



PROFESSIONAL ENGINEERS & GEOSCIENTISTS
NEWFOUNDLAND & LABRADOR

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Professional Conduct Procedure Guideline

June 1, 2016

Based on the Engineers and Geoscientists Act, 2008

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DEFINITIONS	
“Act”	means the <i>Engineers and Geoscientists Act, 2008</i> , available on the PEGNL website www.pegnl.ca
“Adjudication Tribunal”	means an Adjudication Tribunal appointed by the Chairperson of the Disciplinary Panel for the purpose of holding a hearing into a Complaint referred to the Disciplinary Panel by the Complaints Authorization Committee.
“allegation”	means a written document alleging that a professional member has engaged in conduct deserving of sanction, signed by the Complainant or his or her solicitor and filed with the Registrar.
“allegation record”	means all information and documentation disclosed by the Complainant, the Respondent and by third parties in the course of the investigation of an allegation.
“alternative dispute resolution” or “ADR”	means a mediation process entered into pursuant to a referral to the Registrar for alternative dispute resolution under paragraph 24(1)(a) of the Act, and conducted in accordance with section 29 of the Regulations and with the agreement of the parties to an allegation.
“Applicable Law”	means the <i>Engineers and Geoscientists Act, 2008</i> , the <i>Engineers and Geoscientists Regulations, 2011</i> , PEGNL By-Law No. 3 (the Code of Ethics) and other By-Laws of the PEGNL, and the <i>Public Inquiries Act, 2006</i> .
“Board”	means the Board of Directors of Professional Engineers and Geoscientists Newfoundland and Labrador as referred to in section 4 of the Act.
“By-Laws”	means the By-Laws made under the Act, available on the PEGNL website www.pegnl.ca
“Chairperson and Vice Chairperson of the Complaints Authorization Committee”	means Board members appointed by the Board under section 21 of the Act to act as chairperson and vice-chairperson of the Complaints Authorization Committee.
“Code of Ethics”	means the Code of Ethics of PEGNL, set out in PEGNL By-Law No. 3 made under paragraph 9(1)(g) of the Act, and including the definitions of “professional misconduct” and “conduct unbecoming” for the purposes of the professional conduct process, available on the PEGNL website www.pegnl.ca
“Complainant”	means a person making an allegation against a PEGNL professional license holder or permit to practice holder.
“Complaint”	means the document and the contents of the document referred to in paragraph 7.4.5 of this Guideline.

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“conduct deserving of sanction”	includes professional misconduct, professional incompetence, conduct unbecoming a professional member or permit holder, incapacity or unfitness to practice engineering or geoscience, and acting in breach of the Act, the regulations or the Code of Ethics By-law made under section 9 of the Act.
“confirmed filing of the allegation”	means the date on which PEGNL receives written confirmation from the Complainant that he or she consents to the allegation being provided to the Respondent, as an allegation of conduct deserving of sanction
“Decision” of the Adjudication Tribunal	Means the written Reasons and Order of the Adjudication Tribunal
“Decision” of the CAC	means the written Reasons and, as applicable, either the decision of the CAC to dismiss the allegation or the Complaint
“Disciplinary Panel”	means the panel of at least twelve professional members appointed by the Board who are not members of the Board and at least four persons appointed by the Minister who are not professional members, pursuant to section 21 of the Act.
“Disciplinary Panel Chairperson”	means one of the professional members appointed by the Board to serve as chairperson of the Disciplinary Panel.
“Minister”	means the minister appointed under the <i>Executive Council Act</i> to administer this Act.
“Order”	means the order of an Adjudication Tribunal to dismiss a Complaint, to find that a Complaint has been proven, or to impose a sanction.
“PEGNL”	means the Association of Professional Engineers and Geoscientists Newfoundland and Labrador as continued as a corporation without share capital under section 3 of the Act.
“permit holder”	means a professional member, a partnership or other association of persons, or a corporation that holds a permit under the Act.
“professional conduct procedure”	means the PEGNL procedure for the investigation of allegations.
“professional member”	means a professional engineer or professional geoscientist who is registered under the Act.
“Professional Standards Director” or “PSD”	means a professional member appointed by the chief executive officer exercising his/her powers under the Act and Bylaws to act as the Professional Standards Director who, together with such other persons as may be appointed by the chief executive officer from time to time, will comprise the Professional Standards Committee. The PSD may be called upon to assist the Registrar, the CAC, the Disciplinary Panel or an Adjudication Tribunal in the fulfilment of their

DEFINITIONS	
	functions under the professional conduct procedure.
“public interest member”	means a person, who is not a professional member, appointed by the Minister to the Board or to the Complaints Authorization Committee or Disciplinary Panel to represent the public interest.
“Reasons”	means the reasons of an Adjudication Tribunal for a Decision made to dismiss a Complaint, to find that a Complaint has been proven, or to impose a sanction.
“Registrar”	means the Registrar and Chief Executive Officer of PEGNL appointed by the Board under section 4 of the Act.
“Registrar Allegation”	means an allegation made by the PEGNL registrar on his or her own motion under subsection 22 (2) of the Act.
“Registrar Resolution”	means the resolution of an allegation by the PEGNL registrar without seeking a finding of conduct deserving of sanction against the Respondent.
“Regulations”	means the <i>Engineers and Geoscientists Regulations, 2011</i> , made under the Act, available on the PEGNL website www.pegnl.ca
“Respondent”	means a current or former professional member or permit holder against whom an allegation has been made.

1. INTRODUCTION

1.1 Preamble

This Guideline has been prepared to outline PEGNL's professional conduct procedure. It is intended for use by Complainants, members of the Complaints Authorization Committee (CAC) and the Disciplinary Panel of PEGNL, professional members and permit holders registered with PEGNL who may be the subject of an allegation of conduct deserving of sanction (Respondents), and others who may become involved in the professional conduct procedure.

This Guideline is not intended to restrict any of the powers of the Registrar, the CAC and investigators appointed by it, or an Adjudication Tribunal, as conferred by Applicable Law, and the Guideline should always be interpreted with reference to Applicable Law. If in any case the Guideline is found to be inconsistent with Applicable Law, Applicable Law will prevail.

This Guideline is subject to being amended by PEGNL from time to time, and also subject to being departed from when circumstances require it, provided such departure is consistent with Applicable Law.

Three flowcharts illustrating the main processes described in this Guideline are appended with references to the applicable provisions from the Act, Regulations and this Guideline.

1.2 Role of PEGNL

PEGNL regulates the practice of engineering and geoscience in the province of Newfoundland and Labrador in the public interest. All professional members and permit holders are expected to uphold the Act, Regulations and Code of Ethics, and to practice in a manner that protects the public interest.

1.3 Summary of the Professional Conduct Procedure

The professional conduct procedure that is described in this Guideline is a two-step process that begins when an allegation is made against a professional member or permit holder, also known as the Respondent. The person making the allegation is known as the Complainant. PEGNL first seeks to confirm the filing and give notice of the allegation according to this Guideline. The Registrar then considers whether the nature of the allegation may allow for its attempted resolution by the Registrar with the agreement of the Complainant and the Respondent without seeking a finding of conduct deserving of sanction against the Respondent.

If, in the opinion of the Registrar, it is not reasonable to attempt a Registrar Resolution or if a satisfactory resolution of the allegation by Registrar Resolution is not achieved, the allegation is referred to a committee of the Board known as the CAC. The Registrar informs the Complainant and the Respondent of the referral of the allegation to the CAC. The role of the CAC is to determine whether there are reasonable grounds to believe that the professional member or permit holder who is the subject of the allegation (the Respondent) has engaged in conduct deserving of sanction as defined in the Act. The CAC has several specific powers as defined in the Act and may refer the allegation for alternative dispute resolution (ADR), conduct an investigation of the allegation, conduct a practice review of the Respondent's practice, or dismiss the allegation. Under the Act, the Complainant has the right to appeal the dismissal of an allegation to the Supreme Court of Newfoundland and Labrador.

If the CAC determines that there are reasonable grounds to believe that the Respondent has engaged in conduct deserving of sanction, then the allegation is considered to be a Complaint. If

the allegation is considered a Complaint, the CAC may itself counsel or caution the Respondent or refer the Complaint to the Disciplinary Panel for a hearing.

The Chairperson of the Disciplinary Panel appoints from the Panel an Adjudication Tribunal that hears the Complaint, normally in a public hearing, and renders a Decision that is also made public according to the Act. The Respondent has the right to appeal the Decision of the Adjudication Tribunal to the Supreme Court. There is no provision for the Complainant to appeal the Decision of an Adjudication Tribunal following a hearing.

2. COMPOSITION OF THE COMPLAINTS AUTHORIZATION COMMITTEE

2.1 Members of the Complaints Authorization Committee

2.1.1 The composition of the CAC will be in accordance with section 21 of the Act. In accordance with subsection 21(1) of the Act, the CAC must consist of at least three members of the Board, one of who must be a public interest member.

2.1.2 The functioning of the CAC will be suspended during any period when the foregoing minimum membership requirements are not being met.

2.2 Death, Incapacity, Resignation, and Replacement of a Member of the Complaints Authorization Committee

2.2.1 In the event of the death, resignation or incapacity of a professional member of the CAC, or if for any reason the Board deems it necessary or advisable that the Board-appointed professional member no longer serve as a member of the CAC then, as soon as practicable, the Board will appoint to the CAC another professional member of the Board as his or her replacement.

2.2.2 In the event of the death, resignation or incapacity of a public interest member of the CAC, or if for any reason the Board deems it advisable that the Board-appointed public interest member no longer serve as a member of the CAC then, as soon as practicable, the Board will appoint his or her replacement from the other public interest members of the Board.

2.2.3 During any period that a membership position on the CAC is not filled, all allegations or matters before the CAC may be dealt with by the remaining members of the CAC, provided the minimum composition requirements of the CAC as set out in subsection 21(1) of the Act can continue to be met.

2.3 Conflict of Interest, Bias and Temporary Withdrawal of a Complaints Authorization Committee Member

2.3.1 Any member of the CAC who believes he or she has, or may be perceived to have, a conflict of interest or bias in respect of a matter before the CAC will withdraw from CAC deliberations in relation to the specific matter.

2.3.2 If the affected CAC member is uncertain as to whether there is actual or perceived conflict of interest or bias requiring withdrawal from CAC deliberations, the affected CAC member will consult with the Registrar. If the specific matter is an allegation made by the Registrar's own motion or the Registrar is otherwise unable to be consulted, then the affected CAC member will instead consult with the Chairperson of the Board, provided that the Chairperson of the Board is not a member of the CAC, or with the Professional Standards Director. The Registrar, or such other person as is consulted by the affected CAC member, may seek the advice of legal counsel.

- 2.3.3 A member of the CAC who withdraws from CAC deliberations, or consults in relation to whether he or she should withdraw as contemplated by **paragraph 2.3.2** of this Guideline, will not disclose to the other members of the CAC the substance of the apprehended or perceived conflict of interest or bias, unless by the consultation process it is deemed to be appropriate to do so.
- 2.3.4 If the question of whether a member of the CAC should withdraw from CAC deliberations cannot be resolved in accordance with **paragraph 2.3.2** of this Guideline, the question will be referred to the Board.
- 2.3.5 If the result of the withdrawal of a CAC member from CAC deliberations would be that the CAC composition requirements under subsection 21(1) of the Act would no longer be met, then the Board will appoint, for a temporary or indefinite time, one or more additional CAC members to ensure that the composition requirements are met.
- 2.3.6 A non-exclusive list of matters which could give rise to an actual or perceived bias or conflict of interest includes:
- .1 if the affected CAC member is the Complainant or Respondent or has a business or other relationship with the Complainant or Respondent;
 - .2 if the affected CAC member has had direct involvement in the subject matter of the allegation; or
 - .3 if the affected CAC member has been involved in another matter which, although not directly related to the subject matter of the allegation, would nonetheless raise in the mind of a fair-minded and reasonably informed person an apprehension that the CAC member may be biased or in a conflict of interest in relation to the allegation.¹

3. THE ROLE OF THE REGISTRAR

3.1 Applicable Provisions of the Act and Regulations

Sections 20-36 of the Act set out the statutory provisions applicable to the professional conduct procedure. With respect to the role of the Registrar (up to the referral of an allegation to the CAC), the primarily relevant provisions are found in sections 20, 22 and 23. As well, sections 28-32 of the Regulations set out the time limits for events in the professional conduct procedure and also describe the alternative dispute resolution process and related time limits, in respect of which the Registrar may have a role.

3.2 Origin of Allegations

- 3.2.1 The Act places no restrictions on who may make an allegation of conduct deserving of sanction: see subsections 20(a), 20(b) and 22(1) of the Act. The person making the allegation is referred to under the Act as the Complainant.
- 3.2.2 Subsection 22(2) of the Act authorizes the Registrar to make an allegation on his or her own motion.

¹ Case law reference: *Newfoundland and Labrador (Child and Youth Advocate) v. Newfoundland and Labrador (House of Assembly)*, 2009 NLTD 176.

3.3 Filing of an Allegation

3.3.1 To meet the minimum procedural requirements of the Act, an allegation must:

- .1 be in writing, and signed by the Complainant or the Complainant's solicitor;
- .2 allege conduct by an identifiable current or former professional member or permit holder (the "Respondent") which, if it were proven, could constitute conduct deserving of sanction as defined by subsection 20 (c) of the Act; and
- .3 be filed with the Registrar.

3.3.2 In cases where it is uncertain as to whether a written signed document is intended to be an allegation of conduct deserving of sanction against a Respondent, or as to whether the document provides sufficient information to identify the Complainant or the Respondent, the Registrar may request that the Complainant provide written confirmation and clarification of that intention or information before accepting the document for filing as an allegation.

3.3.3 Complainants will also be encouraged by the Registrar to disclose at the outset of the allegation the following:

- .1 as complete a description as possible of the conduct of the Respondent alleged to be conduct deserving of sanction, including the date(s) when the alleged conduct occurred, the place(s) where the alleged conduct occurred, any documentation of or relating to the alleged conduct, and the identity and contact information of any witnesses or persons believed to have information relevant to the alleged conduct;
- .2 any other relevant matters, such as the nature and type of the relationship, for example professional to professional or client to professional, between the Complainant and the professional member or permit holder against whom the allegation is being made; and
- .3 whether the Complainant would be prepared to see the matter resolved by the intervention of the Registrar, without seeking a finding of conduct deserving of sanction against the Respondent.

3.3.4 The Registrar will:

- .1 provide the Complainant with a copy of this Guideline;
- .2 advise the Complainant that the professional conduct procedure requires disclosure of the allegation record to the Respondent and possibly to third parties, and may require public notice and public hearing in relation to the allegation, and as a result no assurance of confidentiality may be given regarding information provided by the Complainant;
- .3 request the written consent of the Complainant to disclosure of the written allegation, and all documents and information provided in support of the allegation, to the Respondent;

- .4 advise the Complainant that it will not normally be possible to proceed with an allegation unless the Complainant is prepared to consent to such disclosure;
- .5 advise the Complainant that communications between PEGNL and the Complainant during the professional conduct procedure will normally be by registered mail, and that the Complainant should update PEGNL with his or her most current contact information should that information change in the course of the disciplinary process; and
- .6 advise the Complainant of the date of the confirmed filing of the allegation, upon receipt by PEGNL of the written consent referred to in **paragraph 3.3.4.3** of this Guideline.

3.4 Notice to the Respondent of an Allegation

- 3.4.1 The Registrar will, as quickly as practicable but no later than 30 days of the confirmed filing of the allegation, notify the Respondent in writing of the allegation and provide the Respondent with a copy of this Guideline. The written allegation and all documents and information received by PEGNL to that point in support of the allegation will normally be disclosed to the Respondent.
- 3.4.2 Notice of the allegation and other communications to the Respondent in the course of the professional conduct procedure will be made, by personal service or by registered mail (the choice of manner of notification to be at the discretion of the Registrar), to the last address of the Respondent of which PEGNL has received written notice. Professional members and permit holders are responsible to provide PEGNL with their most current contact information at all times, and to make reliable arrangements to have PEGNL correspondence brought to their prompt attention during times of absence from their contact address. Respondents will be deemed to have received notification of the allegation on the date of personal service or delivery of registered mail, or if attempted personal service or delivery by registered mail has been ineffective due to their having failed to provide PEGNL with their most current contact information at all times as required, or having failed to make reliable arrangements to have PEGNL correspondence brought to their prompt attention during times of absence from their contact address, then on the fifth business day following the attempted personal service or attempted delivery by registered mail.
- 3.4.3 The Registrar, by the written notice to the Respondent of the allegation, will:
 - .1 advise the Respondent that any response he or she may wish to make to the allegation must be made in writing and within 30 days of notification of the allegation;
 - .2 advise the Respondent that he or she may wish to consider obtaining legal advice before responding to the allegation;
 - .3 advise the Respondent that the professional conduct procedure may require disclosure of the allegation record to the Complainant and possibly to third parties, and may require public notice and public hearing in relation to the allegation, and as a result no assurance of confidentiality may be given regarding information provided by the Respondent;

- .4 if deemed appropriate by the Registrar, inquire whether the Respondent would be prepared to see the matter resolved by the intervention of the Registrar, without seeking a finding of conduct deserving of sanction against the Respondent; and
- .5 remind the Respondent to provide PEGNL with his or her most current contact information, and to make reliable arrangements to have PEGNL correspondence brought to his or her prompt attention during times of absence from his or her contact address.

3.5 Registrar Resolution of Allegation with Consent of Complainant and Respondent

- 3.5.1 Where it appears to the Registrar, after notifying the Respondent of the allegation, that the allegation may be able to be resolved satisfactorily without referral to the CAC and where the Complainant and the Respondent consent, the Registrar may attempt to resolve the allegation pursuant to subsection 23(1) of the Act.
- 3.5.2 Any resolution of an allegation pursuant to subsection 23(1) must be acceptable to the Registrar. The Registrar is not bound to accept that an allegation has been resolved only because the Complainant and Respondent have reached a purported resolution. The Registrar will consider whether any proposed resolution is in the best interests of the public and of the profession.
- 3.5.3 If the allegation is not satisfactorily resolved by the Registrar within a reasonable time, bearing in mind that the CAC has 120 days from the confirmed filing of the allegation to give notice of an investigation, the Registrar will refer the allegation to the CAC.

3.6 Allegation Made by the Registrar

Under subsection 22(2) of the Act, the Registrar may file on his or her own motion an allegation (hereinafter referred to as a “Registrar allegation”). A Registrar allegation should meet the requirements of **paragraph 3.3.1** of this Guideline, and notification of the Registrar allegation should be given to the Respondent as contemplated by **paragraph 3.4** of this Guideline.

3.7 Referral of an Allegation to the Complaints Authorization Committee

- 3.7.1 The Registrar will give written notice to the Complainant and the Respondent of the referral of the allegation to the CAC. The notice will include the following information:
 - .1 that the allegation has been referred to the CAC under subsection 23(2) of the Act;
 - .2 that the CAC may exercise one or more of its powers set out in subsection 21(9) and section 24 of the Act;
 - .3 that failure by the Respondent to respond to the requests of the CAC or to cooperate with an investigation or practice review ordered by the CAC or an examination or inspection requested by an investigator appointed by the CAC may be considered as a separate allegation of conduct deserving of sanction; and
 - .4 that the Respondent may wish to consider retaining legal counsel, if he or she has not already done so.
- 3.7.2 The referral package to the CAC will include:

- .1 the allegation record including the date of the confirmed filing of the allegation;
- .2 a copy of the written notice to the Complainant and of the written consent of the Complainant contemplated by **paragraph 3.3.4.3** of this Guideline; and
- .3 copies of the correspondence to the Complainant and the Respondent giving notice of the referral of the allegation to the CAC as contemplated by **paragraph 3.7.1** of this Guideline.

4. OVERVIEW OF THE ROLE OF THE COMPLAINTS AUTHORIZATION COMMITTEE

4.1 Applicable Provisions of the Act and Regulations

Sections 20-36 of the Act set out the statutory provisions applicable to the professional conduct procedure. With respect to the role of the CAC, the primarily relevant provisions are found in sections 20 and 24, and Committee members should ensure that they are familiar with those provisions as well as with sections 28-32 of the Regulations. These Regulations set out the time limits for events in the disciplinary process and also describe the alternative dispute resolution process and related time limits.

4.2 Powers of the Complaints Authorization Committee

4.2.1 Upon referral of the allegation the CAC may, pursuant to subsection 24 (1) of the Act, exercise one or more of its powers and either:

- .1 refer the allegation back to the Registrar for an investigation or alternative dispute resolution (ADR) in accordance with section 29 of the Regulations. In cases where the allegation is referred back to the Registrar for ADR it must be resolved to the satisfaction of the Complainant, the Respondent and the CAC within 3 months of the commencement of ADR. Where the results of the ADR are accepted by the Complainant, the Respondent and the CAC the disciplinary process is concluded. Otherwise the allegation is referred back to the CAC according to subsection 29(6) of the Regulations;
- .2 conduct an investigation itself or appoint a person to conduct an investigation on its behalf;
- .3 conduct a practice review into the Respondent's practice; or
- .4 require the Respondent to appear before it.

The CAC is not obligated to exercise these powers in any particular sequence and may take more than one action simultaneously. For example, the CAC may refer an allegation to the Registrar or the Professional Standards Director for investigation. It may refer the allegation for ADR with or without ordering an investigation or waiting to receive a report of the results. It might decide to order a practice review either with or without having the results of an investigation.

4.2.2 It is important to note that, if the CAC decides that an investigation is to be conducted, Regulation 28(4) requires that notice be given to the Respondent and the Complainant by the Chairperson of the CAC. When an allegation is referred to the CAC, the Chairperson should therefore ensure that the confirmed date of filing of the allegation is noted and that

notice of any investigation is given to the Respondent and the Complainant within 120 days of that date.

4.3 Consideration of the Nature of the Allegation and the Scope of the Investigation

4.3.1 The CAC is charged with deciding whether or not the allegation, and any information disclosed in the course of the investigation process, constitutes reasonable grounds to believe that the Respondent has engaged in conduct deserving of sanction. In arriving at this Decision two questions to be considered are:

.1 Even if the conduct alleged by the Complainant were to be proven, could it be considered conduct deserving of sanction as defined under section 20 of the Act?

For example: It is alleged the professional member parked in a disabled persons' parking spot. If this were able to be proven, could it potentially be conduct deserving of sanction under the Act, for instance as conduct unbecoming a professional member?

.2 If the answer to .1 above is "yes", then is there evidence, arising from the allegation and the investigation, on which the CAC can arrive at the opinion that there are reasonable grounds to believe that the Respondent has engaged in that conduct?

For example : If the answer to .2 above is "yes", but the professional member provided evidence that he/she was out of the Province at the time of the alleged incident, are there still reasonable grounds to believe that the professional member may have engaged in the alleged conduct?

4.3.2 In some cases, the CAC may be able to decide whether there are "reasonable grounds to believe" based solely on the allegation record referred to the CAC.

4.3.3 In many cases, however, investigation of the referred allegation will be needed before the CAC can decide whether there are "reasonable grounds to believe". The CAC has three options in that circumstance: (a) refer the allegation to the Registrar for investigation; (b) refer the allegation to another person for investigation; or (c) conduct the investigation itself. The role of the investigator is dealt with in detail in **section 5** of this Guideline.

4.3.4 A practice review entails the investigation and review of aspects of the Respondent's practice in addition to the specific circumstances of the referred allegation. Non-exclusive examples of when the CAC may consider a practice review would be when the allegation record raises wider questions regarding the professional competence of the Respondent or of repeated or systematic professional misconduct by the Respondent. The evidence necessary to conduct a practice review may be inspected and copied by the Registrar or other person appointed as an investigator, for review by the CAC. Written notice of the practice review should be delivered to or served on the Respondent; the length and extent of notice may be abbreviated if there is a concern that longer or more detailed notice may raise a risk to the public or a risk of alteration, removal, loss or destruction of evidence.

4.3.5 The Respondent may be required to appear before the CAC. This will usually be to provide the Respondent with the opportunity to respond to specific questions arising out of the allegation record. A requirement to appear before the CAC should be by written notice to the Respondent and should advise the Respondent that he or she may be accompanied and advised by his or her legal counsel at such an appearance. An

alternative to an appearance before the CAC is to pose written questions to the Respondent for his or her written response.

- 4.3.6 The appointment of an investigator and other steps taken by the CAC in the course of the investigation and consideration of an allegation should be recorded by minutes kept by the CAC and signed by the Chairperson or Vice Chairperson of the CAC.

5. ROLE OF THE INVESTIGATOR

The following will apply to the Registrar or another person appointed by the CAC to conduct an investigation of an allegation:

5.1 Appointment of Investigator

- 5.1.1 The investigator may be the Registrar, a professional member of PEGNL or a professional member registered with another professional association of engineers and geoscientists, or another person considered suitable by the CAC to conduct the investigation.
- 5.1.2 A person approached by the CAC to be appointed investigator should declare whether he or she has, or may be perceived to have, a conflict of interest or bias in respect of the matter to be investigated. The circumstances that may give rise to an actual or perceived conflict of interest or bias in a proposed investigator would include those set out in **paragraph 2.3** of this Guideline. An investigator who believes such circumstances may exist should follow the procedures set out in **paragraph 2.3** of this Guideline.

5.2 Powers of Investigator

- 5.2.1 The appointed investigator is entitled to request the assistance of the Registrar and/or the Professional Standards Director (PSD), and may request through the CAC or the Registrar the assistance of legal counsel and of other professionals. If a technical expert is required during an investigation the investigator should request such expert assistance through the CAC or the Registrar who will, in consultation with the investigator:
- .1 select the technical expert;
 - .2 draft the scope of the assignment;
 - .3 establish a budget and monitor the cost; and
 - .4 provide the expert with the recommended format for his/her report.
- 5.2.2 Under subsection 21(9) of the Act an investigator appointed by the CAC may, upon direction of the CAC, summon witnesses and require those witnesses to give evidence, orally or in writing, upon oath or affirmation, and produce the documents or things that either of them considers necessary to the full investigation and hearing of an allegation or Complaint and has the powers, privileges and immunities that are conferred on a commissioner appointed under the *Public Inquiries Act, 2006*. Those powers should only be exercised by an investigator with the direction of the CAC.
- 5.2.3 Under subsection 24(5)(a) of the Act the Registrar or other person appointed by the CAC to conduct an investigation may, upon direction of the CAC require a Respondent to:

- .1 undergo an examination the investigator considers necessary and as arranged by the Registrar, and
 - .2 permit the Registrar or a member of the CAC or a person appointed by the CAC to inspect and copy the records of the Respondent and other documents relating to the subject of the investigation.
- 5.2.4 Under subsection 24(5)(b) of the Act the Registrar or other person appointed by the CAC to conduct an investigation may, upon direction of the CAC require another person to permit the Registrar or a member of the CAC or another person appointed by the CAC to inspect and copy records and other documents relating to the subject matter of the investigation held by that person.
- 5.2.5 Under subsection 24(5) of the Act, where the Registrar, a member of the CAC or a person appointed by the CAC requests that a Respondent or another person provide information under subsection 24(5) of the Act, that information will be provided within 7 days of receipt of the request or a different period as specified in the request.

5.3 Conduct of an Investigation

- 5.3.1 The purpose and function of the investigator is to identify what evidence may be available in relation to the allegation and present a report to the CAC. The investigation should include obtaining and compiling correspondence, reports, drawings, witness statements, copies of applicable regulations, membership documents and any other documentary or regulatory information relating to the allegation.
- 5.3.2 The investigator should advise third parties from whom the investigator seeks to elicit evidence that the disciplinary process requires disclosure of the allegation record to the Respondent, the Complainant and possibly to other third parties, and may require public notice and public hearing in relation to the allegation, and as a result no assurance of confidentiality may be given regarding information and documentation provided to the investigator. If such third parties express concerns about commercially sensitive or personal information of the witness or third parties being thereby disclosed the investigator should, through the CAC or the Registrar, seek the advice of legal counsel.
- 5.3.3 While the investigator should strive not to disclose any more than the minimum amount of information necessary in respect of the allegation and the investigation when eliciting evidence from witnesses, it is to be understood that in some instances it may be necessary for the investigator to disclose the nature of the allegation and evidence disclosed by the investigation so as to be able to make reasonable inquiries of witnesses. When interviewing witnesses the investigator should avoid expressing opinions or predictions regarding the outcome or merits of the allegation.
- 5.3.4 In carrying out the investigation the investigator may conduct interviews of witnesses by telephone or in person and will advise in the investigation report as to the means used to interview witnesses.
- 5.3.5 The investigator will report on all material matters, positive and negative, regarding the professional conduct or professional practice of the Respondent that arise in the course of the investigation. Material matters are those matters which are related to the question of whether there are reasonable grounds to believe the Respondent has engaged in conduct deserving of sanction, either as alleged by the Complainant or as may be otherwise disclosed by the investigation.

- 5.3.6 The investigator should report to the CAC all evidence gathered in the course of the investigation, including evidence which may go to the question of credibility of the Complainant, the Respondent and witnesses, but should not express any opinion on the credibility of the Complainant, the Respondent or of any witness, or express an opinion on the merits of the allegation or on the Respondent's response to the allegation.
- 5.3.7 The investigative activity will vary from one case to another depending on the nature of the allegation and the availability of evidence. In making his or her report the investigator should, as far as circumstances dictate:
- .1 state the Complainant's position;
 - .2 state the response to the allegation from the Respondent;
 - .3 state the evidence in favour of the allegation;
 - .4 state the evidence contrary to the allegation;
 - .5 state all material matters, positive and negative, regarding the professional conduct or professional practice of the Respondent which arose in the course of the investigation;
 - .6 identify any legal or professional advice including that of technical experts obtained in the course of investigation;
 - .7 not draw any conclusions or express any opinions respecting credibility, guilt or innocence; and
 - .8 when there is an admission by the Respondent of any facts underlying the allegation, report same.

6. CONSIDERATIONS FOLLOWING THE INVESTIGATION

6.1 Complaints Authorization Committee may Refer the Allegation for Further Investigation

The filing of a report by the investigator with the CAC will not preclude the CAC from referring the matter back to the original investigator, or referring the matter to another investigator, for further investigation and a supplementary report. All reports, original and supplementary, will be disclosed to the Respondent if the CAC finds that there are reasonable grounds to believe that the Respondent has engaged in conduct deserving of sanction, and the contents of such reports may be disclosed in the Reasons given by the CAC for dismissal of an allegation.

6.2 Further Notice to the Respondent if There are New Issues

- 6.2.1 If the investigator's report identifies that the Respondent has not had the opportunity to respond to some element of the evidence, the CAC should provide the Respondent with the opportunity to respond.
- 6.2.2 The CAC should also consider whether the investigation report discloses any issues of conduct deserving of sanction in addition to those raised by the original allegation and, if so, should give the Respondent notice of the further issues of conduct deserving of sanction and provide the Respondent with the opportunity to respond to same. In particular, where the CAC is considering whether specific provisions of the Act,

Regulations or Code of Ethics may have been breached by the alleged conduct, those provisions should be brought to the attention of the Respondent, for his or her opportunity to respond.

- 6.2.3 In some cases, consideration may need to be given to the Registrar laying a new allegation against the Respondent in respect of such further issues of conduct deserving of sanction, particularly if the further issues do not relate to the circumstances of the original allegation.

7. DECISION OF THE COMPLAINTS AUTHORIZATION COMMITTEE

7.1 Decisions Available to the Complaints Authorization Committee

The CAC must choose from the three statutorily available choices for their Decision:

- 7.1.1 If there are no reasonable grounds to believe that the Respondent has engaged in conduct deserving of sanction, the allegation must be dismissed; or
- 7.1.2 If there are reasonable grounds to believe that the Respondent has engaged in conduct deserving of sanction, the allegation is considered a Complaint, and the CAC may then either:
- .1 counsel and/or caution the Respondent; or
 - .2 instruct the Registrar to file the Complaint against the Respondent and refer the Complaint to the Disciplinary Panel for hearing before an Adjudication Tribunal chosen from amongst the members of the Disciplinary Panel. In this circumstance, the CAC may also suspend or restrict the Respondent's registration, pending the hearing.
- 7.1.3 Generally speaking, Complaints which raise questions of conduct of the Respondent which, in the view of the CAC, raise significant concerns for the public or for the profession should be referred to a hearing.

7.2 Dismissal of the Allegation

- 7.2.1 If the CAC is of the opinion there are no reasonable grounds to believe the Respondent has engaged in conduct deserving of sanction, the CAC will dismiss the allegation and notice in writing of the dismissal will be given to the Complainant and the Respondent. The notice will state that, pursuant to subsection 24(8) of the Act, a Complainant whose allegation has been dismissed may, within 30 days after receiving notice of the dismissal from PEGNL, appeal the dismissal to the Trial Division by filing a notice of appeal with the Registrar of the Supreme Court.
- 7.2.2 The notice of the dismissal should be signed by the Chairperson of the CAC and include the written Reasons of the CAC for the dismissal. The written Reasons should include:
- .1 a listing of the allegation record;
 - .2 a summary of the Complainant's allegation;
 - .3 a summary of the Respondent's response;

- .4 an analysis of whether the Complainant's allegation, if proven, could amount to reasonable grounds to believe the Respondent has engaged in conduct deserving of sanction; and
- .5 identification of evidence disclosed by the investigation, including any expert opinion relied upon by the CAC.

7.3 Reasonable Grounds to Believe - Counsel or Caution

- 7.3.1 Where the CAC is of the opinion there are reasonable grounds to believe that the Respondent has engaged in conduct deserving of sanction the allegation is considered to constitute a Complaint, and the CAC may counsel and/or caution the Respondent.
- 7.3.2 Without limiting the scope of what may constitute a counsel it may take the form of the CAC counselling the Respondent, in writing, to take remedial action in relation to the Respondent's professional conduct or professional practice. Without limiting the scope of what may constitute a caution, it may take the form of the CAC's cautioning the Respondent, in writing, not to continue or not to repeat the impugned conduct in the future.
- 7.3.3 While the CAC may request a voluntary undertaking from the Respondent to comply with the counsel or caution, the CAC does not have the power to order the Respondent to take the counselled remedial action or to order that the Respondent be specifically monitored (other than to the extent all professional members are regulated by PEGNL) to ensure that the Respondent does not continue or repeat the impugned conduct. Therefore a counsel or caution may not be appropriate where, in the opinion of the CAC, the best interests of the public or of the profession require that enforceable conditions be imposed in relation to the Respondent's professional conduct or practice.
- 7.3.4 The counsel or caution does form part of the Respondent's professional conduct record, and may be considered as an aggravating factor by the CAC should there be further allegations filed against the Respondent and "reasonable grounds to believe" are found in respect of those further allegations. Conduct which on the first allegation was felt by the CAC to be able to be deterred by a counsel or caution may therefore, if it is found on a further or subsequent allegation that there are reasonable grounds to believe that the impugned conduct has been repeated, be found to require referral to the Disciplinary Panel for a hearing. For this reason the Registrar will keep a record in the Respondent's file of the CAC's Decision to caution or counsel the Respondent.
- 7.3.5 The Respondent and the Complainant should be given written notice of the finding that there are reasonable grounds to believe that the Respondent has engaged in conduct deserving of sanction and of the counsel or caution.
- 7.3.6 While neither the Respondent nor the Complainant have a statutory right to appeal a Decision to counsel or caution, it is appropriate for the CAC to provide to the Respondent and the Complainant Reasons for its Decision, generally following the format outlined in **paragraph 7.2.2** of this Guideline.

7.4 Reasonable Grounds to Believe - Referral to a Hearing

- 7.4.1 Where the CAC is of the opinion that there are reasonable grounds to believe that a Respondent has engaged in conduct deserving of sanction, the allegation is considered to constitute a Complaint, and the committee may, instead of counselling or cautioning the Respondent, instruct the registrar to file the Complaint against the Respondent and refer it

to the Disciplinary Panel. The CAC should prepare written Reasons for its Decision, generally following the format outlined in **paragraph 7.2.2** of this Guideline, and further including the statements referred to in **paragraph 7.4.5** of this Guideline, and the Decision shall be delivered to the Registrar.

- 7.4.2 Generally, Complaints referred to a hearing will involve alleged misconduct of a more serious nature than those which may be able to be addressed by a counsel or caution. Section 29 of the Act sets out the sanctions that may be imposed by an Adjudication Tribunal if the Complaint is admitted or proven at a hearing.
- 7.4.3 If the CAC finds that the Complaint should be referred to the Disciplinary Panel for a hearing the CAC may also consider whether it is necessary, for the purpose of protecting the best interests of the public or of the profession, to suspend or restrict a Respondent's registration prior to a hearing (hereinafter referred to as an "interim" restriction or suspension). If the CAC has determined, further to paragraph 24(3)(b) of the Act, that the Respondent's registration should be suspended or restricted pending the conclusion of the hearing, a statement of the CAC's Reasons for such suspension or restriction, i.e. why is it necessary to protect the best interests of the public, should be included in the written Reasons section of their Decision.
- 7.4.4 Under subsection 24(4) of the Act the CAC will give notice of an interim suspension (but not of an interim restriction) to the public as required by the subsection 28(5) of the Regulations. The CAC will publish a notice of the suspension in a newspaper of general circulation in or near the community where the Respondent practices. In addition the CAC may give public notice or notice to other persons it considers appropriate by another means it considers appropriate. For example, a permit holder, a municipality or government department may be given notice by the CAC of an interim suspension or the suspension may be posted on PEGNL's website.
- 7.4.5 The CAC Decision for referral of the Complaint to the Disciplinary Panel should include, separate from the written Reasons (see **paragraph 7.4.1** of the Guideline), statements of the following:
 - .1 a statement identifying the Complainant and the Respondent;
 - .2 a statement that the CAC is of the opinion that there are reasonable grounds to believe that the Respondent has engaged in conduct deserving of sanction;
 - .3 a statement of all of the particulars of the alleged conduct determined by the CAC to be reasonable grounds to believe that the Respondent has engaged in conduct deserving of sanction;
 - .4 a statement specifying the nature of the alleged conduct deserving of sanction, such as professional misconduct, professional incompetence, conduct unbecoming a professional member or permit holder, incapacity or unfitness to practice engineering or geoscience, and/or acting in breach of the Act, the Regulations, or the PEGNL Code of Ethics; and
 - .5 if the alleged conduct deserving of sanction is, in whole or in part, an allegation of acting in breach of the Act, the Regulations, or the PEGNL Code of Ethics, a statement specifying the sections of the Act, the Regulations or the PEGNL Code of Ethics alleged to have been breached (Note: The Respondent should have been

previously given notice of these specific provisions if stated in the original allegation or otherwise pursuant to **paragraph 6.2.2** of this Guideline).

- 7.4.6 The statements referred to in **paragraph 7.4.5** of this Guideline should also be reproduced in a document separate from the CAC's written Reasons, entitled the "Complaint" and following the format outlined in **Schedule A** of the Guideline.
- 7.4.7 Further to paragraph 24(3)(b) of the Act, the CAC shall instruct the Registrar to file the Complaint against the Respondent and to refer the Complaint to the Disciplinary Panel.
- 7.4.8 If the CAC has determined to suspend or restrict the Respondent's registration pending a hearing, the CAC shall additionally instruct the Registrar to enter the suspension or restriction on the Respondent's registration record and, in the case of suspension, to publish notice of the suspension, and give such other notice of the suspension as determined by the CAC, in accordance with the Regulations.
- 7.4.9 The Registrar shall send a notice to the Respondent and the Complainant of the filing of the Complaint against the Respondent and the referral of the Complaint to the Disciplinary Panel and shall include with or in that notice:
- .1 a copy of the CAC Decision for referral of the Complaint to the Disciplinary Panel;
 - .2 a copy of the separate Complaint document;
 - .3 where the CAC has determined to suspend or restrict the Respondent's registration pending a hearing, a statement that the suspension or restriction has been placed on the Respondent's registration record and, in the case of suspension, that notice of the suspension will be published, and such other notice of the suspension as determined by the CAC will be given, in accordance with the Regulations;
 - .4 a complete copy of the allegation record, including copies of any investigation reports and technical expert reports received by the CAC;
 - .5 a statement that the hearing of the Complaint will be before an Adjudication Tribunal, and that the parties to a hearing are PEGNL and the Respondent, in accordance with section 26 of the Act;
 - .6 a statement that the parties will be notified of the identities of the members of the Adjudication Tribunal in due course;
 - .7 a statement that the Adjudication Tribunal may convene, by notice to the parties, a pre-hearing conference, at the Adjudication Tribunal's own discretion or at the request of PEGNL or of the Respondent;
 - .8 a statement that the Respondent may be represented by counsel at any pre-hearing conference and at the hearing;
 - .9 a statement that notice will be given of the date and time of commencement of the hearing and the place where it will be held;

- .10 a statement that a hearing will be conducted in public, unless the Adjudication Tribunal decides that the public should be excluded from the hearing or a part of it on the basis set out in subsection 26(3) of the Act, and that the onus rests on the party seeking the exclusion of the public to apply to the Adjudication Tribunal for such exclusion;
- .11 a statement that, at a hearing, the Adjudication Tribunal may exercise the powers set out in section 28 or 29 of the Act; and
- .12 a statement that the Decision to refer the Complaint to the Disciplinary Panel for a hearing is not subject to statutory appeal.

8. COMPOSITION OF THE DISCIPLINARY PANEL AND THE ADJUDICATION TRIBUNAL

8.1 Members of the Disciplinary Panel

- 8.1.1 The Disciplinary Panel is a panel of persons from whom an Adjudication Tribunal is appointed by the Chairperson of the Disciplinary Panel when a Complaint is referred to the Disciplinary Panel for a hearing. The composition of the Disciplinary Panel will be in accordance with section 21 of the Act. In accordance with subsection 21(4) of the Act, the Disciplinary Panel consists of at least 12 members who are appointed by the Board but who are not members of the Board, one of whom will be appointed as chairperson, and at least 4 persons who are not professional members to be appointed by the Minister to represent the public interest.
- 8.1.2 Normally the Chairperson of the Disciplinary Panel will not be appointed to an Adjudication Tribunal and will have as his or her primary role the supervision and administration of the Disciplinary Panel and the selection of the members from the Disciplinary Panel for an Adjudication Tribunal

8.2 Appointment of Adjudication Tribunal and Legal Counsel for the Adjudication Tribunal

- 8.2.1 For the purpose of dealing with Complaints referred to the Disciplinary Panel the Chairperson of the Disciplinary Panel will, within 30 days of receipt of the referral of the Complaint to the Disciplinary Panel, appoint from the Disciplinary Panel an Adjudication Tribunal consisting of three persons, of whom two will be professional members and one will be a person appointed by the Minister under subsection 21(4) of the Act.
- 8.2.2 The Chairperson of the Disciplinary Panel shall provide the members of the Adjudication Tribunal with a copy of the notice of referral given to the Complainant and the Respondent pursuant to **paragraph 7.4.9** of this Guideline and with a copy of the Complaint, but not of any of the other enclosures contemplated by **paragraph 7.4.9** of this Guideline. The Adjudication Tribunal shall not be provided with copies of the CAC's written Reasons or with any part of the allegation record, or with any other information or documentation regarding the allegations, unless consented to by PEGNL's legal counsel for the hearing and by the Respondent or the Respondent's legal counsel for the hearing or unless admitted into evidence at the hearing.
- 8.2.3 The Chairperson of the Disciplinary Panel will appoint one of the professional members on an Adjudication Tribunal to be the Chairperson of the Adjudication Tribunal.

- 8.2.4 The Chairperson of the Disciplinary Panel will arrange legal counsel for the Adjudication Tribunal upon request by the Chairperson of the Adjudication Tribunal.
- 8.2.5 The Chairperson of the Disciplinary Panel will give written notice to the Respondent, copied to the Board, of:
- .1 the members of Adjudication Tribunal and the assigned Chairperson of the Adjudication Tribunal,
 - .2 the contact information for any communications to the Adjudication Tribunal; and
 - .3 the identity of and contact information for legal counsel to the Adjudication Tribunal, if appointed.

8.3 Conflict of Interest or Bias of a Disciplinary Panel Member

- 8.3.1 When a member of the Disciplinary Panel is approached by the Chairperson to be appointed to an Adjudication Tribunal and that Disciplinary Panel member believes he or she has, or may be perceived to have, a conflict of interest or bias in respect of the specific Complaint before the Disciplinary Panel, the member will so advise the Chairperson of the Disciplinary Panel and another member of the Disciplinary Panel will be appointed to the Adjudication Tribunal in his or her place by the Chairperson of the Disciplinary Panel.
- 8.3.2 If the affected Disciplinary Panel member is uncertain as to whether there is actual or perceived conflict of interest or bias the affected Disciplinary Panel member may consult with the Chairperson of the Disciplinary Panel or the Registrar to clarify his or her interest in the matter.
- 8.3.3 A member of the Disciplinary Panel will not disclose to the other members of the Disciplinary Panel the substance of the apprehended or perceived conflict of interest or bias.
- 8.3.4 A list of matters which could give rise to an actual or perceived bias or conflict of interest includes but is not limited to:
- .1 if the affected Disciplinary Panel member is the Complainant or Respondent or has a business or other relationship with the Complainant or Respondent;
 - .2 if the affected Disciplinary Panel member has had direct involvement in the subject matter of the allegation; and
 - .3 where the affected Disciplinary Panel member has been involved in another matter which, although not directly related to the subject matter of the allegation, would nonetheless raise in the mind of a fair-minded and reasonably informed person an apprehension that the Disciplinary Panel member may be biased or in a conflict of interest in relation to the Complaint.

9. PRE-HEARING PROCESS

9.1 Referral to Hearing

- 9.1.1 The Adjudication Tribunal appointed pursuant to **paragraph 8.2** of this Guideline will hear the Complaint according to section 26 of the Act and sections 30, 31 and 32 of the Regulations.
- 9.1.2 The parties to a hearing are PEGNL and the Respondent and a party may be represented by legal counsel at a hearing.

9.2 Hearing to be Public Unless Excluded

- 9.2.1 A hearing will be conducted in public but an Adjudication Tribunal may on its own initiative or upon application by a party exclude the public from a hearing, or from part of it, where pursuant to subsection 26(3) of the Act it considers the desirability of protecting a party to the Complaint or a witness against the consequences of possible disclosure of personal matters outweighs the desirability of holding the hearing in public.
- 9.2.2 Normally an application to the Adjudication Tribunal to exclude the public from a hearing, or from part of it, will be made either at a pre-hearing conference or at the beginning of the hearing by the party that wishes to exclude the public. The public may be excluded from the hearing of an application to exclude the public from a hearing.

9.3 Pre-Hearing Conference

- 9.3.1 The Chairperson of the Adjudication Tribunal may convene one or more pre-hearing conferences, to be held, where possible, at least 10 days in advance of the hearing, at the request of either party or at the initiative of the Adjudication Tribunal. The purpose of a pre-hearing conference is to address preliminary issues, including but not limited to the following:
 - .1 scheduling of the hearing;
 - .2 documents, if any, to be provided to the Adjudication Tribunal in advance of the hearing;
 - .3 disclosure of the identity of witnesses anticipated to be called at the hearing, and whether subpoenas are required;
 - .4 whether an agreed statement of facts will be submitted; and
 - .5 any application to exclude the public from the hearing or a part of the hearing.
- 9.3.2 A Respondent may elect to enter a plea of guilty or not guilty at a pre-hearing conference.
- 9.3.3 Decisions made at pre-hearing conferences will be recorded in Orders signed by the Chairperson of the Tribunal and will be provided to PEGNL and the Respondent, or their legal counsel.

9.4 Hearing Date and Location

- 9.4.1 Whether or not the Adjudication Tribunal convenes a pre-hearing conference, it will set a date for commencement of the hearing which is:

- .1 not later than 120 days after the date of the CAC Decision, and
 - .2 not later than 90 days after the referral of the Complaint to the Disciplinary Panel.
- 9.4.2 The Chairperson of the Adjudication Tribunal may, after consulting with the parties, extend the period referred to in **paragraph 9.4.1** of this Guideline. An Order extending the time period should be made before the expiry of the time period set out in that paragraph.
- 9.4.2 When setting the date, duration, and location of the hearing the Adjudication Tribunal will consult with the Chairperson of the Disciplinary Panel regarding available facilities and travel costs.
- 9.4.3 The date, duration and location for the hearing will be recorded in an Order signed by the Chairperson of the Adjudication Tribunal and provided to PEGNL and the Respondent, or their legal counsel, and to the Complainant, as far in advance of the date of the commencement of the hearing as is reasonably possible.
- 9.4.4 PEGNL will post the time and date of the hearing on its website.

9.5 Witnesses

- 9.5.1 The parties are responsible for arranging the attendance of the witnesses they wish to call at the hearing.
- 9.5.2 The Adjudication Tribunal may request counsel for PEGNL to arrange the attendance of witnesses not intended to be called by either party but whose evidence the Adjudication Tribunal considers to be of importance.
- 9.5.3 The parties may request the Chairperson of the Adjudication Tribunal to issue subpoenas for the attendance of witnesses in accordance with subsection 21(9) of the Act.

9.6 Participation in the Hearing

- 9.6.1 The hearing may proceed in the absence of the Respondent provided notice of the hearing has been given to the Respondent pursuant to **paragraph 9.4.4** of this Guideline.
- 9.6.2 Participation by either party by videoconference or teleconference is permitted if PEGNL, the Respondent and the Adjudication Tribunal agree, but normally a hearing will be held with the parties in physical attendance.
- 9.6.3 The Adjudication Tribunal may permit testimony by a witness by videoconference or teleconference.
- 9.6.4 The Complainant is entitled to attend the hearing unless excluded under subsection 26(3) of the Act.

10. THE HEARING

10.1 Hearing Process

It is important throughout the conduct of a hearing that the adjudication procedures be, and be seen to be, fair and in accordance with the rules of natural justice. An atmosphere of decorum and professionalism should be maintained throughout the hearing.

10.2 Role of Adjudication Tribunal and its Counsel

The role of the Adjudication Tribunal is to hear and evaluate the evidence before arriving at a judgement regarding the conduct of the Respondent. The role of the Tribunal's legal counsel is to provide guidance and counsel on procedural matters. He or she also advises the Adjudication Tribunal on points of law and ensures that the principles of natural justice are respected.

10.3 Role of PEGNL Legal Counsel

The role of the PEGNL legal counsel is to ensure that the evidence relevant to the Complaint is placed before the Adjudication Tribunal. PEGNL counsel ensures that procedures conform to the Act and that the Respondent has a fair hearing in accordance with the principles of natural justice.

10.4 Convening the Hearing

10.4.1 The Chairperson of the Adjudication Tribunal will convene the hearing at the scheduled date and time and place, and will identify the Adjudication Tribunal members, the Respondent, representatives of PEGNL, their legal counsel and the Complainant, if present.

10.4.2 The Chairperson will ask the parties whether there is any objection to the composition of the Adjudication Tribunal or to its jurisdiction to hear the Complaint.

10.4.3 The Chairperson will state that the hearing has been convened to adjudicate upon the allegations set out in the Complaint and will confirm that it has been provided to the Respondent.

10.4.4 If a plea has not already been entered at the pre-hearing stage, the Chairperson will call upon the Respondent or his or her counsel to enter a plea of guilty or not guilty to each allegation set out in the Complaint.

10.5 If the Respondent Pleads Guilty

10.5.1 Where a Respondent pleads guilty to one or more of the allegations set out in the Complaint the Adjudication Tribunal will, without calling evidence or hearing witnesses unless the Tribunal believes it is appropriate to do so, hear submissions from the parties concerning sanction following, to the extent that it is applicable, the hearing procedure set out in **paragraph 10.7** of this Guideline.

10.5.2 Where a Respondent pleads guilty the Adjudication Tribunal may exercise one or more of its powers as described in section 28 of the Act. The Adjudication Tribunal shall issue an Order and provide Reasons as set out in **section 11** of this Guideline.

10.5.3 The costs incurred by PEGNL to ensure the compliance of a Respondent with an Order or direction of an Adjudication Tribunal under this part will be borne by the Respondent.

10.6 If the Respondent Pleads Not Guilty

10.6.1 Where a Respondent pleads not guilty to one or more of the allegations set out in the Complaint, the Adjudication Tribunal will conduct a hearing as set out in **paragraph 10.7** of this Guideline.

10.6.2 Where the Adjudication Tribunal decides that the Respondent is not guilty it will dismiss the Complaint and may, where it believes that the submission of the Complaint to the Adjudication Tribunal was unreasonable:

- .1 order that those costs that the Adjudication Tribunal considers appropriate be paid by PEGNL to the Respondent; or
 - .2 make another order that it considers appropriate;
- 10.6.3 With the consent of the Respondent, PEGNL may publish a Notice of Dismissal of the Complaint. Such notice would be prepared by PEGNL in consultation with the Respondent, and published in the PEGNL newsletter and on the PEGNL website, and where practicable (as determined by PEGNL) may also be published in a newspaper nearest to the community where the Respondent practices. Such notice shall not identify the Complainant, or any other persons, without their express consent.²
- 10.6.4 Where an Adjudication Tribunal decides that a Respondent is guilty of conduct deserving of sanction it may exercise one or more of its powers as described in section 28 of the Act.
- 10.6.5 Whether the Adjudication Tribunal dismisses the Complaint or finds the Respondent guilty of conduct deserving of sanction, it shall issue an Order and provide Reasons as set out in **section 11** of this Guideline.
- 10.6.6 The costs incurred by PEGNL to ensure the compliance of a Respondent with an Order or direction of an Adjudication Tribunal under this part will be borne by the Respondent.

10.7 Hearing Procedure

The following is a description of the procedure during a hearing:

- 10.7.1 The Chairperson of the Adjudication Tribunal is responsible for maintaining control of the hearing. He or she will endeavour to establish a professional, non-adversarial, atmosphere and maintain the focus of the hearing on the allegations set out in the Complaint. The Chairperson will also ensure that proper decorum and professionalism is maintained throughout the hearing.
- 10.7.2 The Chairperson will ask the parties or their legal counsel whether there are any other procedural matters to be addressed by the Adjudication Tribunal before evidence is presented and whether they wish to make opening statements. If there is an agreed statement of facts or a set of documents to be entered into evidence by consent they should be tendered to the Tribunal at this time.
- 10.7.3 PEGNL legal counsel will present evidence relevant to the allegations set out in the Complaint. PEGNL legal counsel will conduct the direct examination of witnesses,

² *In cases of dismissal of a Complaint, the Adjudication Tribunal only has a statutory power to order publication if it finds the referral of the Complaint to the Tribunal to have been unreasonable; in such cases the Tribunal's power, per paragraph 29(2)(b) of the Act, to "make another order it considers appropriate", would encompass the authority to order PEGNL to publish a Notice of Dismissal. In the exceptional circumstance of referral of a Complaint to the Tribunal being found to have been unreasonable, the question of publication of the notice of dismissal would be expected to be addressed by submissions of legal counsel, for PEGNL and for the Respondent, to the Tribunal.*

Apart from the exceptional case of the Adjudication Tribunal finding the referral of the Complaint to the Tribunal to have been unreasonable, PEGNL itself does not have any statutory power or authority to unilaterally publish a Notice of Dismissal. As a result, it is advisable that publication in such circumstances be made only with the consent of and in consultation with the Respondent, and that such notice not identify the Complainant, or any other persons, without their express consent.

asking questions that are strategically designed to bring out the significant elements of the allegations. The Respondent or the Respondent's legal counsel may cross examine the witnesses called for PEGNL.

- 10.7.4 After PEGNL has finished calling evidence, the Respondent may present evidence. The Respondent or legal counsel will conduct the direct examination of witnesses, and PEGNL Legal Counsel may cross-examine those witnesses.
- 10.7.5 The Respondent is entitled to be present to hear the evidence of all witnesses. The Adjudication Tribunal may exclude from the hearing other persons who are proposed to be tendered as witnesses.
- 10.7.6 Technical experts may be called by either party to provide testimony on matters relating directly to allegations made in the Complaint and within the scope of their expertise. Normally, technical experts will not be excluded from hearing the testimony of other witnesses on technical matters.
- 10.7.7 Members of the Adjudication Tribunal may question witnesses for clarification of testimony or to raise relevant points not covered in the direct or cross-examination. Their task is to focus on the allegations of conduct deserving of sanction alleged in the Complaint. Except for matters of clarification, Tribunal members should normally withhold questions until after the examination and cross-examination of each witness.
- 10.7.8 Documents presented as evidence through witnesses or by the consent of the parties will be marked as exhibits and kept as part of the record of the hearing.
- 10.7.9 At the conclusion of the evidence the parties will be invited to make closing submissions. In most cases all submissions should be made orally immediately following the conclusion of the evidence. However, the Adjudication Tribunal may, at the request of a party or parties, or where it otherwise considers it appropriate:
 - .1 grant an adjournment to permit the parties to prepare to present oral submissions;
 - .2 set a time for delivery of written submissions which may or may not be followed by oral submissions;
 - .3 first receive submissions on the question of whether the allegations have been proven and, only following the delivery of its Decision on that question finding that one or more of the allegations have been proven, hear further submissions concerning any sanction to be imposed;
 - .4 if the Adjudication Tribunal believes the circumstances raise a question of whether an Order for publication should be made pursuant to paragraph 29(3)(f) of the Act, provide the opportunity to PEGNL and to the Respondent to make submissions on that question;
 - .5 if the allegations are dismissed and the Adjudication Tribunal believes the circumstances raise a question of whether the submission of the Complaint to the Adjudication Tribunal was unreasonable, provide the opportunity to PEGNL and to the Respondent to make submissions on that question, before making any Order pursuant to paragraph 29(2)(a) of the Act that PEGNL pay costs to the Respondent.

10.7.10 Prior to the conclusion of the hearing the Chairperson of the Adjudication Tribunal will request from the Respondent or his or her legal counsel confirmation of the address to which Reasons and Orders of the Adjudication Tribunal shall be delivered and an acknowledgement that the Reasons and Order will be considered to have been received by the Respondent when delivered to that address.

10.7.11 PEGNL will arrange for the hearing to be recorded, unless the requirement for recording is dispensed with by the Adjudication Tribunal following consultation with the parties. Either party may request transcripts to be prepared at their cost. The Adjudication Tribunal may have transcripts prepared for its use in rendering its Decision.

11. DECISIONS OF THE ADJUDICATION TRIBUNAL

11.1 Use of Evidence and Submissions

In making Decisions the Adjudication Tribunal may consider only information presented at the hearing or otherwise by the consent of the parties, including any agreed statement of facts, the oral evidence of witnesses, hearing exhibits, reports of technical experts and oral and written submissions. The Adjudication Tribunal will not rely on any information other than that presented at the Hearing.

11.2 Majority Decision

The Adjudication Tribunal shall decide questions of proof of the allegations and imposition of sanction by majority decision. A Tribunal member who does not agree with a Decision of the majority of the Adjudication Tribunal may deliver dissenting Reasons.

11.3 Timing and Sequence of Decisions and Orders

11.3.1 The Adjudication Tribunal should conduct its deliberations immediately following the conclusion of the hearing or as quickly as is practical after the conclusion of the hearing. The Tribunal may choose to obtain transcripts of all or part of the evidence of witnesses before completing its deliberations.

11.3.2 Written Reasons and the Order of the Tribunal will be prepared and signed by the Chairperson, or a member assigned by the Chairperson. The Reasons should be endorsed by all members concurring in the Decision. A member who dissents from a Decision may prepare dissenting Reasons. Written Reasons may be issued to the parties without reconvening the hearing.

11.3.3 Where submissions concerning sanction have been deferred until delivery of a Decision finding that an allegation set out in the Complaint has been proven, the process set out above will apply to the preparation and delivery of Reasons for any sanction imposed.

11.3.4 A record of past sanctions against the Respondent will only be made available to the Adjudication Tribunal following the delivery of a Decision finding that an allegation has been proven and that record may then be considered when sanction is determined.

11.4 Content of Adjudication Tribunal Reasons

11.4.1 Without limiting the ability of the Adjudication Tribunal to provide a written account of the Reasons supporting its Decisions and Orders the Adjudication Tribunal should:

- .1 identify each allegation of conduct deserving of sanction as set out in the Complaint;

- .2 state whether the Respondent pleaded guilty or not guilty to each allegation;
- .3 summarize the evidence that was presented for and against each of the allegations;
- .4 summarize the positions of the parties concerning whether the allegations were proven and concerning any sanction to be imposed;
- .5 give the Reasons for its Decision to dismiss or uphold each allegation and its Reasons for any sanctions imposed; and
- .6 set out any Order made under section 28 of the Act which applies when a guilty plea had been entered, or under section 29 of the Act, which applies following a finding that an allegation of conduct deserving of sanction had been proven.

11.5 Content of Order

- 11.5.1 In addition to delivering written Reasons, the Adjudication Tribunal shall issue a written Order which shall:
- .1 where the Respondent has pleaded guilty, identify the allegations to which the Respondent has pleaded guilty and state the sanction imposed by the Tribunal; or
 - .2 where the Respondent has pleaded not guilty and a hearing has been held, identify allegations which were dismissed and allegations which were proven, and state the sanction, if any, imposed by the Tribunal.

11.6 Filing, Delivery and Publication of Decision (Reasons and Order)

- 11.6.1 Regulation 32 requires the Reasons and Order to be provided to PEGNL by filing with the Registrar and to the Respondent within 90 days of the completion of the hearing. The hearing is considered to have been completed when the final step in presentation of evidence and argument to the Adjudication Tribunal has been concluded. This will usually be when the final submissions, either oral or written, have been received from the parties. Where a not guilty plea is entered and separate Decisions are made concerning proof of allegations and imposition of sanctions, each Decision should be provided within 90 days of the final submissions concerning that Decision.
- 11.6.2 Where an address for delivery to the Respondent has been provided as set out in **paragraph 10.7.10** of this Guideline, the Reasons and Order should be delivered to that address. Otherwise the Reasons and Order should be delivered to the last address given in writing to the Registrar by the Respondent and to the Respondent's legal counsel, if any.
- 11.6.3 The Reasons and Order must also be provided to the Complainant and the Respondent's employer (if applicable). This should be done as quickly as possible but is not required to be done within the 90 day period.
- 11.6.4 If the Order imposes one or more of the sanctions referred to in subsection 30(3) of the Act or if the Adjudication Tribunal has made an Order for publication under paragraph 29(3)(f) of the Act, the Registrar will publish a summary of the Reasons and Order as set out in section 30 of the Act.

11.7 Supplementary Hearing

- 11.7.1 Section 33 of the Act outlines the circumstances under which a Respondent may apply to the CAC for a supplementary hearing to discharge or vary the Decision or Order of an Adjudication Tribunal based on new evidence or a material change in circumstances.
- 11.7.2 An application for a supplementary hearing must be made within 90 days after the new evidence became available or the material change in circumstances occurred.
- 11.7.3 If the CAC determines that new evidence has become available or a material change in circumstances has occurred, it will refer the matter to an Adjudication Tribunal.

11.8 Appeal

- 11.8.1 PEGNL or the Respondent may, within 30 days after receiving the notice of the Decision and Order of the Adjudication Tribunal, appeal the Decision or Order to the Trial Division by filing a notice of appeal with the Registrar of the Supreme Court.
- 11.8.2 An appeal does not stay the Decision or Order being appealed unless the Trial Division orders otherwise.
- 11.8.3 There is no provision in the Act for appeal by the Complainant of the Decision or Order filed by the Adjudication Tribunal following a Hearing.

COMPLAINT

(subsection 24(3) of the *Engineers and Geoscientists Act, 2008*)

The Complaints Authorization Committee is of the opinion, in respect of the allegation(s) of *[insert name of the complainant]* (the "Complainant") against *[insert name and professional designation of the respondent]* (the "Respondent"), that there are reasonable grounds to believe that the Respondent engaged in conduct deserving of sanction, and that the allegation(s) constitute a complaint. The particulars of the Complaint are:

- (1) That on or about *[insert date of alleged conduct]*,
 - o at or in the vicinity of *[insert place of alleged conduct, or if there is uncertainty or ambiguity about where the conduct was committed, insert just the name of the province]*,
 - o the Respondent *[insert a summary statement/description of the alleged conduct, e.g. the Respondent allowed his/her seal to be applied to a plan by another person who was not acting under that professional member's immediate and direct control]*,
 - o thereby engaging in or demonstrating *[insert one of five categories of conduct deserving of sanction referred in paragraph 20(a) of the Act]*, and
 - o thereby engaging in conduct contrary to section *[insert applicable provision of the Act, Regulations or Code of Ethics]*; and/or
- (2) *[insert any additional particulars, providing same information as above for a related aspect of the Complaint, eg. the Respondent prepared and submitted to a client, or as the responsible engineer allowed to be prepared and submitted to a client, a plan for a structure which included specifications which were not in compliance with the National Building Code]*; and/or
- (3) *[and so on, as needed]*

DATED at _____, this _____ day of _____, 20 .

XXXX, Chair of the Complaints
Authorization Committee

Chart 1: Filing an Allegation, Resolution by Registrar, Referral to CAC

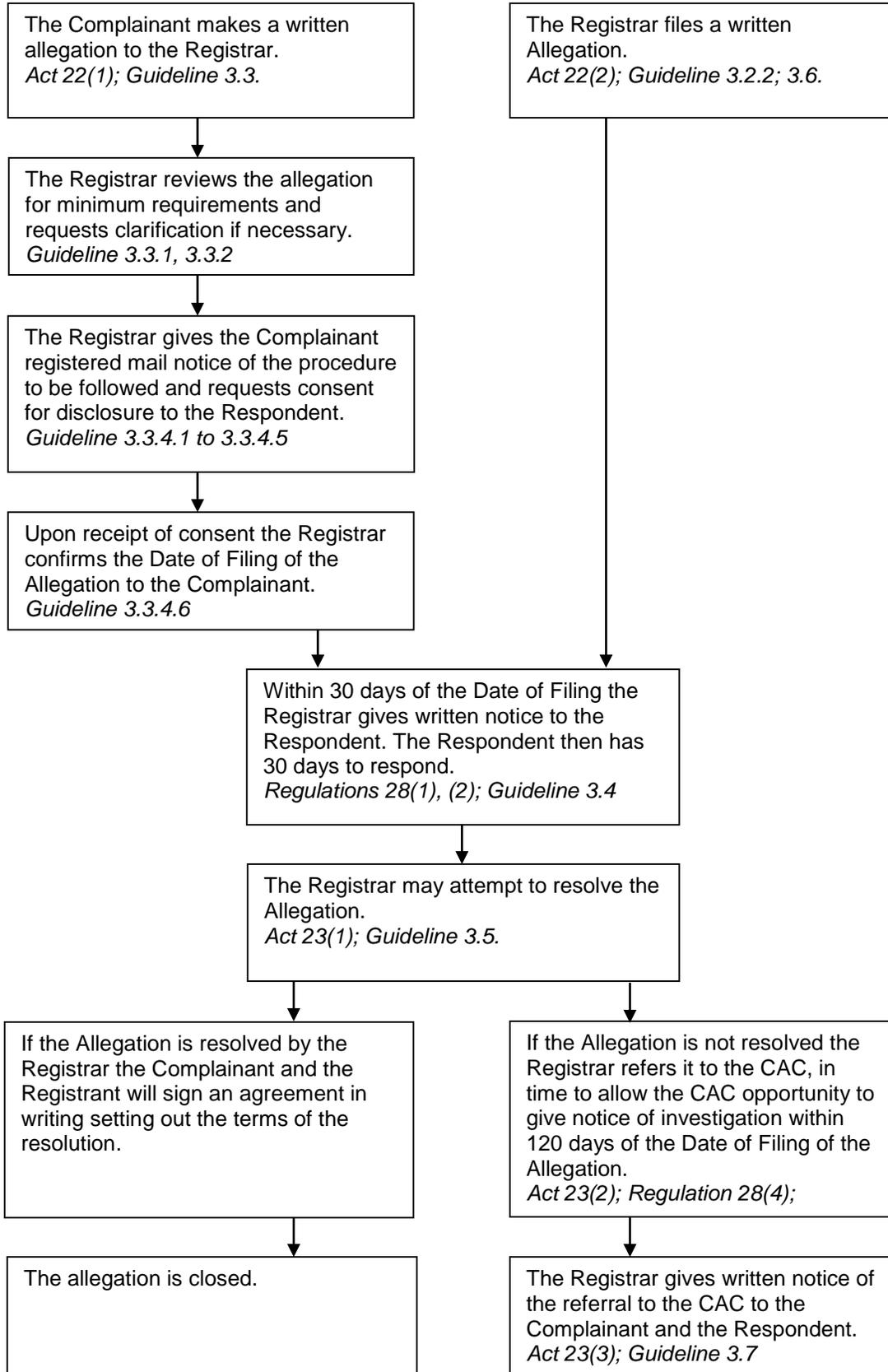


Chart 2: Complaints Authorization Committee (CAC) Process

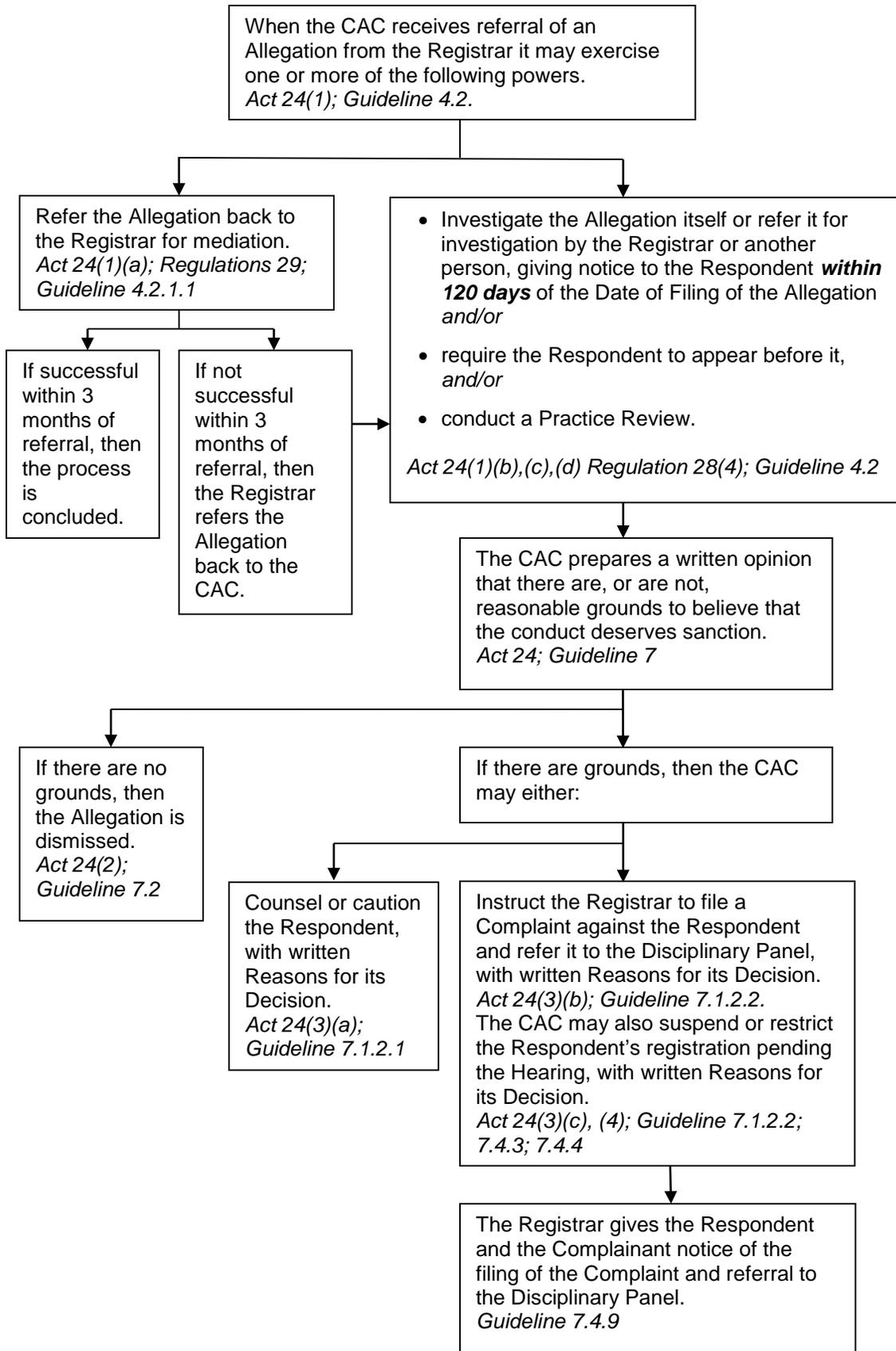


Chart 3: Hearing by an Adjudication Tribunal

