

## **Land Surveyors Regulations**

made under subsection 12(1) of the  
Land Surveyors Act  
S.N.S. 2010, c. 38

O.I.C. 2013-337 (September 10, 2013), N.S. Reg. 308/2013  
as amended by O.I.C. 2014-58 (February 25, 2014), N.S. Reg. 32/2014

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#### Citation

1 These regulations may be cited as the Land Surveyors Regulations.

#### Definitions

2 In these regulations,

“Agreement on Internal Trade” means the agreement signed by the federal, provincial and territorial governments of Canada, which came into force on July 1, 1995, to facilitate the free movement of persons, goods, services and investments throughout Canada;

“approved education program” means an education program that prepares a person for entry to the profession of land surveying, as approved by an examining body determined by the Council;

“articles” means a period of training for a candidate under the direction of an active member, as set out in the by-laws;

“articling agreement” means an agreement approved by the Board between a candidate and an active member.

#### Council and Executive

##### Composition of Executive

3 The Executive must be composed of all of the following members:

- (a) the president;
- (b) the vice-president;
- (c) the immediate past president.

##### Composition of Council

4 In addition to not less than 1 public representative and a person appointed by the Minister required by the Act, the Council must be composed of all of the following members:

- (a) the Executive members;
- (b) any number of members as set out in the by-laws.

#### Registration

##### Board of Examiners

5 (1) The Council must appoint a Board of Examiners.

(2) The Board of Examiners must include at least 5 active members or life members of the Association.

##### Information in Register

6 In addition to the name of the person entitled to be registered, as required by subsection 17(1) of the Act, the Register must contain all of the following information for each member:

- (a) contact information for the member, including any electronic contact information;
- (b) the member’s registration number;
- (c) the date of entry on the Register;
- (d) category of membership.

##### Categories of membership

7 (1) The following are the categories of membership:

- (a) candidate;
- (b) active;
- (c) life;
- (d) retired;

- (e) associate;
- (f) honorary.

(2) The roster for each category of membership must be made available to the public.

#### Waiver of registration or roster requirements

8 The Board may waive any of the criteria for registration or entry in a roster required by these regulations for either of the following reasons:

- (a) it is required by law;
- (b) it is consistent with the objects and purpose of the Association and the Board considers it appropriate.

#### Criteria for registration and entry in candidate roster

9 The Board must register and record the name of a person in the candidate roster who does all of the following:

- (a) pays the applicable registration fee;
- (b) successfully completes an approved education program;
- (c) enters an articling agreement.

#### Privileges of members in candidate roster

10 A member whose name is in the candidate roster has all of the following privileges:

- (a) to receive all official Association publications;
- (b) to attend, but not vote at, general meetings of the Association.

#### Criteria for registration and entry in active membership roster

11 (1) The Board must register and record the name of a person in the active membership roster who meets all of the following criteria:

- (a) for an applicant who is not currently registered in another Canadian jurisdiction, all the criteria in Section 12;
- (b) for an applicant who is currently registered in another Canadian jurisdiction, all the criteria in Section 13;
- (c) payment of the applicable registration fee;
- (d) the applicant is not currently subject to any disciplinary finding that would prohibit or limit the applicant's ability to practise professional land surveying;
- (e) the applicant has provided any information required by the Board to establish that Section 50 of the Act does not apply to the applicant;
- (f) the applicant has met any applicable requirements of the professional development program;
- (g) evidence satisfactory to the Board that the applicant has the capacity, competence and character to safely and ethically practise professional land surveying;

(h) unless the requirement to carry professional liability insurance is waived under subsection (2), proof that the applicant is covered by professional liability insurance.

(2) Despite clause (1)(h), the requirement to hold professional liability insurance is waived and the applicant is not required to hold professional liability insurance if any of the following conditions apply:

(a) the person is employed by a municipal, provincial or federal government or agency, provided that the person undertakes in writing not to engage directly or indirectly in the practice of professional land surveying for any member of the public except on behalf of the employer, whether for or without compensation;

(b) the person is employed by any person, firm or corporation that does not engage directly or indirectly in the practice of professional land surveying for the general public, provided that the person undertakes in writing not to engage directly or indirectly in the practice of professional land surveying for any member of the public, except on behalf of the employer, whether for or without compensation; or

(c) the Council has granted the member an exemption from the requirement to hold professional liability insurance in accordance with subsections (3) to (5).

(3) A person who applies to the Council for an exemption from the requirement to hold professional liability insurance under subsection (2) must provide any relevant information the Council considers necessary to assess the application.

(4) If the Council is satisfied that the public interest is protected, the Council may grant a member an exemption from the requirement to hold professional liability insurance.

(5) A person who is granted an exemption from the requirement to hold professional liability insurance under subsection (4) must not engage directly or indirectly in the practice of professional land surveying for the general public, whether for compensation or not.

Additional criteria for applicants not currently registered in another Canadian jurisdiction

12 An applicant for entry in the active membership roster who is not currently registered in another Canadian jurisdiction must pay the applicable registration fee and meet all of the following criteria:

(a) all of the criteria for entry in the active membership roster in clauses 11(1)(c) to (h);

(b) certification from an examining body approved by the Council;

(c) successful completion of a period of articles;

(d) successful completion of any examinations prescribed by the Board;

(e) demonstration of proficiency in the English language in a manner required by the Board;

(f) proof that the applicant is legally entitled to work in Canada;

(g) the taking of an oath prescribed by the Board;

(h) for an applicant who was previously registered in another Canadian jurisdiction or is or was registered in a jurisdiction outside of Canada, a certificate of standing from all jurisdictions where the applicant was previously licensed or registered establishing that the applicant is not subject to any disciplinary findings that would prohibit or limit the applicant's ability to practise professional land surveying.

Additional criteria for applicants registered in another Canadian jurisdiction

13 The following are the criteria for entry in the active membership roster for applicants who are registered in another Canadian jurisdiction:

- (a) all of the criteria for entry in the active membership roster in clauses 11(1)(c) to (h);
- (b) a certificate of standing from the Canadian jurisdiction where the applicant is currently registered or licensed to practise professional land surveying establishing that the applicant is registered or licensed to practise professional land surveying in that jurisdiction and is not subject to any disciplinary findings that would prohibit or limit the applicant's ability to practise professional land surveying;
- (c) successful completion of any requirements for registration established under the Agreement on Internal Trade or any Mutual Recognition Agreement entered into by the Association under the Agreement on Internal Trade;
- (d) the taking of an oath prescribed by the Board.

Privileges of members in active membership roster

14 A member whose name is in the active membership roster has all of the following privileges:

- (a) use of the designation "Nova Scotia Land Surveyor" or the abbreviation "NSLS" in accordance with Section 20 of the Act;
- (b) subject to subsection 11(5), to practise professional land surveying;
- (c) upon election, hold office in the Association;
- (d) be eligible to serve as an appointed member of any committee of the Association;
- (e) receive all official Association publications;
- (f) attendance, participation and a right to vote at meetings of the Association;
- (g) subject to the approval of the Board, entry into an articling agreement with a candidate.

Conditions imposed on membership

15 (1) When considering an application for membership, the Board may impose conditions on the membership of an applicant if

- (a) it is consistent with the objects of the Association; and
- (b) the Board gives the applicant an opportunity to address the proposed conditions before the conditions are imposed.

(2) An applicant who has conditions imposed on their registration by the Board under subsection (1) may appeal those conditions to the Registration Appeal Committee in accordance with Section 21.

(3) The Board must impose conditions on the registration of a member when conditions have been imposed as part of a decision of any of the following bodies:

- (a) the Complaints Committee;
- (b) the Hearing Committee;
- (c) the Registration Appeal Committee;
- (d) the Reinstatement Committee;

(e) an equivalent committee from another jurisdiction.

(4) Conditions imposed on a membership remain in effect until the Board determines they have been met.

(5) A member who has conditions imposed on their membership retains their privileges under Section 10 or Section 14, subject to the particular conditions that have been imposed.

#### Other categories of membership

16 (1) The Board must enter the name of an applicant who meets the criteria for entry in the life, retired, associate or honorary roster into the appropriate roster.

(2) The privileges of retired, associate and honorary members are as set out in the by-laws.

(3) A life member must meet all the criteria for entry into the active membership roster under Section 11 with the exception of the fee required by clause 11(1)(c).

(4) A life member has all of the privileges of an active member as set out in Section 14.

(5) The Board must enter the name of a life member in the active membership roster if the life member is engaged in the practice of professional land surveying.

#### Term and renewal of membership

17 (1) Unless suspended, revoked or amended as a result of any conditions imposed, a candidate, active, retired and associate membership remains in effect until the end of the calendar year in which it was issued.

(2) The Executive Director must renew a member's registration and entry in the applicable roster if the member meets all of the following conditions:

(a) the member pays the applicable renewal fee and any penalties for late application set by the Council;

(b) the member meets all the criteria for entry in the applicable roster, excluding the initial registration fee.

(3) Unless suspended or revoked by the Council, life and honorary memberships remain in effect indefinitely.

#### Member removed from applicable roster for non-renewal

18 (1) The Board must remove the name of a member who does not renew their membership in accordance with Section 17 from the applicable roster, and the member remains non-active until their name is restored under subsection (2).

(2) The Board must restore the name of a non-active member referred to in subsection (1) to the applicable roster when the member meets the criteria for entry in the roster and pays any applicable renewal fee and penalty as set by the Council.

(3) A member whose name has been removed from the applicable membership roster by the Board under subsection (1) may appeal the Board's decision to the Registration Appeal Committee in accordance with Section 21.

#### Articles

19 (1) The Board must approve the articling agreement of a person seeking membership as a candidate before the period of articles begins.

(2) The Board must approve the name of the active member entering into an articling agreement with a candidate.

(3) With the approval of the Board, a candidate may transfer the responsibility of articles to another active member by signing a new articling agreement.

(4) A candidate must complete the period of articles in the manner and in accordance with the timelines in the articling agreement.

(5) Upon completion of the articling period, an active member to whom a candidate is articulated must sign a form approved by the Board confirming that all the requirements of the articling agreement have been met.

#### Registration Appeal Committee

20 (1) A Registration Appeal Committee is established by these regulations.

(2) The Council must appoint the following members to the Registration Appeal Committee:

(a) 1 public representative;

(b) 2 members from the active membership roster.

(3) The Council must appoint a chair of the Registration Appeal Committee.

(4) A majority of the Registration Appeal Committee constitutes a quorum.

(5) The Registration Appeal Committee must perform the functions set out in these regulations.

(6) Each person on the Registration Appeal Committee has all the rights, powers, privileges and immunities of a commissioner appointed under the Public Inquiries Act.

#### Procedure for appeal to Registration Appeal Committee

21 (1) The Board must give written reasons for any decision that

(a) refuses an applicant's

(i) registration, or

(ii) entry in a roster; or

(b) imposes conditions or restrictions on a member's registration.

(2) An applicant may, by written notice, appeal a decision listed in subsection (1) to the Registration Appeal Committee no later than 30 days after the date the applicant receives the written reasons.

(3) On receiving a written notice of appeal, the Registration Appeal Committee must do all of the following:

(a) set a date for a hearing of the appeal that is no later than 60 days after the date the Committee receives the written notice of appeal;

(b) serve written notice of the date, time and place for the hearing of the appeal on the appellant and the Executive Director;

(c) advise the appellant of their right to



- (i) be represented by legal counsel,
- (ii) disclosure of any information to be given to the Committee, and
- (iii) a reasonable opportunity to present a response and make submissions.

(4) The parties to an appeal before the Registration Appeal Committee are the Association and the appellant.

(5) Except as provided in subsection (6), evidence is not admissible before the Registration Appeal Committee unless, at least 10 days before the appeal, the opposing party has been given

- (a) in the case of written or documentary evidence, an opportunity to examine the evidence;
- (b) in the case of evidence of an expert, a copy of the expert's written report or, if there is no written report, a written summary of the evidence; and
- (c) in the case of evidence of any other witness, the identity of the witness.

(6) If it is in the public interest, the Registration Appeal Committee, in its discretion, may allow the introduction of evidence that is otherwise inadmissible under subsection (5) and may make directions it considers necessary to ensure that a party is not prejudiced by the introduction of the evidence.

(7) In a proceeding before the Registration Appeal Committee, the parties have the right to the opportunity to present evidence and make submissions, including the right to examine and cross-examine witnesses.

(8) The Registration Appeal Committee must give the parties written reasons for its decision within a reasonable time.

(9) All material relied upon by the Board in making the decision that is the subject of the appeal must be given to the parties.

(10) The testimony of witnesses at a hearing before the Registration Appeal Committee must be taken under oath or affirmation.

#### Disposition by Registration Appeal Committee

22 (1) The Registration Appeal Committee must do 1 of the following upon completion of the registration appeal process:

- (a) confirm the original decision of the Board;
- (b) vary the original decision of the Board;
- (c) dismiss the original decision of the Board.

(2) The Registration Appeal Committee must give its decision in writing.

(3) A decision of the Registration Appeal Committee is final.

(4) The Registration Appeal Committee must send a copy of its written decision to all of the following parties:

- (a) the appellant, by registered mail or personal service;
- (b) the Association, by regular mail or personal service.

### Composition of Complaints Committee

22A The Complaints Committee must be composed of all of the following:

- (a) 1 public representative;
- (b) 4 members, at least 3 of whom are active members.

Section 22A added: O.I.C. 2014-58, N.S. Reg. 32/2014.

### Professional Conduct

#### Referral to Complaints Committee

23 On receiving a complaint under subsection 43(1) of the Act, the Executive Director must forward the complaint to the Complaints Committee.

#### Authority to dismiss without investigation

24 (1) On receiving a complaint, the Complaints Committee may dismiss the complaint and provide any guidance the Complaints Committee considers useful to the complainant, the respondent or any other person associated with the complaint, if the Complaints Committee determines that any of the following apply:

- (a) the complaint is outside the jurisdiction of the Association;
- (b) the complaint is frivolous, vexatious or constitutes an abuse of process;
- (c) the complaint does not allege facts that, if proven, would constitute professional misconduct, conduct unbecoming, incompetence or incapacity, or would merit a counsel or a caution, or both;
- (d) the complaint cannot be substantiated.

(2) If the Complaints Committee dismisses the complaint, the Complaints Committee must provide a copy of the letter of dismissal to the complainant and the respondent.

(3) If the complaint is not dismissed under subsection (1), the Complaints Committee must do 1 of the following:

- (a) attempt to resolve the complaint, if in the opinion of the Complaints Committee it may be satisfactorily resolved without an investigation;
- (b) forward the complaint to the respondent and an investigator for investigation in accordance with Section 25.

#### Investigating complaint

25 (1) When investigating a complaint, an investigator may do 1 or more of the following:

- (a) request additional documents and written or oral explanations from the complainant, the respondent or third parties;
- (b) request an interview with the complainant, the respondent or third parties;
- (c) informally resolve the complaint in the interests of the respondent, the complainant, the public and the Association.

(2) An investigator may investigate any matter relating to the respondent that arises in the course of the investigation, in addition to the complaint, that may constitute any of the following:

- (a) professional misconduct;

- (b) conduct unbecoming;
- (c) incompetence;
- (d) incapacity.

(3) A respondent may submit medical information and any other information relevant to the complaint to an investigator.

(4) After completing an investigation, an investigator must send a report of the investigation to the Complaints Committee.

#### Additional information to Complaints Committee

26 (1) The Complaints Committee may at any time direct an investigator to conduct any investigation that the Complaints Committee considers necessary.

(2) At any time before making a decision under Section 27, the Complaints Committee may receive information in addition to the report of the investigation, if the information is relevant to the matters before it.

(3) An investigator or the Complaints Committee may direct the respondent or a third party to provide information or documents or to respond to correspondence, and the respondent or third party must comply within 10 days after the date of the request.

(4) If the Complaints Committee receives additional information under subsection (2) or (3), the respondent must be given an opportunity to respond to the information before the final disposition of the complaint by the Complaints Committee.

#### Complaints Committee disposition of complaint

27 (1) For the purposes of this Section,

“caution” by the Complaints Committee means a determination that a member has breached the standards of ethics or practice expected of members, but that breach does not constitute professional misconduct, conduct unbecoming, incompetence or incapacity, and a caution is not considered to be a registration sanction; and

“counsel” by the Complaints Committee means a determination that a member could benefit from professional guidance from the Association about the subject matter of the complaint, but the member’s conduct does not constitute professional misconduct, conduct unbecoming, incompetence or incapacity, and a counsel is not considered to be a registration sanction.

(2) On receiving a report from an investigator under subsection 25(4), the Complaints Committee must do 1 of the following:

(a) dismiss the complaint and provide any guidance the Complaints Committee considers useful to the complainant, the respondent or any other person associated with the complaint, if the Complaints Committee determines that any of the following apply:

- (i) the complaint is outside the jurisdiction of the Association,
- (ii) the complaint is frivolous, vexatious or constitutes an abuse of process,
- (iii) the complaint does not allege facts that, if proven, would constitute professional misconduct, conduct unbecoming, incompetence or incapacity, or would merit a counsel or a caution, or both,
- (iv) the complaint cannot be substantiated;

(b) give the complainant, the respondent and any other person the Complaints Committee considers appropriate a reasonable opportunity to appear before the Complaints Committee and to submit representations or explanations.

(3) After providing the respondent the opportunity to appear before the Complaints Committee under clause (2)(b), the Complaints Committee may require the respondent to do 1 or more of the following:

(a) submit to a review of the respondent's practice by a qualified person or persons designated by the Complaints Committee and authorize a copy of the review to be given to the Complaints Committee;

(b) produce any records or documents related to the respondent's practice.

(4) After the Complaints Committee has given the parties the opportunity to appear before the Committee under clause (2)(b), the Complaints Committee must do 1 or more of the following:

(a) dismiss the complaint and provide any guidance the Complaints Committee considers useful to the complainant, the respondent or any other persons the Complaints Committee considers appropriate;

(b) counsel the respondent;

(c) caution the respondent;

(d) with the respondent's consent, order that the respondent receive a reprimand and that the reprimand be communicated to the respondent, the complainant and any other persons the Complaints Committee considers appropriate;

(e) with the respondent's consent, impose conditions on the respondent's membership;

(f) refer the matter to the Hearing Committee if

(i) a determination is made that the matter or matters warrant a hearing, or

(ii) the respondent does not consent to a reprimand, conditions or restrictions under clause (d) or (e);

(g) informally resolve the complaint, including entering into agreements with the respondent, or authorizing the respondent's resignation from the applicable roster.

(5) A reprimand issued under clause (4)(d) and conditions placed on a respondent's registration under clause (4)(e) are registration sanctions against the respondent and must be dealt with in accordance with Section 62 of the Act.

#### Compliance with requirements of Complaints Committee

28 (1) If a respondent fails to comply with subsection 27(3), or otherwise fails to comply with the direction of the Complaints Committee, the Complaints Committee may suspend or restrict the respondent's registration and the suspension or restriction remains in place until it is lifted, superseded or annulled by the Complaints Committee or Hearing Committee.

(2) The costs of complying with a requirement made under subsection 27(3) must be initially borne by the Association and may be awarded as an award of costs against a respondent under Section 49.

#### Complaints Committee retains jurisdiction

29 The Complaints Committee retains jurisdiction over a complaint until the commencement of a hearing or the acceptance of a settlement proposal by the Hearing Committee.

### Composition of Hearing Committee

29A Subject to subsection 52(1) of the Act, the Hearing Committee must be composed of all of the following:

- (a) 1 public representative;
- (b) 4 members, at least 3 of whom are active members.

Section 29A added: O.I.C. 2014-58, N.S. Reg. 32/2014.

### Notice of hearing

30 (1) A notice of hearing required by subsection 53(2) of the Act must be served at the respondent's or the complainant's last known address by 1 of the following methods:

- (a) personal service;
  - (b) substituted service;
  - (c) registered mail.
- (2) A notice of hearing sent by registered mail is deemed to have been served on the date it was posted.
- (3) A notice of hearing must state all of the following:
- (a) the details of the charges;
  - (b) the time and place of the hearing;
  - (c) that the respondent may be represented by legal counsel.

### Amendment of notice of hearing

31 (1) At any time before or during a hearing, the Hearing Committee may, on its own motion or on the motion of a party to the hearing, amend or alter the notice of hearing for any of the following reasons:

- (a) to correct an alleged defect in substance or form;
- (b) to make the notice conform to the evidence, if there appears to be a difference between the evidence and the notice, or if the evidence discloses any of the following that is not alleged in the notice:
  - (i) professional misconduct,
  - (ii) conduct unbecoming,
  - (iii) incapacity,
  - (iv) incompetence.

(2) A respondent must be given an opportunity to respond to an amendment or alteration to a notice of hearing made by the Hearing Committee.

(3) If the Hearing Committee determines that an amendment or alteration to a notice of hearing sought by a party is not appropriate, the Hearing Committee may refuse to make the amendment or alteration and, if considered appropriate, may refer any new allegations that are included in the amendment or alteration to the Executive Director for processing in accordance with Section 23.

### Preparing and tendering settlement proposals

32 (1) A settlement proposal may be tendered in writing to the other party at any time before a hearing begins.

(2) A settlement proposal must include all of the following:

(a) an admission or admissions by the respondent to 1 or more of the allegations set out in the notice of hearing;

(b) the respondent's consent to a specified disposition, conditional upon the acceptance of the settlement proposal by the Complaints Committee and the Hearing Committee;

(c) sufficient facts to provide context for the admissions of the respondent and the agreed disposition.

(3) If both parties agree with the settlement proposal tendered under subsection (1), the Association must refer the settlement proposal to the Complaints Committee for consideration.

(4) The parties may agree to use a mediator to prepare a settlement proposal, and the costs for the mediator must be divided equally between the Association and the respondent, unless the parties agree to a different division of the costs.

#### Complaints Committee actions when settlement proposal referred

33 (1) The Complaints Committee may recommend acceptance of a settlement proposal if it is satisfied that all of the following criteria are met:

(a) the public is protected;

(b) the conduct or its causes can be, or have been, successfully remedied or treated and the respondent is likely to successfully pursue any remediation or treatment required;

(c) settlement is in the best interests of the public and the profession.

(2) If the Complaints Committee recommends acceptance of a settlement proposal, the Complaints Committee must refer the settlement proposal to the Hearing Committee.

(3) If the Complaints Committee does not recommend acceptance of a settlement proposal, the Complaints Committee must do 1 of the following:

(a) recommend changes to the settlement proposal that

(i) if agreed upon by the parties will result in acceptance by the Complaints Committee, or

(ii) if not agreed upon by the parties will result in rejection by the Complaints Committee;

(b) reject the settlement proposal and refer the complaint considered by the Complaints Committee to the Hearing Committee for hearing.

#### Hearing Committee actions when settlement proposal referred

34 (1) If the Hearing Committee accepts a settlement proposal

(a) the settlement proposal forms the decision of the Hearing Committee disposing of the matter, unless the Hearing Committee wishes to issue a further written decision in the matter; and

(b) except as provided in subsection 35(3) for a breach of the settlement proposal, there is no hearing.

(2) If the Hearing Committee does not accept a settlement proposal, it must do 1 of the following:

(a) suggest amendments to the settlement proposal and return it to the parties for review;

(b) reject the settlement proposal and refer the matter to another panel of the Hearing Committee for a hearing.

(3) If both parties do not agree with the amendments to a settlement proposal made under clause (2)(a), the settlement proposal is deemed to be rejected and the matter must be referred to another panel of the Hearing Committee for a hearing.

(4) If both parties agree with the amendments to a settlement proposal made under clause (2)(a), the revised settlement proposal must be sent back to the Complaints Committee who must do 1 of the following:

(a) accept the revised settlement proposal and refer the revised settlement proposal back to the Hearing Committee for approval; or

(b) reject the revised settlement proposal and refer the matter to another panel of the Hearing Committee for a hearing.

(5) A person who sits on a panel of the Hearing Committee that reviews a rejected settlement proposal must not sit on a panel of the Hearing Committee that conducts a hearing related to the same complaint.

#### Settlement proposals and hearings

35 (1) If a settlement proposal is rejected by the Hearing Committee, a hearing must proceed without reference to the settlement proposal or any admissions contained in the settlement proposal until after the Hearing Committee has determined whether professional misconduct, conduct unbecoming, incompetence or incapacity has been proven.

(2) Before deciding whether to award costs in a hearing, the Hearing Committee may be given a copy of any settlement proposals exchanged between the parties.

(3) Any alleged breach by a respondent of an accepted settlement proposal must be referred to a Hearing Committee and may form the subject of a new hearing.

(4) A settlement proposal may include any disposition that could be ordered by the Hearing Committee under the Act or these regulations.

#### Consent revocation

36 (1) A respondent who does not contest the allegations or admits to some or all of the allegations set out in a complaint or a notice of hearing may, with the consent of the Association, ask the Hearing Committee to revoke their registration.

(2) The Hearing Committee may consent to the revocation of the respondent's registration in accordance with subsection (1), with or without conditions, or may refuse consent.

(3) A respondent who consents to the revocation of their registration must be treated as though their registration was revoked by the Hearing Committee.

(4) Notification of a revocation under this Section must be given in accordance with Section 47.

#### Public notice of hearing

37 The Association must give public notice of any scheduled hearings through its website or any alternate means the Association considers appropriate, including notice of all of the following:

(a) the date, time and location of the hearing;

- (b) reference to any application being made under subsection 38(2).

#### Attendance at hearing

38 (1) Except as provided in subsections (2) and (3), a hearing is open to the public.

(2) At the request of a party, the Hearing Committee may order that the public, in whole or in part, be excluded from a hearing or any part of it if the Hearing Committee is satisfied that any of the following apply:

- (a) personal, medical, financial or other matters that may be disclosed at the hearing are of such a nature that avoiding public disclosure of those matters in the interest of the public or any person affected outweighs adhering to the principle that hearings should be open to the public;

- (b) the safety of any person may be jeopardized by permitting public attendance.

(3) The Hearing Committee may make an order that the public be excluded from a part of a hearing dealing with an application for an order under subsection (2).

(4) The Hearing Committee may make any orders that it considers necessary to prevent public disclosure of matters disclosed at a hearing, including an order to impose a publication ban as authorized by subsection 51(7) of the Act.

(5) Subject to any order made under this Section, the Hearing Committee must state at a hearing its reasons for any order made under this Section.

#### Hearing procedure

39 (1) A complainant cannot participate as a party at a hearing.

(2) The Hearing Committee may determine any additional rules of procedure for hearings not covered by the Act or these regulations.

(3) Witnesses at a hearing must testify under oath or affirmation.

(4) An oath or affirmation taken at a hearing may be administered by a member of the Hearing Committee or other person in attendance authorized by law to administer oaths or affirmations.

(5) The Hearing Committee may require a respondent to do 1 or more of the following:

- (a) submit to a review of the member's practice by a qualified person or persons designated by the Hearing Committee and authorize a copy of the review to be given to the Hearing Committee;

- (b) produce any records kept about the member's practice.

#### Compliance with requirement of Hearing Committee

40 (1) If a respondent fails to comply with a requirement under subsection 39(5), the Hearing Committee may order that the respondent be suspended until the respondent complies.

(2) The costs of complying with the requirements described in subsection 39(5) must be initially borne by the Association and may be awarded as costs against a respondent under Section 49.

#### Respondent's failure to attend hearing

41 After receiving proof of service of the notice of hearing in accordance with Section 30, the Hearing Committee may proceed with a hearing in the respondent's absence and take any action authorized under the Act and these regulations without further notice to the respondent.



#### Subpoenaed witness fees

42 Witnesses who are present under subpoena at a hearing are entitled to the same allowances as witnesses attending a trial of an action in the Supreme Court of Nova Scotia.

#### Recording evidence at hearing

43 (1) All evidence presented at a hearing must be recorded by a person authorized by the Association.

(2) Subject to subsection 57(2) of the Act, evidence may be presented at a hearing in any manner that the Hearing Committee considers appropriate and the Hearing Committee is not bound by the rules of law respecting evidence applicable to judicial proceedings.

#### Preservation of evidence

44 Evidence presented to the Hearing Committee and information obtained by the Complaints Committee or an investigator regarding a complaint that has not been dismissed by the Complaints Committee must be preserved for at least 5 years from the date the evidence is presented or information is obtained.

#### Disposition by Hearing Committee

45 (1) A Hearing Committee that finds professional misconduct, conduct unbecoming, incompetence or incapacity on the part of a respondent may do 1 or more of the following and must include orders for it in the committee's disposition of the matter:

(a) revoke the respondent's membership and remove the respondent's name from the appropriate roster;

(b) authorize the respondent to resign from membership in the Association and remove the member's name from the appropriate roster;

(c) suspend the respondent from the practice of professional land surveying and remove the respondent's name from the roster in which their name is entered

(i) for a specified period of time, or

(ii) until any conditions ordered by the Hearing Committee are satisfied;

(d) suspend the respondent's ability to obtain entry in a roster for a specified period of time;

(e) suspend the membership of a candidate and remove the candidate's name from the candidate roster

(i) for a specified period of time, or

(ii) until any conditions ordered by the Hearing Committee are satisfied;

(f) impose any restrictions or conditions, or both, on the respondent's registration for a period of time specified by the Hearing Committee;

(g) reprimand the respondent and direct that the reprimand be recorded in the records of the Association;

(h) direct the respondent to pass a particular course of study or satisfy the Hearing Committee, or any other committee established under the Act, of the respondent's general competence or competence in a particular field of practice;

(i) direct the respondent to obtain medical treatment;

(j) direct the respondent to obtain any counselling the Hearing Committee consider appropriate;

(k) for findings that involve the respondent practising professional land surveying while not currently registered, direct the respondent to pay a fine in an amount determined by the Council.

(2) A Hearing Committee that does not find professional misconduct, conduct unbecoming, incompetence or incapacity on the part of a respondent must dismiss the complaint.

#### Written decision of Hearing Committee

46 The Hearing Committee must prepare a written report of its disposition of a hearing including the reasons for the decision in accordance with clause 58(c) of the Act and must provide copies of its decision or information from its decision in accordance with Section 47.

#### Disclosing and publishing decisions and registration sanctions imposed without hearing

47 (1) Except as prohibited by any publication bans, the Hearing Committee may disclose or publish a decision or part of a decision that dismissed a complaint in a manner determined by the Hearing Committee.

(2) Except as prohibited by any publication bans, the Executive Director must do all of the following for any registration sanction that is issued other than through a hearing:

(a) make the appropriate entries on the Register, in the roster, on the website and on the member's registration;

(b) publish a summary of the decision in accordance with subsection (3) in all of the following publications:

(i) the Association website,

(ii) the Professional Conduct Digest retained by the Association and available to the public,

(iii) any official publication determined by the Hearing Committee;

(c) notify all of the following of the registration sanction ordered and provide a copy of some or all of the decision as requested:

(i) registering bodies in other Canadian land surveying jurisdictions,

(ii) registering bodies in a jurisdiction where the respondent was originally registered,

(iii) registering bodies in other jurisdictions where the respondent is known to have practised;

(d) give the respondent a copy of the decision;

(e) give a copy of some or all of the decision to the complainant, as permitted by the Hearing Committee or the Complaints Committee;

(f) give any of the following to any person the committee making the decision directs:

(i) notice of the decision,

(ii) a summary of the decision,

(iii) a copy of parts or all of the decision.

(3) Except for information that must be excluded under subsection (4), the summary of a decision required by clause (2)(b) must be prepared by the Association and must contain all of the following information:

- (a) the member's name, city or town of residence and registration number;
- (b) the provision of the Act or these regulations under which the registration sanction is issued;
- (c) the date of the decision;
- (d) the allegations that were upheld by the Hearing Committee or the Complaints Committee or, for a consent revocation, the allegations that were either admitted by or not contested by the respondent;
- (e) whether the allegations amounted to professional misconduct, conduct unbecoming, incompetence or incapacity;
- (f) the disposition ordered by the Complaints Committee or the Hearing Committee;
- (g) the reasons for the decision;
- (h) any additional information the Association considers necessary to meet the objects of the Association.

(4) If a complaint is resolved without a hearing and any allegations have been found to constitute incapacity, the specific nature of the incapacity must not be included in the summary of the decision under subsection (3).

#### Disclosing and publishing decisions and registration sanctions imposed through hearing

48 Except as prohibited by any publication bans, the Executive Director must take all of the actions set out in clauses 47(2)(a) to (f) for any registration sanction issued following a hearing and, in addition, must do the following:

- (a) provide a copy of some or all of the decision, as determined by the Hearing Committee, to the relevant employer or employers;
- (b) publish a copy of the full decision in the Association's Professional Conduct Digest and make the Professional Conduct Digest available to the public.

#### Costs awarded after hearing

49 (1) In this Section, "costs" includes all of the following:

- (a) expenses incurred by the Association in the investigation of a complaint;
- (b) expenses incurred by the Association for the activities of the Complaints Committee and the Hearing Committee;
- (c) expenses incurred under subsections 28(2) and 40(2);
- (d) the Association's solicitor and client costs, including disbursements and HST, relating to the investigation and hearing of a complaint, including those of the Association's counsel and counsel for the Hearing Committee;
- (e) fees for retaining a court reporter and preparing transcripts of the proceedings;
- (f) travel costs and reasonable expenses of any witnesses, including expert witnesses, required to appear at a hearing.

(2) Except when awarded costs in accordance with subsection (4), a respondent is responsible for all expenses incurred in his or her defence.

(3) If the Hearing Committee finds professional misconduct, conduct unbecoming, incompetence or incapacity on the part of a respondent, it may order that the respondent pay costs in whole or in part.

(4) If the Hearing Committee is of the opinion that a hearing was unnecessary, it may order the Association to pay some or all of the respondent's legal costs.

(5) The Executive Director may suspend the registration of any respondent who fails to pay the costs under this Section within the time ordered until payment is made or satisfactory arrangements for payment are made.

#### Applying for reinstatement

50 (1) An application for reinstatement under the Act or these regulations must be sent in writing to the Reinstatement Committee together with the reinstatement fee prescribed by the Council.

(2) An application for reinstatement must include any information that the Reinstatement Committee requires to assist it in determining whether the objects of the Association will be met if reinstatement is granted.

#### Investigation on reinstatement application

51 (1) On receiving an application for reinstatement, the Reinstatement Committee may request that an investigation be conducted to gather relevant and appropriate information about the application.

(2) A person who conducts an investigation must give a written report to the Reinstatement Committee and the applicant containing all material relevant to the application including the decision of the Hearing Committee that revoked the applicant's registration and any relevant information gathered during the investigation.

#### Notice of reinstatement proceeding

52 The Reinstatement Committee must set a date for a proceeding to review a reinstatement application and must

(a) advise the applicant of the date; and

(b) give public notice of all of the following through its website or by any alternate means the Association considers appropriate:

(i) the date, time and location of the proceeding,

(ii) any application being made for an order under subsection 53(2).

#### Attendance at proceeding for review of reinstatement application

53 (1) Except as provided in subsections (2) and (3), a proceeding to review an application for reinstatement is open to the public.

(2) At the request of a party, the Reinstatement Committee may order that the public, in whole or part, be excluded from a proceeding to review a reinstatement application or any part of it if the Reinstatement Committee is satisfied that any of the following apply:

(a) personal, medical, financial or other matters that may be disclosed at the proceeding are of such a nature that avoiding public disclosure of those matters in the interest of the public or any person affected outweighs adhering to the principle that hearings be open to the public;

(b) the safety of any person may be jeopardized by permitting public attendance.

(3) The Reinstatement Committee may make an order that the public be excluded from a part of a proceeding dealing with an application for an order under subsection (2).

(4) The Reinstatement Committee may make any orders that it considers necessary to prevent the public disclosure of matters disclosed in a proceeding to review a reinstatement application, including an order to impose a publication ban as authorized by subsection 51(7) of the Act.

(5) Subject to any order made under this Section, the Reinstatement Committee must state at the proceeding to review a reinstatement application its reasons for any order made under this Section.

#### Reinstatement proceeding procedure

54 (1) The parties to a proceeding to review an application for reinstatement are the Association and the applicant for reinstatement.

(2) Evidence presented to the Reinstatement Committee must be taken under oath and recorded, and is subject to cross-examination.

(3) An oath or affirmation taken at a proceeding may be administered by a member of the Reinstatement Committee or other person in attendance authorized by law to administer oaths or affirmations.

(4) In a proceeding to review an application for reinstatement the burden is on the respondent to show that the objects of the Association will be served by terminating the order of revocation.

#### Decision of Reinstatement Committee

55 (1) After considering the evidence and representations from an applicant and the Association representative, the Reinstatement Committee must decide to accept or reject the reinstatement application and must communicate its decision in writing to all of the following people:

- (a) the applicant;
- (b) the Executive Director;
- (c) any person the Reinstatement Committee considers appropriate.

(2) If [the] Reinstatement Committee decides to reinstate an applicant, the committee may impose any restrictions and conditions it considers appropriate on the applicant's reinstatement, and the applicant must satisfy all criteria required for the renewal of registration.

(3) Except as provided in subsection (4), a decision of the Reinstatement Committee about reinstatement of registration is final.

(4) An applicant may resubmit an application for reinstatement after 1 year has passed since the date of the Reinstatement Committee's initial decision, or after a longer period determined by the Reinstatement Committee that rejected the application.

#### Costs of reinstatement proceeding

56 Whether an application for reinstatement is accepted or rejected, the Reinstatement Committee may recover costs from the applicant, including any of the following:

(a) expenses incurred by the Association and the Reinstatement Committee in investigating the reinstatement application;

(b) expenses incurred by the Association and the Reinstatement Committee for the role of the Association or the Reinstatement Committee in the reinstatement application process;

(c) the Association's solicitor and client costs, including disbursements and HST, relating to a reinstatement application and proceeding, including those of the Association's counsel and counsel for the Reinstatement Committee;

(d) fees for retaining an expert, preparing reports and preparing transcripts of the proceedings;

(e) travel costs and reasonable expenses of any witnesses required to appear at a proceeding to review a reinstatement application.

#### Practice Reviews

##### Review of active member's practice

57 (1) The Council may establish a committee, department or division, or appoint a person or consultant approved by the Council, to perform practice reviews of active members in a manner determined by the Council.

(2) A practice review conducted under subsection (1) may be conducted by reviewing any documents or practices of a member that the Council considers appropriate, including all of the following:

(a) survey plans;

(b) location certificates;

(c) office practices;

(d) field work.

##### Member must cooperate with practice review

58 A member must fully cooperate with any person authorized under subsection 57(1) to conduct a practice review.

##### Practice review not warranty of member's work

59 A practice review does not warrant the accuracy or correctness of a member's plan, work or practice.

##### Practice review is confidential and privileged

60 (1) Except as provided for in the Act or these regulations, a practice review must be kept confidential and is privileged from production in legal proceedings.

(2) A practice review may be disclosed to the Complaints Committee or any other committees or individuals determined by the Council, if the disclosure is consistent with the objects of the Association and privilege is not waived.

(3) Unless otherwise determined by a court of competent jurisdiction, any decision or recommendation arising from a practice review is not admissible in a civil proceeding other than in an appeal or review under the Act.

##### Witness disclosure about practice reviews

61 (1) A witness in any legal proceeding, whether a party to the proceeding or not, is excused from all of the following:

(a) answering any question regarding a practice review;

(b) producing any report, statement, memorandum, plan, location certificate, recommendation, documentation or information prepared for purposes of the practice review.

(2) Subsection (1) does not apply to plans, location certificates, documents or records that have been made available to the public.

#### Corporate Permits

Requirements for issuing corporate permit

62 (1) A professional corporation may apply for a corporate permit by submitting a completed application to the Executive Director together with all of the following:

- (a) the corporate permit fee set by the Council;
- (b) all of the following information:
  - (i) the names of all partners, directors and officers of the professional corporation;
  - (ii) satisfactory proof that the professional corporation is registered and in good standing with the applicable registering authority;
  - (iii) any name proposed to be used in the practice of professional land surveying;
  - (iv) the name of each person who will practise professional land surveying for and on behalf of the professional corporation;
- (c) proof of compliance with subsection (2).

(2) The following are the requirements for a professional corporation seeking a corporate permit:

- (a) a person who practises professional land surveying on behalf of the professional corporation must be an active member and must have professional liability insurance coverage as required by these regulations;
- (b) the professional corporation must have 1 or more full-time employees who are active members and who personally supervise, direct and control of the practice of professional land surveying in which the professional corporation engages;
- (c) for a professional corporation that is a body corporate,
  - (i) a majority of the issued voting shares must be beneficially held by and registered on the books of the corporation in the name of an active member of the Association or 1 or more corporate permit holders, and
  - (ii) at least 1 of the directors and 1 of the officers of the corporation must be members of the Association;
- (d) for a professional corporation that is a partnership or association of persons, a majority of the partners or persons must be
  - (i) active members of the Association, or
  - (ii) corporate permit holders;
- (e) any name used by a professional corporation in the practice of professional land surveying must be a fit and proper name.

(3) Despite anything contained in the Act or these regulations, the Executive Director must issue a corporate permit to a partnership, association of persons or body corporate that submits all of the following:

- (a) the applicable fee;
- (b) a completed application form;

(c) proof that one of their principal and customary functions is the application of engineering as defined in the Engineering Profession Act;

(d) a list of the names of employees who are active members of the Association.

(4) Professional land surveying carried out by a partnership, association of persons or body corporate holding a corporate permit under subsection (3) must be done under the supervision of at least 1 full-time employee who is an active member.

#### Register of corporate permits

63 The Executive Director must maintain a register of corporate permits, showing the name and business address of the entity, together with all of the following:

(a) a list of all partners, directors and officers of the professional corporation, except for partnerships, associations of persons or bodies corporate issued a corporate permit under subsection 62(3);

(b) the names of all persons who will practise professional land surveying on behalf of the entity that is issued a corporate permit.

#### Corporate permit term and renewal

64 (1) A corporate permit is valid for the calendar year in which it is issued.

(2) A corporate permit may be renewed on or before the expiry date by submitting a completed corporate permit application to the Executive Director together with all of the following:

(a) the corporate permit fee set by the Council;

(b) for a corporate permit holder that is a professional corporation, information satisfactory to the Executive Director to establish that the professional corporation continues to meet the requirements of subsections 62(1) and (2);

(c) for a partnership, association of persons or body corporate issued a corporate permit under subsection 62(3), information satisfactory to the Executive Director to establish that the entity continues to meet the requirements of clauses 62(3)(c) and (d).

#### Suspension, revocation or refusal to renew corporate permit

65 (1) If the Executive Director determines that a professional corporation that holds a corporate permit fails to meet any of the requirements of these regulations, the Executive Director must notify the holder in writing of the specific requirements that have not been met.

(2) On direction from the Council, the Executive Director must suspend, revoke or refuse to issue or renew the corporate permit of a professional corporation that fails to meet any of the requirements of these regulations.

#### Permit displayed at premises

66 A professional corporation must display its current corporate permit, or a copy of it, in a conspicuous place at its premises at all times.

#### Executive Director notified of changes to corporation

67 (1) Except for an entity issued a corporate permit under subsection 62(3), no later than 15 days after a change, a professional corporation must notify the Executive Director in writing with the specifics of any changes in any of the following:

(a) its partners;

(b) its officers;



(c) its directors;

(d) persons who practise professional land surveying for or on behalf of the professional corporation.

(2) An entity issued a corporate permit under subsection 62(3) must submit annually to the Executive Director the names of employees who are active members and under whose supervision professional land surveying is carried out and must keep the list up to date on a quarterly basis.

Notice to and from corporate permit holder

68 (1) A notice required to be given to a professional corporation under the Act or these regulations may be sent by registered mail to the address recorded on the Register of Corporate Permits and is deemed to be received on the 3rd day after the date the notice is sent.

(2) Notice of any act or thing that is required to be given by a professional corporation under the Act or these regulations must be in writing and sent by registered mail and is deemed to be received on the 3rd day after the date the notice is sent.

Appeal of decision to refuse, suspend, revoke or refuse to renew corporate permit

69 (1) The Council must give written reasons to a professional corporation that has been refused a corporate permit, or the renewal of a corporate permit, or has had its permit suspended or revoked under Section 65.

(2) A professional corporation may, by written notice, appeal the refusal, suspension or revocation of a corporate permit to the Registration Appeal Committee, no later than 30 days after the date it receives the written notice under subsection (1).

(3) Sections 21 and 22 apply with the necessary changes in detail to an appeal under subsection (1).

Ordinary High Water Mark

Ordinary high water mark as water boundary

70 (1) In this Section, "ordinary high water mark" means

(a) for non-tidal waters, the limit or edge of the bed of a body of water where the land has been covered by water so long as to wrest it from vegetation or as to mark a distinct character upon the vegetation where it extends into the water or upon the soil itself; and

(b) for tidal waters, the mark on the seashore reached by the average of the mean high tides of the sea between the spring and neap tides in each quarter of a lunar revolution during the year excluding only extraordinary catastrophes or overflows.

(2) Unless there are existing rights to the contrary, the ordinary high water mark must be used as the feature defining water boundaries.