

Professional geoscience in Ontario

This document is intended to help the public understand how the Association of Professional Geoscientists of Ontario (APGO) deals with inquiries about professional geoscience services or complaints against registered practitioners. A registered practitioner means the holder of a practising, limited or temporary certificate of registration or the holder of a Certificate of Authorization. The complaints and discipline process is designed to maintain high professional standards and deal with situations in which public welfare or safety may be endangered.

Geoscientists are, by law in Ontario, registered professionals like doctors, lawyers, accountants and engineers. Professional geoscientists are employed in industry, in government, education, and others provide consulting or other services directly to the public. In Ontario, there are professional geoscientists working, for example, as geologists, geophysicists, hydrogeologists, physical geographers, geochemists, administrators, project managers, and consultants in such diverse fields as exploration mining, environmental management, infrastructure, public interest and safety and water supply.

APGO is responsible, under the *Professional Geoscientists Act, 2000* (the Act), for registering professional practitioners, maintaining professional standards, and ensuring that practitioners follow the Code of Ethics (see Glossary) that governs practitioners in their relationships with the public, employers and other practitioners. In addition, APGO has the legislated power to discipline practitioners found guilty of professional misconduct, negligence or incompetence (see Glossary).

Anyone practicing professional geoscience (see Glossary) in Ontario is required by the Act to be registered by APGO. “P.Geo.” stands for professional geoscientist. Only people who hold a Certificate of Registration may use this designation or infer that he or she is a professional geoscientist. Individuals or firms offering or providing geoscience services directly to the public are also required by the Act to have a Certificate of Authorization (C of A), also granted by APGO.

APGO ensures that only properly qualified professional geoscientists are allowed to practice geoscience in Ontario and that these members practice in accordance with professional standards. Anyone with a question or concern about the activities or conduct of a practitioner is encouraged to contact the Registrar of APGO.

Any member of the public (including another member of APGO or APGO itself) who has been directly or indirectly affected may make a complaint respecting the conduct of a member or certificate holder registered with APGO. A complaint made by a person who has been indirectly affected may be substantiated by documentation, circumstantial evidence or by admission of the practitioner. Section 41 of the Act allows the Association to deal with a complaint respecting the conduct of a former member or certificate holder who was registered with APGO.

The complaints process: what you can expect

The complaints process deals with your concerns about the actions and conduct of registered practitioners to ensure that the public interest, welfare and safety are protected.

The complaints process deals only with your concerns about professional and ethical practice and cannot be used to obtain financial redress from a member or certificate holder. Alternatives for this purpose include filing a suit against the member in the civil courts. Making a complaint is not an alternative to the civil courts.

There is no fee for filing a complaint; however, you will need to provide a written summary of the facts and evidence to support your concern. When you report a concern to the Registrar of APGO, a three-stage process is set in motion. The first two stages may take several months and involve the Registrar and the Complaints Committee. A complaint that is referred to the third stage of the process, a discipline hearing, may take longer.

At the first stage, the Registrar will assist you with understanding the process and the statement and expression of your concern. Practice guidelines (see Glossary) are available from APGO to help you decide whether or not your concern should be formalized as a written complaint. The Registrar will assist you at the first stage with the statement and submission in writing of your complaint.

During the second stage, the APGO Complaints Committee will investigate and evaluate the complaint that has been made. The Complaints Committee will determine what the next action(s) will be. The Committee may decide to dismiss the complaint if it is found to be frivolous or without merit, to direct an attempt to reach a mediated resolution of the complaint, to request further information from you or from the practitioner, to appoint an investigator, to take other appropriate action in the circumstances or to refer the matter to a hearing of the Discipline Committee. In serious matters, an early recommendation to suspend the member’s registration may be made to protect the public interest.

At the third stage, if the evidence or investigation supports it, the complaint will be referred to a formal hearing of a separate Discipline Committee. You, the complainant, may be required to give testimony at a discipline hearing.

Impartiality

Both the Complaints Committee and the separate Discipline Committee are made up of members of the APGO Council and registered members of the profession. The members of each panel of the Complaints Committee that is convened are screened to ensure that they have no conflicts of interest to deal with the complaint. To ensure impartiality throughout the process, each separate stage of the complaint process and the discipline process

will be decided upon by different people within APGO. That is, no member of the Complaints Committee who has participated in the complaint process will sit on the Discipline Committee that hears the same matter.

Confidentiality

All complaints and complaint documentation will be kept confidential by APGO staff and members of the committees. However, a formal discipline hearing is open to the public unless the case under adjudication is sensitive.

Information about the conduct of a practitioner will become public knowledge if and when a formal hearing by the Discipline Committee has been held and the results are published.

Initial contact and gathering evidence about your complaint

If you believe that a practitioner may have acted in an improper, negligent or incompetent manner, APGO would like to hear from you. To inquire about or to begin the complaints process, please contact the Registrar at 416-203-2746, by letter sent to 60 St. Clair Avenue East, Suite 913, Toronto, Ontario M4T 1N5 or by e-mail to registrar@apgo.net.

The Registrar will answer your questions about conduct expected of a practitioner, even if you do not wish to register a formal complaint. The decision to register a complaint is yours.

The Registrar will verify whether or not the individual is a registered professional geoscientist or the entity is a Certificate of Authorization holder. If not a registered member or certificate holder, the Registrar may undertake separate enforcement action (see Glossary).

The Registrar will assist you with understanding the process, making a clear statement of your concern in the format of a complaint and will advise you on the statements and evidence you will need to provide in support of allegations of either professional misconduct, negligence or incompetence.

If the evidence available to you does not support your filing a formal complaint with APGO, the Registrar may suggest alternative methods for addressing your concerns. However, you do have the right to insist that your complaint be submitted directly to the Chair of the Complaints Committee.

STAGE 1: Making a Complaint

You are required to submit your complaint in writing to the Registrar, APGO. This letter should include a description of your

concern, the time frame of the occurrence and any supporting documentation that is available to you.

STAGE 2: Peer Review of the Complaint

1. The Registrar will refer all complaint correspondence to the Chair of the Complaints Committee who will, in turn, assign the matter to a Preliminary Review Panel (PRP) for an examination of the complaint in context of the *Professional Geoscientists Act, 2000*, Regulations (O. Reg. 59/01 amended to 378/01, O. Reg. 60/01), and the APGO By-laws.
2. The PRP, through the Registrar, will inform the member in question about the complaint, the sections of the Act or Regulations alleged to have been breached and request a response in writing.
3. The complainant (you) will be asked to comment on the member’s response and to provide any further information with respect to the complaint.
4. If the evidence provided to the committee does not support recommending a formal hearing, the committee has several options available for resolution of your complaint. Some of these options are:
 - a. Give notice to you of an intention to dismiss the complaint if the PRP is of the opinion that the complaint is frivolous, vexatious, an abuse of process or there is insufficient evidence;
 - b. Request further information from either you (the complainant) and/or the member;
 - c. Engage an independent investigator to obtain, review, comment and report on the work of the member that is your concern;
 - d. Direct the matter to a mediated Complaint Settlement Process (also known as alternative dispute resolution);
 - e. Request an interview with the member or send a “letter of advice” to the member without referring the matter to the Discipline Committee;
 - f. Take other actions as considered appropriate in the circumstances.

In the scenarios above, the complainant (you) and the professional member geoscientist in question are each provided with a written decision of the Complaints Committee, including reasons.

In an instance where the decision is made to dismiss the complaint, a 30-day period will be provided for a complainant, or APGO, to challenge the decision. If a challenge is received, the complaint will be reassigned to a new panel of not less than 3 members of the Complaints Committee who have not been previously involved in the investigation or consideration of the complaint. This second panel will independently assess the complaint from the beginning.

There is an alternative available to the Complaints Committee when the geoscientist under investigation admits to unprofessional conduct or unskilled practice. With the consent of the member, a formal Discipline Committee hearing may be unnecessary. After a

review of the admission, material facts and the recommended sanction, the Complaints Committee may issue, with the agreement of the member or certificate holder, an Order with the resulting decision and with required actions and sanctions. This Order will have the same force and effect as an Order issued after a formal hearing of the Discipline Committee.

STAGE 3: Referral to a Discipline Hearing

If the evidence available to and gathered by the Complaints Committee does support holding a discipline hearing, the Complaints Committee will refer the complaint, in whole or in part, by making an Order to the Discipline Committee (see Glossary) for a formal hearing.

Withdrawal of a complaint

A complaint may be withdrawn. The request for withdrawal of a complaint must be made in writing with an explanation by the complainant (you) as to the reason for the withdrawal. This letter requires the signature of the complainant.

For example, it may become known that a complainant wants to withdraw a complaint at any time after the complaint has been made and received by the Registrar. This may occur whether or not the Preliminary Review Panel has been appointed or a process of informal resolution (mediation) has been started.

However, the Chair of the Complaints Committee or a Preliminary Review Panel may continue an investigation and consideration of a complaint that has been withdrawn. This is to ensure that undue pressure is not placed on a complainant, or compensation offered, to withdraw an otherwise valid complaint. There may have been valid concerns identified or made known to APGO and allowing withdrawal may not be the appropriate action on behalf of APGO in following the mandate of protecting the public interest from unskilled practice or misconduct.

Satisfaction

If either you (or the member concerned) are not satisfied with the way in which your complaint has been handled after the Complaints Committee has made its decision and issued its Order, you may request that the matter be reviewed by an individual appointed by the APGO Council to undertake such a review.

Your request for a review of a complaints committee decision shall be made in writing to the Registrar of APGO. This review will not examine the merits of the complaint, but will only examine the process and procedures followed by the Complaints Committee in arriving at the decision that is under review.

GLOSSARY

The following summary terms are provided to assist the understanding of key aspects in the complaint process. The provisions of the *Professional Geoscientists Act, 2000* and Regulations made under the Act are used to regulate and govern the practice of professional geoscience in Ontario

Code of Ethics

A registered practitioner is obligated to follow the Code of Ethics contained in Ontario Regulation 60/01 made under the Act.

Complaints Committee

The committee is made up of members of the APGO Council and appointed members of the profession. The role of the committee is to investigate the evidence and other circumstances of a complaint and to recommend actions to deal with the complaint.

Discipline Committee

The committee is made up of members of the APGO Council and appointed members of the profession. A hearing will be convened when a complaint has been considered by the Complaints Committee to have merit and an Order of referral for a formal hearing is made to the Discipline Committee. It is the discipline Committee that has the power to impose penalties and punishments on the finding of professional misconduct, negligence or incompetence (Section 26 (4) of the Act).

Early Dismissal

On the grounds that the complaint is considered to be frivolous, vexatious, without merit, made in bad faith or an abuse of process and that it should not be continued with, a Notice of Intention to Dismiss a Complaint will be given to all interested parties. An Order to Dismiss the Complaint will be made if the Notice of Intention to Dismiss is not challenged by any of the notified parties.

Enforcement

The *Professional Geoscientists Act* requires all individuals who provide professional geoscience services in Ontario to be registered with APGO. Enforcement is legal action initiated by APGO against a non-member of the Association when the individual has been reported and is confirmed to be practicing professional geoscience in Ontario without being a registered member.

Incompetence

Incompetence or unskilled practice occurs when a practitioner has not followed recognized and acceptable practices or has not demonstrated an acceptable level of skill in conducting the activity on which the complaint has been made.

Letter of Advice

A letter of advice may be sent to a practitioner as a decision to resolve less serious complaints. This letter would provide advice to the practitioner to prevent the circumstance of the complaint from reoccurring.

Negligence

Negligence may occur when the practitioner fails, by action or omission, to maintain the standards of work that a reasonable and prudent professional geoscientist would have maintained in the circumstances.

Order

An Order is a legal statement of a decision of the Complaints Committee. An Order states the terms of a decision on action(s) required to be taken on the part of the member or certificate holder.

An Order will be made if it is necessary to refer a complaint to the Discipline Committee for a formal hearing. In more serious matters, the Complaints Committee may issue an Order to the Registrar to suspend a member's or certificate holder's registration in order to protect the public interest until such time as the Discipline Committee hearing can be convened and a decision made.

Practice Guidelines

Practice guidelines are available for many areas of professional geoscience. These generic guidelines have been prepared by senior members of the Association to assist both practitioners and the public with understanding the scope and aspects of practice that are required of a professional. The Complaints Committee will also refer to these guidelines in assessing a complaint.

Professional Geoscience

The practice of professional geoscience is the performing of an activity that requires the knowledge, understanding and application of the principles of geoscience and that concerns the safeguarding of the welfare of the public or the safeguarding of life, health or property including the natural environment.

Professional Misconduct

Section 16(2) of Ontario Regulation 258/02 made under the Act sets out circumstances in which it is deemed that a member or certificate holder has committed an act of professional misconduct.

Representative circumstances that may be considered to be professional misconduct include failing to make reasonable provision for safeguarding the life, health or property of a person who may be affected by the work; failing to correct or report a situation that may endanger the safety or welfare of the public; contravening provisions of the Act; undertaking work that the member is not qualified to perform; and/or engaging in conduct that would reasonably be regarded as disgraceful, dishonourable or unprofessional.



MAKING A COMPLAINT

A Public Information Guide

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