



Ontario's Teaching Regulator
L'organisme de réglementation
de l'enseignement en Ontario

Memo

Date: March 10, 2023
To: Council of the Ontario College of Teachers
From: Linda Lacroix, OCT
Registrar and Chief Executive Officer
Subject: Notice of Motion to Amend Sections 4.07, 14.02, 16.04 and 27 of the Bylaws

The Ontario College of Teachers Bylaws (the “Bylaws”) are amended from time to time at the request of Council or the Registrar due to consequential amendments made in other authorities (e.g., legislation, regulations) or to reflect changes in Council policies or College processes and procedures.

This Notice of Motion to amend certain sections of the Bylaws at Council’s June 7, 2023 meeting is made in accordance with section 14.02 (as currently drafted).

1. Section 4.07 re: Registrar and Deputy Registrar Conflicts

Section 4 of the Bylaws concerns officers of the College, the Chair of Council and conflicts of interest. In light of the February 8, 2023 restructure of certain departments within the College’s organization structure, staff recommends that the list of Directors set out in section 4.07 of the Bylaws be updated, as follows:

4.07 In the event that the Registrar and Deputy Registrar each have a conflict of interest and cannot carry out duties arising from the complaints, investigations and hearings processes, including signing documentation relevant to the Investigation, Discipline and Fitness to Practise Committees and Adjudicative Body of Chairs, because of the conflict, one of three Directors will act in their place as outlined below:

1. Director of Corporate ~~and Council~~ Services Department; and if they have a conflict of interest then,
2. Director of Standards of Practice and Accreditation Department; and if they have a conflict of interest then,
3. Director of Membership Services Department.

Staff recommends this amendment because the Director responsible for Council services is now also responsible for Tribunals, thus creating a potential conflict of interest in respect of complaints, investigations and hearings, as well as the interim suspension process. The Director of Corporate Services, similar to the Director of Standards of Practice and Accreditation and the Director of Membership Services, is not involved in processing investigation and discipline/fitness matters and would be conflict-free, subject to personal knowledge of the member or matter in question.

Recommendation at Next Council Meeting

That the words “and Council” be deleted from section 4.07 as noted above.

2. Section 14.02 re: Notice of Motion

At its December 8, 2022 meeting, Council asked staff to investigate and report back on possible revisions to the notice requirements for Bylaw amendments.

At present, section 14.02 of the Bylaws requires that any Council member¹ who proposes to amend the Bylaws must give notice of that amendment at the preceding Council meeting:

Section 14 – Bylaws

- 14.01** These bylaws may be added to, amended, or revoked by a majority vote at any meeting of Council and, if there is an equality of votes, the question shall be deemed to have been decided in the negative.
- 14.02** Notice, including the text, of any proposed addition, amendment, or revocation of a bylaw shall be given by a member of the Council at the preceding Council meeting.
- 14.03** Every bylaw and every amendment shall be maintained in a consolidated list and available on the College’s external website.

Staff propose amending section 14.02 as follows:

- 14.02** Notice, including the text, of any proposed addition, amendment, or revocation of a bylaw shall be given ~~by a member of the Council at the preceding Council meeting in accordance with section 3.06(c).~~

Section 3.06(c) provides that:

- 3.06** Only the following may be considered or transacted at a Council meeting:

* * *

- c. motions for which a notice of motion was given by a member of the Council at the preceding Council meeting, or in time for the notice of motion to be included in the notice of meeting under section 3.03² [i.e. 10 days’ notice]

This change would require a Council member to either (a) give notice of the proposed amendment at the preceding Council meeting (i.e. status quo); or (b) include the notice of

¹ The Registrar and CEO can exercise their meeting rights for this purpose: “The Registrar shall serve as secretary to the Council and has all the rights of participation at meetings of the Council that a member of the Council has, other than the right to vote.” [section 4(3) of the *Ontario College of Teachers Act, 1996*]

² “The Registrar shall notify each member of the Council in writing of the place, date, time and agenda for a Council meeting by sending such notification no less than ten (10) days before a regular meeting.”

the motion to amend the Bylaws (including the proposed text) in the notice of meeting sent to Council at least 10 days in advance.

This amendment would create greater flexibility around Bylaw amendments, while still preserving a high degree of formality and giving Council adequate notice and time to prepare for the discussion. It would also remove the need to rely on section 3.06(d) (which allows Council to consider any motion with a two-thirds vote of those present) given its apparent conflict with section 14.02 governing motions to amend the Bylaws.

Recommendation at Next Council Meeting

That the words “by a member of the Council at the preceding Council meeting” be deleted from section 14.02 and the words “in accordance with section 3.06(c)” be added, as outlined above.

3. Section 16.04 re: Annual Membership Fee

Also at its December 8, 2022 meeting, Council asked staff to investigate and report back on the College’s practice of prescribing the annual membership fee in section 16.04 of the Bylaws:

Section 16 – Annual Membership Fees

- 16.01** Every member shall pay an annual membership fee in accordance with this section.
- 16.02** The first annual membership fee payable by a member shall become payable in the year of and prior to the issuance of their certificate of qualification and registration.
- 16.03** The due date for the annual membership fee shall be January 1, other than as required under section 16.02.
- 16.04** The annual membership fee shall be \$200, inclusive of all applicable taxes, until amended as prescribed in these bylaws.

Staff conducted an environmental scan of 38 regulators in Ontario, among whom 34 prescribe the specific dollar amount of their annual membership fee in their Bylaws or in a schedule to their Bylaws.³

In addition, legal counsel advised against removing the annual membership fee dollar amount from the Bylaws for the following reasons:

- Section 41(1)(23) of the Act stipulates that Council may make by-laws “prescribing annual membership fees and other fees payable by members, applicants for

³ The exceptions were the Law Society of Ontario (LSO), Ontario Professional Foresters Association (OPFA), Ontario Institute of Agrologists (OIA), and Ontario Association of Certified Engineering Technicians and Technologists (OACETT).

membership and other persons.” Section 41(1) also specifies that penalties and other fees referred to in the Act are to be prescribed in by-laws.

- Where the Act provides that a matter is to be prescribed in the by-laws the implication is that it may not be prescribed by other means.
- The annual membership fee is prescribed in section 16.04 of the Bylaws and a variety of other fees and penalties are prescribed in sections 17 and 18 of the Bylaws.
 - The importance of having fees and penalties “prescribed by the by-laws” takes on particular significance in light of section 24 of the Act (Suspension: failure to pay fees, provide information).
 - If a member fails to pay “a fee or penalty prescribed by the by-laws” the Registrar may suspend the member’s certificate provided that the prescribed notice has been given.
 - It would not be desirable to create conditions for a dispute over whether the annual membership fee had been duly prescribed, as this could affect the validity of these suspensions.
- There is therefore a strong legal justification for prescribing the amount of the fee in the Bylaws.

Recommendation at Next Council Meeting

That section 16.04 not be amended at this time and that the amount of the annual membership fee should continue to be prescribed in the Bylaws.

4. Section 27 re: Accreditation Panel Conflicts

Recent amendments to Ontario Regulation 347/02 (Accreditation of Teacher Education Programs) and Ontario Regulation 563/21 (General) necessitate updates to s. 27 of the Bylaws – *Conflicts of Interest for Members of Accreditation Committee Panels*.

First, the conflict of interest rules for Roster members on Accreditation panels are now prescribed in the General regulation rather than the Accreditation of Teacher Education Programs regulation (while conflict of interest rules for non-Roster Accreditation panel members continue to be prescribed in the Bylaws):

29 (7) A member of a [Accreditation Committee] panel,

(a) shall comply with the conflict of interest rules established under section 34 [of the General regulation], if they are a member of the roster; or

(b) shall comply with the conflict of interest rules established under by-law, if they are not a member of the roster.

Second, while the Bylaws reference conflict of interest “guidelines”, the General regulation refers to “rules”.

Section 27 – Conflicts of Interest for Members of Accreditation Committee Panels

27.01 Panel members shall, in the performance of their duties, comply with the provisions of the Act, the regulations and the bylaws.

27.02 The following conflict of interest ~~guidelines~~ rules apply to every panel member, ~~as per subsections 6(7) and 39(6) of Regulation 347/02 (Accreditation of Teacher Education Programs)~~ in addition to the rules set out in section 34 of Regulation 563/21 (General) applicable to members of the roster for the Accreditation Committee:

A person shall not carry out the functions of an accreditation panel if that person:

- a. has a contract with, is in partnership with, or owns, or effectively controls, ~~is~~ a private company engaged in business with the permitted institution whose program is under review,
- b. has acted as an associate teacher for the permitted institution whose program is under review during the previous two years,
- c. has family members who are employed by, or are students enrolled at, the permitted institution whose program is under review,
- d. has been paid as a consultant during the previous two years or has received an honorary degree from the permitted institution whose program is under review,
- e. has any other relationship with the permitted institution whose program is under review, as a result of which the participation of the person in the functions of the panel may directly or indirectly confer a benefit on the person or any person with whom the person does not deal at arm's length.

Recommendation at Next Council Meeting

That section 27 of the Bylaws be amended as outlined above.