

**Individual Proposed Change to By-Law 17**

By-Law	Current Wording	Proposed Wording	Reason
TOC 63	Part XVII By-Law Changes	Part XVII By-Law Changes	
	<p>The current wording is to be deleted and replaced by the proposed wording provided below.</p>	<p>17.1 Amendments- See below for the proposed replacement wording for a new By-Law 17.</p>	<p>This proposal:</p> <ul style="list-style-type: none"> <li>a) provides a vetting process to ensure that the wording and meaning of proposed by-law changes are clear, unambiguous and not inconsistent with any other by-law or applicable Act,</li> <li>b) ensures compliance with the provisions in section 131 of The Corporations Act relating to its section 98(5), including the requirement in that act that a member's proposal must be considered at an Annual General Meeting, and</li> <li>c) establishes a standing committee to deal with by-law proposals in a timely, impartial, consistent and reasoned manner.</li> </ul>

## **PART XVII BY-LAW CHANGES**

### **17.1 Amendments**

By-laws may be amended or repealed and new by-laws may be enacted in accordance with and subject to the Act and other relevant Acts and these by-laws.

### **17.2 By-law Proposals**

**17.2.1** A member entitled to vote at an annual general meeting of members of the association may make a proposal to amend, repeal or enact a by-law.

**17.2.2** The council may make a proposal to amend, repeal or enact a by-law.

### **17.3 Requirements for By-law Proposal**

Each by-law proposal made under 17.2.1 or 17.2.2:

- (a) must be received by the secretary not less than 90 days before the anniversary of the last annual general meeting;
- (b) shall include the suggested text of the proposed amendment or new by-law and of any other by-laws related to, or affected by the text;
- (c) shall include a written statement of no 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 or council, as the case may be, considers necessary or desirable;
- (d) if made under 17.2.1, shall include the full name and signature, e-mail or mailing address, or both, of the proponent and at least 11 other members so entitled to propose, or if made under 17.2.2, the name of the contact person designated as such by the council (the "council designate").

### **17.4 Failure to Comply with 17.3**

The secretary is not required to accept any proposal, the content of which does not include all the requirements of 17.3. The reasons for such refusal shall not include a differing opinion on the need for proposing a by-law change or on its suggested text.

### **17.5 Notice of Non-Acceptance**

If, pursuant to 17.4, the secretary refuses to accept a by-law proposal made under 17.2.1 or 17.2.2, the secretary shall within 14 days of having received the proposal, give notice to the proponent, or the council as may be, of the secretary's refusal and the secretary's reasons for such refusal.

### **17.6 Forwarding to the By-Law Committee**

**17.6.1** If the secretary does not refuse the proposal made in 17.2.1, the secretary shall promptly forward the information listed in 17.3 to the by-law committee for action as provided herein and shall so inform the proposer and the council.

**17.6.2** If the secretary does not refuse the proposal made under 17.2.2, the secretary shall forward the information listed in 17.3 to the by-law committee for action as provided herein and shall so inform the council.

### **17.7 The By-Law Committee**

The council shall establish and maintain a committee, known as the By-Law Committee, whose functions and responsibilities are as defined herein and in further terms of reference established for it and published by the council through its governance process policies.

**17.7.1** The composition of the by-law committee shall be:

- (a) six professional members of the association who shall not be members of council, each of whom shall be appointed for a three-year term except that, initially, two shall be appointed for respectively, one, two and three-year terms in order to provide continuity in membership; and
- (b) two members of the council each of whom shall be appointed for a term not to exceed his or her current term on council; and
- (c) shall not include the staff and the chief executive officer of the association.

**17.7.2** A proposal to enact, amend or repeal a by-law shall not be placed before the members for discussion and vote before it has been considered by the by-law committee and that committee has reported thereon as provided herein.

## **17.8 By-Law Committee Procedures**

**17.8.1** The by-law committee shall consider each by-law proposal that complies with 17.6.1 or 17.6.2.

**17.8.2** Upon receipt of the material from 17.6.1 or 17.6.2 forwarded by the secretary as provided for in 17.6, the by-law committee shall invite either the proponent and seconders of the subject proposal or the council's designate (as the case may be) to meet with the committee to discuss the proposal. Such meeting shall be arranged as promptly as possible.

**17.8.3** On meeting, pursuant to 17.8.2, with the proponent and seconders or council designate (as the case may be), the committee shall address whether, because of its legal status:

- (a) the wording and meaning of any proposed by-law is clear and unambiguous;
- (b) the by-law is not inconsistent with relevant Acts or other by-laws; and
- (c) the proposed by-law is presented in an appropriate format which format may be approved from time-to-time by the council for the enactment, amendment or repeal of a by-law.

**17.8.4** During that meeting, the by-law committee shall inform the proponent or council designate, (as the case may be) that it is required to make a determination and report same to the council 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 councillors, 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 proposal and such proposal was defeated, or failed because the proposer at the time did not attend and

- move it;
- (c) such proposal or the written statement in support of such proposal is defamatory, illegal or likely to bring the association or its councillors, officers or employees into disrepute or to be the subject or cause of any prosecution or legal claim against the association or its councillors, officers or employees; or
  - (d) such proposal or written statement in support of such proposal is being made to secure publicity; and, if so determined, whether such by-law proposal should be rejected.

**17.8.5** The committee shall have access to legal advice when it decides that it is needed; such access shall not be unreasonably denied or unduly delayed.

**17.8.6** In pursuing its responsibilities, the by-law committee may, as required, appoint a subcommittee made up of its members to review any proposal and report its findings to the by-law committee.

**17.8.7** The by-law committee shall respond to any request from council relating to such matters as the Act, Resolutions, etc. or from a member seeking clarification on by-laws and related procedures.

## **17.9 Agreement and Differences**

**17.9.1** When the discussion with the proponent or council designate (as the case may be) leads to agreed alterations to the text originally submitted, such alterations shall be made to that text.

**17.9.2** When discussion on possible alterations has been completed, the proponent shall provide the secretary with the proposed enactment, amendment or repeal of the by-law as altered pursuant to 17.9.1 for forwarding as a motion for a vote at the next annual general meeting.

**17.9.3** Any parts of the text for which agreement has not been reached shall remain in the by-law proposal submitted to the secretary pursuant to 17.9.1 and 17.9.2.

## **17.10 Report of the By-Law Committee**

The written report of the by-law committee shall be delivered to the council no later than 40 days following the date on which it was received by the by-law committee unless extended 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, and, if it has so decided, recommendations on how to reconcile such inconsistencies;
- (b) a summary of the member's input received pursuant to 17.8.2;
- (c) a summary of the outstanding differences pursuant to 17.9.3; and, if it has so decided, the wording of the committee's amendment(s), if any, to the proposer's altered proposal submitted pursuant to 17.9.3, which amendments the by-law committee shall send to the secretary for a vote at the next annual general meeting;
- (d) the legal advice, if any, received pursuant to 17.8.5;
- (e) the committee's conclusions on the effect, necessity and appropriateness of the proposed by-law;

- (f) such other matters as the council may direct;
- (g) if it so decides, the committee's motion to either support or amend the motion in 17.9.2 at the annual general meeting; and
- (h) if it has so decided, its reasons for rejecting the proposal pursuant to the requirements of 17.8.3 and 17.8.4.

### **17.11 Rejection of Proposal.**

Pursuant to 17.8.3 and 17.8.4, or any part thereof, the by-law committee may decide to reject a by-law proposal.

### **17.12 Notice of Rejection**

If the by-law committee decides to reject a by-law proposal made pursuant to 17.2.1, it shall direct the secretary to give, within 3 days of such rejection, notice to the proponent of the committee's rejection and the committee's reasons for such rejection and the proponent's right to appeal to council, and so to inform the council in accordance with policy and procedures approved from time-to-time by the council, which policy must be on file in the association office and must be made available to any member on request.

If the by-law committee recommends to council that a by-law proposal made pursuant to 17.2.2 should be rejected it shall direct the secretary to give, within 3 days of such rejection, notice to the council of the committee's rejection and the committee's reasons for such rejection. Should the council subsequently decide to forward the proposal to the next annual general meeting, it shall be accompanied by the by-law committee's report and, should the council decide to alter its proposal, it shall provide the by-law committee the opportunity to adjust its report to the annual general meeting accordingly.

### **17.13 Consideration by the Annual General Meeting**

The annual general meeting shall consider each proposal to enact, amend or repeal a by-law and the relevant reports and any amendments, and, by motion, either authorize its forwarding, with any amendments approved by the members in attendance at the annual general meeting, to the membership for a vote, or bar its forwarding.

### **17.14 Posting of Proposed By-law**

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

- (a) the text of the proposed by-law as approved by the annual general meeting;
- (b) the names of the mover and seconder;
- (c) the written statement provided by the proponent under 17.9.2;
- (d) the report of the by-law committee;
- (e) a statement by the council; and
- (f) such other information as the president may decide in accordance with a policy adopted by the council.

### **17.15 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 17.14 of the proposed by-law as approved by the annual general meeting for proceeding to a vote and related information on the website.

### **17.16 On-Line Forum**

Concurrently with giving notice under 17.15, the secretary shall open an on-line forum for discussion of the annual general meeting's approved 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.

### **17.17 Voting Period**

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

### **17.18 Electronic Ballot**

The council shall adopt a secure electronic ballot system that may be accessed by professional members through the association's website. The system shall be maintained and monitored and the results shall be audited in accordance with a policy adopted by the council, which policy must be on file in the association office and must be made available to any member on request.

### **17.19 Voting**

**17.19.1 Online:** Except as provided in 17.19.2, professional members shall vote on the proposed by-law through the electronic ballot system.

**17.19.2 By Mail:** Professional members who have made a written request to receive notices from the association 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.

### **17.20 Scrutineers**

Before the annual general meeting at which the proposal is to be discussed, the president shall appoint three professional members who are not councillors or staff to act as scrutineers. The president shall announce the names of the scrutineers at the annual general meeting at which the proposal is to be discussed.

### **17.21 Counting of Ballots**

The counting of the electronic and mail ballots shall be done by the third party and supervised by the scrutineers in accordance with a policy adopted by the council which policy must be on file in the association office and must be made available to any member on request.

### **17.22 Report of the Scrutineers**

The scrutineers shall provide a report of the results to the secretary who shall cause it to be published on the association's website and in the next issue of *The Keystone Professional*. The secretary shall retain the letter ballots and on-line voting records of the vote for a period of 30 days following the publication of the report in *The Keystone Professional* after which period, the secretary shall destroy such ballots and records.

### **17.23 Coming into Effect**

In accordance with section 12(5) of *The Engineering and Geoscientific Act*, "a by-law or the amendment or repeal of a by-law comes into force when, in compliance with the procedures set out the association's by-laws, it is approved by the proportion of the

members required by the by-laws". This is, hereby, interpreted to mean the time at which the scrutineers declare in writing to the secretary that a majority of the total of eligible on-line and paper votes has been cast in favour of the proposed action with a minimum of 100 members participating in the vote. Such a letter shall be delivered within 5 days following the close of voting.

## **Rationale for Member-Initiated By-Law Proposal to Replace Part XVII, 30 August 2017**

By-law 17 is unique in that it proscribes how by-laws may be made, amended or repealed. This member-initiated by-law 17 proposal ensures that your rights as a member of the association are not restricted.

*The Corporations Act* s 98(5) and 131 states that a member has the right to make a proposal and the right to be heard regarding the proposal at the general meeting. The existing, and both the member-initiated and council-proposed by-law allow the membership to propose by-laws changes. But importantly, both the existing and the council-proposed replacement by-laws constrain the right to be heard by requiring that the vote on a by-law change occur in advance of a general meeting. This member-initiated proposal corrects that deficiency by requiring the association to hold a vote after the annual general meeting hears and approves (and perhaps amends) any by-law proposal.

This member-initiated proposal provides for a vetting process that ensures that the wording of a proposed by-law change is clear and unambiguous and not inconsistent with other acts and by-laws. This process would be conducted by a standing council committee (the "By-Law Committee"). The council proposal insists on an *ad hoc* by-law committee appointed by council only after a proposal has been received, with no real restrictions on its membership.

Rigorous and efficient fulfillment of the by-Law committee mandate requires the established expertise and experience which can only come from a standing committee. The council proposal would require each such *ad-hoc* committee to start *de novo* with all the inefficiencies and potential pitfalls that that entails.

This member-initiated proposal ensures that a member proposal may only be rejected on the basis of the provisions of 17.8.3 and 17.8.4. That decision is appealable to council. In contrast, in the council proposal, council decides whether the members' proposal goes forward to the AGM – a clear abrogation of members' rights.

In summary, a by-law proposal (perhaps with agreed alterations) goes to the AGM as a motion to change a by-law, as does (if the by-law committee so decides) the by-law committee's motion to amend that proposal. Both shall be debated at the AGM in the normal way and either forwarded for a vote by the members or rejected.

To expand participation beyond the AGM, this member-initiated proposal continues to provide for an on-line forum through which members may express their views on a proposed by-law approved for a vote by the AGM.



**31 August 2017**

**2017 BY-LAW PROPOSAL FORM**

**BY-LAW CHANGES** -- Proposals for by-law changes shall either be adopted by the council or shall be requested and signed by not fewer than six professional members and submitted to the secretary at least 42 days before the Annual General Meeting or special meeting of the Association at which it is to be considered. For the 2017 AGM, by-law proposals must be received by 4:30 pm on September 7, 2017.

**SPONSOR:**

I, Richard A. Johnson hereby propose the by-law changes described herein.  
*(Please print name of Sponsor)*


Signature R. A. Johnson

**CO-SPONSORS**

1. ROGER LUDWICK Signature   
*(Please print name of Sponsor)*

2. CHARLES R. BOUSKILL Signature   
*(Please print name of Sponsor)*

3. Alan Pollard Signature   
*(Please print name of Sponsor)*

4. Douglas G. Chapman Signature   
*(Please print name of Sponsor)*

5. David A. Ennis Signature   
*(Please print name of Sponsor)*

Each sponsor is required to fill in the above information. One sponsor and five co- sponsors, all of whom are members of the Association, must sign this form. Each by-law change proposal must be submitted in the format shown on the following page. Please contact the Engineers Geoscientists Manitoba office for additional sheets or an editable electronic version of the form.