

■ Policy and Procedure for Registration Hearings



PURPOSE

This policy and procedure was created to:

- Facilitate consistent and fair conduct of oral registration hearings to determine whether or not an applicant whose character or repute is in question is suitable for registration with the Association of Professional Engineers and Geoscientists of British Columbia (“APEGBC”); and
- Assist in the fair, just, and timely resolution of oral registration hearings (“registration hearings”).

APPROVED

By:	Date:	Reference:
Council	September 9, 2016	CO16-81

POLICY

This policy and procedure is intended to apply to all oral registration hearings unless the Registrar orders that all or a portion of this policy and procedure shall be waived or varied in a particular case.

Legal Representation

1. Parties to a registration hearing are APEGBC and an applicant for registration or licensure (an “applicant”). Any party may be represented by legal counsel at a pre-hearing conference and at a registration hearing.
2. The Registrar may retain independent legal counsel to obtain legal advice.
3. If an applicant is represented by legal counsel, the applicant shall provide APEGBC with written notice of the name and contact information of the legal counsel, via postal service or email. Upon receiving the name and contact information of the applicant’s legal counsel, any information that APEGBC is required to send to the applicant will be sent to the applicant’s legal counsel and will be considered as if it were sent to the applicant.
4. If an applicant’s legal counsel withdraws as the applicant’s legal counsel, the withdrawing counsel must provide written notice to APEGBC without delay.

Disclosure

5. APEGBC shall provide the following to the applicant at least fifteen (15) days prior

to the beginning of the pre-hearing conference:

- a. A copy of every document that APEGBC intends to use as evidence;
 - b. A copy of any statement made by a person whom APEGBC intends to call as a witness;
 - c. A summary of any other relevant evidence in APEGBC's possession whether or not counsel intends to introduce that evidence at the registration hearing.
6. After initial disclosure has been made, it is incumbent upon APEGBC to provide timely disclosure of information subsequently obtained and information previously considered irrelevant, but whose relevance has subsequently become apparent.

Pre-hearing Conference

7. A pre-hearing conference may be held, by notice, at the direction of the Registrar. The parties may request, in writing to the Registrar, that a pre-hearing conference be held.
8. If a pre-hearing conference is to be held, the Registrar shall, in consultation with the parties, schedule a date for the pre-hearing conference and shall notify the parties of the date, time and location of the pre-hearing conference.
9. The Registrar shall conduct the pre-hearing conference. A pre-hearing conference may be held in-person or by telephone conference.
10. The purpose of a pre-hearing conference is to:
 - a. Identify and simplify the issues;
 - b. Determine facts or evidence that are admitted or agreed upon;
 - c. Hear motions brought by either party;
 - d. Decide issues relating to disclosure and the exchange of information, including requiring and imposing time limitations and terms and conditions on the production and exchange of documents, admissions, agreed statements of facts, and written submissions;
 - e. Setting the order of and placing time limitations or other restrictions on any part of the inquiry including presentation of evidence, the examination or cross-examination of witnesses, or presentations of opening and closing submissions;
 - f. Setting the dates by which any steps in the proceeding are to be initiated or concluded;
 - g. Determining the estimated duration of the hearing; and

- h. Resolving any other matter that may assist in the just and expeditious disposition of the proceeding, including steps to ensure that the best interests of witnesses are protected.
11. The contents of the pre-hearing conference are not admissible as evidence in a registration hearing.

Motions

12. A motion is an application to the Registrar for an interlocutory order in a particular proceeding.
13. A party who intends to bring a motion to be heard other than at a scheduled pre-hearing conference shall obtain available dates and times for the hearing of the motion from the Registrar.
14. A motion shall:
- a. Be made in writing;
 - b. Set out the grounds for the motion;
 - c. Set out the relief requested; and
 - d. Be accompanied by any evidence to be relied upon.
15. The moving party shall deliver the motion and accompanying evidence to the Registrar and the other party at least ten (10) business days prior to the date set for the hearing of the motion.
16. The other party may prepare a reply to the motion in writing that shall be accompanied by any evidence to be relied upon.
17. The other party shall deliver the reply to the motion and accompanying evidence to the Registrar and the moving party at least (3) business days prior to the date set for the hearing of the motion.
18. Motions shall be heard in-person or by telephone conference at the discretion of the Registrar.

Adjournments

19. A party to a registration hearing may apply to the Registrar for an adjournment.
20. An application for adjournment must state why the request is reasonable and why the request will not unduly prejudice the other party. A copy of the application for adjournment must be provided to the other party who may reply to the application for adjournment.
21. In considering a request for an adjournment, the Registrar may consider one or

more of the following:

- a. The reason for the adjournment;
- b. Whether the adjournment would cause an unreasonable delay;
- c. The impact of refusing the adjournment on the parties;
- d. The impact of granting the adjournment on the parties;
- e. The impact of the adjournment on the public interest.

22. Following an application for an adjournment, the Registrar may grant an adjournment, grant an adjournment with conditions, or refuse to grant an adjournment.

Conduct of a Registration Hearing

23. Registration hearings are to be conducted by the Registrar.

24. If a registration hearing is not scheduled at the pre-hearing conference, the Registrar shall, in consultation with the parties, schedule a date for the registration hearing and shall notify the parties of the date, time and location of the registration hearing.

25. All registration hearings shall be open to the public, unless, in the opinion of the Registrar, it would be appropriate to hold some or all of a particular hearing in private.

26. A court reporter shall keep a record of a registration hearing.

27. At a registration hearing, both APEGBC and the applicant may:

- a. Present evidence;
- b. Reply to evidence;
- c. Call witnesses;
- d. Cross-examine the opposing party's witnesses;
- e. Re-examine witnesses;
- f. Make submissions; and
- g. Reply to the opposing party's submissions.

28. For a registration hearing conducted under s. 13(2)(a) of the *Engineers and Geoscientists Act* ("Act"):

- a. The onus is on APEGBC to establish, on a balance of probabilities, that the applicant has been convicted of an offence in Canada or elsewhere

that, if committed in British Columbia, would be an offence under an enactment of the Province of British Columbia or of Canada.

- b. If APEGBC is able to establish that the applicant has been convicted of an offence, the onus shifts to the applicant to establish, on a balance of probabilities, that he or she is of good character and good repute such that he or she meets the requirement under s. 13(1.1)(d) of the *Act* and is suitable for registration.
29. For a registration hearing conducted under s. 13(1.1)(d) of the *Act*, the onus is on the applicant to establish, on a balance of probabilities that he or she is of good character and good repute such that he or she meets the requirement under s. 13(1.1)(d) of the *Act* and is suitable for registration.
 30. Nothing is admissible in evidence at a proceeding:
 - a. That would be inadmissible in a court by reason of any privilege under the law of evidence; or
 - b. That is inadmissible by any statute.
 31. The Registrar may place reasonable limits on the length of oral submissions.
 32. Any new evidence contained in closing submissions will not be accepted.
 33. If a party does not attend a registration hearing, the hearing may proceed and a decision may be rendered in the absence of the party.

Witnesses

34. Parties are responsible for arranging the attendance of their own witnesses.
35. Any witnesses testifying at a registration hearing shall give an oath or solemn affirmation before testifying, if competent to do so.
36. The Registrar may ask questions of any witnesses.
37. Witnesses shall not see or hear the testimony of other witnesses during the hearing, unless the witness is also a party to the hearing.

Decisions

38. The Registrar shall give written reasons for his or her decision. In his or her written reasons, the Registrar must not disclose information that is subject to solicitor-client privilege or that is confidential.

PROCEDURE

The standard procedure for a registration hearing shall be:

1. The Registrar will call the registration hearing to order and identify the panel members conducting the registration hearing and the official recorder appointed to record the proceedings.
2. The Registrar states that the hearing is being conducted under the *Engineers and Geoscientists Act* and that the purpose of the hearing is to determine the applicant's suitability for registration or licensing with APEGBC. The Registrar should clarify that the scope of the hearing will only cover issues related to the applicant's character and repute.
3. The Registrar will ask the parties in attendance to introduce themselves and identify themselves for the record.
4. The Registrar asks counsel for each party if they are ready to proceed.
 - a. If an applicant is not represented by counsel, the Registrar shall advise the applicant that they may be represented by a legal counsel and ask the applicant if he or she wishes to seek an adjournment in order to retain counsel.
 - b. If an unrepresented applicant does not wish to be represented, the hearing should proceed.
5. If the hearing is proceeding pursuant to s. 13(2)(a) of the *Act*, the Registrar will ask the applicant if he or she admits to the conviction.
 - a. If the applicant admits to the conviction, proceed to instruction 14;
 - b. If the applicant does not admit to the conviction, proceed to instruction 7.
6. If the hearing is proceeding pursuant to s. 13(1.1)(d) of the *Act*, proceed to instruction 14.
7. The Registrar will ask the parties for their opening statements, in the following order:
 - a. Counsel for APEGBC;
 - b. The applicant or his or her counsel, unless he or she chooses to wait until the opening of their own case to make an opening statement.
8. Following opening statements, the Registrar will ask Counsel for APEGBC to present evidence on whether the applicant has been convicted of an offence in Canada or elsewhere.

- a. Counsel for APEGBC may call witnesses and examine them.
 - b. Following examination of each witness by counsel for APEGBC, the applicant or the applicant's counsel may cross-examine each witness.
 - c. Following the cross-examination of each witness, counsel for APEGBC is given the opportunity to re-examine each witness.
 - d. Following cross-examination, or re-examination (if applicable), of a witness, the Registrar may ask questions of the witness. If members choose to ask questions, counsel for each party may ask further questions of the witnesses. Counsel for APEGBC shall be permitted to ask his or her questions last.
9. Once counsel for APEGBC is finished presenting evidence, the applicant or the applicant's counsel may:
- a. Give his or her opening statements, if he or she elected not to do so earlier; or
 - b. Present evidence relevant to the issue of proof of the conviction, if the applicant or the applicant's counsel has already given opening statements.
 - i. The applicant or the applicant's counsel may call witnesses and examine them. The applicant may testify as a witness.
 - ii. Following examination of each witness by the applicant or the applicant's counsel, counsel for APEGBC may cross-examine each witness, including the applicant if he or she testifies).
 - iii. Following the cross-examination of each witness, the applicant or the applicant's counsel is given the opportunity to re-examine each witness.
 - iv. . Following cross-examination, or re-examination (if applicable), of a witness, the Registrar may ask questions of the witness. If members choose to ask questions, counsel for each party may ask further questions of the witnesses. The applicant or the applicant's counsel shall be permitted to ask his or her questions last.
10. After the applicant or the applicant's counsel has finished presenting his or her evidence, counsel for APEGBC may make submissions.
11. After counsel for APEGBC has made submissions, the applicant or the applicant's counsel may make submissions.
12. Following the applicant's submissions, counsel for APEGBC may make submissions in reply to the submissions of the applicant.
13. The Registrar should adjourn the registration hearing so that he or she may consider the evidence with respect to the conviction and that he or she will provide the parties with the decision when it has been reached.

14. If:

- a. The applicant admits to a conviction;
- b. The Registrar determines the applicant has been convicted of an offence in Canada or elsewhere that, if committed in British Columbia, would be an offence under an enactment of the Province of British Columbia or of Canada; or
- c. The hearing is being conducted pursuant to s. 13(1.1)(d);

The applicant shall have the opportunity to present evidence, reply to evidence, and make submissions on whether the applicant is of good character and repute.

15. The Registrar will ask the parties for their opening statements in the following order:

- a. The applicant or the applicant's counsel;
- b. Counsel for APEGBC, unless he or she chooses to wait until the opening of APEGBC's case to make an opening statement.

16. Following opening statements, the Registrar will ask the applicant or the applicant's counsel to present evidence on whether:

- a. The circumstances of the offence render the applicant unsuitable for registration or licensing; and
- b. The applicant is of good character and repute.

17. The applicant or the applicant's counsel may call witnesses and examine them. The applicant may testify as a witness.

18. Following examination of each witness by the applicant or his or her counsel, counsel for APEGBC may cross-examine each witness, including the applicant if he or she testifies.

19. Following the cross-examination of each witness, the applicant or the applicant's counsel may re-examine each witness.

20. Following cross-examination, or re-examination (if applicable), of a witness, the Registrar may ask questions of the witness. If members choose to ask questions, counsel for each party may ask further questions of the witnesses. The applicant or the applicant's counsel shall be permitted to ask his or her questions last.

21. Once the applicant or the applicant's counsel is finished presenting evidence, counsel for APEGBC may:

- a. Give his or her opening statements, if he or she elected not to do so earlier; or
- b. Present evidence relevant to the circumstances of the offence and the

applicant's character, if he or she has already given opening statements.

22. Counsel for APEGBC may call witnesses and examine them.
23. Following examination of each witness by Counsel for APEGBC, the applicant or the applicant's counsel may cross-examine each witness.
24. Following the cross-examination of each witness, Counsel for APEGBC may re-examine each witness.
25. Following cross-examination, or re-examination (if applicable), of a witness, the Registrar may ask questions of the witness. If members choose to ask questions, counsel for each party may ask further questions of the witnesses. Counsel for APEGBC shall be permitted to ask his or her questions last.
26. After counsel for APEGBC has finished presenting his or her evidence, the applicant or the applicant's counsel may make closing submissions.
27. After the applicant or the applicant's counsel has made closing submissions, counsel for APEGBC may make submissions.
28. Following the applicant's submissions, counsel for APEGBC may make submissions in reply to the submissions of the applicant.
29. The Registrar should adjourn the registration hearing so that he or she may consider the evidence with respect to the circumstances of the conviction and the character of the applicant. The Registrar should inform the parties that he or she will provide the parties with the decision when one has been reached.

CROSS REFERENCES

Engineers and Geoscientists Act s.13 Admission to Membership

Bylaws of the Association, Bylaw 6(b) Proceedings of Council

Bylaws of the Association, Bylaw 11(e) Registered Members

#52012—Procedure for Council Hearing Regarding Suitability for Registration Following Revocation of Membership

APEGBC Proposed Disciplinary Hearing Rules

Law Society Rules 2015 Part 5—Hearings and Appeals

Guide for Registration Hearings at Professional Engineers Ontario