

## PROPOSAL 6 - BY-LAW 15.3.6 FORMAL CAUTION BECOMES A CHARGE

This change will allow the Investigation Committee (IC) to exercise the power given to it by the Act to decide whether to escalate a formal caution into a charge. This will allow for minor matters to be resolved without a full hearing, though the IC will still be able to escalate a charge if needed.

The Act (section 35[1]) allows the IC to:

- a) postpone its decision pending the completion of any civil or criminal proceedings arising from the conduct giving rise to the complaint;
- b) formulate a charge setting out the particulars of the complaint and direct that the charge be referred to the discipline committee;
- c) direct that the complaint be dismissed;
- d) accept the voluntary withdrawal by the investigated person of his or her right to practise professional engineering or professional geoscience or his or her enrolment as an engineering intern or geoscience intern;
- e) issue a formal, written caution to the investigated person censuring his or her conduct;
- f) with the written consent of the investigated person, formulate a charge, register a conviction and impose any penalty that the discipline committee could have imposed.

Although the Act allows the IC to exercise any of these powers without having to meet with the investigated person, legal counsel has recommended that the by-laws require such a meeting to allow the investigated person to respond to the IC when they are contemplating a formal caution.

This by-law change also clarifies that the IC may, but is not required to, forward a charge for hearing based on the response, or lack thereof, by the investigated person.

CURRENT WORDING	PROPOSED WORDING
<p>15.3.6.1 Before issuing a caution under clause 35(1)(e) of the Act, the investigation committee shall give notice to the investigated person of its proposal to issue such caution and the terms thereof.</p>	<p>15.3.6.1 Before issuing a caution under <del>clause section</del> 35(1)(e) of the Act, the investigation committee shall give notice to the investigated person of its <del>proposal</del> <u>intention</u> to issue such caution and the terms thereof, <u>and shall invite the investigated person to meet with the committee.</u></p>

CURRENT WORDING	PROPOSED WORDING
<p>15.3.6.2 Cautions</p> <p>If the investigated person refuses to accept the investigation committee’s proposed caution, or fails to respond to the notice thereof within 14 days of the date of any such notice, then the investigation committee shall formulate a charge under clause 35(1)(b) of the Act in respect of the complaint.</p>	<p>(REMOVE)</p>
<p>15.3.6.3 Formal Caution becomes Charge</p> <p>The investigated person may, within 14 days of the date of any notice issued under 15.3.6.1, give notice to the investigation committee that the investigated person intends to make a proposal to vary the terms of the investigation committee’s proposed caution.</p> <p>If the investigated person gives such notice within the aforesaid time period, then the investigated person shall, within a further period of 30 days from the date of the notice given by the investigated person, provide written or oral representations proposing changes to the investigation committee’s proposed caution.</p> <p>If the investigated person fails to provide such written or oral representation within said period of 30 days, or if the investigation committee and the investigated person are unable to agree upon the terms of the caution on or before the later of 10 days from the date of receipt of the investigated person’s proposed charges and the date of the next meeting of the investigation committee, then the investigated person shall be deemed to have refused to accept the investigation committee’s proposed caution and the investigation committee shall formulate a charge under clause 35(1)(b) of the Act in respect of the complaint, which charge shall be forwarded to the discipline committee.</p>	<p>(REMOVE)</p>
<p>NEW</p>	<p><u>15.3.6.2</u></p> <p><u>Following receipt of the notice referred to in section 15.3.6.1, the investigated person shall have 14 days to accept the investigation</u></p>

CURRENT WORDING	PROPOSED WORDING
	<p><u>committee's invitation to meet or accept the terms of the caution, If the investigated person rejects or fails to respond to the investigation committee's invitation to meet, or does not accept the terms of the caution, in each case within the aforementioned 14 day period, the investigation committee may take any other action available to it under 35(1) of the Act.</u></p>
<p>15.3.6.4 No notice of a proposal to issue a caution need be given to the complainant and the complainant has no right to make a proposal to vary any proposed caution. If a caution is issued, notice setting out the terms of the caution (but not a copy of the caution) shall be given to the complainant.</p>	<p>15.3.6-4.3 No notice of <del>a proposal</del><u>an intention</u> to issue a caution need be given to the complainant, and the complainant has no right to make a proposal to vary <del>any proposed</del><u>the</u> caution. If a caution is issued, notice setting out the terms of the caution (but not a copy of the caution) shall be given to the complainant.</p>