

Overview Summary

Round 4 - Fall 2016 Consultations

The Engineering and Geoscience Professions Act



APEGA's legislative review is continuing the conversation with eight topics and 28 new proposed legislative recommendations throughout the fall of 2016.

There are many ways to share your insight, opinions and feedback on this important subject matter.

Please consider:

- attending a face-to-face consultation or webinar by registering at [APEGA Legislative Review](#) and click on 'register for consultations'.
- watching for legislative review updates at local branch meetings.
- gaining a better understanding of all of the proposed recommendations by clicking on [Consultations](#) on the website.
- submitting your feedback to the [Survey](#) by December 2, 2016.

This document provides a summary of the proposed recommendations that will be discussed during the fall 2016 consultations and can be found on the website and in the survey. The topics discussed in the majority of the face to face sessions are: Updating Authentication Practices; Improving the Practice – Permit to Practice; Professional Liability Insurance; Introducing Creative Sanctions; Updating Tools for Statutory Entities; and Allowing for Custodian of Practice. There are sessions for the geoscientists to discuss the: Changes to the Definition of Geoscience; Changes to the Description of Geoscience Work Products; and Changes to Exemptions.

The remainder of the topics are included in the survey which are short, follow up proposed recommendations (many of which are based on feedback received from previous consultations).

Updating Authentication Practices

Briefing Note: [Updating Authentication Practices](#)

APEGA is updating its requirements for authenticating professional documents given the advances in technology and the widespread use of electronic documents.

It is proposed that the following definitions be added to the legislation:

- **stamp:** an instrument issued by APEGA to a Professional Member or Permit Holder in any form or medium, as set out by the Registrar.
- **authentication:** the application of a Professional Member's stamp, signature, and date together with a Permit Holder's stamp to a professional document.
- **professional document:** an engineering or geoscience file in any form or medium that:
 - contains technical information resulting from the practice of engineering or geoscience
 - is complete for an intended purpose and
 - will be relied upon by others.

It is recommended that the legislation be amended to:

- remove references to embossing seals as part of the authentication process.

- explicitly clarify that all professional documents must be authenticated by licensed Members and Permit Holders regardless of whether the engineering or geoscience services related to those documents were performed inside or outside Alberta.
- make it an offence for an any person to knowingly employ or retain an unlicensed individual or other entity to provide engineering or geoscience services unless the person hiring the unlicensed individual or other entity reviews, authenticates and takes responsibility for that work (Appendix 3 - the Alberta *Health Professions Act* sections 47–49).
 - indicate that the court may order fines payable for such violations up to \$100,000 maximum for individuals and \$500,000 maximum for other entities (these dollar amounts are consistent with other proposed fines).

Outlining the Responsibilities of a Permit to Practice

Briefing Note: [Improving the Practice - Permit to Practice](#)

As part of improving the practice of engineering and geoscience for the safety and benefit of Albertans, it is in the public interest that the requirements and obligations of Permit Holders and Responsible Members be clearly defined.

It is recommended that the legislation be amended to:

- Add a definition for Responsible Member to indicate that the Responsible Member can be:
 - a full-time, permanent employee,
 - a partner,
 - a sole practitioner,
 - a member of the Permit Holder,
 - an individual providing services to the Permit Holder through a contractual arrangement,
 who is also a Professional Member.
- Clarify that, in addition to the existing requirements for Responsible Members, their responsibilities are expanded to explicitly include:
 - being professionally responsible for the Professional Practice Management Plan (PPMP) and for ensuring it is being followed.
 - stamp, sign and date the professional practice management plan document within their area of responsibility.
- Clarify that a deficiency in a PPMP (or evidence that a PPMP is not being followed) may result in a practice review order or a finding of unskilled practice or unprofessional conduct against the Responsible Members, collectively or individually, and against the Permit Holder.

- Change the requirement from needing only one Responsible Member to needing one or more Responsible Members, as appropriate to the practice.
- Move the requirement for a Responsible Member to attend a seminar every five years from the General Regulation to part of the mandatory Continuing Professional Development (CPD) program requirements for Responsible Members. The details will be described in the CPD program.
- Require Permit Holders and Responsible Members to advise APEGA if an existing Responsible Member ceases to be the person accepting responsibility for the practice of the Permit Holder or can no longer provide the necessary certification regarding the PPMP.
- Require a sole practitioner to obtain a Permit to Practice.

Initiating Professional Liability Insurance

Briefing Note: [Improving the Practice - Professional Liability Insurance](#)

To ensure that the interests of the public are protected in the event of errors or omissions by Members or Permit Holders, APEGA must have the ability to mandate primary professional liability insurance for Members and Permit Holders who provide consulting services.

It is recommended that the legislation be amended to:

- Require mandatory primary professional liability insurance for all Permit Holders that provide consulting services, in accordance with requirements established by Council.
- Require all Permit Holders that provide consulting services to ensure that primary professional liability insurance is in place for any Professional Member operating under the Permit Holder's Permit to Practice regardless of the individual's employment status or contractual arrangement with the Permit Holder, in accordance with requirements established by Council.
- Impose consequences on a Permit Holder for failing to ensure that primary professional liability insurance is in place for the Permit Holder and any Professional Member operating under the Permit Holder's permit, including suspending the permit, practice review orders, or findings of unskilled practice or unprofessional conduct.

Introducing Creative Sanctions

Briefing Note: [Introducing Creative Sanctions](#)

To better protect the public interest, creative sanction provisions should be added to the *Engineering and Geoscience Professions Act* to provide social justice options for the decision-making authorities who can make orders.

- It is recommended that the legislation be amended to expand the sanctions that can be imposed:
 - in discipline matters to include creative sanction provisions,

- by the court against unlicensed title and practice violators to include creative sanction provisions.
- These amendments should adopt provisions similar to what is contained in section 234 of the *Environmental Protection and Enhancement Act* and section 41.1 of the *Occupational Health and Safety Act*.
- Non-compliance with a creative sanction order may result in the suspension of a licence or permit until the order is fulfilled.

Updating Tools for Statutory Entities

Briefing Note: [Updating Tools for Statutory Entities](#)

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.

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.

Allowing for a Custodian of Practice

Briefing Note: [Allowing for a Custodian of Practice](#)

To better protect the public, APEGA should have the ability, in certain cases, to apply to the court for an order appointing a Professional Member to act as the custodian of another Member's engineering or geoscience practice.

It is recommended that the legislation be amended to allow APEGA to apply to the Court of Queen's Bench for an order appointing a person as a custodian of a Professional Member's practice in the event that a Member's incapacity, illness, death, or suspension of registration, so that it may be temporarily managed or, if necessary, dissolved.

The custodian of a practice will be a qualified Professional Member.

Refining the Continuing Professional Development Program

Briefing Note: [Refining the Continuing Professional Development Program](#)

To better protect the public on a continual basis, it is essential for professionals to engage in lifelong learning.

It is recommended that the legislation be amended to clarify that:

- As previously addressed in the winter 2016 consultations, the Practice Review Committee (PRC) will have the responsibility to develop, and Council will have the authority to approve, the requirements for the CPD program and supporting practice standards.
- The obligations for keeping CPD records and how Members meet the requirements of the program will be described in CPD policies.
- The Registrar will be able to strike a Member from the register for non-compliance with the CPD program.
- The assessment of whether a Member meets the CPD requirements will be conducted by the PRC through practice reviewers and practice review panels as described in the winter 2016 consultations related to the PRC.
- Council may impose an administrative assessment fee if a Member does not comply with the CPD program within specified timelines.
- The requirement for Responsible Members to attend a Permit to Practice seminar every five years will be moved out of the *EPG Act* General Regulation and into the requirements of the CPD program and supporting practice standard.

Membership Categories - Provisional Licensee

Briefing Note: [Membership Categories - Provisional Licensee](#)

It is in the public interest that confusing and unnecessary category designations be removed from the General Regulation.

It is recommended that the legislation be amended to remove the Provisional Licensee category and all references to Provisional Licensees from the legislation.

Geoscience: Changes to the Definition of the Practice of Geoscience

Briefing Note: [Geoscience: Changes to the Definition of the Practice of Geoscience](#)

To better protect the public interest, the definition of the practice of geoscience should be updated in the *Engineering and Geoscience Professions Act* (the Act) to reflect current practice areas and advances in technology.

It is recommended that the Act be amended to update the definition of the practice of geoscience to read:

“practice of geoscience” means:

(i) acquiring, investigating, analyzing, processing, interpreting, evaluating, consulting, applying, modelling, assessing, managing, or reporting related to any activity:

(A) that relates to the Earth sciences or the environment,

(B) that is aimed at the understanding of Earth materials, geobodies, natural resources, energy fields, geohazard risks, or processes, and

(C) that requires in that acquiring investigating, analyzing, processing, interpreting, evaluating, consulting, applying, managing, or reporting the professional application of the principles of geology, geophysics, physics, chemistry, mathematics, or biology,

or

(ii) teaching geoscience at a university.

Geoscience: Changes to the Description of Geoscience Work Products

Briefing Note: [Geoscience: Changes to the Description of Geoscience Work Products](#)

To better protect the public interest, the description of the types of geoscience documents and work products that need authentication should be updated in the *Engineering and Geoscience Professions Act* (the Act) and relevant Practice Standards to reflect current practice and technology.

It is recommended the Act be amended to update the description of the types of geoscience documents and work products that need to be authenticated to read:

“...professional documents...”

It is also recommended this change to the Act be supplemented by updated Practice Standards that will provide greater detail and will clarify that geoscience “professional documents” include:

“...map, geoscientific cross-section, specification, report, or other geoscientific work product in any form or medium, or a reproduction of any of them...”

Geoscience: Changes to Exemptions

Briefing Note: [Geoscience: Changes to Exemptions](#)

To better protect the public interest, amendments are needed to some of the geoscience exemptions in the *Engineering and Geoscience Professions Act*.

It is recommended that the legislation be amended to:

- remove the exemption relating to prospecting.

- amend the existing exemption related to geoscientific surveys and reports to read:
“a person conducting routine geoscientific surveys or preparing routine geoscience reports where the specifications and standards **and any subsequent changes to the field parameters** for the survey or report have been prepared or approved by a professional geoscientist or licensee
- amend the existing exemption related to data reduction and plotting to include routine data management to read:
“a person engaged in routine **data management**, reduction, or plotting of geoscientific data under the supervision and control of a professional geoscientist.”

Investigator Authority

Briefing Note: [Investigator Authority](#)

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.

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.

Authority of Practice Reviewers Conducting Practice Reviews

Briefing Note: [Authority of Practice Reviewers Conducting Practice Reviews](#)

To improve regulatory effectiveness and protect the public interest, practice reviewers must have the appropriate authority to conduct practice reviews to assess the health of professional practice against established standards.

It is recommended that the legislation be amended to explicitly give APEGA practice reviewers the authority to conduct practice reviews similar to the authority contained in the ASET Regulation the Professional Technologists Regulation, or the Chartered Professional Accountants Act, Alberta.

Enforcement Review Committee

Briefing Note: [Enforcement Review Committee](#)

To better protect the public, APEGA needs appropriate tools to effectively and efficiently address unauthorized practice and title violations by unlicensed individuals and companies.

It is recommended the legislation be amended to remove the establishment of the Enforcement Review Committee from the *General Regulation*.

Mediated Settlements Amendment

Briefing Note: [Mediated Settlements](#)

If it is deemed necessary to do so in the public interest, authorize the Registrar to proceed to an investigation, even if the complaint is settled or is withdrawn.

It is recommended that the Engineering and Geoscience Professions Act be amended to authorize the Registrar to proceed to an investigation, even if the complaint is settled or is withdrawn, if it is deemed necessary to do so in the public interest.

Consent Orders Amendment

Briefing Note: [Consent 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.

It is recommended that the legislation be amended as follows:

- The term consent order will replace the current recommended order terminology.
 - The term consent order more accurately reflects that it is a negotiated agreement between the investigative panel and the Member or Permit Holder under investigation that has admitted to unskilled practice or unprofessional conduct.
- A consent order will be approved by a discipline panel, rather than the Registrar, as previously recommended.
 - Negotiated agreements may involve disciplinary sanctions and should be approved by the appropriate disciplinary arm that has the authority to impose sanctions.
 - The criteria for approval of consent orders will be set by the Discipline Committee, in policy, to ensure consistency.

Obligation to Comply and Cooperate

Briefing Note: [Obligation to Comply and Cooperate](#)

To better protect the public, APEGA's legislation should contain clear language to require Members and Permit Holders to comply with the governing legislation and related standards and policies, and to cooperate with and provide documents or information requested by APEGA as part of exercising its regulatory mandate under the legislation.

It is recommended that the legislation be amended to explicitly state that:

- Members and Permit Holders must:
 - comply with the EGP Act, General Regulation, Bylaws, Code of Ethics, Practice Standards, Practice Bulletins and policies established by Council.
 - cooperate with requests to provide all documents or other information made by APEGA as part of exercising its regulatory mandate under the legislation.
- There are consequences for failing to comply or cooperate which could include suspending, canceling, imposing restrictions or not issuing or renewing a licence or permit to practice.
 - Members and Permit Holders will have the right to appeal such decision to the Appeal Board.
 - APEGA will have the ability to apply for a court order enjoining a person from violating any part of the Act, General Regulation or Bylaws; or directing a person to take some action to comply or to rectify any contravention.

Establishing Time Frames for Notices and Discipline Matters

Briefing Note: [Establishing Time Frames for Notices and Discipline Matters](#)

It is in the interest of the public, Members and Permit Holders that complaint and discipline matters are addressed in a reasonable and consistent amount of time.

It is recommended that the legislation be amended to specify certain time frames:

- Send Notice of Preliminary Investigation
 - The Registrar must, within 30 days of receiving a complaint, send a notice to an investigated person (Member or Permit Holder) that a preliminary investigation will be conducted and provide details of the complaint.
- Respond to Notice of Preliminary Hearing
 - An investigated person must, within 30 days of receiving notice of a preliminary investigation or longer if agreed to by the Registrar and the investigated person, provide a written response to the Registrar.
- Review a Complaint
 - An investigative panel must, within 90 days after the conclusion of a preliminary investigation, render a decision on whether to dismiss the complaint, refer the complaint to a discipline hearing, or begin discussions with the investigated person for a consent order.
- Reach a Consent Order
 - The time frame to reach a consent order between an investigated person and an investigative panel is 90 days from the date negotiations began or longer if agreed to by both parties.

- Schedule a Discipline Hearing
 - If a matter is referred to a discipline panel for a hearing, the Registrar must, within 90 days after receiving the referral, set a date for the hearing and give all parties notice of the date, time, and place of the hearing.
- Respond to Notice of Discipline Hearing
 - If a date is set for a hearing by a discipline panel, the investigated person and investigative panel must, within 30 days of receiving notice of the hearing date, respond to the Registrar confirming their availability on that date or propose alternative dates.
 - If the parties and Registrar are not able to agree to a hearing date within an additional 30 days, the Registrar may set a date for the hearing and the hearing shall commence on that date.
- Render a Decision Following a Discipline Hearing
 - A discipline panel must, within 120 days after the conclusion of a hearing, render a written decision.
- Schedule an Appeal Hearing
 - If a discipline decision is appealed, the Registrar must, within 90 days after receiving the notice of appeal, set a date for the appeal hearing and give all parties notice of the date, time, and place of the hearing.
- Respond to Notice of Appeal Hearing
 - If a date is set for a hearing by an appeal panel, the investigated person and investigative panel must, within 30 days of receiving notice of the hearing date, respond to the Registrar confirming their availability on that date or propose alternative dates.
 - If the parties and Registrar are not able to agree to a hearing date within an additional 30 days, the Registrar may set a date for the hearing and the hearing shall commence on that date.
- Render a Decision Following an Appeal Hearing
 - An appeal panel must, within 120 days after the conclusion of a hearing, render a written decision.
- Extensions
 - If an investigative, discipline, or appeal panel has not rendered a written decision within the required time frame, it must at the end of that period inform the parties, in writing, that the decision has not been completed and continue to report to them on the progress of the decision every 30 days.
- Registrar to Serve Decisions
 - The Registrar shall, within a reasonable time of receiving a written decision from an investigative, discipline, or appeal panel, serve the decision. (As is currently the case under the existing Act, the time frame in which a person may appeal a decision will remain 30 days from receipt of notice.)

Membership Category - Restricted Practitioners

Briefing Note: [Membership Category - Restricted Practitioners](#)

To improve regulatory effectiveness and efficiency, provisions related to restricted practitioners as a Member category can be removed from the Engineering and Geoscience Professions Act, the General Regulation and APEGA Bylaws.

It is recommended that the legislation be amended to remove the restricted practitioner category from the legislation.

Membership Category - University Students

Briefing Note: [Membership Category - University Students](#)

To improve regulatory effectiveness and efficiency, provisions for university students as a Member category can be included in APEGA's Bylaws rather than *the Engineering and Geoscience Professions Act General Regulation*.

It is recommended that the legislation be amended to remove provisions regarding University Students from the General Regulation and include them in the Bylaws.

Sections 19 and 20 of the EGP Act, regarding Regulation- and Bylaw-making powers, should also be amended to reflect this change.