

## BY-LAW 15: COMPLAINTS AND DISCIPLINE – DRAFT PROPOSED WORDING

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### PART XV COMPLAINTS AND DISCIPLINE

#### 15.1 Definitions

In this part,

“**appeal committee**” means the committee of the council appointed under sub-section 36(2) of the Act;

“**caution**” means a formal written caution issued under clause 35(1)(e) of the Act;

“**council appeal**” means an appeal to the council under sub-section 53(1) of the Act;

“**discipline committee**” means and includes the discipline committee and any panel of the discipline committee;

“**investigator**” means the employee of the association or a third party retained by the association to conduct an investigation of a complaint; and

“**practitioner**” means any member, licensee, intern or holder of a certificate of authorization.

#### 15.2 General

##### 15.2.1 Conflict of Interest

No person who, or whose employer, has any interest in or any prior involvement with or who may be called as a witness or who otherwise may have any conflict of interest in connection with any complaint, shall serve as a member of any committee or panel investigating or hearing such complaint.

##### 15.2.2 Communications and the Registrar

Except as otherwise provided in any policy or procedure adopted by the council, all notices given and communications made in connection with any complaint, proceeding, decision or order under this part shall be given or made through the registrar. The registrar shall not participate in any investigation or any proceedings of any committee or panel under this part.

#### 15.3 Investigation Committee

15.3.1.1 The council shall appoint an investigation committee consisting of,

(a) not fewer than 1, nor more than \_\_\_ lay persons, but subject to subsection 30(b) of the Act; and

(b) not fewer than 3, nor more than \_\_\_ members of the association representing various disciplines of engineering and geoscience who are not members of the council or the discipline committee.

15.3.1.2 Except in the case of the first appointments made after this by-law comes into force, all appointees shall be appointed for a term of 2 years and are eligible for re-appointment for 2 additional terms of 2 years each. In the case of the first appointments made after this by-law comes into force a majority of the lay persons and members shall be appointed for a term of 3 years each and shall be eligible for reappointment for 2 additional terms of 2 years each. Any appointee’s final term shall be automatically extended and shall continue for so long as reasonably necessary to allow such appointee to complete investigations in which such appointee is then participating.

- 15.3.1.3** The council shall designate one of the appointees as the chair, who shall serve in such capacity for a period of 1 year, renewable annually.
- 15.3.1.4** The council shall establish policies and procedures, not inconsistent with the Act or these by-laws, for the governance of the investigation committee.
- 15.3.2** The investigation committee may employ an investigator. Except as limited in any document appointing or retaining an investigator, the investigator shall have the powers of the investigation committee in conducting an investigation.
- 15.3.3** Once an investigation has been commenced, the investigation committee may investigate any other matter that comes to its attention during the course of such investigation.
- 15.3.4** The investigation committee may prepare and publish directions and practice notes on matters related to the practice of professional engineering and professional geoscience. When consulted, the investigation committee may offer advice to practitioners on specific matters.
- 15.3.5.1** Before issuing a caution, the investigation committee shall give notice to the investigated person of its proposal to issue such caution and the terms thereof.
- 15.3.5.2** If the investigated person refuses to accept the investigation committee's proposed caution, or fails to respond to the notice thereof within 14 days of the date of any such notice, then the investigation committee shall formulate a charge under clause 35(1)(b) of the Act in respect of the complaint.
- 15.3.5.3** The investigated person may, within 14 days of the date of any notice issued under by-law 15.3.5.1, give notice to the investigation committee that the investigated person intends to make a proposal to vary the terms of the investigation committee's proposed caution. If the investigated person gives such notice within the aforesaid time period, then the investigated person shall, within a further period of 30 days from the date of the notice given by the investigated person, provide written or oral representations proposing changes to the investigation committee's proposed caution.
- If the investigated person fails to provide such written or oral representation within said period of 30 days, or if the investigation committee and the investigated person are unable to agree upon the terms of the caution on or before the later of 10 days from the date of receipt of the investigated person's proposed charges and the date of the next meeting of the investigation committee, then the investigated person shall be deemed to have refused to accept the investigation committee's proposed caution and the investigation committee shall formulate a charge under clause 35(1)(b) of the Act in respect of the complaint, which charge shall be forwarded to the discipline committee.
- 15.3.6** No notice of a proposal to issue a caution need be given to the complainant and the complainant has no right to make a proposal to vary any proposed caution. If a caution is issued, notice setting out the terms of the caution (but not a copy of the caution) shall be given to the complainant.
- 15.3.7** If the investigation committee accepts a voluntary withdrawal under clause 35(1)(d) of the Act, the practitioner who has withdrawn shall not be re-admitted as a practitioner unless the withdrawn practitioner submits evidence, satisfactory to the council, that the withdrawn practitioner is fit to practice professional engineering or professional geoscience, as the case may be.

**15.3.8** After completing its investigation, the investigation committee shall give notice to the investigated person and the complainant setting out the actions taken by the investigation committee in respect of the complaint. If the complaint is dismissed, the complainant shall also be notified of the complainant's right of appeal to the appeal committee and that any such appeal must be accompanied by the complainant's reasons therefore.

#### **15.4 Appeal of Dismissal of Complaint**

**15.4.1** A notice of appeal to the appeal committee under subsection 36(1) of the Act shall include detailed reasons for the appeal.

**15.4.2** An appeal to the appeal committee shall be an appeal on the record of the proceedings of the investigation committee, provided that the appeal committee may, in its discretion, receive further evidence.

**15.4.3** Each of the investigated person and the complainant is entitled to make a written submission to the appeal committee. In addition, the appeal committee, in its discretion, may hear oral submissions from the investigated person and the complainant.

**15.4.4** The appeal committee shall give notice to the investigated person and the complainant setting out the decision of the appeal committee.

#### **15.5 Discipline Committee**

**15.5.1.1** The council shall appoint a discipline committee consisting of 3 lay persons appointed under clause 38(1)(b) of the Act and 7 members of the association representing various disciplines of engineering and geoscience who are not members of the council, appointed under clause 38(1)(c) of the Act. The council shall designate one of the appointees as the chair.

**15.5.1.2** Except in the case of the first appointments made after this by-law comes into force, all appointees shall be appointed for a term of 4 years and are eligible for re-appointment for 1 additional term of 4 years. In the case of the first appointments made after this by-law comes into force, the chair, 2 lay persons and 3 members shall be appointed for a term of 5 years and shall be eligible for reappointment for 1 additional term of 4 years. Any appointee's final term shall be automatically extended and shall continue so long as necessary to allow such appointee to complete disciplinary hearings in which such appointee is then participating.

**15.5.1.3** The council shall establish policies and procedures, not inconsistent with the Act or these by-laws, for the governance of the discipline committee.

#### **15.6 Hearing Procedures**

**15.6.1.1** The discipline committee shall commence a hearing of any charge referred by the investigation committee within 120 days of such referral.

**15.6.1.2** Notice of the hearing and a copy of the charge shall be given to the investigated person and the complainant not less than 30 days before the commencement of the hearing.

**15.6.2** The investigation committee shall present the evidence in support of the charge.

**15.6.3** The discipline committee is not bound by the rules of law concerning evidence and may accept any evidence that it considers to be credible and reliable.

## **15.7 Appeals of Discipline Decisions**

- 15.7.1** Every notice of a council appeal shall include written reasons and shall be accompanied by a cash deposit of \$500.
- 15.7.2** The reasons given by the investigated person or the complainant for the council appeal shall be provided to the council.
- 15.7.3** The council shall commence a hearing of the council appeal within 90 days of receiving notice of the appeal and the cash deposit therefore.
- 15.7.4** Notice of the hearing of the council appeal shall be given to the investigated person and the complainant not less than 30 days before the commencement of the hearing.
- 15.7.5** A council appeal shall be an appeal on the record of the proceedings of the discipline committee, provided that the council may, in its discretion, receive further evidence.
- 15.7.6** The council shall establish its own rules of procedure for council appeals.
- 15.7.7** The council shall give notice of its decision to each of the investigated person, the complainant and the discipline committee.

## **15.8 Notice**

- 15.8.1** Any notice to be given under this part shall be given by email, by registered mail, or by personal service, and;
- (a) if to the registrar by e-mail, addressed to the registrar's e-mail address shown on the association's website and if by registered mail or personal service, addressed to or served upon the registrar at the head office of the association, or
  - (b) if to any other person by e-mail, addressed to his or her e-mail address and if by registered mail or personal service to his or her physical address, in each case as recorded in the records of the association.

Any notice given by email shall be deemed to have been received when receipt has been acknowledged by the addressee.

Any notice given by registered mail shall be deemed to have been received by the addressee on the third business day following mailing, unless at the time of mailing there is an actual or threatened disruption of postal services.

## **15.9 Records, Confidentiality and Release of Information**

- 15.9.1.1** Complaints, decisions and information related to an investigated person shall be recorded and retained in the association's discipline file for such person.
- 15.9.1.2** No person shall access a person's disciplinary file excepting the registrar, the council, the investigation committee, the discipline committee, the registration committee and their respective legal counsel, in each case only for purpose of performing such person's or committee's function under the Act and these by-laws.
- 15.9.2.1** Until final disposition of any complaint and the expiry of all appeal periods, no information regarding any complaint, including the identity of any investigated person or the complainant shall be disclosed, excepting such disclosure as may be necessary to review, assess, investigate, prosecute or hear the complaint or to prepare any decision or order or

to provide a response to a proceeding under sub-section 37(2) of the Act or to prepare any report on the foregoing.

**15.9.2.2** Notwithstanding by-law 15.9.2.1, the particulars of any charge formulated under clause 35(1)(b) of the Act shall be published in accordance with the association's policy regarding publication.

**15.9.2.3** After the entry of a conviction and the expiry of all appeal periods, the particulars of the complaint and the decision or order of the discipline committee shall be published in accordance with the association's policy regarding publication.

**15.9.2.4** Notwithstanding by-law 15.9.2.1, if in the course of any investigation it comes to the attention of the investigation committee that any engineering or geoscientific work may be dangerous to persons or property, the investigation shall cause such work to be brought to the attention of the authority having jurisdiction, the person having professional responsibility and the owner.

**15.9.5** The council may, upon application made not less than 10 years after the date of any conviction or penalty registered by the investigation committee or the discipline committee against any practitioner or former practitioner, and after consideration of such information as the council deems pertinent, expunge the public record of any such conviction or penalty.

**15.10 Notice to Other Associations**

**15.10.1** After all appeal periods in connection with any decision or order of the investigation committee or the discipline committee have expired, the association may notify any other association of professional engineers or professional geoscientists of such decision or order and may provide such association with a copy thereof.