

# Land Surveyors Act

## CHAPTER 249

### OF THE

#### REVISED STATUTES, 1989

amended 2008, c. 20

-----  
NOTE - This electronic version of this statute is provided by the Office of the Legislative Counsel for your convenience and personal use only and may not be copied for the purpose of resale in this or any other form. Formatting of this electronic version may differ from the official, printed version. Where accuracy is critical, please consult official sources.  
-----

An Act Respecting  
Nova Scotia Land Surveyors

Short title

1 This Act may be cited as the Land Surveyors Act. R.S., c. 249, s. 1.

#### INTERPRETATION

Interpretation

2 (1) In this Act,

- (a) "annual register" means the register of names of members who have paid their annual fees for the current year;
- (b) "articles" means an agreement respecting training and service between a member of the Association and a student;
- (c) "Association" means the Association of Nova Scotia Land Surveyors constituted by this Act;
- (d) "Board" means the Board of Examiners of the Association;
- (e) "by-law" means a by-law of the Association;
- (f) "corporation" means a body corporate;
- (g) "Council" means the Council of the Association;
- (h) "life member" means a life member appointed pursuant to the by-laws;
- (i) "member" means a member of the Association who has fully paid up the fees and includes a life member and may be referred to in this Act as a Nova Scotia Land Surveyor or by the designation N.S.L.S.;
- (j) "professional land surveying" means the advising on, the reporting on, the supervising of and the conducting of surveys to determine the horizontal and vertical position of any point and the direction

and length of any line required to control, establish, locate, define or describe the extent or limitations of title;

(k) "regulation" means a regulation of the Association;

(l) "roll" means the permanent register, files or documentation in which the names of the members of the Association are entered upon being admitted to the Association by the Board and in which all historical facts and records are kept with respect to the members;

(m) "Secretary" means the Secretary of the Association;

(n) "student member" means an articulated student in professional land surveying.

(2) Where in any enactment, deed, lease, or other document there is reference to a Provincial Land Surveyor, the reference shall be and shall be construed to be a reference to a Nova Scotia Land Surveyor. R.S., c. 249, s. 2.

Association of Nova Scotia Land Surveyors

3 (1) The Association of Nova Scotia Land Surveyors, incorporated by Chapter 243 of the Revised Statutes, 1967, is hereby continued as a body corporate, with the powers herein expressed.

(2) The Association consists of those persons who, on the nineteenth day of May, 1977, were members, student members or holders of a certificate of authorization, together with such persons as after that date pursuant to this Act become members, student members or holders of a certificate of authorization and, subject to this Act and the regulations and the by-laws, every Nova Scotia Land Surveyor is entitled to become a member of the Association.

(3) Notwithstanding subsection (2), any person who holds a certificate of qualification to practise professional land surveying in the Province on the nineteenth day of May, 1977, and who is not a member of the Association

(a) shall, upon application, be granted membership without further qualification within a period of six months but not thereafter; and

(b) may continue to practise as a Nova Scotia Land Surveyor for no more than six months unless granted membership pursuant to clause (a).

(4) The objects of the Association are to

(a) establish and maintain standards of

(i) professional ethics among its members, student members and holders of a certificate of authorization, in order that the public interest may be served and protected, and

(ii) knowledge and skill among its members, student members and holders of a certificate of authorization;

(b) regulate the practice of professional land surveying and govern the profession in accordance with this Act, the regulations and the by-laws; and

(c) communicate and co-operate with other professional organizations for the advancement of the best interests of the surveying profession.

(5) The Association may purchase, acquire or take by gift, devise or bequest for the purposes of the Association and the furtherance of its objectives, but for no other purposes or objects, any real or personal property, and may sell, mortgage, lease or otherwise dispose of such property. R.S., c. 249, s. 3.

## COUNCIL

### Council of Association

4 (1) There shall be a Council of the Association consisting of

(a) the Minister of Lands and Forests or his appointee;

(b) the President, Vice-president, the Immediate Past President, one member each from Zones 1, 2, 3 and 4, two members from Zone 5, and four members from Zone 6, of whom seven shall constitute a quorum.

(2) For the purposes of election of councillors, the Province shall be divided into six zones:

(a) Zone 1, consisting of the Counties of Yarmouth, Shelburne, Queens and Lunenburg;

(b) Zone 2, consisting of the Counties of Digby, Annapolis, Kings and the Municipal District of West Hants;

(c) Zone 3, consisting of the Counties of Cumberland, Colchester and the Municipal District of East Hants;

(d) Zone 4, consisting of the Counties of Pictou, Antigonish and Guysborough;

(e) Zone 5, consisting of the Island of Cape Breton; and

(f) Zone 6, consisting of the County of Halifax.

(3) No person shall be elected councillor for a zone unless the person is ordinarily resident or maintains that person's normal place of employment therein and is a member.

(4) No person shall be elected as a member of Council unless he is ordinarily resident in the Province and is a member.

(5) No person shall vote in an election of a member of the Council unless that person is a member.

(6) The President and Vice-president shall be elected annually by secret ballot by all members listed on the roll and councillors from all zones shall be elected by secret ballot by members listed on the roll, ordinarily resident in the respective zones and in accordance with the provisions of the by-laws. R.S., c. 249, s. 4; 2008, c. 20, s. 1.

### Secretary

5 (1) The Council shall appoint a Secretary who is not a member of Council.

(2) The Secretary may also be appointed as the Treasurer.

(3) The Secretary shall keep a roll open for inspection in the office of the Secretary in which shall be entered the name of every person entitled to be registered as a member, together with the names of the members in alphabetical order and shall assign to each member a registration number and shall enter opposite the names of all registered members who have died, resigned, been disqualified, suspended or dismissed, a statement of that fact and, from time to time, make the necessary alterations in the addresses of the persons registered and shall keep the roll in accordance with the by-laws.

(4) The Secretary shall keep open for inspection in the office of the Secretary an annual register in a form prescribed by the by-laws.

(5) A statement in writing as to the membership or non-membership of any person in the Association purporting to be certified by the Secretary is, without proof of office or signature of the Secretary, admissible in evidence in any proceedings in any court and is prima facie proof of the facts stated therein. R.S., c. 249, s. 5.

#### Treasurer

6 (1) The Council shall appoint a Treasurer.

(2) In addition to his prescribed duties, the Treasurer shall enter in the books to be kept for that purpose a true account of all moneys received and paid by him as Treasurer. R.S., c. 249, s. 6.

#### Additional personnel

7 The Council may appoint such other persons as it considers appropriate to assist in conducting the affairs of the Association. R.S., c. 249, s. 7.

#### Regulations

8 (1) Subject to subsection (2), the Council may make regulations

(a) respecting the government and discipline of any person entitled to practise as a Nova Scotia Land Surveyor including any person who is a member, student member or a holder of a certificate of authorization;

(b) respecting the examination of applicants for admission as students, fixing the terms of articles and providing for the reduction of such terms by reason of educational standing or experience and respecting the examination of students and applicants for membership in the Association and prescribing examination fees;

(c) respecting the practice and procedure for hearings held under this Act;

(d) defining "professional misconduct" for the purposes of this Act and the regulations;

(e) requiring the bonding of members of the Association or any class thereof, prescribing the collateral security for and terms, conditions and forms of bonds, and providing for their forfeiture and the disposition of the proceeds;

(f) prescribing standards for

(i) professional land surveying,

(ii) preciseness of survey equipment,

(iii) monumentation of boundaries,

(iv) preparation of plans and descriptions;

(g) respecting the content and applicability of a code of ethics;

(h) such other matters as may be required to carry out the intent and purpose of this Act.

(2) No regulation is effective until

(a) it has been approved by a majority of the members of the Association present and voting at an annual meeting, or at a general meeting of the Association called for that purpose, or until it has been submitted to the members of the Association for approval by means of a mailed secret ballot returnable within thirty days after the mailing thereof and approved by a majority of those voting within the prescribed time; and

(b) it has been approved by the Governor in Council.

(3) A regulation made pursuant to this Section shall be a regulation within the meaning of the Regulations Act. R.S., c. 249, s. 8.

#### By-laws

9 (1) Subject to subsection (2), the Council may pass by-laws relating to administration and domestic affairs of the Association, and, without limiting the generality of the foregoing, may pass by-laws

(a) governing the nomination, election and taking of office of members of Council and providing procedures for determining disputes in connection therewith;

(b) fixing remuneration and reimbursement of expenses of members of the Council, members of the Board of Examiners, and members of standing and special committees set up by Council;

(c) providing for the appointment of committees by Council and defining their composition and functions;

(d) providing for the calling of meetings of the Association, Council and committees thereof and the Board, fixing quorums, and governing the procedure for such meetings;

(e) respecting the management of the property of the Association;

(f) providing for the borrowing of money on the credit of the Association and charging, mortgaging, hypothecating or pledging of any of the real or personal property of the Association to secure any money borrowed or other debt or any other obligation or liability of the Association;

(g) respecting the use of the funds of the Association, and the investment and reinvestment of any of its funds not immediately required in investments that may from time to time be authorized for trustee securities in the Province or guaranteed investment securities;

(h) providing for the establishment of scholarships, bursaries and prizes;

(i) respecting the keeping of records by the Association, the Council and the Board;

(j) providing for services to encourage and assist members, student members and holders of a certificate of authorization in the development of their professional competence and conduct in carrying on the practice of professional land surveying;

(k) providing for the fixing, levying and collecting of annual and other fees and assessments;

(l) providing for the appointment and privileges of non-practising, honorary, retired, associate and student members of the Association who shall be deemed not to be members of the Association for the purposes of this Act;

(m) providing for the privileges of persons enrolled in a course in land surveying which is recognized by the Association;

- (n) providing for the appointment and privileges of life members of the Association who shall be deemed to be members of the Association for the purpose of this Act;
- (o) prescribing the duties of the Secretary, the Treasurer and any other official;
- (p) prescribing the design of seals of members of the Association and providing for their use;
- (q) prescribing oaths, providing for their use and designating a depository for them;
- (r) designating a place in the Province as the head office of the Association;
- (s) prescribing forms and providing for their use;
- (t) respecting all other things that are considered necessary or convenient for the attainment of the objects of the Association and the efficient conduct of its business.

(2) No by-law is effective until it has been approved by a majority of the members of the Association present and voting at the next annual meeting, or at a special meeting of the Association called for the purpose, or until it has been submitted to the members of the Association for approval by means of a mailed secret ballot returnable within thirty days after the mailing thereof and approved by a majority of those voting within the prescribed time.

(3) The by-laws shall be interpreted as though they form part of this Act. R.S., c. 249, s. 9.

## BOARD

### Board of examiners

10 (1) There shall be a Board for the examination of students and applicants wishing to qualify as Nova Scotia Land Surveyors, the issuing of certificates of qualification, and the admission as members of the Association, consisting of

- (a) the Minister of Lands and Forests, or his appointee who shall be a member of the Association;
- (b) four members of the Association appointed annually by Council;
- (c) one person appointed annually by the Council of the Association of Professional Engineers of Nova Scotia who is a member in good standing of that Association;
- (d) one person appointed annually by the Council of the Nova Scotia Barristers' Society who is a member in good standing of that Society.

(2) The Board shall elect from its own members a Chairman who shall be one of the four members appointed under clause (b) of subsection (1).

(3) The Secretary of the Association shall be the secretary of the Board.

(4) Where a member of the Board for any reason becomes unable to complete his term, the authority that appointed him may appoint another person under subsection (1) to complete the unexpired portion of the term.

(5) Where the Chairman of the Board is unable to attend a meeting of the Board, he shall designate a member of the Board appointed under clause (b) of subsection (1) to act as a chairman for the Board at such meeting.

(6) The Board, with the approval of the Council, may appoint one or more competent persons to assist the Board in any of the subjects of examination.

(7) Each member of the Board and any person appointed under subsection (6) shall take and subscribe to the prescribed oath before a person authorized by law to administer oaths.

(8) The Board shall hold at least two meetings in each year and shall report to Council after each meeting of the Board. R.S., c. 249, s. 10.

## MEMBERS

### Admission of members

11 (1) The Board shall, upon application, admit as a member of the Association any natural person who furnishes satisfactory proof that the person

(a) is of the age of majority;

(b) has paid the prescribed fees;

(c) is of good moral character;

(d) has successfully passed such examinations and served such articles as determined by the regulations;

(e) has complied with all the provisions of the Act and regulations; and

(f) has taken the prescribed oath as set out in the by-laws of the Association.

(2) Every natural person who, in the opinion of the Board, expressed by resolution, has complied with subsection (1), shall be registered on the roll as a member and the Board shall so direct the Secretary.

(3) Admission to membership shall be effected by resolution of the Board and entry of the person's name on the roll.

(4) The Secretary shall issue a certificate of membership in a form prescribed by the by-laws to each member upon that person becoming a member and the member shall keep it prominently displayed in the member's place of business.

(5) The members of the Association are those persons whose names are on the roll of the Association.

(6) The Chairman of the Board, or any other member of the Board who is designated by the Board for that purpose, may administer the oath referred to in clause (f) of subsection (1). R.S., c. 249, s. 11.

### Entitlement to practise, designation and fees

12 (1) Every member shall be entitled to engage in the practice of professional land surveying.

(2) Every member may use the designation "Nova Scotia Land Surveyor" or its abbreviation, "N.S.L.S."

(3) Any fee, assessment or levy payable under the by-laws shall be deemed to be a debt due to the Association and is recoverable with costs in the name of the Association in any court of competent jurisdiction.

(4) Where any fee, assessment or levy payable under the by-laws remains unpaid for a period of two months after the date upon which it became due, the Secretary shall send a written notice of such default, by prepaid mail, to the defaulting member at the address shown last on the roll and, if payment

is not made within one month thereafter, the Council may direct the Secretary to remove the member's name from the roll and, thereupon, that member ceases to be a member, but the Council shall, upon application, re-admit the person if the person seeking readmission

(a) pays the amount of fees, assessments and levies that would have been owed had the person's name not been removed from the roll, or such part thereof, as the Council considers just;

(b) passes such examinations as the Board may direct; and

(c) fulfills such other conditions as may be prescribed by the Board or by the Council. R.S., c. 249, s. 12; 2008, c. 20, s. 2.

#### Resignation and termination of membership

13 (1) A member may resign and a member of the Board shall, upon application, re-admit him if the former member

(a) pays the annual membership fee for that year;

(b) passes such examinations as the Board may direct; and

(c) fulfills such other conditions as the Board may prescribe.

(2) A member shall not resign from membership while an inquiry or proceeding is pending pursuant to this Act about any act or conduct of that member.

(3) A termination of membership pursuant to Section 12, a resignation or a notice of resignation does not affect the exercise of a power vested in the Association, any committee of the Association, the Board or a court by this Act, in respect of that person or a matter or thing existing or done while he was a member.

(4) A termination of membership pursuant to Section 12, a resignation or a notice by the member does not relieve the member from any punishment, penalty, liability or proceeding to which the member would otherwise be liable or subject, and for the purposes of all such actions and proceedings, such person is deemed to be a member. R.S., c. 249, s. 13.

#### EXAMINATION OF WITNESSES

##### Refusal to inform surveyor

14 (1) When a Nova Scotia Land Surveyor has reason to believe that any person is possessed of any information touching a corner, boundary or limit, or of any writing, plan or document tending to establish the true position of a corner, boundary or limit and will not willingly produce to him such writing, plan or document, the surveyor may apply to a judge of the Supreme Court of Nova Scotia for an order directing that person to appear before such judge at a time and place mentioned in the order, not earlier than seven days after service of the order, and to bring with him any writing, plan or document mentioned or referred to therein, and to show the same, and to be orally examined on oath or affirmation before such judge regarding such corner, boundary or limit, or any writing, plan or document in his possession.

(2) An order issued under subsection (1) may be served on the person named therein by delivering a copy thereof to him or by leaving a copy for him with some adult person at his residence together with the ordinary witness fees as prescribed by the Costs and Fees Act.

(3) The evidence on the examination before the judge shall be transcribed as directed by the judge and when certified by the person taking the same as correct shall be deemed to be the original deposition. R.S., c. 249, s. 14; 1992, c. 16, s. 5.

## ENTRY ON LAND

### Right of entry on land and liability

15 Every Nova Scotia Land Surveyor and his assistants, when engaged in professional land surveying, may enter upon and pass over any land, doing as little damage as possible and, save as hereinafter provided, no action shall lie against such Nova Scotia Land Surveyor or his assistants for any act done under this Section, provided that such Nova Scotia Land Surveyor shall be liable for any unnecessary damage done by him or by his assistants under this Section. R.S., c. 249, s. 15.

### Obstruction of surveyor

16 Every person who molests, hinders or obstructs any Nova Scotia Land Surveyor or his assistants while engaged in the carrying on of his profession shall be guilty of an offence under this Act. R.S., c. 249, s. 16.

### Penalty

17 A person who violates any provision of this Act for which a penalty is not otherwise provided is liable on summary conviction to a penalty of not more than two thousand dollars and in default of payment to imprisonment for not more than thirty days. R.S., c. 249, s. 17.

## CORPORATIONS

### Authorization to practise required

18 (1) No partnership, association of persons or corporation shall practise professional land surveying, except as authorized by this Section.

(2) No partnership, association of persons or corporation shall practise professional land surveying unless the partnership, association of persons or corporation holds a certificate of authorization.

(3) A corporation shall not be issued a certificate of authorization unless the Secretary is satisfied that

(a) its customary function is to engage in the practice of professional land surveying;

(b) a majority of the issued voting shares are beneficially held by and registered on the books of the corporation in the name of a member of the Association or a holder or holders of a valid certificate of authorization issued pursuant to this Section;

(c) where the corporation has more than one director and more than one officer, at least one of the directors and one of the officers of the corporation are members of the Association and, where the corporation has only one director and one officer, such director and officer is a member of the Association; and

(d) the professional land surveying carried out by the corporation is conducted under the responsible supervision of a full-time permanent employee who is a member of the Association and who is either an employee of the corporation or of any of its shareholders which holds a valid certificate of authorization.

(4) A partnership or association of persons shall not be issued a certificate of authorization unless the Secretary is satisfied that

(a) its customary function is to engage in the practice of professional land surveying;

(b) the majority of the partners in the case of a partnership or the majority of the persons in the case of an association of persons are practising members of the Association or holders of a valid certificate of authorization issued pursuant to this Section; and

(c) the professional land surveying carried out is conducted under the responsible supervision of a partner of the partnership or a person in the association of persons who is a practising member of the Association.

(5) A partnership, association of persons or corporation that desires a certificate of authorization shall submit to the Secretary an application in the prescribed form containing and including

(a) the names of all its partners, members, officers, directors or shareholders, as the case may be;

(b) the names of all its partners, members, officers, directors, shareholders and full-time permanent employees who are members of the Association and under whose supervision such professional land surveying will be carried out;

(c) from among the names specified under clause (b), the name of any person whose duty it is to ensure that this Act, the regulations and by-laws are complied with by the partnership, association of persons or corporation;

(d) evidence satisfactory to the Secretary that the partnership, association of persons or corporation has complied with the requirements of subsection (3) and (4); and

(e) a fee as prescribed from time to time in the by-laws.

(6) A partnership, association of persons or corporation that has submitted an application in the prescribed form for a certificate of authorization shall, whether or not the certificate of authorization has been issued, whenever there is a change in the particulars given in its application, give notice of the change to the Secretary within thirty days after the effective date of the change.

(7) When subsections (3), (4) and (5) have been complied with the Secretary shall, within thirty days of compliance, issue to the applicant a certificate of authorization.

(8) A partnership, association of persons or corporation holding a certificate of authorization issued before or after the twenty-sixth day of May, 1986, shall submit to the Secretary, at the end of every fiscal year of the Association as determined by the Association, an application for renewal in the prescribed form in accordance with the same requirements contained in subsection (5).

(9) Where a partnership, association of persons or corporation has been issued a certificate of authorization before the twenty-sixth day of May, 1986, such partnership, association of persons or corporation shall make an application pursuant to subsection (8) within ninety days from the twenty-sixth day of May, 1986, or on or before the fiscal year end set by the Association, whichever event last occurs.

(10) A certificate of authorization held by a partnership, association of persons or corporation which failed to renew its certificate of authorization pursuant to subsection (8) or subsection (9) shall be null and void, effective as of the limitation period referred to in subsection (8) or subsection (9), whichever the case may be, and any partnership, association of persons or corporation holding a certificate of authorization which has become null and void shall not be entitled to practise professional land surveying.

(11) Where a partnership, association of persons or corporation holds a certificate of authorization and ceases to have any official representative, the certificate of authorization is ipso facto revoked and the partnership, association of persons or corporation shall not practise professional land surveying until a new certificate of authorization is issued.

(12) Nothing contained in this Section shall prohibit any partnership, association of persons or corporation from having Nova Scotia Land Surveyors in its employ provided

(a) the services of the Nova Scotia Land Surveyors are not made available to the public; and

(b) land surveying is incidental to the principal business or objects of the partnership, association of persons or corporation.

(13) Where the Discipline Committee finds that the holder of a certificate of authorization has failed to observe any of the provisions of this Section or has been guilty of conduct that would, in the case of a member of the Association, have been professional misconduct, the Discipline Committee may reprimand the holder or suspend or revoke the certificate of authorization.

(14) Sections 23, 26, 27 and 28 shall apply mutatis mutandis to the refusal to issue a certificate of authorization, to the suspension or revocation of a certificate of authorization and to any reprimand given to a holder of a certificate of authorization. R.S., c. 249, s. 18.

#### Certificate of engineering a principal function

19 (1) Notwithstanding anything contained in this Act, the Secretary shall issue a certificate of authorization to a corporation or partnership on application by it if he is satisfied that one of its principal and customary functions is the application of engineering as defined in the Engineering Profession Act.

(2) Professional land surveying carried out by a corporation or partnership holding a certificate under subsection (1) must be done under the supervision of a full-time employee or employees of the corporation or partnership who is or are a member or members of the Association.

(3) A corporation or partnership holding a certificate under subsection (1) shall submit annually to the Secretary the names of employees who are members of the Association and under whose supervision such professional land surveying will be carried out and shall keep such list up to date on a quarterly basis.

(4) When an application is made under subsection (1) and the conditions set forth therein are complied with, the Secretary shall, within thirty days of receipt of the application, issue to the applicant a certificate of authorization.

(5) Section 18 does not apply to a corporation or partnership holding a certificate of authorization pursuant to this Section.

(6) Notwithstanding anything contained in this Act, a corporation or partnership holding a certificate of authorization pursuant to this Section shall not be subject to the complaints or disciplinary provisions and procedures of this Act. R.S., c. 249, s. 19.

#### Application of Act to engineer

20 Subject to Section 19, this Act shall not apply to a professional engineer or partnership, association of persons or body corporate entitled under the Engineering Profession Act to practise or undertake the application of engineering or a person employed by and acting under the supervision and direction of such professional engineer or such partnership, association or body corporate while practising or applying engineering within the meaning of the said Engineering Profession Act. R.S., c. 249, s. 20.

#### Liability of corporation

21 (1) A corporation shall be liable for any of its acts or omissions to the same extent as any other corporation.

(2) A Nova Scotia Land Surveyor shall, notwithstanding that he is a shareholder in a corporation, be personally liable for his acts or omissions in carrying on the business of the corporation as if the corporation were a partnership or sole proprietorship and the shareholders of the corporation were

partners or proprietors therein, and the other shareholders shall be jointly and severally liable. R.S., c. 249, s. 21.

## OFFENCES

### Offences and penalty

22 (1) Every person, other than a member of the Association, who

(a) uses the title "Nova Scotia Land Surveyor" or uses any addition to or abbreviation of such title, or uses any words, name or designation that will lead to the belief that he is a member of the Association;

(b) advertises, holds himself out, or conducts himself in any way or by any means as a member of the Association; or

(c) engages in the practice of professional land surveying,

is guilty of an offence.

(2) Every person who

(a) wilfully procures or attempts to procure admission to the Association for himself or for another person by making, producing or causing to be made or produced any fraudulent representation or declaration either oral or written;

(b) wilfully procures or attempts to procure a certificate of authorization for a partnership, association of persons or corporation by making, producing or causing to be made or produced any fraudulent representation or declaration either oral or written; or

(c) knowingly makes any false statement in any application, declaration or other document under this Act or the regulations,

is guilty of an offence.

(3) Subject to subsection (9) of Section 18, where a partnership, association of persons or corporation that has no subsisting certificate of authorization

(a) practises professional land surveying;

(b) uses any name, title, description or designation that will lead to the belief that it is entitled to practise professional land surveying; or

(c) advertises, holds itself out or conducts itself in any way or in such manner as to lead to the belief that it is entitled to practise professional land surveying,

every member of the partnership, every member of the association of persons, or the corporation and every director thereof is guilty of an offence.

(4) Where a corporation that has a subsisting certificate of authorization practises professional land surveying in contravention of this Act, the corporation and every director thereof is guilty of an offence.

(5) Every person, member of a partnership, member of an association of persons, and every corporation and director thereof who is guilty of an offence under this Section is, on summary conviction, liable to a fine of not more than one thousand dollars or to imprisonment for a term of not more than six months, or both.

(6) No proceedings shall be commenced for a contravention of any of the provisions of this Section after two years from the date of the commission [commission] of such contravention.

(7) No person shall, without the prior written consent of the member who prepared the same, alter or make additions to or deletions from or make an obliteration on a member's plan or on a copy or reproduction thereof, and any person who contravenes this subsection is guilty of an offence pursuant to this Act. R.S., c. 249, s. 22.

No action for damages

23 No action or other proceeding for damages shall be instituted against the Council or the Board or any member or official of the Council or the Board or any person appointed by the Council or the Board for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, or any regulation or by-law, or for any neglect or default in the performance or exercise in good faith of any such duty or power. R.S., c. 249, s. 23.

Complaints

24 (1) There shall be a Complaints Committee appointed by Council, whose composition and function shall be provided for by Council in the by-laws.

(2) The conduct of any member, holder of a certificate of authorization or student member, may be investigated by the Complaints Committee upon the receipt by the Secretary from any complainant of a written statement alleging, on the part of the person being complained of, conduct which may constitute professional misconduct or misrepresentation.

(3) Upon the Secretary receiving a complaint as described in subsection (2), the Complaints Committee shall

(a) investigate the complaint; and

(b) where it is satisfied that the evidence disclosed by the investigation, which might reasonably be believed, could not support a finding of professional misconduct or misrepresentation, order the dismissal of such complaint and accordingly notify the complainant and the person whose conduct is being investigated; or

(c) where it is satisfied that there is some evidence disclosed by the investigation, which might reasonably be believed, which could support a finding of professional misconduct or misrepresentation, advise the complainant that the complainant may either

(i) request the Association to appoint a person to swear a complaint under oath of and on behalf of the Association and in the name of the Association in which case the Association shall have the responsibility of carrying the expenses and costs of proceeding with the complaint, or

(ii) swear a complaint under oath in which case the complainant and not the Association shall have the responsibility of carrying the expenses and costs of proceeding with the complaint.

(4) Where a complainant has been advised by the Complaints Committee of the provisions available to the complainant pursuant to clause (c) of subsection (3), the complainant may elect to proceed with the complaint either pursuant to subclause (i) or subclause (ii) of clause (c) of subsection (3).

(5) Where a complainant elects to proceed with the complaint pursuant to subclause (i) of clause (c) of subsection (3) and so notifies the Complaints Committee, the Chairman of the Complaints Committee

shall notify the Secretary and the Association shall have the responsibility of carrying its own costs and expenses of proceeding with the complaint.

(6) Where a complainant elects to proceed with a complaint pursuant to subclause (ii) of clause (c) of subsection (3), the complainant may swear a complaint under oath and file the complaint with the Secretary and the complainant shall have the responsibility for the complainant's costs and expenses of proceeding with the complaint.

(7) Upon the Secretary being notified by the Chairman of the Complaints Committee of a request made by a complainant pursuant to subsection (5), the Secretary shall notify Council and Council shall appoint a person to swear a complaint under oath of and on behalf of the Association and to file such complaint with the Secretary.

(8) Upon a complaint under oath being filed with the Secretary, whether or not sworn by a person appointed by the Association, the Secretary shall deliver the complaint to the Discipline Committee to be heard on the questions of professional misconduct or misrepresentation and discipline.

(9) No complaint with respect to professional misconduct or misrepresentation shall be referred to the Discipline Committee unless the complaint has been investigated by the Complaints Committee, pursuant to subsection (3).

(10) For the purposes of this Act, "complainant" shall include a person, member, a holder of a certificate of authorization and the Association through a member duly authorized by Council to swear and file a complaint of and on behalf of the Association and in the name of the Association.

(11) For the purposes of this Act, the "person whose conduct is being investigated" shall include a member, student member and holder of a certificate of authorization.

(12) The objects of the Complaints Committee and the Discipline Committee are the protection of the public and the preservation of the reputation of the surveying profession.

(13) Unless desirable for the attainment of the objects enumerated in subsection (12), the Complaints Committee and the Discipline Committee shall not permit their procedures to be used

(a) by a client of the person whose conduct is being investigated for the purpose of harassing such person into providing a relief which is beyond that he was retained to furnish and which is ordinarily only available in a judgment, including a successful misconduct suit against the person whose conduct is being investigated;

(b) by a party adverse in interest to a client of the person whose conduct is being investigated for the purpose of harassing such client;

(c) as a form of discovery for civil litigation; or

(d) for any other purpose extraneous to the objects stated in subsection (12). R.S., c. 249, s. 24.

## DISCIPLINE

### Discipline Committee

25 There shall be a Discipline Committee appointed by the Council, and the composition and function of the Discipline Committee shall be provided for by the Council in the by-laws. R.S., c. 249, s. 25.

### Discipline hearings

26 (1) Subject to subsection (2), where the Discipline Committee finds a person who is a member, student member or holder of a certificate of authorization guilty of professional misconduct or finds that a person has obtained admission as a member, student member or holder of a certificate of

authorization by reason of misrepresentation, the Discipline Committee may, by order, do one or more of the following:

- (a) reprimand such person and direct the reprimand to be recorded on the roll;
- (b) suspend the membership of such person for such time as the Discipline Committee considers proper and direct that the reinstatement of such membership on the termination of the suspension be subject to conditions;
- (c) direct the imposition of any penalty be suspended or postponed for such period and upon such terms as the Discipline Committee considers proper and that at the end of such period and upon the compliance with such terms the penalty be remitted;
- (d) direct the membership of such person be cancelled and that the name of such person be removed from the roll;
- (e) direct the decision or order of the Discipline Committee be published in detail or in summary in such manner or medium as the Discipline Committee considers appropriate;
- (f) direct that, where it appears that the proceedings were unwarranted, such costs as to the Council seem just be paid by the Association to the member whose conduct was the subject of such proceedings;
- (g) direct such person to pay the costs of the Council in relation to the matter, in whole or in part, up to a maximum of fifteen thousand dollars, at such time and on such terms as the Discipline Committee directs;
- (h) direct such person to pay a fine not exceeding five thousand dollars.

(1A) In this Section, "costs of the Council" include

- (a) expenses incurred by the Council, the Board, the Complaints Committee and the Discipline Committee; and
- (b) legal costs, including disbursements and the goods and services tax.

(1B) No person shall practise professional land surveying while any costs directed to be paid pursuant to subsection (1) are due and outstanding.

(2) The Discipline Committee shall not take any action under subsection (1) unless

- (a) a complaint under oath has been filed with the Secretary and a copy thereof has been served on the person whose conduct is being investigated;
- (b) the person whose conduct is being investigated has been served with a notice of the time and place of the hearing; and
- (c) the Discipline Committee has heard evidence of or on behalf of the complainant and, if the person whose conduct is being investigated appears at the hearing and wishes to adduce evidence or to have evidence adduced on his behalf until such evidence is heard, and the Discipline Committee has reached the decision that he is guilty,

provided that, if the person whose conduct is being investigated fails to appear in answer to the notice at the time and place appointed, the hearing may be conducted in his absence.

(3) Any person presiding at a hearing may administer oaths to witnesses and require them to give evidence under oath.

(4) Hearings shall be held in camera, but if the person whose conduct is being investigated requests otherwise by a notice in writing delivered to the Secretary before the day fixed for the hearing, the Discipline Committee may conduct the hearing in public or otherwise as it thinks proper.

(5) The Discipline Committee may adjourn any hearing at any time and from time to time.

(6) A person whose conduct is being investigated has the right to be represented by counsel or agent, to adduce evidence and to make submissions and any such person may be compelled to attend and give evidence in the manner provided in subsection (9).

(7) The oral evidence submitted at a hearing shall be taken down in writing or by any other method authorized by the Evidence Act.

(8) The rules of evidence applicable in civil proceedings are applicable at hearings, but at a hearing members of the Discipline Committee may take notice of generally recognized technical and scientific facts or opinions within the specialized knowledge of the members of the Discipline Committee if the person whose conduct is being investigated has been informed before or during the hearing of any such matters noticed and he has been given an opportunity to contest the matter so noticed.

(9) The Chairman of the Discipline Committee or the Secretary may issue a summons in the prescribed form commanding the attendance and examination of any person as a witness, and the production of any document the production of which could be compelled at the trial of an action, to appear before the Discipline Committee at the time and place mentioned in the summons and stating that failure to obey the summons will render the person liable to imprisonment on an application to the Trial Division of the Supreme Court, but the person whose attendance is required is entitled to be paid for travel and attendance the amount prescribed for witnesses in the Supreme Court.

(10) If any person

(a) on being duly summoned to appear as a witness, makes default in attending;

(b) being in attendance as a witness, refuses to take an oath or affirmation legally required to be taken or to produce any document in his power or control legally required to be produced by him or to answer any question which he is legally required to answer; or

(c) does any other thing which would, if the Discipline Committee had been a court of law having the power to commit for contempt, have been contempt of court,

the person presiding at the hearing may certify the offence of that person under his hand to the Trial Division of the Supreme Court and the Court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statements that may be offered in defence, punish or take steps for the punishment of that person in the like manner as if he had been guilty of contempt of court.

(11) At a hearing the complainant and the person whose conduct is being investigated have the right to examine the witnesses called by them, respectively, and to cross-examine the witnesses opposed in interest.

(12) The decision taken after a hearing shall be in writing and shall contain or be accompanied by the reasons for the decision in which are set out the findings of fact and the conclusions of law, if any, based thereon, and a copy of the decision and the reasons therefor shall be served upon the person whose conduct is complained of and the complainant, together with a notice to the person whose

conduct is being investigated of his right of appeal, within thirty days from the day upon which the decision is served upon the person whose conduct is complained of.

(13) An order made after a hearing pursuant to subsection (2) shall be in writing and a copy of the order shall be served upon the person whose conduct is being investigated, together with a notice to the person whose conduct is being investigated of the right of appeal within thirty days from the day upon which the order is served.

(14) A record shall be compiled for every hearing consisting of the complaint and the notice referred to in subsection (2), any intermediate rulings or orders made in the course of the proceedings, a transcript of the oral evidence, if a transcript has been prepared, such documentary evidence and things as were received in evidence and the decision and the reasons therefor, and documents and things received in evidence may be released to the persons tendering them when all appeals have been finally disposed of or the right to appeal has been terminated.

(15) Any document required to be served under this Act upon a person whose conduct is being investigated shall be served personally upon him, but where it appears that service cannot be effected personally, the document may be served by mailing a copy thereof in a registered letter addressed to him at his residence or office address as shown by the records of the Association, which document shall be deemed to have been served on the second day after the day of mailing, and service shall be effected not less than ten days before the date of the hearing or event or thing required to be done, as the case may be, and proof by affidavit of the service is sufficient. R.S., c. 249, s. 26 (part); 2008, c. 20, s. 3.

## REINSTATEMENT

Reinstatement after suspension or cancellation of membership

27 (1) Where a member has been suspended from practising under Section 26, he may, at the expiry of the period of suspension and upon payment of all dues owed by him to the Association, apply to the Discipline Committee to be reinstated as a member and the Discipline Committee may terminate the suspension of such member upon such terms as it considers proper.

(2) A person whose membership has been cancelled under Section 26, may apply to the Discipline Committee for reinstatement as a member and the Discipline Committee shall, subject to subsection (3), hear the application and make such order as it considers proper and may include as a term of any such order such conditions as the Discipline Committee considers proper to be fulfilled before the applicant is admitted to membership, or to be observed by such person thereafter.

(3) No application under subsection (2) shall be heard before the expiry of two years from the date of the cancellation of membership or the date of the final disposition of any appeal, whichever is later.

(4) Upon a hearing for reinstatement as a member under subsection (2), the Discipline Committee shall follow, so far as is practicable, the procedure provided for in the case of a complaint under Section 26, and a former member has the same right of appeal from an order made by the Discipline Committee under subsection (2) as is provided in Section 28.

(5) Except in the case of professional misconduct by reason of incompetence on the part of the person whose conduct was investigated, the suspension or cancellation of the membership of a person whose conduct is investigated under Section 26 does not become effective until any appeal has been finally disposed of or the right of appeal has terminated. R.S., c. 249, s. 27.

## APPEAL

Appeal from finding of professional misconduct or discipline order

28 (1) Any person who has been found guilty of professional misconduct by the Discipline Committee pursuant to Section 26 may appeal from the decision to the Appeal Division of the Supreme Court within thirty days from the date on which the decision is served.

(2) Any person who has been disciplined by the Discipline Committee pursuant to Section 26 may appeal from the order to the Appeal Division of the Supreme Court within thirty days from the date on which the order is served.

(3) Upon the request of any person desiring to appeal and upon prior payment of the cost thereof, the Secretary shall furnish such person with a certified copy of all proceedings, evidence, reports, orders and papers received as evidence by the Discipline Committee in dealing with and disposing of the matter complained of.

(4) An appeal under this Section shall be by motion, notice of which shall be served upon the Secretary, and the record shall consist of a copy, certified by the Secretary, of the proceedings before the Discipline Committee, the evidence taken, the report of the Discipline Committee and all decisions, findings and orders of the Discipline Committee in the matter.

(5) Except as otherwise provided, appeals under this Section shall be in accordance with the practice in appeals from a decision or order of a judge of the Trial Division of the Supreme Court.

(6) Upon the hearing of an appeal under this Section, the Appeal Division of the Supreme Court may make such order as the Court considers proper or may refer the matter or any part thereof back to the Discipline Committee with such directions as the Court considers proper.

(7) The Appeal Division of the Supreme Court may make such order as to the costs of the appeal as the Court considers proper. R.S., c. 249, s. 28

---

This page and its contents published by the Office of the Legislative Counsel, Nova Scotia House of Assembly, and © 2009 Crown in right of Nova Scotia. Created August 31, 2009. Send comments to [legc.office@gov.ns.ca](mailto:legc.office@gov.ns.ca).