

**APGNS Policy Regarding Complaints, Discipline and Enforcement
approved October 13, 2011; update March 2018 and July 2019**

INTRODUCTION

This policy and procedure document is intended as an addendum to the current by-laws of the Association and reflects the currently accepted procedures as well as the by-laws under development for the revised *Geoscience Profession Act* and *Geoscience Practice Regulations*. Where accuracy is critical, please consult the current *Geoscience Profession Act* and the by-laws of the Association.

Definitions

Act – means the *Geoscience Profession Act*.

By-laws – means the by-laws of the Association of Professional Geoscientists of Nova Scotia (Geoscientists Nova Scotia, APGNS or the Association) currently in force under the Act.

Complainant – means a member of the Association or member of the public who files a complaint of unprofessional conduct with the Association.

Complaints Panel – means the panel appointed by the Council of the Association to investigate a complaint.

Council – means the Council of the Association.

Discipline Panel – means the panel appointed by the Council of the Association to adjudicate and render a decision on a complaint that has been forwarded by the Complaints Panel.

Practitioner – means the individual member named in the complaint.

Registrar – means the Registrar of the Association as appointed by the Council of the Association.

Secretary – means the Secretary of the Association as appointed by the Council of the Association.

1. The Registrar, having received or having been notified of the intent by a member of the Association or a member of the public to file a formal complaint, will provide the specifics of the complaint requirements and procedure to the Complainant in order for the Complainant to prepare and submit an official, written, formal complaint.
2. On receipt of an official, written, formal complaint, the Registrar shall, as soon as practicable, advise the person complained of, the Practitioner, by written notice (registered mail or other similar method), that a complaint has been received.
3. The notice to the Practitioner shall include a copy of the complaint.
4. The Practitioner shall have fourteen (14) days, from the date of receipt of the notice, to provide written comments or a response to the complaint and the response shall be submitted directly to the Registrar.
5. After the expiration of fourteen (14) days, and if there has been no response from the Practitioner, and if the Registrar is of the opinion that the complaint should proceed, the Registrar shall forward the written complaint, and any other written materials or documents considered relevant, to the Complaints Panel.

6. If the Practitioner responds to the written notice of the complaint, the Registrar shall, as soon as practicable, advise the Complainant, by written notice (registered mail or other similar method), that a response has been received.
7. The Complainant shall have seven (7) days, from the date of receipt of the notice, to respond to the comments from the Practitioner, the response shall be directly to the Registrar; and
 - a. the response from the Complainant shall be limited to a confirmation that the complaint should proceed or that the complaint should be withdrawn; otherwise the Practitioner must be given an opportunity to respond as per the original complaint to any new or additional information incorporated into the complaint; or
 - b. if the Registrar and the Complainant agree, the complaint may be withdrawn.
8. If on review of the response from the Practitioner, the Complainant is of the opinion that the complaint should go forward, and with the agreement of the Registrar, the Registrar shall refer the complaint file, including the written complaint and the written response, and any written materials or documents considered relevant, to the Complaints Panel.
9. If it has been determined that the complaint shall proceed, the Registrar, in consultation with the Council, and where practicable based on confidentiality issues and/or potential professional conflict, shall appoint a Complaints Panel of three (3) to five (5) members of the Association, not currently serving on Council;
 - a. at the discretion and agreement of the Registrar, the Council and the members of the Panel, one (1) member of the Panel may be appointed from outside the Association; and
 - b. the members of the Panel will be senior practitioners, preferably with experience in the area of practice concerned by the complaint, and not directly implicated by the specifics of the complaint.
10. The Registrar will act as Chair of the Complaints Panel and, with assistance provided by the Secretary, will facilitate the distribution of information regarding the specifics of the complaint as well as other relevant communications.
11. The Registrar, with assistance provided by the Secretary, may also request research and/or support services from other members of the Association, including officers and members of Council or the Executive Committee, and/or others outside the Association.
12. The Registrar, with assistance from the Secretary will ensure that a full record of the proceedings and the resolution of the complaint are compiled and retained by the Association.
13. The Complaints Panel will set its own procedures and timetable with respect to discussions and communications and the rendering of decisions and recommendations on a case by case basis.

14. The Complaints Panel will retain jurisdiction over the matter of the complaint until resolution and disposition of the matter or referral to the Discipline Panel as per section 19.
15. Any complaint received or under investigation or any information gathered in the course of the investigation of the complaint or the complaint process and any proceeding or decision of the Complaints Panel that is not open or available to the members of the Association or to the public in accordance with the Geoscience Profession Act or the by-laws of the Association, must be kept privileged and confidential by any person who has knowledge of it.
16. The Registrar will participate in the review and consideration of the complaint file and associated materials as a member of the Panel and, acting as Chair of the Panel, will compile the recommendations of the Panel to form a decision; in most cases matters before the Panel will be determined by consensus, however, if required, matters before the Panel may be determined by a simple majority vote, with the Chair having a deciding vote if required.
17. All proceedings and records of the review and deliberations and recommendations of the Complaints Panel shall be marked Privileged and Confidential and shall be held so unless required by discovery or other legal means; a complete record of the proceedings will be retained by the Association.
18. The role of the Complaints Panel is to review the complaint file, including the written complaint and the written response, and to make recommendations as per section 19.
19. The Complaints Panel shall:
 - a. dismiss the complaint if it determines it is frivolous or vexatious or not advanced in good faith; or
 - b. dismiss the complaint as unresolved but that it has no merit or is of a stature or nature or subject that does not require further investigation or action by the Association; or
 - c. dismiss the complaint if it finds that there are not reasonable or probable grounds to believe that the Act or the by-laws have been breached; or
 - d. defer action on the complaint to allow the opportunity for resolution by mediation and/or arbitration, with or without assistance and/or input from the Panel; or
 - e. dismiss the complaint as resolved by mediation and/or arbitration between the Complainant and the Practitioner; or
 - f. direct the complaint back to the Registrar to obtain further information and/or research, including additional written submissions from the Complainant and Practitioner, which will be subject to review as per the original complaint, such that the complaint shall be re-submitted to the Complaints Panel for further consideration and/or action; or

- g. where an acceptable resolution is not available, and
 - i. the Panel finds that there are probable grounds to believe that the practitioner complained against has breached the Act or the by-laws or may be guilty of unprofessional conduct, negligence or misconduct; or
 - ii. if the Panel finds that the practitioner has been convicted of a criminal offence by any court of competent jurisdiction;refer the complaint, in whole or in part, to the APGNS Discipline Panel.
20. The APGNS Discipline Panel shall:
- a. be appointed, constituted and function similarly to the Complaints Panel, appointed by Council from members of the Association not currently serving on Council and not having served on the Complaints Panel referring the complaint; and
 - b. shall consider the complaint and shall be mandated to evaluate the investigation documents and materials and to make recommendation(s); and
 - c. the Discipline Panel may,
 - i. request and facilitate an individual, fact-finding interview with the Complainant and the Practitioner; and
 - ii. any such interviews will be conducted separately (time and location) and will not include cross-examination by parties other than members of the Panel; and
 - iii. the interviews will be conducted in the context of the Code of Ethics of the Association, specifically, that the professional will only undertake assignments within their area of competence and the professional will act with fairness, courtesy and good faith towards clients, colleagues and others, including credit where it is due and honest and fair professional criticism where warranted.
21. The Discipline Panel shall make recommendations which may include;
- a. dismissal of the complaint; or
 - b. if the Panel concludes that grounds exist for discipline or sanction pursuant to the Geoscience Profession Act and the by-laws of the Association, the Panel may recommend a directed resolution, including but not limited to;
 - i. admonish or reprimand or caution and/or censure the Practitioner in such a way as the Panel may determine, or
 - ii. suspend or cancel the certificate of professional registration or restrict the practice of the Practitioner for a specified period or until certain stated conditions are fulfilled, or

- iii. impose such remedial measures as the Panel determines to be appropriate, including the imposition of fines as restitution for costs and expenses incurred in the investigation and adjudication of the complaint.
22. The Registrar shall submit a written decision from the Discipline Panel to the Complainant and the Practitioner in question, delivered by registered mail or similar method.
23. An appeal of the decision or disposition of a complaint by the Discipline Panel may be submitted to the Registrar who, on receipt of the appeal, and as soon as practicable, shall appoint one member of the Discipline Panel and one member of Council to act as “review officers” to consider the appeal; and
- a. who may dismiss the appeal; or
 - b. refer the original complaint and the appeal back to the Complaints Panel or the Discipline Panel for further consideration and/or action as warranted.
24. Where no appeal of the decision has been taken within thirty (30) business days from the delivery of the decision of the Discipline Panel, the Registrar shall submit a copy of the written decision to Council, including a recommendation from the Complaints Panel and/or Discipline Panel regarding the publication or distribution of the decision to the members of the Association and/or the public.