

Policy on Avoiding Bias and Conflict of Interest in the Investigation and Discipline Process

POLICY PROCEDURE	Policy on Avoiding Bias and Conflict of Interest in the Investigation and Discipline Process
DATE OF POLICY	May 26, 2022
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APPROVED BY	Mark Rigolo, Acting Chief Regulatory Officer and Registrar

DEFINITIONS

“**Bylaws**” means the bylaws of EGBC.

“**Citation**” means a citation issued under section 66(1)(d) [*Investigations authorized by council*] or 72 (3) [*Reprimand or remedial action by consent*].

“**Committee Member**” means a member of the Investigation Committee or the Discipline Committee.

“**Complainant**” means a person who files a complaint against a Registrant.

“**Discipline Committee**” means the discipline committee established pursuant to section 75(1) of the PGA [*Discipline hearings*].

“**Discipline Hearing Panel**” means a panel of at least three members of the Discipline Committee, one of whom must be a Lay Committee Member, that is established by the chair of the Discipline Committee pursuant to section 77(1) of the PGA [*Discipline committee to conduct hearings*] for the purpose of conducting a discipline hearing pursuant to section 75 of the PGA [*Discipline hearings*], or for the purpose of taking action pursuant to section 76 of the PGA [*Conduct in another jurisdiction*].

“**Discipline Resolution Panel**” means a panel of at least three members of the Discipline Committee, one of whom must be a Lay Committee Member, that is established by the chair of the Discipline Committee for the purpose of attempting to resolve one or more matters set out in a citation by means other than a discipline hearing pursuant to sections 72 to 74 of the PGA.

“**EGBC**” means the Association of Professional Engineers and Geoscientists of the Province of British Columbia, also operating as Engineers and Geoscientists BC.

“**Extraordinary Action Panel**” means a panel of at least three members of the Discipline Committee, one of whom must be a Lay Committee Member, that is established by the chair of the Discipline Committee for the purpose of considering action that may be taken pursuant to section 67 of the PGA [*Extraordinary action*].

“**Investigation Committee**” means the investigation committee established pursuant to section 64 of the PGA [*Investigation committee*].

“**Investigation Subcommittee**” means any number of members of the Investigation Committee authorized by the Investigation Committee to carry out an investigation or oversee and take responsibility for an investigation carried out by an Investigator, which members may be the same as those serving on a Resolution Subcommittee.

“**LEC**” means the Legislation, Ethics and Compliance department of EGBC.

“**Panel**” means one or more of the following:

- (a) Extraordinary Action Panel;
- (b) Discipline Resolution Panel;
- (c) Discipline Hearing Panel.

“**PGA**” means the *Professional Governance Act*, S.B.C. 2018, c. 47.

“**Registrant**” means the same as defined in Schedule 1, section 5 of the PGA [*Definitions in respect of the Association of Professional Engineers and Geoscientists of the Province of British Columbia*], including both individual Registrants and Registrant Firms.

“**Resolution Subcommittee**” means any number of members of the Investigation Committee authorized by the Investigation Committee to attempt to resolve or oversee an attempt to resolve one or more matters subject to investigation pursuant to sections 72 to 74 of the PGA, which members may be the same as those serving on an Investigation Subcommittee.

“**Subcommittee**” means an Investigation Subcommittee or a Resolution Subcommittee.

POLICY STATEMENTS

1. The Investigation Committee and the Discipline Committee, with support from LEC staff, carry out the investigation and discipline process in a transparent, objective, impartial, and fair manner.
2. EGBC maintains separation between the roles of the investigator/prosecutor and the adjudicator in the investigation and discipline process.
3. Conflicts of interest are addressed in order to uphold and protect the public interest with respect to the regulation of engineering and geoscience in British Columbia.

PURPOSE

4. This policy is established to satisfy the following objectives:
 - a. avoid bias or the appearance of bias in the investigation and discipline process in order to maintain the integrity of the process;
 - b. uphold the responsibility of EGBC to establish investigation and discipline procedures that are transparent, objective, impartial and fair, as set out in section 22(2)(i) of the PGA [*General duty and responsibilities of regulatory bodies*].
5. This policy is intended to assist Committee Members as well as LEC staff in recognizing, disclosing, and addressing situations of real, potential, or perceived conflicts of interest arising during the investigation and discipline process.

SCOPE OF APPLICATION

6. This policy applies to all Committee Members and LEC staff in the carrying out of investigation and discipline procedures pursuant to the PGA and the Bylaws, including when Committee Members are serving on Subcommittees or Panels.

POLICY / PROCEDURE

AVOIDING BIAS

7. The Bylaws require the following to avoid bias during the investigation and discipline process:
 - a. Pursuant to section 9.5(1) of the Bylaws, a member of the Investigation Committee must not participate in the consideration or investigation of a matter in which the member of the Investigation Committee
 - i. had involvement prior to the decision of the Investigation Committee to authorize an investigation, or
 - ii. had or has a relationship with either the Complainant a witness, or the Registrant subject to investigationthat would reasonably compromise the member's objectivity;
 - b. Pursuant to section 9.7.3(2) of the Bylaws, the members of any Subcommittee must not, for the same file, participate in any proceedings pursuant to section 67 of the PGA [*Extraordinary action*];
 - c. Pursuant to section 9.7.7(4) of the Bylaws, the members of any Subcommittee must not, for the same file, vote on the disposition of that investigation file;
 - d. Pursuant to section 10.3(5), a member of the Discipline Committee must not sit on more than one Panel concerning the same matter;
 - e. Pursuant to section 10.4(1) of the Bylaws, a member of the Discipline Committee must not sit on a Panel concerning a matter in which the member of the Discipline Committee
 - i. had involvement prior to the matter being referred to the Panel, or
 - ii. had or has a relationship with either the Complainant, a witness, or the Registrant subject to disciplinethat would reasonably compromise the member's objectivity.
8. EGBC maintains the independence of the Discipline Committee and the Investigation Committee with respect to its adjudicative functions:
 - a. The chair and vice-chair of the Discipline Committee, with administrative support from LEC staff, manage the recruitment of new committee members as established at paragraph 10.2 in the Terms of Reference for the Discipline Committee, in order to ensure that the Discipline Committee is independent and self-perpetuating;
 - b. Panel members are appointed by the chair or vice-chair of the Discipline Committee pursuant to section 10.3(2) of the Bylaws;

- c. EGBC retains independent legal counsel for the Discipline Committee and for the Investigation Committee when acting in an adjudicative capacity.

CONFLICTS OF INTEREST

9. Conflicts of interest are real, potential, or perceived situations in which the judgment and actions of individuals, institutions or other entities could be affected because of multiple or competing interests. Examples of competing interests include family, friendships, financial or social factors which could compromise the decision-maker's objectivity, independence, and judgment and make it difficult for a decision-maker to fulfill their duties impartially. A conflict of interest exists even if no unethical or improper act results from the conflict of interest.
10. Three types of conflicts of interest can be distinguished:
 - a. a **real conflict of interest** is a direct conflict between a person's current duties and responsibilities and existing private interests (for example, when a person is in a position to derive personal benefit from actions or decisions made in their official capacity, or when a person's relationships or interests impact their objectivity);
 - b. a **potential conflict of interest** arises where a person has private interests that could conflict with their official duties in the future;
 - c. a **perceived conflict of interest** exists where a fair-minded person, who is properly informed as to the nature of another person's interests, may reasonably perceive that the person's interests improperly influence the performance of their official duties and responsibilities – whether or not this is in fact the case.¹
11. For LEC staff members and Committee Members, a conflict of interest may arise due to a variety of personal, social, business, and financial interests. LEC staff members or Committee Members may be in a conflict of interest due to a connection with a Complainant, a Registrant subject to investigation or discipline, a witness, or any other person connected to an investigation. The Appendix provides a number of questions to help determine if a relationship or interest constitutes a conflict of interest.

DISCLOSURE OF CONFLICTS OF INTEREST

12. LEC staff or Committee Members who have a real, potential, or perceived conflict of interest in relation to an investigation or discipline file must disclose their conflict, recuse themselves from any discussion, deliberations and decision-making related to the matter, and avoid doing anything that could be perceived as interfering or influencing a decision on the matter.
13. If unsure whether to disclose a potential conflict of interest, LEC staff or Committee Members should err on the side of disclosure.

¹ The conflict of interest definitions are adapted, in part, from two main sources: (a) Engineers Canada's public guidance on Conflict of Interest: <https://engineerscanada.ca/public-guideline-conflict-of-interest>; and (b) The Report of the Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens, 1987, pp. 29, 32; "Managing Conflicts of Interest in the Public Sector", Queensland Crime and Misconduct Commission, New South Wales Independent Commission Against Corruption, 2004, p. 10, "the Australian Report"; as cited in Government of Canada website "Apparent Conflict of Interest", [//www.canada.ca/en/treasury-board-secretariat/services/values-ethics/conflict-interest-post-employment/apparent-conflict-interest.html](http://www.canada.ca/en/treasury-board-secretariat/services/values-ethics/conflict-interest-post-employment/apparent-conflict-interest.html).

LEC Staff

14. When LEC staff engages

- a. external experts to deliver opinions in relation to investigation or discipline matters,
- b. external investigators to assist with a particular file,
- c. legal counsel to support the investigation or discipline procedures, or
- d. independent legal counsel for the Discipline Committee or for the Investigation Committee when acting in an adjudicative capacity

LEC staff is responsible for asking the external expert, investigator, or legal counsel to disclose any possible conflict of interest and preclude them from acting if any conflicts of interest are identified.

15. If a staff member of LEC has reason to believe that they are in a real, potential, or perceived conflict of interest, they must disclose the conflict to their manager and recuse themselves if a real, potential, or perceived conflict of interest is identified.

Investigation Committee

16. LEC staff prepare the Investigation Committee meeting agendas which contain an initial request for Investigation Committee Members to declare any conflicts of interest with respect to any file on the agenda.
17. If an Investigation Committee Member has reason to believe they are in a real, potential, or perceived conflict of interest, the Investigation Committee Member must immediately disclose all material facts to the Investigation Committee chair and/or vice-chair and to LEC staff.
18. Investigation Committee Members or LEC staff who have a real, potential, or perceived conflict of interest must recuse themselves from any discussion or decision-making regarding the relevant investigation file and leave the meeting while the file is being discussed. The recusal from the meeting must be recorded in the minutes of the meeting.
19. If the chair of the Investigation Committee has a conflict of interest, the vice-chair must temporarily chair the meeting. If both the chair and vice-chair are conflicted or not present for any other reason, the Investigation Committee must appoint one Investigation Committee Member to temporarily chair the meeting.
20. If an Investigation Committee Member has any reason to believe that another Investigation Committee Member is in a conflict of interest, the Investigation Committee Member must disclose this reason and the nature of the conflict of interest to the chair and/or vice-chair of the Investigation Committee, and to LEC staff.
21. The Director, LEC may provide guidance should there be any uncertainty as to whether a conflict of interest exists with respect to an Investigation Committee Member.
22. Despite paragraphs 17 and 20 to 21, when the Investigation Committee acts in its adjudicative capacity, Investigation Committee Members must not report to or seek advice from LEC staff with respect to any real, potential, or perceived conflict of interest. Instead, Investigation Committee Members may only report to or seek advice from the chair and/or vice-chair of the Investigation Committee and legal counsel providing independent legal advice to the Investigation Committee.

Discipline Committee

23. When a file moves to the discipline stage, the LEC Discipline Coordinator sends the Discipline Committee Members an email with either
 - a. the Citation along with the names of all parties and known witnesses involved, or
 - b. a file for extraordinary action during an ongoing investigation pursuant to sections 9.7.3(1)(b) of the Bylaws, along with the names of parties and known witnesses involved, andasks the Discipline Committee Members to identify whether they have any conflicts of interest with regards to the file.
24. If a Discipline Committee Member has reason to believe they are in a real, potential, or perceived conflict of interest, the Discipline Committee Member must not be appointed to a Panel.
25. If a Discipline Committee Member who has been appointed to a Panel subsequently identifies that they are in a real, potential, or perceived conflict of interest, the Panel member must immediately disclose all material facts to the chair of the Discipline Committee and the chair must replace the conflicted Panel member.
26. If the chair of the Discipline Committee has a conflict of interest, the vice-chair assumes the role of appointing Discipline Committee Members to Panels. If both the chair and vice-chair are conflicted or are otherwise not available to administer the appointment of Panels, the chair may appoint another Discipline Committee Member to administer the appointment of Panels for that file.
27. If a Discipline Committee Member has any reason to believe that another Discipline Committee Member is in a conflict of interest, the Discipline Committee Member must disclose this reason and the nature of the conflict of interest to the chair and/or vice-chair of the Discipline Committee.
28. Discipline Committee Members appointed to a Discipline Resolution Panel may receive guidance from the Director, LEC should there be any uncertainty as to whether a conflict of interest exists.
29. In maintaining the independence of the Discipline Committee in its adjudicative functions, Discipline Committee Members appointed to a Discipline Hearing Panel or an Extraordinary Action Panel must not seek advice from LEC staff with respect to any real, potential, or perceived conflict of interest. Instead, Discipline Committee Members may seek advice from the chair and/or vice-chair of the Discipline Committee and/or legal counsel providing independent legal advice to the Panel.

FILE ACCESS RESTRICTION

30. In order to mitigate risk of interference or violation of this policy, LEC staff and Committee Members who have a real, potential, or perceived conflict of interest in relation to a file will be, to the extent reasonably possible, restricted from having access to any materials on file and removed from any communications regarding that file.

GIFTS AND BENEFITS

31. LEC staff and Committee Members must not directly or indirectly accept pecuniary or non-pecuniary gifts or benefits from a party connected to an investigation or discipline matter.

VIOLATIONS

32. If a Committee Member violates this policy, Council may remove the Committee member pursuant to section 2.2(7) of the Bylaws.

RECORDS

33. Actions taken to disclose and address a conflict of interest will be recorded in writing and retained by EGBC indefinitely following the issuance of a determination on the investigation or discipline matter.

CROSS-REFERENCES

Guide to the *Code of Ethics*

REVIEW DATES

This policy shall be reviewed on a biyearly basis.

APPENDIX

Questions To Help Identifying a Conflict of Interest:

- A. Do you have a current or previous personal or professional relationship or association with any party involved?
- B. Do you have a relationship with someone else implicated with this file? Do they potentially benefit in some way from your position?
- C. Is the person a mere acquaintance or a personal friend? Are you in regular contact with the person?
- D. Would you or the person with whom you have a personal or professional relationship benefit, gain or lose financially as a result of any decision you are involved with?
- E. Have you received any benefit from any person implicated on this file? If so, what is the nature of the person's involvement in the file, and what is the nature of benefit you may receive?
- F. Do you have any financial or business interests related to any the matter on file, or are you seeking any related financial gain or business interests in the future?
- G. Does the fact that you know the person or have a history in any way have the potential to influence your decision-making? Could your knowledge or history in any way be perceived as having the potential to compromise your objectivity?