

By-law 15: Introduction

This proposal was prepared by the By-law Review Committee of Council as part of the multi-year by-law refresh project.

In reviewing By-law 15, the committee first developed a list of guiding principles and then reviewed them with the Investigation Committee and in member engagement sessions. These principles were initially based on the existing by-law but were modified in a number of ways to improve the efficiency and transparency of the investigation and discipline processes.

These principles were then used to draft a new version of the by-law which includes:

- definition of a staff investigator role with respect to the Investigation Committee, to allow the committee to increase their use of staff investigators in achieving their mandate
- removal of a procedure pertaining to the review of penalty proposals by the Discipline Committee that was inconsistent with the Act
- better definition of what is published and when, for greater transparency and consistency
- allowance for expunging of public disciplinary records via petition to council (charges would still remain in the Association's private records)
- movement of some procedural elements (eg. specific methods for communicating the decision of the Investigation Committee) to policy, to give the committees more flexibility to adjust procedural details as needed by working with Council

After review, extensive engagement with members and the Investigation Committee, and consultation with legal counsel, the committee is recommending that the By-law 15: Complaints and Discipline be replaced by the version proposed here.

PART XV COMPLAINTS AND DISCIPLINE

15.1 Definitions

In this part,

“**alternative dispute resolution process**” means any mediation, negotiation or other process entered into with the objective of resolving a complaint without a hearing before the discipline committee;

“**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 establish policies and procedures, not inconsistent with the Act or these by-laws, for the governance of the investigation committee.

15.3.1.2 Decisions of the investigation committee and any sub-committee thereof shall be by majority vote of those members of the committee or the sub-committee present in person at a duly constituted meeting.

15.3.2.1 Alternative Dispute Resolution

At any time before or after commencing an investigation, the investigation committee may enter into an alternative dispute resolution process with the investigated person.

15.3.2.2 The alternative dispute resolution process shall be conducted by the chair, or a member of the investigation committee appointed by the chair, who shall report the progress of such process to the investigation committee and may from time to time seek direction from the investigation committee.

15.3.2.3 An alternative dispute resolution process shall be concluded within 30 days of the date of commencement thereof, unless such time is extended by the investigation committee.

15.3.2.4 In connection with any alternative dispute resolution process, the investigation committee may, with the agreement of the investigated person and the complainant, take any action that the investigation committee can otherwise take, or make any order that the discipline committee can make, under the Act.

15.3.3.1 Investigator

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.

15.3.3.2 The Investigation committee or, with the approval of the investigation committee a sub-committee of the investigation committee, may retain the services of experts and professionals to assist in reviewing and investigating any complaint.

15.3.4.1 Investigation of Other Matters

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.

15.3.5.1 Directions and Practice Notes

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.

15.3.6.1 Cautions

Before issuing a caution under clause 35(1)(e) of the Act, the investigation committee shall give notice to the investigated person of its proposal to issue such caution and the terms thereof.

15.3.6.2 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.

15.3.6.3 The investigated person may, within 14 days of the date of any notice issued under by-law 15.3.6.1, 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.

15.3.6.4 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 Voluntary Withdrawal

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 Consultation with Discipline Committee before imposing penalty

Before registering a conviction and imposing a penalty under clause 35(1)(f) of the Act, the investigation committee shall consult with member of the discipline committee appointed by the chair of the discipline committee on the appropriateness of such penalty.

15.3.9 Report of Investigation Committee

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

15.5.2.1 Hearing Procedures

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

15.5.2.2 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.

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

15.5.2.4 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.

15.6 Appeals of Discipline Decisions

15.6.1 Every notice of a council appeal shall include written reasons and shall be accompanied by a cash deposit of \$500.

15.6.2 The reasons given by the investigated person or the complainant for the council appeal shall be provided to the council.

- 15.6.3** The council shall commence a hearing of the council appeal within 90 days of receiving notice of the appeal and the cash deposit therefore.
- 15.6.4** 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.
- 15.6.5** 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.
- 15.6.6** The council shall establish its own rules of procedure for council appeals.
- 15.6.7** The council shall give notice of its decision to each of the investigated person, the complainant and the discipline committee.

15.7 Notice

- 15.7.1** 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.

15.8 Records, Confidentiality and Release of Information

- 15.8.1.1** Complaints, decisions and information related to an investigated person shall be recorded and retained in the association's discipline file for such person.
- 15.8.1.2** 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.

- 15.8.2.1** 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.
- 15.8.2.2** Notwithstanding by-law 15.8.2.1, 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.
- 15.8.2.3** 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.
- 15.8.2.4** Notwithstanding by-law 15.8.2.1, 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.
- 15.8.5** 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.

15.9 Notice to Other Associations

- 15.9.1** 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.