

Rules of Procedure of the Discipline Committee of the Association of Professional Engineers of Ontario as amended

(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 Professional Engineers Act, R.S.O. 1990, c. P.28, as amended.

"Association" has the same meaning as defined in section 1 of the Act.

"Committee" means the Discipline Committee of the Association of Professional Engineers of Ontario.

"Committee Chair" means the Chair of the full committee.

"Day" means a calendar day.

"Discipline Panel" means a panel of committee members selected by the committee Chair to conduct a hearing or motion.

"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. 28 of the Act.

"Holder" means a holder of a Certificate of Authorization, a temporary licence or a limited licence, whose actions form the basis of the matter before a Discipline panel, as set out in a Statement of Allegations.

"Member" means a member of the Association whose actions form the basis of the matter before a Discipline panel, as set out in a Statement of Allegations.

"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.

"Parties" means the Association and the member or holder.

"Pre-Hearing Conference" means a conference where the parties are directed to attend by Notice given to the parties by the Chair of the Discipline Committee.

"Proceeding" means a motion, hearing and/or application under Rule 9 that is before a Discipline panel.

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

"Statement of Allegations" means a document containing allegations referred to the Discipline Committee by the Complaints Committee.

"Tribunal Staff" means the administrative staff of the Discipline Committee as defined in section 4.5 of the SPPA.

1.2 Application of Rules

The Rules apply to all proceedings referred to the Discipline Committee of the Association of Professional Engineers of Ontario for hearing and determination, and take effect January 1, 2010.

1.3 Interpretation of Rules

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

1.4 These Rules shall not be interpreted or applied in a manner that is inconsistent with any provision of the Act, its Regulations or the SPPA.

1.5 In the event of a conflict between the English version of a rule and the French version of a rule, the Discipline panel shall use the one that the Discipline panel determines is more fair and just.

1.6 The use of a term in the singular includes the meaning of the term in the plural.

1.7 The Discipline panel may issue general or specific procedural directions to the parties at any time.

1.8 Tribunal staff have the power not to process documents in accordance with section 4.5 of the SPPA.

Rule 2 - Disclosure

2.1 The Association 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 the Association'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 the Association to disclose is a continuing one. Consequently, after initial disclosure has been made, it is incumbent upon the Association 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 Association is not admissible unless the Association 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 the Association, 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.
- 2.6** Rule 2 does not apply to hearings into applications after revocation or suspension.

Rule 3 - Pre-Hearing Conferences

- 3.1** The Chair of the Discipline Committee may, by Notice, direct the parties to participate in a pre-hearing conference in which, among other things, the matters set out at section 5.3(1) of the *Statutory Powers Procedure Act* will be considered. The member assigned by the Chair to preside at the pre-hearing conference may make such orders as he or she considers necessary or advisable with respect to the conduct of the proceeding, including adding parties.

Rule 4 - Motions

(amended by the Discipline Committee at its November 29, 2018 meeting)

- 4.1** Until the Chair of the Discipline Committee issues a Notice of Hearing to the parties, a party may make the following motions, with prior notice to a responding party, which shall be scheduled by the Chair of the Discipline Committee:
 - 4.1.1 A motion for an order regarding disclosure; or,
 - 4.1.2 A motion for an order combining matters or separating a matter.
- 4.2** The parties to a matter, may communicate with the Chair of the Discipline Committee by email or letter to schedule a motion or hearing, without the need to bring any formal motion. Any party communicating with the Chair must copy the other party on any such communication. The Chair shall not participate on any motion the Chair has scheduled but may consider informal requests without the need of a party bringing any formal Motion.
- 4.3** All Motions with notice shall be in the format set out in Form 1 and be printed, served on the other party and an additional 7 copies (for: Panel of 5, court reporter and independent legal counsel) of the Motion Record brought by the moving party to the presentation of the motion before a hearing panel. A Motion shall consist of written materials bound in the form of a Motion Record. The Motion Record shall consist of a Notice of Motion and Affidavit in Support of the Motion. At the presentation of the Motion, the Moving party shall provide to the hearing panel an Affidavit of Service to prove that the motion record was served on the Responding party.
- 4.4** All motions by a party, except Rule 4.1 motions, must be presented to the hearing panel seized of the referred matter on the date shown on the Chair's Notice of Hearing, or on a date that the hearing panel sets to reconvene. Prior to the issuance of a Notice of Hearing by the Chair of the Discipline Committee, the party desiring to bring a motion under Rule 4.1 shall schedule a motion with the Chair of the Discipline Committee, who will provide a date for the motion under Rule 4.1.

- 4.5** The Chair of the Discipline Committee shall schedule and convene a motion panel to consider decide Rule 4.1 motions. At the presentation of Rule 4.1 motion, the parties shall bring 5 copies (for: Panel of 3, court reporter and independent legal counsel) of their material at the oral presentation.
- 4.6** No motion panel decision regarding a motion under Rule 4.1 is binding upon the hearing panel deciding the merits of a matter. A party bringing another motion to the hearing panel for an order regarding disclosure or to combine or separate a matter that was previously decided under Rule 4.1 must provide to the hearing panel, the prior decision of the motion panel for marking and entry into the record of proceeding at the hearing.
- 4.7** A responding party may respond to a motion using Form 2.
- 4.8** *Notice of Motion and Supporting Affidavit* (Timeframes and Service)
1. A motion shall be made by a notice of motion and supporting affidavit (Form 1).
 2. The notice of motion and supporting affidavit:
 - a) shall be served on the responding party, at least seven days before the hearing date; and
 - b) shall be filed at the hearing before the hearing panel, with proof of service at the date of presentation of the motion.
 3. The moving party shall obtain a hearing date from the Chair before serving the notice of motion and supporting affidavit (for motions under Rule 4.1)

Supporting Affidavit in Response

4. A responding party who prepares an affidavit (Form 2) in response to the moving party's notice of motion and supporting affidavit shall serve it at least two days before the hearing date and shall file it with proof of service at the date of the presentation of the motion.
5. Affidavits of Service shall be in Form 3 and must be used by both, the moving party and the responding party and filed with the panel.

4.9 *Method of Hearing*

A motion shall be presented and argued in person and heard by the hearing panel with a court reporter present.

4.10 *Motion without Notice*

1. Despite Rule 4.9, a motion may be made without notice if the nature or circumstances of the motion make notice unnecessary or was not reasonably possible.
2. Motions for adjournment or motions for excluding witnesses from a hearing room during a hearing other than for excluding a party, may be made without notice.

Rule 5 - Production of Documents from Third Parties

- 5.1** A summons for the production of documents that are not in the Association's possession shall not require the production of any documents before the commencement of the hearing.
- 5.2** 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 6 - Electronic Hearings

- 6.1** Pursuant to s. 5.2 of the SPPA, a Discipline panel may continue a hearing electronically, unless a party objects and satisfies the panel that holding an electronic hearing rather than an oral hearing is likely to cause the party significant prejudice.
- 6.2** A Discipline panel may allow a witness to provide evidence electronically when a party has advised the other parties as part of their disclosure requirement before a hearing that they plan to present the evidence electronically and have given the Tribunal staff sufficient notice to enable them to secure the necessary equipment or facilities. This rule also applies to the Registrar and the applicant in a hearing under Rule 9.
- 6.3** An electronic hearing must be open to the public either by providing the facilities necessary or access electronically to enable the public to witness the proceedings.
- 6.4** When one party requests a hearing to be heard electronically, the Discipline panel shall provide an opportunity for the other party to make a submission on the issue.
- 6.5** When the parties agree, a pre-hearing conference or a meeting to rule on a pre-hearing motion may be held electronically. The Association or the Registrar will provide the Discipline Committee with a copy of the consent of all parties to participate electronically before discussing any aspect of a matter.
- 6.6** When part of a hearing is conducted electronically, all the parties are entitled to receive a copy of every document that the Discipline panel receives. For the purpose of this rule, a document includes a sound recording, video recording, film, photograph, drawing, chart, graph, map and information recorded or stored by means of any device, including email. Where it is not reasonably practical to produce a copy of a document, the parties shall have a right of reasonable access to inspect the document before reconvening an electronic hearing.
- 6.7** The Chair of a Discipline panel will provide the public and the parties, or the Registrar and an applicant under Rule 9, with a minimum of 48 hours notice before reconvening a hearing electronically. The Chair of the Discipline Committee will provide the parties, or the Registrar and the applicant, with a minimum of 48 hours notice before convening a pre-hearing conference or a meeting to dispose of a pre-hearing motion. A notice shall include all the technical information required for a person to participate electronically using commonly available equipment or the time and location of the facilities arranged by the Tribunal staff.
- 6.8** Every person participating in the proceeding electronically 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.

- 6.9** Every party, or the Registrar and an applicant under Rule 9, shall deliver every document to the other party that he or she may rely upon during an electronic hearing and at least five days before it starts.

Rule 7 - Written Hearings

- 7.1** Pursuant to s. 5.1 of the SPPA, a Discipline panel may continue a hearing in writing if it believes that it is just and equitable to do so, unless a party objects. Hearings to provide a Discipline panel with an amended agreed statement of facts, or to make joint submissions as to penalty are well suited to written hearings.
- 7.2** A Discipline panel may allow a witness to provide evidence in writing if the parties, or the Registrar and an applicant under Rule 9, agree and the evidence includes both the examination-in-chief and the cross-examination.
- 7.3** A written hearing must be open to the public by making the documents presented to a Discipline panel available to the public at the same time. For the purpose of this rule, a document includes a sound recording, video recording, film, photograph, drawing, chart, graph, map and information recorded or stored by means of any device, including by e-mail.
- 7.4** When one party requests a hearing in writing, the Discipline panel shall provide an opportunity for the other party to make a submission on the issue.
- 7.5** When the parties agree, a meeting to rule on a pre-hearing motion may be held in writing. The Association or the Registrar will provide the Discipline Committee with a copy of the consent of all parties to conduct a meeting in writing before discussing any aspect of a matter.
- 7.6** When 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 recording, film, photograph, drawing, chart, graph, map and information recorded or stored by means of any device. Where it is not reasonably practical to produce a copy of a document, the parties shall have a right of reasonable access to the document before reconvening a written hearing.
- 7.7** The Chair of a Discipline panel will provide the public and the parties, or the Registrar and an applicant under Rule 9, with a minimum of 48 hours notice before reconvening a written hearing. The Chair of the Discipline Committee will provide the Registrar and the member(s) with a minimum of 48 hours notice before convening a meeting to dispose of a pre-hearing motion. The notice shall include the date and time of a written hearing, and where any written material must be delivered to.
- 7.8** If a member or a holder enters a plea in a written hearing, the member or holder must complete and provide a copy of Schedule "A" to the Discipline panel before the plea can be accepted. When the parties, or when the Registrar and the applicant under Rule 9, jointly agree to provide a document to the Discipline panel, only the Association or the Registrar needs to provide it. The document must include a statement that the other party, or the applicant, have jointly agreed to provide the document.

SCHEDULE "A" TO RULE 7 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 for your arguments to be heard? Yes No
3. Do 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 the *Gazette*, 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

(To be signed by the member or holder)

(date)

Rule 8 – Dealing with Dismissals

(approved by the Discipline Committee at its November 7, 2014 meeting)

- 8.1** Subject to Rule 8.4, a panel may dismiss a proceeding without a hearing if:
- a) The proceeding is frivolous, vexatious or is commenced in bad faith;
 - b) The proceeding relates to matters that are outside the jurisdiction of the tribunal;
or
 - c) Some aspect of the statutory requirements for bringing the proceeding has not been met.
- 8.2** Before dismissing a proceeding, a panel shall give notice of its intention to dismiss the proceeding to all parties to the proceeding if the proceeding is being dismissed for reasons referred to in Rule 8.1.
- 8.3** The notice of intention to dismiss a proceeding shall set out the reasons for the dismissal and inform the parties of their right to make written submissions to the tribunal with respect to the dismissal within the time period specified in the notice.
- 8.4** A panel shall not dismiss a proceeding under this section until it has given notice under Rule 8.2 and considered any submissions by the parties.

Rule 9 - Applications After Revocation or Suspension

- 9.1** This rule applies to a hearing into application for a licence, a Certificate of Authorization, a temporary licence, a provisional licence or a limited licence after revocation for cause and to applications for removal of a suspension that is referred to the Discipline Committee by the Registrar.
- 9.2** The person who applied to the Registrar for a licence or a Certificate of Authorization after revocation or for removal of a suspension (the applicant) shall, at least ten days before a hearing, provide the Registrar with a copy of any document that the applicant may seek to introduce into evidence at the hearing, not including any document that was previously provided to the Registrar, and a written summary of any oral evidence of any witnesses that the applicant may seek to introduce into evidence. If this rule is not complied with, the Discipline panel may, at its discretion and in accordance with section 30(6) of the Act, accept evidence that was not disclosed to the Registrar in accordance with this rule.
- 9.3** The Registrar shall, at least ten working days before a hearing, provide the applicant with a copy of any document that the Registrar may seek to introduce into evidence, not including any document provided previously by the applicant, and a written summary of any oral evidence of any witness that the Registrar may seek to introduce into evidence. If this rule is not complied with, the Discipline panel may, at its discretion and in accordance with section 30(6) of the Act, accept evidence that was not disclosed to the applicant in accordance with this rule.
- 9.4** At a hearing into an application, the Registrar provides the Discipline panel with a copy of the application and supporting documentation provided to the Registrar by the applicant to fulfill the administrative qualifications. The applicant then states what order is being sought and presents their case in an effort to convince the Discipline panel that they will engage in the practice of professional engineering or, for a holder,

will engage in the business of providing professional engineering services with competence and integrity.

Rule 10 – Provision of documents prior to hearing

(approved by the Discipline Committee at its November 2, 2011 meeting)

- 10.1** The purpose of this Rule is to provide an opportunity for panel members to understand the issues to be determined at a hearing.
- 10.2** Every party may provide a concise voluntary response statement describing the issues to be determined and the party's position on the issues. Each party must provide a copy of their statement to the other parties at the same time.
- 10.3** The Discipline Committee Chair will provide the hearing panel members with the following documents when the documents are provided to the Chair at least ten working days before a hearing: the Statement of Allegations and any voluntary response statements (that could include an Agreed Statement of Facts) in accordance with Rule 10.2.
- 10.4** Panel members will be provided with the documents set out in Rule 10.3 up to five days before a hearing. The documents will be accompanied with a reminder to the panel members that the documents are confidential and that they are not evidence.

**INSTRUCTIONS AND FORMS
PERTAINING TO RULE 4**

Instructions for Making a Motion before the PEO Discipline Committee (Form 1)

A motion is a request to a Discipline Committee Panel to make an order about a matter.

Step 1: EXPLAIN what you are asking the Panel to do and why. This is done by filling out a Notice of Motion and Supporting Affidavit (Form 1). Contact the Discipline Committee Chair to obtain a date and time when the motion could be heard, for Rule 4.1 motions. If the hearing has already commenced and the hearing is scheduled to re-convene (specify the date when the hearing panel is scheduled to reconvene; the date on the Notice of Hearing).

Step 2: SERVE. Form 1 must then be served on the other party at least 7 days before the Motion date. There are rules about how this must be done. See "Guide to Serving Documents". Copies of the supporting affidavit with documentary evidence attached to the form must also be served.

Step 3: BRING 7 copies of the Notice of Motion and Supporting Affidavit form with you for presentation to the Panel on the date the hearing of the Motion. Bring 5 copies of same if a Rule 4.1 motion is being presented. Also file an Affidavit of Service providing that the other parties were served.

Note: Do not include this page with the Notice of Motion

Instructions for Completing the Responding Party Affidavit (Form 2)

A responding party who was served with a Motion (Notice of Motion and Supporting Affidavit), may wish to respond to the Motion.

Step 1: COMPLETE Form 2

Step 2: SERVE the documents. You can serve the documents yourself. You can have a friend or co-worker do it for you. You can also hire someone, called a process server, to do it. If you have a representative, you can instruct them to deal with this requirement.

Step 2: BRING 7 copies of the documents to the oral presentation before a hearing panel. At the presentation of Rule 4.1 motion, the parties shall bring 5 copies of their material at the oral presentation.

Note: Do not include this page with the Notice of Motion

Instructions for Completing the Affidavit of Service (Form 3)

In a Discipline matter everyone involved must receive the key documents they need. "Serving" documents means giving copies to all the other parties. Generally speaking, this must be done at each step in the proceeding. By serving documents, you tell the other parties about the step you are taking. They can then respond if they want to.

Step 1: SERVE the documents. You can serve the documents yourself. You can have a friend or co-worker do it for you. You can also hire someone, called a process server, to do it. If you have a representative, you can instruct them to deal with this requirement.

Step 2: COMPLETE the Affidavit of Service. The person who serves the papers must keep careful notes. He or she will have to let the panel know who was served and when and where and how this was done. These facts must be put on the Affidavit of Service. The person who fills out the form must swear or affirm that the facts are true.

Note: Do not include this page with the Notice of Motion

Notice of Motion and Supporting Affidavit (Form 1)

(Discipline Committee)

Please complete the following:

Name of Matter: _____
(PEO v. Name of defendant(s))

Scheduled Hearing Date(s), if any: _____

Motion made by: please provide the name(s) and contact information for the Moving Party:

Name, or name of company: _____

Address: _____

Tel: _____ E-mail: _____

Name of Counsel or Representative: _____

Address: _____

Tel: _____ E-mail: _____

This motion will be made in person by:

Name of Party: _____

Please provide the name(s) and contact information for the Responding Party:

Name, or name of company: _____

Address: _____

Tel: _____ E-mail: _____

Name of Counsel or Representative: _____

Address: _____

Tel: _____ E-mail: _____

The Motion is for:

(In the space below, or on a separate page, please describe what you want the motion panel or hearing panel to decide or order)

The Grounds of the Motion are:

(In the space below, or on a separate page, please identify the basis for your motion. What are the facts, statutory provisions or Rule you rely on in support of your position and the remedy you seek from the panel)

Dated at _____, Ontario on _____
(City) *(Date)*

Signature: _____

Please also complete the Affidavit in Support of Motion on page 3 below.

- Additional pages are attached because more room was needed.
- Documentary evidence to the Affidavit in support of Motion is attached
- Additional Forms are attached

Affidavit in Support of Motion, continued

If more space is required, attach and initial extra pages.

Sworn/Affirmed before me at: _____
(Municipality)

in: _____
(Province, state or country)

on: _____, 20____, _____
Commissioner for taking affidavits
(Type or print name)

Signature
(This form is to be signed in front
of a lawyer, justice of the peace,
notary public or commissioner for
taking affidavits)

Responding Party Affidavit, continued

If more space is required, attach and initial extra pages.

Sworn/Affirmed before me at: _____
(Municipality)

in: _____
(Province, state or country)

on: _____, 20____, _____
Commissioner for taking affidavits
(Type or print name)

Signature
(This form is to be signed in front
of a lawyer, justice of the peace,
notary public or commissioner for
taking affidavits)

Affidavit of Service (Form 3)
(Discipline Committee)

Please complete the following:

Name of Matter: _____
(PEO v. Name of defendant(s))

My name is: _____
(Full name)

I live in: _____
(Municipality & Province)

I swear/affirm that the following is true:

I served _____, on _____, 20____,
(Full name of person/company served) (Date)

at _____
(complete address)

which is:

- the address of the person's home
- the address of the company's place of business
- the address of the person's or business' representative on record with the Discipline Committee
- other address: _____

I served the document(s) referred to in paragraph one by the following method:

Personal service:

- Leaving a copy with the person
- Leaving a copy with the _____ of the business/company.
(name and position of the person)

Service by registered mail:

- Registered mail
- (If service done by registered mail, attach a copy of the Canada Post delivery confirmation, showing the signature verifying delivery, to this affidavit)

Service by courier:

- Courier
- (If service done by courier, attach a copy of the delivery confirmation, showing the signature verifying delivery, to this affidavit)

Affidavit of Service (Form 3), continued

Service on lawyer or paralegal:

- Leaving a copy with a lawyer or paralegal or an employee in the lawyer's or paralegal's office, who accepted service on person's behalf.

Sworn/Affirmed before me at: _____
(Municipality)

in: _____
(Province, state or country)

on: _____, 20____, _____
Commissioner for taking affidavits
(Type or print name)

Signature
(This form is to be signed in front
of a lawyer, justice of the peace,
notary public or commissioner for
taking affidavits)