

Rules of Procedure of the Discipline Committee of the Association of Professional Geoscientists of Ontario

(Made under S. 25.1 of the *Statutory Powers Procedure Act*)

Rule 1 – Interpretation and Application of Rules

1.1 Definitions

In these Rules, unless the context requires otherwise:

“**Act**” means the *APGO Act*, R.S.O. 2000, as amended;

“**APGO**” means of the Association of Professional Geoscientists of Ontario;

“**application for reinstatement**” means an application for reinstatement made under section 12 (2) or 18 (2) of the Act;

“**Committee**” means the Discipline Committee of APGO as defined by APGO Bylaw 10;

“**Committee Chair**” means the Chair of the full committee as defined by APGO Bylaw 10;

“**Discipline Panel**” means a panel of committee members selected by the committee Chair to conduct a hearing or motion as defined by APGO Bylaw 10;

“**electronic**” with respect to a proceeding, means a proceeding held by telephone conference call, video conference, or some other form of electronic technology allowing persons to communicate with and hear one another;

“**hearing**” means the process before a Discipline Panel constituted under s. 26 of the Act that commences with the filing of a Notice of Hearing and the member of the association or a holder of a Certificate of Authorization, temporary license or a limited license being asked whether he or she admits or denies the allegations contained in the Notice of Hearing;

“**holder**” means a holder of a Certificate of Authorization, a temporary or a limited license, who has been named in a Notice of Hearing;

“**member**” means a member of APGO who has been named in a Notice of Hearing;

“**motion**” is a request made to a Discipline Panel to make an order in a particular proceeding;

“**motion participant**” is a party and any other person who would be affected by the order sought;

“**Notice of Hearing**” means a document issued by APGO that contains one or more allegations of professional misconduct or incompetence against a member or holder;

“**parties**” means APGO and the member or holder;

“**Pre-Hearing Conference**” means a stage in discipline proceedings at which there may be a candid, without prejudice discussion of the strength of APGO’s case, the member or holder’s

potential liability for being found guilty of professional misconduct and/or incompetence, procedural issues, and the potential narrowing of issues to be determined by the Discipline Panel assigned to conduct the hearing;

“proceeding” means a motion, hearing and/or application for reinstatement before a Discipline Panel;

“SPPA” means the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended.

1.2 Application of Rules

The Rules apply to all proceedings referred to the Discipline Committee of APGO for hearing and determination and take effect May 1, 2005.

1.3 Interpretation of Rules

These Rules shall be liberally construed to secure a determination that is fair and just.

Rule 2 – Disclosure

2.1 APGO will make such timely disclosure to the member or holder, as is required by law, including:

- a) all relevant information (whether inculpatory or exculpatory) in APGO’s possession, unless it is privileged as a matter of law;
- b) in the case of written or documentary evidence, copies of the written or documentary evidence, or an opportunity to examine the evidence;
- c) in the case of evidence of an expert, at least 30 days before the hearing, the identity of the expert and a copy of the expert’s written report, or, if there is no written report, a written summary of the evidence.

2.2 The obligation on APGO to disclose is a continuing one. Consequently, after initial disclosure has been made, it is incumbent upon APGO to provide timely disclosure of information subsequently obtained and information previously considered irrelevant, but whose relevance has subsequently become apparent.

2.3 Evidence led by the APGO is not admissible unless APGO has made timely disclosure as required by Rules 2.1 and 2.2.

2.4 Evidence of an expert led by a member or holder is not admissible unless the member or holder gives APGO, at least 10 days before the hearing, the identity of the expert and a copy of the expert’s written report or, if there is no written report, a written summary of the evidence.

2.5 A Discipline Panel may, in its discretion, allow the introduction of evidence that is inadmissible under Rules 2.3 and 2.4 above, and may make directions it considers necessary to ensure that the opposing party is not prejudiced.

Rule 3 – Pre-Hearing Conferences

3.1 On request of either APGO or the member or holder, the committee Chair may direct that a pre-hearing conference be held.

3.2 A pre-hearing conference shall be presided over by a single member of the committee selected by the committee Chair.

3.3 During the course of a pre-hearing conference, the parties and the Chair of the prehearing may consider, on a without prejudice basis:

- a) the settlement of any or all of the issues to be brought before a Discipline Panel;
- b) the simplification of the issues;
- c) the facts or evidence that may be agreed upon;
- d) the dates by which any steps in the proceeding are to be taken or begun;
- e) the estimated duration of the hearing;
- f) procedural and legal issues that might have to be resolved by the Discipline Panel; and
- g) any other matter that may assist in the just and most expeditious disposition of the hearing.

3.4 The member of the committee who presides at a pre-hearing conference shall not be a member of the Discipline Panel assigned to the hearing, unless the parties consent.

Rule 4 – Procedural and Interlocutory Motions

4.1 In advance of a hearing, a procedural motion may be brought before a Discipline Panel of one or three members of the Discipline Committee, selected by the committee Chair in accordance with s. 4.2 of the SPPA.

4.2 After a hearing commences, a procedural or interlocutory motion may, at the discretion of the Chair of the Discipline Panel that is conducting the hearing, be brought before one or three members of that panel.

4.3 All procedural or interlocutory issues shall be raised in a motion as soon as possible and shall be heard on a day that is at least two weeks before the day upon which the hearing is scheduled to commence, unless the nature of the motion requires that it be heard during the hearing itself.

4.4 A person bringing a procedural or interlocutory motion shall provide to the other motion participants, the Notice of Motion and materials in support of the motion by the Tuesday that is at least 10 days before the motion is to be heard.

4.5 The other motion participants shall provide their materials to the person bringing the motion by the Tuesday that is at least three days before the motion is to be heard.

4.6 Where the parties consent, a Discipline Panel before which a procedural or interlocutory motion is brought, may hold a written hearing of the motion in accordance with s. 5.1 of the SPPA.

4.7 Where a written hearing of the motion is held, the Discipline Panel shall fix the dates and times by which submissions and/or evidence shall be provided to the responding party and the

Discipline Panel by the moving party, and provided to the moving party and the Discipline Panel by the responding party.

4.8 Where the parties consent, a Discipline Panel before which a procedural or interlocutory motion is brought may hold an electronic hearing of the motion in accordance with s. 5.2 of the SPPA.

Rule 5 – Hearings

5.1 A notice of hearing shall be publicly filed a minimum of 30 days before the hearing is held.

5.2 Pursuant to Bylaw 10, s.12, 13 of the APGO Act, the Discipline Committee Chair will select a Discipline Panel for the hearing.

5.3 The Discipline Panel will determine if the hearing will be open to the public or closed pursuant to Regulation 258/02 s.8.

5.4 The Discipline Panel shall ensure that all evidence at the hearing shall be recorded and that the transcript of the hearing is retained.

5.5 The Discipline Panel shall ensure that a timely written decision on the matter heard is delivered to the Registrar in the form outlined in Regulation 258/02 s.18.

5.6 Decisions of the hearing panels shall be public unless the discipline panel determines otherwise

Rule 6 – Production of Documents from Third Parties

6.1 A summons for the production of documents that are not in APGO's possession shall not require the production of any documents before the commencement of the hearing.

6.2 A motion relating to the production of documents from third parties by summons as described in Rule 4 shall not be heard until the commencement of the hearing.

Rule 7 – Electronic Hearings

7.1 Pursuant to s. 5.2 of the SPPA, a Discipline Panel may hold all or part of a hearing by telephone conference call, videoconference or any other form of electronic communication, unless a party objects and satisfies the panel that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice. A party may not object to an electronic hearing where the only purpose of the hearing is to deal with procedural matters.

7.2 For the purposes of this rule, a hearing includes a pre-hearing conference, a motion, a discipline hearing, the rendering of an oral reprimand, and an application for reinstatement.

7.3 A party requesting an electronic hearing shall give notice of an electronic hearing and the Discipline Panel shall provide an opportunity to the parties to make submissions on the issue.

7.4 The notice of an electronic hearing shall include:

- a) a statement of the time and purpose of the hearing, and details about the manner in which the hearing will be held;
- b) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;
- c) a statement that the party notified may, if the purpose of the hearing is to deal with matters other than procedure, by satisfying the Discipline Panel that holding an electronic hearing is likely to cause the party significant prejudice, require the Discipline Panel to hold the hearing as an oral hearing, and an indication of the procedure to be followed for the purpose; and
- d) a statement that if the party notified neither acts under clause c), if applicable, nor participates in the hearing in accordance with the notice, the Discipline Panel may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding.

7.5 Subject to Rule 7.1, where the purpose of the hearing is to deal with procedural matters or a pre-hearing conference, the electronic hearing shall proceed by way of telephone conference call, unless the panel orders otherwise.

7.6 Subject to Rule 7.1, where the purpose of the electronic hearing is to hear the evidence of a witness or to render an oral reprimand, the hearing shall proceed by way of videoconference, unless the parties consent or the panel orders otherwise.

7.7 If all or part of a hearing is conducted by electronic means, all of the parties are entitled to receive every document that the Discipline Panel receives. For the purpose of this rule, a document includes a sound recording, videotape, film, photograph, drawing, chart, graph, map and information recorded or stored by means of any device.

7.8 Where it is not reasonably practical to produce a copy of a document (such as a photograph), the parties shall have a right of reasonable access to the document.

7.9 At least 48 hours before an electronic proceeding is scheduled to commence, every person participating in the proceeding shall give notice to the parties of the telephone number and location where he or she can be reached for the proceeding.

7.10 Every person participating in the proceeding shall ensure that he or she can be reached at the telephone number provided at least five minutes before the proceeding is scheduled to commence.

7.11 Every person participating in the electronic hearing shall deliver every document, in sequentially numbered pages that he or she intends to rely upon, at least five days before the hearing.

7.12 Before an electronic hearing proceeds, APGO shall file with the Discipline Panel consent to the electronic hearing executed by the member or holder. The consent shall include an acknowledgement that the member or holder understands that the member or holder may object to the hearing being held as an electronic hearing, if the purpose of the hearing is not procedural.

Rule 8 – Written Hearings

8.1 A Discipline Panel may hold all or part of a hearing in writing if it believes that it is just and equitable to do so, unless a party objects.

8.2 If all or part of a hearing is conducted in writing, all the parties are entitled to receive every document that the Discipline Panel receives. For the purpose of this rule, a document includes a sound recording, videotape, film, photograph, drawing, chart, graph, map and information recorded or stored by means of any device.

8.3 Before a hearing in writing proceeds, APGO shall file with the Discipline Panel:

- a) a consent to the written hearing executed by the member or holder. The consent shall include an acknowledgement that the member or holder understands that the member or holder may object to the hearing being held as a written hearing;
- b) a statement executed by the member or holder confirming whether the member or holder admits or denies the allegations contained in the Notice of Hearing;
- c) where the member or holder admits the allegations contained in the Notice of Hearing, a Plea Inquiry Questionnaire in the form of Schedule “A”, executed by the member or holder; and
- d) an Agreed Statement of Facts executed by the member or holder.

8.4 Submissions by counsel for the parties, or the member or holder (in the case of an unrepresented member or holder) as to whether the Discipline Panel ought to make a finding of professional misconduct and/or incompetence, may be made in writing or electronically as the parties agree and the Discipline Panel directs.

8.5 Submissions as to penalty (which may include a Joint Submission as to Penalty) by counsel for the parties, or the member or holder (in the case of an unrepresented member or holder) may be made in writing or electronically as the parties agree and the Discipline Panel directs.

8.6 Schedule “A” is the Hearing Plea Inquiry Questionnaire attached.

Rule 9–Withdrawal of Allegations

9.1 Where the parties consent, a Discipline Panel of one or three members of the Committee constituted by the Committee Chair under s. 4.2 of the SPPA may make an order authorizing APGO to withdraw the allegations contained in a Notice of Hearing.

Rule 10–Reinstatement Applications

10.1 This Rule applies to applications for reinstatement made under section 12 (2) and 18 (2) of the Act.

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10.2 A person making an application for reinstatement (applicant) shall deliver a notice of the application, specifying the order sought, the grounds of the application, the documentary and oral evidence that the applicant will introduce, and the anticipated length of the hearing.

10.3 The Committee Chair shall not schedule a reinstatement application for a hearing until the applicant complies with Rule 10.2.

10.4 After receiving notice of the application, APGO will make timely disclosure to the applicant in accordance with Rule 2.

**SCHEDULE "A" TO RULE 8
WRITTEN HEARINGS PLEA INQUIRY QUESTIONNAIRE**

TO: _____
Set out name of member or holder

The Discipline Committee considers it essential to ensure that members or holders of the profession who admit allegations of professional misconduct and/or incompetence do so voluntarily and unequivocally and understand the consequences of such admissions.

You, the member or holder, have provided a Discipline Panel with a statement that you admit (an) allegation(s) of professional misconduct and/or incompetence. Before accepting your admission, the Discipline Panel asks that you answer the following questions, in order to ensure that your admission is voluntary, informed and unequivocal.

1. Do you understand the nature of the allegation(s) that has (have) been made against you?

Yes No

2. Do you understand that by admitting the allegation(s), you are waiving the right to require the prosecution to prove the case against you and the right to have a hearing?

Yes No

3. Did you voluntarily decide to admit the allegation(s) against you?

Yes No

4. Do you understand that depending on the penalty ordered by the Discipline Panel, that a summary of the agreed facts and the penalty order may be published in *Field Notes*, including reference to your name?

Yes No

5. Do you understand that any agreement between counsel for the association and you with respect to the penalty proposed does not bind the Discipline Panel?

Yes No

Date: _____

Signature: _____
(To be signed by the member or holder)