

Proposed Changes to By-Law 17

Council's proposal below would replace By-Law 17 in its entirety.

PART XVII BY-LAW CHANGES

17.1 Amendments

These by-laws may be amended or repealed and new by-laws may be enacted in accordance with and subject to the Act and these by-laws.

17.2 Member By-law Proposals

17.2.1 Requests for Member By-law Proposals

Within 120 days after each annual general meeting, the secretary shall, by notice given to all practitioners, request proposals for amendment, repeal or enactment of by-laws.

17.2.2 Requirements for Member By-law Proposals

Each by-law proposal submitted in response to a notice given under 17.2.1:

- (a) must be received by the secretary no more than 30 days after the date of such notice;
- (b) may include the text of any proposed amendment or new by-law;
- (c) shall include a written statement of not more than 200 words outlining the purpose of such proposed by-law and the reasons why the proposed by-law is required and may include such other information as the proponent considers necessary or desirable; and
- (d) shall include the full name and mailing address of the mover and seconder of such proposed by-law.

17.2.3 Failure to Comply with 17.2.2

The secretary is not required to accept any by-law proposal that does not comply with 17.2.2.

17.2.4 Notice of Refusal

If the secretary refuses, pursuant to 17.2.2, to accept any by-law proposal, the secretary shall within 10 days after receiving such proposal give notice to the mover and seconder of the secretary's refusal and the secretary's reasons for such refusal.

17.3 Council By-law Proposals

The council may, at any time, make a proposal for amendment, repeal or enactment of a by-law. At the time of making such proposal the council shall prepare a written statement of not more than 200 words outlining the purpose of such proposed by-law and the reasons why the proposed by-law is required and such other information as the council considers necessary or desirable.

17.4.1 Creation of By-law Review Committee

The council shall, from time to time as required, create a committee on an ad-hoc basis to review a specific by-law proposal or proposals.

17.4.2 By-laws to be Reviewed by By-law Review Committee

All by-law proposals that are:

- (a) submitted in response to a notice given under 17.2.1 and accepted by the secretary as complying with 17.2.2; or
 - (b) made by the council under 17.3
- shall be reviewed by a by-law review committee.

17.4.3 Composition of By-law Review Committee

The by-law review committee shall consist of not fewer than 3 and not more than 7 councilors, lay councilors or members appointed by the council.

17.4.4 Members and Legal Input on By-law Proposals

As part of its review of any by-law proposal, the by-law review committee shall:

- (a) seek input from members by posting the by-law proposer's statement given under 17.2.2(c) or the council's statement made under 17.3, as the case may be, and such other information as the committee may deem appropriate or necessary on an online members forum on the association's website for a period of not less than 14 days and requesting members' input thereon; and
- (b) seek input from legal counsel as to the legality of the proposed by-law and any other matter in connection with such proposed by-law as the committee may direct.

17.4.5 Report of By-law Review Committee

The written report of the by-law review committee shall be delivered to the council no later than the date specified by the council and shall include:

- (a) a listing of the sections of the Act and the by-laws related to or affected by the proposed by-law and the committee's assessment of the impact of the proposed by-law on each such section or by-law;
- (b) a summary of the members' input received pursuant to 17.4.4(a);
- (c) the legal advice received pursuant to 17.4.4(b);
- (d) the committee's conclusions on the effect, necessity and appropriateness of the proposed by-law;
- (e) such other matters as the council may direct; and
- (f) unless the committee recommends that the council not proceed with the by-law, the committee's proposed wording for such by-law.

17.4.6 Decision by the Council

Following receipt of the report of the by-law review committee, the council shall decide whether to refer the proposed by-law to a vote by the

professional members or to reject the by-law proposal. For any by-law proposal received in response to a notice given under 17.2.1, the council shall make such decision not less than 90 days before the anniversary of the last previous annual general meeting. The secretary shall, within 3 days of council's decision give notice of the decision to the by-law review committee and to the mover and seconder of the proposed by-law.

17.5 Member By-law Petitions

17.5.1 Submission of Petition

Any professional member may, by petition in writing signed by not fewer than 12 professional members, propose an amendment, repeal or enactment of a by-law.

17.5.2 Requirements for By-law Petition

Each by-law proposal submitted by petition made under 17.5.1:

- (a) must be received by the secretary not less than 60 days before the anniversary of the last previous annual general meeting;
- (b) shall include the text of any proposed amendment or new by-law;
- (c) shall include a written statement of not more than 200 words outlining the purpose of such proposed by-law and the reasons why the proposed by-law is required and may include such other information as the proponent considers necessary or desirable; and
- (d) shall include the full name, e-mail address and mailing address of the mover and seconder of such by-law proposal.

17.5.3 Failure to Comply with 17.5.1 and 17.5.2

The secretary is not required to accept any petition that does not comply with 17.5.1 and 17.5.2.

17.5.4 Notice of Non-Acceptance

If the secretary refuses, pursuant to 17.5.3, to accept a by-law proposal, the secretary shall, within 14 days of having received the petition in respect of such proposal, give notice to the mover and seconder of the secretary's refusal and the secretary's reasons for such refusal.

17.5.5 Determination of Good Faith

The council shall consider each by-law proposal that complies with 17.5.1 and 17.5.2 and shall make a determination as to whether:

- (a) such proposal or the written statement in support of such proposal appears to be submitted primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the association or its councilors, officers or employees or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;

- (b) such proposal is substantially the same by-law proposal as was submitted to the professional members for consideration in relation to an annual general meeting held within two years preceding the receipt of the petition and such proposal was defeated;
- (c) such proposal or the written statement in support of such proposal is defamatory, scandalous, illegal or likely to bring the association or its councilors, officers or employees into disrepute or to be the subject or cause of any prosecution or legal claim against the association or its councilors, officers or employees; or
- (d) such proposal or the written statement in support of such proposal is being made to secure publicity, and if so, whether such by-law proposal should be rejected.

17.5.6 Notice of Non-Acceptance

If the council rejects any by-law proposal pursuant to 17.5.5, the secretary shall, within 3 days of such rejection, give notice to the mover and seconder of council's rejection and the council's reasons for such rejection.

17.6 Consideration and Voting on Proposed By-law

17.6.1 Interpretation

In this section 17.6, the term "proposed by-law" means and includes only those by-law proposals that the council has referred to a vote under 17.4.6 or which have been received under 17.5.1 and have not been rejected by the council under 17.5.5.

17.6.2 Time of Vote on Proposed By-law

Unless the council shall decide that it is necessary and in the best interest of the association to put a proposed by-law to a vote on an expedited basis, voting on proposed by-laws shall take place before and in conjunction with the next annual general meeting.

17.6.3 Posting of Proposed By-law on Website

The secretary shall post on the association's website, in respect of any proposed by-law:

- (a) the text of the proposed by-law;
- (b) the names of the mover and seconder;
- (c) the written statement provided by the proponent under 17.2.2(c) or 17.5.2(c), as the case may be;
- (d) a written statement of the council; and
- (e) such other information as the president may decide in accordance with a policy adopted by the council.

17.6.4 Notice of Proposed By-law

Not less than 14 days before the date when voting opens on any proposed by-law, the secretary shall give to each member notice of the posting under

17.6.3 of the proposed by-law and related information on the association's website.

17.6.5 Online Forum

Concurrently with giving notice under 17.6.4, the secretary shall open an online forum for discussion of the proposed by-law on the association's website. Such forum shall remain open for discussion for not less than 7 nor more than 14 days but shall be closed to new discussion at the time of the opening of the voting period.

17.6.6 Voting Period

The voting period shall commence on a date set by the secretary and shall continue for not less than 15 days.

17.6.7 Electronic Ballot

The association shall create a secure electronic ballot system that may be accessed by professional members through the association's website. The system shall be maintained, monitored and audited in accordance with a policy adopted by the council.

17.6.8.1 Online Voting

Except as provided in 17.6.8.2, professional members shall vote on the proposed by-law through the electronic ballot system.

17.6.8.2 Mail Vote

Professional members who have made a written request, received by the secretary not less than 7 days before the date when voting opens on any proposed by-law, to vote by mail shall receive mail ballots to be completed in accordance with instructions approved by the council and enclosed with the mail ballot. To be eligible for inclusion in the ballot count, mail ballots must be properly completed in accordance with the instructions and received by the secretary no later than the close of business on the last day of the voting period.

17.6.9 Scrutineers

At least 10 days before the close of the voting period, the president shall appoint three professional members who are not councilors to act as scrutineers.

17.6.10 Counting of Ballots

The counting of the electronic and mail ballots shall be supervised by the scrutineers in accordance with a policy adopted by the council.

17.6.11 Report of Scrutineers

The written report of the scrutineers on their count of the ballots, in the form and containing the information required by the council and signed by each

scrutineer, shall be delivered to the secretary no later than 3 days after the end of the voting period.

17.6.12.1 Delivery of Scrutineers' Report at Annual General Meeting

Except as provided in 17.6.12.2, the results of the scrutineers' report shall be presented to the members at the first annual general meeting after the end of the voting period and shall be posted on the association's website.

17.6.12.2 Delivery of Scrutineers' Report for Expedited Vote

If the proposed by-law was put to a vote on an expedited basis pursuant to 17.6.2, the results of the scrutineers' report shall be posted on the association's website.

17.6.13 Effective Time of New By-law

A proposed by-law that is approved by a vote of the professional members shall become effective:

- (a) in the case of a by-law that was approved on an expedited basis pursuant to 17.6.2, on the date when the scrutineers' report in respect of such proposed by-law is delivered to the secretary; and
- (b) in all other cases, at the time of adjournment of the annual general meeting at which the scrutineers' report in respect of such proposed by-law is presented.

17.6.14 Destruction of Voting Records

The secretary shall retain mail ballots and online voting records for a period of 30 days after the date when the results of the scrutineers' report are posted on the association's website, after which such ballots and records shall be destroyed.

Appendix A – Principles Followed While Developing By-Law 17

- Bylaws must be:
 - o Clear
 - o Concise
 - o Not inconsistent with Act, By-Laws and other legislation
- By-laws must be confined to the purposes described in 12(1) of the Act
- Dialogue with stakeholders, including members, improves the product
- Council, on behalf of the Association, is responsible for administering the process of by-law changes
- The CEO, staff & administration should not be able to change by-laws but are able to identify possible changes to council
- Council's operations regarding by-law changes should take into consideration the will of stakeholders, including members
- Council's operations regarding by-law changes must be in accordance with the Act, By-laws and other legislation
- Members should have the right to propose by-law changes
- Council should have the right to propose by-law changes
- The membership must approve by-law changes
- Processes and outcomes of proposed changes should be transparent
- Processes and outcomes of proposed changes should demonstrate accountability to stakeholders, including members
- Evolving societal influences should be taken into consideration when changing by-laws
- The processes and procedures established by by-laws relate only to the business and affairs of the Association

Appendix B – Summary of Answers from Legal Counsel Re: By-Law 17 Considerations

Summary of Answers from Legal Counsel
RE: Bylaw 17 Considerations

The Council Bylaw task group requested the legal opinion of Wells Peever, Q.C. in drafting the proposal for Bylaw 17. Mr. Peever's guidance to Council's task group was extensive throughout the process. Presented below are specific recommendations in response to the most recent questions from members:

- The shareholder proposal provisions under The Corporations Act (i.e. s.131 of The Corporations Act) only apply to the Association if the Association, in its governing act or by-laws, has not allowed for such proposals. These by-law changes create a mechanism that allows for member proposals. Therefore, the provisions of s.131 of The Corporations Act should no longer apply. The Right of Appeal provision under The Corporations Act specifically empowers the judge to restrain the holding of the meeting at which the shareholder proposal is to be considered, discussed and voted upon. That is not applicable in the Engineers Geoscientists Manitoba situation because by-law changes are considered in an online forum and the vote takes place electronically before the Annual General Meeting (AGM). The Association's AGM's purpose with respect to by-law changes is simply the announcement of the results of the vote. In addition, in the case of an expedited vote, under By-law 17.6.2, there is no meeting in connection with the by-law proposal. Everything takes place online. The remedy under s.131 of The Corporations Act is tailored to corporations and the by-law enactment procedures used for corporations and therefore would not be suitable for the Association, even if it were available.
- There is no legal requirement to specifically provide in the by-law for a right of appeal to the courts. The Court of Queen's Bench has the inherent jurisdiction to deal with all matters of law. In fact, adding a specific right of appeal to one by-law (i.e. By-law 17) would raise the question of whether the intention is to confine the right of appeal to By-law 17 and exclude the right in connection with action taken under other by-laws. The wording of the applicable provision of The Corporations Act (i.e. s.131(8)) appears to be specifically designed to allow for the remedy of restraining the holding of the meeting at which the proposal is to be considered rather than creating a general right of appeal. The recommendation is to be silent on the right of appeal in the by-laws.

- The provisions of The Corporations Act, of necessity, have to take a “one size fits all” approach because they govern every public corporation. The result is that they have to go with the minimum number. Engineers Geoscientists Manitoba can use a higher number, provided that the number is reasonable in the circumstances. Taking into consideration the size of the Engineers Geoscientists Manitoba’s membership, the number “12” is reasonable.
- The Association is allowed to make its own rules and adopt its own procedures governing the enactment and amendment of by-laws, provided that the rules and procedures are not contrary to the Act (see the introductory wording of s.12(1) of the Act). There is nothing in the Act that requires votes on by-law amendments to be held in connection with the AGM and therefore there is no legal reason why the vote needs to be held in conjunction with the AGM.

DRAFT