

# Professional Engineers Act

R.S.O. 1990, CHAPTER P.28

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## Definitions

### 1. In this Act,

“Academic Requirements Committee” means the academic requirements committee appointed pursuant to the regulations; (“comité de vérification des diplômes”)

“architect” means a person who is licensed or who holds a certificate of practice or a temporary licence under the *Architects Act*; (“architecte”)

“Association” means the Association of Professional Engineers of Ontario; (“Ordre”)

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

“certificate of authorization” means a certificate of authorization issued under this Act to engage in the business of providing services that are within the practice of professional engineering; (“certificat d’autorisation”)

“Complaints Review Councillor” means the complaints review councillor appointed under this Act; (“conseiller médiateur”)

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

“Experience Requirements Committee” means the experience requirements committee appointed pursuant to the regulations; (“comité de vérification de l’expérience”)

“Joint Practice Board” means the Joint Practice Board established under the *Architects Act*; (“Conseil professionnel mixte”)

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

“limited licence” means a limited licence to engage in the practice of professional engineering issued under this Act; (“permis restreint”)

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

“practice of professional engineering” means any act of planning, designing, composing, evaluating, advising, reporting, directing or supervising that requires the application of engineering principles and concerns the safeguarding of life, health, property, economic interests, the public welfare or the environment, or the managing of any such act; (“exercice de la profession d’ingénieur”)

“professional engineer” means a person who holds a licence or a temporary licence; (“ingénieur”)

“provisional licence” means a provisional licence to engage in the practice of professional engineering issued under subsection 14 (7); (“permis provisoire”)

**Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “provisional licence” is amended by striking out “under subsection 14 (7)” at the end and substituting “under this Act”. See: 2010, c. 16, Sched. 2, ss. 5 (2), 6 (2).**

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

“regulations” means the regulations made under this Act; (“règlements”)

“temporary licence” means a temporary licence to engage in the practice of professional engineering issued under this Act. (“permis temporaire”) R.S.O. 1990, c. P.28, s. 1; 1999, c. 12, Sched. B, s. 13; 2001, c. 9, Sched. B, s. 11 (1); 2010, c. 16, Sched. 2, s. 5 (1).

## Association

2. (1) The Association of Professional Engineers of the Province of Ontario, a body corporate, is continued as a corporation without share capital under the name of Association of Professional Engineers of Ontario in English and Ordre des ingénieurs de l’Ontario in French. R.S.O. 1990, c. P.28, s. 2 (1).

(2) REPEALED: 2010, c. 16, Sched. 2, s. 5 (3).

**Principal object**

(3) The principal object of the Association is to regulate the practice of professional engineering and to govern its members, holders of certificates of authorization, holders of temporary licences, holders of provisional licences and holders of limited licences 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. P.28, s. 2 (3); 2001, c. 9, Sched. B, s. 11 (2).

**Additional objects**

- (4) 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 standards of practice for the practice of professional engineering.
  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. P.28, s. 2 (4).

**Capacity and powers of Association**

(5) For the purpose of carrying out its objects, the Association has the capacity and the powers of a natural person. R.S.O. 1990, c. P.28, s. 2 (5).

**Council of Association**

**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. P.28, s. 3 (1).

**Composition of Council**

- (2) The Council shall be composed of,
- (a) not fewer than fifteen and not more than twenty persons who are members of the Association and who are elected by the members of the Association as provided by the regulations;
  - (b) not fewer than five and not more than seven persons who are members of the Association and who are appointed by the Lieutenant Governor in Council;
  - (c) not fewer than three and not more than five persons who are not members of the governing body of a self-regulating licensing body under any other Act or licensed under this Act and who are appointed by the Lieutenant Governor in Council; and
  - (d) the holders of offices prescribed by the regulations who are not members of the Council under clause (a), (b) or (c). R.S.O. 1990, c. P.28, s. 3 (2).

**Same**

- (3) No person shall be elected or appointed to the Council unless he or she,
- (a) is a citizen of Canada or has the status of a permanent resident of Canada; and
  - (b) is resident in Ontario. 2010, c. 16, Sched. 2, s. 5 (4).

**Remuneration of lay members**

(4) The persons appointed under clause (2) (c) shall be paid, out of the money appropriated therefor by the Legislature, such expenses and remuneration as is determined by the Lieutenant Governor in Council. R.S.O. 1990, c. P.28, s. 3 (4).

**Term of office of appointed members**

(5) In each year, the persons to be appointed by the Lieutenant Governor in Council shall be appointed for one year, two year or three year terms in order that one-third, or as near thereto as possible, shall be appointed in each year. R.S.O. 1990, c. P.28, s. 3 (5).

**Deemed reappointment**

(5.1) On the expiry of a term referred to in subsection (5), the person whose term expired is deemed to have been reappointed until his or her successor takes office. 2010, c. 16, Sched. 2, s. 5 (5).

**Qualifications to vote**

(6) Every member of the Association who is not in default of payment of an annual fee prescribed by the by-laws is qualified to vote at an election of members of the Council. R.S.O. 1990, c. P.28, s. 3 (6).

#### **Officers**

(7) The Association shall have the officers provided for by the regulations. R.S.O. 1990, c. P.28, s. 3 (7).

#### **Registrar and staff**

(8) The Council shall appoint during pleasure a Registrar, who shall be a member of the Association, 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. P.28, s. 3 (8); 2001, c. 9, Sched. B, s. 11 (3).

#### **Role of Registrar**

(8.1) The Registrar is responsible for the administration of the Association and reports to the Council. 2001, c. 9, Sched. B, s. 11 (4).

#### **Quorum**

(9) A majority of the members of the Council constitutes a quorum. R.S.O. 1990, c. P.28, 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. P.28, 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 as soon as practicable 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. P.28, s. 3 (11).

#### **Meetings of Council**

(12) The Council shall meet at least four times a year. R.S.O. 1990, c. P.28, 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. P.28, s. 4.

#### **Membership**

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

#### **Resignation of membership**

(2) A member may resign his or her membership by filing with the Registrar a resignation in writing and his or her licence is thereupon cancelled, subject to the continuing jurisdiction of the Association in respect of any disciplinary action arising out of the person's professional conduct while a member. R.S.O. 1990, c. P.28, 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. P.28, 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. fixing the number of members to be elected to the Council under clause 3 (2) (a) and defining constituencies, and prescribing the number of representatives;
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 members of the Council from sitting and governing the filling of vacancies on the Council;
4. prescribing positions of officers of the Association and providing for their election or appointment;
5. respecting the composition of the committees required by this Act, other than the Complaints Committee, the Discipline Committee and the Registration 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;
6. respecting matters of practice and procedure before committees required under this Act that do not conflict with the *Statutory Powers Procedure Act*;
7. prescribing the quorums of the committees required by this Act other than the Complaints Committee, the Discipline Committee and the Registration Committee;
8. prescribing classes of persons whose interests are related to those of the Association and the privileges of members of the classes in relation to the Association;

**Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 8 is repealed and the following substituted:**

8. governing persons as engineering interns under section 20.1, including setting out the academic requirements necessary for acceptance as an engineering intern and the rights and privileges of engineering interns, and prescribing and governing other classes of persons whose interests are related to those of the Association;

**See: 2010, c. 16, Sched. 2, ss. 5 (9), 6 (2).**

9. respecting any matter ancillary to the provisions of this Act with regard to the issuing, suspension and revocation of licences, certificates of authorization, temporary licences, provisional licences and limited licences, 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,
  - 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. classes of licences,
  - v. the academic, experience and other requirements for the issuance of a licence or any class of licence,
- v.1 the circumstances in which the Registrar shall refer an application for a licence to a committee for the purposes of clause 14 (4) (b),
- v.2 the establishment of an engineering technologist class of limited licence, including prescribing requirements and qualifications for the issuance of an engineering technologist class of limited licence and terms and conditions that shall apply to the engineering technologist class of limited licence, and
- vi. other classes of certificates of authorization, temporary licences, provisional licences and limited licences, including prescribing requirements and qualifications for the issuance of specified classes of certificates of authorization, temporary licences, provisional licences and limited licences, and terms and conditions that shall apply to specified classes of certificates of authorization, temporary licences, provisional licences and limited licences;
10. prescribing forms of applications for licences, certificates of authorization, temporary licences, provisional licences and limited licences and requiring their use;
11. 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 in respect of the interests of partners that apply for or hold certificates of authorization and prescribing and requiring the use of forms of such returns;

12. requiring and governing the signing and sealing of documents and designs by members of the Association, holders of temporary licences and holders of limited licences, specifying the forms of seals and respecting the issuance and ownership of seals;
13. requiring the making of returns of information by members of the Association and holders of certificates of authorization, temporary licences, provisional licences and limited licences in respect of names, addresses, telephone numbers, professional associates, partners, employees and professional liability insurance, and prescribing and requiring the use of forms of such returns;
14. requiring and governing the disclosure of the identity of holders of certificates of authorization on documents and designs involving the practice of professional engineering issued by such holders and specifying the form and manner of such disclosure;
15. governing the use of names and designations in the practice of professional engineering by members of the Association and holders of certificates of authorization, temporary licences, provisional licences and limited licences;
16. providing for the maintenance and inspection of registers of members of the Association, holders of temporary licences, holders of limited licences, holders of provisional licences and holders of certificates of authorization;
17. respecting and governing standards of practice and performance standards for the profession;
18. providing for the setting of schedules of suggested fees for professional engineering services and for the publication of the schedules;
19. respecting the advertising of the practice of professional engineering;
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 and holders of temporary licences 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, a holder of a temporary licence or a certificate of authorization;
23. providing for the designation of members of the Association as consulting engineers, prescribing the qualifications and requirements for designation as a consulting engineer, 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, a holder of a temporary licence or a certificate of authorization;
24. prescribing the minimum requirements for professional liability insurance, requiring the delivery to the Registrar of proof of such insurance and prescribing the form of such proof and the manner and time of the delivery;
25. prescribing the amount of and requiring the payment of annual fees by holders of certificates of authorization, temporary, provisional and limited licences and by students and members of related classes recognized by the Association, and fees for temporary licences, provisional licences, limited licences, certification, registration, designations, examinations and continuing education, including penalties for late payment, and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;

**Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 25 is repealed. See: 2010, c. 16, Sched. 2, ss. 5 (13), 6 (2).**

26. providing for the entering into of arrangements by the Association for its members and holders of certificates of authorization, temporary licences, provisional and limited licences respecting indemnity for professional liability and requiring the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and holders of certificates of authorization, temporary licences, provisional and limited licences in respect of such indemnity for professional liability;
27. providing for continuing education of members;
28. respecting the duties and authority of the Registrar;
29. prescribing qualifications and requirements that shall be complied with to obtain the reinstatement of a licence, certificate of authorization, temporary licence or limited licence that was cancelled by the Registrar;
30. classifying and exempting any class of holders of licences, certificates of authorization, temporary licences or limited licences from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable;
31. exempting any act within the practice of professional engineering from the application of this Act;

32. specifying acts within the practice of professional engineering that are exempt from the application of this Act when performed or provided by a member of a prescribed class of persons, and prescribing classes of persons for the purpose of the exemption;
33. REPEALED: 2010, c. 16, Sched. 2, s. 5 (14).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding the following paragraph:**

34. prescribing provisions of the *Not-for-Profit Corporations Act, 2010* that apply to the Association.

**See: 2010, c. 15, ss. 238 (1), 249.**

R.S.O. 1990, c. P.28, s. 7 (1); 2000, c. 26, Sched. A, s. 12; 2001, c. 9, Sched. B, s. 11 (5-12); 2010, c. 16, Sched. 2, s. 5 (6-8, 10-12, 14).

#### **Distribution of regulations**

- (2) 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, temporary licence, provisional licence or limited licence; and
  - (b) shall be available for public inspection in the office of the Association. R.S.O. 1990, c. P.28, s. 7 (2); 2001, c. 9, Sched. B, s. 11 (13).

#### **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 and other insignia of the Association and providing for their use;
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 Council;
6. providing for meetings of the Council and committees, except in a proceeding in respect of a membership, certificate of authorization, temporary licence, provisional licence or limited licence, 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, certificate of authorization, temporary licence, provisional licence or limited licence, 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. authorizing voting by mail by the general membership of the Association on any of the business of the Association and prescribing procedures for such voting;
10. prescribing the duties of officers of the Association;
11. prescribing forms and providing for their use;
12. providing procedures for the making, amending and revoking of the by-laws;
13. respecting management of the property of the Association;
14. providing for the appointment, composition, powers, duties and quorums of additional or special committees;
15. 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;
16. prescribing the amount and requiring the payment of annual fees by members of the Association;

**Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 16 is repealed and the following substituted:**

16. specifying the amount and requiring the payment of,
  - i. fees, including annual fees, by holders of licences, certificates of authorization, temporary licences, provisional licences and limited licences, and by engineering interns, students and members of other classes of persons prescribed under paragraph 8 of subsection 7 (1),
  - ii. fees for registration, designations, examinations and continuing education,
  - iii. fees for anything the Registrar is required or authorized to do, and
  - iv. penalties for late payment of any of the fees;

**See: 2010, c. 16, Sched. 2, ss. 5 (15), 6 (2).**

17. respecting the borrowing of money by the Association and the giving of security therefor;
18. respecting membership of the Association in other organizations the objects of which are not inconsistent with and are complementary to those of the Association, the payment of annual assessments and provision for representatives at meetings;
19. providing for the establishment and dissolution and governing the operation of groups of members of the Association and respecting grants by the Association to any such groups;
20. authorizing the making of grants for any purpose that may tend to advance knowledge of professional engineering education, or maintain or improve the standards of practice in professional engineering or support and encourage public information and interest in the past and present role of professional engineering in society;
21. respecting scholarships, bursaries and prizes related to the study of professional engineering;
22. respecting the establishment and operation and use of publications of the Association;
23. providing for an employment advisory service and for the continuance of the retirement savings plans in which members of the Association may participate on a voluntary basis;
24. 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. P.28, s. 8 (1); 2001, c. 9, Sched. B, s. 11 (14, 15).

**By-laws effective**

(2) Subject to subsection (3), a by-law made by the Council is effective when it is passed. 2010, c. 16, Sched. 2, s. 5 (16).

**Confirmation**

(3) A by-law passed by the Council is not effective until it is confirmed, in the manner specified by the Council, by a majority of the members of the Association, if the by-law so specifies. 2010, c. 16, Sched. 2, s. 5 (16).

**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 of the Association; and
  - (c) shall be available for public inspection in the office of the Association. R.S.O. 1990, c. P.28, s. 8 (4).

**Official publication**

9. The Council shall establish and designate an official publication of the Association. R.S.O. 1990, c. P.28, s. 9.

**Establishment of committees**

10. (1) The Council shall establish and appoint the following committees:
  - (a) Executive Committee;
  - (b) Academic Requirements Committee;
  - (c) Experience Requirements Committee;
  - (d) Registration Committee;
  - (e) Complaints Committee;



- (f) Discipline Committee;
- (g) 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 the prescribed quorum. R.S.O. 1990, c. P.28, s. 10.

#### **Executive Committee**

**11.** 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. R.S.O. 1990, c. P.28, s. 11.

#### **When licences or certificates required**

##### **Licensing requirement**

**12.** (1) No person shall engage in the practice of professional engineering or hold himself, herself or itself out as engaging in the practice of professional engineering unless the person is the holder of a licence, a temporary licence, a provisional licence or a limited licence. R.S.O. 1990, c. P.28, s. 12 (1); 2001, c. 9, Sched. B, s. 11 (16).

##### **Certificate of authorization**

(2) No person shall offer to the public or engage in the business of providing to the public services that are within the practice of professional engineering except under and in accordance with a certificate of authorization. R.S.O. 1990, c. P.28, s. 12 (2).

##### **Exceptions**

- (3) Subsections (1) and (2) do not apply to prevent a person,
  - (a) from doing an act that is within the practice of professional engineering in relation to machinery or equipment, other than equipment of a structural nature, for use in the facilities of the person's employer in the production of products by the person's employer;

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) is repealed. See: 2010, c. 16, Sched. 2, ss. 5 (17), 6 (2).**

- (b) from doing an act that is within the practice of professional engineering where a professional engineer assumes responsibility for the services within the practice of professional engineering to which the act is related;

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) is amended by adding "or limited licence holder" after "professional engineer". See: 2010, c. 16, Sched. 2, ss. 5 (18), 6 (2).**

- (c) from designing or providing tools and dies;
- (d) from doing an act that is within the practice of professional engineering but that is exempt from the application of this Act when performed or provided by a member of a class of persons prescribed by the regulations for the purpose of the exemption, if the person is a member of the class;
- (e) from doing an act that is exempt by the regulations from the application of this Act;
- (f) from using the title "engineer" or an abbreviation of that title in a manner that is authorized or required by an Act or regulation. R.S.O. 1990, c. P.28, s. 12 (3); 2001, c. 9, Sched. B, s. 11 (17).

##### **Idem**

(4) Subsections (1) and (2) do not apply to the preparation or provision of a design for the construction, enlargement or alteration of a building,

- (a) that is not more than three storeys and not more than 600 square metres in gross area as constructed, enlarged or altered;
- (b) that is used or intended for one or more of residential occupancy, business occupancy, personal services occupancy, mercantile occupancy or industrial occupancy; and
- (c) is not designed to house and is not part of an apparatus, process, facility or works the design of which is within the practice of professional engineering. R.S.O. 1990, c. P.28, s. 12 (4).

##### **Idem**

- (5) Subsections (1) and (2) do not apply to,

- (a) the preparation or provision of a design for the construction, enlargement or alteration of a building that is not more than three storeys and that is used or intended for residential occupancy and,
  - (i) that contains one dwelling unit or two attached dwelling units each of which is constructed directly on grade, or
  - (ii) that is not more than 600 square metres in building area as constructed, enlarged or altered and contains three or more attached dwelling units, each of which is constructed directly on grade, with no dwelling unit constructed above another dwelling unit; or
- (b) the preparation or provision of a design for alterations within a dwelling unit that will not affect or are not likely to affect fire separations, firewalls, the strength or safety of the building or the safety of persons in the building. R.S.O. 1990, c. P.28, s. 12 (5).

**Idem**

(6) The following rules govern the relationship between professional engineers and architects and subsections (1) and (2) do not apply to prevent an architect from preparing or providing a design for and carrying out the general review of the construction, enlargement or alteration of a building in accordance with these rules:

1. Only an architect may prepare or provide a design for the construction, enlargement or alteration of a building,
  - i. used or intended for residential occupancy,
  - ii. that exceeds 600 square metres in gross area, and
  - iii. that does not exceed three storeys,

and carry out the general review of the construction, enlargement or alteration of the building but an architect who prepares or provides such a design may engage a professional engineer to provide services within the practice of professional engineering in connection with the design and the professional engineer may provide the services.
2. A professional engineer or an architect may prepare or provide a design for the construction, enlargement or alteration of a building,
  - i. that exceeds 600 square metres in gross area or three storeys, and
  - ii. that is used or intended for,
    - A. industrial occupancy, or
    - B. mixed occupancy consisting of industrial occupancy and one or more other occupancies, where none of the other occupancies exceeds 600 square metres of the gross area,

but only a professional engineer may provide services within the practice of professional engineering in connection with the design.
3. Subject to rules 4 and 5, a professional engineer shall provide services that are within the practice of professional engineering and an architect shall provide services that are within the practice of architecture related to the construction, enlargement or alteration of a building used or intended for,
  - i. assembly occupancy,
  - ii. institutional occupancy,
  - iii. business occupancy or personal services occupancy that exceeds 600 square metres in gross area or three storeys,
  - iv. mercantile occupancy that exceeds 600 square metres in gross area or three storeys,
  - v. residential occupancy that exceeds three storeys,
  - vi. mixed occupancy consisting of industrial occupancy and one or more other occupancies, where one of the other occupancies exceeds 600 square metres in gross area,
  - vii. mixed occupancy consisting of a combination of,
    - A. assembly occupancy and any other occupancy, except industrial occupancy,
    - B. institutional occupancy and any other occupancy, except industrial occupancy,
    - C. one or more of,
      1. business occupancy,

- 2. personal services occupancy, or
  - 3. mercantile occupancy,
- and any other occupancy, except assembly occupancy, institutional occupancy or industrial occupancy, where the building as constructed, enlarged or altered exceeds 600 square metres in gross area or three storeys,
- D. residential occupancy that exceeds three storeys and any other occupancy, where the building as constructed, enlarged or altered exceeds 600 square metres in gross area, or
- viii. any other occupancy where the building as constructed, enlarged or altered exceeds 600 square metres in gross area or three storeys,
- but a professional engineer may provide a design for the industrial occupancy of a mixed occupancy described in subparagraph vi.
4. An architect may perform or provide services that are within the practice of professional engineering in preparing or providing a design for and carrying out the general review of the construction, enlargement or alteration of a building described in rule 2 or 3 where to do so does not constitute a substantial part of the services within the practice of professional engineering related to the construction, enlargement or alteration of the building and is necessary,
    - i. for the construction, enlargement or alteration of the building and is incidental to other services provided as part of the practice of architecture by the architect in respect of the construction, enlargement or alteration of the building, or
    - ii. for co-ordination purposes.
  5. A professional engineer may perform or provide services that are within the practice of architecture in preparing or providing a design for and carrying out the general review of the construction, enlargement or alteration of a building described in rule 1 or 3 where to do so does not constitute a substantial part of the services within the practice of architecture related to the construction, enlargement or alteration of the building and is necessary,
    - i. for the construction, enlargement or alteration of the building and is incidental to other services provided as part of the practice of professional engineering by the professional engineer in respect of the construction, enlargement or alteration of the building, or
    - ii. for co-ordination purposes.
  6. Only an architect may carry out or provide the general review of the construction, enlargement or alteration of a building,
    - i. that is constructed, enlarged or altered in accordance with a design prepared or provided by an architect, or
    - ii. in relation to services that are provided by an architect in connection with the design in accordance with which the building is constructed, enlarged or altered.
  7. Only a professional engineer may carry out or provide the general review of the construction, enlargement or alteration of a building,
    - i. that is constructed, enlarged or altered in accordance with a design prepared or provided by a professional engineer, or
    - ii. in relation to services that are provided by a professional engineer in connection with the design in accordance with which the building is constructed, enlarged or altered.
  8. A professional engineer or an architect may act as prime consultant for the construction, enlargement or alteration of a building.
  9. A reference in these rules to the provision of a design or services by a professional engineer applies equally to a holder of a certificate of authorization. R.S.O. 1990, c. P.28, s. 12 (6).

**Idem**

(7) Subsections (1) and (2) do not apply to prevent a person from carrying out a general review of the construction, enlargement or alteration of a building that does not or is not intended to take the place of a general review required to be done by a professional engineer. R.S.O. 1990, c. P.28, s. 12 (7).

**Definitions**

(8) In this section,

- “assembly occupancy” means occupancy for gatherings of persons for civic, educational, political, recreational, religious, social, travel or other similar purpose, or for the consumption of food or drink; (“établissement de réunion”)
- “building” means a structure consisting of a wall, roof and floor, or any one or more of them; (“bâtiment”)
- “building area” means the greatest horizontal area of a building within the outside surface of exterior walls or, where a firewall is to be constructed, within the outside surface of exterior walls and the centre line of firewalls; (“aire de bâtiment”)
- “business occupancy” means occupancy for the transaction of business; (“établissement d’affaires”)
- “construction” means the doing of anything in the erection, installation, extension or repair of a building and includes the installation of a building unit fabricated or moved from elsewhere, and “constructed” has a corresponding meaning; (“construction”, “construit”)
- “design” means a plan, sketch, drawing, graphic representation or specification intended to govern the construction, enlargement or alteration of a building or a part of a building; (“plan”)
- “dwelling unit” means a room or suite of rooms used or intended to be used as a domicile by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities; (“logement”)
- “fire separation” means a construction assembly that acts as a barrier against the spread of fire and that may or may not have a fire-resistance rating or a fire-protection rating; (“séparation coupe-feu”)
- “firewall” means a type of fire separation of non-combustible construction that subdivides a building or separates adjoining buildings to resist the spread of fire and that has a fire-resistance rating as prescribed in the building code under the *Building Code Act* and has structural stability to remain intact under fire conditions for the fire-resistance time for which it is rated; (“mur coupe-feu”)
- “general review”, in relation to the construction, enlargement or alteration of a building, means an examination of the building to determine whether the construction, enlargement or alteration is in general conformity with the design governing the construction, enlargement or alteration, and reporting thereon; (“examen de conformité”)
- “grade” means the lowest of the average levels of finished ground adjoining each exterior wall of a building, but does not include localized depressions such as for vehicle or pedestrian entrances; (“niveau du sol”)
- “graphic representation” means a representation produced by electrical, electronic, photographic or printing methods and includes a representation produced on a video display terminal; (“représentation graphique”)
- “gross area” means the total area of all floors above grade measured between the outside surfaces of exterior walls or, where no access or building service penetrates a firewall, between the outside surfaces of exterior walls and the centre line of firewalls but in a residential occupancy where access or a building service penetrates a firewall, the measurement may be taken to the centre line of the firewall; (“surface hors-tout”)
- “industrial occupancy” means occupancy for assembling, fabricating, manufacturing, processing, repairing or storing of goods or materials or for producing, converting, processing or storing of energy, waste or natural resources; (“établissement industriel”)
- “institutional occupancy” means occupancy for the harbouring, housing or detention of persons who require special care or treatment on account of their age or mental or physical limitations or who are involuntarily detained; (“établissement hospitalier, d’assistance ou de détention”)
- “mercantile occupancy” means occupancy or use for displaying or selling retail goods, wares or merchandise; (“établissement commercial”)
- “personal services occupancy” means occupancy for the rendering or receiving of professional or personal services; (“établissement de services personnels”)
- “residential occupancy” means occupancy for providing sleeping accommodation for persons, but does not include institutional occupancy. (“habitation”) R.S.O. 1990, c. P.28, s. 12 (8).

#### **Proof of practice**

(9) For the purposes of this section, proof of the performance of one act in the practice of professional engineering on one occasion is sufficient to establish engaging in the practice of professional engineering. R.S.O. 1990, c. P.28, s. 12 (9).

#### **Corporation**

13. A corporation that holds a certificate of authorization may provide services that are within the practice of professional engineering. R.S.O. 1990, c. P.28, s. 13.

**Issuance of licence**

14. (1) The Registrar shall issue a licence to a natural person who applies therefor in accordance with the regulations and,
- (a) REPEALED: 2010, c. 16, Sched. 2, s. 5 (19).
  - (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, including passing such examinations as the Council sets or approves in accordance with the regulations, or is exempted by the Council from complying with the requirements;
  - (d) has complied with the experience requirements specified in the regulations for the issuance of the licence;
  - (d.1) has complied with any other requirements specified in the regulations for the issuance of the licence; and
  - (e) is of good character. R.S.O. 1990, c. P.28, s. 14 (1); 2010, c. 16, Sched. 2, s. 5 (19-21).

**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 professional engineering in accordance with the law and with honesty and integrity. R.S.O. 1990, c. P.28, s. 14 (2).

**Referral to committee**

- (3) The Registrar may refer the application of the applicant for the issuance of a licence,
- (a) to the Academic Requirements Committee for a determination as to whether or not the applicant has met the academic requirements prescribed by the regulations for the issuance of the licence;
  - (b) to the Experience Requirements Committee for a determination as to whether or not the applicant has met the experience requirements prescribed by the regulations for the issuance of the licence; or
  - (c) first to the Academic Requirements Committee and then to the Experience Requirements Committee for determinations under clauses (a) and (b). R.S.O. 1990, c. P.28, s. 14 (3); 2010, c. 16, Sched. 2, s. 5 (22).

**Same**

- (4) The Registrar shall refer an application to a committee under subsection (3) for a determination referred to in that subsection,
- (a) if the applicant requests the referral; or
  - (b) in the circumstances specified by the regulations. 2010, c. 16, Sched. 2, s. 5 (23).

**Hearing**

(5) A committee shall receive written representations 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. P.28, s. 14 (5).

**Notice of determination**

(6) The Registrar shall give notice to the applicant of a determination by a committee under subsection (3) and, if the applicant is rejected, the notice shall detail the specific requirements that the applicant must meet. R.S.O. 1990, c. P.28, s. 14 (6).

**Provisional licence**

(7) The Registrar shall issue a provisional licence, to be valid for one year, to a natural person who has applied for a licence in accordance with the regulations and has complied with all the requirements of subsection (1) except the Canadian experience requirement set out in paragraph 4 of section 33 of Regulation 941 of the Revised Regulations of Ontario, 1990. 2001, c. 9, Sched. B, s. 11 (19).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (7) is repealed. See: 2010, c. 16, Sched. 2, ss. 5 (24), 6 (2).**

**Issuance of certificate of authorization**

15. (1) The Registrar shall issue a certificate of authorization to a natural person, a partnership or a corporation that applies therefor in accordance with the regulations if the requirements and qualifications for the issuance of the certificate of authorization set out in the regulations are met. R.S.O. 1990, c. P.28, s. 15 (1).

**General and standard certificate**

(2) Where the Registrar proposes to issue a certificate of authorization to an applicant, the Registrar shall issue a standard certificate of authorization or, where the primary function of the applicant is or will be to provide to the public services that are within the practice of professional engineering and the applicant requests a general certificate of authorization, the Registrar shall issue a general certificate of authorization to the applicant. R.S.O. 1990, c. P.28, s. 15 (2).

**Partnership of corporations**

(3) The Registrar shall issue a standard certificate of authorization to a partnership of corporations that applies therefor in accordance with the regulations if at least one of the corporations holds a certificate of authorization. R.S.O. 1990, c. P.28, s. 15 (3).

**Terms and conditions**

(4) Where a holder of a temporary licence assumes responsibility for and supervises the practice of professional engineering related to the services provided by the holder of a certificate of authorization, the certificate of authorization is subject to the same terms and conditions prescribed by the regulations that apply to the temporary licence. R.S.O. 1990, c. P.28, s. 15 (4); 2010, c. 16, Sched. 2, s. 5 (25).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 15 is amended by adding the following subsection:**

**Same**

(4.1) Where a holder of a limited licence assumes responsibility for and supervises the practice of professional engineering related to the services provided by the holder of a certificate of authorization, the certificate of authorization is subject to the same terms and conditions prescribed by the regulations that apply to the limited licence. 2010, c. 16, Sched. 2, s. 5 (26).

**See: 2010, c. 16, Sched. 2, ss. 5 (26), 6 (2).**

**Suspension of effect of certificate of authorization**

(5) A holder of a certificate of authorization ceases to be entitled to offer to the public or to provide to the public services that are within the practice of professional engineering as soon as there is no holder of a licence or a temporary licence who assumes responsibility for and supervises the practice of professional engineering provided by the holder of the certificate of authorization. R.S.O. 1990, c. P.28, s. 15 (5).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is amended by striking out “a licence or a temporary licence” and substituting “a licence, temporary licence or limited licence”. See: 2010, c. 16, Sched. 2, ss. 5 (27), 6 (2).**

**Notice to Registrar by holder of certificate of authorization**

(6) The holder of a certificate of authorization must give notice to the Registrar when there ceases to be a holder of a licence or a temporary licence who assumes responsibility for and supervises the practice of professional engineering by the holder of the certificate of authorization and when the holder of the certificate of authorization designates another holder of a licence or a temporary licence to assume such responsibility and carry out such supervision. R.S.O. 1990, c. P.28, s. 15 (6).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6) is amended by striking out “a licence or a temporary licence” wherever it appears and substituting in each case “a licence, temporary licence or limited licence”. See: 2010, c. 16, Sched. 2, ss. 5 (28), 6 (2).**

**Notice to Registrar by person in position of professional responsibility**

(7) A holder of a licence or a temporary licence who ceases to be responsible for and to supervise the practice of professional engineering by a holder of a certificate of authorization as the person so designated by the holder of the certificate of authorization shall give notice of the cessation forthwith to the Registrar. R.S.O. 1990, c. P.28, s. 15 (7).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (7) is amended by striking out “a licence or a temporary licence” and substituting “a licence, temporary licence or limited licence”. See: 2010, c. 16, Sched. 2, ss. 5 (29), 6 (2).**

**Past conduct**

(8) The Registrar may refuse to issue or may suspend or revoke a certificate of authorization where the Registrar is of the opinion, upon reasonable and probable grounds,

- (a) that the past conduct of a person who is in a position of authority or responsibility in the operation of the business of the applicant for or the holder of the certificate of authorization affords grounds for the belief that the applicant or

holder will not engage in the business of providing services that are within the practice of professional engineering in accordance with the law and with honesty and integrity;

- (b) that the holder of the certificate of authorization does not meet the requirements or the qualifications for the issuance of the certificate of authorization set out in the regulations; or
- (c) that there has been a breach of a condition of the certificate of authorization. R.S.O. 1990, c. P.28, s. 15 (8).

#### **Exclusion**

- (9) Sections 3.2, 3.3 and 3.4 of the *Business Corporations Act* do not apply to,
  - (a) a corporation that has been issued a certificate of authorization under subsection (1); or
  - (b) a corporation that is a partner in a partnership of corporations that has been issued a certificate of authorization under subsection (3). 2009, c. 34, Sched. Q, s. 1.

#### **Issuance of licence or certificate of authorization on direction of Council**

**16.** The Registrar shall issue a licence or a certificate of authorization upon a direction of the Council made in accordance with a recommendation by the Joint Practice Board. R.S.O. 1990, c. P.28, s. 16.

#### **Supervision under certificate of authorization**

**17.** (1) It is a condition of every certificate of authorization that the holder of the certificate shall provide services that are within the practice of professional engineering only under the personal supervision and direction of a member of the Association or the holder of a temporary licence. R.S.O. 1990, c. P.28, s. 17 (1).

**Note:** On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out “a member of the Association or the holder of a temporary licence” at the end and substituting “a holder of a licence, temporary licence or limited licence”. See: 2010, c. 16, Sched. 2, ss. 5 (30), 6 (2).

#### **Professional responsibility of supervising engineer**

(2) A member of the Association or a holder of a temporary licence who personally supervises and directs the providing of services within the practice of professional engineering by a holder of a certificate of authorization or who assumes responsibility for and supervises the practice of professional engineering related to the providing of services by a holder of a certificate of authorization is subject to the same standards of professional conduct and competence in respect of the services and the related practice of professional engineering as if the services were provided or the practice of professional engineering was engaged in by the member of the Association or the holder of the temporary licence. R.S.O. 1990, c. P.28, s. 17 (2).

**Note:** On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out “A member of the Association or a holder of a temporary licence” at the beginning and substituting “A holder of a licence, temporary licence or limited licence” and by striking out “the member of the Association or the holder of the temporary licence” at the end and substituting “the holder of a licence, temporary licence or limited licence”. See: 2010, c. 16, Sched. 2, ss. 5 (31), 6 (2).

#### **Issuance of temporary, provisional or limited licence**

**18.** (1) The Registrar shall issue a temporary licence, a provisional licence or a limited licence to a natural person who applies therefor in accordance with the regulations and who meets the requirements and qualifications for the issuance of the temporary licence, the provisional licence or the limited licence set out in the regulations. 2001, c. 9, Sched. B, s. 11 (20); 2010, c. 16, Sched. 2, s. 5 (32).

#### **Grounds for refusal, suspension or revocation**

- (2) The Registrar may refuse to issue or may suspend or revoke a temporary licence, a provisional licence or a limited licence where the Registrar is of the opinion, upon reasonable and probable grounds,
  - (a) that the past conduct of the applicant for or the holder of the temporary licence, the provisional licence or the limited licence affords grounds for the belief that the applicant or holder will not engage in the practice of professional engineering in accordance with the law and with honesty and integrity;
  - (b) that the holder of the temporary licence, the provisional licence or the limited licence does not meet the requirements or the qualifications for the issuance of the temporary licence, the provisional licence or the limited licence set out in the regulations; or
  - (c) that there has been a breach of a condition of the temporary licence, the provisional licence or the limited licence. R.S.O. 1990, c. P.28, s. 18 (2); 2001, c. 9, Sched. B, s. 11 (21).

#### **Referral to committee**

(3) Subsections 14 (3) to (6) (which relate to the Academic Requirements Committee and the Experience Requirements Committee) apply with necessary modifications in respect of an applicant for a temporary licence or a limited licence. R.S.O. 1990, c. P.28, s. 18 (3).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out “a temporary licence or a limited licence” at the end and substituting “a temporary licence, a provisional licence or a limited licence”. See: 2010, c. 16, Sched. 2, ss. 5 (33), 6 (2).**

**Application of subs. (1)**

(4) Subsection (1) does not apply in respect of a member of the Association or a holder of a certificate of authorization. R.S.O. 1990, c. P.28, s. 18 (4).

**Membership**

(5) A holder of a temporary licence, a provisional licence or a limited licence is not a member of the Association. R.S.O. 1990, c. P.28, s. 18 (5); 2010, c. 16, Sched. 2, s. 5 (34).

**Notice of proposal to revoke or refuse to renew**

**19.** (1) Where the Registrar proposes,

(a) to refuse to issue a licence; or

(b) to refuse to issue, to suspend or to revoke a temporary licence, a provisional licence, a limited licence or a certificate of authorization,

the Registrar shall serve notice of the proposal, together with written reasons therefor, on the applicant. R.S.O. 1990, c. P.28, s. 19 (1); 2001, c. 9, Sched. B, s. 11 (22).

**Exception**

(2) Subsection (1) does not apply in respect of a proposal to refuse to issue a licence, a temporary licence, a provisional licence or a limited licence where the applicant previously held a licence, a certificate of authorization, a temporary licence, a provisional licence or a limited licence that was suspended or revoked as a result of a decision of the Discipline Committee. 2001, c. 9, Sched. B, s. 11 (23).

**Notice**

(3) A notice under subsection (1) shall state that the applicant is entitled to a hearing by the Registration Committee if the applicant mails or 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 and the applicant may so require such a hearing. R.S.O. 1990, c. P.28, s. 19 (3).

**Power of Registrar where no hearing**

(4) Where the applicant does not require a hearing by the Registration Committee in accordance with subsection (3), the Registrar may carry out the proposal stated in the notice under subsection (1). R.S.O. 1990, c. P.28, s. 19 (4).

**Hearing**

(5) Within 30 days after receiving a notice under subsection (3) requiring a hearing, the Registration Committee shall schedule the hearing. 2010, c. 16, Sched. 2, s. 5 (35).

**Continuation on expiry of Committee membership**

(6) 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 member's term of office had not expired or been terminated. R.S.O. 1990, c. P.28, s. 19 (6); 2010, c. 16, Sched. 2, s. 5 (36).

**Powers of Registration Committee**

(7) Following a hearing under this section, the Registration Committee shall make one of the following orders:

1. If the Committee determines on reasonable grounds that the applicant meets the requirements and qualifications of this Act and the regulations and will engage in the practice of professional engineering or in the business of providing services that are within the practice of professional engineering with competence and integrity, the Committee shall direct the Registrar to issue a licence, certificate of authorization, temporary licence, provisional licence or limited licence, as the case may be, to the applicant.



2. If the Committee determines on reasonable grounds that the applicant does not meet the requirements and qualifications of this Act and the regulations, the Committee shall,
  - i. direct the Registrar to refuse to issue a licence, certificate of authorization, temporary licence, provisional licence or limited licence, or to suspend or revoke the certificate of authorization issued to the applicant, as the case may be,
  - ii. exempt the applicant from any of the requirements of this Act or the regulations and direct the Registrar to issue a licence, certificate of authorization, temporary licence, provisional licence or limited licence, as the case may be, if the Committee determines on reasonable grounds that the applicant will engage in the practice of professional engineering with competence and integrity, or
  - iii. direct the Registrar to issue a licence, certificate of authorization, temporary licence, provisional licence or limited licence, as the case may be, subject to such terms, conditions or limitations as the Committee specifies, if the Committee determines on reasonable grounds that the terms, conditions or limitations are necessary in order to ensure that the applicant will engage in the practice of professional engineering or in the business of providing services that are within the practice of professional engineering with competence and integrity. 2010, c. 16, Sched. 2, s. 5 (37).

**Extension of time for requiring hearing**

(8) 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. P.28, s. 19 (8).

**Parties**

(9) 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. P.28, s. 19 (9).

**Opportunity to show compliance**

(10) The applicant may show or achieve compliance with the requirements for the issuance of a licence, certificate of authorization, temporary licence, provisional licence or limited licence, as the case may be, at any time before the hearing date. 2010, c. 16, Sched. 2, s. 5 (38).

**Examination of documentary evidence**

(11) 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. P.28, s. 19 (11).

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

(12) 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 representative of a party except upon notice to and opportunity for all parties to participate, but the Registration Committee may seek legal advice from an adviser independent from the parties 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. P.28, s. 19 (12).

**Recording of evidence**

(13) 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. P.28, s. 19 (13); 2001, c. 9, Sched. B, s. 11 (66).

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

(14) No member of the Registration Committee shall participate in a decision of the Registration Committee following upon a hearing unless he or she was present throughout the hearing and heard the evidence and argument of the parties. R.S.O. 1990, c. P.28, s. 19 (14).

**Release of documentary evidence**

(15) 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. P.28, s. 19 (15).

**Applicant**

(16) In this section,

“applicant” means applicant for a licence or applicant for or holder of a temporary licence, a provisional licence, a limited licence or a certificate of authorization. R.S.O. 1990, c. P.28, s. 19 (16); 2001, c. 9, Sched. B, s. 11 (26).

**Registration Committee**

**19.1** (1) The Registration Committee is continued and shall be composed of the following persons appointed by the Council:

1. At least two persons, each of whom is either,
  - i. a member of the Council appointed by the Lieutenant Governor in Council, or
  - ii. a person who is neither a member of the Council nor a member of the Association, and approved by the Attorney General.
2. At least three members of the Association. 2010, c. 16, Sched. 2, s. 5 (39).

**Quorum**

(2) Three members of the Registration Committee, of whom at least one is a person referred to in subparagraph 1 i or ii of subsection (1), constitute a quorum. 2010, c. 16, Sched. 2, s. 5 (39).

**Chair, vice-chair**

(3) The Registration Committee shall name one of its members as chair, and another as vice-chair, of the Registration Committee. 2010, c. 16, Sched. 2, s. 5 (39).

**Same**

(4) Any power, duty or function of the chair of the Registration Committee may be exercised by the vice-chair, if the chair is absent or unable to act. 2010, c. 16, Sched. 2, s. 5 (39).

**Fiduciary, etc., relationship between corporation and client**

**20.** A corporation that holds a certificate of authorization has the same rights and is subject to the same obligations in respect of fiduciary, confidential and ethical relationships with each client of the corporation that exist at law between a member of the Association and his client. R.S.O. 1990, c. P.28, s. 20.

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:**

**Engineering interns**

- 20.1** (1) The Registrar shall accept as an engineering intern any applicant for a licence, if,
- (a) in submitting the application for a licence, the applicant requests in writing to become an engineering intern;
  - (b) the applicant is enrolled in the Association’s engineering intern training program; and
  - (c) the applicant meets the academic requirements prescribed by the regulations. 2010, c. 16, Sched. 2, s. 5 (40).

**Revocation for non-payment**

(2) The Registrar may revoke a person’s status as an engineering intern for non-payment of any fee that is payable by the person under this Act. 2010, c. 16, Sched. 2, s. 5 (40).

**Termination**

(3) Subject to a revocation under subsection (2), a person ceases to be an engineering intern on the earlier of the day that his or her application for a licence is finally dealt with or the day that he or she withdraws the application. 2010, c. 16, Sched. 2, s. 5 (40).

**See: 2010, c. 16, Sched. 2, ss. 5 (40), 6 (2).**

**Registers**

**21.** (1) The Registrar shall maintain one or more registers in which is entered every person who is licensed under this Act and every holder of a certificate of authorization, temporary licence, provisional licence or limited licence, identifying the terms, conditions and limitations attached to the licence, certificate of authorization, temporary licence, provisional licence or limited licence, and shall note on the register every revocation, suspension and cancellation or termination of a licence, certificate of authorization, temporary licence, provisional licence or limited licence and such other information as the Registration Committee or Discipline Committee directs. R.S.O. 1990, c. P.28, s. 21 (1); 2001, c. 9, Sched. B, s. 11 (27).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:**

**Registers**

- (1) The Registrar shall maintain one or more registers containing the following information:
  1. Every holder of a licence, certificate of authorization, temporary licence, provisional licence or limited licence.
  2. The terms, conditions and limitations attached to every licence, certificate of authorization, temporary licence, provisional licence and limited licence.
  3. Every revocation, suspension and cancellation or termination of a licence, certificate of authorization, temporary licence, provisional licence or limited licence.
  4. Every person who is an engineering intern under section 20.1.
  5. Any other information that the Registration Committee or Discipline Committee directs. 2010, c. 16, Sched. 2, s. 5 (41).

**See: 2010, c. 16, Sched. 2, ss. 5 (41), 6 (2).**

**Inspection**

(2) Any person has the right, during normal business hours, to inspect the registers maintained by the Registrar. R.S.O. 1990, c. P.28, s. 21 (2).

**Copies**

(3) The Registrar shall provide to any person, upon payment of a reasonable charge therefor, a copy of any part of the registers mentioned in subsection (1) maintained by the Registrar. R.S.O. 1990, c. P.28, s. 21 (3).

**Cancellation for default of fees**

**22.** (1) The Registrar may cancel a licence, certificate of authorization, temporary licence, provisional licence or limited licence for non-payment of any fee prescribed by the regulations or the by-laws after giving the member or the holder of the certificate of authorization, temporary licence, provisional licence or limited licence 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 the person's professional conduct while a member or holder. R.S.O. 1990, c. P.28, s. 22 (1); 2001, c. 9, Sched. B, s. 11 (28).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "any fee prescribed by the regulations or the by-laws" and substituting "any fee payable under this Act". See: 2010, c. 16, Sched. 2, ss. 5 (42), 6 (2).**

**Reinstatement**

(2) A person who was a member of the Association or a holder of a certificate of authorization, temporary licence, provisional licence or limited licence whose licence, certificate of authorization, temporary licence, provisional licence or limited licence was cancelled by the Registrar under subsection (1) is entitled to have the licence, certificate of authorization, temporary licence, provisional licence or limited licence reinstated upon compliance with the requirements and qualifications prescribed by the regulations. R.S.O. 1990, c. P.28, s. 22 (2); 2001, c. 9, Sched. B, s. 11 (29).

**Complaints Committee**

**23.** (1) The Complaints Committee is continued and shall be composed of the following persons appointed by the Council:

1. At least one person who is either,
  - i. a member of the Council appointed by the Lieutenant Governor in Council, or
  - ii. a person who is neither a member of the Council nor a member of the Association, and approved by the Attorney General.
2. At least two members of the Association. 2010, c. 16, Sched. 2, s. 5 (43).

**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. P.28, s. 23 (2).

**Chair**

(3) The Council shall name one member of the Complaints Committee to be chair. R.S.O. 1990, c. P.28, s. 23 (3).

#### **Quorum**

(4) Three members of the Complaints Committee, of whom one shall be a person referred to in subparagraph 1 i or ii of subsection (1), constitute a quorum. R.S.O. 1990, c. P.28, s. 23 (4); 2010, c. 16, Sched. 2, s. 5 (44).

#### **Duties of Complaints Committee**

**24.** (1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the Association regarding the conduct or actions of a member of the Association or holder of a certificate of authorization, a temporary licence, a provisional licence or a limited licence, but no action shall be taken by the Committee under subsection (2) unless,

- (a) a written complaint in a form that shall be provided by the Association has been filed with the Registrar and the member or holder whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations the member or holder may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint. R.S.O. 1990, c. P.28, s. 24 (1); 2001, c. 9, Sched. B, s. 11 (30).

#### **Idem**

- (2) The Committee in accordance with the information it receives may,
  - (a) direct that the matter be referred, in whole or in part, to the Discipline Committee;
  - (b) direct that the matter not be referred under clause (a); or
  - (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Act or the regulations or by-laws. R.S.O. 1990, c. P.28, s. 24 (2).

#### **Decision and reasons**

(3) The Committee shall give its decision in writing to the Registrar for the purposes of subsection (4) and, where the decision is made under clause (2) (b), its reasons therefor. R.S.O. 1990, c. P.28, s. 24 (3).

#### **Notice**

(4) The Registrar shall mail to the complainant and to the person complained against a copy of the written decision made by the Complaints Committee and its reasons therefor, if any, together with notice advising the complainant of the right to apply to the Complaints Review Councillor under section 26. R.S.O. 1990, c. P.28, s. 24 (4); 2006, c. 19, Sched. B, s. 14.

#### **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. P.28, s. 24 (5).

#### **Complaints Review Councillor**

- 25.** (1) There shall be a Complaints Review Councillor who shall be appointed by Council and shall be,
- (a) a member of the Council appointed by the Lieutenant Governor in Council under clause 3 (2) (c); or
  - (b) a person who is neither a member of the Council nor a member of the Association, and approved by the Attorney General. 2010, c. 16, Sched. 2, s. 5 (45).

#### **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. P.28, s. 25 (2).

#### **Powers of Complaints Review Councillor**

##### **Examination by Complaints Review Councillor**

**26.** (1) The Complaints Review Councillor may examine from time to time the procedures for the treatment of complaints by the Complaints Committee. R.S.O. 1990, c. P.28, s. 26 (1); 2010, c. 16, Sched. 2, s. 5 (46).

##### **Review by Complaints Review Councillor**

(2) Where a complaint respecting a member of the Association or a holder of a certificate of authorization, a temporary licence, a provisional licence or a limited licence has not been disposed of by the Complaints Committee within ninety days

after the complaint is filed with the Registrar, upon application by the complainant or on his or her own initiative the Complaints Review Councillor may review the treatment of the complaint by the Complaints Committee. R.S.O. 1990, c. P.28, s. 26 (2); 2001, c. 9, Sched. B, s. 11 (31).

#### **Application to Complaints Review Councillor**

(3) A complainant who is not satisfied with the handling by the Complaints Committee of a complaint to the Committee may apply to the Complaints Review Councillor for a review of the treatment of the complaint after the Committee has disposed of the complaint. R.S.O. 1990, c. P.28, s. 26 (3).

#### **Notice of application**

(3.1) A complainant who applies for a review under subsection (2) or (3) shall give the person complained against notice of the application. 2010, c. 16, Sched. 2, s. 5 (47).

#### **No inquiry into merits**

(4) In an examination under subsection (1) or a review under subsection (2) or (3), the Complaints Review Councillor shall not inquire into the merits of any particular complaint made to the Complaints Committee. 2010, c. 16, Sched. 2, s. 5 (48).

#### **Discretionary power of Complaints Review Councillor**

- (5) The Complaints Review Councillor may decide not to make or continue a review under subsection (2) or (3) if,
- (a) the review is or would be in respect of the treatment of a complaint that was disposed of by the Complaints Committee more than twelve months before the matter came to the attention of the Complaints Review Councillor; or
  - (b) in the opinion of the Complaints Review Councillor,
    - (i) the application to the Complaints Review Councillor is frivolous or vexatious or is not made in good faith, or
    - (ii) the person who has made application to the Complaints Review Councillor has not a sufficient personal interest in the subject-matter of the particular complaint. R.S.O. 1990, c. P.28, s. 26 (5); 2010, c. 16, Sched. 2, s. 5 (49, 50).

#### **Notice, no review**

(5.1) If the Complaints Review Councillor decides under subsection (5) not to make or continue a review, he or she shall give notice of the decision to the Complaints Committee, to the complainant and to the person complained against. 2010, c. 16, Sched. 2, s. 5 (51).

#### **Notice of examination or review**

(6) Before commencing an examination or review, the Complaints Review Councillor shall give notice to the Complaints Committee of his or her intention to commence the examination or review and, in the case of a review, shall also give notice to the person complained against. 2010, c. 16, Sched. 2, s. 5 (52).

#### **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. P.28, s. 26 (7).

#### **Privacy**

(8) Every examination or review by the Complaints Review Councillor shall be conducted in private. R.S.O. 1990, c. P.28, s. 26 (8); 2010, c. 16, Sched. 2, s. 5 (53).

#### **Receipt of information**

(9) In conducting an examination or review, the Complaints Review Councillor may hear or obtain information from any person and may make such inquiries as he or she thinks fit. R.S.O. 1990, c. P.28, s. 26 (9); 2010, c. 16, Sched. 2, s. 5 (54).

#### **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 under this section. R.S.O. 1990, c. P.28, s. 26 (10); 2010, c. 16, Sched. 2, s. 5 (55).

#### **Duty to provide information**

(11) On the request of the Complaints Review Councillor, a member of the Council, member of a committee of the Association or officer or employee of the Association shall give to the Complaints Review Councillor,

- (a) any information regarding the proceedings and procedures of the Complaints Committee regarding the treatment of complaints made to it that the Complaints Review Councillor requires; and
- (b) access to all records, reports, files and other papers and things belonging to or under the control of the member, officer or employee, or the Association, that relate to the treatment by the Complaints Committee of complaints or any particular complaint, as specified by the Complaints Review Councillor. 2010, c. 16, Sched. 2, s. 5 (56).

**Report**

(12) On completing an examination or review, the Complaints Review Councillor shall make a report of his or her findings. 2010, c. 16, Sched. 2, s. 5 (56).

**Report re examination**

(13) The Complaints Review Councillor shall give a copy of a report respecting an examination under subsection (1) to the Council and to the Complaints Committee. 2010, c. 16, Sched. 2, s. 5 (56).

**Report re review**

(14) The Complaints Review Councillor shall give a copy of a report respecting a review under subsection (2) or (3) to the Council, to the Complaints Committee, to the complainant and to the person complained against. 2010, c. 16, Sched. 2, s. 5 (56).

**Report to Minister**

(15) If the Complaints Review Councillor is of the opinion that a report made under this section should be brought to the attention of the Minister, the Complaints Review Councillor shall give a copy of the report to the Minister. 2010, c. 16, Sched. 2, s. 5 (56).

**Recommendations**

(16) The Complaints Review Councillor may include in a report his or her recommendations in respect of the procedures of the Complaints Committee, either generally or with respect to the treatment of a particular complaint. R.S.O. 1990, c. P.28, s. 26 (16); 2010, c. 16, Sched. 2, s. 5 (57).

**Consideration of report by Council**

(17) The Council shall consider every report, and any recommendations included in the report, that it receives from the Complaints Review Councillor, and shall notify the Complaints Review Councillor of any action it takes as a result. 2010, c. 16, Sched. 2, s. 5 (58).

**Consideration of report by Complaints Committee**

(18) The Complaints Committee shall consider every report, and any recommendations included in the report, that it receives from the Complaints Review Councillor, and shall notify the Complaints Review Councillor of any action it takes as a result. 2010, c. 16, Sched. 2, s. 5 (58).

**Discipline Committee**

- 27.** (1) The Discipline Committee is continued and shall be composed of the following persons appointed by the Council:
1. At least one elected member of the Council.
  2. At least one member of the Association who is,
    - i. a member of the Council appointed by the Lieutenant Governor in Council, or
    - ii. not a member of the Council, and approved by the Attorney General.
  3. At least one person who is,
    - i. a member of the Council appointed by the Lieutenant Governor in Council under clause 3 (2) (c), or
    - ii. neither a member of the Council nor a member of the Association, and approved by the Attorney General.
  4. At least three members of the Association each of whom has at least 10 years experience in the practice of professional engineering. 2010, c. 16, Sched. 2, s. 5 (59).

**Quorum**

(2) One of each of the persons appointed under paragraphs 1, 2, 3 and 4 of subsection (1) constitute a quorum of the Discipline Committee. 2010, c. 16, Sched. 2, s. 5 (59).

**Chair, vice-chair**

(3) The Discipline Committee shall name one of its members as chair, and another as vice-chair, of the Discipline Committee. 2010, c. 16, Sched. 2, s. 5 (59).

**Same**

(4) Any power, duty or function of the chair of the Discipline Committee may be exercised by the vice-chair, if the chair is absent or unable to act. 2010, c. 16, Sched. 2, s. 5 (59).

**Referral to panel**

- (5) Within 90 days after a matter is referred to the Discipline Committee for hearing and determination, the chair may,
- (a) select a panel from among the members of the Committee that includes at least one of each of the persons appointed under paragraphs 1, 2, 3 and 4 of subsection (1);
  - (b) designate one of the members of the panel to chair it;
  - (c) refer the matter to the panel for hearing and determination; and
  - (d) set a date, time and place for the hearing. 2010, c. 16, Sched. 2, s. 5 (59).

**Powers of panel**

(6) A panel established under subsection (5) has all the powers, duties and functions of the Discipline Committee with respect to the hearing and determination of the matter referred to the panel, and a decision or order of the panel is deemed to be a decision or order of the Committee. 2010, c. 16, Sched. 2, s. 5 (59).

**Majority required**

(7) All disciplinary decisions of the Committee or of a panel established under subsection (5) require the vote of a majority of those of its members presiding over the matter. 2010, c. 16, Sched. 2, s. 5 (59).

**Inability to act**

(8) If the Discipline Committee or a panel established under subsection (5) commences a hearing and a member of the Discipline Committee required to preside over the hearing by virtue of subsection (2) or clause (5) (a), as the case may be, is unable to continue to act, the remaining members may complete the hearing despite the member's absence, but in no case shall a hearing be presided over by fewer than three members of the Committee. 2010, c. 16, Sched. 2, s. 5 (59).

**Transition**

(9) This section, as it read immediately before the day subsection 5 (59) of Schedule 2 to the *Open for Business Act, 2010* comes into force, continues to apply in respect of every hearing of the Discipline Committee or of a panel that is commenced and not concluded before that day. 2010, c. 16, Sched. 2, s. 5 (59).

**Repeal**

**(10) Subsection (9) is repealed on the fourth anniversary of the day on which subsection 5 (59) of Schedule 2 to the *Open for Business Act, 2010* comes into force. 2010, c. 16, Sched. 2, s. 5 (59).**

**Reference by Council or Executive Committee**

**27.1** The Council or the Executive Committee may, by resolution, refer to the Discipline Committee for hearing and determination any allegation of professional misconduct or incompetence on the part of a member of the Association or a holder of a certificate of authorization, a temporary licence, a provisional licence or a limited licence specified in the resolution. 2010, c. 16, Sched. 2, s. 5 (60).

**Duties and powers of Discipline Committee**

**Duties of Discipline Committee**

- 28.** (1) The Discipline Committee shall,
- (a) when so directed by the Council, the Executive Committee or the Complaints Committee, hear and determine allegations of professional misconduct or incompetence against a member of the Association or a holder of a certificate of authorization, a temporary licence, a provisional licence or a limited licence;
  - (b) hear and determine matters referred to it under section 24, 27.1 or 37; and

- (c) perform such other duties as are assigned to it by the Council. R.S.O. 1990, c. P.28, s. 28 (1); 2001, c. 9, Sched. B, s. 11 (35); 2010, c. 16, Sched. 2, s. 5 (61).

#### **Professional misconduct**

(2) A member of the Association or a holder of a certificate of authorization, a temporary licence, a provisional licence or a limited licence may be found guilty of professional misconduct by the Committee if,

- (a) the member or holder has been found guilty of an offence relevant to suitability to practise, upon proof of such conviction; or
- (b) the member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations. R.S.O. 1990, c. P.28, s. 28 (2); 2001, c. 9, Sched. B, s. 11 (36); 2010, c. 16, Sched. 2, s. 5 (62).

#### **Incompetence**

(3) The Discipline Committee may find a member of the Association or a holder of a temporary licence, a provisional licence or a limited licence to be incompetent if in its opinion,

- (a) the member or holder has displayed in his or her professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public of a nature or to an extent that demonstrates the member or holder is unfit to carry out the responsibilities of a professional engineer; or
- (b) the member or holder is suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member or holder that the member or holder no longer be permitted to engage in the practice of professional engineering or that his or her practice of professional engineering be restricted. R.S.O. 1990, c. P.28, s. 28 (3); 2001, c. 9, Sched. B, s. 11 (37).

#### **Powers of Discipline Committee**

(4) Where the Discipline Committee finds a member of the Association or a holder of a certificate of authorization, a temporary licence, a provisional licence or a limited licence guilty of professional misconduct or to be incompetent it may, by order,

- (a) revoke the licence of the member or the certificate of authorization, temporary licence, provisional licence or limited licence of the holder;
- (b) suspend the licence of the member or the certificate of authorization, temporary licence, provisional licence or limited licence of the holder for a stated period, not exceeding 24 months;
- (c) accept the undertaking of the member or holder to limit the professional work of the member or holder in the practice of professional engineering to the extent specified in the undertaking;
- (d) impose terms, conditions or limitations on the licence or certificate of authorization, temporary licence, provisional licence or limited licence, of the member or holder, including but not limited to the successful completion of a particular course or courses of study, as are specified by the Discipline Committee;
- (e) impose specific restrictions on the licence or certificate of authorization, temporary licence, provisional licence or limited licence, including but not limited to,
  - (i) requiring the member or the holder of the certificate of authorization, temporary licence, provisional licence or limited licence to engage in the practice of professional engineering only under the personal supervision and direction of a member,
  - (ii) requiring the member to not alone engage in the practice of professional engineering,
  - (iii) requiring the member or the holder of the certificate of authorization, temporary licence, provisional licence or limited licence to accept periodic inspections by the Committee or its delegate of documents and records in the possession or under the control of the member or the holder in connection with the practice of professional engineering,
  - (iv) requiring the member or the holder of the certificate of authorization, temporary licence, provisional licence or limited licence to report to the Registrar or to such committee of the Council as the Discipline Committee may specify on such matters in respect of the member's or holder's practice for such period of time, at such times and in such form, as the Discipline Committee may specify;



- (f) require that the member or the holder of the certificate of authorization, temporary licence, provisional licence or limited licence be reprimanded, admonished or counselled and, if considered warranted, direct that the fact of the reprimand, admonishment or counselling be recorded on the register for a stated or unlimited period of time;
- (g) revoke or suspend for a stated period of time the designation of the member or holder by the Association as a specialist, consulting engineer or otherwise;
- (h) impose such fine as the Discipline Committee considers appropriate, to a maximum of \$5,000, to be paid by the member of the Association or the holder of the certificate of authorization, temporary licence, provisional licence or limited licence to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;
- (i) subject to subsection (5) in respect of orders of revocation or suspension, direct that the finding and the order of the Discipline Committee be published in detail or in summary and either with or without including the name of the member or holder in the official publication of the Association and in such other manner or medium as the Discipline Committee considers appropriate in the particular case;
- (j) fix and impose costs to be paid by the member or the holder to the Association;
- (k) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms or for such purpose as the Discipline Committee may specify, including but not limited to,
  - (i) the successful completion by the member or the holder of the temporary licence, provisional licence or limited licence 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,

or any combination of them. 2001, c. 9, Sched. B, s. 11 (38); 2009, c. 33, Sched. 2, s. 61.

**Publication of revocation or suspension**

(5) The Discipline Committee shall cause an order of the Committee revoking or suspending a licence or certificate of authorization, temporary licence, provisional licence or limited licence to be published, with or without the reasons therefor, in the official publication of the Association together with the name of the member or holder of the revoked or suspended licence or certificate of authorization, temporary licence, provisional licence or limited licence. R.S.O. 1990, c. P.28, s. 28 (5); 2001, c. 9, Sched. B, s. 11 (39).

**Publication on request**

(6) The Discipline Committee shall cause a determination by the Committee that an allegation of professional misconduct or incompetence was unfounded to be published in the official publication of the Association, upon the request of the member of the Association or the holder of the certificate of authorization, temporary licence, provisional licence or limited licence against whom the allegation was made. R.S.O. 1990, c. P.28, s. 28 (6); 2001, c. 9, Sched. B, s. 11 (40).

**Costs**

(7) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the Association reimburse the member of the Association or the holder of the certificate of authorization, temporary licence, provisional licence or limited licence for the person's costs or such portion thereof as the Discipline Committee fixes. R.S.O. 1990, c. P.28, s. 28 (7); 2001, c. 9, Sched. B, s. 11 (41).

**Stay of decision on appeal**

**29.** (1) Where the Discipline Committee revokes, suspends or restricts a licence, temporary licence, provisional licence or limited licence on the grounds of incompetence, the decision takes effect immediately even if an appeal is taken from the decision, unless the court to which the appeal is taken otherwise orders, and, where the court is satisfied that it is appropriate in the circumstances, the court may so order. R.S.O. 1990, c. P.28, s. 29 (1); 2001, c. 9, Sched. B, s. 11 (42).

**Stay of decision on appeal, professional misconduct**

(2) Where the Discipline Committee revokes, suspends or restricts a licence or a certificate of authorization, temporary licence, provisional licence or limited licence on grounds other than for incompetence, the order does not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned, unless the Discipline Committee otherwise orders, and, where the Committee considers that it is appropriate for the protection of the public, the Committee may so order. R.S.O. 1990, c. P.28, s. 29 (2); 2001, c. 9, Sched. B, s. 11 (43).

**Discipline proceedings**

**30.** (1) In proceedings before the Discipline Committee, the Association and the member of the Association or the holder of a certificate of authorization, a temporary licence, a provisional licence or a limited licence whose conduct is being investigated in the proceedings are parties to the proceedings. R.S.O. 1990, c. P.28, s. 30 (1); 2001, c. 9, Sched. B, s. 11 (44).

**Examination of documentary evidence**

(2) A member or holder of a certificate of authorization, a temporary licence, a provisional licence or a limited licence whose conduct is being investigated in proceedings before the Discipline Committee 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. P.28, s. 30 (2); 2001, c. 9, Sched. B, s. 11 (45).

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

(3) Members of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation 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 of the Committee, and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or representative of a party except upon notice to and opportunity for all parties to participate, but the Committee may seek legal advice from an adviser independent from the parties 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. P.28, s. 30 (3).

**Public hearings**

(4) Hearings of the Discipline Committee shall be open to the public, subject to subsection (4.1). 2001, c. 9, Sched. B, s. 11 (46).

**Exception**

(4.1) The Discipline Committee may order that the public be excluded from all or part of a hearing if the following conditions are satisfied:

1. The person whose conduct is being investigated delivers to the Registrar, before the day fixed for the hearing or part, a written request that the hearing or part be closed.
2. The Discipline Committee is satisfied that,
  - i. matters involving public security may be disclosed at the hearing or part, or
  - ii. financial or personal or other matters may be disclosed at the hearing or part, of such a nature that the desirability of avoiding public disclosure of these matters in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public. 2001, c. 9, Sched. B, s. 11 (46).

**Recording of evidence**

(5) The oral evidence taken before the Discipline Committee shall be recorded and, if so required, copies of a transcript thereof shall be furnished only to the parties upon the same terms as in the Superior Court of Justice. R.S.O. 1990, c. P.28, s. 30 (5); 2001, c. 9, Sched. B, s. 11 (66).

**Evidence**

(6) Despite the *Statutory Powers Procedure Act*, nothing is admissible in evidence before the Discipline Committee that would be inadmissible in a court in a civil case and the findings of the Discipline Committee shall be based exclusively on evidence admitted before it. R.S.O. 1990, c. P.28, s. 30 (6).

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

(7) No member of the Discipline Committee shall participate in a decision of the Committee following upon a hearing unless he or she was present throughout the hearing and heard the evidence and argument of the parties. R.S.O. 1990, c. P.28, s. 30 (7).

**Release of documentary evidence**

(8) Documents and things put in evidence at a hearing of the Discipline Committee shall, upon the request of the party who produced them, be returned by the Committee within a reasonable time after the matter in issue has been finally determined. R.S.O. 1990, c. P.28, s. 30 (8).

**Continuation on expiry of Committee membership**

(9) Where a proceeding is commenced before the Discipline 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 has been heard, the member shall be deemed to remain a member of the Discipline 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. P.28, s. 30 (9).

#### **Service of decision of Discipline Committee**

(10) Where the Discipline Committee finds a member of the Association or a holder of a certificate of authorization, temporary licence, provisional licence or limited licence 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 or holder. R.S.O. 1990, c. P.28, s. 30 (10); 2001, c. 9, Sched. B, s. 11 (47).

#### **Appeal to court**

**31.** (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. P.28, s. 31.

#### **Fees Mediation Committee**

**32.** (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. P.28, s. 32 (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, a temporary licence, a provisional licence or a limited licence in respect of a fee charged for professional engineering services provided to the client; and

(b) shall perform such other duties as are assigned to it by the Council. R.S.O. 1990, c. P.28, s. 32 (2); 2001, c. 9, Sched. B, s. 11 (48).

#### **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, temporary licence, provisional licence or limited licence 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. P.28, s. 32 (3); 2001, c. 9, Sched. B, s. 11 (49).

#### **Procedure**

(4) Where the Fees Mediation Committee acts as arbitrator under subsection (3), the *Arbitration Act, 1991* does not apply. R.S.O. 1990, c. P.28, s. 32 (4); 2010, c. 16, Sched. 2, s. 5 (63).

#### **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. P.28, s. 32 (5); 2001, c. 9, Sched. B, s. 11 (66).

#### **Registrar's investigation**

**33.** (1) Where the Registrar believes on reasonable and probable grounds that a member of the Association or a holder of a certificate of authorization, a temporary licence, provisional licence or limited licence 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 investigate 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. P.28, s. 33 (1); 2001, c. 9, Sched. B, s. 11 (50).

**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, temporary licence, provisional licence or limited licence 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. 79.

**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. 79.

**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. P.28, s. 33 (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, a temporary licence, a provisional licence or a limited licence 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. P.28, s. 33 (4); 2001, c. 9, Sched. B, s. 11 (52).

**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. P.28, s. 33 (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. P.28, s. 33 (6).

**Application without notice**

(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, temporary licence, provisional licence or limited licence whose affairs are being investigated. R.S.O. 1990, c. P.28, s. 33 (7); 2001, c. 9, Sched. B, s. 11 (53).

**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. P.28, s. 33 (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. P.28, s. 33 (9).

**Report of Registrar**

(10) The Registrar shall report the results of the investigation to the Council or such committee as the Registrar considers appropriate. R.S.O. 1990, c. P.28, s. 33 (10).

#### **Liability insurance**

**34.** It is a condition of every certificate of authorization that the holder of the certificate shall not offer or provide to the public services that are within the practice of professional engineering unless the holder is insured in respect of professional liability in accordance with the regulations. R.S.O. 1990, c. P.28, s. 34.

#### **Insurance claims**

**35.** (1) In this section,

“insurer” means a person offering insurance in respect of liability incurred in the practice of professional engineering.

#### **Information re insurance claims**

(2) Upon the request of the Registrar, an insurer shall furnish to the Registrar all documents that relate to a claim for indemnity in respect of the practice of professional engineering and that are in the possession or under the control of the insurer and have been prepared by a professional engineer and relate to engineering matters.

#### **Exception**

(3) Subsection (2) does not apply in respect of a document prepared by an insured person related to a claim for indemnity in respect of the practice of professional engineering by the insured person.

#### **Transmittal of information**

(4) The Registrar may forward any information referred to in subsection (2) to the Council or to such committee as the Registrar considers appropriate. R.S.O. 1990, c. P.28, s. 35.

#### **Surrender of revoked licence or certificate**

**36.** Where a licence, certificate of authorization, temporary licence, provisional licence or limited licence is revoked or cancelled, the former holder thereof shall forthwith deliver the licence, certificate of authorization, temporary licence, provisional licence or limited licence and related seal to the Registrar. R.S.O. 1990, c. P.28, s. 36; 2001, c. 9, Sched. B, s. 11 (54).

#### **Application after revocation or suspension**

##### **Application for licence, etc., after revocation**

**37.** (1) A person whose licence, certificate of authorization, temporary licence, provisional licence or limited licence 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, temporary licence, provisional licence or limited licence, but such application shall not be made sooner than two years after the revocation. R.S.O. 1990, c. P.28, s. 37 (1); 2001, c. 9, Sched. B, s. 11 (55).

##### **Removal of suspension**

(2) A person whose licence, certificate of authorization, temporary licence, provisional licence or limited licence has been suspended for cause under this Act, or whose membership has been suspended for cause under a predecessor of this Act, may apply in writing to the Registrar for the removal of the suspension, but, where the suspension is for more than one year, the application shall not be made sooner than one year after the commencement of the suspension. R.S.O. 1990, c. P.28, s. 37 (2); 2001, c. 9, Sched. B, s. 11 (56).

#### **Reference to Discipline Committee**

(3) The Registrar shall refer an application under subsection (1) or (2) in respect of a licence or a certificate of authorization, a temporary licence, a provisional licence or a limited licence to the Discipline Committee which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and the applicant. R.S.O. 1990, c. P.28, s. 37 (3); 2001, c. 9, Sched. B, s. 11 (57).

#### **Procedures**

(4) The provisions of this Act applying to hearings by the Registration Committee, except section 31, apply with necessary modifications to proceedings of the Discipline Committee or the Registration Committee under this section. R.S.O. 1990, c. P.28, s. 37 (4).

#### **Confidentiality**

**38.** (1) Every person engaged in the administration of this Act, including any person making an examination or review under section 26 or an investigation under section 33, shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties, employment, examination, review or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of,
  - (i) this Act and the regulations and by-laws, or
  - (ii) the *Architects Act*, and the regulations and by-laws under that Act, or any proceedings under,
  - (iii) this Act or the regulations, or
  - (iv) the *Architects Act*, or the regulations under that Act;
- (b) to his or her counsel; or
- (c) with the consent of the person to whom the information relates. R.S.O. 1990, c. P.28, s. 38 (1).

**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, examination, review or investigation except in a proceeding under this Act or the regulations or by-laws or a proceeding under the *Architects Act* or the regulations or by-laws under that Act. R.S.O. 1990, c. P.28, s. 38 (2).

**Offence, penalty**

(3) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. 2001, c. 9, Sched. B, s. 11 (58).

**Limitation**

(4) No proceeding shall be commenced in respect of an offence under subsection (1) after the expiration of two years after the date on which the offence was, or is alleged to have been, committed. 2001, c. 9, Sched. B, s. 11 (58).

**Order directing compliance**

**39.** (1) Where it appears to the Association that any person does not comply with this Act or the regulations, despite the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the Association may apply to a judge of the Superior Court of Justice for an order directing the person to comply with the provision, and upon the application the judge may make the order or such other order as the judge thinks fit. R.S.O. 1990, c. P.28, s. 39 (1); 2001, c. 9, Sched. B, s. 11 (66).

**Appeal**

- (2) An appeal lies to the Court of Appeal from an order made under subsection (1). R.S.O. 1990, c. P.28, s. 39 (2).

**Offences and penalties**

**Offence, practice of professional engineering**

**40.** (1) Every person who contravenes section 12 is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$25,000 and for each subsequent offence to a fine of not more than \$50,000. R.S.O. 1990, c. P.28, s. 40 (1).

**Offence, use of term “professional engineer”, etc.**

- (2) Every person who is not a holder of a licence or a temporary licence and who,
  - (a) uses the title “professional engineer” or “ingénieur” or an abbreviation or variation thereof as an occupational or business designation;
  - (a.1) uses the title “engineer” or an abbreviation of that title in a manner that will lead to the belief that the person may engage in the practice of professional engineering;
  - (b) uses a term, title or description that will lead to the belief that the person may engage in the practice of professional engineering; or
  - (c) uses a seal that will lead to the belief that the person is a professional engineer,

is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$10,000 and for each subsequent offence to a fine of not more than \$25,000. R.S.O. 1990, c. P.28, s. 40 (2); 2001, c. 9, Sched. B, s. 11 (59).

**Onus of proof**

(2.1) In a proceeding for an alleged contravention of clause (2) (a.1), the burden of proving that the use of the title or abbreviation will not lead to the belief referred to is on the defendant, unless the defendant's use of the title or abbreviation is authorized or required by an Act or regulation. 2001, c. 9, Sched. B, s. 11 (60).

**Offence, services of professional engineer**

- (3) Every person who is not acting under and in accordance with a certificate of authorization and who,
- (a) uses a term, title or description that will lead to the belief that the person may provide to the public services that are within the practice of professional engineering; or
  - (b) uses a seal that will lead to the belief that the person may provide to the public services that are within the practice of professional engineering,

is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$10,000 and for each subsequent offence to a fine of not more than \$25,000. R.S.O. 1990, c. P.28, s. 40 (3).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 40 is amended by adding the following subsections:**

**Offence, use of term "Licensed Engineering Technologist", etc.**

(3.1) Every person who is not the holder of the engineering technologist class of limited licence prescribed under subparagraph 9 v.2 of subsection 7 (1) and who uses the title "Licensed Engineering Technologist" or "technologue en ingénierie titulaire de permis" or the initials "LET" or "TITP" in a manner that will lead to a belief that the person is the holder of the engineering technologist class of limited licence is guilty of an offence, and on conviction is liable for the first offence to a fine of not more than \$10,000 and for each subsequent offence to a fine of not more than \$25,000. 2010, c. 16, Sched. 2, s. 5 (64).

**Offence, use of term "engineering intern", etc.**

(3.2) Every person who is not an engineering intern under section 20.1 and who uses any of the following terms, titles or descriptions in a manner that will lead to a belief that the person is an engineering intern under that section is guilty of an offence, and on conviction is liable for the first offence to a fine of not more than \$10,000 and for each subsequent offence to a fine of not more than \$25,000:

1. The title "engineering intern" or "stagiaire en ingénierie" or any abbreviation or variation of the title.
2. The initials "EIT" or "SI".
3. Any other term, title or description that will lead to the belief that the person is an engineering intern under section 20.1. 2010, c. 16, Sched. 2, s. 5 (64).

See: 2010, c. 16, Sched. 2, ss. 5 (64), 6 (2).

**Offence, obstruction of investigation**

(4) Any person who obstructs a person appointed to make an investigation under section 33 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 \$10,000. R.S.O. 1990, c. P.28, s. 40 (4).

**Liability of directors and officers**

(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 \$50,000. R.S.O. 1990, c. P.28, s. 40 (5).

**Liability of partners**

(6) Where a person who is guilty of an offence under subsection (1), (2), (3) or (4) is a member or an employee of a partnership, every member of the partnership 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 \$50,000. R.S.O. 1990, c. P.28, s. 40 (6).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6) is amended by adding "(3.1), (3.2)" after "(3)". See: 2010, c. 16, Sched. 2, ss. 5 (65), 6 (2).**

**Limitation**

(7) Proceedings shall not be commenced in respect of an offence under subsection (1), (2), (3), (4), (5) or (6) after two years after the date on which the offence was, or is alleged to have been, committed. R.S.O. 1990, c. P.28, s. 40 (7).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (7) is amended by adding “(3.1), (3.2)” after “(3)”. See: 2010, c. 16, Sched. 2, ss. 5 (66), 6 (2).**

**Application of subs. (2)**

(8) Subsection (2) does not apply to a holder of a limited licence who uses a term, title or description authorized or permitted by the regulations. R.S.O. 1990, c. P.28, s. 40 (8).

**Offences involving falsity**

**Falsification of documents**

**41.** (1) Any person who makes or causes to be made a wilful falsification in a matter relating to a register or issues a false licence, certificate, temporary licence, provisional licence, limited licence or document with respect to registration is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. R.S.O. 1990, c. P.28, s. 41 (1); 2001, c. 9, Sched. B, s. 11 (61).

**Offences for false representation**

(2) Every person who wilfully procures or attempts to procure the issuance of a licence, a certificate of authorization, a temporary licence, a provisional licence or a limited licence under this Act by knowingly making a 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 \$10,000, and every person knowingly aiding and assisting such person therein is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. R.S.O. 1990, c. P.28, s. 41 (2); 2001, c. 9, Sched. B, s. 11 (62).

**Limitation**

(3) No proceeding shall be commenced in respect of an offence under subsection (1) or (2) after the expiration of two years after the date on which the offence was, or is alleged to have been, committed. 2001, c. 9, Sched. B, s. 11 (63).

**Onus of proof respecting licensing**

**42.** Where licensing or the holding of a certificate of authorization, a temporary licence, a provisional licence or a limited licence or acting under and in accordance with a certificate of authorization under this Act is required to permit the lawful doing of an act or thing, if in any prosecution it is proven that the defendant has done the act or thing, the burden of proving that the defendant was so licensed or that the defendant held a subsisting certificate of authorization, temporary licence, provisional licence or limited licence or that the defendant acted under and in accordance with a certificate of authorization under this Act rests upon the defendant. R.S.O. 1990, c. P.28, s. 42; 2001, c. 9, Sched. B, s. 11 (64).

**Service of notice or document**

**43.** (1) A notice or document under this Act or the regulations is sufficiently given, served or delivered if delivered personally or by mail.

**Idem**

(2) Where a notice or document under this Act or the regulations is sent to a person by mail addressed to the person at the last address of the person in the records of the Association, there is a rebuttable presumption that the notice or document is delivered to the person on the tenth day after the day of mailing. R.S.O. 1990, c. P.28, s. 43.

**Registrar's certificate as evidence**

**44.** 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. P.28, s. 44.

**Immunity and indemnity**

**Immunity of Association**

**45.** (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 of the Association, or an officer, employee, agent or appointee of the Association for any act done in good faith in the performance or intended performance of a duty or in the exercise or the intended exercise of a 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, a committee of the Association and every officer and 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 by 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 against the person, 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; 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. P.28, s. 45.

**46.** REPEALED: 2002, c. 24, Sched. B, s. 25.

#### **Joint Practice Board**

**47.** (1) The Council shall appoint to the Joint Practice Board (composed of the chair, three members representing the Ontario Association of Architects and three members representing the Association of Professional Engineers of Ontario) the three members of the Joint Practice Board representing the Association and shall prescribe the term of each appointment.

#### **Recommendation**

(2) The Joint Practice Board may recommend to the Council that the Council direct the Registrar to issue a licence or a certificate of authorization to a holder of a certificate of practice issued under the *Architects Act*.

#### **Direction by Council**

(3) The Council, upon the recommendation of the Joint Practice Board, may direct the Registrar to issue a licence or a certificate of authorization to a holder of a certificate of practice under the *Architects Act* and, if the Council does not direct the issuance of the licence or the certificate of authorization, the Council shall give its reasons therefor in writing to the Joint Practice Board and to the applicant for the licence or the certificate of authorization.

#### **Referral of dispute to Joint Practice Board**

(4) Where a dispute arises between an architect and a professional engineer or a holder of a certificate of authorization as to jurisdiction in respect of professional services, the Registrar may refer the matter to the Joint Practice Board and the Joint Practice Board shall consider the matter and assist the architect and the professional engineer or the holder of the certificate of authorization to resolve the dispute in accordance with the rules in section 12.

#### **Commencement of proceedings**

(5) Proceedings shall not be commenced under this Act in respect of a matter mentioned in subsection (4) except upon the certificate of the chair of the Joint Practice Board that the Board has considered the matter and has been unable to resolve the dispute.

#### **Certificate**

(6) The certificate of the chair 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 chair. R.S.O. 1990, c. P.28, s. 47.

#### **Annual report**

**48.** (1) The Council shall make a report annually to the Minister containing such information as the Minister requires.

#### **Idem**

(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next session. R.S.O. 1990, c. P.28, s. 48.

#### **Application of Corporations Act**

**49.** (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 (which relates to liability for wages).
2. Section 94 (which relates to auditors) and, for the purpose, the Minister shall be deemed to be the Minister referred to in the section.
3. Subsection 95 (1) (which relates to the 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 (which relates to the auditor's functions).
5. Subsection 97 (1), exclusive of clause 97 (1) (b), (which relates to the auditor's report) and, for the purpose, the Association shall be deemed to be a private company.
6. Subsection 97 (3) (which relates to the auditor's report).
7. Section 122 (which relates to the liability of members).
8. Section 276 (which relates to the holding of land) and, for the purpose, the Minister shall be deemed to be the Minister referred to in the section.
9. Section 280 (which relates to making contracts).
10. Section 281 (which relates to power of attorney).
11. Section 282 (which relates to authentication of documents) except in respect of information from the records required to be kept by the Registrar.
12. Section 292 (which relates to validity of acts of directors).
13. Section 297 (which relates to directions by a court as to holding a meeting).
14. Section 299 (which relates to minutes of meetings).
15. Section 302 (which relates to books of account).
16. Section 303 (which relates to untrue entries) and, for the purpose, the section shall be deemed not to refer to section 41 of that Act.
17. Section 304 (which relates to the 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 (which relates to inspection of records) and, for the purpose, the section shall be deemed not to refer to section 41 of that Act.
19. Section 310 (which relates to investigations and audits).
20. Section 323 (which relates to evidence of by-laws and certificates of amounts due).
21. Section 329 (which relates to appeals).
22. Section 331 (which relates to 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 (which relates to orders by the court) and, for the purpose, the section shall be deemed not to refer to creditors. R.S.O. 1990, c. P.28, s. 49 (1).

#### **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. P.28, s. 49 (2).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 49 is repealed and the following substituted:**

#### **Application of *Not-for-Profit Corporations Act, 2010***

**49.** The *Not-for-Profit Corporations Act, 2010* does not apply in respect of the Association except as may be prescribed by regulation. 2010, c. 15, s. 238 (2).

**See: 2010, c. 15, ss. 238 (2), 249.**

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