Investigation and Discipline

Law and Ethics Seminar
Spring 2019
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 APEGSA Regulate the Professions?

• 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

• 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

• 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

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.
Ensuring public safety

Professional Misconduct Sec. 30

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

• 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

• 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

Ensuring public safety
Key Processes

• 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

- 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

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

• 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

• 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

• 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

• 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

• 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

• 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

• 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

• 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 taken
  OR
  – Complaint is referred to the Discipline Committee
Issues Underlying Allegations

- 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

• 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)

- 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

• 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

• 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

• 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 taken; 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

• 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

- Criminal offence
- Improper issuing of documents
- Failure
- Misrepresentation of qualifications
- Unauthorized use of other’s documents
Publication of Hearing Decisions

• After the 30-day appeal period
  – On APEGs website
  – In *The Professional Edge*
  – Possibly in local newspapers
...in summary

• 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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