



BILL NO. 4

Government Bill

*1st Session, 61st General Assembly
Nova Scotia
58 Elizabeth II, 2009*

An Act to Amend Chapter 148 of the Revised Statutes, 1989, the Engineering Profession Act

CHAPTER 13
ACTS OF 2009

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
NOVEMBER 5, 2009**

The Honourable Ross Landry
Minister of Justice

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 148
of the Revised Statutes, 1989,
the Engineering Profession Act**

Be it enacted by the Governor and Assembly as follows:

1 Section 2 of Chapter 148 of the Revised Statutes, 1989, the *Engineering Profession Act*, is amended by

(a) adding immediately after clause (n) the following clause:

(na) “registrant” means either a member, a person licensed to practise or an engineer-in-training;

and

(b) adding immediately after clause (o) the following clause:

(oa) “registration” means either a certificate of registration, a licence to practise or enrolment as an engineer-in-training;

2 Section 6 of Chapter 148, as amended by Chapter 29 of the Acts of 2006, is further amended by

(a) adding “(1)” immediately after the Section number;

(b) adding immediately after clause (g) the following clause:

(ga) by resolution establish compulsory requirements for the continuing professional development of members with the power to exempt any member or class of members from such requirements for reasons and upon such terms and conditions as the Council may from time to time may determine;

(c) adding immediately after clause (l) the following clause:

(la) by by-law and power of the Council, by resolution, adopt, amend or rescind, in whole or in part, a Code of Ethics;

and

(d) adding the following subsection:

(2) A Code of Ethics adopted or an amendment to a Code of Ethics pursuant to clause (4)(la) must be appended to the by-law and is a part of the by-laws.

3 (1) Subsection 7(1) of Chapter 148, as amended by Chapter 29 of the Acts of 2006 and Chapter 15 of the Acts of 2008, is further amended by adding “has completed the minimal number of professional development hours prescribed by or under the by-laws in the twelve month period before application for registration as a member,” immediately after the comma in the fourth line.

(2) Subsection 7(2) of Chapter 148 is amended by striking out “Every” in the first line and substituting “Subject to subsection 7(3), every”.

(3) Section 7 of Chapter 148 is further amended by adding immediately after subsection (2) the following subsection:

(3) The Association may by by-law authorize the Council to make resolutions

(a) respecting the establishment of different classes of applicants for registration;

(b) respecting the conditions for the entry into membership of persons in those classes;

(c) respecting the right of persons in those classes to be exempted from the requirement that the application for membership of persons in those classes come before either the Board or the Council, or both, for consideration and resolution before being granted membership.

4 Chapter 148 is further amended by adding immediately after Section 7 the following Section:

7A A registrant may resign his or her registration by filing with the Registrar a resignation in writing and the registration is thereupon cancelled, subject to the continuing jurisdiction of the Council in respect of any disciplinary action arising out of the person's professional conduct while a registrant.

5 Section 17 of Chapter 148 is repealed and the following Sections substituted:

17 (1) A complaint against a registrant may be initiated by any person.

(2) A complaint must be in writing and filed with the Secretary.

(3) Upon the filing of the complaint, the Secretary or the Secretary's designate shall forthwith by written notice

(a) advise the registrant complained against that the complaint has been made;

(b) enclose a copy of the complaint; and

(c) advise the registrant complained against that the registrant has the opportunity to provide the Secretary with a written response to the complaint within fourteen days of the date that a copy of the complaint was sent to the registrant.

(4) The Secretary or the Secretary's designate shall forward the response of the registrant complained against, if any, to the complainant.

(5) The complainant may submit a written response to the response of the registrant complained against within ten days of the response of the registrant being forwarded to the complainant by the Secretary.

(6) The Secretary or the Secretary's designate shall forward the complainant's response, if any, to the registrant complained against.

(7) The registrant complained against may respond in writing to the complainant's further response within ten days of complainant's response being forwarded to the registrant by the Secretary.

(8) The Secretary or the Secretary's designate shall forward to the complainant any further response received from the registrant complained against.

(9) The Secretary or the Secretary's designate shall refer the complaint to the Complaints Committee, together with any written responses from the registrant complained against and the complainant upon the earliest of the following events occurring:

(a) upon the registrant failing to respond to the written notice issued pursuant to clause (3)(c) within fourteen days following the issuance of the notice;

(b) upon either the registrant or the complainant failing to respond to the response forwarded to either person within the response times set out in subsection (5) or (7); or

(c) upon receipt of the further response of the registrant pursuant to subsection (7).

17A (1) Where, in the absence of a complaint, circumstances come to the notice of the Secretary that, in the Secretary's opinion, may constitute grounds for discipline pursuant to this Act, the Secretary may prepare a report thereon in writing for submission to the Complaints Committee.

(2) The Secretary shall

(a) forward a copy of the report forthwith after its preparation to the registrant who is the subject of the report; and

(b) advise the registrant who is the subject of the report that the registrant has the opportunity to provide the Secretary with a written response concerning the report within fourteen days of its being forwarded by the Secretary.

(3) After the expiration of fourteen days, the Secretary or the Secretary's designate shall refer the report to the Complaints Committee together with any written response from the registrant who is the subject of the report.

(4) The Complaints Committee shall deal with such a report as if it were a complaint, and the report must be treated for purpose of this Act and by-laws in the same manner as a complaint.

17B The complaint process must not be used for any extraneous or improper purpose including, but not limited to, use

(a) for the purpose of harassing a registrant of the Association into providing relief that is beyond that which the member was retained to furnish or that may be more appropriately available through civil litigation or other processes;

(b) by a party adverse in interest to a client or a registrant complained against, for the purpose of harassing such client or registrant;

(c) as a form of discovery or for the gathering of information in another proceeding; or

(d) for commercial gain.

17C (1) The Council shall appoint, from among the members of the Association, a Complaints Committee composed of not fewer than five members.

(2) Members of the Complaints Committee shall be appointed for terms up to and including three years, as the Council determines.

(3) In the case of a vacancy in the Complaints Committee, the Council may appoint another member of the Association to fill the vacancy for such term as the Council determines.

(4) A quorum of the Complaints Committee consists of three members.

(5) The Council shall appoint the Chair and Vice-chair of the Complaints Committee.

17D (1) The Complaints Committee shall investigate complaints regarding disciplinary matters concerning a registrant and upon doing so may

(a) obtain additional information, orally or in writing from the member, the complainant or any other person;

(b) interview the registrant, the complainant or any other person;

(c) obtain outside assistance to further the investigation;

(d) employ such experts as the Committee considers necessary;

(e) undertake such other steps as the Committee determines are required for a thorough investigation.

(2) The Complaints Committee is not required to hold a hearing or to afford 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 or Section 17E.

(3) The Complaints Committee may require a registrant to

(a) submit to physical or mental examinations by such qualified persons as the Committee designates;

(b) submit to an inspection or audit of the registrant's work, products of service and practice by such qualified persons as the Committee designates;

(c) undergo such examinations of engineering and allied skills, knowledge and professional practice as the Committee directs to assess the registrant's competency to practise engineering;

(d) produce records and accounts kept with respect to the registrant's practice.

(4) Where a registrant fails to comply with subsection (3), the Complaints Committee may suspend or restrict the registration or licence to practise until the member, person licensed to practise or engineer-in-training complies.

(5) Where the Complaints Committee has required a registrant to submit to examinations or submit to inspection or audit of the registrant's practice by a qualified person designated by the Committee, the Committee shall provide the member with a copy of any report it receives from the designated qualified person.

17E (1) The Complaints Committee may

(a) dismiss a complaint if it determines that the complaint is frivolous or vexatious or not advanced in good faith or advanced for an extraneous or improper purpose as identified in Section 17B;

(b) dismiss a complaint if it finds that there are not reasonable or probable grounds to believe that the registrant complained against has breached the Act or by-laws or is guilty of unprofessional conduct, negligence or misconduct in the execution of the duties of the registrant's office;

(c) attempt to resolve the complaint if, in the opinion of the Committee, the complaint may be satisfactorily resolved and the resolution of the complaint would properly balance the protection of the public and the rights of the registrant complained against;

(d) refer a complaint to the Discipline Committee if it finds that there are probable and reasonable grounds to believe that the registrant complained against has breached the Act or by-laws or is guilty of unprofessional conduct, negligence or misconduct in execution of the duties of the registrant's office;

(e) refer a complaint to the Discipline Committee if it finds that a registrant has been convicted of a criminal offence by any court of competent jurisdiction.

(2) A referral pursuant to clause (1)(d) or (e) must include a written report containing a summary of the investigation and identification of the issues that the Discipline Committee may wish to determine.

(3) The Complaints Committee shall provide a copy of its report to Discipline Committee to the registrant complained against.

(4) The Secretary shall advise, in writing, the registrant and the complainant of the disposition of a complaint by the Complaints Committee.

17F (1) A complainant who is not satisfied with the disposition of the complaint by the Complaints Committee may apply to the Chair of the Discipline Committee for a review of the treatment of the complaint by the Complaints Committee by submitting a written appeal to the Secretary within thirty days of the decision to the Complaints Committee.

(2) An appeal must set out the reasons why the complainant considers the complaint to have received improper treatment.

(3) Upon receipt of a written appeal of the disposition of a complaint by the Complaints Committee, the Chair of the Discipline Committee shall appoint a member of the Discipline Committee to act as review officer for the purpose of considering the appeal.

(4) The member appointed as review officer must have had no prior knowledge of the complaint and cannot participate in the disciplinary hearing if the subject-matter of the complaint comes before the Discipline Committee.

(5) The review officer may request the disclosure of such information regarding the treatment of the complaint as the review officer considers necessary.

(6) Within thirty days of receiving a written application for review from a complainant, the review officer shall inquire into the treatment of the complaint and

(a) dismiss the appeal if the review officer considers it to be frivolous or vexatious or not advanced in good faith;

(b) dismiss the appeal if the review officer considers the complaint to have been properly treated by the Complaints Committee;

(c) remit the complaint back to the Complaints Committee for further consideration if the review officer determines that the complaint was not fairly treated by the Committee; or

(d) refer the matter to the Discipline Committee for hearing together with a statement of the issues identified by the review officer if the officer is satisfied that the complaint was not fairly treated by the Complaints Committee and should not be remitted to the Complaints Committee for further consideration.

17G (1) The Council shall appoint not fewer than ten members of the Association to serve on the Discipline Committee.

(2) The Council may appoint not more than two persons who are not registrants to serve on the Discipline Committee.

(3) The Council shall appoint the Chair and Vice-chair of the Discipline Committee.

(4) Members of the Discipline Committee shall be appointed for terms up to three years, as the Council determines.

(5) In the case of a vacancy in the Discipline Committee, the Council may appoint another member of the Association or a person who is not a registrant, as the case may be, to fill the vacancy for such term as the Council determines.

(6) The Vice-chair of the Discipline Committee may do any act assigned herein for the Chair of the Committee if the Chair is unable or unwilling to act.

(7) The Discipline Committee shall receive and process all complaints referred by the Complaints Committee and all appeals from decisions of the Complaints Committee and such other or additional duties as may be assigned it by the Council.

17H (1) Upon referral of a complaint to the Discipline Committee, the Chair of the Committee shall appoint not more than five members of the Committee to serve as a disciplinary panel for the complaint and shall set a time and place for the holding of a hearing to deal with the complaint.

(2) The Secretary shall send notice of the time and place of the disciplinary hearing to the registrant complained against at least thirty days before the hearing, and the notice must advise the registrant that the registrant may appear in person or by or with counsel at the hearing.

(3) The notice must also set forth the nature of the allegations that must be considered by the disciplinary panel at the disciplinary hearing.

(4) The disciplinary panel shall appoint one of its members to serve as chair of the disciplinary panel.

(5) A majority of members of the disciplinary panel is a quorum.

17I (1) At any time prior to the commencement of the disciplinary hearing, the Secretary may, together with the registrant complained against, tender a written joint recommendation for the disposition of the complaint.

(2) The joint recommendation must be conditional upon its acceptance by the disciplinary panel.

17J (1) Where a disciplinary panel accepts a joint recommendation for the disposition of a complaint, the panel shall confirm such acceptance by issuing an order that incorporates a joint statement of facts and the joint recommendation for the disposition of the complaint.

(2) The disciplinary panel's acceptance of a joint statement of facts and a joint recommendation for the disposition of the complaint is final and binding on the registrant complained against.

(3) A disciplinary hearing is not required if a disciplinary panel accepts a joint recommendation.

17K (1) Where a disciplinary panel rejects a joint recommendation for the disposition of a complaint, the chair of the disciplinary panel shall refer the complaint back to the Chair of the Discipline Committee who shall appoint not more than five members of the discipline committee to serve as a disciplinary panel for the complaint and shall set a date and time for the commencement of a disciplinary hearing.

(2) The disciplinary hearing of a complaint must proceed without reference to the proposed joint statement of facts and joint recommendation for the disposition of the complaint.

(3) No member of the disciplinary panel that considered the joint statement of facts and joint recommendation for the disposition of the complaint may be a member of the new disciplinary panel.

17L Notwithstanding that a member of the Complaints Committee or a disciplinary panel has ceased to hold office by reason of lapse of appointment, the member remains seized with the jurisdiction to complete any matter the Committee or panel has commenced and, for this purpose, the member continues to have the same powers, privileges and duties as are provided by this Act or the by-laws.

17M (1) A disciplinary panel shall hold a disciplinary hearing at the time and date specified, and or at adjournment or continuation thereof.

(2) A disciplinary hearing must be held *in camera* unless the registrant complained against requests a public hearing, and the disciplinary panel, in its discretion, is satisfied that a public hearing is in the interest of the public.

17N The parties to the disciplinary hearing are the Association and the registrant complained against.

17O (1) A disciplinary panel shall hear each case in the manner it considers fit.

(2) Where the registrant complained against fails to appear at a disciplinary hearing, the disciplinary panel may proceed with the hearing in the absence of such person upon receiving proof in the form of a statutory declaration from the Secretary that due notice of the disciplinary hearing was given or mailed to the registrant complained against.

(3) The chair of the disciplinary panel has the right to administer oaths.

(4) The disciplinary panel may require a registrant to

(a) submit to physical or mental examinations by such qualified persons as the Disciplinary Committee designates;

(b) submit to an inspection or audit of the registrant's work, products of service and practice by such qualified persons as the Disciplinary Committee designates;

(c) undergo such examinations of engineering and allied skills, knowledge and professional practice as the disciplinary panel directs to assess the registrant's competency to practise engineering;

(d) produce records and accounts kept with respect to the registrant's practice.

(5) Where a registrant fails to comply with subsection (4), the disciplinary panel may suspend or restrict the registrant's registration or licence to practise until the registrant complies.

(6) Where a disciplinary panel has required a registrant to submit to examinations or submit to inspection or audit of the registrant's practice by a qualified person designated by the disciplinary panel, the disciplinary panel shall provide the registrant with a copy of any report it receives from the designated qualified person.

17P (1) A disciplinary panel has the same powers of taking evidence, compelling the attendance of witnesses, compelling the production of books, paper and documents, and of punishing for contempt or the failure to comply with the orders of the disciplinary panel, as a commissioner appointed under the *Public Inquiries Act*.

(2) All oral evidence adduced at a disciplinary hearing must be given under oath and recorded.

(3) A certified copy of the transcript of a disciplinary hearing must be made available to the registrant complained against at the registrant's request and expense.

17Q Throughout a disciplinary hearing, the registrant complained against is entitled to all the rights of natural justice, including the right to be represented by legal counsel, to know all the evidence considered by the disciplinary panel, to present evidence and to cross-examine witnesses.

17R (1) Notwithstanding any other provision of this Act, in urgent and compelling circumstances the Chair of the Discipline Committee, upon the advice of the Complaints Committee, may, without a hearing, in the interest of the public, immedi-

ately suspend the licence of a registrant or immediately impose restrictions on a temporary basis on the registration of a registrant.

(2) Where the registration of a registrant has been suspended or subjected to restrictions pursuant to subsection (1), the Secretary or the Secretary's designate shall, forthwith, cause written notice of the suspension or restriction to be transmitted to the registrant.

(3) The registrant whose registration has been suspended or subjected to restrictions pursuant to subsection (1) may request a meeting with the Complaints Committee within ten days of the notice issued by the Secretary pursuant to subsection (2) by submitting a request in writing to the Secretary.

(4) The Secretary or the Secretary's designate shall cause the request to be transmitted to the Complaints Committee as soon as practical.

(5) The Complaints Committee shall, upon receipt of the request from the registrant, provide an opportunity for a meeting within ten days of the receipt of the written request and the Committee shall within seven days after the meeting confirm, vary or terminate the suspension or restrictions imposed pursuant to subsection (1) in writing and transmit its decision as quickly as practicable to the Secretary.

(6) The Secretary or the Secretary's designate shall cause the registrant to be advised of the Complaint Committee's decision.

(7) Where the Complaints Committee confirms or varies the suspension or restriction, the matter must be referred to the Chair of the Discipline Committee who shall appoint a disciplinary panel and the panel shall commence a hearing to inquire into the suspension, or restriction and the conduct of the registrant giving rise to the suspension or restriction within thirty days, unless the registrant requests a hearing date that is more than thirty days after the referral of the matter to the Chair of the Discipline Committee.

(8) Where a decision is made pursuant to subsection (1) and the registrant does not request a meeting with the Complaints Committee within ten days of receiving notice of the decision made pursuant to subsection (1), the matter must be referred to the Chair of the Discipline Committee who shall appoint a disciplinary panel and the panel shall hold a hearing within forty days of the date of the decision made pursuant to subsection (1) unless the registrant requests a hearing date that is more than forty days after the decision made pursuant to subsection (1).

(9) For the purpose of calculating time in subsection (3), a registrant shall be presumed to have received notice of the decision made pursuant to subsection (1) two business days after the date the notice of the decision is sent to the registrant by the Secretary or the Secretary's designate by registered mail.

(10) A disciplinary panel may, upon the commencement of a hearing, vary or terminate a suspension or restrictions imposed by the Complaints Committee.

17S (1) Upon completion of a disciplinary hearing, the disciplinary panel may, where it finds that the registrant is not guilty, dismiss the complaint.

(2) Where a disciplinary panel finds any registrant guilty of

(a) unprofessional conduct, negligence or misconduct in the execution of the duties of registrant's office; or

(b) any breach of this Act or of the by-laws, or finds that a registrant has been convicted of a criminal offence by any court of competent jurisdiction, the disciplinary panel may by order

(c) cancel or suspend the certificate of registration, licence to practise or enrolment of any engineer-in-training;

(d) impose terms, restrictions, conditions or limitations on the certificate of registration;

(e) reprimand and censure the registrant and, where warranted, direct that the fact of the reprimand or censure be recorded in the register for a prescribed or indefinite period of time;

(f) in respect of orders of revocation or suspension, direct that the finding and the order of the disciplinary panel be published in detail or in summary and either with or without including the name of the registrant in the official publication of the Association and in such other manner or medium as the disciplinary panel considers appropriate in the particular case;

(g) impose such fine as the disciplinary panel considers appropriate to a maximum of five thousand dollars to be paid by the registrant to the Minister of Finance for payment into the Consolidated Fund;

(h) require that a registrant undergo such treatment, testing or assessment as is deemed appropriate;

(i) impose such other disposition as it considers appropriate.

(3) A decision of a disciplinary panel has effect immediately upon service on the member or from such time as the panel may direct.

(4) A witness in any legal proceeding, whether a party to the proceeding or not, is excused from answering any question as to any proceedings of the Complaints Committee, the Discipline Committee or a disciplinary panel, and is excused from producing any report, statement, memorandum, recommendation, document or information prepared for the purpose of the complaint process, including any information gathered in the course of an investigation or produced for the Complaints Committee, the Discipline Committee or a disciplinary panel.

(5) Subsection (4) does not apply to documents or records that have been made available to the public by the Association.

(6) Unless otherwise determined by a court of competent jurisdiction, a decision of the Complaints Committee or a disciplinary panel is not admissible in a civil proceeding other than an appeal or a review pursuant to this Act.

17T (1) In this Section, “costs of the Association” include

(a) expenses incurred during the investigation into a complaint and in preparing for and conducting a hearing; and

(b) solicitor and client costs and disbursements incurred during a Complaints Committee investigation, in preparation for and during a disciplinary hearing by the disciplinary panel.

(2) Where a disciplinary panel has made a finding of guilt or finds that a conviction of a criminal offence has occurred, the disciplinary panel, in addition to those remedies identified in subsection 17S(2), may

(a) require that a registrant pay to the Association all or a portion of the costs of the Association; and

(b) make it a condition of the registration of a registrant that such costs be paid forthwith, or at such time and on such terms as the disciplinary panel may fix.

(3) The Secretary shall provide the registrant and the complainant and such other persons as the disciplinary panel considers appropriate with a copy of the decision of the disciplinary panel.

17U Where no appeal has been taken pursuant to subsection 17V(1) within the time prescribed for the filing of notices of appeal,

(a) the disciplinary panel's decision must be reported either on a named or unnamed basis, to members of the Association by publication in such form and in such manner as the Council considers appropriate;

(b) the disciplinary panel may, in its discretion, order that a notice of suspension or revocation of licence be printed in whatever newspaper and on as many occasions as the disciplinary panel directs;

(c) in the event that an appeal from an order of the disciplinary panel is taken pursuant to subsection 17V(1), no such notice shall be given unless and until the order of the disciplinary panel is upheld on appeal and the periods for the taking of any further appeals have expired.

17V (1) A registrant subject to an order issued by the disciplinary panel under subsection 17S(2) may, within thirty days of the issuance of the order, appeal from such order to the Supreme Court of Nova Scotia on any point of law.

(2) A registrant who intends to commence an appeal pursuant to subsection (1) shall give ten days prior notice of registrant's intention to appeal to the Secretary.

(3) A registrant who commences an appeal pursuant to subsection (1) shall forthwith serve the notice of appeal on the Secretary or the Secretary's designate.

(4) Upon receipt of a notice of appeal filed pursuant to subsection (1), the Secretary or the Secretary's designate shall prepare and file with the Supreme Court of Nova Scotia a record of the disciplinary hearing which must include a copy of the transcript of the hearing, the decision of the disciplinary panel and the evidence before the disciplinary panel certified by the chair of the disciplinary panel.

(5) Where a matter is appealed to the Supreme Court of Nova Scotia pursuant to subsection (1), the Court may pending its determination of the appeal grant a stay of any order or any part of an order made by the disciplinary panel pursuant to subsection 17S(2), where in its discretion it deems fit.

17W No action for damages lies against the Council, the Secretary, any committee member, officer or employee of the Council

(a) for any act or failure to act, or any proceeding initiated or taken, in good faith under this Act, or in carrying out their duties or obligation as an officer, employee, or committee member under this Act and the regulations; or

(b) for any decision, order or resolution made or enforced in good faith under this Act and the regulations.

6 Chapter 148 is further amended by adding immediately after Section 19 the following heading and Section:

CONTINUING PROFESSIONAL DEVELOPMENT

19A (1) Every member shall, unless exempted by a resolution of the Council, provide to the Registrar by the first day of January in each year, certification in a form prescribed by the Council, that the member is in compliance with the Association's Continuing Professional Development Guidelines as prescribed or under the by-laws.

(2) Where any member fails to provide certification of compliance as required by subsection (1) by the thirty-first day of March in any year, the Registrar shall, after issuing ten days notice by registered letter addressed to the last known address of the member on the register, cause the name of the member to be erased from the register and the member thereupon ceases to be a member but such person shall, at any time thereafter upon providing confirmation of compliance with the continuing professional development requirements in the by-laws be entitled to be reinstated on the register.

7 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
