



Minutes

The Ninety-fifth meeting of the Enforcement Committee held on Tuesday September 10, 2019 at 1:30 p.m., PEO Offices

- Present: Stephen Georgas, LLB., P.Eng. (Chair)
Joe Adams, P.Eng. (Vice-Chair)
Tomiwa Olukiyesi, P.Eng. (Council Liaison) (via Teleconference [poor sound quality])
Edward Poon, P.Eng.
Gordon Ip, P.Eng.
Indra Maharjan, P.Eng. (from 1:43 p.m.)
Juwairia Obaid, P.Eng.
Peter Broad, P.Eng.
Tommy Sin, P.Eng.
Tyler Ing, P.Eng. (via Teleconference to 2:37 pm)
- Staff: Cliff Knox, P.Eng. (Manager, Enforcement)
Ashley Gismondi (Enforcement and Outreach Officer)
Maria Iannone (Administrative Assistant)
- Regrets : Linda Latham, P.Eng. (Deputy Registrar, Regulatory Compliance)
Roger Barker, P.Eng.
Steven Haddock (Enforcement and Advisory Officer)

1. Welcome and Call to Order

Mr. Georgas, called the meeting to order at 1:39 p.m. with a quorum of nine (9) and welcomed everyone.

2. Approval of Agenda

Motion #1: That the Enforcement Committee Agenda dated September 10, 2019 be approved.

Moved by Gordon Ip, P.Eng., seconded by Peter Broad, P.Eng.

CARRIED

3. Report from Chair

Mr. Georgas commented on the final report on the regulatory performance Review conducted by the Professional Standards Authority (PSA), which was issued in June. One observation by PSA was that PEO appeared to assume an advocacy role at times. PSA's view is that a regulator should not be advocate for a professional body. This is not part of PEO's mandate. This committee needs to be mindful to confine its advice to regulatory matters. Advocacy falls within the mandate of OSPE, with PEO advising in the background.



Mr. Georgas circulated an article from the July 11th edition of the Toronto Star, regarding negotiations between the Ontario Medical Association (OMA) and the government for a new fee structure. Mr. Georgas noted that OMA is the advocacy body for the doctors and cited this an example of an advocacy issue that doesn't involve regulation.

Mr. Georgas announced that Mr. Broad is to be awarded the Sovereign's Medal for Volunteers by the Governor General of Canada at an upcoming ceremony. He congratulated Mr. Broad on the honour, which recognizes the exceptional volunteer achievements of individuals across the country.

Mr. Adams commented that with respect to advocacy, PEO needs to look at the activities of Committee and Chapters to separate this from regulatory activities. Mr. Georgas noted that PEO can still consider advocacy matters, but it can't be the body that presents them.

Mr. Broad commented that the PSA review indicated that PEO should not look at titles that have nothing to do with engineering, e.g., a retired engineer.

Ms. Obaid commented that the Council budget discussions indicate a significant portion of PEO's budget has nothing to do with its regulatory mandate or its core business. Mr. Adams commented that this will be an issue for Council to address as it looks at advocacy activities.

4. Consent Agenda

Mr. Georgas asked for a motion on the Consent Agenda.

Motion #3: That the contents of the consent agenda be received as submitted.

Moved by Juwairia Obaid, P.Eng., seconded by Joe Adams, P.Eng.

CARRIED

Mr. Adams asked what is meant by "operationalizing PEAK". Mr. Knox opined that this referred to maintaining PEAK as a continuing program, rather than as a pilot program. He noted that participation remains optional and it's totally voluntary for license holders to report under PEAK.

Mr. Adams asked about the intent for the Professional Standards Committee (PSC) to form a subcommittee to review the Pre-Start Health and Safety Review Guideline. Mr. Knox replied that a motion was passed to have a subcommittee review the existing guideline. He noted that this would be discussed further under New Business.

Mr. Adams noted that Councillor Olukeyesi was appointed as vice-president at the June Council meeting.

Motion #4: That the meeting minutes of the Enforcement Committee dated June 25, 2019 be approved.

Moved by Gordon Ip, P.Eng., seconded by Indra Maharjan, P.Eng.

CARRIED

5. Staff Update

Mr. Knox commented that Mr. Haddock is attending a conference for Subsurface Utility Engineering (SUE) and has been invited to talk about PEO's role with respect to Utility Engineering. He will have a full report at our next meeting.

Mr. Knox commented that he has been assigned responsibility to work with the Office of the Fairness Commissioner (OFC). PEO has certain accountabilities to OFC for compliance with their associated legislation.



Mr. Knox noted that he has also been involved in developing PEO's Action Plan to address the recommendations from the regulatory review report.

Mr. Knox reported on a draft protocol regarding the review of engineering work by unlicensed persons. This was prompted by a question of whether the review of a report prepared by a professional engineer by a government employee is the practice of professional engineering.

Mr. Georgas asked if the government employee's review involved recommendation of the report contents. Mr. Knox replied that the review is typically to confirm compliance with applicable standards and regulations. Such reviews are not generally considered to be the practice of professional engineering and it is the source report that is relied upon to provide public protection.

6. 2020 Enforcement Work Plan

Mr. Adams commented that the first Work Plan item should have an identifier for the purpose of tracking activity. It was suggested to use "2017-AR" or "2017-A2".

Mr. Knox suggested that the Work Plan maintains the current activities and allows for new items to be assigned as a result of the action plan from the regulatory review.

There was general discussion on changing the order of Work Plan items, with a focus on regulatory issues and to express an intent to educate the public on enforcement issues.

Mr. Adams proposed to change the wording for item to 2018-A to reflect its original intent: "to provide examples of professional engineering to stakeholders to better understand when they require a professional engineer".

Ms. Obaid asked if we could include comments to show that the committee has looked at the regulatory review and given some thought to what it could do to support the recommendations. Mr. Adams suggested to add an activity 2019-A where the committee will review the recommendations from the regulatory review and on how these relate to Enforcement.

Mr. Maharjan asked if there is an opportunity to invite the president-elect to an upcoming meeting, so that there is improved awareness of the committee. Councillor Olukiyesi commented that the committee should not be concerned about the level of attention from Council as there may be attention given to more urgent priorities.

Action #1: Mr. Knox will revise the Work Plan to add a numeric identifier for Social Media Outreach, revise the defined activity for the Practice Examples subcommittee, and add an activity to look at recommendations from the regulatory review and offer ideas on how the committee can contribute to the solutions.

7. 2020 Enforcement Human Resources Plan

Mr. Knox commented that 2 members are retiring at the end of the year due to term limits. Since the Council Liaison is now a full member of the committee, there will be one vacancy to fill. Mr. Knox suggested to wait for direction from Council prior to filling the vacancy.

Motion #5: That 2020 Enforcement Human Resources Plan be submitted for approval by Council.

Moved by Peter Broad, P. Eng., seconded by Joe Adams P.Eng.

CARRIED



8. Work Plan – Policy Issue 2017-A: Outreach Using Social Media

Ms. Gismondi reported that she made a pitch to include enforcement as a theme for the next PEAK ethics module. She was informed by PEAK coordinator Arden Heerah that the theme is selected by Senior Staff and Council.

Ms. Gismondi reported that the subcommittee hasn't been able to have a teleconference meeting, but Ms. Obaid was chosen to serve as Chair of the redefined subcommittee. Ms. Gismondi had a series of individual phone conversations to get feedback on the current website content looks and suggestions for an infographic, whiteboard presentations or short videos that could be developed for our website.

Ms. Gismondi also met with Duff McCutcheon and Michelle Yiu from Communications, to discuss content being loaded for the updated PEO website. There will be an extensive Frequently Asked Questions section and she suggested that the document that was recently developed by the subcommittee could be forwarded to them for inclusion.

Duff suggested that Enforcement could make a 3-5 minute video, similar to the Use of Seal video created by Practice Standards. This was delivered using the Adobe Connect software. We would also have support from Communications to assist with creating an infographic. They can also provide enforcement content for a series of Tweets or other posts to PEO's social media channels.

Mr. Knox commented that any Enforcement prosecutions decided by the courts are a public matter that should not be subject to any constraints on publication. Mr. Knox commented that we are looking for a legal opinion on whether we can post a list of unlicensed persons who have come to the attention of PEO Enforcement so that it is not defamatory or releasing any personal information.

Mr. Broad asked about court proceedings regarding a Halton Region municipal engineer and whether PEO can report on this. Mr. Knox replied that it's not PEO's proceeding and we can't report or comment on other litigation.

Ms. Gismondi commented that the subcommittee has created action items to get its content out and will meet via teleconference within the next 2 weeks.

9. Work Plan – Policy Issue 2018-A: Examples of Engineering Practice

Mr. Knox reported that the subcommittee has been developing practice examples and referred to the current drafts provided in the agenda package. The example for structural engineering is progressing well and the next step is to include the specific impact on the public welfare for each engineering activity.

It is suggested to take a similar approach for the software engineering example so that there is a common template for each example. It is hoped that one or both examples can be completed by November.

Mr. Knox reported that it was also suggested to involve Ms. Obaid to develop an environmental engineering example. Ms. Obaid indicated that she could assist the subcommittee for that item.

10. Work Plan – Policy Issue 2018-B: Regulatory Gaps to Enforcement

Ms. Obaid suggested that the committee review the draft memorandum on title use and submit comments to the subcommittee prior to submitting it to Council. Mr. Adams suggested that there be agreement by the committee on the content of the memorandum.



Mr. Georgas commented that it is unclear whether an employer is responsible for unlicensed employees that engage in the practice of professional engineering, or that hold out as being licensed, in the course of their employment. Mr. Georgas opined that an employer should be considered as an offender under Section 12 or Section 40 when they have approved, endorsed or assisted an employee in committing a violation of the Act.

Mr. Georgas commented that there is provision under the *Provincial Offences Act* that any party who has aided or abetted the commission of an offence is also guilty of the offence, but he noted that this provision has not been tested in court. This may be implicit in the *Professional Engineers Act*.

Mr. Georgas suggested to obtain a written opinion from PEO's legal counsel regarding the accountability of employers.

Mr. Knox asked whether the action item to check for prior legal opinions on employer liability was a separate issue. The consensus of the committee was that it is a separate issue.

Action #2: Members are to review the draft memorandum and forward comments prior to the November meeting.

11. Work Plan – Policy Issue 2018-C Position on Split Registration

Mr. Knox reported that the subcommittee has prepared a draft position paper on split registration and suggests that it be reviewed by the committee to provide feedback for the next meeting.

Mr. Broad commented that the *Professional Engineers Act* is specific regarding the need for a licence, but it's not clear whether this would change as a result of implementing recommendations from the regulatory review.

Mr. Knox commented that the position paper might make a recommendation for a non-practising licensee to have a signed undertaking and a requirement to modify his or her title to reflect that status.

Ms. Obaid asked if the non-practising individual would still be held accountable under the complaints and discipline process. Mr. Knox confirmed that the licensee would remain accountable.

Mr. Georgas commented that split registration would require an amendment to the Act to distinguish use of title from the rights and responsibilities pertaining to the practice of professional engineering.

Action #3: Members are to review the draft position paper and supporting documents and provide their feedback for the next meeting.

12. Other Business

Mr. Knox reported that the regulatory review report makes 15 recommendations for PEO to consider. PEO's senior management has been preparing an action plan to address the recommendations which will be presented to Council at its September meeting. Details of the plan are not yet available.

Mr. Knox commented that PEO's enforcement activities were generally found to meet the corresponding standard but that it might be directing more resources than what is needed. The 15 recommendations will be reviewed as part of the new work plan item. Mr. Knox recommended that this item be a discussion for the full committee.

Mr. Knox reported that he prepared a draft memo to Professional Standards Committee (PSC) regarding our question on a performance standard for Pre-Start Health and Safety Reviews. Councillor Olukiyesi stated that an email response was provided by PSC. Mr. Knox commented that he did not receive this email. Councillor Olukiyesi will check her



messages and forward the email. Mr. Georgas and Mr. Knox review the PSC email and send the memo if the response isn't satisfactory. He and Mr. Knox will take action as needed after review of the PSC email.

Motion #6: That the draft memo be sent to PSC pending an unsatisfactory response in their email.

Moved by Mr. Peter Broad, P.Eng., seconded by Mr. Joe Adams, P.Eng.

CARRIED

Mr. Knox reported on the feedback he gave regarding proposed amendments to Regulation 941 regarding Use of Seal. The PSC subcommittee has extended the consultation deadline to include input from the Ministry of Transportation and Ministry of Labor.

Mr. Knox reported that he prepared a draft email to Bill Jackson to explain why the committee would not be looking at the issue of commoditization of engineering at this time. Mr. Adams noted that the draft email and other items had not been electronically prior to the meeting.

Action #4: Mr. Knox will send the email to Bill Jackson on behalf of the committee.

Mr. Broad expressed concern about whether the committee's recent report to Council was received. He reported that an LGA Councillor had told him that Council did not have information about the Enforcement Committee's activities and that the report was not received by Council.

Councillor Olukiyesi commented that not all councillors read the full agenda package for each meeting. Mr. Georgas suggested to create some mechanism to acknowledge receipt of communications from committees. Mr. Adams commented that this is a governance issue. Mr. Knox explained that committee reports were moved to a separate section that is linked to the Council agenda via a link that is accessible to Council but not to other interested parties.

13. Attendance

Regrets:

Roger Barker, P.Eng.
Steven Haddock, Enforcement and Advisory Officer
Linda Latham, P.Eng. (Deputy Registrar, Regulatory Compliance)

Mr. Knox commented that the teleconference service for this meeting has been inadequate for remote participants, affecting the quality of the meeting for all attendees.

Action #5: Mr. Knox will raise this issue directly with PEO's IT department.

13. Next Meeting

Mr. Knox commented that a Doodle poll had not been sent out for the November meeting.

Action #6: Maria to send a Doodle poll for availability in the weeks of November 11 to 15, and 18 to 20, 2019.



14. Adjournment

Motion #6: To adjourn at 4:36 pm.

Moved by Tommy Sin, P.Eng.

S. Georgas, P.Eng. - Chair

MS/SG

Date Nov 12/19

M. Iannone – Secretary

M Iannone

Date Nov 12/19