

Statutes of Newfoundland and Labrador 2008

CHAPTER E-12.1

AN ACT RESPECTING THE PRACTICE OF ENGINEERING AND GEOSCIENCE

(Assented to December 18, 2008)

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Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as the *Engineers and Geoscientists Act, 2008*.

Definitions

2. In this Act

- (a) "association" means the association continued under section 3;
- (b) "board" means the board referred to in section 4;
- (c) "geoscientist" means either a geophysicist, geochemist or geologist;
- (d) "member", unless the context otherwise requires, means a member of the association;
- (e) "member-in-training" means an engineer-in-training or a geoscientist-in-training who has not completed the requirements to be registered under this Act;
- (f) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;
- (g) "permit holder" means a professional member, a partnership or other association of persons, or a corporation, that holds a permit under this Act;
- (h) "practice of engineering" means reporting on, advising on, evaluating, designing, preparing plans and specifications for or directing the construction, technical inspection, maintenance or operation of a structure, work or process
 - (i) that is aimed at the discovery, except by the practice of geoscience, development or utilization of matter, materials or energy or is designed for the use and convenience of human beings, and
 - (ii) that requires in the reporting, advising, evaluating, designing, preparation or direction the professional application of the principles of mathematics, chemistry, physics or a related applied subject,and includes providing educational instruction on the matters contained in this paragraph to a student at an educational institution, but excludes practising as a natural scientist;
- (i) "practice of geoscience" means reporting on, advising on, evaluating, interpreting, processing, geological and geophysical surveying, exploring, classifying reserves or examining activities related to the earth sciences or engineering-geology
 - (i) that is aimed at the discovery or development of oil, natural gas, coal, metallic or non metallic minerals or precious stones, water or other natural resources or that is aimed at the investigation of geoscientific conditions, and
 - (ii) that requires in the reporting, advising, evaluating, interpreting, processing, geoscientific surveying, exploring, reserve classifying or examining the professional application of mathematics, chemistry or physics through the application of the principles of geoscience,and includes providing educational instruction on the matters contained in this paragraph to a student at an educational institution;

- (j) "professional engineer" means a person registered to engage in the practice of engineering under this Act;
- (k) "professional geoscientist" means a person registered to engage in the practice of geoscience under this Act;
- (l) "professional member" means either a professional engineer or geoscientist who is registered under this Act;
- (m) "registrar" means the registrar referred to in subsection 4(13); and
- (n) "student" means a person registered in a recognized undergraduate degree program in engineering or geoscience.

Association continued

3. (1) The Association of Professional Engineers and Geoscientists of Newfoundland and Labrador is continued as a corporation without share capital for the purposes of Part XXI of the *Corporations Act*.

(2) All professional members and members-in-training are members of the association.

(3) The powers of the association shall be exercised in the name of and on behalf of the association by the board of directors referred to in section 4.

Board

4. (1) The association shall be governed by a board of directors which shall consist of

(a) 9 professional members elected from and by members of the association in accordance with the by-laws; and

(b) 3 members appointed under section 5 who are not members of the association.

(2) The association shall elect one of the elected members as the chairperson of the board.

(3) A person is not eligible to serve as chairperson for more than 2 consecutive years.

(4) The chairperson, or an elected member designated by him or her, shall chair the meetings of the board.

(5) A member may be elected for a term set by the by-laws which shall not exceed 3 years and is eligible to be re-elected, but shall not serve as a member for more than 9 consecutive years.

(6) Where a person elected to the board under subsection (1) holds office for a period of 9 consecutive years the person is not eligible for election as a member of the board until the expiration of 12 months from the end of the year in which he or she was last a member.

(7) An elected member may resign his or her office by written notice to the board.

(8) Where an elected member resigns, dies or becomes incapable of performing his or her duties, the remaining members shall appoint a replacement to serve until the expiry of the term of that elected member.

(9) Where the term of office of a member of the board expires and a successor has not been elected, the member may continue to hold office until a successor is elected or appointed but time served by that member under this subsection shall not be counted for the purpose of subsection (5).

(10) Elected members shall serve without payment for their services, but their travel and other expenses associated with their duties as members may be paid by the board, in accordance with the by-laws.

(11) The board shall appoint a chief executive officer of the association.

(12) The chief executive officer shall carry out the duties imposed on him or her by this Act and the by-laws made under section 9.

(13) The chief executive officer of the association shall act as the registrar for the purpose of this Act.

Appointment by minister

5. (1) The minister shall appoint as members of the board 3 persons who are not professional engineers or professional geoscientists who are suitable to represent the public interest.

(2) A person appointed under subsection (1) holds office for a term of 3 years and is eligible to be re-appointed.

(3) Where a person appointed under subsection (1) holds office for a period of 9 consecutive years the person is not eligible for appointment as a member of the board until the expiration of 12 months from the end of the year in which he or she was last a member.

(4) Where the term of an appointed member expires, he or she continues to be a member until re-appointed or replaced but time served by that member under this subsection shall not be counted for the purpose of subsection (3).

(5) The association shall pay the expenses of a person appointed under this section in accordance with guidelines established by the Lieutenant-Governor in Council.

(6) A person appointed under subsection (1) may resign his or her appointment by written notice to the minister and shall provide a copy to the chairperson of the board.

(7) A person appointed under subsection (1) may be removed from office by the minister before the expiration of his or her term of office and no compensation shall be paid to him or her other than an amount owing under subsection (5).

Meetings of the board

6. (1) A quorum of the board is 7 members, one of whom is an appointed member.

(2) Except where prohibited in the by-laws, a member may, where a majority of the members consent, participate in a meeting of the board by means of the telephone or other telecommunication device that permits all persons participating in the meeting to communicate with each other.

(3) Where a quorum under subsection (1) exists, a majority of that number is sufficient to make a decision, and in the event of a tie the chairperson of the meeting shall cast the deciding vote.

(4) In the absence of the chairperson, the members of the board in attendance at a meeting may appoint another member to chair that meeting.

Annual general meeting

7. (1) The association shall hold an annual general meeting, to which all members shall be invited.

(2) At the annual general meeting the association shall appoint an auditor to audit the accounts of the association and report on the financial statement prepared by the board.

(3) The board may in its by-laws provide for voting at a meeting of the board and the association or in an election of members by mail or electronic means.

Fees

8. (1) In prescribing the fees payable under this Act, the board shall, so far as it is practicable, ensure that the amount of fees is sufficient to enable the association to exercise its powers under this Act.

(2) All fees received by the association shall be applied by it to its duties under this Act.

By-laws

9. (1) The board may make by-laws not inconsistent with this Act respecting

(a) the holding and procedure of its and the association's meetings;

(b) the appointment of committees of the members of the board comprising representatives of elected and appointed members and the duties and responsibilities of those committees and the delegation of some or all of the board's powers to them;

(c) the election of members of the board under subsection 4(1) and setting the terms of office;

(d) the election of the chairperson of the board under subsection 4(2);

(e) the payment of travel and other expenses of elected members of the board;

(f) the employment and remuneration of staff and consultants of the association;

(g) a code of ethics which shall include

(i) a definition of "professional misconduct" and "conduct unbecoming" for the purposes of sections 20 to 37,

(ii) provisions respecting conflict of interest, and

(iii) rules respecting methods of advertising;

(h) the remuneration and payment of travel expenses of members of adjudication tribunals;

(i) the participation of members at a meeting of the association or board by telephone or other telecommunications device under section 6; and

(j) voting by members of the association and the board by mail or electronic means.

(2) A by-law may be made, amended or repealed at a meeting of the board provided that 30 days notice, in writing, of the making, amendment or repeal of the by-law and of the meeting are given to members of the board.

(3) The board shall have its by-laws available for inspection by the public on reasonable notice and at reasonable hours.

Annual report

10. (1) The board shall prepare and submit to the minister not later than 6 months after the end of its financial year

- (a) a report on the activities of the association in the previous year; and
- (b) the association's audited financial statements for the previous financial year.

(2) The minister shall table a copy of the annual report and the audited financial statement in the House of Assembly within 15 days of receiving it if the house is sitting and if the house is not sitting within 15 days after it next begins to sit.

(3) Where the board fails to comply with subsection (1), the board is guilty of an offence and on summary conviction may be fined \$1,000.

Registration

11. A person who

- (a) has met the requirements for registration that may be prescribed by the board; and
- (b) pays the fees set by the association,

is entitled to be registered as a professional engineer or geoscientist.

Permit holders

12. (1) A professional member, partnership, corporation or other association of persons that proposes to provide the services of a professional member directly to the public shall apply to the board for a permit to provide those services.

(2) An applicant for a permit under subsection (1) shall pay the fee set by the association for the permit.

(3) As a condition of receiving a permit, a professional member, partnership, corporation or association of persons shall provide proof that he or she has obtained professional liability insurance coverage in a form and amount satisfactory to the board.

Register

13. (1) The registrar shall keep a register in which shall be entered the names of all persons registered, under section 11 and all professional members, partnerships, corporations or other associations of persons issued a permit under section 12.

(2) The register shall be open to inspection by a member of the public during normal business hours at the office of the board.

Exclusive scope of the practice of engineering

14. (1) A person, corporation, partnership or other association of persons, except a professional engineer or a permit holder, shall not engage in the practice of engineering.

(2) A professional engineer or permit holder may engage in the practice of surveying except land surveying as defined in the *Land Surveyors Act, 1991* and as defined for geological and geophysical surveying in the practice of geoscience.

(3) Subsection (1) does not apply to

- (a) the performance of engineering work by persons who are not professional engineers where a professional engineer is responsible for the maintenance of engineering standards in the performance of the work;
- (b) a person engaging in testing, inspecting and reporting, where the specifications and standards involved have been prepared or approved by a professional engineer;
- (c) a person designing special production machinery, equipment or tools and dies for the use of his or her employer's facilities;
- (d) a person engaging in the repair, maintenance or operation of equipment and facilities of his or her employer;
- (e) an engineer-in-training, in the course of his or her being employed or supervised and directed by a professional engineer; and
- (f) a person who, on his or her property and for his or her sole use or the use of his or her domestic establishment, carries out work that does not involve the safety of the general public.

(4) Subsection (1) does not apply to a person engaged in

- (a) planning, designing or giving advice on the design of;
- (b) preparing plans, drawings, detail drawings, specification or graphic representations for the design of; or
- (c) inspecting work or assessing the performance of work under a contract for

the erection, construction or alteration of or addition to a building.

(5) In subsection (4), "building" means a building in a category or type for which the services of a designer are not required by the National Building Code in the construction of the building, except as provided in the Code.

(6) In subsection (5), "designer" has the same meaning as that given to it in the latest edition of the National Building Code.

Exclusive use of name engineer

15. (1) A professional engineer only shall use the title "professional engineer" or the abbreviation "P. Eng.".

(2) A person, corporation, partnership or other association of persons, except a professional engineer or permit holder, shall not

- (a) use the word "engineer or engineering" in combination with a name, title, description, letter, symbol or abbreviation, except a registered engineering geologist, that represents expressly or by implication that he or she is a professional engineer or permit holder;
- (b) represent, expressly or by implication, that
 - (i) he or she is entitled to engage in the practice of engineering, or
 - (ii) he or she is a professional engineer or permit holder; or

- (c) affix the stamp or seal of a professional engineer or permit holder, or allow that stamp or seal to be affixed to a plan, drawing, detail drawing, specification, other document or reproduction of either of them unless
 - (i) the plan, drawing, detail drawing, specification, other document or reproduction was prepared by or under the supervision and control of a professional engineer,
 - (ii) the stamp or seal is affixed with the knowledge and consent or in accordance with the direction of the professional engineer or permit holder to whom the stamp or seal was issued, and
 - (iii) a professional engineer signs the stamp or seal affixed.

Exclusive scope of the practice of geoscience

16. (1) A person, corporation, partnership or other association of persons, except a professional geoscientist or a permit holder, shall not engage in the practice of geoscience.

(2) Subsection (1) does not apply to

- (a) a person engaged in the practice of geoscience as a geoscientist in training, geoscience technician or technologist, while employed or engaged and supervised and controlled by a professional geoscientist;
- (b) a prospector engaged in activities that are normally associated with the business of prospecting;
- (c) the performance of routine geoscientific surveys and reports, where the specifications and standards involved have been prepared or approved by a professional geoscientist;
- (d) the performance of routine reduction and plotting of geoscientific data where the activities are conducted under the supervision of a professional geoscientist;
- (e) the performance of routine repair, maintenance or operation of geoscience equipment and facilities of his or her employer; and
- (f) the performance of geoscientific work by persons who are not professional geoscientists where a professional geoscientist is responsible for the maintenance of geoscience standards in the performance of the work.

Exclusive use of name geoscientist

17. (1) A professional geoscientist only shall use the title "professional geoscientist" or the abbreviation "P. Geo.".

(2) A person, corporation, partnership or other association of persons, except a professional geoscientist or a permit holder, shall not

- (a) use the word "geoscientist" in combination with a name, title, description, letter, symbol or abbreviation that represents expressly or by implication that he or she is a professional geoscientist or permit holder;
- (b) represent, expressly or by implication, that
 - (i) he or she is entitled to engage in the practice of geoscience, or
 - (ii) he or she is a professional geoscientist or permit holder; or

- (c) affix the stamp or seal of a professional geoscientist or permit holder, or allow that stamp or seal to be affixed to a report or document, or a reproduction, unless
 - (i) the report or document or reproduction was prepared by or under the supervision and control of a professional geoscientist,
 - (ii) the stamp or seal is affixed with the knowledge and consent or under the direction of the professional geoscientist or the permit holder to whom the stamp or seal was issued, and
 - (iii) a professional geoscientist signs the stamp or seal.

Requirement for permit

18. (1) A professional member shall not offer or provide professional services directly to the public unless the member has a permit issued under section 12.

(2) A permit issued under section 12 may contain those restrictions on the practice of engineering or geoscience that the board considers appropriate.

Limited liability partnerships

19. Two or more persons registered under this Act to practice as professional members are eligible, as required by section 56 of the *Partnership Act*, to apply to be registered under that Act as a limited liability partnership.

Definitions

20. In this section and sections 21 to 37,

- (a) "allegation" means a written document alleging that a person has engaged in conduct deserving of sanction;
- (b) "complainant" means a person making an allegation described in section 22;
- (c) "conduct deserving of sanction" includes
 - (i) professional misconduct,
 - (ii) professional incompetence,
 - (iii) conduct unbecoming a professional member or permit holder,
 - (iv) incapacity or unfitness to practise engineering or geoscience, and
 - (v) acting in breach of this Act, the regulations or the code of ethics made under section 9;
- (d) "costs incurred by the association" includes
 - (i) out of pocket expenses incurred by or on behalf of the association,
 - (ii) amounts paid by the association to adjudication tribunal members as remuneration and for expenses, and
 - (iii) the actual cost of legal counsel for the association and the adjudication tribunal;

- (e) "disciplinary panel" means the panel of persons appointed under section 21 from which the members of an adjudication tribunal are chosen; and
- (f) "respondent" means a current or former professional member or permit holder against whom an allegation is made.

Complaints and disciplinary panel

21. (1) The board shall appoint at least 3 of its members, at least one of whom is a member appointed under section 5, to constitute a complaints authorization committee.

(2) The registrar is not eligible to be a member of the complaints authorization committee.

(3) The board shall appoint the chairperson and vice-chairperson of the complaints authorization committee from the persons appointed under subsection (1).

(4) The board shall appoint at least 12 members who are not members of the board, one of whom shall be appointed to serve as chairperson, and the minister shall appoint at least 4 persons who are not members to represent the public interest, who shall together constitute a disciplinary panel.

(5) Of the members first appointed to the disciplinary panel, one half shall be appointed for a term of 2 years and the remainder for a term of 3 years and all subsequent appointments of members to the disciplinary panel shall be for a term of 3 years.

(6) Notwithstanding the expiry of his or her term, a member of the disciplinary panel continues to be a member until he or she is re-appointed or his or her replacement is appointed.

(7) Persons appointed to the disciplinary panel may be reappointed.

(8) Members of the disciplinary panel shall serve on the panel without payment for their services, but may be remunerated for service as a member of an adjudication tribunal and paid their travel and other expenses associated with the work of that tribunal by the board, in accordance with and at the rates set by the by-laws.

(9) The complaints authorization committee and an adjudication tribunal appointed under section 25 and a person appointed by either of them may summon witnesses and require those witnesses to give evidence, orally or in writing, upon oath or affirmation, and produce the documents and things that either of them considers necessary to the full investigation and hearing of an allegation or complaint and have the powers, privileges and immunities that are conferred on a commissioner appointed under the *Public Inquiries Act, 2006*.

Allegation

22. (1) An allegation shall be in writing and signed by the complainant or his or her solicitor, and filed with the registrar.

(2) The registrar may on his or her own motion make an allegation and file it, and the allegation has the same effect as an allegation referred to in subsection (1).

(3) Where the registrar has been informed that a professional member or permit holder has been convicted of an offence under the provisions of the *Criminal Code* or a similar penal statute of another country or has been suspended by a governing body of professional members and permit holders in another province or territory of Canada or another territory or country for reason of professional misconduct, conduct unbecoming a professional member or permit holder, or professional incompetence, the information shall be dealt with by the registrar as an allegation.

(4) For the purpose of subsection (3), a certified copy of the record of a conviction or findings made or the action taken by an external regulatory body constitutes proof, in the absence of evidence to the contrary, of the conviction or findings made or the action taken by that body, without proof of the signature of the convicting justice or person purporting to have signed on behalf of that body.

Effect of filing allegation

23. (1) Where it appears to the registrar after notifying the respondent of the allegation that the allegation may be resolved satisfactorily and where the complainant and the respondent consent, the registrar may attempt to resolve the matter.

(2) Where the allegation is not satisfactorily resolved by the registrar under subsection (1), he or she shall refer the allegation and all other allegations to the complaints authorization committee.

(3) The registrar shall inform a complainant and a respondent of the referral of the allegation to the complaints authorization committee.

Complaints authorization committee

24. (1) Where an allegation has been submitted to the complaints authorization committee, the committee may exercise one or more of the following powers:

- (a) refer the allegation back to the registrar for an investigation or alternative dispute resolution in accordance with the regulations;
- (b) conduct an investigation itself or appoint a person to conduct an investigation on its behalf; and
- (c) conduct a practice review into the respondent's practice; and
- (d) require the respondent to appear before it.

(2) Where the complaints authorization committee is of the opinion there are no reasonable grounds to believe the respondent has engaged in conduct deserving of sanction, the committee shall dismiss the allegation and give notice in writing of the dismissal to the complainant.

(3) Where the complaints authorization committee is of the opinion that there are reasonable grounds to believe that a respondent has engaged in conduct deserving of sanction, the allegation is considered to constitute a complaint, and the committee may

- (a) counsel or caution the respondent; or
- (b) instruct the registrar to file the complaint against the respondent and refer it to the disciplinary panel; and
- (c) suspend or restrict the respondent's registration.

(4) Where the complaints authorization committee suspends a respondent's registration under subsection (3), the committee shall give notice of the suspension to the public as required by the regulations.

(5) A person conducting an investigation under subsection (1) may

- (a) require a respondent to
 - (i) undergo an examination he or she considers necessary and as arranged by the registrar, and

(ii) permit the registrar or a member of the complaints authorization committee or a person appointed by the complaints authorization committee to inspect and copy the records of the respondent and other documents relating to the subject matter of the investigation; and

(b) require another person to permit the registrar or a member of the complaints authorization committee or another person appointed by the complaints authorization committee to inspect and copy records and other documents relating to the subject matter of the investigation held by that person,

and the respondent or other person shall comply.

(6) Where the registrar, a member of the complaints authorization committee or a person appointed by the complaints authorization committee requests that a respondent or another person provide information under subsection (5), that information shall be provided within 7 days of receipt of the request or a different period as specified in the request.

(7) An action for damages does not lie against a member or permit holder or another person to whom a request is made solely because he or she provides information requested of him or her under subsection (5).

(8) A complainant whose allegation is dismissed by the complaints authorization committee under subsection (2) may, within 30 days after receiving notice of the dismissal, appeal the dismissal to the Trial Division by filing a notice of appeal with the Registrar of the Supreme Court.

(9) Subsections (5), (6) and (7) apply to the Crown.

Adjudication tribunal

25. (1) For the purpose of dealing with complaints referred to the disciplinary panel, the chairperson of the disciplinary panel shall appoint from it an adjudication tribunal consisting of 3 persons, of whom 2 shall be members and one shall be a person appointed by the minister under subsection 21(4).

(2) The chairperson of the disciplinary panel shall appoint one of the members on an adjudication tribunal to be the chairperson.

Hearing

26. (1) Where a complaint has been referred under paragraph 24(3)(b), an adjudication tribunal shall hear the complaint.

(2) The parties to a hearing are the board and the respondent and a party may be represented by his or her counsel at a hearing.

(3) A hearing shall be conducted in public but an adjudication tribunal may exclude the public from a hearing, or from part of it, where it considers the desirability of protecting a party to the complaint or a witness against the consequences of possible disclosure of personal matters outweighs the desirability of holding the hearing in public.

Copies of books, etc. as evidence

27. A copy or extract of a book, record, document or thing certified by

(a) a member of the complaints authorization committee; or

(b) a person authorized under subsection 24(5) to conduct an inspection,

who made the copy or extract under subsection 24(5) is admissible in evidence in an action, proceeding or prosecution, in the absence of evidence to the contrary, as evidence of the original book, record, document or thing and its contents.

Guilty plea by respondent

28. (1) Where a respondent pleads guilty to one or more of the charges set out in a complaint, the adjudication tribunal shall, without calling evidence or hearing witnesses, unless the tribunal believes it is appropriate to do so, hear submissions from the parties.

(2) Where a respondent pleads guilty, and following submissions under subsection (1), the adjudication tribunal may

- (a) reprimand the respondent;
- (b) order that the respondent be suspended for a fixed period that it considers appropriate, until conditions which it may impose are fulfilled, or until further order of the adjudication tribunal;
- (c) allow or direct the respondent to surrender his or her registration or permit to the board upon those conditions that may be considered appropriate and strike the respondent's name from the register;
- (d) impose a fine not to exceed \$25,000 to be paid to the association;
- (e) order that the respondent pay the costs or a part of the costs incurred by the association in the investigation and hearing of the complaint;
- (f) order that the registrar publish a summary of the decision including the information set out in subsection 30(4) and other information that the tribunal may specify; and
- (g) order that the respondent comply with one or more of the following:
 - (i) make restitution to the complainant or other person affected by the conduct of the respondent,
 - (ii) obtain medical treatment,
 - (iii) obtain counselling,
 - (iv) obtain substance abuse counselling or treatment, until the respondent can demonstrate to the board or other body or person designated by the adjudication tribunal that a condition related to substance abuse rendering the respondent incapable or unfit to practise has been overcome,
 - (v) engage in continuing education programs,
 - (vi) complete a course of studies satisfactory to the board or another body or person designated by the adjudication tribunal,
 - (vii) report on his or her compliance with an order made under this section and authorize others involved with his or her treatment or supervision to report on it,
 - (viii) restrict his or her practice or continue his or her practice under specified conditions,
 - (ix) permit periodic inspection of records relating to his or her practice, or
 - (x) impose other requirements that are just and reasonable in the circumstances.

(3) The costs incurred by the association to ensure the compliance of a respondent with an order or direction of an adjudication tribunal under this section shall be borne by the respondent.

Powers of adjudication tribunal

29. (1) Upon the hearing of a complaint, an adjudication tribunal shall decide whether or not a respondent is guilty of conduct deserving of sanction.

(2) Where an adjudication tribunal decides that a respondent is not guilty, it shall dismiss the complaint and may, where it believes that the submission of the complaint to the tribunal for a hearing was unreasonable,

(a) order that those costs that the tribunal considers appropriate be paid by the association to the respondent; and

(b) make another order that it considers appropriate.

(3) Where an adjudication tribunal decides that a respondent is guilty, it may

(a) reprimand the respondent;

(b) order that the respondent be suspended for a fixed period that it considers appropriate, until conditions which it may impose are fulfilled, or until further order of the adjudication tribunal;

(c) allow or direct the respondent to surrender his or her registration or permit to the board upon those conditions that may be considered appropriate and strike the respondent's name from the register;

(d) impose a fine not to exceed \$25,000 to be paid to the association;

(e) order that the respondent pay the costs or a part of the costs incurred by the association in the investigation and hearing of the complaint;

(f) order that the registrar publish a summary of the decision including the information set out in subsection 30(4) and other information that the tribunal may specify; and

(g) order that the respondent comply with one or more of the following:

(i) make restitution to the complainant or other person affected by the conduct of the respondent,

(ii) obtain medical treatment,

(iii) obtain counselling,

(iv) obtain substance abuse counselling or treatment, until the respondent can demonstrate to the board or other body or person designated by the adjudication tribunal that a condition related to substance abuse rendering the respondent incapable or unfit to practise has been overcome,

(v) engage in continuing education programs,

(vi) complete a course of studies to the satisfaction of the board or other body or person designated by the adjudication tribunal,

(vii) report on his or her compliance with an order made under this section and authorize others involved with his or her treatment or supervision to report on it,

(viii) restrict his or her practice or continue his or her practice under specified conditions,

- (ix) permit periodic inspection of records relating to his or her practice, or
- (x) impose other requirements that are just and reasonable in the circumstances.

(4) The costs incurred by the association to ensure the compliance of a respondent with an order or direction of an adjudication tribunal under this section shall be borne by the respondent.

Filing and publication of decisions

30. (1) An adjudication tribunal shall file a decision or order made under subsection 28(2) or 29(2) or (3) and its reasons with the registrar and provide a copy to the complainant and the respondent and the respondent's employer.

(2) The registrar shall maintain a copy of a decision or order filed under subsection (1) for a minimum of 5 years after the day the decision is filed and shall upon receiving a request to view the disciplinary records in relation to a professional member or permit holder permit a person to view those records.

(3) The registrar shall publish a summary of a decision or order of an adjudication tribunal in a newspaper of general circulation in or nearest to the community in which the respondent practises within 14 days of the appeal period under section 36, unless a court orders otherwise, where the decision or order

- (a) suspends the respondent;
- (b) allows or directs the respondent to surrender his or her registration or permit;
- (c) restricts the respondent's practice;
- (d) specifies conditions for the continuing practice of the respondent; or
- (e) requires that a summary of the decision or order be published.

(4) The summary of the decision published under subsection (3) shall include

- (a) the name of the respondent and the address where he or she practises;
- (b) the date, location and a brief description of the conduct of the respondent that was found to be deserving of sanction;
- (c) the name of the complainant, unless the complainant has requested that his or her name be withheld;
- (d) the contents of the order in relation to the actions referenced in paragraphs (3)(a) to (d); and
- (e) other information specified for publication in the decision or order.

(5) Where a decision published under this section is confirmed, varied or set aside, the registrar shall within 14 days of the filing of the subsequent decision or order publish a summary of the decision or order and subsections (2) and (3) apply, with the necessary changes.

(6) The registrar may give notice of the decision and information respecting the decision to other persons the board may direct and shall include a summary of the decision in a certificate of good standing issued in relation to the respondent.

De-registration and suspension

31. (1) Where a professional member or permit holder is allowed or directed to surrender his or her registration or permit, his or her rights and privileges as a professional member or permit holder cease.

(2) Where a professional member or permit holder is suspended, his or her rights and privileges as a professional member or permit holder cease for the period of suspension.

(3) Where conditions or restrictions have been imposed upon a respondent's ability to carry on his or her practice, his or her rights and privileges as a professional member or permit holder shall be limited to the extent specified by the conditions or restrictions.

Failure to comply

32. (1) On application by the board to the disciplinary panel, an adjudication tribunal may make an order suspending the rights and privileges of a respondent where it determines that the respondent has failed to comply with a decision or an order under subsection 28(2) or 29 (3).

(2) The parties to the application are the board and the respondent.

(3) An order of an adjudication tribunal under this section may suspend the rights and privileges of the respondent for a fixed period that the adjudication tribunal may consider appropriate, or until conditions which it may impose are fulfilled, or until further order of the adjudication tribunal.

Re-hearing

33. (1) Where a decision or order of the adjudication tribunal

(a) suspends the respondent;

(b) allows or directs the respondent to surrender his or her registration or permit;

(c) restricts the respondent's practice; or

(d) specifies conditions for the continuing practice of the respondent,

and where the respondent alleges that new evidence has become available or a material change in circumstances has occurred since the making of the decision or order, the respondent may apply to the complaints authorization committee for a supplementary hearing to discharge or vary the decision or order based on the new evidence or material change in circumstances.

(2) An application under subsection (1) shall be made not more than 90 days after the new evidence becomes available or the material change in circumstances has occurred.

(3) Where an application is made to the complaints authorization committee under subsection (1), and the committee is of the opinion that new evidence has become available or that a material change in circumstances has occurred, as alleged by a respondent, the matter shall be referred to an adjudication tribunal as if it were a matter referred under paragraph 24(3)(b) and sections 26 to 31 apply, with the necessary changes, to the referred matter.

(4) The parties to a supplementary hearing under this section are the respondent and the board.

(5) For the purpose of this section, in addition to an order that an adjudication tribunal may make under section 29, a tribunal may

(a) vary the original decision or order made under section 29; or

(b) discharge the original decision or order, with or without conditions.

Costs of association

34. (1) Where a person who was ordered to pay the costs of the board under paragraph 28(2)(e) or 29(3)(e) fails to pay in the time required, the board may suspend the registration or permit of that person until the costs are paid.

(2) Costs ordered to be paid to the association under paragraph 28(2)(e) or 29(3)(e) are a debt due the association and may be recovered by a civil action.

Collection of fine

35. (1) Where an order is made under section 28 or 29 imposing a fine on a respondent, the board may issue a certificate stating the amount of the fine due and remaining unpaid and the name of the person by whom it is payable, and file the certificate with the Registrar of the Supreme Court.

(2) Where a certificate is filed with the Registrar of the Supreme Court under subsection (1), it has the same effect and all proceedings may be taken on the certificate as if it were a judgment of the Trial Division for the recovery of the amount stated in the certificate against the person named in the certificate.

(3) A person named in a certificate filed under this section may, within 30 days after the certificate is filed, apply to a judge of the Trial Division for a review, on a question of law or jurisdiction, of the certificate.

(4) On application under subsection (3), the judge may make any amendment to the certificate that is necessary to make the certificate accord with the judge's decision.

(5) There is no appeal from a decision of a judge made under this section.

(6) A certificate filed under this section may also be filed in the judgment enforcement registry on the expiration of the 30 day period referred to in subsection (3) in accordance with Part III of the *Judgment Enforcement Act* and be enforced in accordance with that Act.

Appeal to Trial Division

36. (1) The board or the respondent may, within 30 days after receiving notice of the decision or order of an adjudication tribunal under this Act, appeal the decision or order to the Trial Division by filing a notice of appeal with the Registrar of the Supreme Court.

(2) An appeal under this section does not stay the decision or order being appealed unless the Trial Division orders otherwise.

Action prohibited

37. An action for damages shall not lie against the association, the board, disciplinary panel, an adjudication tribunal or the individual members of those bodies, a person appointed to conduct an investigation under subsection 24(1)(b), the registrar, or an officer or employee of the board for

(a) an act or failure to act, or a proceeding initiated or carried out in good faith under this Act, or carrying out their duties or obligations as an officer, employee or member under this Act; or

(b) for a decision or order made or enforced in good faith under this Act.

Regulations

38. (1) The board may, with the approval of the minister, make regulations

- (a) respecting the establishment of categories of and conditions respecting the registration of engineers-in-training, geoscientists-in-training, candidates for examination and students;
- (b) respecting the academic qualifications and experience required of applicants for registration as professional engineers or geoscientists;
- (c) governing the evaluation by the board or a committee of the board, of the academic qualifications and experience requirements of applicants for registration to engage in the practice of engineering or geoscience and the examination of the applicants with respect to those qualifications or requirements;
- (d) respecting providing notice to the public under subsection 24(4);
- (e) respecting the eligibility of applicants generally for registration to engage in the practice of engineering or geoscience;
- (f) prescribing performance standards for the practice of the professions;
- (g) governing the names which members and permit holders may use in the practice of the professions;
- (h) respecting the establishment by the board of both compulsory and optional continuing education programs for members;
- (i) establishing categories of professional engineers or geoscientists or permit holders and prescribing the restrictions of practice and the privileges and obligations of the categories;
- (j) respecting the use of stamps and seals;
- (k) governing the eligibility for registration of persons, firms, partnerships and other associations of persons as permit holders;
- (l) respecting eligibility to form limited liability partnerships;
- (m) respecting alternative dispute resolution for the purposes of sections 20 to 36 and the procedure for that resolution; and
- (n) prescribing time limits for events in the disciplinary process in sections 20 to 37, including time limits for:
 - (i) the filing of an allegation,
 - (ii) the resolution of an allegation by the registrar,
 - (iii) the conduct of an investigation under section 24,
 - (iv) consideration of an allegation by the complaints authorization committee following completion of an investigation,
 - (v) responding to a complainant and respondent at each stage of the process,
 - (vi) the conduct of a practice review under paragraph 24(1)(c),
 - (vii) the appointment of an adjudication panel under section 25, and
 - (viii) the conduct of a hearing and the filing of a decision or order by an adjudication panel following completion of the hearing.

(2) Notwithstanding subsection (1), the minister may make regulations to prescribe time limits for events in the disciplinary process under sections 20 to 37 where the board does not do so in a time period the minister considers reasonable.

Use of stamp

39. (1) A professional member shall sign and stamp or seal and a permit holder shall stamp or seal all documents or records in accordance with the regulations.

(2) A person other than a professional member or permit holder shall not use a stamp or seal issued by the registrar under this Act.

Liability to others

40. (1) The relationship between a permit holder engaged in the practice of engineering or of geoscience and a person receiving the professional services of the permit holder is subject to this Act and the regulations.

(2) The relationship of a member to a permit holder, whether as a member, shareholder or employee of the permit holder, does not affect, modify or diminish the application of this Act to

(a) the member; or

(b) the relationship between the member and a client.

Registrar's certificate

41. (1) A certificate signed by the registrar and stating that a person was or was not during a specified period, a member or permit holder shall be admitted in evidence as, in the absence of evidence to the contrary, proof of the facts stated in it without proof of the registrar's appointment or signature.

(2) A certificate signed by the registrar and stating that a person, corporation, partnership or other association of persons was or was not during a specified period a permit holder shall be admitted in evidence as, in the absence of evidence to the contrary, proof of the facts stated in it without proof of the registrar's appointment or signature.

Practice prohibitions

42. (1) A person whose registration as an engineer, geoscientist or permit holder is cancelled or suspended under this Act shall not, without the consent of the board, engage in the practice of engineering or of geoscience or directly or indirectly associate in the practice of engineering or of geoscience with another member or permit holder.

(2) A professional engineer, geoscientist or permit holder shall not, except with the consent of the board, associate in the practice of engineering or of geoscience directly or indirectly with or employ a person whose registration has been cancelled or suspended under this Act.

(3) The board may permit a member or permit holder to employ in connection with the practice of engineering or of geoscience a person whose registration has been cancelled or suspended under this Act, in the capacity and subject to the terms and conditions that are prescribed by the board.

Penalties

43. (1) A person who contravenes section 15 or 17 is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.

(2) A person who contravenes this Act, other than section 15 or 17, is guilty of an offence and is liable on summary conviction to a fine not exceeding

- (a) in the case of a natural person, \$5,000 for a first conviction and to a fine not exceeding \$10,000 for a second or subsequent conviction; and
- (b) in the case of a corporation, \$25,000 for a first conviction and to a fine not exceeding \$100,000 for a second or subsequent conviction.

Transition

44. (1) Where a disciplinary committee has begun to hear a complaint against a professional member or permit holder under Part V of the Act repealed by this Act, Part V continues to apply to the complaint as if it continued in force.

(2) The elected members of the board holding office on the day this Act comes into force continue to serve as members of the board for the purpose of section 4 until the expiry of their terms.

RSNL1990 cE-12 Rep.

45. The *Engineers and Geoscientists Act* is repealed.

Commencement

46. This Act comes into force on July 1, 2009.

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