



Investigator Authority

*Improved Public Interest
Improved Regulatory Effectiveness and Efficiency*

To better protect the public, APEGA investigators must have the ability to properly investigate allegations of unskilled practice or unprofessional conduct by its Members and Permit Holders, and to report suspected criminal activity to the proper authorities.

Background

- During the fall 2015 consultations, recommendations on *Modernizing the Investigation Process* included expanding the ability of investigators to conduct thorough investigations by being able to compel interviews with witnesses, compel production of documents, and enter premises, if necessary.
- Members requested detail on the authority of investigators to compel witnesses and produce documents. Examples of similar provisions found in other pieces of legislation are shown below.
- Members also expressed concern over the recommendation to enter premises and asked for further clarification.
- The current legislation does not explicitly require or enable APEGA's statutory entities to report criminal activity. Although there is nothing preventing Members of statutory entities from reporting such activity, it should be a legislated requirement that any criminal activity discovered in the course of an investigation or review be reported.

Why is this important?

- Investigators need to be able to gather relevant documents and information from all possible witnesses and sources to have a complete investigation from which the investigative panel may make decisions.
- The authority of investigators to conduct those investigations needs to be clearly stated in the legislation.
- It is in the public interest that suspected criminal activity be reported to the Minister of Justice and Solicitor General, or the police.

Proposed
legislative
change

It is recommended the legislation be amended to:

- Consolidate the sections describing the authority of investigators in conducting investigations.
- Explicitly enable APEGA to apply to the court, on reasonable grounds, for an order authorizing investigators, accompanied by police as necessary, to enter and search buildings, dwellings or places for documents, media, or other records as part of an investigation.
- Require APEGA's statutory entities to report suspected criminal activity if found in the course of an investigation or review. Statutory entities would advise the Registrar, who would inform the Minister of Justice and Solicitor General or police of the concern. Statutory entities would not be required to complete their investigation before reporting an activity, if it were in the public interest to do so.

Examples of
relevant existing
legislation

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

Ability to Obtain Court Orders to Enter Premises

Health Professions Act, Alberta
Section 53.2

53.2(1) Subject to the regulations, an inspector
(d) subject to subsection (6), may at any reasonable time enter and inspect any place
(i) where a regulated member provides professional services,
(ii) related to the provision of professional services, or
(iii) where documents associated with the provision of professional services are maintained.

(6) No inspector may enter
(a) a private dwelling place or any part of a place that is designed to be used and is being used as a permanent or temporary private dwelling place except
(i) with the consent of the occupant of the dwelling place, or
(ii) pursuant to an order of the Court of Queen's Bench;
(b) a publicly funded facility as defined in section 51(1), except

- (i) with the consent and agreement of the person who controls or operates the publicly funded facility to the carrying out of one or more of the powers and duties under subsection (1), or
- (ii) pursuant to an order of the Court of Queen's Bench.

2008 c34 s9

Professional Engineers Act, Ontario
Section 33(4)

Order by provincial judge

33(4) Where a provincial judge is satisfied on evidence upon oath,
(a) that the Registrar had grounds for appointing and by order has appointed one or more persons to make an investigation; and
(b) that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the member of the Association or holder of a certificate of authorization, a temporary licence, a provisional licence or a limited licence whose affairs are being investigated and to the subject-matter of the investigation, the provincial judge may issue an order authorizing the person or persons making the investigation, together with such police officer or officers as they call upon to assist them, to enter and search, by force if necessary, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them.

Additional similar examples are found in other legislation including *Professional Geoscientists Act, Ontario*; *Professional Code, Quebec*; *Occupational Health and Safety Act, Alberta*; and *Environmental Protection and Enhancement Act, Alberta*.

Ability to Advise of Criminal Offences

Chartered Professional Accountants Act, Alberta
Sections 68(8), 74(12), and 94(2)

68(8) After completing a review under this Part, if the CIC secretary is of the opinion that there are reasonable and probable grounds to believe that the investigated party has committed a criminal offence, the CIC secretary may
(a) advise the Minister of Justice and Solicitor General of the nature of the concerns, and
(b) on request, send a copy of information related to the concerns to the Minister of Justice and Solicitor General, except information that is subject to solicitor-client privilege.

74(12) If the complaints inquiry committee is of the opinion that there are reasonable and probable grounds to believe that the investigated party has committed a criminal offence, the complaints inquiry committee must (a) direct the CIC secretary to send a copy of the agreement made under this section to the Minister of Justice and Solicitor General, and (b) on request, send a copy of any other information related to the agreement to the Minister of Justice and Solicitor General, except information that is subject to solicitor-client privilege.

Discipline tribunal findings

94(2) If a discipline tribunal is of the opinion that there are reasonable and probable grounds to believe that the investigated party has committed a criminal offence, the discipline tribunal must (a) direct the discipline tribunal secretary to send a copy of the written decision under section 97 to the Minister of Justice and Solicitor General, and (b) on request, send a copy of any other information related to the finding of the discipline tribunal to the Minister of Justice and Solicitor General, except information that is subject to solicitor-client privilege.

Health Professions Act, Alberta Section 80(2)

Tribunal Decision

80(2) If the hearing tribunal is of the opinion that there are reasonable and probable grounds to believe that the investigated person has committed a criminal offence, the hearing tribunal must direct the hearings director to send a copy of the written decision under section 83 to the Minister of Justice and Solicitor General and on the request of the Minister of Justice and Solicitor General also send a copy of the record of the hearing.

Additional similar examples are found in the *Veterinary Profession Act, Legal Profession Act, Alberta*.

Ability to Interview Witnesses and Obtain Documents

In response to requests from Members for more detail on this topic, below are examples of similar provisions found in other pieces of legislation.

Engineering and Geoscience Professions Act
ASET Regulation, Alberta, Section 24 (5) and (6)
(also found in the *Professional Technologists Regulation, Section 16*)

Investigation by ASET Practice Review Board

24 (5) For the purposes of conducting an investigation under this section, any or all of the members of the ASET Practice Review Board may, in order to ensure that continuing competence requirements are met, do one or more of the following:

- (a) subject to subsection (6), at any reasonable time and on having given notice, conduct a practice visit by entering and inspecting any place where the regulated member works in the profession of applied science, information technology or engineering technology;
- (b) interview a regulated member about the member's work in the profession of applied science, information technology or engineering technology;
- (c) observe the regulated member working in the profession of applied science, information technology or engineering technology;
- (d) interview or survey clients, co-workers, the regulated member's employer or the regulated member about the regulated member's work in the profession of applied science, information technology or engineering technology;
- (e) review documents and examine substances and things that
 - (i) are owned by or under the control of the regulated member, and
 - (ii) are related to the work in the profession of applied science, information technology or engineering technology by the regulated member;
- (f) assess the safety and condition of equipment and technology used by the regulated member.

(6) No member of the ASET Practice Review Board may enter a private dwelling place or any part of a place that is designed to be used and is being used as a permanent or temporary private dwelling place except with the consent of the occupant of the dwelling place.

Chartered Professional Accountants Act, Alberta
Section 78

Investigation powers

78(1) For the purpose of conducting an investigation, an investigator

- (a) may, at any reasonable time, require a registrant or former registrant
 - (i) to attend meetings with the investigator or others,
 - (ii) to answer any questions the investigator may have relating to the investigation and to answer the questions under oath, and
 - (iii) to give to the investigator any records, information or things that, in the opinion of the investigator, are or may be relevant to the investigation that the registrant or former registrant possesses or that are under the control of the registrant or former registrant, including any records, information or things that a registrant or former registrant obtained or prepared in order to perform any engagement,

and

(b) may require a registrant or former registrant to give up possession of any records, information or things described in clause (a) to allow the investigator to take them away to copy, examine or perform tests on them, in which case the investigator must return them within a reasonable time of being given them and must return them after a hearing is completed and any right to an appeal is expired, and the registrant or former registrant must comply.

(2) For the purposes of conducting an investigation, an investigator (a) may, at any reasonable time, request a person, other than a registrant or former registrant,

- (i) to attend meetings with the investigator or others,
- (ii) to answer any questions the investigator may have relating to the investigation and to answer the questions under oath, and
- (iii) to give to the investigator any records, information or things that, in the opinion of the investigator, are or may be relevant to the investigation that the person possesses or that are under the control of the person, including any records, information or things that a registrant or former registrant obtained or prepared in order to perform any engagements,

and

(b) may request a person to give up possession of any records, information or things described in clause (a) to allow the investigator to take them away to copy, examine or perform tests on them, in which case the investigator must return them within a reasonable time of being given them and must return them after a hearing is completed and any right to an appeal is expired.

(3) The investigator may copy and keep copies of any records, information or things given under subsection (1) or (2).

(4) All records, information or things received by an investigator under subsection (1)(a)(iii) or (2)(a)(iii) are confidential and may not be used or disclosed except in accordance with this Part or Part 7 without (a) the written consent of all persons whose interests might reasonably be expected to be affected by the disclosure, or (b) a court order authorizing the disclosure.

(5) No investigator, CIC member or member of a discipline or appeal tribunal and no officer, employee, board member, agent or representative of the CPAA shall be required in any proceeding, other than a proceeding under this Act, to give testimony or produce any document with respect to records, information or things provided under subsection (1)(a)(iii) or (2)(a)(iii).

(6) Disclosure of records, information or things under subsection (1)(a)(iii) or (2)(a)(iii) does not negate or constitute a waiver of any privilege, and the privilege continues for all other purposes.

(7) The CPAA, on the request of an investigator or the CIC chair, may apply to the Court of Queen's Bench for

- (a) an order directing a registrant or former registrant to comply with all or part of subsection (1),
- (b) an order directing any other person
 - (i) to attend meetings with the investigator to answer any questions the investigator may have relating to the investigation and to answer those questions under oath, if the investigator requires, and
 - (ii) to give to the investigator any records, information or things that, in the opinion of the investigator, are or may be relevant to the investigation that the person possesses or that are under the control of the person,

and

- (c) an order directing any person to give up possession of any records, information or things described in clause (b) to allow the investigator to take them away to copy, examine or perform tests on them and return them within a reasonable time of being given them.

(8) Notice of an application for an order under subsection (7) must be given to all affected parties unless the Court is satisfied that it is proper to dispense with notice in the circumstances.

(9) A person may comply with a request or an order to give records, information or things by giving copies of the records, information or things.

(10) If a person gives copies under subsection (9), the person must on the request of the investigator allow the investigator to compare the copies with the original records, information or things at the person's place of business during regular business hours.

(11) A person who gives records, information or things under subsection (1), (2) or (7) or copies of records, information or things under subsection (9) is not entitled to any indemnification for the expense of producing the records, information or things, except for the reasonable costs of copying them.