

# CHANGES REGARDING ORDERS, FINES, AND COSTS

Fall 2015 Consultations

*The Engineering and Geoscience Professions Act*



The Association of Professional  
Engineers and Geoscientists of Alberta

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## 1. Overview

This paper proposes changes to the *Engineering and Geoscience Professions Act* (the *EGP Act*) regarding fines, costs and recommended orders.

## 2. Increase to Discipline Related Fines

It is in the public interest that APEGA Members and Permit Holders not engage in unskilled practice or unprofessional conduct. Discipline-related fines should appropriately punish and significantly deter unskilled practice or unprofessional conduct by APEGA Members and Permit Holders. The current maximum fines are too low and should be increased significantly.

### Background

- Currently, under the *Engineering and Geosciences Professions Act*, the Discipline Committee may order that an offender pay all or part of the costs of a hearing, a fine not exceeding \$10,000, or both costs and a fine.

### Why this is important

- A fine punishes an offender and should be proportional to the risk the offending action posed to the public. It should also deter the offender from reoffending and deter other Members and Permit Holders from offending.
- The current maximum fine is too low and no longer acts as a sufficient punishment or deterrent. To better protect the public, APEGA must have the ability to impose much larger fines on offending Members and Permit Holders.
- The fine structure and amounts are unchanged since the early 1980s. At the time, the fines represented a significant penalty, but that is no longer the case because of inflation. Furthermore, there is an increased expectation from the public that companies and individuals be punished appropriately for conduct that has put public safety or interest at risk.

### Proposed legislative change

- Increase discipline-related fines for Members to a maximum of \$100,000.
- Increase discipline-related fines for Permit Holders to a maximum of \$500,000.

Effect of the proposed change

- It will better protect the public because it will authorize APEGA to impose fines proportional to the risk the offending action posed to the public. The fine should vary depending on the severity of the offence, which is not the case with the current maximum.
- The amount of the fines will be based on criteria established in policy.
- In severe cases, the maximum fine will represent a penalty that will impose a significant, financial hardship on the Member or Permit Holder, which will punish the offender appropriately.
- It will better protect the public because the increased fines will deter Members and Permit Holders from engaging in unskilled or unprofessional conduct and will deter offenders from reoffending.
- It will send a message to the public and the government that APEGA takes its responsibility to regulate its Members and Permit Holders seriously.
- It aligns the legislation with other modern, self-regulatory associations in Alberta and Canada.

*Discussion*

Currently, the Discipline Committee may order that an investigated person pay all or part of the costs of a hearing, a fine not exceeding \$10,000, or both costs and a fine (Appendix 1).

The bylaws list eligible hearing or appeal costs as:

- honoraria
- professional fees paid to persons retained to participate
- witness fees
- fees of solicitors acting on behalf of the Association
- transcript reporter fees
- room rental
- recording equipment rental
- costs of transcripts of evidence taken during proceedings
- costs of reproduction of documents or transcripts of evidence
- any other expenses incurred that are attributable to the hearing or an appeal resulting from it (Appendix 1)

A fine is a form of punishment against an offender. It is also levied to deter the offender from reoffending and other Members and Permit Holders from offending in the first place. It is in the

public interest that fines act to deter Members and Permit Holders from engaging in unskilled practice and unprofessional conduct.

The current maximum fine is too low and no longer acts as a sufficient punishment or deterrent. The structure and amounts of fines have remained unchanged since the early 1980s. At the time, the fines represented a significant penalty, but that is no longer the case because of inflation and an increased expectation from the public that companies and individuals be punished appropriately for conduct that has put public safety or interest at risk.

It is recommended that the maximum fines for discipline-related orders against Members be increased to \$100,000 from the present \$10,000. Fines for Permit Holders should increase to a maximum of \$500,000.

This way, the public is better protected because increased fines will deter Members and Permit Holders from engaging in unskilled or unprofessional conduct.

The fine imposed should vary depending on the severity of the offence, and the maximum fine should represent a penalty that would impose a significant financial hardship to the Member or Permit Holder. Also, the fine should be proportionate to the risk the offending action posed to the public or the professions. The consequences should fit the offence, which is not the case with the current maximum.

### *Research Summary*

An analysis of professional engineering and geoscience self-regulatory associations in Canada shows a range in the maximum fine amount that can be imposed for discipline-related costs and fines (Appendix 2).

The maximum fine for discipline orders imposed among other constituent associations for an individual is \$25,000, by the Association of Professional Engineers and Geoscientists of British Columbia, the Association of Professional Engineers and Geoscientists of Manitoba, and Professional Engineers and Geoscientists Newfoundland and Labrador.

An analysis of other Alberta professional self-regulatory associations also showed a variety of maximum fines allowable for discipline violations (Appendix 3). The maximum fine for discipline orders is \$100,000 under the *Chartered Professional Accountants Act* (2015).

Legislation governing a sample of other regulatory organizations in Alberta was also reviewed. The lowest fine was a maximum of \$10,000 under the *Teaching Professions Act*, and the *Land Surveyors Act*. Under the *Alberta Workers' Compensation Act*, fines start at \$25,000, with an additional \$10,000 for each day an offence continues. Under the *Environmental Protection and Enhancement Act*, fines can be a maximum of \$50,000 for an individual and \$500,000 for a corporation for some offences, \$100,000 and \$1,000,000 respectively for other offences. Under the *Occupational Health and Safety Act*, fines can be a maximum of \$500,000 for a first offence and \$1,000,000 for a second offence (Appendix 4).

### 3. Increase Fines for Inappropriate Use of Title and Practice Violations

The public should be protected from unqualified, unlicensed, and unregulated individuals and companies that practice engineering or geoscience or mislead the public into thinking they are licensed. Fines should appropriately punish and significantly deter such conduct. The current maximum fines are too low and should be increased significantly.

#### Background

- Currently, under the *Engineering and Geoscience Professions Act*, (the *EGP Act*) fines for scope-of-practice and use-of-title violations by any individual or company are:
  - maximum of \$2,000 for a first offence
  - maximum of \$4,000 for a second offence
  - \$6,000 or up to six months imprisonment for third and subsequent offences

#### Why this is important

- Unlicensed individuals and companies pose risks to the public when they practise engineering or geoscience or hold themselves out as qualified.
- A fine punishes an offender and should be proportional to the risk the offending action posed to the public. It should deter the offender from reoffending and deter other unlicensed individuals and companies from offending.
- The current maximum fines are too low and no longer sufficiently punish or deter. The fine structure and amounts are unchanged since the early 1980s. To better protect the public, APEGA must have the ability to impose much larger fines.
- Because the risk to the public by unlicensed individuals and companies can be just as great, if not greater, than the risk to the public from unskilled practice or unprofessional conduct by licensed Members and Permit Holders, the maximum fines for scope-of-practice and use-of-title violations should be equal to the maximum fines for discipline offences.

#### Proposed legislative change

- Increase fines for unlicensed individuals for scope-of-practice or use-of-

title violations to a maximum of \$100,000.

- Increase fines for unlicensed companies for scope-of-practice or use-of-title violations to a maximum of \$500,000.

#### Effect of the proposed change

- It will better protect the public because the increased fines will punish and deter unlicensed individuals and companies against unlicensed, unregulated, and unqualified practice.
- It will better protect the public because it will authorize the Court to impose fines proportional to the risk the offending action posed to the public. The fine should vary depending on the severity of the offence, which is not the case currently.
- In severe cases, the maximum fine will impose an appropriately significant, financial hardship on the violating individual or company.
- It will better protect the public because the increased fines will deter unlicensed individuals and companies from misleading the public into thinking they are licensed.
- It will inform the public and the government that APEGA takes its responsibility to protect the public against unlicensed individuals and companies seriously.
- It will align the legislation with other modern, self-regulatory associations in Alberta and Canada.

#### *Discussion*

Similarly, fine increases are needed in violations of scope of practice and use of title by unlicensed individuals and companies without Permits to Practice. Currently, the following fines are authorized in the Act for violations related to scope of practice and use of title violations by any person, officer, employee, or agent of a firm, partnership, company, or other association of persons not licensed by APEGA:

- maximum of \$2,000 for a first offence
- maximum of \$4,000 for a second offence
- \$6,000 or up to six months imprisonment for third and subsequent offences (Appendix 1)

These fines also apply to failure to surrender a certificate of registration, licence, and stamp or seal following the cancellation of a membership (Appendix 1).

The current maximum fines are too low and no longer sufficiently discourage these violations. The structure and amounts of these fines has remained unchanged since the early 1980s.

It is recommended that the maximum fines in these violations be increased to match the maximum amounts proposed for discipline orders: \$100,000 for individuals and \$500,000 for companies.

Individuals and companies that have not had their qualifications evaluated and approved by APEGA pose risks to the public when they practise the professions or hold themselves out as qualified. This is because they have not proven themselves qualified to practice engineering or geoscience.

It is in the public interest that non-licensed individuals and companies without permits, which may include former Members and Permit Holders, face potentially significant fines as a punishment for their conduct and as a deterrent against future unlicensed, unregulated, and unqualified practice.

Also, increasing maximum fines will deter other unlicensed individuals and companies without permits from doing engineering or geoscience work when they are not licensed to do so, and from misleading the public into thinking they are licensed when they are not.

### *Research Summary*

An analysis of fines for title and practice violations imposed by constituent associations shows a wide variance of maximums, from \$1,000 for Engineers Nova Scotia to \$50,000 for Professional Engineers Ontario, the Association of Professional Geoscientists of Ontario, and Engineers & Geoscientists New Brunswick. Fines of \$100,000 can be made against companies by Professional Engineers and Geoscientists Newfoundland and Labrador (Appendix 2).

An analysis of Alberta professional self-regulatory associations also shows a variance of the maximum fines allowable for title and practice violations. The maximum fine is \$20,000 under the *Chartered Professional Accountants Act (2015)* (Appendix 3).

## **4. Recovery of Discipline Related Fines and Costs**

To improve regulatory effectiveness and efficiency, APEGA should have the ability to recover discipline-related fines or costs from offending Members and Permit Holders without a civil lawsuit and trial.



## Background

- The *Engineering and Geosciences Professions Act* currently allows APEGA to suspend the licence of Members and Permit Holders that have not paid discipline-related fines or costs ordered against them. The Act currently states that disciplinary fines or costs are debts due the Association and may be recovered by civil action for debt.
- If offending Members or Permit Holders do not pay the fines and costs stipulated in the order, APEGA must file statements of claim and sue the offenders in Court to recover the amounts.

## Why this is important

- It costs APEGA time and money to file statements of claim and sue in Court to recover the amounts owing. In many cases, APEGA has already spent significant resources to obtain the original discipline decision.
- APEGA could use these resources for other regulatory endeavours, resulting in better protection of the public interest and improved regulatory effectiveness.

## Proposed legislative change

- Amend the Act to authorize APEGA to file discipline orders with the Court if there are outstanding fines or costs. These orders would be enforceable as Orders of the Court.

## Effect of the proposed change

- It will eliminate the need for APEGA to start separate lawsuits to collect the monies owing. APEGA could invoke the collection and recovery-of-debt remedies associated with the Orders of the Court, without the expense and time of a civil trial.
- It will align the legislation with other modern, self-regulatory associations in Alberta and Canada.

## *Discussion*

The Act allows APEGA to suspend the registration of Members or Permit Holders that have not paid discipline related fines or costs ordered against them. The Act currently states that

disciplinary fines or costs are debts due the Association and may be recovered by civil action for debt (Appendix 1). If offending Members or Permit Holders do not readily pay the fines and costs stipulated in the order, APEGA has to file statements of claim and sue them in Court to recover the amounts owing. This costs APEGA more time and money.

It is recommended that the Act be revised to authorize APEGA to file discipline orders to pay fines and costs with the Court, and that those orders be enforceable as Orders of the Court. This would eliminate the need for APEGA to start separate lawsuits to collect the monies owing.

APEGA could then invoke the collection and recovery-of-debt remedies associated with Court orders, without needing to go through the expense and time of a civil trial.

The rationale for this proposal is more effective and efficient regulation. APEGA could use the money not spent on lawsuits for other regulatory endeavors, resulting in better protection of the public interest.

### *Research Summary*

All professional engineering and geosciences self-regulatory associations in Canada have mechanisms that allow for recovery of fines, costs, or both in their legislation, except for the Association of Professional Geoscientists of Ontario. For about half of the associations, the mechanism for debt recovery is civil action, suspension of a member until payment is received, or both.

Three of the associations are authorized to file their orders as orders of the Court and enforce them in the same manner as a judgment of the Court – the Association of Professional Engineers and Geoscientists of Manitoba, Professional Engineers & Geoscientists New Brunswick, and Professional Engineers and Geoscientists Newfoundland and Labrador. The Association of Professional Engineers and Geoscientists of British Columbia can file orders for costs as Orders of the Court and enforce them in the same manner as a judgment of the Court. Professional Engineers Ontario is allowed to file an application to the Superior Court of Justice for the order; Professional Engineers & Geoscientists New Brunswick can recover monies under the *Professional Offences Procedure Act* (seizure and sale; payment order or committal) (Appendix 2).

An analysis of Alberta self-regulatory professional associations shows that all organizations have some legislation allowing for the recovery of fines, costs, or both. The most common means of recovery is civil action for debt. It is used by the Alberta Association of Architects, the Law Society of Alberta, the Alberta Dental Association and College, the College of Physicians and Surgeons of Alberta, and the Alberta Veterinary Medical Association. Under the *Chartered Professional Accountants Act*, the association may apply to the Court to enforce a decision made (Appendix 3).

## 5. Recommended Discipline Orders

To better protect the public, APEGA must have the ability to quickly and efficiently impose appropriate sanctions on Members and Permit Holders that have admitted to unskilled practice or unprofessional conduct.

### Background

- Currently, if an investigation is not terminated and the investigated Member or Permit Holder has admitted to unskilled practice or unprofessional conduct, the Investigative Committee may recommend a Discipline Order. The draft Recommended Discipline Order (RDO) is presented to a Member of the Discipline Committee who acts as a case manager.
- The case manager can be any Member of the Discipline Committee and changes from case to case. The case manager reviews the RDO from the Investigative Committee, and if the case manager agrees with the proposed order, the case manager meets with the investigated Member or Permit Holder to discuss it.
- If the Member or Permit Holder agrees with the RDO, it has the same effect as a decision by the Discipline Committee following a formal hearing.
- If the case manager or the investigated Member or Permit Holder rejects the order, the matter must be referred to the Discipline Committee for a formal hearing.
- The intent is that an RDO is a negotiated settlement. It is negotiated between the Investigative Panel and the Member or Permit Holder under investigation. Because it is a negotiated settlement, there should be very few instances where it is not accepted by the case manager.

### Why this is important

- It is in the public interest that comparable sanctions be imposed for comparable violations, and that the severity of the sanctions reflect the severity of the offences. Because different Discipline Committee Members act as independent case managers, there can be inconsistencies in the decisions and orders.
- The speed at which decisions on proposed RDOs are made needs to be improved. Volunteer case managers are practicing Professional Members with competing demands on their time. This often delays their reviewing and deciding on proposed RDOs.

Proposed  
legislative  
change

- Amend the *Engineering and Geoscience Professions Act* to make the Registrar the case manager for all proposed RDOs.
- Amend the Act to give the Registrar the express authority to review and approve proposed RDOs, reject proposed RDOs and refer the matter to the Discipline Committee for a formal hearing, or refer the matter back to the parties for further negotiation, with or without suggested amendments or other direction.

Effect of the  
proposed  
change

- It will not take away any authority from the Investigative Panel to negotiate a settlement. The negotiation of proposed RDOs will continue to occur between the Investigative Panel and the Member or Permit Holder under investigation.
- It will improve public protection because having the same decision maker review all proposed RDOs will result in consistent decisions. Comparable sanctions will be imposed for comparable violations, and the severity of the sanctions will reflect the severity of the offences and will be based on criteria established in policy.
- Having the Registrar, rather than volunteer case managers, review proposed RDOs will result in more timely reviews. This will improve the effectiveness and efficiency of the discipline process because complaints will be resolved more quickly or be referred to a hearing more quickly. This will result in improved protection of the public.
- Authorizing the Registrar to refer the matter back to the parties for further negotiation may result in more acceptable RDOs being developed, which will mean fewer discipline panel hearings. This will improve regulatory effectiveness and efficiency and will result in reduced costs for all parties and timely resolution of complaints for improved protection of the public.

### *Discussion*

Currently if an investigation is not terminated and the investigated person has admitted to unskilled practice or unprofessional conduct, the Investigative Committee may recommend drafting a Discipline Order. The draft Recommended Discipline Order (RDO) is presented to a member of the Discipline Committee who acts as a case manager (Appendix 1).

The case manager can be any member of the Discipline Committee and changes from case to case. The case manager reviews the RDO from the Investigative Committee and, if the case manager agrees with the proposed order, the case manager meets with the investigated person to discuss it. If the person agrees with the RDO, it has the same effect as a decision by the Discipline Committee following a formal hearing. An actual hearing has therefore been avoided. If either the case manager or the investigated person rejects the order, the matter must be referred to the Discipline Committee for a formal hearing (Appendix 1).

Because different Discipline Committee members act as case managers, there are inconsistencies in the decisions and orders.

It is recommended that the *EGP Act* be amended to make the Registrar the case manager for all proposed RDOs.

It is also recommended that the Act be amended to give the Registrar express authority to review and approve proposed RDOs; reject proposed RDO and refer the matter to the Discipline Committee for a formal hearing; or refer the matter back to the parties for further negotiation, with or without suggested amendments or other directions.

Under this proposal, if an investigation is not terminated and the investigated person has admitted to unskilled practice or unprofessional conduct, the Investigative Panel and the investigated person may jointly develop a draft RDO. The draft RDO would be presented to the Registrar.

The Registrar would be authorized to:

- approve the draft order which would then have the same force and effect as an order made by the Discipline Committee following a formal hearing
- refer the matter back to the parties for further negotiation, with or without suggested amendments or other directions
- reject the draft order and refer the matter to the Discipline Committee for a formal hearing

The rationale for the proposed change is improved protection of the public and improved effectiveness and efficiency of the discipline process. Having the same decision-maker review all proposed RDOs will result in more efficiency, effectiveness, and consistency in discipline orders. This will better protect the public because comparable sanctions will be imposed for comparable violations, and the appropriate severity of sanctions will be ordered to reflect the severity of each offence.

Having the Registrar rather than volunteer case managers review proposed recommended orders will result in more timely reviews. This will improve the effectiveness and efficiency of the discipline process because complaints will be resolved more quickly, or referred to a hearing more quickly. This will result in improved protection of the public.

Also, authorizing the Registrar to refer the matter back to the parties for further negotiation may result in more acceptable RDOs being developed, which would mean fewer Discipline Panel hearings. The result would be reduced costs for all parties and timely resolution of complaints for improved protection of the public.

### *Research Summary*

Most of the constituent associations have some form of settlement or other complaint resolution mechanism in their legislation. The Association of Professional Engineers and Geoscientists of British Columbia, and Professional Engineers and Geoscientists Newfoundland and Labrador are the only jurisdictions that use the Registrar as a mediator. Ordre des ingénieurs du Québec, Northwest Territories and Nunavut Association of Professional Engineers and Geoscientists, and Geoscientists Nova Scotia appoint mediators. For the Association of Professional Engineers of Yukon, the discipline committee appoints a mediator (in a similar fashion as APEGA does for case managers). For Engineers PEI, the Act Enforcement Officer has a similar role to the APEGA case manager. Engineers Nova Scotia uses a secretary to write discipline recommendations with complainants (Appendix 2).

Research on Alberta self-regulatory professional associations shows that, for the Chartered Professional Accountants legislation, a panel of the complaints inquiry committee and the investigated person may propose a settlement agreement that is forwarded to the complaints inquiry committee as a whole who may accept or reject the proposed agreement. The Law Society of Alberta may accept an admission of guilt by a member, but it must be in a form acceptable to its conduct committee. For the Alberta Veterinary Medical Association, the Alberta Dental Association and College, and the College of Physicians and Surgeons, proposed settlement agreements are forwarded to the complaint review committee, who may accept, amend, or reject the proposed agreement (Appendix 3).

## **6 Appendices**

- Appendix 1 Existing Legislation
- 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 Other Alberta Professional Associations
- Appendix 3A Relevant Provisions from the Legislation of Other Alberta Professional Associations Legislation
- Appendix 4 Other Alberta Legislation