

# Investigation and Discipline

Law and Ethics Seminar  
Fall 2018

*Ensuring public safety*



**A P E G S**

*Association of Professional Engineers  
& Geoscientists of Saskatchewan*

# Two Aspects of Self-Regulation

- **Registration** - qualified persons are registered and licensed as members, and are subject to investigation and discipline for professional incompetence and professional misconduct
- **Prohibition** - unqualified persons are prohibited using title and from practicing professional engineering or professional geoscience (i.e. non-members)

# How Does APEGS Regulate the Professions?

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- Members, licensees and holders of Certificates of Authorization are subject to the Act and Bylaws
- The Bylaws contain a “Code of Ethics” to be followed by all members
- Complaints may be received about the competence and conduct of members
- The Investigation and Discipline Committees deal with professional incompetence and professional misconduct of members

# Investigation Committee

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- Responsible for the investigation of allegations of professional misconduct (section 30) or professional incompetence (section 29).
- Purpose of the investigation is to determine whether there is a basis for laying a charge and proceeding with a hearing. (Buglass)

# Investigation Committee

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- At least nine members of APEGS Sec. 16(2) 21(1)
- Includes one of the Councillors appointed by the provincial government Sec. 10(6); 31(2)
- No elected members of Council Sec. 31(3)
- No members of the Discipline Committee Sec. 31(3)

# Professional Incompetence Sec. 29

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The display by a member of:

- (a) a lack of knowledge, skill or judgment; or
- (b) a disregard for the welfare of members of the public served by the profession;

of a nature or to an extent that demonstrates that the member is unfit to continue in the practice of the profession, is professional incompetence within the meaning of the Act.

# Professional Misconduct Sec. 30

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Any matter, conduct or thing, whether or not disgraceful or dishonourable, is professional misconduct within the meaning of the Act if:

- (a) it is harmful to the best interest of the public or the members;
- (b) it tends to harm the standing of the profession;
- (c) it is a breach of the Act or bylaws; or
- (d) it is a failure to comply with an order of the investigation committee, the discipline committee or the council.

# Natural Justice

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- All investigation and discipline hearings must be undertaken pursuant to the principles of natural justice.
- Natural justice requires:
  - Members are advised of allegations and of findings.
  - Opportunity to be heard or respond.
  - Impartial investigation and discipline committees (no conflicts or bias)



# Duty of Fairness

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- Investigation Committee is required to act fairly.
- Fairness is exhibited by:
  - Notice of the allegation and formal charges
  - Disclosure of information to member
  - Confidentiality
  - Knowledge and use of facts
  - Freedom from partiality and bias
  - Declaration of Conflict of Interest

# Key Processes

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- Investigation Initiated
- Threshold Review
- Notification & Request for Information
- Information Gathering and Review
- Establish Findings and Recommendation
- Reporting
- Review by Council (if application is made)
- Pre-hearing Conference (if a discipline hearing is recommended)

# Initiation

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- Investigation process starts with either
  - A request from Council to consider a complaint, or
  - A written complaint Sec. 32(1) (From a member or the public)

# Threshold Review

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- APEGS member/licensee?
- Actions within Saskatchewan?
- Allegations, if proved, could reasonably be regarded as professional incompetence or professional misconduct?
- Jurisdiction over remedy requested?

# Notification Process

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- Advise the member that a complaint has been received and of the nature of the complaint and invite response. Sec. 16(2) 21(2)
- Acknowledge receipt of complaint.
- Explain Investigation Committee procedures.

# Information Gathering & Review

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- Information is gathered through interviews, examination of documents and records, field observations.
- Information sought from complainant, member, employers, others.
- Technical and other information may be solicited from third parties.

# Investigative Powers

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- Act requires partnerships, associations of persons or corporations that engage in the practice of professional engineering or professional geoscience to provide records, property, etc. required for investigation Sec. 23
- Association can apply to Provincial Court for an order to obtain records, property, etc. required for investigation

# Establish Findings & Recommendation

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- Review of the information gathered.
- Discussion by Committee Members.
- Weighing of evidence.
- Establish findings.
- Input from legal counsel.
- Development of a Recommendation and basis.



# Investigation Committee Report

- On completion of the investigation, the Investigation Committee makes a written report to the Discipline Committee recommending:
  - That the Discipline Committee hear and determine the formal complaint set out in the report; or
  - That no further action be taken with respect to the matter under investigation Sec. 32(3)
- Report must be signed by a majority of members of Investigation Committee Sec. 32(5)

# Reporting

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- Report generally includes:
  - Summary of the allegations
  - Findings of the Committee
  - Recommendation of the Committee
  - Signatures of Committee Members
- Issuance of the Report to:
  - Discipline Committee
  - Complainant
  - Member
  - Council

# Review by Council

- Complainant may apply to Council to review the recommendation of the Investigation Committee.  
Sec. 32(7)
- Council may:
  - Confirm the decision of the Committee; or
  - Refer the matter back to the Investigation Committee to:
    - further investigate the matter, or
    - prepare a written report recommending a discipline hearing Sec. 32(8)

# Pre-Hearing Conference

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- If the Investigation Committee recommends that the discipline committee hear and determine a complaint, a pre-hearing conference is conducted prior to the hearing. Sec. 16(2) 21.1(1)
- Provides an opportunity to make full disclosure to the member.

# Pre-Hearing Conference

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- Attendance includes:
  - Representative from the Investigation Committee, or designate and/or their Legal Counsel
  - Member and/or their Legal Counsel
  - Independent mediator
- The meeting is facilitated by the independent mediator

# Pre-Hearing Conference

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- Items that may be discussed:
  - Wording of formal complaint
  - Scheduling of hearing
  - Agreed statement of facts or conduct
  - Agreement on evidence
- Outcomes:
  - Report is issued that recommends no further action be takenOR
  - Complaint is referred to the Discipline Committee

# Issues Underlying Allegations

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- Disatisfaction with product, scope or schedule (business conflict)
- Conflict of interest
- Unauthorized use of documentation
- Misaligned expectations
- Misunderstanding of APEGS' jurisdiction and role (i.e., not a mechanism for resolving disputes nor a substitute for the courts)

# Discipline Committee

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- Provides an inquiry and judgment capability to enable the Association to meet its responsibilities under the discipline sections of the Act. Sec. 33
- Hears and determines formal complaints referred to it by the Investigation Committee
  - Essentially a “judge and jury” function



# Make-up of Discipline Committee sec. 32(7)

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- At least nine members of APEGS
- No elected members of Council
- No members of the Investigation Committee
- One of the Councillors appointed by the provincial government

# Discipline Hearings Sec. 34

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- Discipline Committee appoints up to five members to hear and determine a formal complaint (always includes public appointee)
- The discipline hearing is open to the public (except in special cases)
- The Investigation Committee and the member may be represented by legal counsel
- Proceedings are recorded by a Court reporter

# Procedures at a Hearing

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- Testimony is provided under oath or affirmation
- Witnesses may be called on behalf of the Investigation Committee and the member
- The hearing panel can determine its rules of evidence
- The complaint may be amended, added to or substituted

# Decision of Hearing Panel

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- The panel will hear the testimony and review the evidence and decide:
  - If the actions do not constitute professional incompetence or professional misconduct, that the complaint be dismissed and no further action be take; or
  - If the actions constitute professional incompetence or professional misconduct, the appropriate order.

# Orders of Discipline Panel Sec. 35

- On a finding of professional incompetence or professional misconduct, the hearing panel may issue an order:
  - expelling the member and striking his or her name from the register
  - suspending the member for a specified period
  - suspending the member subject to conditions
  - a reprimand, restrictions on practice, or penalized in any other way the panel considers just
  - a fine not exceeding \$15,000
  - that the member pay costs of the investigation and discipline hearing

# Appeal to Court Sec. 39

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- An order of a discipline panel can be appealed by the member to the Court of Queen's Bench

# Most Common Reasons for Discipline Hearings

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- Criminal offence
- Improper issuing of documents
- Failure
- Misrepresentation of qualifications
- Unauthorized use of other's documents

# Publication of Hearing Decisions

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- After the 30-day appeal period
  - On APEGS website
  - In *The Professional Edge*
  - Possibly in local newspapers



# ...in summary

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- By virtue of your profession, you will always be held accountable by your actions.
  - “what goes around, comes around”...eventually...
  - Most often in the form of a complaint.
- Professional Misconduct
  - ...if it feels wrong...it probably is wrong...
  - ...not sure? Ask another P.Eng. or P.Geo.
- Professional Incompetence
  - ...in a worst case scenario, a member has gone too far...and worse...they may not even see it...
- Self regulation
  - A means of ensuring that professional standards are met.

# Questions

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Bob McDonald, P.Eng., LL.B.  
Executive Director & Registrar

APEGS

(306) 525-9547

1-800-500-9547

[www.apegs.ca](http://www.apegs.ca)