



# **Professional Discipline Procedural Handbook**

**Revised Edition  
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## **PREAMBLE**

This handbook is published for the assistance and guidance of members, applicant members and/or their counsel and shall not be considered restrictive of the rights of PEGNL’s Council or the Discipline Committee conferred by Statute or Regulations made pursuant to Statute. In all cases where the statements or rules herein are in conflict with the Act or Regulations, the Act and/or Regulations prevail.

## **DEFINITIONS**

“Act”	<i>The Engineers and Geoscientists Act, 1990 R.S.N., c. E-12</i>
“By-Laws”	means the By-Laws made under <i>The Engineers and Geoscientists Act</i> .
“Chair of the Discipline Committee”	means a professional member appointed by Council to act as Chair of the Discipline Committee during the term established by the Council for the Discipline Committee, pursuant to the Act.
“Complaints Committee”	means the committee appointed by Council to mediate complaints, provided the parties agree to mediation.
“Council”	means the Council of Professional Engineers and Geoscientists Newfoundland and Labrador.
“Discipline Committee”	means the committee of at least six professional members of PEGNL appointed by Council pursuant to Section 32 of the Act and Section 41 (4) of the Regulations.
“Executive Director”	means the Executive Director of PEGNL who is an employee and a person appointed by Council to handle the business affairs of PEGNL.

“Investigation Committee”	means the Preliminary Investigator and the Secretary and/or the Professional Standards Director of PEGNL.
“Member Under Investigation”	means the same as the term “Investigated Person” prescribed in the Act, that is, “a professional member, licensee, permit holder or member-in-training whose conduct has led to an investigation.”
“PEGNL”	Professional Engineers and Geoscientists Newfoundland and Labrador.
“Preliminary Investigator (PI)”	means a professional member of the Discipline Committee appointed by the Discipline Committee to carry out a preliminary investigation of any complaint or such other matter as may be referred to the Discipline Committee by the Council in the exercise of Council’s powers set out in Section 15 of the Act.
“Professional Standards Director (PSD)”	means a professional member appointed by Council to act as the Professional Standards Director contemplated by the Regulations, with such duties as may be assigned from time to time by Council or the Executive Director.
“Registrar”	means a person appointed by Council to act as Registrar pursuant to Section 13 of the Act and may be the same person as the Secretary or the Treasurer of PEGNL.
“Regulations”	means The Engineers and Geoscientists Regulations made under <i>The Engineers and Geoscientists Act</i> .
“Secretary of PEGNL”	means a person appointed by Council in accordance with Section 13 of the Act.
“Secretary of the Discipline Committee”	means a professional member elected by the Discipline Committee to act as Secretary during the term of the Chair.
“Umpire”	means a person appointed by the Discipline Committee to assist the Complaints Committee to settle a complaint.

## **1 ADMINISTRATION - DISCIPLINE COMMITTEE**

### **1.1 Officers of the Discipline Committee**

(1) The Vice-Chair and Secretary of the Discipline Committee will be elected from the members of the Discipline Committee. In the case of a tie vote, the Chair may cast a deciding vote having not previously voted to create the tie. The Vice-Chair and Secretary will hold office at the pleasure of the Committee for terms of not less than one year and not more than three. If appointed for a term of less than three years, incumbents may be re-appointed or extended until such time as they are no longer eligible to be members of the Discipline Committee.

(2) In the Discipline Committee Chair's absence, the Vice-Chair of the Discipline Committee shall chair its meetings; constitute Panels of the Discipline Committee; and cause decisions to be published.

### **1.2 Death, Mental or Physical Incapacity, Resignation of a Committee Member**

In the event of the death, resignation or incapacity of a member of the Discipline Committee, the Council will, within 60 days, appoint a replacement. During such vacancy of a position, all matters, investigations or matters under deliberation at the time of such death, incapacity or resignation shall be dealt with, decided, or disposed of, by the remaining members of the Discipline Committee.

### **1.3 Incapacity**

(1) Any professional member of the Discipline Committee shall be deemed incapacitated for medical reasons during his/her term where, in the circumstances of the individual, on the advice of a physician, Council determines that the member is unable to attend the meetings of the Discipline

Committee and carry out his/her duties and responsibilities as a member of the Committee.

(2) Any professional member of the Discipline Committee shall be deemed incapacitated for other than medical reasons in relation to any particular matter referred to the Discipline Committee if it should appear to the Chair that:

- (a) a conflict of interest exists;
- (b) the member declares to the Chair of the Discipline Committee good and sufficient reason to stand aside in respect of the matter under investigation or review;
- (c) a complaint is filed and has not been determined in respect of a member of the Discipline Committee.

(3) Notwithstanding Clause 1.2, a replacement member of the Committee need not be appointed if the Chair of the Discipline Committee determines that the incapacity is temporary.

#### **1.4 Removal, Expulsion**

The Council, upon recommendation of the Chair of the Discipline Committee, may request, and the member so requested shall provide, his/her resignation from the Discipline Committee in the following circumstances:

- (a) the member of the Committee has been disciplined or otherwise reprimanded or suspended;
- (b) the member's license, permit or other authority to practice his/her profession is lifted, cancelled, withdrawn or suspended;
- (c) the member has been convicted of a criminal act which would or is likely to impair his/her ability to exercise his/her duties or responsibilities to PEGNL.

## **2 PROCEDURAL**

Part V of *The Engineers and Geoscientists Act* defines the statutory requirement for the discipline process. Applicable Regulations are published in the *Newfoundland Gazette*, November 17, 1989 in Part VIII, Sections 41 - 46.

The following are the procedures presently adopted by the Discipline Committee.

### **2.1 Origin of Complaints**

Complaints may come from private individuals, professional members, firms or corporations or other organizations. In addition, the Professional Standards Director (PSD) or Secretary of PEGNL may bring a complaint on behalf of PEGNL. The procedures differ slightly in the two cases.

### **2.2 Complaint from the Public or by a Member of PEGNL**

Complaints from private individuals, professional members, firms or corporations or other organizations, other than PEGNL, must be made in writing to the Secretary of PEGNL or the PSD. Upon receipt, the Secretary, or PSD under the direction of the Secretary, will do an initial review to ensure that the complaint is clearly presented.

#### **2.2.1 Initial Review**

- (1) Any complaint must contain certain basic information in order to be processed. The following is a minimum list:
  - (a) name, address and telephone number of the complainant or sufficient information to identify the complainant and a place where the complainant can be contacted by a representative of PEGNL;

- (b) name and address of the professional member, licensee, permit-holder or member-in-training complained against;
- (c) a brief description of the conduct of the professional member, licensee, permit-holder or member-in-training which is the subject of the complaint;
- (d) any other relevant matters such as the nature and type of the relationship between the complainant and the member complained against;
- (e) copies of any correspondence, drawings, reports or other documents which the complainant believes will assist the Discipline Committee in investigating the complaint;
- (f) the remedy, if any, that is sought by the complainant.

(2) Beyond these basic procedural requirements, the Secretary or PSD must also be satisfied that the complaint constitutes an allegation that the action of the professional member, licensee, permit-holder or member-in-training who is the subject of the complaint constitutes unprofessional conduct or unskilled practice or both, as defined in section 31 of the Act.

(3) If the complaint meets both (1) and (2) outlined above, the Secretary or PSD then considers it to be valid.

(4) Where the Secretary or PSD finds that the complaint is deficient because it is not in compliance with Clause 2.2.1, paragraph (1), the Secretary or PSD will advise the complainant where the complaint is deficient and of his/her right to re-file if he/she amends such defects. There shall be no right to appeal the determination of the Secretary or the PSD that the complaint is deficient.

(5) Where the Secretary or PSD advises the complainant in writing that there is no apparent

infraction, and the complainant agrees or fails to advise of his/her disagreement in writing within a reasonable time, not normally to exceed thirty (30) calendar days from the date the complainant was advised that there is no apparent infraction, the matter will be closed without further action. If the complainant advises of his/her disagreement in writing within 30 days, the Secretary or PSD will proceed with the complaint.

### **2.2.2 Submission to the Complaints Committee of Council**

If the complainant and the professional member, licensee, permit-holder or member-in-training complained against agree, the complaint and all the available information can be sent to the Complaints Committee of Council. This route is less expensive and time-consuming for the parties, and the complaint might be mediated, dealt with by a Stipulated Order, or through an Inquiry, which is less formal than a disciplinary hearing before a panel of peer judges, as set out in Section 8. Choosing this alternative does not preclude either party or the Complaints Committee itself from subsequently deciding to submit the matter to the Discipline Committee. For a more complete description of this alternative procedure, see Appendix Z.

If a complaint involves an issue of public safety, it cannot be submitted to the Complaints Committee of Council for mediation, but will go directly to the Discipline Committee.

### **2.2.3 Submission to the Discipline Committee**

(1) If the PSD (or Secretary) of PEGNL has decided that the complaint is valid, in accordance

with sections 2.2.1 and 2.2.2, but the parties do not agree to a submission to the Complaints Committee of Council, or that process is inappropriate or has not resolved the matter, a Submission to the Discipline Committee is then required.

- (2) In preparation for this submission, the PSD or Secretary must:
- (a) verify and satisfy himself/herself that there is sufficient information on the face of the complaint to identify the complainant and the member to be investigated and to correspond with each;
  - (b) acknowledge receipt of the complaint (initially by telephone if possible or by other informal means) followed up by written acknowledgement (Appendix C);
  - (c) advise the complainant not to contact the member complained against or discuss the matter under investigation except through the process now activated;
  - (d) provide a copy of this Procedural Handbook to the complainant;
  - (e) contact the member to be investigated, advise him/her of the complaint and direct him/her not to contact the complainant except through the process now activated;
  - (f) provide a copy of this Procedural Handbook to the member to be investigated.
- (3) The Submission to the Discipline Committee is prepared as soon as possible and forwarded to the Chair of the Discipline Committee. The Submission to the Discipline Committee will contain:
- (a) a statement that both the complainant and member to be investigated were contacted and provided with a copy of this Procedural Handbook;
  - (b) a copy of the complaint;
  - (c) a statement that all applicable provisions of the Handbook have been complied with.

#### **2.2.4 Notice to the Complainant and Member Being Investigated**

- (1) The Secretary or PSD must immediately advise in writing the complainant (Appendix C) and the member to be investigated (Appendices A and B), by registered mail or personal

service, that the matter has been forwarded to the Discipline Committee and that pursuant to Sections 33 and 34, a preliminary investigation is to be conducted and directing them that failure to co-operate with the Preliminary Investigator and/or Investigation Committee could result in a separate finding of unprofessional conduct outside the issues surrounding the complaint.

(2) The Notice of Preliminary Investigation (Appendix B) should also contain a copy of the Submission to the Discipline Committee and instruct the member complained against of his/her right to reply in writing within thirty (30) calendar days of receipt.

(3) Upon receipt of the response or expiration of the time, the PSD will forward any additional case documentation to the Chair of the Discipline Committee.

## **2.3 Complaint by PEGNL**

Complaints may be initiated in writing by the PSD or the Secretary of PEGNL if circumstances come to his/her notice that may constitute grounds for discipline pursuant to the Act. In that case, the PSD or Secretary prepares a submission to the Discipline Committee and informs the person who is the subject of the report, as outlined in the following sections.

### **2.3.1 Submission to the Discipline Committee**

(1) A complaint by the PSD or Secretary must be directed to the Chair of the Discipline Committee setting forth the following:

- (a) a brief description of the conduct of the professional member, licensee, permit-holder or member-in-training which is the subject matter of the complaint;
- (b) name(s) and address(es) of the member(s) to be investigated;

- (c) copies of any correspondence, drawings, reports or other documents which are believed will assist the Discipline Committee in its investigation.

### **2.3.2 Notice to Member To Be Investigated**

- (1) Where the PSD or Secretary initiates a complaint under 2.3 above, he/she shall:
  - (a) contact the member to be investigated by telephone or by other informal means if possible, and advise him/her of the complaint;
  - (b) advise the member to be investigated by registered mail or personal service that the matter has been forwarded to the Discipline Committee and that pursuant to Sections 33 and 34 of the Act, a preliminary investigation is being conducted and directing them that failure to co-operate with the Preliminary Investigator and/or Investigation Committee could result in a separate finding of unprofessional conduct outside the issues surrounding the complaint (Appendices A and B).
  - (c) provide a copy of this Procedural Handbook to the member to be investigated;
  - (d) The Notice of Preliminary Investigation (Appendix B) should also contain a copy of the Submission to the Discipline Committee and instruct the member complained against of his/her right to reply in writing to the PSD within thirty (30) calendar days of receipt.
  
- (2) Upon receipt of the response or expiration of the time in 1(d) above, the PSD will forward all of the case documentation to the Chair of the Discipline Committee.

## **3 PRELIMINARY INVESTIGATION BY THE DISCIPLINE COMMITTEE**

- (1) Upon receipt of the “Submission to the Discipline Committee”, the Discipline Committee shall appoint a Preliminary Investigator or Investigation Committee to carry out a preliminary

investigation. The Preliminary Investigator shall be a member of the Discipline Committee who shall declare any incapacity or conflict of interest prior to initiating any inquiry.

(2) The member so appointed is entitled to enlist the assistance of the Secretary of PEGNL and/or the PSD and, upon enlisting this assistance, they are constituted as the “Investigation Committee”.

(3) The Preliminary Investigator or Investigation Committee may seek legal or other professional help to assist in the investigation. Under Section 43(1) of the Act, any member of the Discipline Committee and the Secretary of PEGNL (under Section 29(2)) has power to compel the production of evidence by subpoena or otherwise.

(4) The primary purpose and function of the Investigation Committee or Preliminary Investigator is to establish the facts of the situation under investigation and to present a report to the Discipline Committee. It is not to assess the merits of the complaint, but simply to identify the evidence relating to the issues which constitute the complaint. Fact finding shall include compilation of all correspondence, reports, drawings, copies of applicable regulations, membership documents and any other documentary or regulatory information which the Committee or the Preliminary Investigator believe may be relevant to the matter under investigation. The Investigation Committee or Preliminary Investigator is not to perform an adjudicative function. They should not assess the credibility of potential witnesses nor state any fact that has not been previously disclosed to the investigated member. The member under investigation should be permitted to respond, confirm or deny any relevant fact that comes into the knowledge of the Investigation Committee or Preliminary Investigator.

(5) The Investigation Committee or Preliminary Investigator shall take reasonable steps to protect the identity and potential harm to reputation that could result from its investigation and should treat all matters as confidential as between the person to be investigated, the complainant and the Discipline Committee.

(6) The Investigation Committee or Preliminary Investigator shall report on all matters, positive and negative, regarding the professional conduct of the member under investigation or professional practice of the profession by the member under investigation that arise in the course of the investigation.

(7) The findings of the Investigation Committee or Preliminary Investigator shall not contain a final statement or reasons indicating a conclusion formed on the merit or lack of merit of any complaint referred to it.

(8) The investigative activity will vary from one case to another depending on the nature of the complaint and availability of evidence. In making its report, the Investigation Committee or Preliminary Investigator should, as far as circumstances dictate:

- (a) state complainant's position;
- (b) state the response to the complaint from the member under investigation;
- (c) state the facts in favour of the complaint;
- (d) state the facts contrary to the complaint;
- (e) state all matters regarding the professional conduct or professional practice of the profession of/by the member under investigation (favourable and unfavourable) which arose in the course of investigation;
- (f) summarize or identify any legal or professional advice including that of technical experts obtained in the course of investigation;

- (g) not draw any conclusions or make any statements respecting credibility, guilt or innocence;
- (h) where there is admission of the facts underlying the complaint, report same.

(9) In carrying out the preliminary investigation, interviews may be done by telephone or in person. During such discussions, opinions or predictions regarding the outcome or quality of the complaint or reply must be avoided.

(10) If a technical expert is required during a preliminary investigation, request such expert assistance through the Secretary or PSD of PEGNL who will, in consultation with the Preliminary Investigator or Investigation Committee:

- (a) select the technical expert, who must be an individual and not a corporation;
- (b) draft the scope of the assignment (Appendix D);
- (c) establish a budget and monitor the cost;
- (d) provide the expert with the required format for his/her report (Appendix E).

#### **4 REVIEW OF PRELIMINARY INVESTIGATION REPORT**

(1) The report of the Preliminary Investigator or Investigation Committee (Appendix F) should be circulated with the regular Discipline Committee agenda for review by its members before the next meeting. It should be presented to the Discipline Committee by the Preliminary Investigator or Investigation Committee and voted on after discussion, with all copies of the report returned to the Secretary of the Discipline Committee.

(2) The Discipline Committee may reject the complaint and terminate the investigation if it is of the opinion that it is frivolous or vexatious or if, in their view, there is insufficient evidence of unskilled practice of the profession or of unprofessional conduct. Where the Discipline Committee is of the opinion that there is sufficient prima facie evidence of unprofessional conduct or unskilled practice to proceed further, the Discipline Committee shall cause a Formal Hearing to be convened to inquire into the complaint and render its decision.

(3) The information in the Preliminary Investigation Report does not restrict the ability of the parties to present further materials that may be relevant to the adjudication of the complaint.

#### **5 NOTIFICATION**

(1) If the Discipline Committee votes to terminate the investigation, the Secretary of the Discipline Committee shall direct the Secretary of PEGNL to notify the parties by letter as required by the Act and Bylaws, and such letter should advise that the complainant may appeal to Council if dissatisfied with the stated reasons [see Appendices G2 (Complainant) and H2 (Member under Investigation)].

(2) If the Discipline Committee votes to proceed to a Formal Hearing, the Secretary of the Discipline Committee shall direct the Secretary of PEGNL to advise the parties by letter (Appendices G1 and H1). The letter shall include:

- (a) the decision to proceed to Formal Hearing;
- (b) the particulars of the conduct or facts in dispute which led the Discipline Committee to hold a Formal Hearing;
- (c) an attached copy of the Report of the Preliminary Investigator or Investigation Committee (Appendix F);
- (d) a statement that the member under investigation may retain and instruct counsel to appear at the hearing;
- (e) a statement that a Notice of Formal Hearing will be prepared in due course;
- (f) a statement that the decision to refer the matter to Formal Hearing cannot be appealed to Council.

(3) In a case where PEGNL has brought the complaint, the Secretary of the Discipline Committee shall notify the parties in accordance with the requirements set forth in this part.

## **6 APPEAL OF DECISION TO TERMINATE AN INVESTIGATION**

(1) The complainant can appeal to Council the decision by the Discipline Committee to terminate an investigation following a Preliminary Investigation, by so requesting in a letter to the Secretary of PEGNL within thirty (30) days of being advised that the Discipline Committee dismissed the complaint. The letter requesting appeal, together with the Investigation Committee Report and the Discipline Committee resolution to terminate, will be submitted with the agenda for the next meeting of the Council. The Discipline Committee Chair or his/her designate (and if appropriate, the Preliminary Investigator) will present the Investigation Committee Report and the

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Committee resolution to the Council and respond to questions by members of the Council. The Chair and any other members of the Discipline Committee are not to defend the decision of the Discipline Committee, but should confine themselves to clarification requested by Council.

(2) The Council shall determine whether the complaint should proceed to a Formal Hearing and shall notify the Discipline Committee, the member under investigation and the complainant in writing of such decision.

## **7 STIPULATED ORDER**

Following the Preliminary Investigation, and with the agreement of the Discipline Committee, a Stipulated Order may be offered to a person complained against when an obvious breach of the Act and Regulations or By-Laws has been made. The person complained against and the complainant must agree to this process. With the assistance of the PSD and, where necessary, legal counsel, the Preliminary Investigator confirms the nature of the breach of the Act or By-Laws and decides upon an appropriate penalty.

The person complained against is then given a detailed description of the alleged offence, the finding of guilt and the penalty, complete with an explanation of the Stipulated Order procedure. The person complained against may choose to accept or reject the Order, at his/her sole discretion. Rejection would result in the case being referred to a Formal Hearing. By signing the Stipulated Order, the person complained against admits guilt and accepts the penalty stipulated. There shall be no appeal, and the Stipulated Order shall be publicized.

## **8 THE FORMAL HEARING**

(1) When the Discipline Committee decides that there are facts discovered to support a prima facie case of unskilled practice or unprofessional conduct, Section 38(1) of the Act requires the holding of a Formal Hearing.

(2) Subject to the agreement of the Committee, a Formal Hearing may be deemed to have been held where the member under investigation petitions the Committee to waive the holding of a Formal Hearing and acknowledges that his/her acts or omissions constitute unskilled practice of the profession or unprofessional conduct. The Discipline Committee will then determine sanctions and cost assessments.

(3) The following shall govern the establishment and holding of a Formal Hearing.

### **8.1 Selection of Panel of Peer Judges**

(1) The hearing shall be by a Panel of Peer Judges.

(2) The Chair of the Panel of Peer Judges must be a professional member of PEGNL appointed by Council but need not be a sitting member of the Discipline Committee.

(3) The Discipline Committee shall also appoint from its members three or more professional members of PEGNL, who were not involved in the Preliminary Investigation and who do not have any conflict of interest. Where there are insufficient members, the Committee can request Council to appoint additional members to the Discipline Committee. If a member becomes incapacitated, remaining members may complete the hearing. If the Chair is incapacitated, members may select a Chair.

## **8.2 Expert Witness(es)**

(1) The Panel will determine, in consultation with the Secretary of PEGNL, whether Expert Witness(es) are required in addition to expert evidence already obtained during the Preliminary Investigation.

(2) Subject to the approval of the Panel, the Secretary of PEGNL will establish with the Expert Witness:

- (a) scope of assignment (Appendix D);
- (b) schedule;
- (c) budget;
- (d) report format (Appendix E);

and monitor both progress and cost.

(3) The member under investigation may also adduce expert evidence, which must be provided to all parties in advance of the hearing.

## **8.3 Date and Location for Formal Hearing**

(1) The Panel will establish where the Formal Hearing will be held, taking into account available facilities and travel costs.

(2) The Panel will select at least two potential hearing dates that are acceptable to the members of the Panel, Expert Witness(es), PEGNL legal counsel, and staff member(s).

(3) The Chair of the Panel will establish by telephone if the member under investigation and his/her legal counsel, if applicable, are available on dates selected.

#### **8.4 Notice of Formal Hearing**

(1) PEGNL Staff will prepare the Notice of Formal Hearing in consultation as necessary with the Panel of Peer Judges and PEGNL legal counsel (Appendices I and J).

(2) The specific issues to be heard will be stated concisely and clearly in the Notice. The wording will be such that other matters arising during the hearing can also be heard provided the member under investigation is given reasonable opportunity to respond to those additional matters.

(3) The Notice will be delivered by registered mail to the member under investigation (Appendix I). The address on record will be used and staff will follow up by telephone to determine if the Notice was received. A record of the telephone call will be placed on file.

(4) The complainant and all expert witnesses whose attendance at the Formal Hearing is required are to be advised by letter regarding the date and place of the Formal Hearing with a request for confirmation of their intention to attend (Appendix L). Other witnesses whose attendance is required by PEGNL are issued a Formal Notice to Attend signed by the Secretary of PEGNL (Appendix K).

(5) The complainant is encouraged in all cases to attend the Formal Hearing but if he/she is unable to attend on the date established, a decision will be made by the Panel of Peer Judges or the Chair thereof, whether or not to postpone the Formal Hearing. If the complainant indicates a preference not to attend, a decision will be made to proceed or not, only after determining the need for his/her attendance in the hearing process. The Hearing may proceed in the absence of the complainant or the member under investigation, or both, provided full and proper notice has been given.

(6) Participation by either party by teleconference is permitted if both parties and the Panel agree.

## **8.5 Information Packages**

- (1) An information package will be prepared by staff and mailed or delivered to:
  - (a) the member under investigation;
  - (b) members of Panel;
  - (c) PEGNL legal counsel.
  
- (2) The information package will include:
  - (a) the letter of complaint;
  - (b) Notice of Preliminary Investigation (Appendix B);
  - (c) Response from the person under investigation to Notice of Preliminary Investigation;
  - (d) Technical Expert's Report (Appendix E);
  - (e) Evidence which supported the decision made to proceed to Formal Hearing;
  - (f) Notice of Formal Hearing (Appendix J).

## **8.6 Formal Hearing Process**

It is important throughout the conduct of a Formal Hearing that the adjudication procedures be, and be seen to be, fair and in accordance with the rules of natural justice.

### **8.6.1 PEGNL Legal Counsel, Staff Representative, etc.**

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 Panel. PEGNL Counsel ensures that procedures conform to the Act and that both the complainant and member under investigation have a fair hearing in accordance with the rules of natural justice. The role of the Panel is to establish the facts on the matters being investigated and to apply their professional knowledge in arriving at a judgement regarding the conduct of the member under investigation. 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.

### **8.6.2 Hearing Procedure**

The following is a description of the procedure during a Formal Hearing:

(1) The Chair of the Panel of Peer Judges presents the opening statement (Appendix O) 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 Formal Hearing.

(2) PEGNL's 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 Formal Hearing. He/she establishes the status of the member under investigation in PEGNL and other professional associations. He/she also advises the Chair and Panel on points of law to ensure that natural justice is maintained. The following are the witnesses normally called by PEGNL:-

- (a) PEGNL staff to read into the record the "Notice of Formal Hearing" (Appendix J), the confirmation of receipt of Notice and routine documentation that would otherwise be included in the PEGNL staff testimony.
- (b) The complainant to testify regarding the facts which form the basis for the complaint. The complainant is deemed not to be an Expert Witness and questions are, therefore, framed to focus on the facts rather than opinions or judgements.

(c) Technical Expert(s) to testify on matters relating directly to items listed in the Notice of Formal 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.

(3) Legal counsel or other representative (not a witness) for the member under investigation, or the member under investigation (personally) performs the direct examination of witnesses called by the member and cross-examines other witnesses. He/she is also permitted to make submissions on points of law and procedure.

(4) The Panel hears the evidence and questions 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 unprofessional conduct or unskilled practice listed in the Notice of Formal Hearing. Except for matters of clarification, Panel Members should withhold questions until after the examination and cross-examination of witnesses.

(5) At the conclusion of the Hearing, the Panel Chair invites the member under investigation or his/her legal counsel to make a verbal submission. Following his/her response, the Panel Chair describes the review and decision process in a concluding statement (Appendix P), including the opportunity for the member under investigation or his legal counsel to present a further written submission. The Panel Chair asks the member 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 member or his legal counsel that any

additional written submissions must be restricted to the evidence referred to at the Formal Hearing. Finally, he/she asks the member who should receive copies of the Decision and Orders of the Discipline Committee.

## **8.7 Judgment**

### **8.7.1 Transcripts**

If it was decided at the conclusion of the Formal 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 member under investigation and members of the Panel, with the cost assigned by the Panel in its discretion (Appendix R).

### **8.7.2 Review**

All new material (transcript, new exhibits, written submissions) will be forwarded to the Panel Chair. This material, together with the information package provided before the Formal 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 Panel of Peer Judges who heard the matter.

### **8.7.3 Preliminary Submissions of Panel Members**

Following receipt of the information noted in 8.7.2 above, each Panel member reviews the material and at a meeting of the Panel attempts, with the Panel Chair, to arrive at a consensus on conclusions or sanctions, if any, against the member under investigation. A record of past discipline sanctions will only be made available to the Panel members who heard the matter

when considering sanctions. It will not be made available until there is first a finding of unprofessional conduct or unskilled practice of the profession.

#### **8.7.4 Recommendation of Panel by Chair**

Where consensus is reached, the Chair shall prepare the written decision and review it with the other members of the Panel prior to submission to the Discipline Committee.

Where there is no consensus among members of the Panel, the Chair of the Panel shall accept written conclusions and recommended sanctions, if any, and prepare the conclusions and recommendations of the Panel for signature by the Chair and Panel members and submission to the Discipline Committee for consideration and action. A copy is sent to the members of the Panel of Peer Judges who heard the matter. Where a Peer Judge prepares a dissenting opinion, it will be attached to the Report if he/she wishes it.

The Panel Chair prepares the report (Appendix Q). In the course of preparing his/her conclusions and recommendations with respect to sanctions and assessments of costs, he/she may consult with PEGNL staff to consider consistency and conformance to PEGNL policy.

The report is distributed to members of the Discipline Committee with the agenda for the next meeting of the Committee. The Panel Chair will present the report to the meeting and respond to questions in preparation for the motion and vote on the report.

#### **8.7.5 Consistency in Penalties**

The Act, Section 44, authorizes the Discipline Committee to order the following sanctions

with respect to a member's professional status and/or practice:

- (a) reprimand the member under investigation;
- (b) suspend the registration of the member under investigation for a specified period;
- (c) suspend the registration of the member under investigation either generally or from a field of practice until:
  - (i) the member has completed a specified course of studies or obtained supervised practical experience; or
  - (ii) the Discipline Committee is satisfied as to the competence of the member under investigation generally or in a specified field of practice.
- (d) accept, in place of a supervision, the undertaking of the member under investigation to limit his or her practice;
- (e) impose conditions on the practice of the member under investigation generally or in a field of practice, including that the member does the following:
  - (i) practice under supervision;
  - (ii) not engage in sole practice;
  - (iii) permit periodic inspections by a person authorized by the Discipline Committee; or
  - (iv) report to the Discipline Committee on specific matters.
- (f) direct the member under investigation to pass a course of study or satisfy the Discipline Committee of his or her practical competence;
- (g) require the member under investigation to take counselling or to obtain the assistance that in the opinion of the Discipline Committee is appropriate;
- (h) direct the member under investigation to waive, reduce or repay any fee for services by him/her that, in the opinion of the Discipline Committee, were improperly rendered;
- (i) cancel the registration of the member under investigation; or
- (j) make another order that it considers appropriate in the circumstances.

### **8.7.6 Decision and Orders of the Discipline Committee**

The Committee considers the report of the Panel Chair. The Discipline Committee (DC) is authorized under the Act to accept, alter or reject the judgement, including any recommended sanction, if any. Following the DC's decision, the Chair prepares a report titled "Decision and Orders of the Discipline Committee" (see Appendix T).

### **8.7.7 Notification to Member Under Investigation**

(1) A covering letter is prepared by PEGNL staff (Appendix S). The report, signed by the Discipline Committee Chair, is attached and sent by registered mail to the member under investigation in which case service is presumed effected seven days after date of mailing. 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.

(2) The notification or a copy of it will be mailed to the member's legal counsel only if so instructed at the conclusion of the Formal Hearing.

## **9 APPEAL OF DECISIONS OF THE DISCIPLINE COMMITTEE**

(1) The member under investigation may appeal the decision of the Discipline Committee, within thirty (30) days of the decision, by so requesting in a written notice of appeal to the Council, setting out the grounds upon which the member under investigation is appealing. The Secretary of the PEGNL will prepare an information package for inclusion with the agenda of the next meeting of the Council. The Chair of the Discipline Committee or his/her designate will attend the meeting and respond to questions from members of Council. There is no provision in the Act for appeal by the complainant following a Formal Hearing.

(2) The following is a summary of documents that will make up the information package:

- (a) Letter of Complaint
- (b) Notice of Preliminary Investigation (Appendix B)
- (c) Response to Notice of Preliminary Investigation
- (d) Notice of Formal Hearing (Appendix J)
- (e) Panel Chair Report to the Discipline Committee (Appendix Q)
- (f) Copy of transcript of Formal Hearing and exhibits (if available)
- (g) Discipline Committee resolution on findings and sanctions (Appendix T)
- (h) Letter of Notification to Member under Investigation (Appendix S)
- (i) Letter of Appeal.

(3) Members of Council who are also members of the Discipline Committee may participate in the discussion but will not vote on the appeal.

(4) The Council, on receipt of notice of appeal and the information package, will serve on the member under investigation and complainant a notice of hearing of the appeal stating the date, time and place that Council will hear the matter.

(5) The Council shall hear the member under investigation by argument only. No new or additional evidence not before the Discipline Committee shall be presented or referred to. Council may direct the attendance of any person to render it such assistance as Council deems necessary.

(6) Where an appeal to Council is made, the Council may hear argument as to the appropriateness of the decision of the Discipline Committee and may:

- (a) make findings about the conduct of the member under investigation that, in its opinion, ought

- to have been made by the Discipline Committee, including varying the penalty or altering the conclusion reached based upon the evidence or lack of evidence;
- (b) quash, vary or confirm the finding or order of the Discipline Committee or make its own finding or order;
  - (c) refer the matter back to the Discipline Committee for further consideration in accordance with  
any direction Council may make;
  - (d) order the member under investigation to pay the reasonable expenses arising out of the hearing in accordance with the By-laws;
  - (e) Article 8.7.7 (with the necessary changes) applies with regard to notification of the parties following Council's decision on the appeal.

## **10 PUBLICATION OF DISCIPLINE COMMITTEE DECISIONS**

Following expiry of the appeal period, PEGNL staff will prepare an article for publication in the PEGNL electronic newsletter *Dialogue*. Members of the professions and PEGNL have an obligation to always act in the best interest of the public (safety, health and welfare.) The public interest should always be the first and most important consideration when a decision is being made whether or not to publish the member's name.

### **10.1 Publishing of Names as a Result of Disciplinary Action**

- (1) In cases of suspension or revocation of a member's license, the name(s) will always be published.
  
- (2) In cases where disciplinary action is taken that does not involve the suspension or revocation of a license, the Discipline Committee must decide if publishing of names is warranted.

## **10.2 Publishing of Discipline Committee Decisions**

The Discipline Committee should publish decisions and their associated events with or without names so that the membership and the public understand the principles of professional ethics involved and how they should be applied.

## **10.3 Disposition of Documentation**

Following the conclusion of a disciplinary complaint (including appeals), the documentation is to be disposed of as follows:

(1) Where the Discipline Committee has terminated a case, all records and documentation pertaining to the complaint are to be destroyed.

(2) Where a formal hearing has been held and the member exonerated, all records and documentation pertaining to the complaint are to be destroyed.

(3) Where a formal hearing has been held and a conviction registered, documentation will be maintained by PEGNL, and a notation will be made on the member's file.

## **Appendices**

**APPENDIX A**

(covering letter for Notice of Preliminary Investigation, on PEGNL letterhead)

DATE:

**CONFIDENTIAL**

Member or Permit Holder

(address)

Dear

**Preliminary Investigation - (description)**

We have received a complaint regarding the conduct of (member or permit holder) in the above matter.

Professional Engineers and Geoscientists of Newfoundland and Labrador [PEGNL] has a duty under *The Engineers and Geoscientists Act* to investigate complaints regarding the conduct of its members or permit holders and we therefore enclose herewith a Notice of Preliminary Investigation (Appendix B).

We have appointed (name and professional designation) to conduct the preliminary investigation and (he/she) will contact you in this regard. You are directed to cooperate with the Investigator; failure to do so will be treated as unprofessional conduct.

We have enclosed a copy of the appropriate Procedural Handbook.

(Signed)

Secretary - PEGNL

**APPENDIX B**

**CONFIDENTIAL**

**IN THE MATTER OF  
*THE ENGINEERS AND GEOSCIENTISTS ACT***

and

**IN THE MATTER OF THE CONDUCT OF**

(Member or Permit Holder)

**NOTICE OF PRELIMINARY INVESTIGATION**

**TAKE NOTICE** that the Discipline Committee of the Professional Engineers and Geoscientists of Newfoundland and Labrador (PEGNL) intends to conduct an investigation into your conduct in relation to services provided (describe project or services).

In particular, the Committee will review:

1. (concise statements)
- 2.

and, in general, any other aspects of the services provided that may arise during the course of the investigation. A copy of the “Submission to Discipline Committee” is attached for your review.

**FURTHER TAKE NOTICE** that you shall have until the      day of (month), (year) to submit in writing any comments you may wish to have considered by the Discipline Committee.

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**DATED** this     day of (month), (year) in the City                      in the Province of Newfoundland  
and Labrador.

To:     (name and address)

Professional Standards Director  
and/or Secretary, PEGNL

**APPENDIX C**

(acknowledgement letter to complainant following receipt of complaint, on PEGNL letterhead)

date

**CONFIDENTIAL**

(complainant's name and address)

Dear

This is to acknowledge receipt of your letter dated                      in which you make specific allegations with respect to the conduct of                      and                      .

Following our telephone conversation on                      , I discussed this matter with                      . A Notice of Preliminary Investigation has been issued and when a response is received, the Discipline Committee will appoint an Investigation Committee or Preliminary Investigator. The Chair of the Investigation Committee or Preliminary Investigator will meet with you to discuss the complaint and will expect you to provide documentation to support the allegations contained in your letter.

You will be advised when the Discipline Committee has considered the report of the Investigation Committee Chair and has made a decision to proceed to Formal Hearing or to terminate the investigation.

Yours truly,

Professional Standards  
Director, PEGNL

**APPENDIX D**

**CONFIDENTIAL**

**SCOPE OF ASSIGNMENT FOR TECHNICAL EXPERT**

Prepared by:

Date:

Technical Expert:

Name of Project:

**Scope Definition**

List in point form the specific areas to be reviewed, including the depth of review and the objectives of each.

- 
- 
- 

**Schedule**

Establish specific activity schedule identifying the points at which strategic decisions need to be made.

**Budget**

Summarize man-hours and expenses and establish the dollar amount within which the assignment is to be completed.

**Confidentiality**

All matters in the technical expert's investigation are confidential and are not to be revealed or discussed with anyone apart from the Secretary, the PSD and the Discipline Committee.

**APPENDIX E**

**CONFIDENTIAL**

**REPORT OF TECHNICAL EXPERT**

Prepared by:

Date:

Name of Project:

**Terms of Reference**

Duplicate the Scope Definition contained in the Scope of Assignment Report.

**Summary of Review**

Describe work done, including names of people interviewed, technical data used and details of the review process.

**Conclusions**

Summarize the review findings and respond to each point listed in the Scope Definition.

**Other Observations**

Describe any significant information obtained during the review that is outside the scope of the assignment but which bears directly on the subject of the investigation.

**APPENDIX F**

**CONFIDENTIAL**

**PRELIMINARY INVESTIGATOR OR INVESTIGATION COMMITTEE REPORT**

Prepared by:

Date:

Name of Case:

File No.:

**Complaint**

Describe the complaint briefly and attach the letter of complaint if applicable.

**Notice of Preliminary Investigation**

State date that Notice was issued and to whom and summarize the specific items to be investigated.

**Investigation**

Describe people contacted and information obtained in interviews.

**Technical Expert Report**

State name of technical expert and summarize the conclusions and other observations. Attach copy of Technical Expert Report.

**Summary**

- Summarize the facts relevant to the case.
- Identify relevant sections of the Code of Ethics, as well as any known precedents or previous determinations that might be similar to this case.
- No judgement should be made as to the relevance of these previous cases.
- Do not make any findings or conclusions with regard to guilt or innocence of the member under investigation, nor recommendations regarding a formal hearing.

**APPENDIX G1**

(Notification of Complainant following Preliminary Investigation leading to Formal Hearing, on PEGNL letterhead)

**CONFIDENTIAL**

DATE

Complainant  
(name and address)

Dear

Preliminary Investigation - (name of member and/or permit holder)

Your complaint against (name of member and/or permit holder) has been investigated and the findings of the Preliminary Investigator/Investigation Committee have been adjudicated by the PEGNL Discipline Committee. The report of the Preliminary Investigation is enclosed.

I have been directed by the Discipline Committee to inform you that the matter will be the subject of a Formal Hearing and a Notice to that effect will be issued to \_\_\_\_\_ in the near future.

Signed

Secretary - PEGNL

**APPENDIX G2**

(Notification of Complainant following Preliminary Investigation leading to investigation termination, on PEGNL letterhead)

**CONFIDENTIAL**

DATE

Complainant  
(name and address)

Dear

Preliminary Investigation - (name of member and/or permit holder)

Your complaint against (name of member and/or permit holder) has been investigated and the findings of the Preliminary Investigator/Investigation Committee have been adjudicated by the PEGNL Discipline Committee. The report of the Preliminary Investigation is enclosed.

I have been directed by the Discipline Committee to inform you that the investigation has been terminated [with comment or describe basis, giving reasons, with reference to Section 37 of the Act].

You are hereby notified that you may appeal the decision of the Discipline Committee to terminate the investigation by serving a Notice of Appeal in writing to the Council within 30 days of receipt of this letter.

(Signed)

Secretary – PEGNL

**APPENDIX H1**

(Notification of Member under Investigation following Preliminary Investigation leading to Formal Hearing, on PEGNL Letterhead)

DATE

**CONFIDENTIAL**

Member under Investigation (name and address)

Dear

Preliminary Investigation - (name of member and/or permit holder)

The complaint against (you or your company) has been investigated and the findings of the Investigation Committee/Preliminary Investigator have been adjudicated by the PEGNL Discipline Committee. The report of the Preliminary Investigation is enclosed.

I have been directed by the Discipline Committee to inform you that the allegations are such that further review is warranted and a Notice of Formal Hearing will be issued in the near future. You may retain and instruct counsel to appear at the hearing on your behalf.

Please note the decision to proceed to a Formal Hearing is not subject to appeal by you to Council.

Signed

Secretary - PEGNL

**APPENDIX H2**

(Notification of Member under investigation following Preliminary Investigation leading to investigation termination, on PEGNL letterhead)

Date

**CONFIDENTIAL**

Member under investigation  
(name and address)

Dear

Preliminary Investigation - (name of member and/or permit holder)

The complaint against (you or your company) has been investigated and the findings of the Investigation Committee/Preliminary Investigator have been adjudicated by the PEGNL Discipline Committee.

I have been directed by the Discipline Committee to inform you that investigation has been terminated on the basis that the evidence found is not of such substance as to warrant proceeding to a Formal Hearing.

Please note the decision to terminate is subject to the right of the complainant to appeal to Council within 30 days.

Signed

Secretary - PEGNL

**APPENDIX I**

(covering letter for Notice of Formal Hearing, on PEGNL letterhead)

DATE

**CONFIDENTIAL**

Dear \_\_\_\_\_:

Formal Hearing - (name of member and project)

Attached are the following documents:

1. Notice of Formal Hearing
2. Formal Hearing - General Information

For your information, in preparing for the Formal Hearing, PEGNL intends to invite, in addition to witnesses that you may call, the following persons to testify and be available for questions by those attending the Hearing:

PEGNL Staff Representative (name) \_\_\_\_\_

Complainant (name) \_\_\_\_\_

Technical Expert (name) \_\_\_\_\_

Other (name) \_\_\_\_\_

Confirmation is required no later than  (date)  that you will attend at the time and date indicated in the Notice of Formal Hearing.

(signed)

Secretary - PEGNL

**APPENDIX J**

**CONFIDENTIAL**

**IN THE MATTER OF  
*THE ENGINEERS AND GEOSCIENTISTS ACT***

And

**IN THE MATTER OF THE CONDUCT OF  
(Member or Permit Holder)**

**PART I**

**NOTICE OF FORMAL HEARING**

**TAKE NOTICE** that the Discipline Committee of Professional Engineers and Geoscientists of Newfoundland and Labrador (PEGNL) intends to hold a Formal Hearing into your conduct in relation to services provided on the (name of project).

In particular, the Committee will consider the following matters related to the services provided:

- 1.
- 2.
- 3.

**FURTHER TAKE NOTICE** that the Discipline Committee will consider any other matter relevant to the professional services provided by you and your professional conduct which may

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be disclosed by the evidence. The Discipline Committee will consider the question of whether or not your conduct, disclosed by the evidence, constitutes unskilled practice of the profession or unprofessional conduct, or both.

**FURTHER TAKE NOTICE** that pursuant to Section 43 of *The Engineers and Geoscientists Act*, the Discipline Committee is not bound by the rules of evidence pertaining to actions and proceedings in the courts of justice but, on the contrary, may proceed to ascertain the facts in such manner as it considers proper and has full right to examine and cross-examine all witnesses called and to adduce evidence in response and reply.

## **PART II**

### **NOTICE TO ATTEND**

**TAKE NOTICE** that pursuant to Section 43(1) of *The Engineers and Geoscientists Act*, you are required to attend as a witness before a Formal Hearing of the Discipline Committee at the time and location indicated below, or as mutually agreed, to give evidence with respect to the matters in question.

**FURTHER TAKE NOTICE** that you are required to come prepared to produce and enter as evidence any and all books, papers, or other documents relating to the said matters.

**FURTHER TAKE NOTICE** that these proceedings may affect your status as a member of PEGNL and your right to practice your profession. You are entitled to be represented by legal

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counsel at the Hearing and to enter such evidence (including expert evidence) and documents on your own behalf as you or your legal counsel deem necessary and proper.

**FURTHER TAKE NOTICE** that the Hearing will be conducted at (location) commencing at (time) on (date) and will continue throughout that day and on adjournment should this be necessary.

**DATED** this        day of        , 20    , in the City of St. John's, in the Province of Newfoundland and Labrador.

(signed)

Secretary - PEGNL

**APPENDIX K**

(notice to attend as a witness)

**CONFIDENTIAL**

**IN THE MATTER OF  
*THE ENGINEERS AND GEOSCIENTISTS ACT***

and

**IN THE MATTER OF THE CONDUCT OF  
(Member or Permit Holder)**

**NOTICE TO ATTEND AS A WITNESS  
AND  
NOTICE TO PRODUCE DOCUMENTS**

**TAKE NOTICE** that pursuant to Section 43(1) of *The Engineers and Geoscientists Act*, you are hereby required to attend as a witness at a Formal Hearing conducted by the Discipline Committee of Professional Engineers and Geoscientists of Newfoundland and Labrador [PEGNL]. The Hearing will be held at (location and address) commencing at (time and date) and you will be called to give evidence on the matters before the Discipline Committee listed in the Notice of Formal Hearing attached hereto. In this regard, you are required to produce any and all books, papers, or other documents relating to those matters.

**DATED** this        day of        , 20    in the City of St. John's, in the Province of Newfoundland and Labrador.

(signed)

Secretary - PEGNL

**APPENDIX L**

(letter to complainant notifying date of Formal Hearing, on PEGNL letterhead)

DATE

**CONFIDENTIAL**

Dear

**Re: Formal Hearing (name of member and project)**

This is to confirm that the above Formal Hearing is scheduled for (time) on (date) at (place). The enclosed document titled Formal Hearing General Information describes the established procedure.

For your information, in preparing for the Formal Hearing, PEGNL intends to invite the following persons to testify:

PEGNL Staff Representative (name)

Member Under Investigation (name)

Other (name)

Please confirm no later than (date) that you will attend at the time and date indicated above.

Yours truly,

Secretary - PEGNL

## **APPENDIX M**

### **CONFIDENTIAL**

### **FORMAL HEARING**

### **GENERAL INFORMATION**

#### **Introduction**

A Formal Hearing is an internal professional investigation into the conduct of a member or permit holder of Professional Engineers and Geoscientists of Newfoundland and Labrador [PEGNL], by their peers. Procedures are governed by *The Engineers and Geoscientists Act*, S.N., c. 48.

PEGNL engages the services of legal counsel to:

1. Advise the Chair of the Panel and Panel members on points of law and procedure to ensure that natural justice is maintained throughout the course of the proceedings.
2. Conduct the Hearing and present appropriate evidence to the Panel such that the Panel may have before them the information necessary to deal with the allegations on their merits.
3. Display the facts to the Panel and, in so doing, attempt to preserve a peer, as distinct from an adversarial, atmosphere.

The member under investigation has the option of representing himself/herself or of having legal counsel present to represent him/her. In either situation, opportunities to ask questions or make submissions on points of law and procedure are available.

Formal Hearing proceedings are not bound by the rules of evidence. The Panel may hear evidence it considers appropriate and ascertain the facts in a manner it considers proper. The

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complainant does not receive a copy of the record of the Hearing, however, the Discipline Committee is obligated to advise him/her of the nature of the decision once the proceedings are concluded.

Procedure

The participants in a Formal Hearing are normally as follows:

1. Panel of Peer Judges consisting of three or more members of the Discipline Committee, chaired by a professional member of PEGNL who need not be a member of the Discipline Committee.
2. PEGNL staff representative responsible for administration of the discipline process, as defined in the Act.
3. PEGNL legal counsel.
4. Recorder.
5. Complainant.
6. Technical experts and other witnesses called by PEGNL.
7. Member under investigation and legal counsel as applicable.
8. Technical experts and other witnesses called by the member under investigation.

The procedure is designed to give the complainant the opportunity to describe to the Panel the circumstances which led to the complaint. The member under investigation and the Panel are given full opportunity to ask questions of the complainant in order to establish the facts on which the complaint was based.

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The complainant is encouraged to attend the Formal Hearing to give testimony regarding the facts which form the basis for the complaint so that the member under investigation has the opportunity to question his accusers. The Formal Hearing may, however, proceed in the absence of the complainant provided the complainant and the member under investigation do not disagree on the facts forming the basis for the complaint or the complainant fails to appear without sufficient just cause.

Following testimony by the complainant, the technical experts called by PEGNL give testimony and are available for cross-examination and questions by the member under investigation and the Panel members respectively.

The member under investigation and any witnesses that he/she may call then give testimony. Each submit to cross-examination and questions by PEGNL legal counsel and the members of the Panel. All information bearing on the matters in question should be presented at the Formal Hearing.

The hearing is recorded and at its conclusion, the Panel Chair describes the decision process. Normally, copies of the transcript are produced if the member under investigation or the Panel requests them. If a transcript is requested, a copy is forwarded to the member under investigation for reference in preparing any final written submissions for consideration by the Panel. Copies of the transcript, together with any written submissions, are forwarded to the members of the Panel for use in preparing their judgement.

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**APPENDIX N**

(sample letter sent to witnesses, on PEGNL letterhead)

(date)

**CONFIDENTIAL**

(Witness name and address)

Dear

**Re: Formal Hearing - (name of member)**

Regarding our recent telephone conversation [and/or (and the Notice to Attend as a Witness)], this letter will serve as confirmation of your agreement to attend the above hearing on (date) at (time) in (place).

Mr./Ms. \_\_\_\_\_, will be conducting the Hearing on behalf of PEGNL and will be contacting you to set up an appointment for the afternoon of (date) as your schedule permits, to discuss procedure.

Yours truly,

Professional Standards  
Director, PEGNL

cc: (Legal Counsel)

**APPENDIX O**

**CONFIDENTIAL**

**FORMAL HEARING**

**PANEL CHAIR'S INTRODUCTORY STATEMENT**

This is a Formal Hearing of the Professional Engineers and Geoscientists of the Province of Newfoundland and Labrador [PEGNL] into the conduct of a member, \_\_\_\_\_ and a permit holder, \_\_\_\_\_. The Hearing is being conducted in accordance with the provisions of *The Engineers and Geoscientists Act*. It concerns services provided in connection with \_\_\_\_\_.

My name is \_\_\_\_\_. I am a professional \_\_\_\_\_ practising in \_\_\_\_\_. The Panel of Peer Judges here with me are: \_\_\_\_\_, a professional \_\_\_\_\_ practising in \_\_\_\_\_; \_\_\_\_\_, a professional \_\_\_\_\_, practising in \_\_\_\_\_; \_\_\_\_\_, a professional \_\_\_\_\_ practising in \_\_\_\_\_. All other members of the Panel are members of the Discipline Committee.

One of the prerequisites used in selecting members to serve on a Formal Hearing Panel is that they not have any conflict of interest in the subject matter of the Hearing. Should something arise during the Hearing which creates any obstacle to their objectivity, they are asked to declare such potential conflict.

With us also are \_\_\_\_\_, PEGNL legal counsel, and \_\_\_\_\_, P. Eng., PSD for PEGNL.

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2.

This Hearing is an internal professional investigation into the conduct of a member or permit holder of PEGNL. The role of PEGNL legal counsel is not to prosecute the party under investigation but rather to assist the Discipline Committee on points of law and procedure as they arise in the course of the proceedings, and to ensure that the evidence is presented to the Panel such that the Panel may have before them all information necessary to deal with the allegations on their merits. The member under investigation will have the opportunity to comment on points of law and procedure should he/she see fit.

As Chair of the Panel, it is my duty to preside over the Hearing and provide the complainant with full opportunity to present to the Panel the factual circumstances that led to the complaint. This should not be interpreted, however, to extend to argument or debate on the subject of the complaint.

I will attempt to avoid an adversarial atmosphere throughout the Hearing and I invite all present to assist me in maintaining a professional atmosphere appropriate to a self-governed profession. It will be my objective to focus the Hearing on the questions itemized in the Notice of Formal Hearing and to avoid unnecessary deviation from those specific topics. The topics are:

- 1.
- 2.
- 3.

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3.

These proceedings are not bound by the rules of evidence. Under the authority of Section 43 of the Act, the Discipline Committee may hear any evidence it considers appropriate. PEGNL legal counsel will advise the Panel with respect to admission of specific items of evidence. As Chair of the Panel, I will be inclined to accept all evidence which is relevant to the specific items listed in the Notice of Formal Hearing. Objections to the admission of specific evidence will be acknowledged and taken into account in the adjudication process.

The findings of the Panel are subject to the approval of the full Discipline Committee. The complainant will be notified when conclusions have been reached by the Discipline Committee, following receipt of the recommendations of the Panel.

The hearings reporter will record the Formal Hearing proceedings from which a transcript can be produced. Our normal procedure is to produce transcripts only if the member under investigation or the Panel request them. In making this decision, it should be borne in mind that the cost of the transcript is \$10.00 per page and in the event of a finding that results in a sanction against the member under investigation, these costs may be assessed against the member.

**APPENDIX P**

(This statement is made following response by the member under investigation or his legal counsel to an invitation by PEGNL legal counsel to make a submission at the conclusion of the Hearing.)

**CONFIDENTIAL**

**FORMAL HEARING**  
**PANEL CHAIR'S CONCLUDING STATEMENT**

This concludes the Formal Hearing. I would like at this time to review for the benefit of all concerned, the procedure that we will follow in completing the adjudication of this case.

1. In my opening statement, I indicated that transcripts of the proceedings would be made and distributed only if either the member under investigation or the Panel require them. I would like at this time to recess for 10 minutes to make that decision. As indicated earlier, the cost of the transcripts is an assessable cost and the allocation of costs between the member under investigation and PEGNL will be decided by the Panel in our adjudication of this matter.
  
2. The Panel has decided that transcripts (will/will not) be required. Do you require a transcript?

**NOTE: IF 'YES', PROCEED WITH POINTS 3 TO 8.**  
**IF 'NO', PROCEED WITH POINTS 9 TO 13.**

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2.

3. Transcripts will be ordered and it is expected will be available in approximately \_\_\_\_ weeks.
4. Written submission from member, if any. (Suggest 2 weeks following receipt of transcripts). The member is reminded that this opportunity to make an additional written submission should not be regarded as a means to enter further evidence. Additional written submissions must be restricted to the evidence referred to at the Formal Hearing.
5. The Panel will consider any written submission, review transcripts as considered necessary and finalize their report to the Discipline Committee.
6. The Discipline Committee will consider the Panel report and make a decision.
7. The Chair of the Discipline Committee will issue an order respecting findings and decisions of the Discipline Committee.
8. The Secretary of PEGNL will inform the member and the complainant in accordance with *The Engineers and Geoscientists Act*.

**IF ANSWER TO POINT 2 IS 'NO', PROCEED WITH 9**

9. Does the member or his legal counsel wish to make any summary or final presentation to the Panel?

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3.

**IF ‘YES’, HEAR THE PRESENTATION, IF ‘NO’, PROCEED TO 10.**

10. The Panel will meet to consider the evidence presented and prepare a report to the Discipline Committee.
11. The Discipline Committee will consider the Panel report and make a decision.
12. The Chair of the Discipline Committee will issue an order respecting findings and decisions of the Discipline Committee.
13. The Secretary will inform the member and the complainant in accordance with *The Engineers and Geoscientists Act*.

Are there any questions regarding the procedure?

If there are no further questions, the Hearing is adjourned.

**APPENDIX Q**

**CONFIDENTIAL**

**PANEL CHAIR REPORT**

PREPARED BY:

DATE:

NAME OF CASE:

CASE FILE NO.:

Summary of Events

1. Investigation Committee Report

The Notice of Preliminary Investigation was issued on (date) and the decision to proceed to Formal Hearing was made by the Discipline Committee on (date) following review of the Investigation Committee Report dated (date).

2. Notice of Formal Hearing

The Notice of Formal Hearing was dated (date) and is attached.

3. Formal Hearing

The Formal Hearing was held on (date). Following were the participants:

- a) Panel
  - (name) - Chair
  - (name)
  - (name)
- b) PEGNL Legal Counsel - (name)
- c) PEGNL Staff - (name)

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2.

- d) PEGNL Technical Expert - (name)
- e) Complainant - (name)
- f) Member under investigation - (name)
- g) Member's legal counsel - (name)
- h) Member's representatives - (name)
- i) Member's technical expert - (name)

### Conclusions

The following is a summary of the conclusions reached on each item listed in the Notice of Formal Hearing.

1. (repeat item and concise statement of the conclusions respecting each).
  
2. etc.

### Findings

The Panel found, with respect to each of the items listed in the Notice of Formal Hearing, as follows:

1. Unskilled Practice of the Profession  
Itemize the conduct by the members (individual and permit holder)  
which was found to be unskilled.
  
2. Unprofessional Conduct  
Itemize the conduct by the members (individual and permit holder)

.../3

3.

which was found to be in conflict with the Code of Ethics and therefore unprofessional.

### Recommendations

The Panel of Peer Judges makes the following recommendations regarding sanctions and assessment of costs.

#### 1. Sanctions

- none (if there was no finding of unskilled practice or unprofessional conduct)
- caution (if there was a finding of unskilled practice or unprofessional conduct but not of sufficient seriousness to warrant a reprimand)
- reprimand
- reprimand plus one or more of the following:
  - prescribed examinations
  - practice restrictions
  - suspension of registration
  - cancellation of registration
  - other sanctions in accordance with Section 44 of the Act.

#### 2. Assessment of Costs

These may be assessed in accordance with the Act (Sections 45(1) and 49(2)(d)) and the By-Laws.

signed

PANEL CHAIR

**APPENDIX R**

(on letterhead of PEGNL)

LETTER TO BE SENT WITH FORMAL HEARING TRANSCRIPT

**CONFIDENTIAL**

(date)

Dear \_\_\_\_\_ :

Enclosed is your copy of the transcript of the Formal Hearing which was held on (date). As indicated at the conclusion of the Formal Hearing, you have the opportunity of making a written submission for consideration by the Panel.

If we do not receive a response by (date), the Panel will prepare their report based on the testimony presented at the Hearing as recorded in the Transcript.

Yours truly,

Professional Standards  
Director, PEGNL

**APPENDIX S**

(covering letter for Discipline Committee Order to member complained against)

**PRIVATE & CONFIDENTIAL**

Date

BY PROCESS SERVER

Dear \_\_\_\_\_ :

**Re: Formal Hearing (name of member and project)**

Attached is a summary of the findings and resulting Orders of the Discipline Committee with respect to the above matter.

This is your notice of (reprimand, comments, suspension and assessment of costs). Costs in the amount of \$ \_\_\_\_\_ have been assessed, under the authority of Section 45 of *The Engineers and Geoscientists Act* (the “Act”), and payment of that amount is required by (date), notwithstanding your right of appeal in accordance with Section 47 of the Act.

Your registration in PEGNL is (suspended, cancelled) effective receipt of these Orders. In accordance with Section 53(1) of the Act, please return your Certificate of Registration and Professional Stamp to this office.

The (suspension, cancellation) of your registration in PEGNL will be published in the PEGNL publication in the usual way that all such changes in membership records are reported. In addition, a summary account of the conclusions of the Formal Hearing will be published with names in the PEGNL publication *Dialogue* and (name other newspapers). Appropriate authorities will be notified regarding the (suspension, cancellation) of your registration in PEGNL.

(signed)

Secretary - PEGNL

**APPENDIX T**

**CONFIDENTIAL**

**IN THE MATTER OF  
*THE ENGINEERS AND GEOSCIENTISTS ACT***

and

**IN THE MATTER OF THE CONDUCT OF  
[member or permit holder]**

**DECISION AND ORDERS OF THE DISCIPLINE COMMITTEE**

The Discipline Committee of the Professional Engineers and Geoscientists of Newfoundland and Labrador (PEGNL) has concluded its consideration of the evidence presented at the Formal Hearing held on (date) in this matter, together with your submission of (date).

The Discipline Committee has found, in response to the questions listed in the Notice of Formal Hearing, as follows:

**1. Unskilled Practice of the Profession**

(itemize the conduct by the members, both individual and permit holder, which was found to be unskilled)

**2. Unprofessional Conduct**

(itemize the conduct by the members, both individual and permit holder, which was found to be in conflict with the Code of Ethics and therefore unprofessional.)

.../2

2.

The Discipline Committee has ordered:

(sanctions and cost assessments as listed in the Panel Chair's Report, including dates within which compliance is required)

1.

2.

3. etc.

4. That the registration of P. be suspended without further notice if the Orders as described in items , and are not fully satisfied.

5. That the above orders remain in effect notwithstanding that the member may file an appeal from these Orders.

DATED this day of , 20 , in the City of St. John's, in the Province of Newfoundland and Labrador.

PROFESSIONAL ENGINEERS AND GEOSCIENTISTS OF  
NEWFOUNDLAND AND LABRADOR

PER:

CHAIR OF THE DISCIPLINE COMMITTEE

**APPENDIX U**

(Notification of Parties following Formal Hearing, on PEGNL letterhead)

**CONFIDENTIAL**

(date)

(Complainant)  
(name and address)

Dear \_\_\_\_\_ :

**Re: Formal Hearing - (name of member and/or permit holder)**

The Formal Hearing resulting from your complaint against (name of member and/or permit holder) has been concluded and the findings of the Panel of peer judges have been adjudicated by the Discipline Committee.

Following is a summary of the findings:

1. (content to be guided by circumstances and may vary from a minimum amount of information to a comprehensive list of points in the Notice of Formal Hearing and corresponding conclusions.)
- 2.
- 3.
- 4.

I have been directed by the Discipline Committee to inform you regarding the above (special information or instructions or expression of appreciation).

(Signed)

Secretary - PEGNL

**APPENDIX V**

(form letter following expiry of time specified in Decision and Orders of Discipline Committee, on PEGNL letterhead)

(date)

**CONFIDENTIAL**

Member under investigation

Dear :

**Re: Formal Hearing - (name of member and project)**

Our records indicate that you have not satisfied the Decision and Orders of the Discipline Committee dated which was forwarded to you by registered mail on (date). Your registration in PEGNL has, therefore, been suspended effective (date).

In accordance with Section 53(1) of *The Engineers and Geoscientists Act*, please return your member certificate and professional stamp to this office by (date). Failure to comply with this request may be deemed to constitute unprofessional conduct and a breach of the Act.

Yours truly,

Secretary - PEGNL

**APPENDIX W**

(collection of assessed costs and/or fines on letterhead)

**CONFIDENTIAL**

(date)

Member under investigation

Dear \_\_\_\_\_ :

**Re: Formal Hearing (name of member and permit holder)**

Please refer to our letter dated (date) in which you were given notice with respect to the assessment of costs for the above. Payment of the cost assessment, in the amount of \$ \_\_\_\_\_, is now overdue.

In accordance with the Decision and Orders of the Discipline Committee, your registration in PEGNL was suspended effective (date). Please return your Certificate of Registration and professional stamp to this office.

Yours truly,

Professional Standards  
Director

**APPENDIX X**

(To member complained against, Re Assessment of Fines and Costs, on PEGNL letterhead)

**CONFIDENTIAL**

(date)

Dear \_\_\_\_\_ :

**Re: Formal Hearing**

Please refer to our letter of (date) with attached Decision and Order of the Discipline Committee with respect to the above.

The Orders of the Discipline Committee require \_\_\_\_\_ as a condition of continued membership in PEGNL and that you pay the cost assessment of \$ \_\_\_\_\_ by (date).

Payment of the cost assessment is required notwithstanding your right to appeal the decision of the Discipline Committee in this matter. If payment is not received by (date) your registration as a member of PEGNL will be subject to suspension by the Discipline Committee at its regular meeting on (date) without further notice.

Attached for your convenience is the schedule for the professional practice examination (if applicable) etc.

Yours truly,

Professional Standards  
Director

**APPENDIX Y**

(format for Publication with Names following Formal Hearing)

**CONFIDENTIAL**

**MEMBER DISCIPLINARY ACTION**

A Formal Hearing into the conduct of (member name) and (permit holder) in relation to (type of) services provided to (name) was conducted by the Discipline Committee on (date).

The Hearing was in response to a complaint from (description/no names) which alleged that the conduct of (member complained against) and/or (permit holder) in the (nature of complaint) represented (unskilled practice of the profession and/or unprofessional conduct).

During the Formal Hearing, a Panel of four members of the Discipline Committee undertook to determine:

1. (quote items in Notice of Formal Hearing)
- 2.

The conclusions reached by the Panel with respect to each of the above items were as follows:

**Item # 1**

- (a) (quote conclusions in Panel report)
- (b)

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2.

**Item # 2**

- (a) (quote conclusions in Panel report)
  
- (b)

The Panel found that the conduct of the member under investigation constituted:

- 1. (Panel findings)
  
- 2.

and the Discipline Committee ordered the following (sanctions) and/or (assessments) against them:

- 1. (orders)
  
- 2.

Publication of this article was withheld pending appeal of the Orders of the (Discipline Committee) and/or (Council).

The registration of (member or permit holder) was (cancelled, suspended) effective (date) for a period of (duration) and reinstatement will be subject to (describe conditions).

## **APPENDIX Z**

### Complaint Procedure (Complaints Committee)

#### **CONFIDENTIAL**

#### **COMPLAINT PROCEDURE**

Professional members, licensees, permit holders or members-in-training or former members, licensees and permit holders may be investigated and disciplined under the provisions of the *Engineers and Geoscientists Act*. Part V of the Act defines a system under which complaints to Professional Engineers and Geoscientists of Newfoundland and Labrador [PEGNL] are subjected to a thorough investigation and passed on, if appropriate, to the Discipline Committee for action.

Any person or group of persons wishing to make a complaint (complainant) about the actions or behaviour of any member, member-in-training, licensee, or permit holder can do so by following the procedures set out below. This procedure is to be carried out under Section 30(3) and the Complaints Committee will act as the Umpire referred to in that Section. The Complaints Committee is appointed by Council specifically to look into complaints and determine if there are reasonable and probable grounds to believe there has been a contravention of the *Engineers and Geoscientists Act*, Regulations or By-Laws. The Complaints Committee is made up of five or more volunteer members who are experienced professional engineers or geoscientists and may also include a lay member representing the general public.

1. The complaint should be submitted, in writing, to the Secretary or the PSD of PEGNL. A letter setting out the facts on which the complaint is based is the usual method of initiation.

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2.

Guidance as to the contents of the letter may be obtained from the PSD. Alternatively, a complaint may be initiated by the Secretary or the PSD by a letter to the Complaints Committee. However, if a complaint involves an issue of public safety, it will go directly to the Discipline Committee.

2. The Secretary or the PSD sends an acknowledgement to the complainant.

3. The member, member-in-training, licensee, or permit holder complained against will be sent a copy of the complaint and asked to comment on the allegations. A time limit, usually 30 days, will be set within which the comments are required. If the complainant and the person complained against agree, all information available will be sent to PEGNL's Complaints Committee. Otherwise, the Discipline Committee will deal with the complaint.

4. The Complaints Committee will examine the complaint and may request further details from the complainant, the person complained against, or from others with knowledge of the circumstances.

5. The Complaints Committee will, after thorough review, decide if the complaint is justified or not justified.

6. If the Complaints Committee decides the complaint is not justified, the complainant and the person complained against shall be so notified in writing with reasons for its decision. This does not preclude the complainant from referring the matter to the discipline process.

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3.

7. If the Complaints Committee decides the complaint is justified, it may determine that one of the following procedures be undertaken:

(i) The matter be referred to the Discipline Committee for the formal disciplinary process. (See Appendix A). In this case, all correspondence about the complaint and investigation will be provided to the Discipline Committee and will remain strictly confidential until the start of a hearing before that Committee.

(ii) Inquiry

(iii) Stipulated Order

(iv) In cases where (i), (ii), or (iii) is not considered necessary, the Complaints Committee may make recommendations to the member, member-in-training, licensee or permit holder who was complained against.

8. The Inquiry and Stipulated Order are “without prejudice”. All offers, promises, conduct and statements, whether oral or written, made in the course of the proceedings by any of the parties are confidential and cannot be used in any other inquiry into the personal conduct of the person complained against.

### **Inquiry**

An Inquiry, as an alternative to the formal disciplinary process, may be used where a case is reasonably straightforward; the evidence readily documented; and some verbal presentation would be helpful in resolving the matter.

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On the recommendation of the Complaints Committee to enquire into the actions of a person complained against, the complainant will be contacted and asked to agree to the procedure. The Inquiry will be held in private, with only the person complained against, a representative appointed by the Complaints Committee and an Umpire participating. The Complainant would be given the opportunity to attend as an observer. The Umpire shall be appointed from the Discipline Committee. Any ruling made by the Umpire shall become binding when the person complained against and the representative from the Complaints Committee are in agreement. There shall be no appeal of the ruling once agreed. In the event of non-agreement among the parties, the case shall automatically be moved to the formal disciplinary process.

In the event of a guilty verdict, the results of the Inquiry will be publicized.

### **Stipulated Order**

A Stipulated Order may be offered to a person complained against when an obvious breach of the Act and Regulations or By-Laws has been made and, in the opinion of the Complaints Committee, reference to the disciplinary process is not warranted. The person complained against and the complainant must agree to this process.

At the request from the Chair of the Complaints Committee, a Reviewing Member will be appointed from the Discipline Committee to review the Complaints Committee's findings. With the assistance of the PSD and, where necessary, legal counsel, the Reviewing Member will confirm the breach of the Act and Regulations or By-Laws and decide on the appropriate penalty.

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5.

The person complained against is then given, in writing, a detailed description of the alleged offence, the finding of guilt and the penalty, complete with an explanation of the Stipulated Order procedure.

The person complained against will be offered a Stipulated Order, as an option to the expensive, time-consuming formal disciplinary process, which he/she may choose to accept or reject, at his/her sole discretion. Rejection would result in the case being referred to the Discipline Committee.

By signing the Stipulated Order the person complained against admits guilt and accepts the penalty stipulated. There shall be no appeal. The Stipulated Order shall be publicized.

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