

FORMALIZING THE MOBILITY OF DISCIPLINE DECISIONS

Fall 2015 Consultations

The Engineering and Geoscience Professions Act



The Association of Professional
Engineers and Geoscientists of Alberta

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1 Overview

To better protect the public, APEGA must have the ability to respond quickly if needed. If the licence of a Member or Permit Holder has been cancelled, suspended, or restricted in another province because of unskilled practice or unprofessional conduct, APEGA needs to be able to act immediately to cancel, suspend, or impose restrictions on that Member's or Permit Holder's licence to practice in Alberta.

Background

- In today's marketplace, individuals and companies are often licensed in multiple provinces. APEGA has the jurisdiction, and the obligation, to discipline Members and Permit Holders for conduct that occurs both inside and outside Alberta.
- Currently, if an individual or company is licensed in Alberta and has had that licence cancelled, suspended, or restricted in another province because of unskilled practice or unprofessional conduct, APEGA cannot use that other association's discipline decision and order as a basis to impose discipline sanctions in Alberta. This puts the Alberta public at risk while APEGA conducts its own investigation and disciplinary hearing.
- Currently, the Investigative Committee may suspend a Member or Permit Holder on an interim basis pending a preliminary investigation or disciplinary hearing, but a complaint must be received first.

Why is this important

- Although the Investigative Committee can suspend a Member or Permit Holder on an interim basis pending a preliminary investigation or disciplinary hearing, the Investigative Committee cannot cancel or impose restrictions on a Member's or Permit Holder's licence to practise until after a full investigation and disciplinary hearing.
- It takes months to conduct a full investigation and disciplinary hearing. If a Member's or Permit Holder's licence has been suspended, cancelled, or restricted in another province, it is in the interest of the public of Alberta that APEGA can quickly suspend, cancel, or restrict that Member's or Permit Holder's licence to practise in Alberta.
- Using resources for APEGA to conduct a full investigation and disciplinary hearing should not be necessary given that the Member or Permit Holder has already undergone a full investigation and disciplinary hearing and been found guilty in another province.

Proposed legislative change

- Require Members and Permit Holders to advise APEGA if they have had discipline orders made against them from other jurisdictions.
- Authorize APEGA to share discipline decisions with other professional associations and regulators.
- Authorize the Registrar to use another provincial engineering or geoscience association's discipline record of proceedings, decisions, and orders.
- Authorize the Registrar to make the equivalent orders to those imposed by the other provincial engineering or geoscience association without conducting a full investigation and disciplinary hearing.

Effect of the proposed change

- If a Member's or Permit Holder's licence has been suspended, cancelled, or restricted in another province, APEGA would have the ability to better protect the public of Alberta by being able to quickly suspend, cancel, or restrict that Member's or Permit Holder's licence to practise in Alberta without conducting a full investigation and disciplinary hearing.

2 Discussion

Individuals and companies are often licensed in multiple provinces and territories. APEGA has the jurisdiction and obligation to discipline Members and Permit Holders for conduct that occurs in Canada whether inside or outside Alberta.

There are no provisions for mobility of discipline decisions in the Act, the Agreement on Internal Trade, or the New West Partnership Trade Agreement (Appendix 1).

If a Member or Permit Holder licensed in Alberta and in another province is found guilty of unskilled practice and/or unprofessional conduct by that other constituent association, APEGA cannot currently use that other association's discipline decision and order as a basis to impose disciplinary sanctions in Alberta. APEGA must start an investigation and conduct its own discipline hearing – resulting in unnecessary costs and delays.

If a Member has been suspended, cancelled, or had restrictions placed on his or her practice in another province, it is in the interest of Albertans that APEGA be authorized to quickly suspend, cancel, or restrict that Member's licence to practise in Alberta.

The Registrar should be authorized to use another engineering or geoscience constituent association's discipline record of proceedings, decision, and order as the basis to make equivalent order(s) without the need for a full investigation and discipline hearing first.

Using another constituent association's disciplinary findings and decisions to inform APEGA discipline proceedings would help protect the public because it would allow APEGA to quickly suspend or cancel a Member's registration, or impose sanctions on a Member, without needing to wait for APEGA's investigation and discipline hearing process to conclude. Furthermore, it would allow APEGA to quickly and efficiently prevent a Member from practising in Alberta if he or she is not allowed to practise in another province or territory.

In addition, nothing above would prevent the Registrar from starting an independent investigation into the actions of a Member in such circumstances.

It is also recommended that the legislation be revised to impose a requirement on Members to disclose to APEGA all discipline orders against them by other engineering or geoscience constituent associations. Furthermore, Members and Permit Holders would be required to disclose any criminal convictions.

Fairness would still require that the Member or Permit Holder be given an opportunity to respond to APEGA. However, in the case of Members (not all jurisdictions license companies), the record of proceedings, decision, and order would be accepted as proof of unskilled practice and/or unprofessional conduct until proven otherwise.

Also, to further improve protection of the public, it is recommended that the legislation be revised to expressly authorize APEGA to share discipline decisions. The Act would allow the

Registrar to send a decision of a Discipline Panel or Appeal Panel to any federal, provincial, or territorial minister of the Crown. The Registrar would also be allowed to send and share a decision, records of proceedings or any other information to any provincial or territorial engineering or geoscience association or other governmental, regulatory, or professional association APEGA considers appropriate.

It is in the public interest for associations to share this information because someone who has been sanctioned in one province won't necessarily inform another constituent association about it. By sharing discipline information, constituent associations could keep each other informed about the status of their Members and would be able to quickly and efficiently discipline individuals who have been sanctioned in another province.

3 Research Summary

Of the engineering and geoscience constituent associations in Canada, only The Association of Professional Engineers and Geoscientists of British Columbia (APEGBC) and the Professional Engineers and Geoscientists of New Brunswick have incorporated mobility of discipline decisions into their legislation. APEGBC's Council, after becoming aware of disciplinary action against a member or licensee by another constituent association, may refer the matter to its Discipline Committee. After providing an opportunity for the member to be heard, the Discipline Committee may, without holding an inquiry, make orders that it considers equivalent to the orders made in the other province.

Only in British Columbia and Yukon does legislation require a member to disclose a discipline finding made by another constituent association or to disclose a criminal conviction (Appendix 2 and 2A).

The majority of Alberta professional associations are required by their legislation to share disciplinary information with other similar jurisdictions. However, this is not the case with the Alberta Association of Architects and APEGA.

The Chartered Professional Accountants of Alberta and the Law Society of Alberta can review discipline decisions or actions that have occurred outside of Alberta, but they still require their own hearings or proceedings. The Chartered Professional Accountants of Alberta may share information with other similar jurisdictions and require members to disclose discipline finding from other jurisdictions. The Law Society of Alberta, Alberta Veterinary Medical Association, College of Physicians and Surgeons of Alberta, and the Alberta Dental College and Association "shall" or "must" provide the information to other governing bodies (Appendix 3 and 3A).

4 Appendices

Appendix 1 Existing Legislation

Appendix 2 Summary and Analysis of Canadian Engineering and Geoscience Associations

Appendix 2A Relevant Provisions from Legislation of Canadian Engineering and Geoscience Associations

Appendix 3 Summary and Analysis of Alberta Professional Associations

Appendix 3A Relevant Provisions from Legislation of Other Alberta Professional Associations