



A P E G S

*Association of Professional Engineers
& Geoscientists of Saskatchewan*

The APEGS Investigation and Discipline Process

*Achieving a Safe and Prosperous Future
Through Engineering and Geoscience*

Introduction


This booklet is an outline of some of the procedures and guiding principles regarding The Association of Professional Engineers and Geoscientists of Saskatchewan (APEGGS) investigation and discipline process. Information not contained in this booklet can be obtained by contacting the Registrar, General Counsel, or the appropriate APEGGS staff member. In all cases the provisions of *The Engineering and Geoscience Professions Act and Bylaws* govern the process.

The public interest in professional regulation demands that investigation and discipline processes be fair, transparent and efficient. Complaints must be taken seriously and investigated properly. *The Engineering and Geoscience Professions Act* manifestly intends to leave the governance of the engineering and geoscience professions to engineers and geoscientists through APEGGS council and unless judicial intervention is clearly warranted, this expression of the legislative will is to be respected.

APEGGS expects that the entire Investigation and Discipline process can be undertaken in a fair, expeditious manner maintaining the Association's objectives of meeting public safety and maintaining high professional standards.

No member of the Investigation Committee is eligible to be a member of the Discipline Committee and no member of the Discipline Committee is eligible to be a member of the Investigation Committee.





No elected councillor is eligible to be a member of either committee, however each committee is required to include one of the publicly appointed councillors.

All actions must be undertaken pursuant to the principles of fundamental justice. Failure to do so could result in a review by the courts. In the context of an administrative tribunal, those include rules of natural justice which in turn require that the members of the Investigation Committee and Discipline Committee be impartial and disinterested. The rules of natural justice require that the committees act fairly. The concepts of fundamental justice and natural justice are critical to the process and should any questions arise as to their context in the particular investigation, advice will be sought.

The Engineering and Geoscience Professions Act, The Engineering and Geoscience Professions Regulatory Bylaws and The Engineering and Geoscience Professions Administrative Bylaws are available from the Queens Printer. The Code of Ethics is contained in Section 20 of the *Regulatory Bylaws*.

<http://www.qp.gov.sk.ca/>



General Procedures

As indicated in section 32(1) of *The Engineering and Geoscience Professions Act*, a complaint must be in writing or must be a request from the APEGS Council. The Investigation Committee is responsible for investigating the complaint.




Staff support is provided to conduct the gathering of information. A majority of the Investigation Committee must then recommend a course of action that is permitted under the *The Engineering and Geoscience Professions Act*.

The Investigation Committee with the assistance from staff support will:

1. review the complaint to:
 - a. identify the issues and areas which require further investigation or clarification;
 - b. ensure that the complaint is one which can be investigated by APEGS (see Complaint Review Threshold Test). APEGS is not a substitute for the courts and all complaints must relate to matters that the legislature has delegated to APEGS to review, i.e. professional misconduct / incompetence of a member;
 - c. consult with legal counsel if unsure whether APEGS has jurisdiction;
2. advise the member that a complaint has been received and the nature of the complaint. This is normally done by providing the member with the written complaint that was received, or the motion approved by Council requesting the investigation, and inviting comments from the member in reply as required by Regulatory Bylaw 21(2)(a);



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3. investigate the circumstances, collect evidence, and if deemed necessary by the committee, interview the member, the complainant, and potential witnesses;
 4. upon completion of the investigation, prepare the Report of the Investigation Committee;
 5. if the committee determines that a formal complaint be heard by the Discipline Committee, consult with legal counsel regarding the wording of the Report of the Investigation Committee.

Confidentiality

The policy of APEGS is that the details of an investigation are confidential and will not be disclosed to the public, the media, or APEGS members. If a formal complaint is to be heard by the Discipline Committee the proceedings of the hearing would normally be open to the public.

Complaint Review Threshold Test

In determining whether or not a complaint is one which can be investigated, it must first be established that APEGS has jurisdiction to proceed, given to them pursuant to *The Engineering and Geoscience Professions Act*. The allegations, if proved, must reasonably be regarded as professional misconduct or professional incompetence pursuant to sections 29 and 30 of *The Engineering and Geoscience Professions Act*.



Contact with Complainants

The regulatory responsibility of APEGS is delegated from government as being to the benefit of the public. It is naturally important that complainants, as members of the public, are assured that their complaint is being treated sincerely. It is therefore common practice to remain in contact with the complainant.

The outcome of an investigation may not always meet the expectations of the complainant. Some complainants will not be satisfied with the result, and it is also unfortunately true that some complainants may never be convinced that the investigation proceeded fairly and impartially.

Contact with the Member

The member complained against is contacted and advised that a complaint has been received and the nature of the complaint. Normally the member will be provided with the complaint for him or her to address fully and as well, any concerns or inquiries are communicated to the member. The member must be assured that the complaint is treated fairly, expeditiously, confidentially, and impartially in accordance with the rules of fundamental justice.

The APEGS experience is that members are very cooperative and eager to assist in the investigation. The Investigation/ Discipline Committees must reciprocate by treating the member with courtesy and respect.





Conflicts of Interest

If staff or committee members discover that they have had involvement with persons or issues which may raise a conflict or a perceived conflict of interest, they should immediately advise the Chair of the Investigation Committee, the APEGS Director of Professional Standards and/or General Counsel. Conflicts should be resolved as quickly as possible. Whenever a conflict is identified the person will remove themselves completely from the investigation.

Time Limits

It is in the best interest of all concerned that investigations be completed as quickly as possible. Investigations typically require considerable time to complete. An investigation can take a year or more from the receipt of the complaint to be completed. In some circumstances, the investigation process is impeded by legal proceedings in the courts. The Director of Professional Standards reports on the status of investigations at each meeting.

The Investigation Committee risks losing jurisdiction over a matter due to unreasonable delay unless it acts with reasonable dispatch once it receives a complaint about a member's conduct. This would include both the investigation stage and any hearing before the Discipline Committee. This length of time before jurisdiction is lost may be shortened by factors over which the committee has no control, so the sooner the process is completed, the less the risk of losing jurisdiction.

Professional Assistance

The Investigation Committee may retain legal or other assistance it considers necessary. The association's in-house staff support is also available to assist the committee in any manner necessary.


Criminal Offence - Duty to Report

Where an Investigation Committee believes the member under investigation may be guilty of a criminal offence, the committee may discontinue its investigation and report its findings to the President of the Association and the Deputy Minister of Justice. A similar obligation exists for the Discipline Committee at the conclusion of a hearing.

Report of The Investigation Committee

There is no particular form or format for Investigation Committee reports to the Discipline Committee. However, it is a requirement that the signatures of a majority of the members of the Investigation Committee appear on the report.

If the Investigation Committee is recommending a formal complaint be heard by a panel of the Discipline Committee details of the facts would normally not be included in the Investigation Committee Report. The facts will have to be proven at the hearing and do not add to the report at this stage.



However, the report would contain the wording of the allegations against the member. The Investigation Committee will normally consult legal counsel to assist in the wording of the formal complaint.

Where a Discipline Hearing is not recommended, the report should contain sufficient analysis to allow a casual reader to be satisfied as to the issues, the facts, the analysis and the reasoning. It is important the complainant understands the reasons the Investigation Committee recommended that no further action be taken.

The report will be provided to the Discipline Committee, the APEGS Council, the member, and the complainant. Matters that are personal and confidential to the member would not be disclosed to the complainant.

Review of a Decision to Close a Case

The complainant and the named member and/or certificate holder are notified in writing of a decision that no further action should be taken. The complainant may, within 30 days of this notification, make a formal application to the APEGS Council to request a review of such a decision. The request for a review must set out the grounds on which the complainant believes that the Investigation Committee's decision is in error, along with supporting documentation.

Pre-Hearing Conference

If the Investigation Committee determines that a matter is to proceed to a discipline hearing, and prior to the preparation and delivery of a formal complaint to the Discipline Committee, the Registrar is notified and a pre-hearing conference is scheduled. The pre-hearing conference involves the member, a member of the Investigation Committee or its designate, and an independent mediator. The member and the Investigation Committee can both be represented by legal counsel at the pre-hearing conference.

The main purpose of a pre-hearing conference is to disclose to the member all information relevant to the complaint. In addition, any issues that will expedite the discipline hearing should be agreed to between the parties, including scheduling of the hearing, agreed statements of fact and/or the entering of any admissions of fact or evidence.

It would normally be expected that at the conclusion of a pre-hearing conference a formal complaint would be finalized and submitted to the Discipline Committee. Any outcome at the pre-hearing conference that does not result in a case closing must go to the Discipline Committee. If, following a pre-hearing conference, the Investigation Committee is satisfied that a case can be closed, then the Investigation Committee would produce a report that no further action be taken.



Agreed Statement of Fact

A member whose conduct is the subject of a complaint that comes before a panel of the Discipline Committee may admit the complaint in an agreed statement of fact provided by the Investigation Committee's representative. The panel of the Discipline Committee shall confirm that the conduct constitutes professional misconduct or professional incompetence. The panel of the Discipline Committee will receive evidence and argument from the Investigation Committee's representative and the member regarding the appropriate penalty.

In addition, the parties may agree to submit an agreed statement of facts with no admission by the complainant as to misconduct or incompetence and the panel of the Discipline Committee would then hear the argument and determine whether the conduct constitutes professional misconduct or professional incompetence.

Committees Independent

It is imperative that the Investigation Committee and Discipline Committee remain independent in all areas, including staff support and legal advice. The Discipline Committee, as the panel deciding the matter, must exercise its own independent judgment. In practice, the Discipline Committee will use legal advice concerning any agreements as to admissions of facts or admission of evidence and the appropriate penalty.


The Discipline Hearing

If the complaint proceeds to a formal discipline hearing, a written notice of the hearing is prepared and served on the named member or certificate holder. The complainant is also notified. The Discipline Committee appoints a suitable panel from among its members to conduct the formal hearing. The panel has the same powers as the Discipline Committee.

The hearing is held at a location determined by APEGS and is normally open to the public although portions of the hearing may be closed to the public if the Discipline Panel agrees that some aspects of the case are of a sensitive nature or that an open hearing will unduly violate a person's privacy. In either case, a court reporter will be present.

The Investigation Committee, represented by a hearing committee and legal counsel, directs the initial presentation of facts to the panel but individual committee members are only present if called as witnesses. The complainant and the named member or representative(s) of the certificate holder may be called as witnesses. Witnesses may be called to appear for the Investigation Committee or the member. Both the Investigation Committee and the named member or certificate holder may be represented by legal counsel, at their own expense. The panel may also be advised by legal counsel.

When the hearing has concluded, the panel will examine all the evidence and testimony presented before reaching a decision.



If the panel does not find the actions to be professional misconduct or professional incompetence, it will recommend that no further action be taken and the case will be dismissed.

If the panel finds the actions to be professional misconduct or professional incompetence, the member or certificate holder may be:

1. expelled from the association and struck from the register;
2. suspended from the association for a specific period;
3. suspended from the association until having complied with conditions such as obtaining specified training, medical treatment or counseling, or undergoing treatment for substance addiction;
4. restricted to practice only under conditions such as limiting practice to specified types of work or in partnership with a specified member, obtaining specified training, medical treatment or counseling, or undergoing treatment for substance addiction;
5. reprimanded; or
6. penalized in any other way that the panel considers just.

In addition to these penalties, the panel may impose a fine of up to \$15,000 and may assess costs of the hearing to the member or certificate holder.

A member may appeal decisions of the panel of the Discipline Committee to the Saskatchewan Court of Queen's Bench.



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