



# POLICY

POLICY	Policy for the Publication of Disciplinary Decisions by Engineers and Geoscientists BC
NUMBER OF POLICY	CO-16-58
DATE OF POLICY	June 17, 2016
APPROVED BY	Council

## BACKGROUND – LEGAL AUTHORITY TO PUBLISH

Section 46(1) of the *Engineers and Geoscientists Act* (the “Act”), requires persons acting under the authority of the Act to keep confidential all facts, information and records obtained or provided under the Act except so far as public duty requires or the Act or the Bylaws permit. Therefore, there is a presumption of privacy under the Act except where “public duty requires” disclosure. Apart from section 46 of the Act, the Act and the Bylaws are silent on publication of disciplinary decisions.

Engineers and Geoscientists BC is also subject to the *Freedom of Information and Protection of Privacy Act* (the “FIPPA”). Accordingly, Engineers and Geoscientists BC may only disclose personal information in its custody or control as authorized by the FIPPA.<sup>1</sup>

If Engineers and Geoscientists BC had a specific Bylaw regarding publication, section 33.1(1)(c) of the FIPPA would give Engineers and Geoscientists BC the authority to disclose information. However, Engineers and Geoscientists BC cannot rely on s. 33.1(1)(c) without such a Bylaw. The Legislative Implementation Task Force has the consideration of a publication Bylaw on its agenda.

Nevertheless, absent a Bylaw, it is permissible for Engineers and Geoscientists BC to publish disciplinary decisions. The justification is found in s. 33.2 of the FIPPA, which reads:

A public body may disclose personal information referred to in s. 33 inside Canada as follows:

- (a) for the purpose for which it was obtained or compiled or for a use consistent with that purpose (see section 34);

---

<sup>1</sup> The definition of “personal information” in the FIPPA is very broad. It reads, “recorded information about an identifiable individual other than contact information.”

The concept of a “consistent purpose” was considered in an investigation by the Office of the Information and Privacy Commissioner for BC (the “OIPC”) on the disclosure by the BC College of Teachers of personal information concerning discipline matters [OIPC Investigation P99-013]. In the investigation, the OIPC found that the College was legally authorized to disclose personal disciplinary information and noted that “disclosure of personal disciplinary information to members and the public is an extension of the disciplinary process and is, therefore, a consistent purpose.” (p.11)

The *Teaching Profession Act* under consideration in the OIPC investigation gave the College a mandate to establish standards for its members, having regard to public interest. In the Investigation Report, the Commissioner gave a great deal of weight to the College’s public interest mandate, finding that the College “has a duty to inform its members and the public of the types of behaviour it finds unacceptable in a member. I also find that it is appropriate for the College to publish members’ names in most cases, together with details of their transgressions so members have concrete examples of behaviour which is deemed unacceptable by College standards.”

However, the Commissioner stated it may not be appropriate to release the identity of the member in some cases, such as where the teacher is judged not to be a danger to others, has learned his or her lesson, or where publication would reveal the victims’ identities.

Engineers and Geoscientists BC is similarly charged with a public interest mandate, as set out at section 4.1 of the Act:

4.1(1) It is the duty of the association

(a) to uphold and protect the public interest respecting the practice of professional engineering and the practice of professional geoscience

Engineers and Geoscientists BC is therefore also authorized to publish personal disciplinary information under the exception in s. 33.2 (a ) of the FIPPA for a consistent purpose.

In a subsequent publication,<sup>2</sup> the OIPC introduced the concept of a “privacy continuum” for a tribunal such as the Discipline Committee to consider in assessing the necessary level of privacy, given the mandate of the tribunal. The OIPC suggested that the tribunal consider not publishing “sensitive” personal information unless the information is critical to the decision being made and the parties’ and public’s understanding of why the decision is being made. Subsequently, the OIPC set out a list of factors related to privacy that a tribunal should consider in its release of personal information.<sup>3</sup>

---

<sup>2</sup> *Access and Privacy Issues: A Guide for Tribunals*, OIPC, pp. 6-7, 17-18.

<sup>3</sup> *Balancing Privacy and Openness: Guidelines on the Electronic Publication of Decisions of Administrative Tribunals (July 2011)*, OIPC, pp. 2-3.

In light of the Act and the Bylaw being silent on publication, this policy is intended to guide Engineers and Geoscientists BC in publishing disciplinary decisions. In general, the Engineers and Geoscientists BC policy should be to protect the personal information of complainants, non-professional witnesses and third-parties, but not be concerned with any adverse reputational effect of discipline on an Engineers and Geoscientists BC Professional<sup>4</sup> as a result of Engineers and Geoscientists BC fulfilling its mandate to regulate the professions and to protect the public interest.

## THE EXISTING PRACTICE

Engineers and Geoscientists BC currently publishes Notices of Inquiry on its website in advance of disciplinary inquiry hearings. Engineers and Geoscientists BC publishes the full text of Consent Orders agreed to by the Discipline Committee, as well as Interim Orders and Disciplinary Determinations made by the Discipline Committee (collectively, “Disciplinary Decisions”). The practice is for staff to redact the names of complainants and non-professional witnesses, along with any specific addresses of properties related to complainants, non-professional witnesses and third-parties.

Engineers and Geoscientists BC has published summaries of Disciplinary Decisions in its magazine since at least the early 1980s.

A document entitled “Engineers and Geoscientists BC Complaints Procedure” which has been updated but is not currently on the Engineers and Geoscientists BC website, is useful as it sets out the usual investigation and discipline procedure. The document states that Consent Orders are to be distributed to municipalities, other relevant regulators, and are published in Engineers and Geoscientists BC’s magazine, on its website and in local newspapers. The same procedural document explains that discipline inquiries are open to the public and if the Notice of Inquiry is proven, the decision of the Discipline Committee is published in the same manner as a Consent Order.

## REASONS TO PUBLISH

Pursuant to section 4.1(1)(a) of the Act, Engineers and Geoscientists BC has a duty to uphold and protect the public interest respecting the practice of professional engineering and the practice of professional geoscience. Accordingly, Engineers and Geoscientists BC has a duty to inform Engineers and Geoscientists BC Professionals and the public of the types of behaviour it finds unacceptable for the following non-exhaustive reasons:

- a. Specific deterrence of the Engineers and Geoscientists BC Professional subject to discipline from similar future conduct;
- b. General deterrence of other Engineers and Geoscientists BC Professionals and communication of professional standards to Engineers and Geoscientists BC Professionals;

---

<sup>4</sup> The phrase Engineers and Geoscientists BC Professional is used to refer to both members and licensees under the Act.

- c. Protection of the public so that the public may know of the disciplinary history of an Engineers and Geoscientists BC Professional; and,
- d. Protecting self-governance of Engineers and Geoscientists BC by:
  - i. exhibiting transparency of the decision-making process (i.e. public display of the effectiveness of Engineers and Geoscientists BC and the maintenance of confidence in Engineers and Geoscientists BC as a regulatory body); and,
  - ii. avoiding bringing Engineers and Geoscientists BC into disrepute in the future by the failure to publish in the present (i.e. if the Engineers and Geoscientists BC Professional re-offends in the future, Engineers and Geoscientists BC will not be accused of having previously “swept the matter under the rug.”)

Accordingly, Engineers and Geoscientists BC should publish the full text of all Disciplinary Decisions unless one of the exceptions listed below applies.

Engineers and Geoscientists BC staff should continue to redact the names of the complainants, non-professional witnesses and third-parties, along with any specific identifying locations, so as to protect the personal information of complainants and witnesses. In the future, to avoid having staff make such decisions, the Discipline Committee should adopt a practice of drafting reasons without revealing personal information about the complainants, non-professional witnesses, third-parties and locations, if appropriate, so subsequent redactions by staff are not necessary.

## EXCEPTIONS TO PUBLICATION RESULTING IN ANONYMOUS OR REDACTED PUBLICATION

### *If all the Elements of the Notice of Inquiry are not Proven*

Anonymous publication is available where Engineers and Geoscientists BC has not proven any element of the Notice of Inquiry to the requisite standard. That is, given that none of the “charges” were proven, the name of the Engineers and Geoscientists BC Professional or any identifying details need not be published.

However, as the goals of communicating professional standards and making the decision-making process transparent are enhanced by publication, the decision should be published anonymously. For instance, Engineers and Geoscientists BC should publish the decision, or a summary of the decision, using only the name “Engineer A” or “Geoscientist A” and adopt a sequential lettering system if further such cases arise in the future.

Failing to prove a discipline case is not a matter of embarrassment to Engineers and Geoscientists BC, rather the anonymous publication of such a case enhances the regulatory process by illustrating Engineers and Geoscientists BC’s efforts to regulate the professions of engineering and geoscience and communicating professional standards to the professions.

However, as Notices of Inquiry are published on the Engineers and Geoscientists BC website in advance of the inquiry hearing, an Engineers and Geoscientists BC Professional may indicate that he or she wants his or her name published in the Disciplinary Determination to make it known that none of the elements of the Notice of Inquiry were proven to the requisite standard. In this instance, the Discipline Committee has the option to publish the name of the Engineers and Geoscientists BC Professional.

#### *Where Elements of the Case are Proven*

In cases where some or all of the elements of the Notice of Inquiry are proven to the requisite standard, the name of the Engineers and Geoscientists BC Professional should continue to be published along with all necessary details so as to communicate the professional standards to Engineers and Geoscientists BC Professionals and to protect the public interest.

However, the Discipline Committee should determine whether disclosure of personal information of the complainant, witnesses and third-parties involved, other than the Engineers and Geoscientists BC Professional, is necessary or appropriate to satisfy the public interest in disclosure. In most cases, the names of the complainants, witnesses and third-parties should be anonymized or redacted so as to protect their privacy interests.

#### *Anonymous Publication in Exceptional Cases*

In exceptional cases, the name of the Engineers and Geoscientists BC Professional and the circumstances of the matter may be anonymized or redacted prior to publication, at the discretion of the Discipline Committee, in the circumstances where:

- a. the Discipline Committee considers it necessary to protect the monetary, reputational or other interests of the complainant, if any, or another person, other than the Engineers and Geoscientists BC Professional subject to discipline; or
- b. if the Engineers and Geoscientists BC Professional makes an admission or is found by the Discipline Committee to suffer from a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs his or her ability to practice professional engineering or geoscience.<sup>5</sup>

## REASONS TO PUBLISH

Engineers and Geoscientists BC should publish Disciplinary Decisions as follows:

1. The full text of Disciplinary Decisions will be posted on Engineers and Geoscientists BC's website.
2. Either the full text or summaries of Disciplinary Decisions will be published in Engineers and Geoscientists BC's electronic and paper communications.
3. Engineers and Geoscientists BC will notify other relevant regulatory bodies of Disciplinary Decisions by email.
4. Engineers and Geoscientists BC should distribute its Disciplinary Decisions to affected municipalities.

---

<sup>5</sup> These tests are adapted from s. 39.3 of the *Health Professions Act*.

5. A press release should be issued by Engineers and Geoscientists BC summarizing any Disciplinary Decisions where there is a suspension or cancellation of an Engineers and Geoscientists BC Professional.
6. Disciplinary Decisions may be distributed in local newspapers or by means of electronic communications to the public.
7. Engineers and Geoscientists BC should establish a relationship with CanLii (the free national database of legal decisions) and begin publishing its Disciplinary Decisions on CanLii for greater accessibility.

## RETENTION OF DISCIPLINARY DECISIONS ON THE ENGINEERS AND GEOSCIENTISTS BC WEBSITE

1. Disciplinary Decisions setting out a practice restriction will stay posted on Engineers and Geoscientists BC's website for the career of the Engineers and Geoscientists BC Professional. The Disciplinary Decision will be moved to a searchable archive section of the webpage if the Engineers and Geoscientists BC Professional is no longer the subject to a practice restriction.
2. Disciplinary Decisions setting out a suspension will stay posted on Engineers and Geoscientists BC's website for the course of the suspension. The Disciplinary Decision will be moved to a searchable archive section of the webpage once the suspension is lifted.
3. Disciplinary Decisions setting out a cancelation (or resignation in the face of discipline) will stay posted on Engineers and Geoscientists BC's website for the life of the former Engineers and Geoscientists BC Professional and then moved to a searchable archive section of the webpage.

## REVIEW DATES

April 17, 2015 (CO-15-51) – Approved by Council

June 17, 2016 (CO-16-58) – Revised and Approved by Council

## APPENDIX A: CONSOLIDATED POLICY STATEMENT – ENGINEERS AND GEOSCIENTISTS BC’S PROCEDURE FOR PUBLISHING CONSENT ORDERS, INTERIM ORDERS AND DISCIPLINARY DETERMINATIONS (COLLECTIVELY, “DISCIPLINARY DECISIONS”)

1. A Notice of Inquiry should be published on the Engineers and Geoscientists BC website in advance of the hearing date. The publication should occur at least 14 days prior to the hearing.
2. Disciplinary hearings are open to the public. The Discipline Committee can close the hearing room to protect privacy interests when appropriate. The Discipline Committee also has the ability to manage the number of people able to attend a public hearing given the size of the particular hearing room.
3. Engineers and Geoscientists BC will publish the full text of all Disciplinary Decisions including the name of the Engineers and Geoscientists BC Professional and all details necessary to communicate professional standards to the profession, the public, and to protect self-regulation of Engineers and Geoscientists BC.
4. In drafting its reasons, the Discipline Committee should determine whether disclosure of personal information of the complainant/third-parties involved, other than the Engineers and Geoscientists BC Professional, is necessary or appropriate to satisfy the public interest in disclosure. In most cases, the names of the complainants, non-professional witnesses and third-parties, along with any identifying information including locations, should be anonymized or redacted so as to protect the privacy interests of those individuals. There is no need to redact the names of expert witnesses, as expert witnesses are professionals acting in the scope of their profession.
5. In exceptional cases, the name of the Engineers and Geoscientists BC Professional and/or circumstances of the matter may be anonymized or redacted prior to publication, at the discretion of the Discipline Committee, in the circumstances where:
  - a. the Discipline Committee considers it necessary to protect the monetary, reputational or other interests of the complainant, if any, or another person, other than the Engineers and Geoscientists BC Professional subject to discipline; or
  - b. if the Engineers and Geoscientists BC Professional makes an admission or is found by the Discipline Committee to suffer from a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs his or her ability to practice professional engineering or geoscience.

6. Anonymous publication will occur where Engineers and Geoscientists BC has not proven any elements of the Notice of Inquiry to the requisite standard. However, the Discipline Committee has the option of publishing the name of the Engineers and Geoscientists BC Professional where the Engineers and Geoscientists BC Professional indicates that he or she wants his or her name published to make it known that the matter was not proven to the requisite standard.
7. Engineers and Geoscientists BC should publish the full text of its Disciplinary Decisions on its website and publish the full text or summaries in its electronic and paper communications. Engineers and Geoscientists BC should issue a press release where there is a suspension or cancellation of an Engineers and Geoscientists BC Professional. Engineers and Geoscientists BC should also distribute its Disciplinary Decisions to affected municipalities and any other relevant regulatory bodies. Engineers and Geoscientists BC has the discretion to publish Disciplinary Decisions in local newspapers and other means of electronic communications to the public. Engineers and Geoscientists BC should establish a relationship with CanLii, and begin publishing its Disciplinary Decisions on CanLii.
8. With respect to the retention of Disciplinary Decisions on the Engineers and Geoscientists BC website:
  - a. Disciplinary Decisions setting out a practice restriction will stay posted on Engineers and Geoscientists BC's website for the career of the Engineers and Geoscientists BC Professional. The Disciplinary Decision will be moved to a searchable archive section of the webpage if the Engineers and Geoscientists BC Professional is no longer the subject to a practice restriction.
  - b. Disciplinary Decisions setting out a suspension will stay posted on Engineers and Geoscientists BC's website for the course of the suspension. The Disciplinary Decision will be moved to a searchable archive section of the webpage once the suspension is lifted.
  - c. Disciplinary Decisions setting out a cancellation (or resignation in the face of discipline) will stay posted on Engineers and Geoscientists BC's website for the life of the former Engineers and Geoscientists BC Professional and then moved to a searchable archive section of the webpage.