatment plants and systems: physical, chemical and biological systems, primary, secondary and tertiary treatment, sedimentation, coagulation, flocculation, filtration, adsorption, ammonia removal, aeration, anaerobic and aerobic digestion, activated sludge and trickling filter, ion exchange, lagoons, disinfection, natural treatment systems, sludge treatment and disposal, industrial wastewater treatment: characteristics of industrial wastewater, treatment levels and available technologies. Design of isolated wastewater treatment systems. Emphasis on need to consider nutrient and heat recovery as well as impact of emerging contaminants and its implication for wastewater treatment plant design.

18-Env-A5 Air Quality and Pollution Control Engineering

Sources and classification of atmospheric pollutants, indoor and outdoor air pollutants, health and ecological impacts, meteorology: influence of solar radiation and wind fields, lapse rate and stability conditions, characteristics of stack plumes, Dispersion and deposition modeling of atmospheric pollutants: Eddy and Gaussian diffusion models, Puff models, effective stack heights and spatial concentration distributions, Measurement techniques. Characteristics of various air pollutant particulates, health and nuisance/aesthetic considerations (PM_{2.5} and PM₁₀) and gaseous pollutants (CO, SO_x, NO_x, etc.), their behaviour in the atmosphere, monitoring. Control of particulates: collection mechanisms and efficiencies. Control of gases and vapours: adsorption, absorption, combustion, incineration. Control of sulphur oxides and oxides of nitrogen, desulphurisation, kinetics of NO_x formation. Photochemical reactions, role of nitrogen and hydrocarbons in photochemical reactions, air toxics, mobile sources of air pollutants, noxious pollutants, and odour control. Emissions trading. Olfactometry as a method of measuring odours; its science and application.

18-Env-A6 Solid Waste Engineering and Management

Engineering design and operational aspects of waste generation, collection, storage, transfer, processing, including composting of organic waste, treatment and disposal. Engineering evaluation of: integrated waste management, solid waste characterization and classification, reduction, reuse and recycling, resource recovery and utilization. Life cycle assessment of waste, physical and chemical treatment methods and composting. Landfill design and operation including: site selection, engineered sites, liners and covers, leachate control and treatment, gas recovery and control, including utilization of recovered gas (energy), and landfill monitoring and reclamation.

GROUP B

ELECTIVE EXAMINATIONS (THREE REQUIRED)

18-Env-B1 Environmental Assessment and Management Systems

Applicable federal and provincial environmental regulations. Analysis of environmental impact using technical and non-technical parameters. Environmental impact assessment legislation and regulatory framework. Environmental impact assessment applied to solid and liquid waste management, effluent control, air pollution control, urban development, and transportation systems. Environmental audits. Introduction to geographical information systems (GIS). Environmental management systems (EMS) ISO 14000/14001 standards, and applications. Principles of sustainable development and implications of finite biosphere and complexities for engineering design and decision-making. Design of controlled environments to enhance health and protection of natural resources for sustainable development. Resource problems and design with ecological, economic, demographic and social dimensions. Techniques to integrate knowledge and define policy. Risk analysis. Life cycle analysis. Risk management. Environmental impact assessment methods.

18-Env-B2 Water Resources

Nature and response of waste inputs to water systems, point and non-point source loading rates. River flow and reservoir analysis. Availability of groundwater resources. Diffusion, dispersion and pollutant transport mechanisms, including two phase flow. Eutrophication reduction in natural water systems. Contaminant decay modeling. Oxygen sag equation and modifications, water quality and contaminant transport in rivers. Functions of watershed models for hydraulic design, environmental assessment and flood warning. Global and national water problems, laws and legislation. Water resources and sustainable development. Technology and impacts of water conservation practices and policies on municipal service infrastructure. Storm water models and management systems. Impact of climate change on water availability.

18-Env-B3 Contaminant Transport

Major types of contaminants in air, surface water and ground water. Physical phenomena governing the transport of contaminants in different environments: advection, dispersion, diffusion, sorption, ion exchange, precipitation, dissolution, volatilization, equilibrium partitioning of contaminants amongst air, water, soil, sediments and biota. Development of governing transport equations, initial and boundary conditions, completely mixed and plug flow systems. Analytical and numerical solutions, model development, calibration, verification, sensitivity analysis, prediction and post audit.

18-Env-B4 Site Assessment and Remediation

Introduction to engineering, regulatory and management aspects of site assessments and restoration. Fundamentals and interactions between soils, groundwater, contaminants, and microorganisms. Site characterization and investigations. Monitoring and sampling strategies and techniques. Remedial action screening. Engineered solutions for site remediation including: physical, chemical, biological and in-situ and ex-situ techniques. Risk assessment. Brownfields. Computer modeling for assessment and remediation.

18-Env-B5 Industrial & Hazardous Waste Management

Definition and characteristics of industrial and hazardous wastes. Industrial and hazardous waste generation rates and prevention. Introduction to I&H waste collection, transportation, treatment, monitoring, and disposal. Applicable international, federal and provincial regulations and initiatives. Municipal services and planning associated with industrial and hazardous waste management. Physical, chemical and biochemical treatment technologies, and disposal methods, including landfilling and incineration. Environmental impact of industrial and hazardous waste management. Radioactive, nuclear and biomedical waste.

18-Env-B6 Agricultural Waste Management

Agricultural sources of pollution (pesticides, mineral fertilizers, on-farm crop and food processing wastes and livestock wastes, wastewaters and waste seepages) and their effect on the total environment. Physical, chemical and biological properties of agricultural waste materials. Design of storage and handling systems for agricultural wastes. Physical, chemical and biological treatment processes of agricultural wastes, their life-cycle analysis, and their potential for nutrient recycling. Various methods of land application of agricultural wastes in relation to pollution problems and fertilizing value. Technologies for utilization of agricultural wastes for biogas production. Air pollution (noise, odour, dust); agriculture as carbon sink. Water quality parameters and management.

18-Env-B7 Environmental Sampling and Analysis

Practical and essential principles of water, soil and air sampling. Basic concepts in quantitative analyses of physical, chemical, and biological parameters. Tolerable levels of contaminants in air, water and soil. Sampling, sample preparation and preservation techniques, and quality assurance and quality control. Development of optimum monitoring strategy, scheduling, and sampling frequency. Database management, data analysis, statistical treatment of data, sources of error, and seasonal effects. Instrumental methods of analysis for organic and inorganic contaminants in air, water, and soil: colorimetry, chromatography, spectroscopy, electrochemical probes, remote sensing and bioassays. Basic concepts of resolution, accuracy, precision, sensitivity, calibration and control of error. Laboratory certification and standardization. Introduction of Genomics potential for Environmental Monitoring.

18-Env-B8 Instrumentation and Process Control

Basic concepts of resolution, accuracy, precision, sensitivity, calibration and control of error. Analysis and interpretation of data. Transducers for the sensing of strain, displacement, velocity, acceleration, pressure, flow, temperature, humidity, moisture content, and electromagnetic radiation. Signal conditioning for noise reduction and control. Operational amplifiers. Systems for data acquisition, telemetry, display, recording and processing. Computer interfacing. Concept of transfer functions. Response of simple chemical processes to step, ramp, and sinusoidal inputs. Transient response of interacting elements in series. Frequency response analysis of simple systems. On-off control, proportional, integral, derivative, and combinations of these control actions. Feed-back and feed-forward control. Controller tuning and algorithms. Simple stability analysis. Dynamics and control of common chemical process units.

Chemistry of organic and inorganic contaminants in the environment. Natural chemical cycles in the biosphere, geosphere, hydrosphere and atmosphere, and consequences of anthropogenic disturbances. Chemical equilibrium and kinetics. Fundamentals of aquatic, atmospheric and soil chemistry. The fate of hazardous, refractory and heavy metal pollutants in the environment. Introduction to microbial taxonomy, ecology and growth kinetics of microorganisms. The microbes of public health importance in water, soil and air, including their detection, occurrence, transport, and survival in the environment. Introduction to the application of different processes to remove contaminants in natural and engineered systems.

COMPLEMENTARY STUDIES

11-CS-1 Engineering Economics

Basic concepts of engineering economics through understanding of the theoretical and conceptual financial project analysis. Types and applications of engineering economic decisions. Capital, cash flow, and the time value of money concepts. Nominal and effective interest rates when considering loans, mortgages, and bonds. The application of present worth analysis, annual equivalent analysis and rate of return analysis in evaluating independent projects, comparing mutually exclusive projects, analyzing lease vs. buy alternatives and making decisions. After-tax financial analysis requiring an understanding of capital cost allowance (depreciation) and corporate income tax. Understanding methods of financing and capital budgeting. Break-even, sensitivity and risk analyses.

11-CS-2 Engineering in Society – Health and Safety

The duties and legal responsibilities for which engineers are accountable; safety laws and regulations; and a basic knowledge of potential hazards and their control: biological hazards – bacteria, viruses; chemical hazards - gases, liquids and dusts; fire and explosion hazards; physical hazards – noise, radiation, temperature extremes; safety hazards – equipment operation; workplace conditions - equity standards, human behaviour, capabilities, and limitations; managing safety and health through risk management, safety analyses, and safety plans and programs; practices and procedures to improve safety. The roles and social responsibilities of an engineer from a professional ethics point of view, as applied in the context of Canadian values. The integration of ethics into engineering practice, and its effect on public safety and trust.

11-CS-3 Sustainability, Engineering and the Environment

Basic knowledge of soil, water and air quality engineering: soil and water interaction, water supply issues, human activities and their interaction on soil, air and water resources. Fundamentals of: soil erosion, water quality, atmospheric pollution (carbon and nitrogen cycle), climate change, risk assessment. Basic knowledge of renewable energy sources: solar, photovoltaic, wireless electricity, thermal, wind, geothermal, and biofuels. **Introduction to** renewable materials engineering; nano materials, new material cycles. Eco-product development, and product life cycle assessment; recycling technologies; reuse of products; design for disassembly, recycling, e-waste, and reverse manufacturing. Consumption patterns; transportation; environmental communication; consumer awareness. Optimized energy and resources management. Sustainable methods: sustainability indicators; life cycle assessment; regulatory aspects of environmental management, ecological planning.

11-CS-4 Engineering Management

Introduction to management principles and their impact upon social and economic aspects of engineering practice. Engineering management knowledge topics including: market research, assessment and forecasting; strategic planning; risk and change management; product, service and process development; engineering projects and process management; financial resource management; marketing, sales and communications management; leadership and organizational management; professional responsibility. New paradigms and innovative business models, including: sustainable production, products, service systems and consumption; best practices and practical examples of successful implementations of sustainable scientific and engineering solutions.

3.2 ENGINEERING REPORT

Upon passing the examination(s) assigned by PEO's Academic Requirements Committee, a candidate may be required to write an Engineering Report. The report must demonstrate the candidate's ability to present an engineering problem, observation, or idea, and to analyze it logically and accurately using engineering principles, and to draw conclusions or make recommendations. The work must include acceptable technical content involving engineering analysis, design, development, or research. The report must also demonstrate a satisfactory level of writing and graphical skills, thus the quality of the presentation will be a factor in determining the acceptability of the report.

The report itself need not prove originality of ideas, but the candidate should demonstrate his/her ability to appreciate, present, differentiate between and draw conclusions from observations and ideas. The definition of a "report" is flexible and could also include discussion and judgement of opposed theories or methods, or a description of a novel technique or process and a discussion of the practicality of its application. The key consideration is that the report address a new issue, and not repeat the coverage of the particular subject available in textbooks. It is the current state of the art, the novel or the contentious that is expected to be explored in the report.

While no rigid rules of format are specified, it is recommended that the report be suitably subdivided and include:

- a) A title page and date
- b) A signed declaration of authorship
- c) A table of contents
- d) A summary of the report and its conclusions
- e) Technical content including analysis, design, development or research
- f) Conclusions and/or recommendations
- g) A list of the technical literature cited
- h) A list of acknowledgements, contributors, reviewers and sources of information

The report should be about 5,000 words long, not including tables and graphs. Diagrams, illustrations, etc. should be clearly and properly identified. It is preferable to locate graphs, diagrams, etc. necessary for the understanding of the text at the place where reference to them is made.

DRAFT

GEOLOGICAL ENGINEERING EXAMINATIONS

INTRODUCTION

Each discipline examination syllabus is divided into two examination categories: compulsory and elective. A full set of Geological Engineering examinations consists of eighteen, three-hour examination papers and an engineering report. Candidates will be assigned examinations based on an assessment of their academic background. Examinations from discipline syllabi other than those specific to the candidates' discipline may be assigned at the discretion of PEO's Academic Requirement Committee.

Information on examination scheduling, textbooks, materials provided or required, and whether the examinations are open or closed book, will be provided by PEO's examinations Centre.

BASIC STUDIES

04-BS-1 Mathematics

Calculus, Vector, and Linear Algebra: Applications involving matrix algebra, determinants, eigenvalues; first and second order linear ordinary differential equations, Laplace transforms. Vector algebra; vector functions and operations; orthogonal curvilinear coordinates; applications of partial derivatives, Lagrange multipliers, multiple integrals, line and surface integrals; integral theorems (Gauss, Green, Stokes). Power series.

04-BS-2 Probability and Statistics

Concepts of probability, events and populations, probability theorems, concept of a random variable, continuous and discrete random variables, probability distributions, distributions of functions of a random variable, sampling and statistical estimation theory, hypothesis testing, simple regression analysis.

04-BS-3 Statics and Dynamics

Force vectors in two- and three-dimensions, equilibrium of a particle in two- and three-dimensions; moments and couples; equilibrium of rigid bodies in two- and three-dimensions; centroids, centres of gravity; second moment of area, moment of inertia; truss, frame and cable static analysis; friction. Planar kinematics of particles and rigid bodies; planar kinetics of particles and rigid bodies; work and energy, impulse, and momentum of particles and rigid bodies.

04-BS-5 Advanced Mathematics

Series Solutions of Differential Equations: Series solutions of ordinary differential equations, boundary value problems and orthogonal functions, Fourier series.

Numerical Methods: Use of computers for numerical solution of engineering problems, including techniques involving library subroutines and spreadsheets. Approximations and errors, interpolation, systems of linear and non-linear algebraic equations, curve fitting, numerical integration and differentiation, and ordinary differential equations.

04-BS-6 Mechanics of Materials

Definitions of normal stress, shearing stress, normal strain, shearing strain; shear force and bending moment diagrams; members subjected to axial loading; members subjected to torsional loading; compound stresses, Mohr's circle; deformation of flexural and torsional members; failure theories; elastic and inelastic strength criteria; columns.

04-BS-7 Mechanics of Fluids

Fluid characteristics, dimensions and units, flow properties, and fluid properties; the fundamentals of fluid statics, engineering applications of fluid statics; the one-dimensional equations of continuity, momentum, and energy; laminar and turbulent flow, flow separation, drag and lift on immersed objects; wall friction

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and minor losses in closed conduit flow; flow of incompressible and compressible fluids in pipes; dimensional analysis and similitude; flow measurement methods.

04-BS-10 Thermodynamics

Thermodynamic states of simple systems; the laws of thermodynamics; equilibrium, PVT and other thermodynamic diagrams; equation of state; compressibility charts and steam tables; calculation of property changes; enthalpy; applications of thermodynamics, cycles, reversibility; thermodynamics of phase changes, Gibbs phase rule, gas-vapour mixtures.

04-BS-11 Properties of Materials

Properties of materials for mechanical, thermal and electrical applications. Atomic bonding, solid solutions, crystallization. Equilibrium phase diagrams, applications to steel and aluminium alloys, heat treatments. Structure and special properties of polymers and ceramic materials. General characteristics of metallic composites, polymeric composites and concrete. Introduction to materials in hostile environments: corrosion, creep at high temperature, refractory materials, subnormal temperature brittle fracture.

04-BS-12 Organic Chemistry

Principles of organic chemistry developed around the concepts of structure and functional groups. The main classes of organic compounds. Properties of pure substances. Introduction to molecular structure, bond types, properties, synthesis and reactions, reaction mechanisms, as a means of systematizing organic reactions.

04-BS-14 Geology

The structure of the earth, plate tectonics, earthquakes and igneous activity. Minerals and rocks including their formation, identification, basic properties, and classification. Processes of weathering, erosion, transport, and deposition of geological materials and their results of significance to engineering. Occurrence, flow, and quality of groundwater. Introductory aspects of structural geology including faulting, folding, and the overall formation of discontinuities and their effect on the engineering properties of rock masses. Aerial photography and geological maps.

04-BS-15 Engineering Graphics and Design Process

Engineering drawing: Orthographic sketching. Standard orthographic projection. Principal views, selection and positioning of views. Visualization. Conventions and practices. First and second auxiliary views. Basic descriptive geometry. Section views, types, hatching conventions. Basic dimensioning requirements. Tolerance for fits and geometry control. Detail drawings and assembly drawings, other drawings and documents used in an engineering organization. Bill of materials. Fasteners and welds. Design process and methods. Project management & teamwork. Requirements and function analysis in design. Conceptual design and testing. Concept evaluation design factors such as: cost, quality, manufacturability, safety, etc. Systems modelling & design detail.

GROUP A**COMPULSORY EXAMINATIONS (SEVEN REQUIRED)****18-Geol-A1 Mineralogy and Petrology**

Introduction to crystallography and crystal chemistry. Physical and chemical properties of minerals in hand specimens. Identification of minerals and rocks with the petrographic microscope. Field and laboratory classification of igneous and metamorphic rocks. The nature of magmas and processes of magmatic differentiation. Metamorphic facies concepts. Interpretation of mineral assemblages of igneous and metamorphic rocks in the light of the phase rule and phase relations of relevant mineral assemblages. Textural and physical properties of rocks relevant to engineering problems.

18-Geol-A2 Hydrogeology

Hydrologic cycle: precipitation, evaporation, transpiration, deep and shallow groundwater circulation. Physics of flow through porous media. Hydraulic conductivity and groundwater storage. Occurrence, transmissivity and storage characteristics of surficial and bedrock aquifers. Groundwater exploration methods: geophysics, remote sensing, mapping, borehole investigations. Groundwater flow patterns: recharge, discharge, flow net construction and analysis. Aquifer development and management. Control of pore pressures and groundwater flow in geotechnical engineering.

18-Geol-A3 Sedimentation and Stratigraphy

Classification of sedimentary rocks, processes of weathering, erosion, sedimentation and diagenesis. Formation of carbonate, clastic and chemical precipitate rocks. Principles of stratigraphic and paleontological correlation; sedimentary facies: geological and practical significance. Distribution of major Precambrian and Phanerozoic systems. Facies associations; modern and ancient sedimentary environments. The engineering properties and behaviour of sedimentary rocks and the use of stratigraphic principles in the solution of engineering problems.

18-Geol-A4 Structural Geology

Stress and strain. Brittle and ductile rock deformation behaviour. Fabric analysis of deformed rocks. Structural features of stable and mobile parts of the crust. Fold and fault development. Mountain building and orogenies. Theories in geotectonics. Methods of structural analysis. Field mapping and graphical data processing; maps, cross-sections, block diagrams, structure contour maps, stereographic projections, equal area nets, and strain indicators. Kinematic and dynamic interpretation. The application of structural geology to the solution of engineering problems.

18-Geol-A5 Rock Mechanics

Engineering properties and classification of intact rocks. Rock mass properties and classification. Laboratory and in-situ testing of rock. In-situ stresses and stress measurement techniques. Stability analysis of rock slopes and excavations. Rock excavation techniques. Design of excavations, slopes, tunnels and shafts. Rock reinforcement and support. Groundwater considerations in rock engineering.

18-Geol-A6 Soil Mechanics

Rock weathering and development of soils. Engineering classification of soils. Soil physical properties: porosity, density, capillarity, permeability. Shear strength, consolidation and settlement. Normally and over consolidated soils. In-situ stresses in soil masses. Lateral earth pressures. Mechanics, stability and analysis of soil slopes. Pore water pressure, seepage pressure, groundwater considerations in soil engineering.

18-Geol-A7 Applied Geophysics

Basic principles, interpretation, and limitations of geophysical methods applied to the exploration for coal, oil and natural gas, minerals, groundwater, and for geotechnical studies of the surface and subsurface. Introduction to electrical, electromagnetic, and magnetotelluric surveys; magnetic and gravity surveys; seismic reflection and refraction surveys; radiometric methods. Introduction to geophysical well logging techniques. Case histories of applications to engineering problems.

GROUP B**ELECTIVE EXAMINATIONS (THREE REQUIRED)****18-Geol-B1 Contaminant Hydrogeology**

Groundwater geochemistry, isotopes in groundwater. Movement of dissolved species. Diffusion and dispersion regimes. Classification of contaminants. Organic contaminants, introduction to multiphase flow, LNAPLs and DNAPLs. Assessment, control and remediation of contaminants. Waste management. Deep well disposal.

18-Geol-B2 Terrain Analysis

Elements of photogrammetry. Interpretation of aerial photos – recognition elements (tone, pattern, texture, size and shape, occupancy). Identification of structures and terrain features. Glacial, fluvial, coastal, and permafrost landforms – identification and engineering characteristics. LANDSAT imagery. Operation, characteristics, and uses of thermal infrared and RADAR remote sensing.

18-Geol-B3 Site Investigation

Uses and sources of geological and geotechnical information. Methods of site investigation: trial pits, boreholes, sampling, laboratory and in-situ testing, geophysical methods. In-situ instrumentation and post construction monitoring: measurement of stress, deformation and settlement, pore pressures, permeability, groundwater contamination. Design of site investigations and monitoring schemes.

18-Geol-B4 Geomorphology and Pleistocene Geology

Basic geomorphological concepts: formation and composition of landforms, geomorphologic cycles. Weathering and soils. Mass wasting. Fluvial processes and landforms. Coastal processes and landforms. Glacial geomorphology and landforms. Frozen-ground phenomena. Karst geomorphology. Physical geology of Canada. Quaternary geology of selected areas of Canada. Influence of geomorphology on human activity.

18-Geol-B5 Environmental Geology

Geological hazards, volcanoes, landslides, earthquakes, subsidence, floods, erosion. Preparation of hazard maps. Return period concepts and risk assessment. Environmental considerations for landfills, deep cavern and deep well disposal of wastes. Mining reclamation. Acid rock drainage. Control of sediment and dissolved contaminants. Preservation and restoration of soils, landscaping and contour restoration, revegetation and erosion control. Preparation of environmental impact statements. Laws and procedures pertaining to environmental assessments.

18-Geol-B6 Resource Geology

Select **ONE** from:

18-Geol-B6-1 Petroleum Deposits

Physical properties, geochemistry, origin, migration, accumulation, and history of oil and natural gas, and their associated waters. Geological conditions of oil and gas entrapment. Structural and

stratigraphic factors controlling the distribution of reservoir rocks, porosity, permeability and fluid saturations. Environmental problems associated with the development of hydrocarbons.

18-Geol-B6-2 Coal Deposits

Coal depositional environments and their significance. Nature, origin, diagenesis, metamorphism, and classification of organic sediments. Rank, physical, and petrological properties of coal. Glacial and tectonic deformation effects on rank and seam dimensions. Trace element geochemistry of coal. Stratigraphic and geographic occurrence of Canadian (and world) coals. Properties of environmental and mining significance.

18-Geol-B6-3 Metallic and Industrial Mineral Deposits

Nature, mode of occurrence and processes of formation of metallic and industrial minerals including minerals deposited from magmas, high-temperature vapours and aqueous solutions; formed by evaporation or precipitation in surface waters; formed by mechanical accumulation or accumulated by residual weathering. Processes of element/mineral migration and concentration. Stratigraphic and structural controls on occurrence. Solution geochemistry and isotopic characteristics of ore bearing fluids and ore deposits. Illustrative case histories for important deposits of sulphides, oxides, native elements, silicates, and ionic salts.

18-Geol-B7 Petroleum Development

Drilling equipment, controls and techniques. Circulation systems and well completions. Drilling problems associated with overpressure, underpressure, permafrost, evaporites, sour-gas, loss of circulation. Reservoir fluid phase behaviour. Material balance equations. Porosity and permeability characteristics of reservoirs. Steady and transient flow of oil, water and gas through porous media. Well stimulation. Capillary pressure and multiphase flow. Segregated and diffuse flow regimes. Oil and gas well testing and analysis. Natural drive mechanisms. Secondary and tertiary oil recovery. Introduction to history matching and numerical simulators. Conventional and geostatistical methods of oil and gas reserve estimation.

18-Geol-B8 Resource Economics & Valuation

Growth of mining and petroleum industries. Estimation of future demands. Significance of the resource sector in the Canadian economy. Prices, exchanges and futures markets. Types and grades of concentrates, smelter charges and returns. Properties, specifications and markets for industrial rocks and minerals. Relative value of hydrocarbon fractions. Evaluation of mining and oil prospects; mining and oil law, taxes and tariffs, labour, transportation, technical factors, property acquisition and claims, development methods, production estimates. Evaluation of geological engineering and commercial aspects of developed properties. Feasibility reports. Costs: access; transportation; mining; milling; well-development, well stimulation; primary, secondary and tertiary recovery. Capital costs, amortization and depreciation, rate-of-return on investment calculations.

18-Geol-B9 Exploration & Mining Geology

Planning and execution of exploration programs. Sampling methods. Legal aspects of exploration in Canada. Principles of geochemistry in mineral exploration. Field analytical techniques. Primary and secondary dispersion patterns, weathering, soil formation. Anomalies in residual and transported overburden, stream waters, stream sediments, vegetation. Factors affecting relative mobility of elements. Background values, threshold values, orientation surveys. Application, planning and interpretation of

geophysical surveys. Planning surface drilling programs. Logging, sampling, analysis and interpretation of drill core data. Mineralogical study of ore and recommendations for beneficiation. Introduction to mining methods, equipment selection, layout, environmental logistics during life of mine and at closure, and integration of these with a clear understanding of their compatibility with the geological and geotechnical parameters of the site materials. Mapping and sampling underground. Planning subsurface drilling programs. Structural interpretation and analysis of underground drilling. Quality control aspects of mining and milling. Conventional and geostatistical methods of ore-deposit reserve estimation.

18-Geol-B10 Geophysical Exploration Methods

Select **ONE** from:

18-Geol-B10-1 Gravity and Magnetic Fields

Theory and quantitative interpretation of the gravity and magnetic fields in geophysical exploration. Interpretation of regional gravity and magnetic maps. Identification of local anomalies. Data acquisition and data reduction for gravimeters and magnetometers. Design and conduct of field surveys. Potential field, Fourier, forward modeling and inversion methods in data interpretation and analysis.

18-Geol-B10-2 Electrical Methods

Theory and quantitative interpretation of electrical, electromagnetic and magnetotelluric data in geophysical exploration. Electrical properties of rocks. Self-potential, induced polarization, electromagnetic induction and magnetotelluric methods. Operation of field instrumentation, data reduction. Design and conduct of field surveys. Potential field, forward modeling and inversion methods for data interpretation.

18-Geol-B10-3 Exploration Seismology

Theory of elasticity and elastic properties of rock. Wave propagation in elastic media. Interaction of waves with boundaries. Body-wave seismology. Surface waves. Earthquake source studies. Artificial energy sources. Refraction and reflection methods. Theory of operation and selection of seismometers. Design and conduct of field refraction and reflection surveys. Fundamentals of digital processing: static corrections, velocity analysis and corrections, Fourier analysis and filtering, stacking, migration. Interpretation of refraction and reflection seismograms.

COMPLEMENTARY STUDIES

11-CS-1 Engineering Economics

Basic concepts of engineering economics through understanding of the theoretical and conceptual financial project analysis. Types and applications of engineering economic decisions. Capital, cash flow, and the time value of money concepts. Nominal and effective interest rates when considering loans, mortgages, and bonds. The application of present worth analysis, annual equivalent analysis and rate of return analysis in evaluating independent projects, comparing mutually exclusive projects, analyzing lease vs. buy alternatives and making decisions. After-tax financial analysis requiring an understanding of capital cost allowance (depreciation) and corporate income tax. Understanding methods of financing and capital budgeting. Break-even, sensitivity and risk analyses.

11-CS-2 Engineering in Society – Health and Safety

The duties and legal responsibilities for which engineers are accountable; safety laws and regulations; and a basic knowledge of potential hazards and their control: biological hazards – bacteria, viruses; chemical hazards - gases, liquids and dusts; fire and explosion hazards; physical hazards – noise, radiation, temperature extremes; safety hazards – equipment operation; workplace conditions - equity standards, human behaviour, capabilities, and limitations; managing safety and health through risk management, safety analyses, and safety plans and programs; practices and procedures to improve safety. The roles and social responsibilities of an engineer from a professional ethics point of view, as applied in the context of Canadian values. The integration of ethics into engineering practice, and its effect on public safety and trust.

11-CS-3 Sustainability, Engineering and the Environment

Basic knowledge of soil, water and air quality engineering: soil and water interaction, water supply issues, human activities and their interaction on soil, air and water resources. Fundamentals of: soil erosion, water quality, atmospheric pollution (carbon and nitrogen cycle), climate change, risk assessment. Basic knowledge of renewable energy sources: solar, photovoltaic, wireless electricity, thermal, wind, geothermal, and biofuels. **Introduction to** renewable materials engineering; nano materials, new material cycles. Eco-product development, and product life cycle assessment; recycling technologies; reuse of products; design for disassembly, recycling, e-waste, and reverse manufacturing. Consumption patterns; transportation; environmental communication; consumer awareness. Optimized energy and resources management. Sustainable methods: sustainability indicators; life cycle assessment; regulatory aspects of environmental management, ecological planning.

11-CS-4 Engineering Management

Introduction to management principles and their impact upon social and economic aspects of engineering practice. Engineering management knowledge topics including: market research, assessment and forecasting; strategic planning; risk and change management; product, service and process development; engineering projects and process management; financial resource management; marketing, sales and communications management; leadership and organizational management; professional responsibility. New paradigms and innovative business models, including: sustainable production, products, service systems and consumption; best practices and practical examples of successful implementations of sustainable scientific and engineering solutions.

3.2 ENGINEERING REPORT

Upon passing the examination(s) assigned by PEO's Academic Requirements Committee, a candidate may be required to write an Engineering Report. The report must demonstrate the candidate's ability to present an engineering problem, observation, or idea, and to analyze it logically and accurately using engineering principles, and to draw conclusions or make recommendations. The work must include acceptable technical content involving engineering analysis, design, development, or research. The report must also demonstrate a satisfactory level of writing and graphical skills, thus the quality of the presentation will be a factor in determining the acceptability of the report.

The report itself need not prove originality of ideas, but the candidate should demonstrate his/her ability to appreciate, present, differentiate between and draw conclusions from observations and ideas. The definition of a "report" is flexible and could also include discussion and judgement of opposed theories or methods, or a description of a novel technique or process and a discussion of the practicality of its application. The key consideration is that the report address a new issue, and not repeat the coverage of the particular subject available in textbooks. It is the current state of the art, the novel or the contentious that is expected to be explored in the report.

While no rigid rules of format are specified, it is recommended that the report be suitably subdivided and include:

- a) A title page and date
- b) A signed declaration of authorship
- c) A table of contents
- d) A summary of the report and its conclusions
- e) Technical content including analysis, design, development or research
- f) Conclusions and/or recommendations
- g) A list of the technical literature cited
- h) A list of acknowledgements, contributors, reviewers and sources of information

The report should be about 5,000 words long, not including tables and graphs. Diagrams, illustrations, etc. should be clearly and properly identified. It is preferable to locate graphs, diagrams, etc. necessary for the understanding of the text at the place where reference to them is made.

Briefing Note – Decision

APPOINTMENT OF ADDITIONAL MEMBERS TO 2018-2019 CENTRAL ELECTION AND SEARCH COMMITTEE

Purpose: To appoint two additional members to the 2018-2019 Central Election and Search Committee

Motion(s) to consider: (requires a simple majority of votes cast to carry)

That:

- a) **Tim Kirkby P.Eng. and Susana Toma, P.Eng be appointed as the the additional members to the 2018-2019 Central Election and Search Committee;**
- b) **that the 2017-2018 Central Election and Search Committee be stood down with thanks at the close of this Council meeting;**
- c) **that the 2018-2019 Central Election and Search Committee be constituted at the close of this Council meeting**

Prepared by: Ralph Martin – Manager, Secretariat

Moved by: Bob Dony, P.Eng., Past President

1. Need for PEO Action

Section 12(1) of Regulation 941 requires that Council appoint a Central Election and Search Committee (CESC) each year, to be composed of (a) the penultimate past-president; (b) the immediate past-president; (c) the president; and (d) two or more other Members. A notice for the additional positions was posted PEO's website. Thirteen applications were received and vetted by the Penultimate Past-President, Immediate Past-President and President.

With concensus, the reviewers are recommending that Tim Kirkby, P.Eng. and Susana Toma, P.Eng. be appointed as two additional members of the 2018-2019 CESC.

2. Proposed Action / Recommendation

It is being recommended that Council approve the recommendations made by the Penultimate Past- President, Immediate Past-President and President.

3. Next Steps

The CESC will encourage members to seek nomination for election to Council for the President-Elect, Vice-President and the Councillor at-large positions.

4. Policy or Program contribution to the Strategic Plan

The appointment of members to the CESC is related to Objective 9 in the 2018-2020 Strategic Plan.

5. Financial Impact on PEO Budgets (for five years)

	Operating	Capital	Explanation
Current to Year End	\$0	\$0	
2 nd	\$0	\$0	
3 rd	\$	\$	
4 th	\$	\$	
5 th	\$	\$	

6. Peer Review & Process Followed

Process Followed	<ul style="list-style-type: none"> • A notice calling for applications for positions on the CESC was posted on the PEO website on April 27, 2018 with a closing date of May 11, 2018 • Thirteen applications were received and reviewed by the Penultimate Past-President, Immediate Past President and President.
Council Identified Review	<ul style="list-style-type: none"> • Section 12(1) of Regulation 941 requires that Council appoint the CESC each year, to be composed of (a) the penultimate past-president; (b) the immediate past-president; (c) the president; and (d) two or more other Members.
Actual Motion Review	<ul style="list-style-type: none"> • PEO Council appoints additional members of the CESC each year (at the June meeting) as part of setting direction for the upcoming Council Elections.

Appendices: Appendix A – CESC Applications k

Briefing Note – Decision

CONSULTING ENGINEER DESIGNATION APPLICATIONS

Purpose: Under Section 61(2) of Regulation 941 under the *Professional Engineers Act*, the Consulting Engineer Designation Committee (CEDC) may make recommendations to Council in respect of all matters relating to application for designation as a consulting engineer. The CEDC is recommending that Council approve the following motions.

Motion(s) for Council to consider: (requires a simple majority of votes cast to carry)

1. That Council approve the exemption from examinations and the applications for designation as Consulting Engineer as presented to the meeting at C-519-3.6, Appendix A, Section 1.
2. That Council approve the applications for re-designation as Consulting Engineer as presented to the meeting at C-519-3.6, Appendix A, Section 2.
3. That Council grant permission to use the title “Consulting Engineers” (or variations thereof) to the firms as presented to the meeting at C-519-3.6, Appendix A, Section 3.

Prepared by: Faris Georgis, P.Eng, Manager, Registration and Imelda Suarez, Staff Support

Moved by: Councillor Lola Hidalgo, P.Eng.

1. Need for PEO Action

Council needs to accept the recommendations of the Consulting Engineer Designation Committee (CEDC) with respect to the applications submitted for its consideration before the applicants are informed of the PEO’s decision with respect to their application.

2. Proposed Action / Recommendation

That Council approve/deny the applications for designation and redesignation.

3. Next Steps (if motion approved)

The applicants will be advised of Council’s decision with respect to their applications.

4. Peer Review & Process Followed

Process Followed	All applications were reviewed by PEO staff, the Regional Subcommittees of CEDC and later approved by CEDC on May 17, 2018.
Council Identified Review	Not applicable. Required by Regulation.
Actual Motion Review	As stated under above process.

5. Appendices

- Appendix A – Report of the Consulting Engineer Designation Committee
- Appendix B – Legal Implications

To the 519th Meeting of the Council of
Professional Engineers Ontario

REPORT OF THE CONSULTING ENGINEER DESIGNATION COMMITTEE

Chair: Doug Barker, P.Eng.

- 1. The Committee has reviewed the following applications for DESIGNATION and recommends to Council that these 14 applicants be exempted from examinations pursuant to Section 56(2) of O.Reg.941 and that they be considered for DESIGNATION AS CONSULTING ENGINEER, having met the requirements pursuant to Section 56(1) of O.Reg.941:**

#	P.Eng.	Company Name	Address	Licence #
1.1	Agahzadeh, Ramin	Peto MacCallum Ltd.	16 Franklin St S, Kitchener ON, N2C 1R4	100042444
1.2	Ayvar, Martin	Asurza Engineers Ltd.	7078 Liberty St N, Bowmanville ON, L1C 3K6	100128443
1.3	Bo, Myint	Bo & Associates Inc.	302-2233 Argentia Rd, Mississauga ON, L5N 2X7	100129834
1.4	Cooper, Darren	Renteknik Group Inc.	100-1122 International Blvd, Burlington ON, L7L 6Z8	90453868
1.5	Euale, Orlan	Kresin Engineering Corporation	536 Fourth Line E, Sault St Marie ON, P6A 6J8	100122724
1.6	Gilbert, David	Paterson Group Inc.	154 Colonnade Rd, Ottawa ON, K2E 7J5	100116130
1.7	Grainger, Glenn	GS Engineering Consultants Inc.	2080 North Talbot, Windsor ON, N9A 6J3	90460676
1.8	Ispas, Horia	Environmental Infrastructure Solutions Inc.	300-600 Alden Rd, Markham ON, L3R 0E7	100154869
1.9	Koerth, Ronald	Envista Forensics Ltd.	14-2785 Skymark Ave, Mississauga ON, L4W 4Y3	90267667
1.10	Mocan, Nikola	C.F. Crozier & Associates	100-2800 High Point Dr, Milton ON, L9T 6P4	100061476
1.11	Strajin, Darko	B.I.G. Consulting Inc.	12-5500 Tomken Rd, Mississauga ON, L4W 2Z4	90445651
1.12	Wiebe, Brent	GEMTEC	32 Steacie Dr, Ottawa ON, K2K 2A9	100060438
1.13	Wilson, Montana	MTE Consultants Inc.	365 Home St, Stratford ON, N5A 2A5	100136472
1.14	Zajac, Ignac	Tacoma Engineers Inc.	176 Speedvale Ave W, Guelph ON, N1H 1C3	100125617

2. The Committee has reviewed the following applications for **REDESIGNATION** and recommends to Council that these **43** applicants be granted **REDESIGNATION AS CONSULTING ENGINEER**, having met the requirements pursuant to Section 57(2) of O.Reg.941:

#	P.Eng.	Company Name	Address	Licence #
2.1	Asuncion, Hernan	Jilani and Asuncion Consulting Engineers	341 Talbot St, London ON, N6A 2R5	90255721
2.2	Alexander, Jason	ProEng Consulting Inc.	101-399 Bayrose Dr, Ottawa ON, K2J 5W3	100081054
2.3	Andrews, Mark	M.E. Andrews & Associates Ltd	200-222 Laurier Ave E, Ottawa ON, K1N 6P2	1075407
2.4	Barbacsy, Attila	Lassing Dibben Consulting Engineers Ltd.	67B Plant St, Batawa ON, K0K 1E0	2295509
2.5	Behm, Kenneth	K.J. Behm & Associates Inc.	320-55 Erb St E, Waterloo ON, N2J 4K8	3109014
2.6	Carvalho, Rui	R.J. Burnsides & Associates Ltd.	15 Townline, Orangeville ON, L9W 3R4	10899011
2.7	Chamberlain, David	Eramosa Engineering Inc.	4-650 Woodlawn Rd W, Block C, Guelph ON, N1H 1B8	100014912
2.8	Chung, Philip	Mulvey & Banani International Inc.	44 Mobile Dr, Toronto ON, M4A 2P2	8363400
2.9	Clark, Kevin	Ancam Solutions Company Ltd.	2009 Wyecroft Rd, Unit C, Oakville ON, L6L 6J4	90341371
2.10	Cooper, Donald	Remy Consulting Engineers Ltd.	75 Westmore Dr, Toronto ON, M9V 3Y6	9259607
2.11	DiRezze, Carlo	AME-Tech Developments Ltd.	9-346 Newkirk Rd, Richmond Hill ON, L4C 0A9	90337098
2.12	DiScipio, Riccardo	DiScipio Associates Inc.	9200 Weston Rd, PO Box 92027, Vaughan ON, L4H 3J3	90481052
2.13	Drako, Ivan	WSP Canada Ltd.	100 Commerce Valley Dr W, Thornhill ON, L3T 0A1	100049682
2.14	Elgendui, Ashraf	Trinus Engineering Inc.	2370 Midland Ave, A-22, Scarborough ON, M1S 5C6	90339896
2.15	Fairn, Colin	C.B. Fairn & Associates Ltd.	18 Greengate Rd, North York ON, M3B 1E8	13620018
2.16	Genge, Gerald	Arbitech Inc.	6-355 Harry Walker Pkwy, Newmarket ON, L3Y 7B3	15796014
2.17	Gupta, Vijay	Schaeffer & Associates Ltd.	6 Ronrose Dr, Concord ON, L4K 4R3	17612110
2.18	Jansons, Karlis	GeoMin Initiatives	6223-2100 Bloor St W, Toronto ON, M6S 5A5	21839501
2.19	Kalishenko, Leonard	Leonard Kalishenko & Associates Ltd.	240-5050 Dufferin St, Toronto ON, M3H 5T5	22780019
2.20	Khalilian, Farid	Worley Parsons	8133 Warden Ave, Markham ON, L6G 1B3	90419334

2.21	Likhite, Milind	Moon Matz Ltd.	2902 South Sheridan Way, Oakville ON, L6J 7L6	90518945
2.22	Lonsdale, William	Lonsdale Consulting Engineers Inc.	66 Hands Dr, Guelph ON, N1G 4MB	27351501
2.23	Majeed, Imran	ABS Advanced Buildings Solutions Inc.	205-2400 Midland Ave, Toronto ON, M1S 5C1	100070807
2.24	Mann, James	Mann Engineering Ltd.	101-150 Bridgeland Ave, Toronto ON, M6A 1Z5	28914208
2.25	Masongsong, Antonio	Masongsong Associates Engineering Ltd.	201-7800 Kennedy Rd, Markham ON, L3R 2C7	29504503
2.26	McCuaig, Jeffrey	Gerrits Engineering Ltd.	303-231 Bayview Ave, Barrie ON, L4N 4Y5	100064895
2.27	Montgomery, Thomas	CIMA Canada Inc.	900-101 Frederick St, Kitchener ON, N2H 6R2	32388506
2.28	Ng, Man	Peto MacCallum Ltd.	165 Cartwright Ave, Toronto ON, M6A 1V5	33933086
2.29	Patterson, John	Counterpoint Engineering Inc.	100-8395 Jane St, Vaughan ON, L4K 5Y2	35854017
2.30	Pierorazio, Adrian	Baker Engineering and Risk Consultants, Inc.	103-5575 N Service Rd, Burlington ON, L7L 6M1	90468281
2.31	Potter, Bruce	B.M. Ross and Associates Ltd.	62 North St, Goderich ON, N7A 2T4	37205010
2.32	Romanello, Luigino	Atkinson Engineering Inc.	786 King St E, Hamilton ON, L8M 1A6	39553110
2.33	Rosenthal, John	Dunn-Wright Engineering Inc.	9 Green Briar Rd, Alliston ON, L9R 1R5	39687017
2.34	Sarafinchin, Murray	Sarafinchin Associates Ltd.	238 Galaxy Blvd, Toronto ON, M9W 5R8	40637019
2.35	Schroeder, Kenneth	Schroeder Engineering Consultants Limited	211 Country Club Dr, Hamilton ON, L8K 6B1	41102013
2.36	Shamon, Wamid	Telecon Design Inc.	7777 Weston Rd, Vaughan ON, L4L 0G5	100034593
2.37	Sharma, Bhagwati	7055625 Canada Inc.	2220 Maple Grove Road, Cambridge ON, N3C 2V3	100012786
2.38	Stairs, Matthew	MGM Consulting Inc.	201-400 Bronte St S, Milton ON, L9T 0H7	44048502
2.39	Stojanov, Evgeni	Bremel Co. Ltd.	101-278 Avenue Rd, Toronto ON, M4V 2G7	44627016
2.40	Tessler, William	Sonterlan Corporation	4-401 Magnetic Dr, Toronto ON, M3J 3H9	46004016
2.41	Tilatti, Louis	Steer Davies Gleave	1502-80 Richmond St W, Toronto ON, M5H 2A4	46479515
2.42	Turner, Janine	WSP Canada Group Ltd.	100 Commerce Valley Dr W, Thornhill ON, L3T 0A1	8450504
2.43	Weisman, Simon	Weisman Consultants Inc.	716-1110 Finch Ave W, Toronto ON, M3H 2T2	49383011

3. The Committee recommends to Council that the following **9 FIRMS** be granted **PERMISSION TO USE THE TITLE “CONSULTING ENGINEERS”** (or variations thereof), having met the requirements pursuant to Section 68 of O.Reg.941:

#	Company Name	Address	Designated Consulting Engineer (s)
3.1	Fejes, Gyoergy (o/a) Irish Creek Consultants	6566 Ellis Rd, Cambridge ON, N3C 2V4	George Fejes, P.Eng.
3.2	John G. Cooke & Associates Ltd.	200-17 Fitzgerald Rd, Ottawa ON, K2H 9G1	John Cooke, P.Eng. And Grazyna Materna, P.Eng.
3.3	Kozluk, Barry Peter (o/a) Caledon Structural Consulting	84 Marilyn St, Caledon ON, L7C 1H7	Barry Kozluk, P.Eng.
3.4	K-Tek Electro-Services Limited	107- 37 Sandiford Dr, Stouffville ON, L4A 3Z2	Alireza Mirhadi, P.Eng.
3.5	Morey Associates Ltd.	2672 County Rd, PO Box 184, Kemptville ON, K0G 1J0	Clifford Morey, P.Eng.
3.6	Neegan Burnside Ltd.	15 Townline, Orangeville ON, L9W 3R4	Gerald Popowich, P.Eng.
3.7	R.J. Burnside International Limited	15 Townline, Orangeville ON, L9W 3R4	Rui De Carvalho, P.Eng., Jeffrey Langlois, P.Eng. And James Hollingworth, P.Eng.
3.8	SLR Consulting (Canada) Ltd.	200-300 Town Centre Blvd, Markham ON, L3R 5Z6	Steven Usher, P.Eng.
3.9	Terrapex Environmental Ltd.	90 Scarsdale Rd, North York ON, M2N 1H2	Michael Osborne, P.Eng. And Peter Sutton, P.Eng.

CONSULTING ENGINEER DESIGNATION APPLICATIONS

Legal Implications/Authority

1. Pursuant to Section 56(2), Council has the authority to exempt an applicant from any of the examinations required by section 56(1) to be taken by an applicant for a Consulting Engineer Designation if Council is satisfied that the applicant has appropriate qualifications.

Pursuant to Section 56(1) Council **shall** designate as a Consulting Engineer every applicant for the Designation who meets the requirements set out in Section 56(1)(a-d). As a result there does not appear to be any discretion for Council to refuse applicants who meet the requirements.

2. Pursuant to Section 57(2) Council **shall** redesignate as a consulting engineer every applicant who meets the requirements of section 57(2) (a-c). As a result there does not appear to be any discretion for Council to refuse applicants who meet the requirements.

CHANGES TO THE 2018 COMMITTEES AND TASK FORCES MEMBERSHIP ROSTER

Purpose: To approve changes to Sections 1 (Board Committees), 2 (Other Committees Reporting to Council), 4 (Task Forces) and 5 (External Appointments) of the *2018 PEO Committees and Task Forces Membership Roster*.

Motion(s) to consider: (requires a simple majority of votes cast to carry)

That Council approves changes to the *2018 PEO Committees and Task Forces Membership Roster* as presented to the meeting at C-519-3.7, Appendix A.

Prepared by: Viktoria Aleksandrova, Committee Coordinator
Moved by: Councillor Michael Chan, P.Eng.

1. Need for PEO Action

It is the role of Council to approve annual rosters of committee members under the Committees and Task Forces Policy (Role of Council, Item 4) and authorize the membership of those volunteers who formally participate on its behalf through membership on committees and task forces. Furthermore, Council is asked to approve volunteer members of committees and task forces in accordance with PEO’s insurance policy requirements.

Council approved the *2018 PEO Committees and Task Forces Membership Roster* at the November 17, 2017 meeting. *Appendix A* sets out changes to the Sections 2 (Other Committees reporting to Council) and 4 (Task Forces) of the approved Roster that require Council approval at this time.

2. Proposed Action / Recommendation

Approve the changes to Sections 1, (Board Committees), 2 (Other Committees Reporting to Council), 4 (Task Forces) and 5 (External Appointments) of the *2018 PEO Committees and Task Forces Membership Roster*.

3. Next Steps (if motion approved)

- a. The newly appointed and re-appointed members will be notified accordingly.
- b. The updated *2018 PEO Committee and Task Force Membership Roster* will be posted on PEO’s website.

4. Policy or Program contribution to the Strategic Plan

The motion regarding Changes to the *2018 PEO Committees and Task Forces Membership Roster* is related to Objective 9 in the 2018-2020 Strategic Plan.

5. Financial Impact on PEO Budgets (for five years)

Not applicable

6. Peer Review & Process Followed

Process Followed	Committees and Task Forces Policy – Role of Council Item 4: Approve the annual roster of committee members.
Actual Motion Review	The HRC will review the changes to the <i>2018 PEO Committees and Task Forces Membership Roster</i> at its meeting on June 21, 2018 .

7. Appendices

- Appendix A – Changes to Sections 1 (Board Committees), 2 (Other Committees Reporting to Council), 4 (Task Forces) and 5 (External Appointments) of the *2018 PEO Committees and Task Forces Membership Roster*.

**Changes to the 2018 PEO Committees and
Task Forces Membership Roster**

C-519-3.7
Appendix A

519th Council Meeting

New appointments:

First/Last Name	Service Dates	Committee / Task Force
Eric Nejat, P.Eng.	May 28, 2018 – December 31, 2018	Advisory Committee on Volunteers (ACV)
Ken McMartin, P.Eng.	May 28, 2018 – December 31, 2018	Awards Committee (AWC)
Michael Wesa, P.Eng.	May 28, 2018 – December 31, 2018 June 22, 2018 – December 2018	Awards Committee (AWC) Discipline Committee (DIC) – member appointer per 27. (1) 4.
Charles McDermott, P.Eng.	June 22, 2018 – December 31, 2018	Discipline Committee (DIC) – member appointed per 27. (1) 4.
Sean O'Brien, P.Eng.	June 22, 2018 – December 31, 2018	Discipline Committee (DIC) – member appointed per 27. (1) 4.
Michael Rosenblitt, P.Eng.	June 22, 2018 – December 31, 2018	Discipline Committee (DIC) – member appointed per 27. (1) 4.
Vinni Sahni, P.Eng.	June 22, 2018 – December 31, 2018	Discipline Committee (DIC) – member appointed per 27. (1) 4.
Tommy Sin, P.Eng.	June 22, 2018 – December 31, 2018	Discipline Committee (DIC) – member appointed per 27. (1) 4.
Gary Thompson, P.Eng.	June 22, 2018 – December 31, 2018	Discipline Committee (DIC) – member appointed per 27. (1) 4.
John Tyrrell, P.Eng.	June 22, 2018 – December 31, 2018	Discipline Committee (DIC) – member appointed per 27. (1) 4.
Georgia Fotopoulos, P.Eng.	March 28, 2018 – December 2018	Equity and Diversity Committee (EDC)
Manasi Koushik, P.Eng.	May 10, 2018 – December 2018	Equity and Diversity Committee (EDC)
Ryan Zizzo, P.Eng.	March 28, 2018 – December 2018	Equity and Diversity Committee (EDC)
Mokhtar Aboelaze, P.Eng.	May 10, 2018 – December 2018	Experience Requirements Committee (ERC)
Hisham Alkabie, P.Eng.	May 25, 2018 – December 2018	Experience Requirements Committee (ERC)
Iilir Angjeli, P.Eng.	May 25, 2018 – December 2018	Experience Requirements Committee (ERC)
Shaun Gao, P.Eng.	June 22, 2018 – December 2018	Experience Requirements Committee (ERC)
Gerald Monforton, P.Eng.	May 25, 2018 – December 2018	Experience Requirements Committee (ERC)
Lionel Ryan, P.Eng.	May 25, 2018 – December 2018	Experience Requirements Committee (ERC)
Michael Kin Min Wong, P.Eng.	May 25, 2018 – December 2018	Experience Requirements Committee (ERC)

The above volunteers have completed a formal application process and, in consultation with the Committee Advisors, were evaluated by the Acting Director, People Development and approved by the Registrar to serve on the respective committee(s), in accordance with the *PEO Committee and Task Force Policy* (Section 7.4). All volunteers have completed the *Equity and Diversity Awareness* and *PEO – Our Mandate* web-modules.

**Changes to the 2018 PEO Committees and
Task Forces Membership Roster**

519th Council Meeting

Changes to the Roster – election of Chairs/Vice Chairs and other:

First/Last Name	Term / Compliance [per Terms of Reference]	Committee / Task Force
Michael Chan, P.Eng.	1-year term [1 st term / full compliance]	Finance Committee (FIC) - Chair
Kelly Reid, P.Eng.	1-year term [1 st term / full compliance]	Finance Committee (FIC) – Vice Chair
Dave Brown, P.Eng.	1-year term [1 st term / full compliance]	Human Resources Committee (HRC) - Chair
Warren Turnbull, P.Eng.	1-year term [2 nd term / full compliance]	Regional Councillors Committee (RCC) - Chair
Serge Robert, P.Eng.	1-year term [1 st term / full compliance]	Regional Councillors Committee (RCC) – Vice Chair
Helen Wojcinski, P.Eng.	1-year term [1 st term / full compliance]	30 by 30 Task Force (30/30TF) – Chair
Christian Bellini, P.Eng.	1-year term [1 st term / full compliance] June 22, 2018 – December 31, 2018	30 by 30 Task Force (30/30TF) – Vice Chair Consulting Engineer Designation Committee (CEDC) (observer)

External Appointments:

First/Last Name	Service Dates	Committee / Task Force
Alfred Inacio, P.Eng.	October 21-23, 2018	Canadian Engineering Accreditation Board (CEAB) – General Visitor to the University of Toronto
Nazmy Markos, P.Eng.	October 21-23, 2018	Canadian Engineering Accreditation Board (CEAB) – General Visitor to the University of Toronto
Colin Cantlie, P.Eng.	November 3-6, 2018	Canadian Engineering Accreditation Board (CEAB) – General Visitor to the University of Waterloo
Tim Kirkby, P.Eng.	November 4-6, 2018	Canadian Engineering Accreditation Board (CEAB) – General Visitor to the Royal Military College of Canada
Charles McDermott, P.Eng.	November 4-6, 2018	Canadian Engineering Accreditation Board (CEAB) – General Visitor to the Royal Military College of Canada
Keivan Torabi, P.Eng.	November 11-13, 2018	Canadian Engineering Accreditation Board (CEAB) – General Visitor to the University of Ontario Institute of Technology
Larry Frankum, P.Eng.	November 25-27, 2018	Canadian Engineering Accreditation Board (CEAB) – General Visitor to the University of Western Ontario
Tahir Shafiq, P.Eng.	November 25-27, 2018	Canadian Engineering Accreditation Board (CEAB) – General Visitor to the University of Western Ontario

**Changes to the 2018 PEO Committees and
Task Forces Membership Roster**

519th Council Meeting

First/Last Name	Service Dates	Committee / Task Force
Marilyn Spink, P.Eng.	January 27-29, 2019	Canadian Engineering Accreditation Board (CEAB) – General Visitor to the Conestoga College of Technology
Helen Wojcinski, P.Eng.	June 22, 2018 - TBD	PEO representative (champion) on Engineers Canada's 30 by 30 Initiative

Committee and Task Force Resignations/Retirements:

First/Last Name	Service Dates	Committee / Task Force
Qadira Jackson, LL.B.	2017 – April 4, 2018	Discipline Committee (DIC) – member appointed per 27. (1) 3.
Bob White, P.Eng.	2012 – April 25, 2018	Equity and Diversity Committee (EDC)

In Camera Session

In-camera sessions are closed to the public

COUNCILLORS ITEMS

- a) **Notices of Future Agenda Items**
- b) **Councillors' Questions**

Purpose: To provide Councillors with an opportunity to provide notice of items for inclusion on the next Council meeting agenda, and to ask questions.

No motion required

Prepared by: Dale Power, Secretariat Administrator

PROPOSED ENGINEERS CANADA BY-LAW AMENDMENT

Purpose: To update Council on a proposed amendment to the Engineers Canada By-laws.

No motion required

Prepared by: Dave Brown, P.Eng., President

1. Status Update

Engineers Canada has proposed an amendment to the Engineers Canada By-laws regarding the Engineers Canada Board size.

Stephanie Price, Executive Vice President, Regulatory Affairs, sent the following correspondence.

Dear Members,

As per our earlier correspondence, an amendment to our bylaws has been proposed and we are requesting your vote on the following motion through written resolution.

It is moved by Jeffrey Underhill (President, Engineers and Geoscientists New Brunswick) and seconded by Jonathan Epp (President, Engineers and Geoscientists Manitoba)

THAT Section 4.2 of the [Engineers Canada bylaws](#) be amended to state:

4.2. Composition and Election of Directors

(a) The number of Directors shall not exceed twenty four (24).

(b) Directors shall be elected on the basis of nominations received as follows:

- One (1) from the Association of Professional Engineers and Geoscientists of Newfoundland and Labrador;*
- One (1) from the Association of Professional Engineers of Nova Scotia;*
- One (1) from the Association of Professional Engineers of the Province of Prince Edward Island;*
- One (1) from the Association of Professional Engineers and Geoscientists of New Brunswick;*
- Four (4) from l'Ordre des ingénieurs du Québec;*
- Five (5) from the Association of Professional Engineers of Ontario;*
- One (1) from the Association of Professional Engineers and Geoscientists of the Province of Manitoba;*
- One (1) from the Association of Professional Engineers and Geoscientists of Saskatchewan;*
- Four (4) from the Association of Professional Engineers and Geoscientists of Alberta;*
- Two (2) from the Association of Professional Engineers and Geoscientists of British Columbia;*
- One (1) from the Association of Professional Engineers of Yukon;*
- One (1) from the Northwest Territories Association of Professional Engineers and Geoscientists; and*
- One (1) from the list of nominees put forward by the Minister of Industry.*

Please submit your vote by email, in response to this email. Results of the voting will be communicated as soon as all votes have been received.

This bylaw amendment is intended to be temporary, to prevent further growth in the board size. Engineers Canada will continue to work on the issues associated with board size, as per the Members' motion #1 from last May 26, to allow for final resolution of this issue.

*Please don't hesitate to contact me if you have any questions,
Stephanie*