Professional Conduct Procedure Guideline

December 7, 2012
Based on the Engineers and Geoscientists Act, 2008
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DEFINITIONS

“Act”
Means the *Engineers and Geoscientists Act, 2008*, 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 *Engineers and Geoscientists Act, 2008*, the *Engineers and Geoscientists Regulations, 2011*, by-Law No. 3 of the PEGNL (the Code of Ethics) and other By-Laws of the PEGNL, and the Public Inquiries Act, 2006.

“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

“Complaints Authorization Committee” or CAC
means the committee of at least 3 Board members appointed by the Board under and in accordance with section 21 of the Act to consider allegations and exercise its powers according to the Act.

“Complainant”
means a person making an allegation against a professional member of PEGNL.

“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 made by By-laws under section 9 of the Act.

“Disciplinary Panel”
means the panel of at least twelve professional members who are not members of the Board appointed by the Board and at least four persons who are not professional members appointed by the minister, 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 Executive Council Act to administer this Act, who at the time of the preparation of this Guideline is the Minister of Government Services.

“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 permit holder 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 (PSD)”
means a professional member appointed by the Board to act as the Professional Standards Director, who together with such other persons as may be appointed by the Board 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 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 Disciplinary Panel, to represent the public interest.

“Registrar”
means the Registrar and Chief Executive Officer of PEGNL appointed by the Board under section 4 of the Act.

“Regulations”
means the Engineers and Geoscientists Regulations, 2011, made under 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.
I. INTRODUCTION

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 and of the Disciplinary Panel of PEGNL, professional members and permit holders registered with PEGNL who may be 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 Complaints Authorization Committee and investigators appointed by it, or on 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.

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.

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 document 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.

If satisfactory resolution of the allegation by the Registrar is not achieved, the allegation is referred to a committee of the PEGNL known
as the Complaints Authorization Committee (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 caution or counsel the Respondent or refer the complaint to a hearing before an Adjudication Tribunal.

In cases where the CAC determines the public interest is best served by a hearing, the complaint is referred to the Disciplinary Panel. 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.

II. COMPOSITION OF THE COMPLAINTS AUTHORIZATION COMMITTEE

1. Members of the Complaints Authorization Committee

   (a) The composition of the Complaints Authorization Committee (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 3 members of the Board, one of who must be a public interest member.

   (b) The functioning of the CAC will be suspended during any period when the foregoing minimum membership requirements are not being met.
2. **Death, Incapacity, Resignation, and Replacement of a Member of the CAC**

(a) 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.

(b) In the event of the death, resignation or incapacity of a public interest member of the Complaints Authorization Committee, 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.

(c) 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.

3. **Conflict of Interest, Bias and Temporary Withdrawal of a CAC Member**

(a) 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.

(b) 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.

(c) A member of the CAC who withdraws from CAC deliberations, or consults in relation to whether he or she should withdraw as contem-
plated by paragraph II. 3. (b) 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.

(d) If the question of whether a member of the CAC should withdraw from CAC deliberations cannot be resolved in accordance with paragraph II. 3. (b) of this Guideline, the question will be referred to the Board.

(e) If the result of the withdrawal of 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.

(f) A non-exclusive list of matters which could give rise to an actual or perceived bias or conflict of interest includes:

(i) if the affected CAC member is the Complainant or has a business or other relationship with the Complainant;

(ii) if the affected CAC member has had direct involvement in the subject matter of the allegation;

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

III. THE ROLE OF THE REGISTRAR

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 Complaints Authorization Committee), 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.

2. **Origin of allegations**

   (a) 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.

   (b) Subsection 22(2) of the Act authorizes the Registrar of PEGNL to make an allegation on his or her own motion.

3. **Filing of an allegation**

   (a) An allegation, to meet the minimum procedural requirements of the Act, must:

      (i) be in writing, and signed by the Complainant or the Complainant’s solicitor;

      (ii) 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

      (iii) be filed with the Registrar.

   (b) 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.

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

      (i) 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;

(ii) 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;

(iii) 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.

(d) The Registrar, by registered mail, will

(i) provide the Complainant with a copy of this Guideline;

(ii) 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;

(iii) 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;

(iv) 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; and

(v) 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.
4. **Notice to the Respondent of an allegation**

(a) The Registrar, upon receiving the consent of the Complainant, will within 30 days of filing an allegation, notify the Respondent in writing of the allegation and provide the Respondent with a copy of this Guideline. By such notice, 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.

(b) 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.

(c) The Registrar, by the written notice to the Respondent of the allegation, will

(i) advise that the Respondent make any response he or she may wish to make to the allegation, in writing and within 30 days of notification of filing the allegation;

(ii) advise the Respondent that he or she may wish to consider obtaining legal advice before responding to the allegation;

(iii) 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; and

(iv) 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.
5. Registrar resolution of allegation with consent of Complainant and Respondent

(a) 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.

(b) 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.

(c) If any reason, the allegation is not satisfactorily resolved by the Registrar, the Registrar will refer the allegation to the CAC within 120 days of accepting the allegation for filing.

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 III. 3.(a) of this Guideline, and notification of the Registrar allegation should be given to the Respondent as contemplated by subsection III. 4. of this Guideline.

7. Referral of an allegation to the Complaints Authorization Committee

(a) 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:

(i) the allegation has been referred to the CAC under subsection 23(3) of the Act;

(ii) the CAC may exercise one or more of its powers set out in subsection 21(9) and section 24 of the Act;

(iii) failure by the Respondent to respond to the requests of the CAC and to cooperate with an investigation or practice review or-
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

(iv) that the Respondent may wish to consider retaining legal counsel, if he or she has not already done so.

(b) The referral package to the CAC will include:

(i) the allegation record;

(ii) a copy of the written notice to the Complainant and of the written consent of the Complainant contemplated by subparagraph III. 3.(d) iii. of this Guideline;

(iii) 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 III. 7.(a) of this Guideline.

IV. OVERVIEW OF THE ROLE OF THE COMPLAINTS AUTHORIZATION COMMITTEE

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 Complaints Authorization Committee, 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.

2. Powers of the CAC

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

(a) 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 Com-
plainant, 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 professional conduct procedure is concluded. Otherwise the allegation is referred back to the CAC according to subsection 29(6) of the Regulations;

(b) conduct an investigation itself or appoint a person to conduct an investigation on its behalf;

(c) conduct a practice review into the Respondent’s practice;

(d) require the Respondent to appear before it.

3. Consideration of the nature of the allegation and the scope of the investigation

(a) 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:

(i) 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?

(ii) If the answer to (i) 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 (ii) above was “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?
(b) 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.

(c) 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; and (c) conduct the investigation itself. The role of the investigator is dealt with in detail in Section V. of this Guideline.

(d) 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 of alteration, removal, loss or destruction of evidence.

(e) 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.

(f) 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.
V. 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:

(a) 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.

(b) 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 subsection II.3. of this Guideline. An investigator who believes such circumstances may exist should follow the procedures set out in subsection II.3. of this Guideline.

(c) 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:

(i) select the technical expert;
(ii) draft the scope of the assignment;
(iii) establish a budget and monitor the cost;
(iv) provide the expert with the recommended format for his/her report.

(d) 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.
(e) Under subsection 24(5) of the Act, the Registrar or other person appointed by the CAC to conduct an investigation may, upon direction of the CAC

(i) require a Respondent to

(A) undergo an examination the investigator considers necessary and as arranged by the Registrar, and

(B) 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; and

(ii) 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.

(f) 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.

(g) 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 the obtaining and compilation of correspondence, reports, drawings, witness statements, copies of applicable regulations, membership documents and any other documentary or regulatory information relating to the allegation.

(h) 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.
(i) 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.

(j) 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.

(k) 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. By “material”, what is meant are 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.

(l) 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.

(m) 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:

(i) state the Complainant’s position;
(ii) state the response to the allegation from the Respondent;
(iii) state the evidence in favour of the allegation;
(iv) state the evidence contrary to the allegation;
(v) 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;
(vi) identify any legal or professional advice including that of technical experts obtained in the course of investigation;

(vii) not draw any conclusions or express any opinions respecting credibility, guilt or innocence;

(viii) when there is an admission by the Respondent of any facts underlying the allegation, report same.

VI. CONSIDERATIONS FOLLOWING THE INVESTIGATION

1. **CAC 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.

2. **Further notice to the Respondent if there are new issues**

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. 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 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.

VII. DECISION OF THE COMPLAINTS AUTHORIZATION COMMITTEE

1. **The decisions available to the CAC**

At the conclusion of the investigation process, the CAC must choose from the three statutorily available choices for their decision:
2. **Dismissal of the allegation**

(a) 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.

(b) The notice of the dismissal should include the written reasons of the CAC for the dismissal. The written reasons should include:

(i) a listing of the allegation record;

(ii) a summary of the Complainant’s allegation;

(iii) a summary of the Respondent’s response;

(iv) 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;

(v) identification of evidence disclosed by the investigation, including any expert opinion relied upon by the CAC;
(vi) analysis of whether there is sufficient evidence arising from the allegation and the investigation of it to find that there are reasonable grounds to believe that the Respondent has engaged in conduct deserving of sanction.

3. **Reasonable grounds to believe-counsel or caution**

(a) 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 or caution the Respondent.

(b) Without limiting the scope of what may constitute a counsel, it may take the form of the CAC’s 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.

(c) 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.

(d) 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.
(e) 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.

(f) 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 VII. 2. (b) of this Guideline.

4. Reasonable grounds to believe-referral to a hearing

(a) Generally speaking, complaints referred to a hearing will involve alleged misconduct of a more serious nature than that 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.

(b) 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).

(c) Under subsection 24(4) of the Act, the CAC will give notice of the 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 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.

(d) While the Respondent does not have a statutory right to appeal a decision to refer the matter to a hearing or to impose an interim restriction or interim suspension, 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 VII. 2.(b) of this Guideline.
(e) The notice of complaint and referral to a hearing given to the Respondent and the Complainant should include:

(i) the decision to refer the complaint to the disciplinary panel for a hearing under paragraph 24(3)(b) of the Act, with written reasons as contemplated by paragraph VII. 4.(d) of this Guideline;

(ii) particulars of the alleged conduct constituting the complaint, including reference to the type or types of conduct deserving of sanction being alleged as defined in subsection 20(b) of the Act, and if a breach of the Act, the regulations or code of ethics is being alleged, reference to the sections thereof alleged to have been breached;

(iii) copies of any investigation and technical expert reports received by the CAC;

(iv) a statement that the hearing will be before an adjudication tribunal in accordance with section 26 of the Act;

(v) a statement that the Respondent may be represented by counsel at the hearing;

(vi) a statement that a Notice of Hearing, giving notice of the date and time of commencement of the hearing and the place where it will be held, will be provided in due course;

(vii) 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;

(viii) a statement that at a hearing, the Adjudication Tribunal may exercise the powers set out in section 28 or 29 of the Act;

(ix) a statement that the decision to refer the complaint to the Disciplinary Panel for a hearing is not subject to statutory appeal.
VIII. COMPOSITION OF THE DISCIPLINARY PANEL AND THE ADJUDICATION TRIBUNAL

1. Members of the Disciplinary Panel

(a) The Disciplinary Panel is a panel of persons from whom an adjudication tribunal is appointed by the Disciplinary Panel chairperson 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.

(b) 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.

2. Appointment of Adjudication Tribunal

(a) 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 a complaint from the CAC, appoint from the Disciplinary Panel an adjudication tribunal consisting of 3 persons, of whom 2 will be professional members and one will be a person appointed by the minister under subsection 21(4) of the Act.

(b) The chairperson of the Disciplinary Panel will appoint one of the members on an Adjudication Tribunal to be the chairperson of the Adjudication Tribunal.

3. Conflict of Interest or Bias of a Disciplinary Panel member

(a) 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.
(b) 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.

(c) 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.

(d) A non-exclusive list of matters which could give rise to an actual or perceived bias or conflict of interest includes:

   (i) if the affected Disciplinary Panel member is the Complainant or has a business or other relationship with the Complainant;

   (ii) if the affected Disciplinary Panel member has had direct involvement in the subject matter of the allegation; and

   (iii) 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.

IX. PRE-HEARING PROCESS

1. Referral to Hearing

   (a) Where a complaint has been referred to the Disciplinary Panel by the CAC an Adjudication Tribunal will hear the complaint according to Section 26 of the Act and Sections 30, 31 and 32 of the Regulations.

   (b) The parties to a hearing are the Board and the Respondent and a party may be represented by legal counsel at a hearing.

2. Hearing to be public unless excluded

   (a) A hearing will be conducted in public but an Adjudication Tribunal may on its own initiative or by application 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 com-
plaint or a witness against the consequences of possible disclosure of personal matters outweighs the desirability of holding the hearing in public.

(b) Normally an application to the Adjudication Tribunal to exclude the public from a hearing, or from part of it, will be made either prior to or at the beginning of the hearing by the party that wishes to exclude the public. The public may be excluded from an application to exclude the public from a hearing. Such an application may be considered at a pre-hearing conference if requested by either party.

3. **Setting a Hearing date and location**

(a) An Adjudication Tribunal will set a hearing date at the later of

(i) 120 days after the decision of the CAC that grounds exist to start a disciplinary proceeding, or

(ii) 90 days after the complaint is referred to the Disciplinary Panel.

(b) The chairperson of an Adjudication Tribunal may extend the period referred to in paragraph IX.3(a) above after first seeking the opinion of the parties regarding the extension.

(c) The chairperson of the Disciplinary Panel will after consulting with the parties determine the amount of time for notice of the hearing and will provide such notice to the Respondent and the Board in accordance with subsection IX. 4. PEGNL will post the time and date of the hearing on its website following such notice from the Chairperson.

(d) The Adjudication Tribunal will establish the date and location of the hearing taking into account available facilities and travel costs in consultation with the chairperson of the Disciplinary Panel.

4. **Notice of Hearing**

(a) PEGNL staff will prepare the Notice of Hearing to the Respondent in consultation as necessary with the Adjudication Tribunal and PEGNL legal counsel. The Notice will be given to the Respondent and the Board and should include:

(i) the decision to refer the complaint to the disciplinary panel for a hearing under paragraph 24(3)(b) of the Act, with written rea-
sons as contemplated by paragraph VII. 4.(d) of this Guideline;

(ii) particulars of the alleged conduct constituting the complaint, including reference to the type or types of conduct deserving of sanction being alleged as defined in subsection 20(c) of the Act, and if a breach of the Act, the regulations or the code of ethics is being alleged, reference to the sections thereof alleged to have been breached;

(iii) copies of any investigation and technical expert reports received by the CAC;

(iv) a statement that the hearing will be before an Adjudication Tribunal in accordance with section 26 of the Act;

(v) a statement that the Respondent may be represented by counsel at the hearing;

(vi) 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;

(vii) a statement that at a hearing, the Adjudication Tribunal may exercise the powers set out in sections 28 or 29 of the Act;

(viii) a statement that the decision to refer the complaint to the Disciplinary Panel for a hearing is not subject to statutory appeal;

(b) The Notice will normally be sent by registered mail to the Respondent and the Complainant at the address on record;

5. Complainant and witnesses

(a) The Complainant and all witnesses whose attendance at the hearing is required are to be advised by letter or subpoena regarding the date and place of the hearing with a request for confirmation of their intention to attend. Witnesses whose attendance is required by PEGNL or requested by the Respondent or the Adjudication Tribunal are issued a subpoena signed by the chairperson of the Adjudication Tribunal in accordance with subsection 21 (9) of the Act.
(b) The Complainant is entitled to attend the hearing unless excluded under subsection 26(3) of the Act.

6. **Participation in the Hearing**

(a) The hearing may proceed in the absence of the Complainant or the Respondent, or both, provided Notice of Hearing has been given.

(b) 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.

(c) Testimony by a witness may be by videoconference or teleconference if both parties and the Adjudication Tribunal agree.

7. **Pre-Hearing Conference**

The chairperson of the Disciplinary Panel may grant a pre-hearing conference, to be held at least 10 days in advance of the hearing, at the request of the legal counsel of either the Board or the Respondent. The purpose of the pre-hearing conference would be to address preliminary issues including but not limited to the following:

(a) subpoenas of witnesses;

(b) number of days needed for the hearing;

(c) documents, if any, to be provided to the Adjudication Tribunal in advance of the hearing;

(d) application to exclude the public from the hearing or a part of the hearing; and

(e) delivery of Notice of Hearing to the Respondent

**X. THE HEARING**

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 should be maintained throughout the hearing.
2. **Role of PEGNL Legal Counsel and Staff**

The role of the PEGNL legal counsel is to ensure that the evidence with respect to the matter of 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 rules of natural justice. The role of the Adjudication Tribunal is to hear the evidence and evaluate it before arriving at a judgement regarding the conduct of the Respondent. The role of the PEGNL staff representative is to provide testimony regarding service of notices and other administrative aspects relating to the conduct of the investigation in accordance with the Act.

3. **Respondent pleads guilty prior to holding of a hearing**

   (a) Where a Respondent pleads guilty to one or more of the charges set out in a 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. A full hearing may be deemed to have been held where the Respondent petitions the Adjudication Tribunal to waive the holding of a full hearing and acknowledges his/her guilt of one or more of the charges set out in the complaint. The Adjudication Tribunal will then determine sanctions and cost assessments as if a full hearing had been held.

   (b) Where a Respondent pleads guilty and following submissions under paragraph X. 3.(a) above the Adjudication Tribunal may exercise one or more of its powers as described in Section 28 of the Act.

   (c) 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.

4. **Respondent pleads not guilty**

   (a) After the hearing of a complaint (the hearing procedure being further set out in subsection X. 5. below), an Adjudication Tribunal will decide whether or not a Respondent is guilty of conduct deserving of sanction.

   (b) Where an Adjudication Tribunal decides that a 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:
(i) Order that those costs that the Adjudication Tribunal considers appropriate be paid by PEGNL to the Respondent;

(ii) Make another order that it considers appropriate;

(iii) With the consent of the Respondent may publish a Notice of Dismissal. Such notice would be developed in consultation with the Respondent and the Board and published in a newspaper nearest to the community where the Respondent practices and also in the Board’s newsletter.

(c) 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.

(d) 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.

5. Hearing Procedure

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

(a) The Chairperson of the Adjudication Tribunal presents the opening statement and is responsible for maintaining control of the hearing. He/she will endeavour to establish a professional, as distinct from an adversarial, atmosphere and maintain the focus of the hearing on the items listed in the Notice of Hearing. The Chairperson will also ensure that proper decorum is maintained throughout the hearing.

(b) PEGNL legal counsel performs the direct examination of witnesses called by PEGNL and cross-examines other witnesses. He/she asks questions that are strategically designed to bring out the significant elements of the complaint as itemized in the Notice of Hearing. He/she establishes the status of the member under investigation in PEGNL and other professional associations. He/she also advises the Adjudication Tribunal on points of law to ensure that natural justice is maintained.

(c) Legal counsel for the Respondent or the Respondent (personally) performs the direct examination of witnesses called by the Respondent and cross-examines other witnesses. He/she is also permitted to make submissions on points of law and procedure.
(d) Technical Expert(s) may be called to provide testimony on matters relating directly to items listed in the Notice of Hearing and within the scope of his/her assignment. Normally, the technical expert(s) will not be excused during the testimony of other witnesses on technical matters.

(e) The Adjudication Tribunal hears the evidence and may question each witness 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 listed in the Notice of Hearing. Except for matters of clarification, tribunal members should normally withhold questions until after the examination and cross-examination of witnesses.

(f) At the conclusion of the hearing, the Chairperson invites the Respondent or his/her legal counsel to make a verbal submission. Following his/her response, the Chairperson invites the PEGNL Board or the Board’s legal counsel to make a verbal submission. The Chairperson then describes the review and decision process in a concluding statement, including the opportunity for the Respondent or his or her legal counsel and the Board and its legal counsel to present a further written submission. The Chairperson asks the Respondent or his/her legal counsel if he/she will require a copy of the transcript at his or her cost and establishes a time schedule for further written submissions (usually 2 - 4 weeks after receipt of copy of transcript). He/she also informs the Respondent or his legal counsel and the Board and its legal counsel that any additional written submissions must be restricted to the evidence presented and accepted at the hearing.

XI. DECISION OF THE ADJUDICATION TRIBUNAL

1. **Transcripts**

   If it was decided at the conclusion of the hearing or at any other time that transcripts are required, one copy of the transcript of the proceedings is ordered for the PEGNL file. Copies are made and distributed by PEGNL staff as requested by the Respondent and members of the Adjudication Tribunal, with the cost assigned by the Adjudication Tribunal in its discretion.
2. **Review of hearing documents and exhibits**

Hearing transcripts, hearing exhibits and written submissions will be forwarded to the Adjudication Tribunal Chairperson. This material, together with the information package provided at or for the Hearing and any individual notes taken during the hearing, will be the total information on which a decision will be made and will be distributed to the other members of the Adjudication Tribunal who heard the matter. The Adjudication Tribunal will not rely on any information other than that presented at the Hearing.

3. **Deliberation of the Adjudication Tribunal**

(a) Following receipt of the information noted in subsection XI. 2 above, the Adjudication Tribunal reviews the material and arrives at a majority decision on the complaint and sanctions, if any, against the Respondent.

(b) The Adjudication Tribunal may conduct its review at the conclusion of the Hearing and reach a decision on the same day or it may require a period of several days to do this. The Chairperson of the Adjudication Tribunal will advise the parties and their legal counsel of which approach it chooses. Where possible the Adjudication Tribunal will hear submissions on sanctions only after a finding of conduct deserving of sanction and in all cases where the Respondent or his or her legal counsel so requests.

(c) A record of past sanctions will only be made available to the Adjudication Tribunal who heard the matter when considering sanctions. It will not be made available until there is first a finding of conduct deserving of sanction. In order to allow for procedural fairness it may be necessary to schedule a continuation of the hearing when considering sanctions.

4. **Adjudication Tribunal Decision Reasons**

(a) Without limiting the ability of the Adjudication Tribunal to provide a written account of the reasons supporting its decision and order the Adjudication Tribunal will:

   (i) list the individual charges of conduct deserving of sanction that were considered;

   (ii) summarize the evidence that was brought to bear for and against each of the charges;
(iii) examine the matters of fact that were established at the hearing;

(iv) identify and discuss the issues of professional conduct relevant to those matters;

(v) give the reasons for each charge being dismissed or upheld; and

(vi) where the Respondent pleads or has been found guilty, state the orders made by the Adjudication Tribunal under Section 28 of the Act.

5. **Notification to Respondent of Decision and Order of Adjudication Tribunal**

(a) The decision and order of an Adjudication Tribunal, as filed with the registrar, is sent by registered mail or process server or other means to the Respondent by PEGNL staff. In cases where the member’s registration status in PEGNL is affected or may be affected if he/she fails to satisfy the orders, the notification should be by process server.

(b) Where a professional member is allowed or directed to surrender his or her registration, permit or license, the notification or a copy of it will be mailed to the member’s legal counsel if the Respondent is represented by legal counsel.

(c) Sections 31 and 32 of the Act apply in cases where a professional member is allowed or directed to surrender his or her registration, permit or license.

6. **Supplementary Hearing**

(a) Section 33 of the Act outlines the circumstances under which a Respondent may apply to the Complaints Authorization Committee (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.

(b) 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.
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 with the necessary changes.

7. Appeal

(a) The Board or the Respondent may, within 30 days after receiving the notice of the decision or 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.

(b) An appeal does not stay the decision or order being appealed unless the Trial Division orders otherwise.

(c) 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.