



Updating Tools for Proceedings by APEGA's Statutory Entities

*Improved Public Interest
Improved Regulatory Effectiveness and Efficiency*

A number of changes are proposed to the *Engineering and Geoscience Professions Act* to provide APEGA's five statutory entities (Investigative Committee, Discipline Committee, Practice Review Board, Board of Examiners, and Appeal Board) with more tools and options to manage their proceedings.

Background

Under the current legislation:

- The Investigative Committee can form panels with investigative powers and the Discipline Committee can form discipline panels with decision-making authority.
- The question of whether statutory entities can proceed by way of written or oral submissions (or both) is silent.
- The Discipline Committee and Appeal Board can proceed with a matter in the absence of a party, if the party has been given sufficient notice of the proceeding.

Why is this important?

- It is in the public interest that the regulatory proceedings of APEGA's five statutory entities continue to follow the principles of natural justice and be transparent, objective, impartial, and fair and consistent.
- At the same time, APEGA's statutory entities must have the ability to balance these natural justice principles against the need to exercise their regulatory obligations effectively and efficiently in the public interest.

Proposed legislative change

It is recommended that the legislation be amended to explicitly authorize all statutory entities to:

- Determine whether their proceedings will proceed by way of written or oral submissions, or both. Each statutory entity will manage the use of this authority through policy guidelines developed by the respective statutory entity.
- Create panels with decision-making authority, including investigative, discipline, appeal, registration and practice review panels:
 - Panels may be made of one or more members chosen from the rosters of the relevant statutory entity. Discipline and appeal panels of three or more members should include public members, selected from a roster. Each statutory entity will manage the use of this authority through policy guidelines developed by the respective entity.

Although it would not be the usual practice, panels may hold proceedings and make decisions in the absence of a complainant, appellant, applicant, Member under review, or investigated person after appropriate notice of the proceeding being given to the individual.

- That any person who has a right to appeal a statutory entity's decision to an Appeal panel may commence the appeal by filing a written notice of appeal that must state the grounds for the appeal, including what is being appealed, why the appeal is being made, and what results are being sought from the appeal. The criteria for which the grounds of the appeal must meet will be established in the regulation and further developed through policy.

Examples of relevant existing legislation

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

Written and Oral Proceedings

Chartered Professional Accountants Act, *Alberta*

113(4) The appeal tribunal may, after considering submissions from the parties to an appeal, direct that the appeal or any part of an appeal proceed by way of written or oral submissions, or both.

Health Professions Act (Alberta)

68(1) A complainant may apply, in writing with reasons, to the hearings director for a review of the dismissal of a complaint within 30 days after being notified of the dismissal under section 55 or 67.

(4) A complaint review committee may determine whether the submissions to it with respect to a review under subsection (3) by the complainant and the investigated person must be written, oral or both.

Professional Engineers Act, Ontario

14(5) A committee shall receive written representations from an applicant but is not required to hold or to afford to any person a hearing or an opportunity to make oral submissions before making a determination under subsection (3).

Administrative Procedures and Jurisdiction Act, Alberta

6 Where by this Part a party is entitled to make representations to an authority with respect to the exercise of a statutory power, the authority is not by this Part required to afford an opportunity to the party

(a) to make oral representations, or

(b) to be represented by counsel,

if the authority affords the party an opportunity to make representations adequately in writing, but nothing in this Part deprives a party of a right conferred by any other Act to make oral representations or to be represented by counsel.

Panels of One or More

Statutory Powers Procedure Act, Ontario

4.2.1(1) The chair of a tribunal may decide that a proceeding be heard by a panel of one person and assign the person to hear the proceeding unless there is a statutory requirement in another Act that the proceeding be heard by a panel of more than one person.

Reduction in number of panel members

(2) Where there is a statutory requirement in another Act that a proceeding be heard by a panel of a specified number of persons, the chair of the tribunal may assign to the panel one person or any lesser number of persons than the number specified in the other Act if all parties to the proceeding consent.

Proceeding in Absence of a Party

Architects Act, Alberta

- 47 The review panel or, on appeal, the Council, on proof of service on the investigated person of the notice of hearing or appeal, may
- (a) proceed with the hearing or appeal in the absence of the investigated person, and
 - (b) act, decide or report on the matter being heard or appealed in the same way as though the investigated person were in attendance.

Health Professions Act, Alberta

- 79(6) Despite section 72(1), if the investigated person does not appear at a hearing and there is proof that the investigated person has been given a notice to attend the hearing tribunal may
- (a) proceed with the hearing in the absence of the investigated person, and
 - (b) act or decide on the matter being heard in the absence of the investigated person.

Chartered Professional Accountants Act, Alberta

- 92 A discipline tribunal, on evidence of service of notice of the hearing on an investigated party, may
- (a) proceed with the hearing in the absence of the investigated party, and
 - (b) act and decide on the allegations of unprofessional conduct referred to it.

Grounds for Appeal

Chartered Professional Accountants Act, Alberta

- 111(1) When a person has a right to appeal to an appeal tribunal under this Act, that person may commence the appeal by sending to the CPAA a written notice of appeal, which must explain
- (a) what is being appealed,
 - (b) why the appeal is being made, and
 - (c) what results are sought from the appeal.

Health Professions Act, Alberta

Assessing incapacity

118(6) The regulated member may appeal a direction of the complaints director under subsection (1), (2) or (4) to the council.

(7) An appeal under subsection (6) must be in writing, must set out the grounds for the appeal and must be served on the registrar within 7 days after receipt of the direction by the regulated member.