

## **RULES OF PROCEDURE OF THE DISCIPLINE 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 Tribunal’s processes are clear and understandable;
- d. promote early identification of issues in dispute and facilitate agreement and resolution; and
- e. ensure that processes and proceedings are accessible and transparent.

#### **Interpretive Principles**

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

**1.3** Orders and directions made under these rules shall be proportionate to the importance and complexity of the issues.

**1.4** The Discipline 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** The Discipline Committee operates electronically or by electronic means unless otherwise ordered, taking into account the purposes set out in Rule 1.1 and where doing so improves access to the Discipline Committee and is procedurally fair.

### ***RULE 2: APPLICATION AND DEFINITIONS***

#### **Name**

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

#### **Application**

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

**(2)** These rules apply to all proceedings before the Discipline 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;

“authenticity” includes: (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 said to be a copy is a true copy of the original; and (c) 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 case law and statutory law;

“Chair” means the Chair of the Discipline 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;

“Discipline 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 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 Discipline Committee, the Presiding Member or the Panel or Chair, and “direct” has a corresponding meaning;

“electronic” means any form of electronic technology that permits all 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 Discipline Committee in accordance with Rule 3;

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

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

“holiday” means any Saturday, Sunday, 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 (ILC)” means a lawyer engaged to provide legal advice to the Discipline 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;

“Panel” means the member or members of the Discipline 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 Association of Professional Engineers of Ontario and the defendant or defendants;

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

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

“Statement of Allegations” means a document alleging professional misconduct or incompetence in accordance with the Act and Regulations.

“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 under these rules, or under a direction or order made under these rules:

- a. where 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 less than seven days is prescribed, holidays shall not be counted;
- c. where the time for doing an action expires on a holiday, the action may be done on the next 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 DISCIPLINE COMMITTEE AND FORM OF DOCUMENTS***

#### **Communication with the Discipline Committee**

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

(2) All communication with a Panel 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 Discipline Committee**

**3.3** (1) The Discipline Committee may refuse to accept any 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** All documents must be filed in electronic form and be in accordance with Rule 3.5.

#### **Filing electronic documents**

**3.5** 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.

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

#### **Disclosure**

**3.7** (1) The parties will make such timely disclosure, including all relevant information in their possession, unless it is privileged information.

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

(3) The disclosure or production of a document shall not be taken as an admission of its relevance or admissibility.

(4) The Discipline Committee may, in its discretion, allow the introduction of evidence that is inadmissible, and may make directions it considers necessary to ensure the parties are not prejudiced.

(5) Each party must provide to every other party a list of witnesses, other than expert witnesses, that the party intends to call not later than 10 days before the hearing.

(7) Evidence not disclosed or produced as required by this rule may not be relied upon without leave of the Panel.

(8) Documents and information required to be provided by Rule 3.7 to a party shall only be shared or distributed by the party, other than to their counsel, for the purposes of the proceeding or as required by law, unless the Discipline Committee orders otherwise. This rule does not apply to the contents of the record of proceeding which are public, unless the Discipline Committee or a court orders otherwise.

### **Expert Witness**

**3.8** (1) Evidence of an expert led by PEO shall be served at least 60 days before the hearing, the identity of the expert and a copy of the expert's report, or, if there is no report, a summary of the evidence.

(2) Evidence of an expert led by the defending party is not admissible unless PEO receives, at least 30 days before the hearing, the identity of the expert and a copy of the expert's report or, if there is no report, a summary of the evidence.

(3) The parties may agree to a mutually acceptable schedule at a Pre-Hearing Conference, setting out dates for the service of experts' reports in lieu of meeting the requirements of subrules (1) and (2).

(4) A report for the purposes of Rules 3.8 (1) and (2) 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 instructions provided to the expert;
4. The nature of the opinion being sought and each issue in the proceeding to which the opinion relates;
5. 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;
6. The expert's reasons for their opinion, including,
  - a. a description of the factual assumptions on which the opinion is based,
  - b. a description of any research conducted by the expert that led them to form the opinion, and
  - c. a list of every document, if any, relied on by the expert in forming the opinion; and
7. Written acknowledgement of the expert's duty to the Panel.

(5) If a Party fails to comply with the provisions of sub-rule 3.8 (1), (2), (3) or (4), 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 as the Panel considers just.

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

### **Expert Evidence**

**3.9** The evidence-in-chief of an expert witness may be given by affidavit, unless the Discipline Committee orders otherwise.

## ***RULE 4: PRE-HEARING CONFERENCE***

### **Pre-hearing conference**

**4.1** The purpose of a pre-hearing conference is to facilitate the just and most expeditious disposition of a proceeding.

### **Issues discussed at pre-hearing conference**

**4.2** 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.

### **When a pre-hearing conference is scheduled**

**4.3** (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.

### **Confidential and without prejudice**

**4.4** 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. The presiding member may summarize in an endorsement the results of the discussions and the directions made.

### **Directions at pre-hearing conference**

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

- a. schedule or adjourn an appearance;  
set timelines and deadlines for steps in the proceeding; and
- b. 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.

## ***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 Discipline Committee.
- (3) The Chair of the Discipline Committee may decide that a motion may be heard by a panel of one person.

### **Motion materials**

- 6.2 (1) This rule applies where a motion is made by Notice of Motion unless the Chair of the Discipline 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 three 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**

- 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 Discipline Committee may direct the manner in which one or more appearances occur in a proceeding.

**7.2** In directing the manner of an appearance, the Discipline 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 Discipline Committee; and

## ***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 Discipline Committee.

## ***RULE 9: RECORD OF PROCEEDING AND TRANSPARENCY***

### **Record of proceeding**

**9.1** The record of proceeding consists of:

- a. all materials filed with the Discipline Committee, unless the Discipline 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 Discipline Committee;
- g. all reasons issued by the Discipline Committee; and
- h. any other relevant, non-privileged, documents in the possession of the Discipline Committee relating to the proceeding.

### **Open Tribunal**

**9.2** Except as otherwise stated in the Act, the contents of the record of proceeding and all appearances except pre-hearing conferences are public, unless the Discipline 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 Discipline 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.

## ***RULE 11: REPRIMANDS***

### **Administration of reprimands**

**11.1** (1) A reprimand shall be administered either orally at a hearing open to the public or in writing.

(2) A written reprimand is part of the record of the proceeding.

(3) A reprimand may be administered by any member of the Panel that ordered the reprimand.

### **Appeals and reprimands**

**11.2** The administration of a reprimand does not affect the right to appeal the order, or the arguments that may be raised upon appeal.