

Surveyors Act

R.S.O. 1990, CHAPTER S.29

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## Definitions

1. (1) In this Act,

“Association” means the Association of Ontario Land Surveyors; (“Ordre”)

“by-laws” means by-laws made under this Act; (“règlements administratifs”)

“certificate of authorization” means a certificate of authorization issued under this Act; (“certificat d'autorisation”)

“certificate of registration” means a certificate of registration issued under this Act; (“certificat d'inscription”)

“Council” means the Council of the Association; (“Conseil”)

“graphic representation” means a representation produced by an electrical, electronic, photographic or printing method and includes a representation produced on a video display terminal; (“représentation graphique”)

“licence” means a licence issued under this Act to engage in the practice of cadastral surveying; (“permis”)

“licensed”, in relation to a person, means the person is the holder of a licence; (“détenteur d’un permis”)

“Minister” means the Minister of Natural Resources or such other member of the Executive Council as is designated by the Lieutenant Governor in Council; (“ministre”)

“practice of cadastral surveying” means advising on, reporting on, conducting or supervising the conducting of surveys to establish, locate, define or describe lines, boundaries or corners of parcels of land or land covered with water; (“exercice de la profession d’arpenteur cadastral”)

“practice of professional surveying” means the determination or analysis of spatial attributes of natural and artificial features on, above or below the surface of the earth, whether or not the surface of the earth is situated below water, and the storage and representation of such features on a chart, map, plan or graphic representation, and includes the practice of cadastral surveying; (“exercice de la profession d’arpenteur-géomètre”)

“registered”, in relation to a member of the Association, means a member who holds a certificate of registration; (“inscrit”)

“Registrar” means the Registrar of the Association; (“registrateur”)

“regulations” means the regulations made under this Act. (“règlements”) R.S.O. 1990, c. S.29, s. 1; 2009, c. 33, Sched. 22, s. 11 (1-3).

#### Interpretation, engaging in the practice

(2) An individual engages in the practice of cadastral surveying or engages in the practice of professional surveying when he or she performs an act that is within the practice of cadastral surveying or that is within the practice of professional surveying, as the case may be. 2009, c. 33, Sched. 22, s. 11 (4).

#### Same, exceptions

(3) An individual who performs an act that is within the practice of professional surveying is not engaging in the practice of professional surveying for the purposes of this Act if,

(a) the individual is the holder of a licence, temporary licence, provisional licence or limited licence under the Professional Engineers Act and is competent by virtue of training and experience, in accordance with the regulations made under that Act, to carry out acts that would be within the practice of professional surveying but that would not be within the practice of cadastral surveying; or

(b) the individual is licensed as a professional geoscientist under the Professional Geoscientists Act, 2000 and is competent by virtue of training and experience, in accordance with the regulations made under that Act, to carry out acts that would be within the practice of professional surveying but that would not be within the practice of cadastral surveying. 2009, c. 33, Sched. 22, s. 11 (4).

#### Association

2. (1) The Association of Ontario Land Surveyors is continued as a corporation without share capital under the name Association of Ontario Land Surveyors in English and Ordre des arpenteurs-géomètres de l'Ontario in French. R.S.O. 1990, c. S.29, s. 2 (1).

#### Principal object

(2) The principal object of the Association is to regulate the practice of professional surveying and to govern its members and holders of certificates of authorization in accordance with this Act, the regulations and the by-laws in order that the public interest may be served and protected. R.S.O. 1990, c. S.29, s. 2 (2); 2009, c. 33, Sched. 22, s. 11 (5).

#### Additional objects

(3) For the purpose of carrying out its principal object, the Association has the following additional objects:

1. To establish, maintain and develop standards of knowledge and skill among its members.
2. To establish, maintain and develop standards of qualification and practice for the practice of professional surveying.
3. To establish, maintain and develop standards of professional ethics among its members.
4. To promote public awareness of the role of the Association.
5. To perform such other duties and exercise such other powers as are imposed or conferred on the Association by or under any Act. R.S.O. 1990, c. S.29, s. 2 (3); 2009, c. 33, Sched. 22, s. 11 (5).

#### Privacy requirements

(4) The Association may collect, use and disclose personal information for the purpose of carrying out its objects. 2009, c. 33, Sched. 22, s. 11 (6).

#### Council

3. (1) The Council of the Association is continued and shall be the governing body and board of directors of the Association and shall manage and administer its affairs. R.S.O. 1990, c. S.29, s. 3 (1).

#### Composition of Council

- (2) The Council shall be composed of,
- (a) six persons who are members of the Association and who are elected by the members of the Association as provided by the regulations;
  - (b) the president and the vice-president, each of whom shall be elected annually by and from among the members of the Association as provided by the regulations;
  - (c) the immediate past president;

(d) the Surveyor General;

(e) at least two and not more than four persons who are not members of the Association, nor members of the governing body of any other self-regulating professional association or organization under an Act other than this Act and who are appointed by the Lieutenant Governor in Council; and

(f) one person who is not a member of the Association and who is a barrister and solicitor of at least 10 years standing in Ontario and who is appointed by the Lieutenant Governor in Council. R.S.O. 1990, c. S.29, s. 3 (2); 2009, c. 33, Sched. 22, s. 11 (7).

#### Term of appointment continued

(3) A person appointed to the Council by the Lieutenant Governor in Council under clause (2) (e) or (f) continues to hold office after the expiry of the person's term of office until he or she is reappointed or a successor is appointed. 2009, c. 33, Sched. 22, s. 11 (8).

(4) REPEALED: 2009, c. 33, Sched. 22, s. 11 (8).

#### Remuneration of appointed member

(5) A person appointed under clause (2) (e) or (f) shall be paid, out of the money appropriated therefor by the Legislature, such expenses and remuneration as are determined by the Lieutenant Governor in Council. R.S.O. 1990, c. S.29, s. 3 (5).

#### Idem

(6) No person shall be elected or appointed to the Council unless he or she is a Canadian citizen. R.S.O. 1990, c. S.29, s. 3 (6).

#### Qualifications to vote

(7) Every member of the Association who is not in default of payment of the annual fee prescribed by the by-laws is qualified to vote at an election of members of the Council. R.S.O. 1990, c. S.29, s. 3 (7).

#### Registrar and staff

(8) The Council shall appoint during pleasure a Registrar and may appoint one or more deputy registrars who shall have the powers of the Registrar for the purposes of this Act, and may appoint such other persons as are from time to time necessary or desirable in the opinion of the Council to perform the work of the Association. R.S.O. 1990, c. S.29, s. 3 (8).

#### Quorum

(9) A majority of the members of the Council constitutes a quorum. R.S.O. 1990, c. S.29, s. 3 (9).

#### Vacancies

(10) Where one or more vacancies occur in the membership of the Council, the members remaining in office constitute the Council so long as their number is not fewer than a quorum. R.S.O. 1990, c. S.29, s. 3 (10).

#### Filling of vacancy

(11) A vacancy on the Council caused by the death, resignation, removal or incapacity to act of an elected member of the Council shall be filled by a member of the Association,

(a) where a quorum of the Council remains in office, appointed by the majority of the Council, and the member so appointed shall be deemed to be an elected member of the Council; or

(b) where no quorum of the Council remains in office, elected in accordance with the regulations,

and the member so appointed or elected shall hold office for the unexpired portion of the term of office of the member whose office he or she is elected or appointed to fill. R.S.O. 1990, c. S.29, s. 3 (11).

#### Meetings of Council

(12) The Council shall meet at least four times a year. R.S.O. 1990, c. S.29, s. 3 (12).

#### Annual meetings

4. The Association shall hold an annual meeting of the members of the Association not more than fifteen months after the holding of the last preceding annual meeting. R.S.O. 1990, c. S.29, s. 4.

#### Membership

5. (1) Every person licensed by the Association is a member of the Association, subject to any term, condition or limitation to which the licence is subject.

#### Idem

(2) Every person who is the holder of a certificate of registration is a member of the Association subject to any term, condition or limitation to which the certificate of registration is subject.

#### Resignation of membership

(3) A member may resign his or her membership by filing with the Registrar a resignation in writing, and the member's licence or certificate of registration is thereupon cancelled, subject to the continuing jurisdiction of the Association in respect of any disciplinary action arising out of his or her professional conduct while a member. R.S.O. 1990, c. S.29, s. 5.

#### Powers of Minister

6. In addition to his or her other powers and duties under this Act, the Minister may,

(a) review the activities of the Council;



(b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;

(c) advise the Council with respect to the implementation of this Act and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures. R.S.O. 1990, c. S.29, s. 6.

## Regulations

7. (1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

1. defining constituencies and prescribing the number of representatives on the Council of each constituency;

2. respecting and governing the qualifications, nomination, election and term or terms of office of the members to be elected to the Council, and controverted elections;

3. prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;

4. respecting the composition of the committees required by this Act, other than the Complaints Committee and the Discipline Committee, the mechanism of the appointment of members of the committees and procedures ancillary to those specified in this Act in respect of any committee;

5. respecting matters of practice and procedure before committees required under this Act not inconsistent with this Act and the Statutory Powers Procedure Act;

6. prescribing the quorums of the committees required by this Act, except the Complaints Committee and the Discipline Committee;

7. prescribing classes of persons whose interests are related to those of the Association and the privileges of persons in the classes in relation to the Association;

8. respecting any matter ancillary to the provisions of this Act with regard to the issuing, suspension and revocation of licences, certificates of authorization and certificates of registration, and the requirements and qualifications therefor, including but not limited to regulations respecting,

i. the scope, standards and conduct of any examination set or approved by the Council as a licensing requirement or as a requirement for a certificate of registration,

ii. the curricula and standards of professional training programs offered by the Council,

iii. the academic, experience and other requirements for admission into professional training programs,

iv. the academic and experience requirements for the issuance of a licence, and

v. the academic and experience requirements for the issuance of a certificate of registration;

9. prescribing terms and conditions of licences, certificates of authorization or certificates of registration;
10. prescribing forms of applications for licences, certificates of authorization and certificates of registration and requiring their use;
11. REPEALED: 2009, c. 33, Sched. 22, s. 11 (9).
12. requiring the making of returns of information in respect of the holdings of shares and the officers and directors of corporations that apply for or hold certificates of authorization, and prescribing and requiring the use of forms of such returns;
13. requiring and governing the signing and sealing of documents and drawings by members of the Association or by members entered on a specific register of the Association, specifying the forms of seals and respecting the issuance and ownership of seals;
14. requiring the making of returns of information by members of the Association and holders of certificates of authorization in respect of names, addresses, telephone numbers, associates, partners, employees, directors, officers and shareholdings, and, if the corporation engages in the practice of cadastral surveying, the name of the member of the Association who directs the practice of cadastral surveying by the corporation, and in respect of professional liability insurance, and prescribing and requiring the use of forms of such returns;
15. governing the use of names and designations in the practice of professional surveying by members of the Association and holders of certificates of authorization;
16. providing for the maintenance and inspection of registers of persons permitted to engage in the practice of professional surveying;
17. prescribing and governing standards of practice and performance standards for the practice of professional surveying;
18. providing for the setting of schedules of suggested fees for the practice of professional surveying and for the publication of the schedules;
19. respecting the advertising of the practice of professional surveying;
20. prescribing a code of ethics;
21. defining professional misconduct for the purposes of this Act;
22. providing for the designation of members of the Association as specialists, prescribing the qualifications and requirements for designation as a specialist, providing for the suspension or revocation of such a designation and for the regulation and prohibition of the use of the designation by members of the Association;

23. providing for inspection programs related to the practice of professional surveying, including programs for the inspection of records, other than financial records, of members of the Association and holders of certificates of authorization;
24. providing for the compilation of statistical data on the supply, distribution and professional activities of members of the Association and holders of certificates of authorization and on remuneration for the practice of professional surveying and requiring members of the Association and holders of certificates of authorization to provide the information necessary to compile such statistics, but persons engaged in the administration of this Act shall maintain secret the names of persons providing the information as a matter that comes to their knowledge in the course of their duties under this Act;
25. requiring members of the Association or holders of certificates of authorization, or both of them, to obtain and to maintain insurance against liability that may be incurred in the practice of professional surveying, respecting the terms and conditions and prescribing the minimum amounts of such insurance, requiring such members and holders to provide to the Registrar proof of the insurance coverage, and respecting the form of the proof and the times when the proof shall be provided;
26. exempting any class of members or holders of certificates of authorization from the requirement to be insured in respect of professional liability, and classifying members or holders of certificates of authorization for the purpose of such exemption;
27. requiring members of the Association or holders of certificates of authorization, or both, to inform the Registrar in respect of claims or impending claims against them for professional liability;
28. prohibiting or regulating the practice of professional surveying where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
29. providing for a program of professional development of members of the Association and requiring members to participate in the program;
30. respecting the duties and authority of the Registrar;
31. prescribing qualifications and requirements that shall be complied with to obtain the reinstatement of a licence, certificate of registration or a certificate of authorization that was cancelled by the Registrar;
32. classifying and exempting any class of holders of licences, certificates of registration or certificates of authorization from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable;
  - 32.1 prescribing the kind and form of monuments used to identify points in surveys and prescribing how and where they are to be used and how they are to be designated on plans of survey;
33. prescribing any matter referred to in this Act as prescribed by the regulations. R.S.O. 1990, c. S.29, s. 7 (1); 1998, c. 18, Sched. I, s. 60 (1); 2009, c. 33, Sched. 22, s. 11 (9-11).

Regulation may be limited

(1.1) Any regulation authorized by paragraph 32.1 of subsection (1) may be limited territorially or as to time or otherwise. 1998, c. 18, Sched. I, s. 60 (2).

#### Confirmation by members

(2) The Council shall not request that the Lieutenant Governor in Council approve a regulation made by the Council until the regulation is confirmed by the members of the Association. R.S.O. 1990, c. S.29, s. 7 (2).

#### Voting

(3) The members of the Association may confirm a regulation by a majority of those voting,

- (a) at an annual meeting;
- (b) at a general meeting of the Association called for the purpose; or
- (c) by means of a vote conducted by mail. R.S.O. 1990, c. S.29, s. 7 (3).

#### Distribution of regulations

(4) A copy of each regulation made under subsection (1),

(a) shall be forwarded to each member of the Association and to each holder of a certificate of authorization; and

(b) shall be available for public inspection in the office of the Association. R.S.O. 1990, c. S.29, s. 7 (4).

#### Regulations by Lieutenant Governor in Council

(5) Where the Minister requests in writing that the Council make, amend or revoke a regulation under subsection (1) and the Council has failed to do so within sixty days after the request, the Lieutenant Governor in Council may make the regulation, amendment or revocation specified in the request. R.S.O. 1990, c. S.29, s. 7 (5).

#### Idem, distribution

(6) Where the Lieutenant Governor in Council makes, amends or revokes a regulation under subsection (5), the Minister shall transmit a copy of the regulation, amendment or revocation to the Council and the Council shall cause the regulation, amendment or revocation to be distributed and to be made available in the same manner as a regulation made under subsection (1). R.S.O. 1990, c. S.29, s. 7 (6).

#### By-laws

8. (1) The Council may pass by-laws relating to the administrative and domestic affairs of the Association not inconsistent with this Act and the regulations and, without limiting the generality of the foregoing,

1. prescribing the seal of the Association;
2. providing for the execution of documents by the Association;
3. respecting banking and finance;
4. fixing the financial year of the Association and providing for the audit of the accounts and transactions of the Association;
5. respecting the calling, holding and conducting of meetings of the Council and the duties of members of the Council;
6. providing for meetings of the Council and committees, except in a proceeding in respect of a licence or a certificate of authorization or a certificate of registration, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and a member of the Council or committee participating in a meeting in accordance with such by-law shall be deemed to be present in person at the meeting;
7. providing that the Council or a committee may act upon a resolution consented to by the signatures of all members of the Council or the committee except in a proceeding in respect of a licence or a certificate of authorization or a certificate of registration, and a resolution so consented to in accordance with such a by-law is as valid and effective as if passed at a meeting of the Council or the committee duly called, constituted and held for that purpose;
8. respecting the calling, holding and conducting of meetings of the membership of the Association;
9. prescribing the remuneration of the members of the Council and committees, other than persons appointed by the Lieutenant Governor in Council, and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
10. delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
11. prescribing the positions and qualifications of officers of the Association, providing procedures for their selection and the filling of vacancies in the offices of the Association, and prescribing the duties of officers of the Association;
12. providing for the appointment of inspectors for the purposes of this Act;
13. prescribing forms and providing for their use;
14. providing procedures for the making, amending and revoking of the by-laws;
15. respecting management of the property of the Association;
16. providing for the appointment, composition, powers and duties of additional or special committees;

17. respecting the application of the funds of the Association and the investment and reinvestment of any of its funds not immediately required, and for the safekeeping of its securities;
18. respecting the borrowing of money by the Association and the giving of security therefor;
19. respecting membership of the Association in other organizations, the payment of annual assessments and provision for representatives at meetings;
20. authorizing the making of grants for any purpose that may tend to advance knowledge of professional surveying education, or maintain or improve the standards of practice in professional surveying or support and encourage public information and interest in the role of professional surveying in society;
21. respecting scholarships, bursaries and prizes related to the study of professional surveying;
22. prescribing the amounts of and requiring the payment of annual fees by members of the Association and holders of certificates of authorization and by students and members of related classes recognized by the Association, and fees for licensing, certification, registration, examinations and continuing education, including penalties for late payment, fees in respect of the Association's quality control program for plans of survey and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
23. providing for the entering into of arrangements by the Association for its members and holders of certificates of authorization respecting indemnity for professional liability and requiring the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members of the Association and holders of certificates of authorization in respect of professional liability;
24. respecting the Compensation Fund and prescribing the amount of the levy to be paid to the Association for the Fund and exempting any class of members from all or any part of such levy;
25. providing for the payment to the Association by any member of the cost of any investigation or audit of the member's books, records, accounts and transactions;
26. providing for the establishment of group insurance plans, other than for professional liability, in which members of the Association may participate on a voluntary basis;
- 26.1 respecting the policies and practices of the Association with respect to the collection, use and disclosure of personal information, including specifying any limitations or controls on the collection, use and disclosure of such information and providing that the policies and practices be set out in a code;
27. regarding such other matters as are entailed in carrying on the business of the Association and are not included in section 7. R.S.O. 1990, c. S.29, s. 8 (1); 2009, c. 33, Sched. 22, s. 11 (12, 13).

#### Confirmation by members

(2) A by-law passed by the Council is not effective until confirmed by the members of the Association. R.S.O. 1990, c. S.29, s. 8 (2).

## Voting

- (3) The members of the Association may confirm a by-law by a majority of those voting,
- (a) at an annual meeting;
  - (b) at a general meeting of the Association called for the purpose; or
  - (c) by means of a vote conducted by mail. R.S.O. 1990, c. S.29, s. 8 (3).

## Distribution of by-laws

- (4) A copy of the by-laws made under subsection (1) and amendments thereto,
- (a) shall be forwarded to the Minister;
  - (b) shall be forwarded to each member; and
  - (c) shall be available for public inspection in the office of the Association. R.S.O. 1990, c. S.29, s. 8 (4).

## Committees

9. (1) The Council shall establish and appoint as provided in this Act the following committees:
- (a) Executive Committee;
  - (b) Academic and Experience Requirements Committee;
  - (c) Registration Committee;
  - (d) Complaints Committee;
  - (e) Discipline Committee;
  - (f) Fees Mediation Committee,

and may establish such other committees as the Council from time to time considers necessary.

## Vacancies

(2) Where one or more vacancies occur in the membership of a committee, the members remaining in office constitute the committee so long as their number is not fewer than a quorum of the committee. R.S.O. 1990, c. S.29, s. 9.

## Executive Committee

10. (1) The Council may delegate to the Executive Committee the authority to exercise any power or perform any duty of the Council, other than to make, amend or revoke a regulation or a by-law.

## Urgent matters

(2) Subject to ratification by the Council at its next meeting, the Executive Committee may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or a by-law. R.S.O. 1990, c. S.29, s. 10.

#### Prohibitions relating to cadastral surveying

11. (1) No individual shall engage in the practice of cadastral surveying or hold himself or herself out as engaging in such a practice unless he or she holds a licence under this Act. 2009, c. 33, Sched. 22, s. 11 (14).

#### Exception

(2) Despite subsection (1), an individual who does not hold a licence under this Act may perform an act that is within the practice of cadastral surveying if he or she does so at the direction of and under the supervision of a licensed member. 2009, c. 33, Sched. 22, s. 11 (14).

#### Professional responsibility

(3) A licensed member who supervises and directs the performance of acts that are within the practice of cadastral surveying by individuals referred to in subsection (2) is subject to the same standards of professional conduct and competence in respect of the acts and the related practice of cadastral surveying as if the acts were performed directly by the licensed member. 2009, c. 33, Sched. 22, s. 11 (14).

#### Operating a business

(4) No individual, corporation or partnership shall operate a business that offers or provides services that are within the practice of cadastral surveying to the public unless the individual, corporation or partnership holds a certificate of authorization to do so issued under this Act. 2009, c. 33, Sched. 22, s. 11 (14).

#### Proof of practising cadastral surveying

(5) For the purposes of establishing a contravention of subsection (1) or (4), proof of the performance of one act in the practice of cadastral surveying on one occasion is sufficient to establish that a person has engaged in the practice of cadastral surveying. 2009, c. 33, Sched. 22, s. 11 (14).

#### Issuance of licence

12. (1) The Registrar shall issue a licence to an individual who applies therefor in accordance with the regulations and,

- (a) is a citizen of Canada or has the status of a permanent resident of Canada;
- (b) is not less than eighteen years of age;
- (c) has complied with the academic requirements specified in the regulations for the issuance of the licence and has passed such examinations as the Council has set or approved in accordance with the regulations or is exempted therefrom by the Council;



(d) has complied with the experience requirements specified in the regulations for the issuance of the licence; and

(e) is of good character. R.S.O. 1990, c. S.29, s. 12 (1); 2009, c. 33, Sched. 22, s. 11 (15).

#### Grounds for refusal to issue licence

(2) The Registrar may refuse to issue a licence to an applicant where the Registrar is of the opinion, upon reasonable and probable grounds, that the past conduct of the applicant affords grounds for belief that the applicant will not engage in the practice of cadastral surveying in accordance with the law and with honesty and integrity. R.S.O. 1990, c. S.29, s. 12 (2).

#### Referral to Committee on Academic and Experience Requirements

(3) The Registrar, on his or her own initiative, may refer and on the request of an applicant shall refer the application of the applicant for the issuance of a licence to the Academic and Experience Requirements Committee for a determination as to whether or not the applicant has met the academic requirements or the experience requirements or both prescribed by the regulations for the issuance of the licence. R.S.O. 1990, c. S.29, s. 12 (3).

#### Direction by Committee

(4) The Committee may direct the Registrar to issue a licence subject to such conditions in respect of completion by the applicant of such academic requirements or experience requirements as are specified by the Committee. R.S.O. 1990, c. S.29, s. 12 (4).

#### Determination by Committee

(5) A determination or direction by the Committee under subsection (3) or (4) is final and is binding on the Registrar and on the applicant. R.S.O. 1990, c. S.29, s. 12 (5).

#### Hearing

(6) The Committee shall receive written submissions from an applicant but is not required to hold or to afford to any person a hearing or an opportunity to make oral submissions before making a determination under subsection (3). R.S.O. 1990, c. S.29, s. 12 (6).

#### Notice of determination or direction

(7) The Registrar shall give notice to the applicant of a determination or direction by the Committee under subsection (3) or (4) and, if the applicant is rejected, the notice shall detail the specific requirements that the applicant must meet. R.S.O. 1990, c. S.29, s. 12 (7).

#### Practice of professional surveying other than cadastral surveying

13. (1) Although not required in order to engage in the practice of professional surveying in a branch other than cadastral surveying, an individual may apply to the Registrar for a certificate of registration in a branch of professional surveying other than cadastral surveying. 2009, c. 33, Sched. 22, s. 11 (16).

## Prohibition

(2) No person shall hold himself or herself out as a registered member of the Association unless the person holds a certificate of registration issued under this Act. 2009, c. 33, Sched. 22, s. 11 (16).

## Certificate of registration

(3) The Registrar shall issue a certificate of registration in a branch of professional surveying other than cadastral surveying to an applicant who meets the requirements and qualifications prescribed by the regulations in relation to the branch. 2009, c. 33, Sched. 22, s. 11 (16).

## Application for certificate of authorization

(4) Although not required in order to operate a business that provides services that are part of a branch of professional surveying other than cadastral surveying to the public, any of the following persons or entities may apply for a certificate of authorization with respect to such a business:

1. An individual who is a registered member and who, on his or her own behalf, practises professional surveying in a branch other than cadastral surveying.

2. A corporation that, under the direction of a registered member, provides services to the public that are part of a branch of professional surveying other than cadastral surveying.

3. A partnership of persons or of corporations that, under the direction of a registered member, provides services to the public that are part of a branch of professional surveying other than cadastral surveying. 2009, c. 33, Sched. 22, s. 11 (16).

## Branches of professional surveying

(5) The branches of professional surveying to which this section applies include photogrammetry, geodesy, hydrography, geographic information management and all other branches that are prescribed by the regulations. 2009, c. 33, Sched. 22, s. 11 (16).

## Certificate of authorization

14. (1) An application for a certificate of authorization shall be made in accordance with the regulations. 2009, c. 33, Sched. 22, s. 11 (16).

## Issuance to individuals

(2) The Registrar shall issue a certificate of authorization to an individual who is a member of the Association and who meets the requirements and qualifications prescribed by the regulations. 2009, c. 33, Sched. 22, s. 11 (16).

## Same, corporations

(3) The Registrar shall issue a certificate of authorization to a corporation if,

(a) the primary function of the corporation is to engage in the business of providing services that are within the practice of professional surveying;

(b) at least 50 per cent of the members of the board of directors of the corporation are members of the Association; and

(c) if the corporation provides or wishes to provide services to the public that are within the practice of cadastral surveying, at least one director or full-time employee of the corporation is a licensed member of the Association who agrees to personally supervise and direct the practice of cadastral surveying for the corporation. 2009, c. 33, Sched. 22, s. 11 (16).

Same, partnerships

(4) The Registrar shall issue a certificate of authorization to a partnership of members of the Association or to a partnership of corporations if the partnership meets the requirements and qualifications prescribed by the regulations. 2009, c. 33, Sched. 22, s. 11 (16).

Refusal or revocation

(5) The Registrar may refuse to issue or may suspend or revoke a certificate of authorization if,

(a) the Registrar is of the opinion, on reasonable and probable grounds, that the past conduct of the applicant, or of a person who is in a position of authority or responsibility in the operation of the business of the applicant, affords grounds for the belief that the applicant will not operate the business of providing services that are within the practice of professional surveying in accordance with the law and honesty and integrity;

(b) the applicant does not meet the requirements or the qualifications for the issuance of the certificate of authorization prescribed by the regulations;

(c) there is a breach of a condition of the certificate of authorization; or

(d) in the case of an applicant or member who is an individual, the Registrar is satisfied, based on evidence, that the applicant or member has not engaged in the practice of professional surveying during the five-year period preceding the date of the refusal, suspension or revocation. 2009, c. 33, Sched. 22, s. 11 (16).

15., 16. REPEALED: 2009, c. 33, Sched. 22, s. 11 (16).

Hearing by Registration Committee

17. (1) Where the Registrar proposes,

(a) to refuse an application for a licence, a certificate of authorization or a certificate of registration;

(b) to revoke a certificate of authorization; or

(c) to issue a licence, a certificate of authorization or a certificate of registration subject to terms, conditions or limitations,

the Registrar shall serve notice of the proposal, together with written reasons therefor, on the applicant. R.S.O. 1990, c. S.29, s. 17 (1).

#### Exceptions

(2) Subsection (1) does not apply in respect of a refusal to issue a licence or a certificate of registration to a person who was previously licensed or who previously held a certificate of registration and whose licence or certificate of registration was suspended or revoked as a result of a decision of the Discipline Committee. R.S.O. 1990, c. S.29, s. 17 (2).

#### Idem

(3) Subsection (1) does not apply in respect of a refusal to issue a certificate of authorization to a person or a partnership that previously held a certificate of authorization and whose certificate of authorization was suspended or revoked as a result of a decision of the Discipline Committee. R.S.O. 1990, c. S.29, s. 17 (3).

#### Notice

(4) A notice under subsection (1) shall state that the applicant is entitled to a hearing by the Registration Committee if the applicant delivers, within thirty days after the notice under subsection (1) is served on the applicant, notice in writing requiring a hearing by the Registration Committee. R.S.O. 1990, c. S.29, s. 17 (4).

#### Power of Registrar where no hearing

(5) Where the applicant does not require a hearing by the Registration Committee in accordance with subsection (4), the Registrar may carry out the proposal stated in the notice under subsection (1). R.S.O. 1990, c. S.29, s. 17 (5).

#### Hearing by Registration Committee

(6) Where an applicant requires a hearing by the Registration Committee in accordance with subsection (1), the Registration Committee shall appoint a time for, give notice of and shall hold the hearing. R.S.O. 1990, c. S.29, s. 17 (6).

#### Disability of member

(7) Where the Registration Committee commences a hearing and a member of the Registration Committee becomes unable to act, the remaining members may complete the hearing despite the absence of the member who is unable to act. R.S.O. 1990, c. S.29, s. 17 (7).

#### Continuation on expiry of Committee membership

(8) Where a proceeding is commenced before the Registration Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated other than

for cause before the proceeding is disposed of but after evidence is heard, the member shall be deemed to remain a member of the Registration Committee for the purpose of completing the disposition of the proceeding in the same manner as if the term of office had not expired or been terminated. R.S.O. 1990, c. S.29, s. 17 (8).

#### Powers of Registration Committee re licences

(9) Following a hearing under this section in respect of a proposal by the Registrar in relation to a licence, the Registration Committee by order may,

(a) where the Committee is of the opinion upon reasonable grounds that the applicant meets the requirements and qualifications of this Act and the regulations and will engage in the practice of cadastral surveying with competence and integrity, direct the Registrar to issue a licence to the applicant;

(b) where the Committee is of the opinion upon reasonable grounds that the applicant does not meet the requirements and qualifications of this Act and the regulations,

(i) direct the Registrar to refuse to issue a licence to the applicant, or

(ii) where the Committee is of the opinion upon reasonable grounds that the applicant will engage in the practice of cadastral surveying with competence and integrity, exempt the applicant from any of the requirements and qualifications of this Act and the regulations and direct the Registrar to issue a licence; or

(c) where the Committee is of the opinion upon reasonable grounds that it is necessary in order to ensure that the applicant will engage in the practice of cadastral surveying with competence and integrity,

(i) require the applicant to take and successfully complete such examinations as the Registration Committee may set or approve and to pay such fees therefor as the Registration Committee fixes,

(ii) require the applicant to take such additional training as the Registration Committee specifies, or

(iii) direct the Registrar to issue a licence subject to such terms, conditions and limitations as the Registration Committee specifies. R.S.O. 1990, c. S.29, s. 17 (9).

#### Powers of Registration Committee re certificates of authorization

(10) Following a hearing under this section in respect of a proposal by the Registrar in relation to a certificate of authorization, the Registration Committee by order may,

(a) where the Committee is of the opinion upon reasonable grounds that the applicant meets the requirements and qualifications of this Act and the regulations and will engage in the business of providing services that are within the practice of cadastral surveying with competence and integrity, direct the Registrar to issue a certificate of authorization to the applicant or to not revoke the certificate of authorization held by the applicant, as the case requires;

(b) where the Committee is of the opinion upon reasonable grounds that the applicant does not meet the requirements and qualifications of this Act and the regulations,

(i) direct the Registrar to refuse to issue a certificate of authorization to the applicant or to revoke the certificate of authorization held by the applicant, or

(ii) where the Committee is of the opinion upon reasonable grounds that the applicant will engage in the business of providing services that are within the practice of cadastral surveying with competence and integrity, exempt the applicant from any of the requirements and qualifications of this Act and the regulations and direct the Registrar to issue a certificate of authorization to the applicant or to not revoke the certificate of authorization held by the applicant, as the case requires; or

(c) where the Committee is of the opinion upon reasonable grounds that it is necessary in order to ensure that the applicant will engage in the business of providing services that are within the practice of cadastral surveying with competence and integrity, direct the Registrar to issue a certificate of authorization subject to such terms, conditions and limitations as the Registration Committee specifies. R.S.O. 1990, c. S.29, s. 17 (10).

#### Powers of Registration Committee re certificates of registration

(11) Following a hearing under this section in respect of a proposal by the Registrar in relation to a certificate of registration, the Registration Committee by order may,

(a) where the Committee is of the opinion upon reasonable grounds that the applicant meets the requirements and qualifications prescribed by the regulations, direct the Registrar to issue a certificate of registration to the applicant or to not revoke the certificate of registration held by the applicant, as the case requires;

(b) where the Committee is of the opinion upon reasonable grounds that the applicant does not meet the requirements and qualifications prescribed by the regulations,

(i) direct the Registrar to refuse to issue a certificate of registration to the applicant or to revoke the certificate of registration held by the applicant, as the case requires, or

(ii) where the Committee is of the opinion upon reasonable grounds that the applicant will engage in the practice of professional surveying with competence and integrity, exempt the applicant from any of the requirements and qualifications prescribed by the regulations and direct the Registrar to issue a certificate of registration to the applicant or to not revoke the certificate of registration held by the applicant, as the case requires; or

(c) where the Committee is of the opinion upon reasonable grounds that it is necessary in order to ensure that the applicant will engage in the practice of professional surveying with competence and integrity, direct the Registrar to issue a certificate of registration to the applicant subject to such terms, conditions and limitations as the Registration Committee specifies. R.S.O. 1990, c. S.29, s. 17 (11).

#### Extension of time for requiring hearing

(12) The Registration Committee may extend the time for the giving of notice requiring a hearing by an applicant under this section before or after the expiration of such time where it is satisfied that there are apparent grounds for granting relief to the applicant following upon a hearing and that there are reasonable grounds for applying for the extension, and the Registration Committee may give such directions as it considers proper consequent upon the extension. R.S.O. 1990, c. S.29, s. 17 (12).

#### Parties

(13) The Registrar and the applicant who has required the hearing are parties to proceedings before the Registration Committee under this section. R.S.O. 1990, c. S.29, s. 17 (13).

#### Opportunity to show compliance

(14) The applicant shall be given a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements in respect of the licence, the certificate of authorization or the certificate of registration, as the case requires. R.S.O. 1990, c. S.29, s. 17 (14).

#### Examination of documentary evidence

(15) A party to proceedings under this section shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. R.S.O. 1990, c. S.29, s. 17 (15).

#### Members holding hearing not to have taken part in investigation, etc.

(16) Members of the Registration Committee holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his or her representative except upon notice to and opportunity for both parties to participate, but the Registration Committee may seek legal advice from a person who is not counsel in the proceedings and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law. R.S.O. 1990, c. S.29, s. 17 (16).

#### Recording of evidence

(17) The oral evidence taken before the Registration Committee at a hearing shall be recorded and, if so required, copies of a transcript thereof shall be furnished upon the same terms as in the Superior Court of Justice. R.S.O. 1990, c. S.29, s. 17 (17); 2006, c. 19, Sched. C, s. 1 (1).

#### Only members at hearing to participate in decision

(18) No member of the Registration Committee shall participate in a decision of the Registration Committee following upon a hearing unless the member was present throughout the hearing and heard the evidence and argument of the parties. R.S.O. 1990, c. S.29, s. 17 (18).

#### Release of documentary evidence

(19) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to the person by the Registration Committee within a reasonable time after the matter in issue has been finally determined. R.S.O. 1990, c. S.29, s. 17 (19).

#### Registers

18. (1) The Registrar shall maintain registers in which is entered every person who is a member of the Association and every holder of a certificate of authorization.

#### Notation as to terms, conditions, limitations

(2) The Registrar shall note in the registers the terms, conditions and limitations attached to each licence, certificate of authorization and certificate of registration.

#### Notation as to revocation, suspension, etc.

(3) The Registrar shall note in the registers every revocation, suspension and cancellation or termination of a licence, certificate of authorization or certificate of registration.

#### Notation as to other information

(4) The Registrar shall note in the registers such other information as the Registration Committee or the Discipline Committee directs. R.S.O. 1990, c. S.29, s. 18.

#### Inspection of registers

19. (1) Any person has the right to inspect during normal business hours the registers maintained by the Registrar.

#### Copies

(2) The Registrar shall provide to any person, upon payment of a reasonable charge therefor, a copy of any part of the registers maintained by the Registrar. R.S.O. 1990, c. S.29, s. 19.

#### Cancellation for default of fees

20. (1) The Registrar may cancel a licence, a certificate of authorization or a certificate of registration for non-payment of any fee prescribed by the by-laws after giving the member or the holder of the certificate of authorization at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the Association in respect of any disciplinary action arising out of his or her professional conduct while a member or holder.

#### Reinstatement

(2) A person who was a member or a holder of a certificate of authorization whose licence, certificate of authorization or certificate of registration was cancelled by the Registrar under subsection (1) is entitled to have the licence, certificate of authorization or certificate of registration reinstated upon compliance with the requirements and qualifications prescribed by the regulations. R.S.O. 1990, c. S.29, s. 20.



## Complaints Committee

21. (1) The Complaints Committee shall be composed of at least five members, including,

(a) at least one member of the Association who was elected to the Council under clause 3 (2) (a);

(b) at least one person who was appointed to the Council by the Lieutenant Governor in Council under clause 3 (2) (e) or (f); and

(c) the other members of the Association that are appointed by the Council. 2009, c. 33, Sched. 22, s. 11 (17).

## Qualifications

(1.1) A person appointed to the Complaints Committee under clause (1) (c) shall have practised professional surveying in Ontario or in another jurisdiction for at least five years at the time of being appointed to the Committee. 2009, c. 33, Sched. 22, s. 11 (17).

## Idem

(2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee. R.S.O. 1990, c. S.29, s. 21 (2).

## Exception

(2.1) Despite subsection (2), if a member of the Complaints Committee who is a member of the Council appointed by the Lieutenant Governor in Council under clause (1) (b) is unable to act as a member of the Committee for a part of, or the remainder of, his or her appointment, the Council may appoint to the Committee a member of the Discipline Committee who was appointed to the Council by the Lieutenant Governor in Council under clause 3 (2) (e) or (f), but the member of the Discipline Committee is appointed only until the time that the member who is unable to act is able to resume his or her duties or is replaced. 2009, c. 33, Sched. 22, s. 11 (18).

## Same

(2.2) A member of the Discipline Committee who is appointed to act in the place of a member of the Complaints Committee under subsection (2.1) shall not serve on a disciplinary panel that holds a hearing with respect to any matter that the member was involved with as a member of the Complaints Committee. 2009, c. 33, Sched. 22, s. 11 (18).

## Chair

(3) The Council shall name one member of the Complaints Committee to be chair. R.S.O. 1990, c. S.29, s. 21 (3).

## Quorum

(4) For the purpose of transacting business, a quorum of the Complaints Committee consists of five members of the Committee, where,

(a) at least one member is a member of the Association elected to the Council under clause 3 (2) (a); and

(b) at least one member is a person who was appointed to the Council by the Lieutenant Governor in Council under clause 3 (2) (e) or (f). 2009, c. 33, Sched. 22, s. 11 (19).

#### Complaint process

22. (1) A member of the public or a member of the Association may file a complaint in writing with the Registrar attributing conduct or actions to a member of the Association that may be found to constitute professional misconduct or incompetence. 2009, c. 33, Sched. 22, s. 11 (20).

#### Notice to member

(2) When a complaint is filed under subsection (1), the Registrar shall give written notice of the complaint to the member of the Association who is the subject of the complaint and advise the member that he or she may submit a written response to the complaint to the Registrar within two weeks of receiving the notice. 2009, c. 33, Sched. 22, s. 11 (20).

#### Written response

(3) A member who receives a notice under subsection (2) may submit a written response to the complaint to the Registrar within two weeks of receiving the notice. 2009, c. 33, Sched. 22, s. 11 (20).

#### Refusal to consider

(4) The Complaints Committee may refuse to consider or investigate a complaint filed under subsection (1) if, in the opinion of the Committee, the complaint is frivolous, vexatious or an abuse of process. 2009, c. 33, Sched. 22, s. 11 (20).

#### Notice

(4.1) If the Complaints Committee refuses to consider or investigate a complaint under subsection (4), the Committee shall give written notice of its decision and of the reasons for it to the complainant, the member who is the subject of the complaint and the Council. 2009, c. 33, Sched. 22, s. 11 (20).

#### Duty of Committee

(4.2) Subject to subsection (4), the Complaints Committee shall consider and investigate all complaints filed under subsection (1). 2009, c. 33, Sched. 22, s. 11 (20).

#### Power of Committee

(4.3) Upon consideration of the complaint, of any response received under subsection (3) and of any other information, record or document relating to the complaint that has come to the attention of the Complaints Committee in the course of its investigation, the Committee may,

(a) direct that the matter be referred, in whole or in part, to the Council with a recommendation that Council refer the matter to the Discipline Committee; or

(b) take the action that it considers appropriate in the circumstances and that is not inconsistent with this Act or the regulations or by-laws. 2009, c. 33, Sched. 22, s. 11 (20).

#### Decision and reasons

(4.4) The Complaints Committee shall give its decision in writing to the Registrar for the purposes of subsection (4.5) and, if the decision is to not refer the matter under clause (4.3) (a), its reasons for the decision. 2009, c. 33, Sched. 22, s. 11 (20).

#### Notice

(4.5) The Registrar shall send to the complainant and to the person who is the subject of the complaint by mail a copy of the written decision made by the Complaints Committee and its reasons for it, if any. 2009, c. 33, Sched. 22, s. 11 (20).

#### Hearing

(5) The Committee is not required to hold a hearing or to afford to any person an opportunity for a hearing or an opportunity to make oral submissions before making a decision or giving a direction under this section. R.S.O. 1990, c. S.29, s. 22 (5).

#### Complaints Review Councillor

23. (1) There shall be a Complaints Review Councillor who shall be appointed by and from among the members of the Council appointed by the Lieutenant Governor in Council. R.S.O. 1990, c. S.29, s. 23 (1).

#### Idem

(2) The Complaints Review Councillor is not eligible to be a member of the Complaints Committee or the Fees Mediation Committee. R.S.O. 1990, c. S.29, s. 23 (2).

#### Powers

(3) The Complaints Review Councillor may,

(a) from time to time conduct an examination of the Association's procedures for the treatment of complaints; and

(b) upon application of a complainant or on the Councillor's own initiative, review the treatment of a particular complaint against a member of the Association or the holder of a certificate of

authorization if the Complaints Committee has not disposed of the complaint within 90 days after the day the complaint was filed with the Registrar. 2009, c. 33, Sched. 22, s. 11 (21).

#### Complaints Review Councillor not to inquire into merit of complaint

(4) In an examination or review in respect of the Association, the Complaints Review Councillor shall not inquire into the merits of any particular complaint made to the Association. R.S.O. 1990, c. S.29, s. 23 (4).

(5) REPEALED: 2009, c. 33, Sched. 22, s. 11 (22).

#### Notice

(6) Before commencing an examination or review in respect of the Association, the Complaints Review Councillor shall inform the Association of his or her intention to commence the examination or review. R.S.O. 1990, c. S.29, s. 23 (6).

#### Office accommodation

(7) The Council shall provide to the Complaints Review Councillor such accommodation and support staff in the offices of the Association as are necessary to the performance of the powers and duties of the Complaints Review Councillor. R.S.O. 1990, c. S.29, s. 23 (7).

#### Privacy

(8) Every examination or review by the Complaints Review Councillor in respect of the Association shall be conducted in private. R.S.O. 1990, c. S.29, s. 23 (8).

#### Receipt of information

(9) In conducting an examination or review in respect of the Association, the Complaints Review Councillor may hear or obtain information from any person and may make such inquiries as the Complaints Review Councillor thinks fit. R.S.O. 1990, c. S.29, s. 23 (9).

#### Hearing not required

(10) The Complaints Review Councillor is not required to hold or to afford to any person an opportunity for a hearing in relation to an examination, review or report in respect of the Association. R.S.O. 1990, c. S.29, s. 23 (10).

#### Duty to furnish information

(11) Every person who is,

- (a) a member of the Council;
- (b) an officer of the Association;
- (c) a member of a committee of the Association; or

(d) an employee of the Association,

shall furnish to the Complaints Review Councillor such information regarding any proceedings or procedures of the Association in respect of the treatment of complaints made to the Association as the Complaints Review Councillor from time to time requires, and shall give the Complaints Review Councillor access to all records, reports, files and other papers and things belonging to or under the control of the Association or any of such persons and that relate to the treatment by the Association of complaints or any particular complaint. R.S.O. 1990, c. S.29, s. 23 (11).

#### Report by Complaints Review Councillor

(12) The Complaints Review Councillor shall make a report following upon each examination or review by him or her in respect of the Association. R.S.O. 1990, c. S.29, s. 23 (12).

#### Report following upon examination

(13) Where the report follows upon an examination of the treatment of complaints by the Association, the Complaints Review Councillor shall transmit the report to the Council. R.S.O. 1990, c. S.29, s. 23 (13).

#### Report following upon review

(14) Where the report follows upon a review as to the treatment of a complaint by the Association, the Complaints Review Councillor shall transmit the report to the Council, to the complainant and to the person complained against. R.S.O. 1990, c. S.29, s. 23 (14).

#### Report to Minister

(15) The Complaints Review Councillor may transmit a report following upon an examination or review to the Minister where, in the opinion of the Complaints Review Councillor, the report should be brought to the attention of the Minister. R.S.O. 1990, c. S.29, s. 23 (15).

#### Recommendations

(16) The Complaints Review Councillor may include in a report following upon an examination or review his or her recommendations in respect of the procedures of the Association, either generally or with respect to the treatment of a particular complaint. R.S.O. 1990, c. S.29, s. 23 (16).

#### Consideration by Council

(17) The Council shall consider each report, and any recommendations included in the report, transmitted to it by the Complaints Review Councillor and shall notify the Complaints Review Councillor of any action it has taken in consequence. R.S.O. 1990, c. S.29, s. 23 (17).

#### Annual meeting

(18) The Complaints Review Councillor shall meet with the members of the Complaints Committee at least once a year to,

(a) discuss the results of an examination of the Association's procedures for the treatment of complaints received by the Committee in the preceding 12-month period; and

(b) discuss the review of any individual complaint conducted under clause (3) (b) in the preceding 12-month period. 2009, c. 33, Sched. 22, s. 11 (23).

24. REPEALED: 2009, c. 33, Sched. 22, s. 11 (24).

#### Discipline Committee

25. (1) The Discipline Committee shall be composed of at least six members, including,

(a) at least one member of the Association who was elected to the Council under clause 3 (2) (a);

(b) at least one person who was appointed to the Council by the Lieutenant Governor in Council under clause 3 (2) (e) or (f); and

(c) at least two members of the Association who do not sit on the Council and are appointed to the Committee by the Council. 2009, c. 33, Sched. 22, s. 11 (25).

#### Qualifications

(2) A person appointed to the Discipline Committee under clause (1) (c) shall have practised professional surveying in Ontario or in another jurisdiction for at least five years at the time of being appointed to the Committee. 2009, c. 33, Sched. 22, s. 11 (25).

#### Disqualification

(3) No person who is a member of the Complaints Committee shall be a member of the Discipline Committee. 2009, c. 33, Sched. 22, s. 11 (25).

#### Exception

(4) Despite subsection (3), if a member of the Discipline Committee who is a member of the Council appointed by the Lieutenant Governor in Council under clause (1) (b) is unable to act as a member of the Committee for a part of, or the remainder of, his or her appointment, the Council may appoint to the Committee a member of the Complaints Committee who was appointed to the Council by the Lieutenant Governor in Council under clause 3 (2) (e) or (f), but the member of the Complaints Committee is appointed only until the time that the member who is unable to act is able to resume his or her duties or is replaced. 2009, c. 33, Sched. 22, s. 11 (25).

#### Quorum

(5) For the purpose of transacting business other than the business of conducting a hearing under section 26, a quorum of the Discipline Committee consists of six members of the Committee, where at least one of the members was appointed to the Council by the Lieutenant Governor in Council under clause 3 (2) (e) or (f). 2009, c. 33, Sched. 22, s. 11 (25).

## Chair

(6) The Council shall name one member of the Discipline Committee who is a member of and elected to the Council to be chair. 2009, c. 33, Sched. 22, s. 11 (25).

## Duties

(7) The Discipline Committee shall,

(a) if directed by the Council to do so, hear and determine allegations of professional misconduct or incompetence against any member of the Association in accordance with section 26;

(b) if directed by the Council to do so, prepare for the Council's approval rules governing the practice and procedures before a discipline panel appointed under section 26; and

(c) perform the other duties that are assigned to it by the Council. 2009, c. 33, Sched. 22, s. 11 (25).

## Mediator

25.1 (1) If a matter comes to the attention of the Council for referral to the Discipline Committee, whether from the Registrar or the Complaints Committee or otherwise, the Council may appoint a mediator to look into the matter and make a report to the Council as to whether the matter should be referred to the Discipline Committee. 2009, c. 33, Sched. 22, s. 11 (25).

## Role of mediator

(2) The mediator shall make reasonable efforts to meet with the member against whom the allegations are made and any other interested party to facilitate a resolution of the matter and, if a resolution is not possible, to further define the issues to be brought before the Committee. 2009, c. 33, Sched. 22, s. 11 (25).

## Report

(3) The mediator shall submit a written report to the Council within 90 days of his or her appointment and the report shall contain the mediator's recommendation as to whether the matter should be referred to the Discipline Committee and as to any issues that the Committee should consider. 2009, c. 33, Sched. 22, s. 11 (25).

## Hearings and decisions in disciplinary matters

26. (1) If the Discipline Committee is directed by the Council to hear and determine allegations of professional misconduct or incompetence against a member of the Association, the Committee shall appoint a discipline panel to hear and determine the matter. 2009, c. 33, Sched. 22, s. 11 (26).

## Composition of discipline panel

(1.1) A discipline panel shall consist of five members of the Discipline Committee and shall include,

- (a) at least one member of the Committee appointed under clause 25 (1) (b); and
- (b) at least two members of the Committee appointed under clause 25 (1) (c). 2009, c. 33, Sched. 22, s. 11 (26).

#### Eligibility to sit on panel

(1.2) Members of a discipline panel appointed to hold a hearing shall not, before the hearing, have taken part in any investigation or consideration of the subject matter of the hearing, other than as a member of the Council considering the referral of the matter to the Discipline Committee or at a previous hearing by a discipline panel. 2009, c. 33, Sched. 22, s. 11 (26).

#### Professional misconduct

(2) A member of the Association may be found guilty of professional misconduct by a discipline panel if,

(a) the member has been found guilty of an offence relevant to his or her suitability to practise, upon proof of such conviction;

(b) in the opinion of the discipline panel, the member is guilty of professional misconduct as defined in the regulations. R.S.O. 1990, c. S.29, s. 26 (2); 2009, c. 33, Sched. 22, s. 11 (27, 28).

#### Incompetence

(3) A discipline panel may find a member of the Association to be incompetent if in its opinion,

(a) the member has displayed in the member's professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public the member serves of a nature or to an extent that demonstrates the member is unfit to carry out the responsibilities of a person engaged in the practice of professional surveying; or

(b) the member is suffering from a physical or mental condition or disorder and the nature or extent of the condition or disorder is such that it is in the interest of the public, of the member or of both that the member no longer be permitted to practise or that his or her practice be restricted. R.S.O. 1990, c. S.29, s. 26 (3); 2009, c. 33, Sched. 22, s. 11 (29-31).

#### Powers of discipline panel

(4) If a discipline panel finds a member of the Association guilty of professional misconduct or incompetence it may, by order,

(a) revoke the licence or certificate of registration, as the case may be, of the member;

(b) suspend the licence or certificate of registration, as the case may be, of the member for a stated period, not exceeding twenty-four months;

(c) accept the undertaking of the member to limit the professional work of the member in the practice of professional surveying to the extent specified in the undertaking;



(d) impose terms, conditions and limitations on the licence or certificate of registration, as the case may be, of the member, including but not limited to, in the case of a member, to the successful completion of a particular course or courses of study, as are specified by the discipline panel;

(e) impose specific restrictions on the licence or certificate of registration, as the case may be, or on the certificate of authorization, including but not limited to,

(i) requiring the member to engage in the practice of professional surveying only under the personal supervision and direction of another member,

(ii) requiring the member to not alone engage in the practice of professional surveying,

(iii) requiring the member to accept periodic inspections by the discipline panel or its delegate of the books, accounts, records and plans of the member in connection with the member's practice,

(iv) requiring the member to report to the Registrar or to such committee of the Council as the discipline panel may specify on such matters in respect of the member's practice for such period of time, at such times and in such form, as the discipline panel may specify;

(f) require that the member be reprimanded, admonished or counselled and, if considered warranted, direct that the fact of the reprimand, admonishment or counselling be recorded on the register;

(g) revoke or suspend for a stated period of time the designation of the member by the Association as a specialist in any branch of professional surveying;

(h) impose the fine that the discipline panel considers appropriate, to a maximum of \$5,000, to be paid by the member to the Minister of Finance for payment into the Consolidated Revenue Fund;

(i) require the member to repay, waive or reduce the fee charged by the member in respect of the practice of professional surveying related to the finding of professional misconduct or incompetence;

(j) REPEALED: 2009, c. 33, Sched. 22, s. 11 (40).

(k) fix and impose costs to be paid by the member to the Association;

(l) direct that the imposition of a penalty be suspended or postponed for the period and upon the terms or for the purpose that the discipline panel specifies, including but not limited to any combination of the following:

(i) the successful completion by the member of a particular course or courses of study,

(ii) the production to the Discipline Committee of evidence satisfactory to it that any physical or mental incapacity in respect of which the penalty was imposed has been overcome. R.S.O. 1990, c. S.29, s. 26 (4); 2009, c. 33, Sched. 2, s. 72; 2009, c. 33, Sched. 22, s. 11 (32-41).

Publication of orders

(5) The Discipline Committee shall cause a decision of a discipline panel to be published, with or without the reasons for it, in an official publication of the Association and shall ensure that the member who was the subject of the disciplinary proceedings is named in the publication. 2009, c. 33, Sched. 22, s. 11 (42).

#### Costs

(6) If the discipline panel is of the opinion that the commencement of the proceedings was unwarranted, the panel may order that the Association reimburse the member for the member's costs or the portion of the costs that the panel fixes and the Association shall comply with the order. 2009, c. 33, Sched. 22, s. 11 (42).

#### No stay on appeal for incompetence

(7) If a discipline panel revokes, suspends or restricts a licence or certificate of registration on the ground of incompetence, the decision takes effect immediately even if an appeal is taken from the decision. 2009, c. 33, Sched. 22, s. 11 (42).

#### Exception

(8) Despite subsection (7), if an appeal is taken from a decision mentioned in that subsection, the court to which the appeal is taken may, in the circumstances that it considers appropriate, order a stay of the decision until the time that the court specifies. 2009, c. 33, Sched. 22, s. 11 (42).

#### Stay on appeal for professional misconduct

(9) If a discipline panel revokes, suspends or restricts a licence or certificate of registration on the ground of professional misconduct, the decision does not take effect until,

- (a) the time for an appeal from the decision has expired and no notice of appeal is filed; or
  - (b) if notice of appeal is filed within the appropriate time, the final disposition of the appeal.
- 2009, c. 33, Sched. 22, s. 11 (42).

#### Exception

(10) Despite subsection (9), a discipline panel that makes a decision mentioned in that subsection may order that the decision is to take effect immediately or at the other time that the panel determines if the panel believes it is necessary for the protection of the public. 2009, c. 33, Sched. 22, s. 11 (42).

#### Service of decision

(11) If the discipline panel finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member. 2009, c. 33, Sched. 22, s. 11 (42).

#### Expiry of other membership

(12) A Discipline Committee member who is sitting at a hearing on a discipline panel and whose term of office on the Council or on the Discipline Committee expires or terminates before a decision is rendered on the matter being heard may continue to sit as a member of the panel and participate in the hearing and rendering of the decision. 2009, c. 33, Sched. 22, s. 11 (42).

#### Exception

(13) A member may not continue to sit as a member of a discipline panel or to participate in a hearing or the rendering of a decision under subsection (12) if the member's term of office is terminated for cause. 2009, c. 33, Sched. 22, s. 11 (42).

#### Incapacity of member

(14) If a discipline panel is conducting a hearing and one or two of the five members of the panel become unable, for any reason, to complete the hearing or participate in the decision, the remaining members may complete the hearing and give a decision. 2009, c. 33, Sched. 22, s. 11 (42).

#### Same, new panel

(15) If a discipline panel is conducting a hearing and more than two of the five members of the panel become unable, for any reason, to complete the hearing or participate in the decision, a new panel shall be appointed and a new hearing commenced. 2009, c. 33, Sched. 22, s. 11 (42).

#### Case of tie

(16) If one of the five members of a discipline panel has become unable to continue with respect to a matter that is before the panel and the four remaining members of the panel are divided equally as to the guilt of the member of the Association who is the subject of the hearing, that is to say two believe that the member should be found guilty and two believe that the member should not be found guilty, the panel shall find that the member is not guilty of incompetence or professional misconduct, as the case may be. 2009, c. 33, Sched. 22, s. 11 (42).

#### Proceedings before discipline panel

27. (1) In proceedings before a discipline panel, the Association and the member of the Association whose conduct is being investigated in the proceedings are parties to the proceedings. 2009, c. 33, Sched. 22, s. 11 (43).

#### Examination of documentary evidence

(2) A member whose conduct is being investigated in proceedings before a discipline panel shall have an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. 2009, c. 33, Sched. 22, s. 11 (43).

#### Non-communication by panel members

(3) Members of a discipline panel shall not communicate directly or indirectly in relation to the subject matter of a hearing with any person or with any party or any party's representative except upon notice to and opportunity for all parties to participate. 2009, c. 33, Sched. 22, s. 11 (43).

#### Exception, legal advice

(4) Despite subsection (3), a discipline panel may seek legal advice from, and communicate with, a person who is not counsel in the proceedings and, if it does so, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law. 2009, c. 33, Sched. 22, s. 11 (43).

#### Hearings to be public

(5) A hearing of a discipline panel shall, subject to subsection (6), be open to the public. 2009, c. 33, Sched. 22, s. 11 (43).

#### Exclusion of public

(6) A discipline panel may make an order that the public be excluded from a hearing or any part of a hearing if the panel is satisfied that,

(a) matters involving public security may be disclosed;

(b) upon considering that financial, personal or other matters may be disclosed at the hearing, it is preferable to exclude the public from the hearing and prevent such disclosure, in order to protect the interests of an individual or for reasons of public safety or security, rather than adhere to the principle that hearings be open to the public; or

(c) the safety of a person may be jeopardized. 2009, c. 33, Sched. 22, s. 11 (43).

#### Same

(7) A discipline panel may make an order that the public be excluded from a hearing while it receives evidence or submissions or deliberates whether to exclude the public from all or part of a hearing under subsection (6). 2009, c. 33, Sched. 22, s. 11 (43).

#### Orders preventing public disclosure

(8) In any situation in which a discipline panel may make an order under subsection (6) or (7), the discipline panel may make orders it considers necessary to prevent the public disclosure of information disclosed at the hearing and may for such purpose make an order banning the publication or broadcasting of that information. 2009, c. 33, Sched. 22, s. 11 (43).

#### Written orders

(9) An order under subsection (6) or (7) shall be made in writing and shall include written reasons and shall be made available to members of the public upon request. 2009, c. 33, Sched. 22, s. 11 (43).

#### Recording of evidence

(10) A discipline panel shall ensure that the oral evidence taken before it is recorded and, if so required, shall furnish copies of a transcript of the evidence only to the parties at their own cost. 2009, c. 33, Sched. 22, s. 11 (43).

#### Findings of fact

(11) The findings of fact of a discipline panel shall be based exclusively on evidence admissible or matters that may be noticed under sections 15, 15.1, 15.2 and 16 of the Statutory Powers Procedure Act. 2009, c. 33, Sched. 22, s. 11 (43).

#### Participation in decision

(12) A member of a discipline panel shall not participate in a decision of the panel following a hearing unless the member was present throughout the hearing and heard the evidence and argument of the parties. 2009, c. 33, Sched. 22, s. 11 (43).

#### Release of documentary evidence

(13) Upon the request of the party who produced documents and things put in evidence at a hearing of a discipline panel, the panel shall return them within a reasonable time after the matter in issue has been finally determined. 2009, c. 33, Sched. 22, s. 11 (43).

#### Security for court applications

(14) If, in the course of a hearing by a discipline panel and before the panel makes its ruling, a party to the hearing desires to make an application to the Superior Court of Justice in respect of a matter before the panel, the party shall post security for costs in accordance with the rules of the Superior Court of Justice. 2009, c. 33, Sched. 22, s. 11 (43).

#### Appeal to court

28. (1) A party to proceedings before the Registration Committee or the Discipline Committee may appeal to the Divisional Court, in accordance with the rules of court, from the decision or order of the committee.

#### Certified copy of record

(2) Upon the request of a party desiring to appeal to the Divisional Court and upon payment of the fee therefor, the Registrar shall furnish the party with a certified copy of the record of the proceedings, including the documents received in evidence and the decision or order appealed from.

#### Powers of court on appeal

(3) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the committee appealed from and may exercise all powers of the committee and may direct the committee to take any action which the committee may take and as the court considers proper, and for such purposes the court may substitute its opinion for that of the

committee or the court may refer the matter back to the committee for rehearing in whole or in part, in accordance with such directions as the court considers proper. R.S.O. 1990, c. S.29, s. 28.

#### Fees Mediation Committee

29. (1) No person who is a member of the Complaints Committee or the Discipline Committee shall be a member of the Fees Mediation Committee. R.S.O. 1990, c. S.29, s. 29 (1).

#### Duties of Fees Mediation Committee

(2) The Fees Mediation Committee,

(a) shall, unless the Committee considers it inappropriate to do so, mediate any written complaint by a client of a member of the Association or of a holder of a certificate of authorization in respect of a fee charged for services in the practice of professional surveying provided to the client; and

(b) shall perform such other duties as are assigned to it by the Council. R.S.O. 1990, c. S.29, s. 29 (2); 2009, c. 33, Sched. 22, s. 11 (44).

#### Arbitration by Fees Mediation Committee

(3) The Fees Mediation Committee, with the written consent of all parties to the dispute, may arbitrate a dispute in respect of a fee between a client and a member of the Association or a holder of a certificate of authorization and in that case the decision of the Fees Mediation Committee is final and binding on all parties to the dispute. R.S.O. 1990, c. S.29, s. 29 (3).

#### Application

(4) Where the Fees Mediation Committee acts as arbitrator under subsection (3), the Arbitrations Act does not apply. R.S.O. 1990, c. S.29, s. 29 (4).

#### Enforcement

(5) A decision by the Fees Mediation Committee under subsection (3), exclusive of the reasons therefor, certified by the Registrar, may be filed with the Superior Court of Justice and when filed the decision may be enforced in the same manner as a judgment of the court. R.S.O. 1990, c. S.29, s. 29 (5); 2006, c. 19, Sched. C, s. 1 (1).

#### Registrar's investigation

30. (1) Where the Registrar believes on reasonable and probable grounds that a member of the Association has committed an act of professional misconduct or incompetence or that there is cause to refuse to issue or to suspend or revoke a certificate of authorization, the Registrar by order may appoint one or more persons to make an investigation to ascertain whether such act has occurred or there is such cause, and the person or persons appointed shall report the result of the investigation to the Registrar. R.S.O. 1990, c. S.29, s. 30 (1).

#### Powers of investigator

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member or holder of the certificate of authorization in respect of whom the investigation is being made and may, upon production of his or her appointment, enter at any reasonable time the business premises of the member or holder and examine books, records, documents and things relevant to the subject-matter of the investigation and, for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the Public Inquiries Act, which Part applies to such inquiry as if it were an inquiry under that Act. R.S.O. 1990, c. S.29, s. 30 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

#### Powers of investigator

(2) For purposes relevant to the subject matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member or holder of the certificate of authorization in respect of whom the investigation is being made and, upon production of his or her appointment, may enter at any reasonable time the business premises of the member or holder and examine books, records, documents and things relevant to the subject matter of the investigation. 2009, c. 33, Sched. 6, s. 88.

#### Application of Public Inquiries Act, 2009

(2.1) Section 33 of the Public Inquiries Act, 2009 applies to the inquiry under subsection (2). 2009, c. 33, Sched. 6, s. 88.

See: 2009, c. 33, Sched. 6, ss. 88, 92.

#### Obstruction of investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or her or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation. R.S.O. 1990, c. S.29, s. 30 (3).

#### Order by provincial judge

(4) Where a provincial judge is satisfied on evidence upon oath,

(a) that the Registrar had grounds for appointing and by order has appointed one or more persons to make an investigation; and

(b) that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the member of the Association or holder of a certificate of authorization whose affairs are being investigated and to the subject-matter of the investigation,

the provincial judge may issue an order authorizing the person or persons making the investigation, together with such police officer or officers as they call upon to assist them, to enter and search, by force,

if necessary, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them. R.S.O. 1990, c. S.29, s. 30 (4).

#### Execution of order

(5) An order issued under subsection (4) shall be executed at reasonable times as specified in the order. R.S.O. 1990, c. S.29, s. 30 (5).

#### Expiry of order

(6) An order issued under subsection (4) shall state the date on which it expires, which shall be a date not later than fifteen days after the order is issued. R.S.O. 1990, c. S.29, s. 30 (6).

#### Notice not required

(7) A provincial judge may receive and consider an application for an order under subsection (4) without notice to and in the absence of the member of the Association or holder of a certificate of authorization whose affairs are being investigated. R.S.O. 1990, c. S.29, s. 30 (7).

#### Removal of books, etc.

(8) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under this section relating to the member or holder whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member or holder whose practice is being investigated. R.S.O. 1990, c. S.29, s. 30 (8).

#### Admissibility of copies

(9) Any copy made as provided in subsection (8) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as proof in the absence of evidence to the contrary of the original book, record or document and its contents. R.S.O. 1990, c. S.29, s. 30 (9).

#### Report of Registrar

(10) The Registrar shall report the results of the investigation to the Council and the Council may direct the matter to the Discipline Committee or to the other committee that it sees fit. 2009, c. 33, Sched. 22, s. 11 (45).

#### Information re insurance claims

31. (1) In this section,

“insurer” means a person offering insurance in respect of liability incurred in the practice of professional surveying. R.S.O. 1990, c. S.29, s. 31 (1); 2009, c. 33, Sched. 22, s. 11 (46).

#### Information



(2) Upon the request of the Registrar, an insurer shall furnish to the Registrar any information that is in the possession of the insurer and that is specified in the request related to a claim or claims for indemnity in respect of the practice of professional surveying. R.S.O. 1990, c. S.29, s. 31 (2); 2009, c. 33, Sched. 22, s. 11 (46).

#### Exception

(3) Subsection (2) does not apply in respect of a document prepared by an insured person relating to a claim for indemnity in respect of the practice of professional surveying by the insured person. R.S.O. 1990, c. S.29, s. 31 (3); 2009, c. 33, Sched. 22, s. 11 (46).

#### Transmittal of information

(4) The Registrar may forward any information referred to in subsection (2) to such committee as he or she considers appropriate. R.S.O. 1990, c. S.29, s. 31 (4).

#### Professional liability insurance

32. (1) No member of the Association or holder of a certificate of authorization shall engage in the practice of professional surveying unless insured against professional liability in accordance with the regulations or in accordance with arrangements under subsection (2). R.S.O. 1990, c. S.29, s. 32 (1); 2009, c. 33, Sched. 22, s. 11 (46).

#### Arrangements by Association

(2) The Association may make arrangements respecting insurance against professional liability for members of the Association and holders of certificates of authorization. R.S.O. 1990, c. S.29, s. 32 (2).

#### Premiums

(3) Arrangements under subsection (2) may include arrangements respecting the payment and remission of premiums. R.S.O. 1990, c. S.29, s. 32 (3).

#### Levies

(4) The Association may prescribe levies that shall be paid by members of the Association and holders of certificates of authorization related to arrangements under subsection (2). R.S.O. 1990, c. S.29, s. 32 (4).

#### Compensation Fund

33. (1) The Association shall continue to maintain the Compensation Fund and shall continue to hold it in trust for the purposes of this section. R.S.O. 1990, c. S.29, s. 33 (1).

#### Composition of Fund

(2) The Compensation Fund shall be made up of,

- (a) all money paid by members of the Association under subsection (3);
- (b) all money earned from the investment of money in the Fund;
- (c) all money recovered under subsection (7); and
- (d) all money contributed by any person. R.S.O. 1990, c. S.29, s. 33 (2).

#### Compensation Fund levy

(3) Every member, other than those of a class exempted by the by-laws, shall pay to the Association for the Compensation Fund such sum as is prescribed from time to time by the by-laws. R.S.O. 1990, c. S.29, s. 33 (3).

#### Insurance

(4) The Council may insure with any insurer licensed to carry on business in Ontario for such purposes and on such terms as the Council considers expedient in relation to the Compensation Fund, and, in such event, the money in the Fund may be used for the payment of premiums. R.S.O. 1990, c. S.29, s. 33 (4).

#### Grants

(5) The Council in its absolute discretion may make grants from the Compensation Fund in order to relieve or mitigate loss sustained by any person in consequence of dishonesty or incompetence in the practice of professional surveying on the part of any member even if after the commission of the act of dishonesty or incompetence the member may have died or ceased to administer his or her affairs or to be a member. R.S.O. 1990, c. S.29, s. 33 (5); 2009, c. 33, Sched. 22, s. 11 (46).

#### Conditions of grants

(6) No grant shall be made out of the Compensation Fund unless notice in writing of the loss is received by the Registrar within six months after the loss came to the knowledge of the person suffering the loss or within such further time, not exceeding eighteen months, as in any case may be allowed by the Council. R.S.O. 1990, c. S.29, s. 33 (6).

#### Subrogation

(7) If a grant is made under this section, the Association is subrogated to the amount of the grant to any rights or remedies to which the person receiving the grant was entitled on account of the loss in respect of which the grant was made against the member or any other person, or, in the event of the death or insolvency or other disability of the member or other person, against the personal representative or other person administering the member's or other person's estate. R.S.O. 1990, c. S.29, s. 33 (7).

#### Grantees' rights conditionally limited

(8) A person to whom a grant is made under this section, or, in the event of the person's death or insolvency or other disability, the personal representative or other person administering the person's estate, has no right to receive anything from the member or the member's estate in respect of the loss in

respect of which the grant was made until the Association has been reimbursed the full amount of the grant. R.S.O. 1990, c. S.29, s. 33 (8).

#### Reimbursement from bankrupt's estate

(9) Where a grant has been made under this section and the member has been declared a bankrupt, the Association is entitled to prove against the bankrupt's estate for the full amount of the claim of the person to whom the grant was made and to receive all dividends on such amount until the Association has been reimbursed the full amount of the grant. R.S.O. 1990, c. S.29, s. 33 (9).

#### Delegation of powers to committee or referee or both

(10) The Council may delegate any of the powers conferred upon it by this section to a committee of the Council and, whether or not the Council has made any such delegation, it may appoint any member as a referee and delegate to the member any of the powers conferred upon it by this section that are not delegated to a committee. R.S.O. 1990, c. S.29, s. 33 (10).

#### Reports

(11) Where the Council has delegated any of its powers under this section to a committee or to a referee, the committee or referee, as the case may be, shall report as required to the Council. R.S.O. 1990, c. S.29, s. 33 (11).

#### Costs of administration

(12) There may be paid out of the Compensation Fund the costs of its administration, including the costs of investigations and hearings and all other costs, salaries and expenses necessarily incidental to the administration of the Fund. R.S.O. 1990, c. S.29, s. 33 (12).

#### Other purposes

(13) Surplus money in the Compensation Fund may be applied for such other purposes as are specified by the Council and approved by the Lieutenant Governor in Council. R.S.O. 1990, c. S.29, s. 33 (13).

#### Surrender of cancelled licence, etc.

34. Where a licence, certificate of authorization or certificate of registration is revoked or cancelled, the former holder thereof shall forthwith deliver the licence or certificate and related seal to the Registrar. R.S.O. 1990, c. S.29, s. 34.

#### Restoration of licence, etc.

35. (1) A person whose licence, certificate of authorization or certificate of registration has been revoked for cause under this Act, or whose membership has been cancelled for cause under a predecessor of this Act, may apply in writing to the Registrar for the issuance of a licence, certificate of authorization or certificate of registration, but such application shall not be made sooner than two years after the revocation or cancellation. R.S.O. 1990, c. S.29, s. 35 (1).

#### Reference to Registration Committee

(2) The Registrar shall refer the application to the Registration Committee and the Committee shall,

- (a) hold a hearing and make a decision with respect to the application; and
- (b) report its decision and reasons to the Council and to the applicant. 2009, c. 33, Sched. 22, s. 11 (47).

#### Procedures

(3) The provisions of this Act applying to hearings by the Registration Committee, except section 28, apply with necessary modifications to proceedings of the Discipline Committee under this section. R.S.O. 1990, c. S.29, s. 35 (3).

#### Direction by Council to issue licence

(4) Despite subsections (1), (2) and (3), the Council may direct at any time that a licence, certificate of authorization or certificate of registration be issued to a person whose licence, certificate of authorization or certificate of registration has previously been revoked for cause or suspended for cause or that a suspension or cancellation for cause under a predecessor of this Act be removed, subject to such terms, conditions and limitations as the Council considers appropriate. R.S.O. 1990, c. S.29, s. 35 (4).

#### Confidentiality

36. (1) Every person engaged in the administration of this Act, including any person making a review or investigation under section 30, shall preserve secrecy with respect to all matters that come to the person's knowledge in the course of the person's duties, employment, inquiry or investigation and shall not communicate any such matter to any other person except,

(a) as may be required in connection with the administration of this Act and the regulations and by-laws or any proceedings under this Act or the regulations;

(a.1) in accordance with the Association's policies and practices with respect to the collection, use and disclosure of personal information as set out in the by-laws;

(b) that the person may communicate any such matter to his or her counsel; or

(c) with the consent of the person to whom the information relates. R.S.O. 1990, c. S.29, s. 36 (1); 2009, c. 33, Sched. 22, s. 11 (48).

#### Testimony in civil action

(2) No person to whom subsection (1) applies shall be required to give testimony or to produce any book, record, document or thing in any action or proceeding with regard to information obtained in the course of his or her duties, employment, inquiry or investigation except in a proceeding under this Act or the regulations. R.S.O. 1990, c. S.29, s. 36 (2).

## Use of “O.L.S.” by corporation

37. (1) A corporation whose name includes the title “Ontario land surveyor” or “arpenteur-géomètre de l’Ontario” or the initials “O.L.S.” or “A.-G.O.” and that ceases to hold a subsisting certificate of authorization shall not carry on or engage in any business until the title “Ontario land surveyor” or “arpenteur-géomètre de l’Ontario” or the initials “O.L.S.” or “A.-G.O.” are removed from the name of the corporation.

## Exception

(2) Subsection (1) does not apply to prevent a corporation from carrying on an activity necessary to the winding up of the corporation. R.S.O. 1990, c. S.29, s. 37.

## Proceedings to prohibit continuation or repetition of contravention

38. Where any provision of this Act or the regulations is contravened, despite any other remedy or any penalty imposed, the Association may apply to a judge of the Superior Court of Justice for an order prohibiting the continuation or repetition of the contravention or the carrying on of any activity specified in the order that, in the opinion of the court, will result or will likely result in the continuation or repetition of the contravention by the person committing the contravention, and the judge may make the order and it may be enforced in the same manner as any other order or judgment of the Superior Court of Justice. R.S.O. 1990, c. S.29, s. 38; 2006, c. 19, Sched. C, s. 1 (1).

## Penalties

39. (1) Every person who contravenes section 11 is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$15,000 and for each subsequent offence to a fine of not more than \$30,000.

## Idem

(2) Every person who is not a member of the Association and who uses the title “Ontario land surveyor” or “arpenteur-géomètre de l’Ontario” or the initials “O.L.S.” or “A.-G.O.” as an occupational designation is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$5,000 and for each subsequent offence to a fine of not more than \$15,000.

## Idem

(3) Every person who obstructs a person appointed to make an investigation under section 30 in the course of his or her duties is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

## Idem

(4) Every corporation that contravenes section 37 is guilty of an offence and on conviction is liable for a first offence to a fine of not more than \$5,000 and for each subsequent offence to a fine of not more than \$15,000.

## Idem, director or officer of corporation

(5) Where a corporation is guilty of an offence under subsection (1), (2), (3) or (4), every director or officer of the corporation who authorizes, permits or acquiesces in the offence is guilty of an offence and on conviction is liable to a fine of not more than \$30,000.

#### Limitation

(6) Proceedings shall not be commenced in respect of an offence under subsection (1), (2), (3), (4) or (5) after two years after the date on which the offence was, or is alleged to have been, committed. R.S.O. 1990, c. S.29, s. 39.

#### Offences involving falsity

##### Falsification of certificate

40. (1) Any person who makes or causes to be made any wilful falsification in any matter relating to a register or issues a false licence, certificate of authorization or certificate of registration or a false document with respect to a register maintained by the Registrar under this Act is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

##### Offences for false representation

(2) Any person who wilfully procures or attempts to procure the issuance of a licence or the issuance of a certificate of authorization or a certificate of registration under this Act by knowingly making any false representation or declaration or by making a fraudulent representation or declaration, either orally or in writing, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

##### Aiding and assisting

(3) Every person knowingly aiding and assisting in the commission of an offence under subsection (2) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

##### Limitation period

(4) Proceedings to obtain a conviction for an offence under subsection (1) shall not be commenced after the expiration of six months after the date on which the offence was, or is alleged to have been, committed. R.S.O. 1990, c. S.29, s. 40.

##### Onus of proof

41. Where licensing or the holding of a certificate of authorization under this Act is required to permit the lawful doing of any act or thing, if in any prosecution it is proven that the defendant has done such act or thing, the burden of proving that the defendant was so licensed or that the defendant held a subsisting certificate of authorization under this Act rests upon the defendant. R.S.O. 1990, c. S.29, s. 41.

##### Service of notice

42. A notice or document required by this Act to be served or delivered may be served or delivered personally or by prepaid first class mail addressed to the person to whom notice is to be given at

the person's last known address and, where notice is served or delivered by mail, the service or delivery shall be deemed to have been made on the tenth day after the day of mailing unless the person to whom notice is given establishes that the person, acting in good faith, through absence, accident, illness or other cause beyond the person's control, did not receive the notice, or did not receive the notice until a later date. R.S.O. 1990, c. S.29, s. 42.

#### Registrar's certificate as evidence

43. Any statement containing information from the records required to be kept by the Registrar under this Act, purporting to be certified by the Registrar under the seal of the Association, is admissible in evidence in all courts as proof in the absence of evidence to the contrary of the facts stated therein without proof of the appointment or signature of the Registrar and without proof of the seal. R.S.O. 1990, c. S.29, s. 43.

#### Immunity

44. (1) No action or other proceeding for damages shall be instituted against the Association, a committee of the Association or a member of the Association or committee, or an officer, employee, agent or appointee of the Association for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power.

#### Councillor indemnified in suits respecting execution of office

(2) Every member of the Council and every officer, member or employee of the Association, and the person's heirs, executors and administrators, and estate and effects, respectively, may, with the consent of the Association, given at any meeting of the members of the Association, from time to time and at all times, be indemnified and saved harmless out of the funds of the Association, from and against,

(a) all costs, charges and expenses whatsoever that the person sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted for or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by the person, in or about the execution of the duties of the person's office, employment or appointment; and

(b) all other costs, charges and expenses that the person sustains or incurs in or about or in relation to the affairs thereof, except such costs, charges or expenses as are occasioned by the person's own wilful neglect or default. R.S.O. 1990, c. S.29, s. 44.

45. REPEALED: 1998, c. 18, Sched. I, s. 62.

#### Application of Corporations Act

46. (1) The Corporations Act does not apply in respect of the Association except for the following sections of that Act which shall apply with necessary modifications in respect of the Association:

1. Section 81 (liability for wages).

2. Section 94 (auditors) and, for the purpose, the Minister shall be deemed to be the Minister referred to in the section.

3. Subsection 95 (1) (auditor's qualifications) and, for the purpose, the subsection shall be deemed not to include,

- i. the exception as provided in subsection 95 (2), and
- ii. the reference to an affiliated company.

4. Section 96 (auditor's functions).

5. Subsection 97 (1), exclusive of clause 97 (1) (b), (auditor's report) and, for the purpose, the Association shall be deemed to be a private company.

6. Subsection 97 (3) (auditor's report).

7. Section 122 (liability of members).

7.1 Clause 131 (1) (b) and subsection 131 (6) (change of name).

8. Section 276 (holding of land) and, for the purpose, the Minister shall be deemed to be the Minister referred to in the section.

9. Section 280 (making contracts).

10. Section 281 (power of attorney).

11. Section 282 (authentication of documents) except in respect of information from the records required to be kept by the Registrar.

12. Section 292 (validity of acts of directors).

13. Section 297 (directions by a court as to holding a meeting).

14. Section 299 (minutes of meetings).

15. Section 302 (books of account).

16. Section 303 (untrue entries) and, for the purpose, the section shall be deemed not to refer to section 41 of that Act.

17. Section 304 (place of keeping and the inspection of records) and, for the purpose,

- i. the section shall be deemed not to refer to sections 41 and 43 of that Act, and
- ii. the Minister shall be deemed to be the Minister referred to in the section.

18. Section 305 (inspection of records) and, for the purpose, the section shall be deemed not to refer to section 41 of that Act.



19. Section 310 (investigations and audits).
20. Section 323 (evidence of by-laws and certificates of amounts due).
21. Section 329 (appeals).
22. Section 333 (untrue statements) and, for the purpose,
  - i. the section shall be deemed not to refer to regulations made under that Act, and
  - ii. the Minister and the Deputy Minister to the Minister shall be deemed to be the Minister and the Deputy Minister referred to in the section.
23. Section 332 (orders by the court) and, for the purpose, the section shall be deemed not to refer to creditors. R.S.O. 1990, c. S.29, s. 46 (1); 2009, c. 33, Sched. 22, s. 11 (49).

#### Interpretation

(2) For the purposes of subsection (1), a member of the Association shall be deemed to be a shareholder. R.S.O. 1990, c. S.29, s. 46 (2).

#### References to O.L.S.

47. A reference in any Act or regulation to a surveyor or an Ontario land surveyor licensed or registered under this Act or to an Ontario Land Surveyor shall be deemed to be a reference to a member of the Association licensed to engage in the practice of cadastral surveying. R.S.O. 1990, c. S.29, s. 47.

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