

Closure of a Complaint File by the Registrar

This policy is not intended to fetter the discretion of the Registrar. The Registrar has discretion in deciding whether to close a complaint and is not bound by this policy.

The Registrar may, in deciding whether to close a complaint file, request clarification or further information or records from the complainant, the person complained about, a witness, or any combination of the foregoing. However, the Registrar is not required to seek out any information or records in deciding whether to close a complaint file.

1. In this policy,

“abuse of process” means the disciplinary process is not being fairly or honestly used, or where multiple or successive complaints are made to cause vexation or oppression.

“frivolous” refers to a complaint that is obviously unsustainable in law or that displays no reasonable cause for complaint in law.

“trivial” refers to a complaint that has no merit and does not warrant further investigation.

“vexatious” refers to a complaint whose intent is to annoy, harass, embarrass, abuse another party or abuse the complaint process.

“irrelevant” refers to a complaint that is not connected to a breach of the *Engineers and Geoscientists Act*, APEGBC’s Bylaws, or policies.

“bad faith” refers to a complaint that was made with untruthful, misleading or unduly insensitive intent where the complainant is motivated by malice or financial gain.

2. Upon receiving a complaint, the Registrar has the discretion to decide whether to refer the complaint to a designated reviewer or to close the file.

3. The Registrar may, in deciding whether to close a complaint file, request clarification or further information or records from the complainant, the person complained about, a witness, or any combination of the foregoing.

4. The Registrar may, in deciding whether to close a complaint file, have regard to considerations about the nature of the complaint, including, but not limited to:

- (1) if the complaint does not concern a current or former member or licensee of APEGBC or is otherwise beyond the jurisdiction of APEGBC to investigate;
- (2) if the parties can resolve the subject matter of the complaint on a reasonable and appropriate basis or have already done so, and there is no public interest in proceeding with the complaint;

- (3) if the complaint is frivolous, trivial, vexatious, irrelevant or made in bad faith and would not serve the interest of the public for the Registrar to proceed with further investigation;
- (4) if the complaint gives rise to an abuse of process;
- (5) if the complaint is one that could more appropriately be dealt with, initially or completely, by civil litigation or according to a procedure provided for under legislation or a scheme other than the *Engineers and Geoscientists Act* and the public interest in proceeding with the complaint is low;
- (6) if the complaint has not been pursued in a timely manner. In determining whether a lengthy delay in bringing a complaint forward should result in a complaint being closed, the Registrar may consider the following:
 - a. the length of the delay;
 - b. the reason for the delay;
 - c. if accepting the complaint would be in the public interest;
 - d. if accepting the complaint would result in substantial prejudice to any person; or
 - e. if the complainant has first pursued other processes unsuccessfully (a factor weighing against accepting late complaints).
- (7) If the complaint has no reasonable prospect of success. In assessing whether the complaint has a reasonable prospect of success, the Registrar will consider only the materials before him or her. The relevant question is whether, on the basis of this material, the member could reasonably be perceived to have engaged in unprofessional conduct, incompetence, negligence, or any other breach of the Act, Bylaws, and Code of Ethics; or
- (8) Such other facts, issues or reasons that the Registrar reasonably believes warrant closure of the complaint file and that such closure would not be contrary to the Act, Bylaws, or the public interest.

Approved by Council: September 11, 2015 (CO-15-82)