



Minutes

LEGISLATION COMMITTEE MEETING

Friday, October 19, 2018 - 10:00 a.m.

PEO Offices - Room 1C

Members:

Gary Houghton, P. Eng. (Chair)

Lisa MacCumber, P. Eng. (Vice-Chair)

Nancy Hill, P.Eng. (President-Elect, Ex-Officio Member) *[via teleconference]*

Gregory Wowchuk, P. Eng.

Staff:

Bernard Ennis, P. Eng., Director, Policy and Professional Affairs

Jordan Max, Manager, Policy

Andrew Tapp, Policy Analyst

Johnny Zuccon, P. Eng., Interim Registrar, and Deputy Registrar, Tribunals and Regulatory Affairs

Regrets:

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

Thomas Chong, P. Eng.

Lola Hidalgo, P. Eng.

1. PROCEDURAL

1.1 Introduction

The Chair called the meeting to order at 10:03 a.m., and welcomed and thanked everyone for attending.

1.2 Approval of Agenda

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

A motion was made to approve the agenda as written.

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

1.3 Approval of Minutes of September 28, 2018 Meeting

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

A motion was made to approve the Minutes of the September 28, 2018 meeting as written.

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

1.4 Action Items Update from September 28, 2018 Meeting

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

Regulation 941 - Academic and Examination Changes

Continue working on the Regulation file and PRIA components, and keep the Committee apprised. [Pending]

J. Max reported that this would be discussed under Agenda Item 3.1 later this meeting.

Regulation 941 - Provisional Licence

Request the Licensing Committee Minutes from its September 27, 2018 meeting and provide them to the Legislation Committee members pertaining to the Provisional Licence. [Completed]

J. Max noted this item as complete, and advised that the Chair of the Licensing Committee had communicated to him that the Licensing Committee had given the Legislation Committee its agreement to proceed with the Regulation changes, and that the Provisional Licence changes would be discussed under Agenda Item 2.3 later this meeting.

Regional Councillors Committee By-Law Request

Meet with Chapters staff to better understand the Regional Councillors Committee's policy intents, possibly to present to the Regional Councillors Committee, to prepare a detailed legal authority analysis of the Regional Councillors Committee's proposed changes, for the next Legislation Committee meeting, and to send the Regional Councillors Committee a response that more clearly indicated what the next steps were in the process for Regulation and/or By-Law changes. [Completed]

J. Max noted that the Regional Councillors Committee's By-Law change requests would be discussed under Agenda Item 2.1 later this meeting.

By-Law Change Protocol Follow-Ups

Revise the By-Law Change Protocol to address the Regional Councillors Committee's questions, and to present it at the next Legislation Committee meeting on October 19, 2018. [Completed]

J. Max noted that the resulting changes to the By-Law Change Protocol would be discussed under Agenda Item 2.2 later this meeting.

Limited Licence Briefing Note Package for Ministry of the Attorney General

Follow up with the Attorney General Minister's Office on the Limited Licence file. [Completed]

J. Max updated the Legislation Committee on the Briefing Note sent to the Ministry of the Attorney General regarding the Ontario Architects Association refusal to update the *Architects Act* to match the changes in the *Professional Engineers Act*, permitting Limited Licence holders to practice certain elements of architecture that overlap with structural engineering. J. Zuccon confirmed that PEO has had meetings with the Ontario Architects Association, but there has not yet been any progress and that, although PEO has been receiving anecdotal reports that Limited Licence holders have been receiving resistance, there have not yet been any official complaints.

2. FOR DISCUSSION

2.1 Regional Councillors Committee By-Law Proposal

A. Tapp guided the Legislation Committee in a discussion of policy staff's review of the Regional Councillors Committee's suggested By-Law changes, which were approved by Council in September 2017. The Legislation Committee had reviewed their proposals and provided preliminary legislative analysis back to the Regional Councillors Committee in November 2017, but no response had been forthcoming to date prior to receiving further recent inquiries. Staff had

done more in-depth legal analysis, as directed at the September 2018 Legislation Committee meeting, and had sent several policy intent questions to the Regional Councillors Committee to assist with further legal analysis, and the Regional Councillors Committee is planning to provide feedback to the Legislation Committee after their meeting on October 20, 2018.

The Regional Councillors Committee's primary issue of concern was over the apparent conflict between the sections of By-Law No. 1 [Section 5] and Regulation 941 [Section 32.1(2)(1)] governing which executive positions EITs could hold in PEO Chapters. Although Section 5 of By-Law No. 1 was revoked this past February, policy staff are concerned that the wording of Section 32.1(2)(1) may constitute an improper sub-delegation, as it could make Chapter By-Laws more restrictive than the Regulation. This may make this section invalid.

Additionally, the Legislation Committee members were unsure if the Regional Councillors Committee is seeking to forbid EITs from serving in executive positions on Chapter Boards, permit it, or leave the decision up to individual PEO Chapter Boards. The Legislation Committee members were concerned that, if EITs could hold executive positions on Chapter Boards, it left Chapters vulnerable to EIT executives acting in bad faith. It was suggested that, if an EIT became an executive member of a Chapter and then used that authority to embezzle money, then PEO might not be able to respond appropriately because that person would not be a member of PEO.

The Legislation Committee members were also unsure of how to interpret the Regional Councillors Committee's request that the By-Law be changed to allow members to choose an "alternate" Chapter. It was unclear if the alternate Chapter was to be considered a replacement to a member's original home Chapter or an addition to it. It is expected that the Regional Councillors Committee's response to policy staff's questions will clear this issue as well. There was further discussion regarding whether to address legal questions beforehand or during drafting of the By-Law changes, and whether to fix Section 32.1 of the Regulation without waiting for the By-Law changes.

The Legislation Committee members agreed to direct staff to instruct legal counsel to draft By-Law changes to address the issues brought forward by the Regional Councillors Committee. Staff are also to start drafting a Briefing Note for the Legislation Committee to fix Section 32.1 of Regulation 941 to remove any improper sub-delegation to Chapter By-Laws.

Action: After receiving the Regional Councillors Committee's responses to staff's questions, staff will instruct legal counsel to draft By-Law changes to address the issues brought forward by the Regional Councillors Committee.

Action: Staff to prepare a Briefing Note for the Legislation Committee to fix Section 32.1 of Regulation 941 to remove any improper sub-delegation to Chapter By-Laws.

2.2 By-Law Change Protocol

J. Max reviewed the latest edits to the By-Law Change Protocol noting that, in response to the Regional Councillors Committee's suggestions, it now sanctions obtaining legal opinions, but only in circumstances where there is a question concerning the legal authority of the *Professional Engineers Act*. G. Wowchuk asked if the By-Law Change Protocol could be changed to allow for the creation of new By-Laws and not just the modification of existing ones. J. Max confirmed that these changes would be made before the protocol was sent to Council for approval. B. Ennis noted that the motion in the Briefing Note would only require a majority to pass, not a 2/3 majority.

Action: Staff to modify the By-Law Change Protocol so it can be used to create new By-Laws, if required.

The Committee members agreed that the By-Law Change Protocol should go to Council for final approval after the suggested changes had been made.

A motion was made to approve the By-Law Change Protocol Council Briefing Note, as modified, to include future By-Laws, and submit it to Council.

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

2.3 Provisional Licence

J. Max updated the Committee on the status of the Briefing Note regarding removing the Registrar's discretion concerning the granting of a Provisional Licence, and the proclamation of subsections 5(2), 5(24), 5(33) and 6(2) of Schedule 2 to the *Open for Business Act, 2010*, c. 16, effective <date>, regarding the Provisional Licence in sections 1, 14(7), and 18(3) of the *Professional Engineers Act*. The Ministry of the Attorney General clarified that PEO does not need to reference subsection 6(2) or to put in an effective date, but to move forward. They also stated that these proclamations could be requested now, but to wait for the effective date of the necessary amendments to Regulation 941. These proclamations are urgent as, if the above changes are not proclaimed by December 2019, the opportunity to make them will expire. This will be made clearer in the Briefing Note for Council.

A motion was made to approve the Provisional Licence Briefing Note for Council, as amended, with added emphasis on the limited timeframe for this issue.

3. FOR DISCUSSION

3.1 Academic and Examination Changes Regulation Update

J. Max advised the Legislation Committee that, to proceed with these Regulation changes, PEO needed to respond to the Fairness Commissioner regarding what would happen to those whose files would be closed as a result of the Regulation changes. To this end, a survey will be sent out to those affected and will be completed before the end of the year. It is planned that these changes will be part of a package of Regulation changes that includes changes related to Section 29(f) (CCPE), Section 32.1 of Regulation 941, and the provisional licence. Staff would still need to respond to the Fairness Commissioner and conduct an OLMA consultation with PEO's provincial counterparts. Staff will continue to update the Committee on this file as it progresses.

3.2 Finance Committee By-Law Proposed Change

J. Max stated that there had been discussion at Council regarding whether changing Section 59 of By-Law No. 1, which requires a member referendum on matters regarding the annual fee, *itself* requires a member referendum. However, no formal request has been made to the Legislation Committee regarding this matter from either the Finance Committee or the Secretariat and, therefore, it was concluded that no further action be undertaken at this time.

4. FOR INFORMATION

4.1 Professional Engineers Act Limited Licence Change

This item was addressed as the last item in the Action Items Update section.

5. NEXT MEETING AND ADJOURNMENT

There being no further business to conduct, the meeting was adjourned at 12:06 p.m.

The next meeting is scheduled for Friday, November 23, 2018, from 10:00 a.m. to 1:00 p.m.