

RULES OF PROCEDURE OF THE REGISTRATION COMMITTEE OF THE ASSOCIATION OF PROFESSIONAL ENGINEERS OF ONTARIO

The Association of Professional Engineers of Ontario is also known as “Professional Engineers Ontario” or “PEO.”

RULE 1: PURPOSES AND INTERPRETATION

Purposes

1.1 The purposes of these rules are to:

- a. promote timely determination of proceedings in accordance with the public interest;
- b. ensure fair and efficient processes and proceedings;
- c. ensure that the Registration Committee’s processes and proceedings are clear, understandable, accessible, and transparent; and
- d. promote early identification of issues in dispute and facilitate agreement and resolution.

Interpretive Principles

1.2 These rules shall be construed so as to secure a determination that is fair and just.

1.3 The Registration Committee procedures, Orders and directions made under these rules shall be proportionate to the substance and complexity of the issues.

1.4 The Registration Committee may decide not to apply these rules strictly unless to do so would be inconsistent with legislation, regulations or a mandatory rule.

1.5 To promote access to proceedings and expedited exchange of documents, unless otherwise directed by the Registration Committee, the Registration Committee operates electronically or by electronic means to the extent reasonably possible, taking into account the purposes set out in Rule 1.1.

RULE 2: APPLICATION AND DEFINITIONS

Name

2.1 These rules are referred to as the *Registration Committee Rules of Practice and Procedure*.

Application

2.2 (1) *The Statutory Powers Procedure Act* (SPPA) applies in Registration Committee proceedings, except where these rules provide otherwise.

(2) These rules apply to all proceedings before the Registration Committee.

Definitions

2.3 In these rules, unless the context requires otherwise:

“Act” means the *Professional Engineers Act*, R.S.O. 1990, c. P.28;

“affidavit” means: (a) a statement of facts within the personal knowledge of the individual affirming or swearing the Affidavit, except the Affidavit may contain statements of belief if the source of the information and fact of the belief are described, and (b) is signed, and affirmed or sworn, before an identified person qualified to commission Affidavits, who will identify and sign all exhibits to the Affidavit;

“appearance” means attendance at a hearing, hearing on a motion, case conference, or pre-hearing conference;

“applicant” means applicant for a licence or applicant for or holder of a temporary licence, provisional licence, limited licence, or a Certificate of Authorization.

“authentic” and “authenticity”: (a) the fact that a document that is said to be an original was printed, written or otherwise produced and signed or executed as it purports to have been; (b) a document that is similarly said to be a copy and is a true copy of the original; and (c) similarly, where the document is a copy of a letter or electronic communication, the original was sent as it purports to have been sent and received by the person to whom it is addressed;

“Book of Authorities” means a collection of relevant case law and/or statutory law;

“Chair” means the Chair of the Registration Committee, or a Vice-Chair acting in the Chair’s absence; or the Chair of the Panel constituted for the purposes of an appearance, as may be applicable;

“Registration Committee” means collectively, the Committee, and includes where applicable, the Chair, a Panel or a Presiding Member assigned by the Chair;

“day” for calculating time duration means all days Monday to Sunday except for holidays;

“deliver” means to serve on every other Party, and to file with the Tribunal Office, with proof of delivery, and “delivery” and “delivering” have corresponding meanings;

“direction” means an Order of a procedural nature that may be given by the Registration Committee, the Presiding Member or the Panel or Chair, with “Direct” having a corresponding meaning;

“electronic” means any form of electronic technology permitted to be used by the Registration Committee that permits persons to effectively communicate with one another, including by audio or video;

“electronic records” means a document, record of a proceeding or graphic representations preserved or shared electronically;

“document” includes electronic records;

“factum” means a written statement of fact, law, and submissions;

“file” means to provide a document to the Registration Committee in accordance with Rule 3;

“hearing” means the process before a Registration Committee constituted under the Act.

“holder” has the same meaning as in the Act;

“holiday” means statutory holiday, Ontario or Canada Civic Holiday, or any other day that PEO recognizes as a holiday and during which the office is closed;

“Independent Legal Counsel” or “ILC” means a lawyer engaged to provide legal advice to the Registration Committee;

“motion” means a request to the Panel to make an interim or final Order in a case or proceeding;

“Motion Record” means all Affidavits and other documents that a motion participant intends to rely on for a Motion, other than a Factum and Book of Authorities;

“Notice of Hearing” means the document issued that indicates the date, time, place and reasons for the hearing;

“Notice of Proposal” or “NOP” means the document that is served on the applicant in which the Registrar proposed not to issue or to revoke or suspend licence;

“Order” means a direction or mandate given by the chair or presiding member of a hearing that is not a determination (although a determination may be included in an order) directing that something be done or prohibiting something being done;

“Panel” means the member or members of the Registration Committee appointed by the Chair to hear a matter and make a determination;

“party” means participant who has an interest in the outcome and are generally the Applicant, or member and/or holder, and the Association of Professional Engineers of Ontario;

“Presiding Member” means the member of the Registration Committee appointed to facilitate a pre-hearing conference or “PHC”;

“serve” means to deliver or provide documents to the other party or parties in accordance with these Rules;

“Tribunal Office” means the office and staff responsible for the administration of the work of the statutory committees that hold hearings or make assessments or determinations pursuant to the Act.

Same meaning as in the *Professional Engineers Act (Act)*

2.4 If a word or phrase is defined in the Act, it has the same meaning in these rules unless the rules specify otherwise.

Calculating time

2.5 In calculating time duration under these rules, or under a direction or order made under these rules:

- a. if there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens but including the day on which the second event happens;
- b. where a period of fewer than seven days is prescribed, holidays shall not be counted;

- c. where the time for doing an action expires on a holiday, the expiry date for that action is the following day that is not a holiday; and
- d. where a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, the document shall be deemed to be received, or service shall be deemed to be effective, on the next day that is not a holiday.

RULE 3: COMMUNICATING WITH THE REGISTRATION COMMITTEE AND FORM OF DOCUMENTS

Communication with the Registration Committee

3.1 (1) All parties must be copied on correspondence sent to the Registration Committee about the substance of the proceeding.

(2) All communication with the Committee or a Panel other than during an appearance shall be sent electronically through the Tribunal Office.

Respectful communication

3.2 All documents filed and all written and oral communications must be relevant to the proceeding and respectful to all participants in the proceeding.

Acceptance of documents by the Registration Committee

3.3 (1) The Registration Committee may refuse to accept documents that do not comply with these Rules.

(2) Acceptance of documents by the Tribunal Office does not mean they are timely, properly served or otherwise comply with these rules or the Order or Direction under which they were filed.

Filing requirements: electronic and hard copies

3.4 Unless otherwise permitted by the Registration Committee, all documents must be filed in electronic form and be in accordance with Rule 3.5.

Filing electronic documents

3.5 (1) Unless otherwise permitted by the Registration Committee, all documents must be filed electronically in pdf format (JPEG is acceptable for photographs). Where filing by email is not possible, the party must contact the Tribunal Office to facilitate a solution.

(2) Documents must be filed with the Tribunal Office not less than three (3) business days in advance of the hearing.

Disclosure

3.6 (1) In matters where the Registrar is proposing to revoke or suspend a licence or certificate of authorization, the Registrar will make timely disclosure to the applicant or member or holder, including:

- (a) all relevant information in PEO's possession, unless it is privileged information;

(b) in the case of evidence of an expert, at least 30 days before the hearing, the identity of the proposed expert witness and a copy of the expert's report, or, if there is no report, a summary of what the expert witness will say.

(2) The obligation to disclose is a continuing one.

(3) The Registration Committee may, in its discretion, allow the introduction of evidence that is inadmissible under Rule 3.7 (1), and (2), and, if so doing, may make directions it considers necessary to ensure the opposing party is not prejudiced.

(4) Any party that intends to rely on a document at a hearing shall serve a copy of that document on the other party so that it is received by them at least ten (10) days prior to the hearing.

(5) No document is admissible unless the party who wishes to rely on it has served it as required by the Rules, or unless the panel decides otherwise.

Expert Witness

3.7 (1) A party that intends to present evidence from an expert witness at a hearing shall serve the other party at least 30 days prior to the hearing or as agreed upon by the parties, or directed by the Registration Committee in a Pre-Hearing Conference, with a written report signed by the expert containing the information set out in (2) or, if there is no report, a summary of what the expert witness will say.

(2) A report for the purposes of Rule 3.7 (1) shall contain the following information:

1. The expert's name, address and area of expertise;
2. The expert's qualifications and employment and educational experiences in their area of expertise;
3. The expert's opinion respecting each issue and, where there is a range of opinions given, a summary of the range and the reasons for the expert's own opinion within that range;
4. The expert's reasons for their opinion, including written acknowledgement that the expert has a duty to the Panel.

(3) If a Party fails to comply with the provisions of sub-rule 3.7 (1) or (2), the Party may not put forth an expert witness unless it obtains leave from the Panel, which may be granted on such terms and conditions determined by the Panel.

(4) A Party shall not be permitted to call more than one expert witness without leave of the Panel.

Expert Evidence

3.8 (1) The evidence-in-chief of an expert witness may be given by affidavit, unless the Panel orders otherwise.

(2) Cross-examination of expert witnesses may be by written questions and answers or by oral examination as established by the Panel Chair.

(3) Reply evidence to cross-examination evidence may be by written questions or by oral examination as established by the Panel Chair.

RULE 4: PRE-HEARING CONFERENCE

Pre-hearing conference

4.1 If a pre-hearing conference is scheduled, the purpose would be to facilitate the just and most expeditious disposition of a proceeding.

When a pre-hearing conference is scheduled

4.2 (1) The Chair may, at the request of a party, or on its own initiative, schedule a pre-hearing conference in any proceeding, at any time.

(2) To facilitate scheduling a pre-hearing conference, the parties must provide at least two mutually agreeable dates to the Tribunal Office.

Issues discussed at pre-hearing conference

4.3 The Presiding Member at a pre-hearing conference may discuss with the parties:

- a. the identification, limitation or simplification of the issues in the proceeding;
- b. the identification and limitation of evidence and witnesses;
- c. the possibility of settlement of any or all of the issues in the proceeding;
- d. the possibility of the parties entering into an agreed statement of facts; and
- e. the procedural steps appropriate to moving the matter toward a hearing in a fair and timely manner.

Confidential and without prejudice

4.4 (1) A pre-hearing conference is confidential and without prejudice. No one may disclose what occurred at a pre-hearing conference or what is contained in a pre-hearing conference memorandum unless otherwise ordered or required by law.

(2) The presiding member may summarize in a report the results of the discussions and the directions made, which is shared with parties and the Chair of the Committee.

Directions at pre-hearing conference

4.5 The presiding member at a pre-hearing conference may:

- a. schedule or adjourn an appearance;
- b. set timelines and deadlines for steps in the proceeding; and
- c. make any other procedural directions to move the matter forward toward a hearing in a fair and timely manner.

Limitation on assignment of pre-hearing conference Presiding Member

4.6 Except with agreement of the parties, the presiding member who conducted a pre-hearing conference in a matter shall not be assigned to a motion or merits hearing or to any appeal of that proceeding, nor shall a member of the panel assigned to a hearing preside at a pre-hearing conference.

RULE 5: CASE MANAGEMENT

Case Management

- 5.** (1) In complex matters, the Chair or the Panel may require formal case management.
- (2) The Chair may act as the Presiding Member or may appoint a member of the committee to sit as the Presiding Member.
- (3) The Presiding Member may make such procedural orders as may be required, including but not limited to:
- (a) imposing a timetable for steps in the proceeding; and
 - (b) giving directions regarding the conduct of the proceeding.
- (4) A case management conference is confidential and without prejudice.
- (5) The process and procedures related to a case management conference are the same as the process and procedures for a pre-hearing conference.
- (6) The Presiding Member may make an Order. Any Order made has the same force and effect as an Order made by the panel.

RULE 6: MOTIONS

Motions

- 6.1** (1) A motion must be made by Notice of Motion unless it is on consent or made orally during a hearing.
- (2) A motion may **not** be brought prior to the referral to the-Registration Committee.
- (3) Motions will be dealt with by the Panel at the hearing.
- (4) Notwithstanding Rule 6.1 (3), written motions concerning the following matters may be dealt with in advance of a Hearing by the Chair of the Committee:
- a) a request for production or particulars; or,
 - b) a request for an adjournment.

Motion materials

6.2 (1) This rule applies where a motion is made by Notice of Motion unless the Chair of the Registration Committee has directed otherwise.

(2) At least 10 days before the hearing of the motion, the moving party must serve and file a Motion Record containing the Notice of Motion and the Affidavit or other materials that the moving party intends to rely on.

(3) At least 3 days before the hearing of the motion, the responding party to the motion must serve and file the Responding Motion Record or other materials that the responding party intends to rely on.

(4) A Motion Record must be served and filed electronically with the Tribunal Office and copied to all parties.

Content of Notice of Motion

6.3 Every Notice of Motion shall:

- a. state the precise relief sought;
- b. state the grounds to be argued, including a reference to any statutory provision or rule to be relied on; and
- c. list the documentary evidence to be used at the hearing of the motion.

RULE 7: APPEARANCES

Manner of appearance

7.1 The Registration Committee operates virtually and may direct the manner in which one or more appearances occur in a proceeding.

7.2 In directing the manner of an appearance, the Registration Committee shall consider:

- a. the SPPA;
- b. the purposes set out in Rule 1.1;
- c. that proceedings involve parties, witnesses and members who may be remote from the Registration Committee.

RULE 8: EVIDENCE

Agreed facts

8.1 A Panel may receive and rely on any facts agreed to by the parties without further proof.

Filing materials before the hearing

8.2 The parties may file an Agreed Statement of Facts for the Panel to review to prepare for the hearing.

Previously Admitted Evidence

8.3 Previously admitted evidence may be admitted on consent, or if:

- a. the party against whose interest the evidence is sought to be admitted was a party to the other proceeding;
- b. the party against whose interest the evidence is sought to be admitted either gave the evidence sought to be admitted or had the opportunity to cross-examine the witness who gave the evidence at the other proceeding; and
- c. an issue in the other proceeding is substantially similar to an issue in the current proceeding.

Limits on examination or cross-examination

8.4 (1) A Panel shall not permit cross-examination that is repetitive, abusive or otherwise inappropriate.

(2) A Panel may reasonably limit further examination or cross-examination of a witness where it is satisfied the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

Proof of Service or Delivery

8.5 Proof of service or delivery of any document, including the Notice of Hearing, may be proven by an affidavit filed by a party. No cross-examination shall occur on such an affidavit without leave of the Panel.

RULE 9: RECORD OF PROCEEDING AND TRANSPARENCY

Record of proceeding

9.1 The record of proceeding consists of:

- a. all materials filed with the Registration Committee, unless the Registration Committee refuses them for failure to comply with these rules, an order or direction;
- b. all exhibits, including any marked "for identification";
- c. all other documents and correspondence from a party or other participant, reviewed by a Panel, except for the purpose of a pre-hearing conference;
- d. all notices of hearing;
- e. all endorsements;
- f. all orders made by the Registration Committee;
- g. all reasons issued by the Registration Committee; and

- h. any other relevant, non-privileged, documents in the possession of the Registration Committee relating to the proceeding.

Open Tribunal

9.2 Except as otherwise stated in the Act, the contents of the record of proceedings and all appearances except pre-hearing conferences are public, unless the Registration Committee or a court orders otherwise.

Transcripts

9.3 Any person wishing to have a copy of the transcript of any hearing must order it, at their own expense, from the reporting service that recorded the hearing.

RULE 10: ORDERS AND REASONS

Orders and Directions

10.1 Unless otherwise stated therein, an order or direction is effective from the date it is pronounced, whether or not the order or direction has been reduced to writing.

Decision and Reasons

10.2 (1) The decision and reasons for orders and directions shall be prepared by the Panel and released by the Tribunal Office.

(2) Any member of a Panel may sign the decision and reasons of the Panel.

Reasons

10.3 The Registration Committee attempts to issue Decisions and Reasons as soon as practicable and has a goal of doing so within thirty (30) days of the end of a hearing where possible.

Correction of errors

10.4 Prior to publication, the Chair or any member of a Panel that made the endorsement, order or reasons, may correct typographical errors, errors of calculation or similar minor errors.

Publication

10.5 (1) All Registration Committee decisions are published on CanLii.

(2) Applicant will elect publication with names or anonymized.

(3) Where an applicant makes no election, the decision will be published, with names, automatically 14 days after distribution of the Decision and Reasons to the parties.