

# CAPACITY TO PRACTICE

Fall 2015 Consultations

*The Engineering and Geoscience Professions Act*



The Association of Professional  
Engineers and Geoscientists of Alberta

**Contents**

1 [Overview](#)..... 3

2 [Discussion](#) ..... 4

3 [Research Summary](#) ..... 6

4 [Appendices](#) ..... 6

## 1 Overview

To better protect the public, APEGA must have the ability to quickly suspend or restrict a Member's licence if a Member is unable to provide professional services in a safe and competent manner due to an impaired health condition.

### Background

- Sometimes mental health issues, substance addictions, or physical illnesses and disorders can impair a Member's ability to provide professional services in a safe and competent manner. This is referred to as a Member's incapacity or fitness to practise.
- Currently, the Discipline Committee may review a Member's incapacity or fitness to practise but only after a complaint, full investigation, and hearing, which can be a lengthy process.
- Currently, the Investigative Committee may suspend a Member pending a preliminary investigation or disciplinary hearing, but a complaint must be received first.

### Why this is important

- The management of a Member's fitness to practise is a matter of public protection. It is not a matter of discipline or punishment.
- APEGA needs to be able to respond quickly in a respectful and confidential manner to protect the public and to help the individual.
- The question of a Member's or applicant's fitness to practise might arise from sources other than a formal complaint. To adequately protect the public, APEGA needs to be able to respond quickly and appropriately.

### Proposed legislative change

- Authorize the Registrar to require a Member or applicant to undergo independent, third-party mental or physical examinations to assess the person's fitness to practise.
- Authorize the Registrar to restrict or suspend a Member's licence pending receipt of the results of the medical assessment.
- Authorize the Registrar to maintain the restriction or suspension until the incapacity has been treated and addressed.

## Effect of Proposed Change

- It authorizes APEGA to proactively request a medical assessment of a Member's or applicant's fitness to practise if there are reasonable and probable grounds to believe the individual is incapacitated.
- It authorizes APEGA to suspend or restrict an individual's licence to practise in these cases.
- It places the authority to act at the most responsive and appropriate level of the organization.
- It aligns the legislation with other modern, self-regulatory associations in Alberta and Canada.

## 2 Discussion

The term *incapacity* (also called *fitness to practise*) refers to substance addiction or physical, mental, or emotional conditions or disorders that impair a Member's ability to provide professional services in a safe and competent manner.

When a Member's capacity or fitness to practise is in question, the existing legislative options are limited, insufficient, and available too late in the review process.

None of the existing options are within the power of the Registrar. Currently, the Discipline Committee has the authority to make orders on disability or addiction, but only after a discipline hearing and only if the Discipline Committee finds there was unprofessional conduct or unskilled practice. The Investigative Committee can suspend a Member's registration pending a preliminary investigation. The Practice Review Board may, after a review of an individual practitioner, make any order the Discipline Committee can make (Appendix 1).

No authority exists for the Board of Examiners (BOE) to consider incapacity when determining eligibility for registration, and the BOE has no mechanism to require an applicant to undergo medical or other assessments when the BOE suspects an incapacity issue that may impair an applicant's ability to practise.

Similarly, there is no mechanism to require a registered Member to undergo medical or other assessments when APEGA suspects an incapacity issue. APEGA can only make orders relating to disability or addiction as part of the disciplinary process following a complaint or if a practice review raises a potential incapacity issue.

APEGA recommends that the Registrar be authorized to inquire into a Member's or applicant's potential incapacity issue and to make corresponding orders to restrict or suspend a Member's practice, or an application for registration, if required to protect the public. Introducing incapacity

provisions into the new legislation will protect the public and help, not punish, the individual suffering from a health condition that impairs his or her ability to provide professional services in a safe and competent manner.

If any APEGA's statutory boards or panels suspect that a Member's fitness to practise is in question, that Board or panel should have the ability to refer the matter to the Registrar. For example, the Board of Examiners, Practice Review Board, discipline panel or investigation panel may notice inconsistent practises and behaviours during an individual's application for registration, throughout an investigation, during a practice review and/or throughout a discipline hearing or investigation.

Where a Member or applicant's fitness to practise may be in question, the proposed legislative change gives the Registrar the authority to better understand the Member's or applicant's ability to provide professional services in a safe and competent manner, by directing them to submit to a physical or mental examination through an independent, third-party examination. The Registrar would have the authority to suspend or restrict a Member's practice or an application for registration pending evaluation and receipt of the results of those examinations. Any such examinations would be conducted by independent, expert, medical professionals.

Following receipt and review of the independent examination results, the Registrar should have the authority to suspend or impose restrictions on the Member's practice or on an applicant until the Member or applicant provides proof of treatment by an expert medical professional that the identified issues have been addressed.

The Member or applicant would have the right to appeal the Registrar's decision to a panel of the Appeal Board, which would review the Registrar's decision to ensure the Registrar followed proper process and exercised his or her authority per established policy. The ability to appeal the Registrar's decision balances the rights of the Member or applicant and APEGA's requirement to protect the public interest.

It is in the public interest for APEGA to have the ability to restrict or suspend a Member's practice or and applicant if they are suffering with a condition that impairs his or her ability to provide professional services in a safe and competent manner. It is in the Member's and applicant's interest to receive the treatment or other help needed to overcome the condition. The proposed changes empower APEGA to work with the individuals towards achieving that end and to do so in a timely manner. Placing this authority with the Registrar allows the issue to be dealt with promptly, avoiding the delays of needing the Investigative or Discipline Committee to respond to the situation.

These recommended changes will allow APEGA to address sensitive matters in a compassionate manner while also addressing public interest and safety.

### 3 Research Summary

Among engineering and geoscience associations in Canada, only the Ordre des ingénieurs du Québec and the Order des géologues du Québec have specific legislation for incapacity (Appendix 2 and 2A). The rest must rely on provisions related generally to issues of discipline. In about half of the constituent associations, one entity (it is the Registrar for the Association of Professional Geoscientists of Ontario) has the authority to suspend or impose conditions on a member pending an investigation or disciplinary decision. The member's right to apply to the court to stay such a decision is expressly stated in some legislation.

Proposed amendments to the B.C. legislation include both a requirement regarding fitness to practise and provisions allowing the Association of Professional Engineers and Geoscientists of British Columbia's Investigative Committee to impose interim suspensions or conditions.

The terms *addiction*, *medical examination*, or *treatment* are specifically mentioned in the legislation of 5 constituent associations.

About half of all legislation governing Alberta's professional associations include provisions to address incapacity (Appendix 3 and 3A). The *Health Professions Act* and the *Veterinary Act* in Alberta contain similar provisions, as does the *Professional Code* governing engineers and geoscientists in Quebec. Changes and additions found in the *Chartered Professional Accountants Act* also allow incapacity of registrants to be addressed in a dignified manner and not treated or perceived as a disciplinary matter (Appendix 3).

In those, Alberta professional associations have the authority to suspend or impose conditions on a member pending an investigation or disciplinary proceeding. It should be noted that APEGA researched the term *addiction* and found that it was specifically mentioned in various pieces of legislation for the Alberta professional associations, whereas *medical examination* and *treatment* were mentioned only in legislation containing provisions aimed specifically at assessing incapacity.

### 4 Appendices

- Appendix 1 Existing Legislation Pertaining to Remedies for Incapacity or Fitness to Practise
- Appendix 2 Summary and Analysis of Canadian Engineering and Geoscience Associations
- Appendix 2A Relevant Provisions from the Legislation of Canadian Engineering and Geoscience Associations
- Appendix 3 Summary and Analysis of Alberta Professional Associations
- Appendix 3A Relevant Provisions from the Legislation of Other Alberta Professional Associations