

Professional Geoscientists Act, 2000

ONTARIO REGULATION 258/02

No Amendments

DISCIPLINARY MATTERS — COMPLAINTS AND DISCIPLINARY PROCEEDINGS RELATING TO THE PRACTICE OF PROFESSIONAL GEOSCIENCE

This is the English version of a bilingual regulation.

COMPLAINTS PROCESS

Initial steps in complaint process

1. (1) Any person or entity, including the Association, may submit a complaint in writing to the Registrar respecting the conduct of a member or certificate holder or, as is provided under section 41 of the Act, respecting the conduct of a former member or certificate holder. O. Reg. 258/02, s. 1 (1).

(2) The Registrar shall, by notice in writing,

(a) acknowledge receipt of the complaint to the complainant and set out the nature of the complaint and the particular steps to be taken with respect to it; and

(b) inform the person or entity complained about of the complaint and set out the nature of the complaint and the particular steps to be taken with respect to it. O. Reg. 258/02, s. 1 (2).

(3) The person or entity complained about may make written submissions in response to the complaint within the time specified in the notice given by the Registrar. O. Reg. 258/02, s. 1 (3).

(4) The person or entity complained about and the Association are parties to all proceedings before the complaints committee and its panels and before the discipline committee, but the complainant is not a party. O. Reg. 258/02, s. 1 (4).

(5) The Association may be represented at the proceedings referred to in subsection (4) by a representative chosen by it, including the Registrar. O. Reg. 258/02, s. 1 (5).

(6) Any action or step that a panel of the complaints committee may take under the complaints process may be taken by the complaints committee. O. Reg. 258/02, s. 1 (6).

Preliminary review

2. (1) The complaints committee shall establish one or more preliminary review panels, each composed of one member of the committee, to conduct a preliminary review of a complaint. O. Reg. 258/01, s. 2 (1).

(2) On receipt of a complaint, the Registrar shall refer it to the chair of the complaints committee who, in turn, shall refer it to a preliminary review panel; however, if the chair is of the opinion that the matter deserves special consideration, the chair may refer the matter to a panel consisting of not less than three members of the complaints committee appointed by the chair, in which case the three member panel shall review the matter and may exercise any of the powers set out in subsection 3 (5). O. Reg. 258/02, s. 2 (2).

(3) On reviewing the complaint, the preliminary review panel may,

(a) act in accordance with section 3;

(b) direct that the parties participate in complaint settlement;

(c) appoint an investigator;

(d) refer the complaint, in whole or in part, to the discipline committee;

(e) request clarification or further information from the complainant or the person or entity complained about; or

(f) take such other action as it considers appropriate in the circumstances. O. Reg. 258/02, s. 2 (3).

Early dismissal of complaint

3. (1) After considering the written submissions and any other relevant information with respect to the complaint, the preliminary review panel shall give a notice of intention to dismiss to the complainant and the person or entity complained about, along with the reasons on which the notice of intention to dismiss are based, if it is of the opinion,

(a) that the complaint is frivolous, vexatious, made in bad faith or otherwise an abuse of process; or

(b) that there are not otherwise sufficient grounds for proceeding with the complaint. O. Reg. 258/02, s. 3 (1).

(2) A person in receipt of a notice of intention to dismiss may, within 30 days of the date of the notice, make further written submissions to the preliminary review panel in response to the notice. O. Reg. 258/02, s. 3 (2).

(3) If no written submissions are made within the 30-day period, the preliminary review panel shall make an order dismissing the complaint and shall give notice of the order to the complainant and all parties. O. Reg. 258/02, s. 3 (3).

(4) If written submissions are made within the 30-day period, the preliminary review panel shall refer the complaint to a separately constituted panel consisting of not less than three other members of the complaints committee appointed by the chair of the committee. O. Reg. 258/02, s. 3 (4).

(5) On their review of the complaint, the three member panel may dismiss the complaint or do one or more of the following:

1. Direct that the parties participate in complaint settlement.
2. Appoint an investigator.
3. Refer the complaint, in whole or in part, to the discipline committee.
4. Request clarification or further information from the complainant or the person or entity complained about.
5. Take such other action as it considers appropriate in the circumstances. O. Reg. 258/02, s. 3 (5).

(6) If the three member panel dismisses the complaint, a notice in writing to that effect shall be given to the complainant and all parties. O. Reg. 258/02, s. 3 (6).

Complaint settlement

4. (1) If a preliminary review panel or a three member panel orders that the parties participate in complaint settlement, the relevant panel may designate a person to act as mediator for the purpose of helping to resolve any or all matters raised by the complaint. O. Reg. 258/02, s. 4 (1).

(2) At the Association's discretion, the complainant may take part in complaint settlement. O. Reg. 258/02, s. 4 (2).

(3) Complaint settlement shall not exceed 30 days from the date it is ordered unless an extension of time is granted pursuant to a written request made by the mediator to the complaints committee. O. Reg. 258/02, s. 4 (3).

(4) When the time provided for complaint settlement is over, the mediator shall, as soon as is reasonably possible, report on the results achieved, if any, to the body that appointed him or her. O. Reg. 258/02, s. 4 (4).

(5) The mediator's report shall contain a copy of any written agreement signed by the parties attesting to the settlement of a matter during complaint settlement. O. Reg. 258/02, s. 4 (5).

(6) The relevant panel or the complaints committee may approve any such settlement, in which case the panel or complaints committee shall make an order giving effect to such settlement. O. Reg. 258/02, s. 4 (6).

(7) The relevant panel or the complaints committee may do one or more of the following with respect to any matters that are not settled or with respect to matters that are settled but not approved under subsection (6), except that a preliminary review panel may not dismiss the complaint under paragraph 4:

1. Direct that the parties participate in a further round of complaint settlement.
2. Appoint an investigator.
3. Refer the complaint, in whole or in part, to the discipline committee.
4. Dismiss the complaint.
5. Request clarification or further information from the complainant or the person or entity complained about.
6. Take such other action as it considers appropriate in the circumstances. O. Reg. 258/02, s. 4 (7).

(8) Any statements made by a party during complaint settlement, either orally or in writing, shall remain private and confidential and shall not be used or disclosed by an adverse party for any purpose outside complaint settlement, including any proceeding of the discipline committee or an appeal from a decision made by the discipline committee. O. Reg. 258/02, s. 4 (8).

Investigations

5. (1) Where, at any time during the complaints process, a panel or the complaints committee appoints an investigator, the panel or committee may,

- (a) terminate the investigation as it considers appropriate; or
- (b) require the investigator to make a report on his or her findings and review the report. O. Reg. 258/02, s. 5 (1).

(2) Where the panel or complaints committee acts under clause (1) (a) or (b), it may,

- (a) require the investigator to investigate further; or
- (b) do one or more of the following:
 - (i) direct that the parties participate in complaint settlement,
 - (ii) appoint another investigator,
 - (iii) refer the complaint, in whole or in part, to the discipline committee,

- (iv) dismiss the complaint,
- (v) request clarification or further information from the complainant or the person or entity complained about,
- (vi) take such other action as it considers appropriate in the circumstances. O. Reg. 258/02, s. 5 (2).

Complaint referred to discipline committee

6. (1) Where, at any time during the complaints process, a complaint is ordered referred in whole or in part to the discipline committee, the discipline committee shall be provided with the particulars of the complaint and a statement of the provisions of the Act or the regulations that are alleged to have been breached. O. Reg. 258/02, s. 6 (1).

(2) The order referring the matter to the discipline committee shall be provided forthwith to the Registrar and to the person or entity complained about. O. Reg. 258/02, s. 6 (2).

PROCEEDINGS OF THE DISCIPLINE COMMITTEE

Hearings

7. (1) The discipline committee shall hold a hearing for the purpose of determining a complaint or other matter initiated against a member or a certificate holder on any of the grounds set out in subsection 26 (2) of the Act. O. Reg. 258/02, s. 7 (1).

(2) The hearing shall be conducted in accordance with the Act, this Regulation, the *Statutory Powers Procedure Act* and the rules of the discipline committee established pursuant to that Act. O. Reg. 258/02, s. 7 (2).

Public hearings

8. (1) Subject to subsection (2), all hearings before the discipline committee are open to the public. O. Reg. 258/02, s. 8 (1).

(2) The discipline committee may make an order that a hearing or any part of it be closed to the public if it is satisfied that,

- (a) matters involving public security may be disclosed;
- (b) financial or personal or other matters may be disclosed at the hearing of such a nature that the desirability of avoiding public disclosure of those matters in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public;
- (c) a person involved in a criminal proceeding or in a civil suit or proceeding may be prejudiced; or
- (d) the safety of a person may be jeopardized. O. Reg. 258/02, s. 8 (2).

(3) When a motion for an order to close a hearing to the public is made, the discipline committee may order,

- (a) the exclusion of the public from the hearing while the motion is being dealt with; and
- (b) where the public is not excluded from the hearing of the motion, that any matter disclosed in the submissions made on the motion not be published. O. Reg. 258/02, s. 8 (3).

(4) The discipline committee shall ensure that any order it makes closing a hearing to the public is made available to the public, in writing and with the reasons. O. Reg. 258/02, s. 8 (4).

Publication ban

9. (1) The discipline committee may make an order prohibiting the publication of any or all matters before a hearing. O. Reg. 258/02, s. 9 (1).

(2) In the event that the discipline committee makes an order closing a hearing in whole or in part, it may make any orders it considers necessary to prevent the public disclosure of matters disclosed at the hearing prior to the making of the order, including but not limited to prohibiting the publication of those matters. O. Reg. 258/02, s. 9 (2).

(3) The discipline committee may not prohibit publication of anything that is contained in the register or otherwise available to the public in an order under this section. O. Reg. 258/02, s. 9 (3).

Disclosure of evidence

10. (1) Subject to subsection (2), evidence is not admissible at a hearing of the discipline committee unless the parties to the hearing are, at least 10 days before the hearing,

- (a) given an opportunity to examine any written or documentary evidence;
- (b) given a copy of any expert witness's report or, where there is no written report, a written summary of the expert's evidence, along with the name of the expert;
- (c) given the name of any witness, along with a written summary of his or her proposed testimony. O. Reg. 258/02, s. 10 (1).

(2) The discipline committee may, in its discretion, allow the introduction of evidence that is inadmissible under subsection (1) and may make any direction it considers necessary to ensure that no party is prejudiced as a result of the introduction of such evidence. O. Reg. 258/02, s. 10 (2).

No communication

11. No member of the discipline committee involved in a hearing shall communicate outside the hearing, in relation to the subject-matter of the hearing, with a party or the party's representative unless all other parties have been given notice of the subject-matter of the communication and an opportunity to be present during the communication. O. Reg. 258/02, s. 11.

Participation of persons not parties at hearing

- 12.** (1) The discipline committee may allow a person who is not a party to participate in a hearing if,
- (a) the good character, propriety of conduct or qualifications of the person is an issue at the hearing; or
 - (b) the participation of the person would, in the discipline committee's opinion, be of assistance at the hearing. O. Reg. 258/02, s. 12 (1).
- (2) The discipline committee shall determine the extent to which the person who is not a party may participate at the hearing. O. Reg. 258/02, s. 12 (2).

Suspension of registration or certificate of authorization

- 13.** (1) The Registrar may suspend a member's registration or a certificate of authorization on an interim basis for at most 90 days under subsection 12 (1) or 18 (1) of the Act where,
- (a) a matter is the subject of a proceeding before the discipline committee and that matter has not yet been determined; and
 - (b) the discipline committee makes a preliminary finding that the conduct of the member or certificate holder exposes or is likely to expose the public to harm or injury. O. Reg. 258/02, s. 13 (1).
- (2) The Registrar may grant an extension of an interim suspension once, for an additional period of up to 90 days, where,
- (a) the matter before the discipline committee has not yet been determined; and
 - (b) the discipline committee continues to find that the conduct of the member or certificate holder exposes or is likely to expose the public to harm or injury. O. Reg. 258/02, s. 13 (2).
- (3) If the Registrar suspends a registration or certificate of authorization on an interim basis or grants an extension of the suspension, the discipline committee shall make every effort to deal with the matter as expeditiously as possible and shall, where possible, give it precedence over any matter in relation to which no such order or extension has been made. O. Reg. 258/02, s. 13 (3).

Further investigation

- 14.** (1) If, at any time during a hearing, the discipline committee is of the opinion that it is appropriate to do so, it may request the complaints committee to appoint an investigator to conduct an investigation on a matter relevant to the hearing, and the complaints committee shall comply with the request. O. Reg. 258/02, s. 14 (1).
- (2) Where an investigator is appointed for the purposes of this section, he or she shall report his or her findings to the chair of the complaints committee who shall in turn provide them to the representative of the Association at the hearing and to the member whose conduct is the subject-matter of the hearing or his or her representative, if any. O. Reg. 258/02, s. 14 (2).

Transcripts

- 15.** (1) The discipline committee shall ensure that,
- (a) the oral evidence at a hearing is recorded;
 - (b) copies of the transcript of the hearing are available to any party on the party's request at the party's expense; and
 - (c) copies of the transcript of any part of the hearing that is not the subject of an order prohibiting publication are available to any person at that person's expense. O. Reg. 258/02, s. 15 (1).
- (2) If a transcript of a hearing or part of a hearing that is the subject of an order prohibiting publication is filed with a court in respect of proceedings, it shall, unless the court orders otherwise, be filed under seal and only the court and the parties to the proceedings may examine it unless the court orders otherwise. O. Reg. 258/02, s. 15 (2).

Professional misconduct

- 16.** (1) On a hearing, the discipline committee may find that a member or certificate holder has committed an act of professional misconduct. O. Reg. 258/02, s. 16 (1).
- (2) The following are prescribed as circumstances in which a member or certificate holder commits professional misconduct:
- 1. Failing to make reasonable provision for safeguarding the life, health or property of a person who may be affected by the work for which the member or certificate holder is responsible.
 - 2. Failing to correct or to report a situation that the member or certificate holder believes may endanger the safety or the welfare of the public.
 - 3. Contravening the Act or the regulations made under it, including the Code of Ethics, or of the by-laws of the Association or contravention of any other statute, regulation, standard, code, by-law or rule that applies in connection with work being undertaken by or under the responsibility of the member or certificate holder.
 - 4. Signing or sealing by a member of a final drawing, specification, plan, report or other document not actually prepared by the member or reviewed by the member.
 - 5. Permitting the sealing with the seal of a certificate holder of a final drawing, specification, plan, report or other document not actually prepared or reviewed by an individual retained or employed by the certificate holder.
 - 6. Undertaking to perform work that a member is not qualified to perform by virtue of the member's training and experience.
 - 7. Undertaking to perform work that a certificate holder is not qualified to perform by virtue of the training or experience of the member or members retained or employed by the certificate holder.

8. Failing to make prompt, voluntary and complete disclosure of an interest, direct or indirect, that might in any way be, or be construed as, prejudicial to the professional judgment of the member or certificate holder in rendering service to the public, to an employer or to a client and, in particular, without limiting the generality of the foregoing, carrying out any of the following acts without making prior disclosure:
 - i. Accepting compensation in any form for a particular service or a particular project from more than one party.
 - ii. Submitting a tender or offering or providing services in respect of a project on which the member or certificate holder may carry out work as a professional geoscientist.
 - iii. Participating in the supply of material or equipment to be used by the client in respect of a project on which the member or certificate holder may carry out work as a professional geoscientist.
 - iv. Expressing opinions or making statements concerning matters within the professional practice of geoscience where the opinions or statements are inspired or paid for by other interests.
9. Engaging in conduct or an act relevant to the practice of professional geoscience that, having regard to all the circumstances, would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional.
10. Failing to comply with any terms, conditions or limitations imposed on a certificate of registration or a certificate of authorization.
11. Permitting or counselling a person who is not a member or certificate holder to engage in the practice of professional geoscience or assisting such a person in doing so, except as provided for in the Act or the regulations.
12. Engaging in conduct or an act, criminal or otherwise, that constitutes conduct unbecoming of a professional geoscientist. O. Reg. 258/02, s. 16 (2).

Negligence

17. The discipline committee shall make a finding of negligence against a member or certificate holder where the member or certificate holder commits an act or omission in the practice of the profession that constitutes a failure to maintain the standards that a reasonable and prudent professional geoscientist would have maintained in the circumstances. O. Reg. 258/02, s. 17.

Written decision

18. (1) The discipline committee shall, within a reasonable time after the conclusion of a hearing, make a written decision on the matter,
- (a) describing each finding made on the issues before it;
 - (b) stating the reasons for each finding made; and
 - (c) stating any order made. O. Reg. 258/02, s. 18 (1).
- (2) The discipline committee shall immediately forward to the Registrar,
- (a) the decision; and
 - (b) the record of the hearing, consisting of all evidence presented before it, including,
 - (i) all exhibits,
 - (ii) all documents and records, and
 - (iii) a transcript of all testimony given before it, whether recorded electronically, mechanically or in handwritten form. O. Reg. 258/02, s. 18 (2).
- (3) The Registrar shall, immediately on receiving the decision and the record of the hearing, give a copy of the decision to the parties and the complainant. O. Reg. 258/02, s. 18 (3).
- (4) The Association shall ensure that a decision of the discipline committee is published, with or without the reasons therefor, in an official publication of the Association, together with the name of the member or certificate holder who was the subject of the proceeding. O. Reg. 258/02, s. 18 (4).

Release of documents

19. The Registrar, the complaints committee and the discipline committee, as applicable, shall release documents and any other matter or thing put into evidence at a hearing to the person who produced them, on request, within a reasonable time after the matter in issue has been finally determined. O. Reg. 258/02, s. 19.