



## Obligation to Comply and Cooperate

*Improved Public Interest  
Improved Regulatory Effectiveness and Efficiency*

To better protect the public, APEGA's legislation should contain clear language to require Members and Permit Holders to comply with the governing legislation and related standards and policies, and to cooperate with and provide documents or information requested by APEGA as part of exercising its regulatory mandate under the legislation.

### Background

Currently:

- There is an implied obligation for Members and Permit Holders to comply with the *Engineering and Geoscience Professions (EGP) Act*, *General Regulation*, *Bylaws*, and *Code of Ethics*.
- The *General Regulation* includes specific provisions requiring compliance with the payment of annual dues, Continuous Professional Development Program and the Code of Ethics.
- The Code of Ethics states that Members and Permit Holders must comply with applicable statutes, regulations, and bylaws in their professional practices.
- Failure to comply with the *EGP Act*, *General Regulation*, or *Bylaws* or conduct that contravenes the Code of Ethics that is of a serious nature may constitute unprofessional conduct.
- Current tools available in response to a failure to comply or cooperate include treating the matter as a complaint and proceeding through the disciplinary process, or conducting a practice review.

Why is this important?

- It is in the public interest that Members and Permit Holders comply with the Act, General Regulation, Bylaws, Code of Ethics, Practice Standards, Practice Bulletins and policies established by Council and provide APEGA with documents or other information requested by APEGA in carrying out its regulatory mandate.
- These obligations should be explicitly stated in the legislation so the public as well as Members and Permit Holders know that Members and Permit Holders are obligated to comply and cooperate and that there are consequences for failing to do so.
- In cases not involving discipline matters, APEGA can improve regulatory efficiencies and effectiveness by having other tools available in order to ensure compliance and cooperation.
- Expressly stating that Members and Permit Holders are obligated to comply and cooperate allows APEGA to better use its resources to carry out its mandate to regulate and protect the public.

Proposed legislative change

It is recommended that the legislation be amended to explicitly state that:

- Members and Permit Holders must:
  - comply with the *EGP Act*, General Regulation, Bylaws, Code of Ethics, Practice Standards, Practice Bulletins and policies established by Council.
  - cooperate with requests to provide all documents or other information made by APEGA as part of exercising its regulatory mandate under the legislation.
- There are consequences for failing to comply or cooperate which could include suspending, canceling, imposing restrictions or not issuing or renewing a licence or permit to practice.
  - Members and Permit Holders will have the right to appeal such decision to the Appeal Board.

- APEGA will have the ability to apply for a court order enjoining a person from violating any part of the Act, General Regulation or Bylaws; or directing a person to take some action to comply or to rectify any contravention.

#### Examples of relevant existing legislation

Below are examples of similar provisions found in other pieces of legislation in Alberta and other provinces.

#### **Obligation to Comply**

*Chartered Professional Accountants Act, Alberta*

5 A registrant must comply with

- (a) this Act and the regulations, bylaws, directives, resolutions, rules of professional conduct and practice standards, and
- (b) any requirement, prohibition, restriction, condition or undertaking on the registrant's practice or registration imposed, given or provided under this Act, a former Act or the regulations.

6 No person shall knowingly

- (a) obstruct or interfere with a registrant's complying with section 5, or
- (b) request or permit a registrant to contravene or not to comply with section 5 or assist a registrant in contravening or not complying with section 5.

#### **Consequences of Failing to Comply and Cooperate**

*Engineers and Geoscientists Act, British Columbia*

14(1) The council must issue a certificate of authorization to a corporation, partnership or other legal entity for the practice of professional engineering or for the practice of professional geoscience if the council is satisfied that the corporation, partnership or other legal entity

- (a) has on its active staff members or licensees who directly supervise and assume responsibility for the practice of professional engineering or for the practice of professional geoscience undertaken by the corporation, partnership or other legal entity,

14(8) Despite subsection (1), the council may refuse to issue or renew a certificate of authorization if the applicant for the certificate of authorization or the certificate holder, as the case may be, or a member or licensee described in subsection (1) (a)

- (b) has contravened this Act, the bylaws or the code of ethics of the association, or
- (c) has demonstrated incompetence, negligence or unprofessional conduct.

*Chartered Professional Accountants Act, Alberta*

54(2) If a registrant fails to meet the requirements *[for continuing registration]* set out in subsection (1)

- (a) the registrant's registration may be suspended, cancelled or made subject to practice restrictions in accordance with the bylaws,
- (b) the registrant is liable for any financial penalty for the contravention imposed in accordance with the bylaws, and
- (c) the registrar may make a complaint under section 66 about the conduct of the registrant.

**Application to Court**

*Chartered Professional Accountants Act, Alberta*

8(1) The Court of Queen's Bench, on application by the CPAA

- (a) may grant an injunction prohibiting any person from doing any act that contravenes this Division *[which includes sections 5 and 6, found under examples of "Obligation to Comply", above]*, even if other proceedings may be taken and sanctions may be imposed for that contravention under this Act, or
- (b) may make an order requiring or directing a person to take some action in order to comply with this Division or to rectify any contravention of this Division.

*Professional Engineers Act, Ontario*

39 (1) Where it appears to the Association that any person does not comply with this Act or the regulations, despite the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the Association may apply to a judge of the Superior Court of Justice for an order directing the person to comply with the provision, and upon the application the judge may make the order or such other order as the judge thinks fit.

*The Engineering and Geoscientific Professions Act, Manitoba*

64 On application of the association, the court may grant an injunction

- (b) enjoining a person from employing for work that is the practice of professional engineering or professional geoscience any person not entitled to practice professional engineering or professional geoscience under this Act; or
- (c) enjoining a person from violating any provision of this Act whether or not such person has been found guilty of an offence under that provision.