

Land Surveyors Act

CHAPTER 38 OF THE ACTS OF 2010



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CHAPTER 38 OF THE ACTS OF 2010

**An Act Respecting
Nova Scotia Land Surveyors**

Table of Contents

(The table of contents is not part of the statute)

	Section
Short title.....	1
Interpretation.....	2
Association	
Association of Nova Scotia Land Surveyors	3
Powers of Association.....	4
Exercise of powers.....	5
Annual meeting and annual report.....	6
Council.....	7
Quorum.....	8
Council to govern Association.....	9
Executive.....	10
Executive Director	11
Regulations.....	12
By-laws	13
Available for inspection	14
Standards of Practice and Code of Ethics	15
Board of Examiners	16
Registration	
Register	17
Membership categories	18
Members.....	19
Use of designation.....	20
Prohibition on practice.....	21
Action to collect fees.....	22
Proof of membership.....	23
Imposition of conditions or restrictions	24
Register entries.....	25
Removal of member from roster.....	26
Offences and penalties	27
Injunction respecting violation.....	28
Examination of Witnesses and Entry on Land	
Refusal to inform member	29
Right of entry on land and liability	30
Oath or affidavit taken by member	31
Obstruction of member	32
Corporate Permits	
Corporate permit	33
Exceptions.....	34
Effect of corporate relationship to member	35
Liability under corporate permit	36
Compellable witnesses.....	37
Power to investigate	38

Corporate offences and penalty	39
Suspension	40
Professional Conduct	
Non-members subject to professional conduct process	41
Complaints Committee	42
Initiation of complaint	43
Powers of Complaints Committee	44
Complaints Committee procedure	45
Jurisdiction over matter	46
Publication ban	47
Written decision	48
Rights of respondent	49
Duty to disclose	50
Complaints to be confidential	51
Hearing committee	52
Setting and notification of hearing date	53
Service	54
Settlement proposals	55
Powers of Hearing Committee	56
Inadmissibility of evidence before Hearing Committee	57
Rights of parties	58
Finding of misconduct and revocation of membership	59
Reinstatement Committee	60
Rights of member	61
Notification of registration sanction	62
Reinstatement of member	63
Retaining legal or other assistance	64
Right of appeal and procedure on appeal	65
Member duty to report	66
Non-payment of fine	67
Miscellaneous	
Offence	68
No action lies	69
Additional members to obtain quorum	70
Matter pending under former Act	71
Application for reinstatement under former Act	72
Application for registration under former Act	73
Continuation of registration under former Act	74
Continuation of conditions and restrictions under former Act	75
Application of Act to engineer	76
Repeal of former Act	77
Effective date	78

Short title

1 This Act may be cited as the *Land Surveyors Act*. 2010, c. 38, s. 1.

Interpretation

2 In this Act,

(a) “active member” means a person whose name is entered on the Register and in the active membership roster and who is authorized to practise professional land surveying in the Province;

(b) “Association” means the Association of Nova Scotia Land Surveyors constituted by this Act;

- (c) “Board” means the Board of Examiners of the Association appointed by the Council to carry out the registration functions as set out in this Act, the regulations and the by-laws;
- (d) “by-law” means a by-law of the Association;
- (e) “candidate” means a person who has met the criteria for entry in the candidate roster pursuant to the regulations and who has entered a period of articles with an active member as approved by the Board;
- (f) “Code of Ethics” means a document approved by the members setting out the minimum ethical expectations of a Nova Scotia Land Surveyor;
- (g) “competence” means the ability to integrate and apply the knowledge, skills and judgement required to practise safely and ethically in a designated role and practice setting and includes both entry-level and continuing competencies;
- (h) “complaint” means a notice in writing pursuant to subsection 43(1), indicating possible professional misconduct, conduct unbecoming, incompetence or incapacity of a member;
- (i) “Complaints Committee” means the Complaints Committee appointed pursuant to this Act;
- (j) “conduct unbecoming” means conduct in a member’s personal or private capacity that tends to bring discredit upon professional land surveying;
- (k) “corporate permit” means a corporate permit issued pursuant to Section 33 and the regulations;
- (l) “Council” means the Council of the Association;
- (m) “Executive” means the members of the Executive as set out in the regulations;
- (n) “Executive Director” means the Executive Director appointed by the Council who may be an employee, consultant, independent contractor or agent appointed by Council;
- (o) “former Act” means Chapter 249 of the Revised Statutes, 1989, the *Land Surveyors Act*;
- (p) “hearing” means a process before the Hearing Committee, following the issuance of a notice of hearing, where the parties lead evidence and make submissions to the Hearing Committee, and does not include the consideration by the Hearing Committee of a settlement proposal or an application for consent revocation and does not include any proceeding before the Complaints Committee;
- (q) “Hearing Committee” means the Hearing Committee appointed pursuant to this Act;

(r) “incapacity” means the status whereby a respondent, at the time of the subject-matter of a complaint, suffered from a medical, physical, mental or emotional condition, disorder or addiction that rendered the respondent unable to practise professional land surveying with reasonable skill or judgement or that may have endangered the safety of clients;

(s) “incompetence” means the display of lack of knowledge, skill or judgement in the respondent’s delivery of professional land-surveying services that, having regard to all the circumstances, fall below the expected standard of practice;

(t) “investigator” means a member of the Complaints Committee assigned to conduct an investigation or a person designated by the Complaints Committee to conduct or supervise an investigation into a complaint;

(u) “legal proceeding” means any civil proceeding, discovery, inquiry, proceeding before any tribunal, board or commission or arbitration, in which evidence is or may be given, and includes an action or proceeding for the imposition of punishment by fine, penalty or imprisonment for the violation of a Provincial enactment, but does not include any proceeding or hearing conducted pursuant to this Act or the regulations;

(v) “life member” means a life member appointed pursuant to the by-laws;

(w) “member” means, unless the context otherwise requires, a person whose name is entered on the Register;

(x) “Minister” means the Minister of Natural Resources;

(y) “Nova Scotia Land Surveyor” means a professional land surveyor who is an active member of the Association, or is otherwise authorized pursuant to the by-laws to use the designations set out in Section 20;

(z) “party” means the Association or a respondent as the context requires;

(aa) “professional conduct process” means the processes described in this Act and in the regulations respecting professional conduct;

(ab) “professional corporation” means one or more land surveyors incorporated pursuant to the laws of the Province for the purpose of engaging in professional land surveying, and includes an association of persons or a partnership engaged in the practice of professional land surveying;

(ac) “professional development program” means a program approved by the Council or its delegate providing credits for the attendance of members at programs and conferences, and participation in other activities of a professional development nature;

(ad) “professional land surveying” means the advising on, the reporting on, the supervising of or the conducting of surveys to determine the horizontal and vertical position of any point and the direction and length of any line required to control, establish, locate, define or describe the extent or limitations of title;

(ae) “professional land surveyor” means a person who is registered or licensed by a professional surveying body or organization to carry out the activities of professional land surveying;

(af) “professional misconduct” includes such conduct or acts relevant to professional land surveying that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional including, without limiting the generality of the foregoing,

(i) failing to maintain the Standards of Practice,

(ii) failing to uphold the Code of Ethics adopted by the Association,

(iii) publishing or causing to be published any advertisement that is false, fraudulent, deceptive or misleading,

(iv) engaging or assisting in fraud, misrepresentations, deception or concealment of a material fact when applying for or securing registration to practise professional land surveying or taking any examination provided for in this Act, including using fraudulently procured credentials, and

(v) taking or using the designation “Nova Scotia Land Surveyor”, or any derivation or abbreviation thereof, or describing a person’s activities as professional land surveying in any advertisement or publication, including business cards, websites, or signage, unless the referenced activity falls within the meaning of professional land surveying under this Act;

(ag) “public representative” means a member of the Board, the Council or a committee established by the Board or the Council who is not a member of the Association and who is not a professional land surveyor;

(ah) “Register” means the permanent list, documentation or database in which the names of the members of the Association are entered upon being admitted to the Association by the Board and in which all historical facts and records are kept with respect to the members;

(ai) “registration” means the process by which an applicant for membership in the Association becomes an initial member of the Association, and maintains membership on an annual basis;

(aj) “Registration Appeal Committee” means the Registration Appeal Committee appointed pursuant to this Act;

(ak) “registration examination” means such examination or examinations as may be approved from time to time by the Board as a prerequisite for qualification as a Nova Scotia Land Surveyor;

(al) “registration sanction” means

(i) the imposition of conditions or restrictions on a member’s registration by the Complaints Committee or the Hearing Committee or their equivalent in another jurisdiction,

(ii) a consent reprimand ordered by the Complaints Committee or its equivalent in another jurisdiction,

(iii) a reprimand issued by the Hearing Committee or its equivalent from another jurisdiction,

(iv) a suspension of a member's registration by the Complaints Committee or the Hearing Committee or their equivalent in another jurisdiction, or

(v) a revocation of registration by the Hearing Committee or its equivalent in another jurisdiction;

(am) "Reinstatement Committee" means the Reinstatement Committee appointed pursuant to this Act;

(an) "respondent" means the person who is the subject of a complaint or the subject of a registration appeal pursuant to the regulations;

(ao) "roster" means the record of the category of membership established pursuant to this Act or the regulations;

(ap) "settlement proposal" means a proposal for the settlement of a complaint as prescribed in the regulations;

(aq) "Standards of Practice" means the minimum professional practice expectations for any Nova Scotia Land Surveyor in any setting or role, approved by the members;

(ar) "witness" includes every person who, in the course of a legal proceeding, is examined for discovery or is cross-examined upon an affidavit made by that person, answers any interrogatories or makes an affidavit as to documents or is called upon to answer any questions or produce any document, whether under oath or not, and includes the Association or any representative of the Association. 2010, c. 38, s. 2.

ASSOCIATION

Association of Nova Scotia Land Surveyors

3 (1) The Association of Nova Scotia Land Surveyors, incorporated under the former Act, is hereby continued as a body corporate under the same name, and is composed of its members.

(2) The Association has perpetual succession and a common seal, with power to acquire, hold, lease, mortgage and otherwise dispose of real and personal property, and may sue and be sued. 2010, c. 38, s. 3.

Powers of Association

4 In order to

- (a) serve and protect the public interest;
- (b) preserve the integrity of the profession; and

(c) maintain public confidence in the ability of the profession to regulate itself,

the Association shall

(d) regulate the practice of professional land surveying and govern its members in accordance with this Act and the regulations;

(e) establish, develop, promote and monitor the Standards of practice among its members;

(f) establish, develop, promote and monitor a Code of Ethics for the benefit of its members;

(g) subject to clauses (a) to (f), and in the public interest, advance and promote professional land surveying;

(h) do such other lawful acts and things as are incidental to the attainment of the foregoing purpose and objects set out in this Section. 2010, c. 38, s. 4.

Exercise of powers

5 In addition to any other power conferred by this or any other Act, the Association may do such things as it considers appropriate to advance the objects of the Association and, without limiting the generality of the foregoing, may

(a) purchase, take in, lease, exchange, hire, construct and otherwise acquire and hold, sell, mortgage, hypothecate, lease out or otherwise deal with any real or personal property;

(b) draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, warrants and other negotiable and transferable instruments;

(c) engage such agents and employees as it, from time to time, deems expedient;

(d) expend the moneys of the Association in the advancement of its objects in such manner as it deems expedient;

(e) establish and maintain such offices and agencies as it deems expedient;

(f) invest and deal with any moneys and funds of the Association that are not immediately required, in such manner as it deems expedient;

(g) improve, manage, develop, exchange, dispose of, turn to account or otherwise deal with the real or personal property of the Association;

(h) borrow money for the use of the Association, issue bonds, debentures, debenture stock and other securities on the credit of the Association and pledge or sell such securities for such sums or at such prices as may be deemed expedient;

- (i) secure the repayment of money borrowed, in such manner and upon such terms and conditions as it considers fit and, in particular, by the execution and delivery of mortgages of all or any part of the real or personal property of the Association, both present and future; and
- (j) do such things as are incidental or necessary to the exercise of the powers referred to in clauses (a) to (i). 2010, c. 38, s. 5.

Annual meeting and annual report

- 6** (1) There shall be an annual meeting of the Association at such time and place as prescribed by the Council.
- (2) An annual report as described in the by-laws must be distributed at or before the annual meeting for review by the members of the Association.
- (3) The by-laws must prescribe the form and content of the notice of the annual meeting.
- (4) Special meetings of the Association may be held at such time and place, and upon such notice as prescribed in the by-laws.
- (5) Auditors shall be recommended by the Council but are subject to the approval of the Association at the annual meeting. 2010, c. 38, s. 6.

Council

- 7** (1) The Council is composed of such persons as set out in the regulations and bylaws and must include not less than one public representative and a person appointed by the Minister.
- (2) Persons on the Council shall be elected or appointed or succeed to office in the manner prescribed by the by-laws.
- (3) Notwithstanding subsection (2), public representatives on the Council continue to hold office until their successors are appointed or until such time as they are re-appointed. 2010, c. 38, s. 7.

Quorum

- 8** A majority of the Council constitutes a quorum. 2010, c. 38, s. 8.

Council to govern Association

- 9** (1) The Council shall govern the Association and manage its affairs, and may take any action consistent with this Act and the regulations that it considers necessary for the promotion, protection, interest or welfare of the Association, including
- (a) the setting of fees, assessments or levies payable by members and those applying for membership in the Association, with

the exception of annual fees for membership which must be voted on at the annual meeting or a special meeting of the Association;

(b) proposing a budget for approval by the members at the annual meeting or a special meeting, and approving the process for revising and monitoring the budget;

(c) submitting to each annual meeting of the Association an audited financial statement of the Association's operations for the past fiscal year;

(d) recommending proposed changes to the by-laws, the regulations and this Act for approval by the members entitled to vote at an annual meeting or a special meeting; and

(e) recommending the approval of or revisions to the Code of Ethics and the Standards of Practice for approval by the members entitled to vote at an annual meeting or a special meeting.

(2) The Council may take any action consistent with this Act by resolution. 2010, c. 38, s. 9.

Executive

10 The Executive consists of those persons as are set out in the regulations, and shall perform such functions as are set out in the by-laws. 2010, c. 38, s. 10.

Executive Director

11 (1) The Council shall appoint an Executive Director, who shall perform the duties set out in this Act, regulations and by-laws, and such other duties as determined by the Council.

(2) The Executive Director may delegate functions assigned to the Executive Director by this Act, the regulations or the by-laws.

(3) The Executive Director is a non-voting member of the Executive and the Council. 2010, c. 38, s. 11.

Regulations

12 (1) Subject to the approval of the Governor in Council, the Council may make regulations

(a) regulating the registration of members and applicants for registration;

(b) regulating the discipline and reinstatement of members, and the investigation and resolution of complaints against members;

(c) prescribing the procedures for an appeal of registration or membership on a particular roster, and establishing a Registration Appeal Committee and its powers and its authority;

- (d) determining the functions, powers and responsibilities of the Board of Examiners;
- (e) creating categories of membership and prescribing the privileges, qualifications and obligations of the persons for those categories, including establishing criteria for entry into the respective membership roster;
- (f) determining the composition of the Executive;
- (g) setting the requirements for professional liability insurance or other forms of malpractice coverage or liability protection in such amounts as determined by the Council, and establishing any exemptions from such requirement;
- (h) respecting the registration sanctions issued pursuant to this Act and the reinstatement of such registration and allowing for conditions, limitations or restrictions to be attached to a reinstated registration;
- (i) allowing for an award of costs on a solicitor-client or other basis;
- (j) providing that the registration of a member be suspended without notice or investigation upon contravention of any regulation that requires the member to pay a fee, to file a document or do any other act by a specified or ascertainable date and providing for the reinstatement of a registration so suspended upon payment of such fee as determined by the Board;
- (k) respecting the ability of the Complaints Committee and the Hearing Committee to impose a fine if a member has engaged in the practice of professional land surveying while not being an active member;
- (l) respecting the reporting and publication of decisions in disciplinary matters;
- (m) prescribing the requirements and processes for practice by partnerships and professional corporations;
- (n) respecting the ability of the Association to engage in the practice review of its active members and prescribing the obligations of active members to comply with such practice reviews;
- (o) establishing processes for resolving boundary line uncertainties;
- (p) prescribing the functions, powers and duties of any entity established in the regulations to resolve boundary disputes;
- (q) defining any word or expression used but not defined in this Act;
- (r) further defining any word or expression defined in this Act;

(s) governing such other matters as the Council considers necessary or advisable for the effective discharge of its functions or the exercise of its powers.

(2) The exercise by the Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

(3) A regulation must not be forwarded to Governor in Council for approval unless the regulation has been voted on and approved by members entitled to vote at an annual meeting or a special meeting of the Association. 2010, c. 38, s. 12.

By-laws

13 (1) The Association may make by-laws not inconsistent with this Act

(a) respecting the holding of the annual meeting and special meetings of the Association including the notice for such meetings, the content of such meetings, the quorum, the procedures to be followed and the manner of voting;

(b) establishing zones or geographical areas for purposes of electing members to the Council and holding meetings in such areas on matters of interest to members in those areas;

(c) establishing the number of members, in addition to the executive members, public representatives, and person appointed by the Minister, to serve on the Council;

(d) establishing the eligibility for election or appointment to the Council;

(e) establishing the process for elections to the Council;

(f) respecting the terms of office of the Council members, the manner in which vacancies on the Council may be filled and the manner of removing Council members;

(g) prescribing the manner in which resolutions or motions are forwarded to the Council;

(h) establishing the role of the Executive;

(i) providing for the payment of honoraria and expenses;

(j) respecting the holding of the Council meetings including required meetings, the notice for such meetings, the quorum and procedure to be followed and the manner of voting;

(k) respecting the quorum for committees appointed under this Act, the regulations or the by-laws;

(l) respecting the establishment of committees appointed by the Council, and providing for the holding and conduct of meet-

ings of such committees and the process for approving terms of reference for such committees;

(m) establishing a mandatory professional-development program, and providing for the administration of the program and the consequences for non-compliance with the program;

(n) providing for the audit of the Association;

(o) providing for the establishment of the fiscal year of the Association;

(p) respecting the seal of the Association;

(q) respecting the location of the head office of the Association;

(r) establishing the criteria for entry into and the entitlements of life members, retired members and associate, honorary and other categories of membership;

(s) respecting a code of conduct and conflict of interest policy for the Council members and Association volunteers and employees;

(t) establishing the criteria required for completion of a period of articles;

(u) respecting all other things necessary for the administration of the affairs of the Association.

(2) A by-law does not come into force until the by-law has been voted on and approved by members entitled to vote at an annual meeting or a special meeting of the Association. 2010, c. 38, s. 13.

Available for inspection

14 All regulations and by-laws of the Council must be available for inspection by any person, free of charge, at the head office of the Association at all reasonable times during business hours. 2010, c. 38, s. 14.

Standards of Practice and Code of Ethics

15 The Standards of Practice and the Code of Ethics, or revisions to them, do not come into force until they have been voted on and approved by the members entitled to vote at an annual meeting or a special meeting of the Association. 2010, c. 38, s. 15.

Board of Examiners

16 (1) A Board of Examiners shall be appointed consisting of such members as set out in the regulations.

(2) The Board shall elect a Chair from its own members.

- (3) The Executive Director is a non-voting member of the Board.
- (4) Where a member of the Board for any reason becomes unable to complete the member's term, the Council may appoint another person to complete the unexpired portion of the term.
- (5) Where the Chair of the Board is unable to attend a meeting of the Board, the Chair shall designate a member of the Board to act as the chair of the Board at such meeting.
- (6) The Board, with the approval of the Council, may appoint one or more competent persons to assist the Board in any of the subjects of examination.
- (7) The Board shall hold meetings as required and shall report to Council.
- (8) The Board of Examiners shall perform such functions as are set out in this Act, regulations and the by-laws. 2010, c. 38, s. 16.

REGISTRATION

Register

- 17 (1) The Association shall keep a Register in which must be entered the names of all persons who are entitled pursuant to this Act and the regulations to be registered.
- (2) The Register must include such other information as may be required by the regulations.
- (3) The Association shall cause to be kept a record available to the public showing
- (a) the name and registration number of every active member;
 - (b) any conditions or restrictions on such person's registration if the Board of Examiners determines it is in the public interest to have such conditions or restrictions available to the public; and
 - (c) any registration sanctions imposed on a member that are not otherwise subject to a publication ban. 2010, c. 38, s. 17.

Membership categories

- 18 (1) The categories of membership must be as set out in the regulations.
- (2) The Association shall cause to be maintained separate rosters for each category of membership as provided by the regulations. 2010, c. 38, s. 18.

Members

19 The Board shall register a person as a member of the Association who has applied for and met all of the criteria for registration as set out in the regulations. 2010, c. 38, s. 19.

Use of designation

20 No person shall take or use the designation “Nova Scotia Land Surveyor” or “NSLS”, or any derivation or abbreviation thereof or any other words, names or designations, to imply that the person is a member of the Association unless such person is an active member in the Association or is otherwise authorized, pursuant to the by-laws, to use such designation. 2010, c. 38, s. 20.

Prohibition on practice

21 (1) No person shall engage in the practice of professional land surveying or shall describe the person’s activities as activities falling within the meaning of “professional land surveying” unless the person

- (a) is an active member of the Association; or
- (b) is otherwise authorized to engage in the practice of professional land surveying as set out in this Act or the regulations.

(2) No person shall engage in the practice of professional land surveying for the general public directly or indirectly, whether for or without compensation, unless the person holds the required professional liability insurance as set out in the regulations.

(3) Notwithstanding subsections (1) and (2), a person working under the supervision of an active member is not engaging in the practice of professional land surveying. 2010, c. 38, s. 21.

Action to collect fees

22 No person shall bring an action in any court to collect fees, compensation or other remuneration for services performed in the practice of professional land surveying, unless that person was registered as an active member at the time the services were performed. 2010, c. 38, s. 22.

Proof of membership

23 A statement certified under the hand of the Executive Director respecting the membership and entry in the appropriate roster of a person’s name is admissible in evidence as *prima facie* proof of that person’s entry in such roster. 2010, c. 38, s. 23.

Imposition of conditions or restrictions

24 Where the authority of a professional land surveyor to be an active member has been limited by the imposition of conditions or restrictions imposed on that professional land surveyor, the conditions or restrictions must be noted in the

records of the Association and may be disclosed to the public in accordance with this Act. 2010, c. 38, s. 24.

Register entries

25 (1) The Executive Director shall make a notation in the Register if

- (a) data has been entered incorrectly;
- (b) notification is received of a member's death;
- (c) the registration of a member has been revoked;
- (d) the Complaints Committee, as part of an informal resolution of a complaint, or the Hearing Committee authorizes the resignation of a member from the register; or
- (e) a member has resigned.

(2) Where a notation has been made on the register pursuant to clause (1)(b), (c), (d) or (e), the person ceases to be a member of the Association. 2010, c. 38, s. 25.

Removal of member from roster

26 (1) The Executive Director shall cause the removal of the name of a member from the appropriate roster if

- (a) data has been incorrectly entered requiring the removal of the member's name;
- (b) the member no longer meets the criteria for entry on the relevant roster;
- (c) at the request of the member, if approved by the Executive Director;
- (d) for non-payment of fees or other assessments levied under this Act or the regulations;
- (e) the member has been suspended, for the term of the suspension;
- (f) the registration of the member has been revoked;
- (g) the Complaints Committee or the Hearing Committee authorize the resignation of the member from the Register; or
- (h) notification is received of the member's death.

(2) Subject to subsection (3), the name of a person removed from the appropriate roster pursuant to subsection (1)(a) to (g) must be restored upon

- (a) payment of the prescribed fee; and

(b) compliance by the person with this Act and the regulations.

(3) The reinstatement of the name to the register pursuant to clause (1)(g) must only be made if

(a) the Committee authorizing the resignation of the member permitted the opportunity to re-apply for membership in the Association; and

(b) the Re-instatement Committee determines, on such conditions, or with such restrictions as it directs, that the registration or membership should be re-instated. 2010, c. 38, s. 26.

Offences and penalties

27 (1) Every person who

(a) knowingly furnishes false information in any application under this Act or in any statement required to be furnished under this Act or the regulations;

(b) engages in the practice of professional land surveying in the Province without complying with Section 21;

(c) engages in the practice of professional land surveying in violation of any condition or restriction contained in the person's registration or membership; or

(d) otherwise contravenes this Act or the regulations,

is guilty of an offence and liable on summary conviction to a fine of not more than two thousand dollars or to imprisonment for a term of not more than six months, or to both.

(2) The *Summary Proceedings Act* applies in addition to any fine or penalty otherwise provided for in this Act or regulations.

(3) All fines payable under this Act or under the *Summary Proceedings Act* as a result of a prosecution by or on behalf of the Association are payable to Her Majesty in right of the Province.

(4) In any prosecution by or on behalf of the Association, any information to be laid pursuant to this Act or pursuant to the *Summary Proceedings Act* must be laid by such person as authorized by the Council.

(5) In a prosecution of an offence contrary to this Act or the regulations, the onus to prove that a person accused of an offence has the right to practise professional land surveying, or that a person comes within any of the exemptions provided by this Act, is on the person accused.

(6) Where a violation of this Act or the regulations by a person continues for more than one day, the person is guilty of a separate offence for each day that the violation continues.

(7) For the purpose of this Act or the regulations, proof of the performance by a non-member of one act of professional land surveying is sufficient to establish that a person has engaged in the practice of professional land surveying. 2010, c. 38, s. 27.

Injunction respecting violation

28 (1) In the event of a threatened or continuing violation of this Act or the regulations, the Association may apply to a judge of the Supreme Court of Nova Scotia for an injunction to restrain the person from continuing or committing the violation and, where the judge considers it to be just, the judge may grant the injunction.

(2) A judge may, on application, grant an interim injunction pending the hearing of an application for an injunction pursuant to subsection (1) if the judge is satisfied that there is reason to believe that a person is likely to commit or is continuing to commit a violation of this Act or the regulations.

(3) A judge may make such orders as to costs as the judge considers appropriate in any proceedings pursuant to this Section. 2010, c. 38, s. 28.

EXAMINATION OF WITNESSES AND ENTRY ON LAND

Refusal to inform member

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

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

(3) Upon hearing the evidence pursuant to subsection (1), the judge may make any order the judge considers appropriate, including an order for costs. 2010, c. 38, s. 29.

Right of entry on land and liability

30 All active members and their assistants, when engaged in professional land surveying, may enter upon and pass over any land, doing as little damage as possible and, save as hereinafter provided, no action lies against an active member or their assistants for any act done under this Section, but any active member is liable for any unnecessary damage done by the member or by the member's assistants under this Section. 2010, c. 38, s. 30.

Oath or affidavit taken by member

31 An oath, affidavit, affirmation or declaration for use in the Province may be administered, sworn, affirmed or made within the Province before an active member if the subject-matter of the oath, affidavit, affirmation, or declaration relates to the location of land, boundaries, the extent or limitations of title to land, or other matters relevant to professional land surveying. 2010, c. 38, s. 31.

Obstruction of member

32 Every person who molests, hinders or obstructs any active members or their assistants while engaged in the carrying on of their profession is guilty of an offence under this Act. 2010, c. 38, s. 32.

CORPORATE PERMITS

Corporate permit

33 No partnership, association of persons or body corporate shall engage or offer to engage in professional land surveying unless the partnership, association of persons or body corporate holds a corporate permit issued in accordance with the regulations. 2010, c. 38, s. 33.

Exceptions

34 Notwithstanding Section 33, nothing in this Act shall prohibit a partnership, association of persons or body corporate from having active members in the partnership's, association's or body corporate's employ, or as a partner or consultant, if professional land surveying is incidental to the principal business or objects of the partnership, association of persons or body corporate, and the services of the active members are not made available to the public. 2010, c. 38, s. 34.

Effect of corporate relationship to member

35 An active member's position as a partner, shareholder, director, officer or employee of a partnership, association of persons or body corporate does not affect, modify or diminish the application of this Act and regulations to the member. 2010, c. 38, s. 35.

Liability under corporate permit

36 All persons who carry on the practice of professional land surveying by, through or on behalf of a partnership, association of persons or body corporate are, for purpose of this Act and the regulations, responsible for acts or omissions

done or omitted to be done by them in the course of the practice of professional land surveying to the same extent and in the same manner as if such practice were carried on by them as active members. 2010, c. 38, s. 36.

Compellable witnesses

37 All shareholders, directors, officers, employees or partners of a partnership, association of persons or body corporate engaged in the practice of professional land surveying are compellable witnesses in any proceedings pursuant to this Act. 2010, c. 38, s. 37.

Power to investigate

38 (1) Where the conduct of a Nova Scotia Land Surveyor is the subject of a complaint, investigation or a hearing and the Nova Scotia Land Surveyor was a partner, officer, director, shareholder or employee of a partnership, association of persons or body corporate at the time the conduct occurred, any power of inspection, investigation or inquiry that may be exercised in respect of the Nova Scotia Land Surveyor or his or her records may be exercised in respect of the partnership, association of persons or body corporate or its records.

(2) Sections 41 to 67 apply *mutatis mutandis* to all partnerships, associations of persons or bodies corporate engaged in the practice of professional land surveying. 2010, c. 38, s. 38.

Corporate offences and penalty

39 (1) Every partnership, association of persons or body corporate engaged in the practice of professional land surveying that contravenes this Act or the regulations is guilty of an offence and is liable to the same penalties as any person who is guilty of an offence under this Act.

(2) Sections 27 and 28 apply *mutatis mutandis* to all partnerships, associations of persons or bodies corporate engaged in the practice of professional land surveying. 2010, c. 38, s. 39.

Suspension

40 Where a partnership, an association of persons or a body corporate is convicted of an offence contrary to this Act or the regulations, its corporate permit is, in default of paying any fine ordered to be paid, suspended until such time as the fine is paid. 2010, c. 38, s. 40.

PROFESSIONAL CONDUCT

Non-members subject to professional conduct process

41 Where a person ceases to be registered as a member for any reason, that person remains subject to the jurisdiction of the Association for the purposes of the professional conduct process if the subject-matter of the professional conduct process arose out of the person's conduct while registered. 2010, c. 38, s. 41.

Complaints Committee

42 (1) The Council shall appoint a Complaints Committee composed of such members and public representatives as set out in the regulations.

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

(3) The Vice-chair shall act as Chair in the absence of the Chair.

(4) Whenever for any reason neither the Chair nor the Vice-chair is available for the purpose of subsections (5), (6) and (7), the Committee may, for such purpose, appoint a member of the Complaints Committee as chair of the Complaints Committee.

(5) Any three persons from the Complaints Committee, regardless of whether such persons are members or a public representative, constitute a quorum of the Complaints Committee.

(6) Failure of one or more Complaints Committee members to receive any notice of a meeting does not invalidate the proceedings at the meeting, and nothing herein precludes the members from waiving notice of meetings.

(7) All Complaints Committee decisions require a majority vote.

(8) Where a proceeding is commenced before the Complaints Committee, and the term of office of any person sitting on the Complaints Committee has expired, such person may remain part of the Complaints Committee until the proceeding is concluded.

(9) Where at any time a quorum of a Complaints Committee cannot be constituted, the Council may appoint replacement members to the Complaints Committee. 2010, c. 38, s. 42.

Initiation of complaint

43 (1) A complaint may be initiated by

- (a) a member;
- (b) any body corporate or association;
- (c) the Executive Director;
- (d) a committee of the Association; or
- (e) any other person.

(2) Where the Complaints Committee and the complainant agree, a complaint may be withdrawn. 2010, c. 38, s. 43.

Powers of Complaints Committee

44 Each person on the Complaints Committee and each investigator has all the powers conferred by this Act and the regulations in the discharge of their functions, including all the rights, powers, privileges, and immunities of commissioners under the *Public Inquiries Act*. 2010, c. 38, s. 44.

Complaints Committee procedure

45 The Complaints Committee may set its own procedure for meetings. 2010, c. 38, s. 45.

Jurisdiction over matter

46 The Complaints Committee retains jurisdiction over a matter until such time as a hearing commences before the Hearing Committee or the matter is otherwise resolved. 2010, c. 38, s. 46.

Publication ban

47 With respect to any decision issued by the Complaints Committee that is available to the public pursuant to the Act or the regulations, the Complaints Committee may impose a publication ban on such portions of its decision as deemed necessary by the Committee. 2010, c. 38, s. 47.

Written decision

48 (1) A complaint must be dealt with in accordance with the regulations.

(2) When a complaint is forwarded to the Complaints Committee for disposition, the Complaints Committee shall give its decision in writing and shall send a copy of the written decision, by registered mail or personal service, to the respondent and the complainant and may send some or all of the written decision to such other persons as the Complaints Committee determines. 2010, c. 38, s. 48.

Rights of respondent

49 In a proceeding before the Complaints Committee, a respondent has the right to

- (a) be represented by legal counsel;
- (b) disclosure of the complaint, any written reports of the investigator provided to the Complaints Committee and any other document produced or received by the Complaints Committee;
- (c) a reasonable opportunity to present a response and make submissions; and
- (d) have the complaint dealt with in a reasonable time. 2010, c. 38, s. 49.

Duty to disclose

50 (1) Notwithstanding anything contained in this Act or the regulations, where a member or a person applying for membership in the Association

(a) has been charged with, pled guilty to, been convicted or found to be guilty of any offence in or outside of Canada that is inconsistent with the proper professional behaviour of a member, including a conviction under

(i) the *Criminal Code* (Canada), or

(ii) such other legislation as prescribed in the regulations,

unless a pardon has been issued;

(b) has been found guilty of a disciplinary finding relating to the provision of professional services in another jurisdiction;

(c) has had a licensing sanction relating to the provision of professional services imposed by another jurisdiction; or

(d) is the subject of an investigation or disciplinary process relating to the provision of professional services in any jurisdiction,

the member or person applying for membership shall immediately report the matter to the Executive Director.

(2) The Executive Director shall refer any information disclosed pursuant to subsection (1) to the Complaints Committee, which may, by such notice as it prescribes, require the person to attend a hearing before the Complaints Committee to fully disclose the facts and circumstances of the matter so disclosed.

(3) For purpose of a hearing pursuant to subsection (1), the Complaints Committee may take any of the actions authorized to be taken by a Complaints Committee pursuant to this Act or the regulations.

(4) For the purpose of subsection (1), a certificate of conviction of a member is conclusive evidence that the member has committed the offence stated therein, unless it is proven that the conviction has been quashed or set aside. 2010, c. 38, s. 50.

Complaints to be confidential

51 (1) All complaints received or under investigation, all information gathered in the course of the professional conduct process and all proceedings and decisions of the Complaints Committee, and the Hearing Committee that are not open to or available to the public in accordance with this Act or regulations must be kept confidential by any person who possesses such information.

(2) Notwithstanding subsection (1) but subject to subsections (3) and (4), where it is consistent with the objects of the Association,

(a) the Complaints Committee or the Hearing Committee may direct the Executive Director to disclose to law enforcement authorities any information about possible criminal activity on the part of a member that is obtained during an investigation pursuant to this Act;

(b) the Complaints Committee or the Hearing Committee may authorize the Executive Director to release specific information to a specific person or persons;

(c) the Complaints Committee or the Hearing Committee may direct the Executive Director to disclose information with respect to the complaint to a land-surveying regulatory body in another jurisdiction if it is relevant and concerns the fitness of the member for membership in the extra-provincial land-surveying regulatory body; and

(d) the Council may direct the Executive Director to disclose information with respect to a complaint for purposes of administration of this Act or to comply with the objects of the Association.

(3) Where information sought to be disclosed under subsection (2) includes a member's personal health information, or treatment provided by any health provider, such information must not be disclosed.

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

(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 the Hearing Committee is not admissible in a civil proceeding other than an appeal or review pursuant to this Act.

(7) The Complaints Committee, the Hearing Committee or the Reinstatement Committee may impose a publication ban on any or all parts of proceedings conducted by the committee, or decisions rendered by the committee, if the committee deems it appropriate. 2010, c. 38, s. 51.

Hearing committee

52 (1) The Council shall appoint a Hearing Committee composed of such members and public representatives as set out in the regulations, none of whom are current members of the Council.

(2) The Council shall appoint a Chair and a Vice-chair of the Hearing Committee.

(3) The Vice-chair shall act as chair in the absence of the Chair.

(4) Whenever for any reason neither the Chair nor the Vice-chair are available, the Hearing Committee may appoint a member of the Hearing Committee as chair of the Hearing Committee.

(5) Any three persons from the Hearing Committee, regardless of whether such persons are members or public representatives, constitute a quorum of the Hearing Committee.

(6) No person on the Hearing Committee may concurrently serve on the Complaints Committee.

(7) Failure of one or more Hearing Committee members to receive any notice of a meeting does not invalidate the proceedings thereat, and nothing herein precludes Committee members from waiving notice of meetings.

(8) All Hearing Committee decisions require a majority vote.

(9) Where a proceeding is commenced before the Hearing Committee, and the term of office of any person sitting on the Hearing Committee has expired, such person may remain part of the Hearing Committee until the proceeding is concluded.

(10) Where at any time a quorum of a Hearing Committee cannot be constituted, the Council may appoint replacement members to the Hearing Committee. 2010, c. 38, s. 52.

Setting and notification of hearing date

53 (1) Where the Complaints Committee refers a matter to the Hearing Committee, the Executive Director shall, within thirty days from the date of the referral, fix a date, time and place for holding a hearing, which must commence not later than ninety days from the date of the referral by the Complaints Committee, or such later date as the respondent and the Association may agree or the Hearing Committee may order following an opportunity for submissions from both parties as to such date.

(2) A notice of hearing, containing such information as required by the regulations, must be forwarded by the Executive Director to the respondent and the complainant at least thirty days before the hearing. 2010, c. 38, s. 53.

Service

54 At any stage of the professional conduct process, any document required to be served on or provided to a respondent or any other individual is deemed to be served or provided if

- (a) the intended recipient or the intended recipient's counsel acknowledges receipt of the document;
 - (b) a registered mail receipt is provided from Canada Post;
 - (c) an affidavit of service on the respondent is provided; or
 - (d) the Association provides evidence satisfactory to the Hearing Committee that all reasonable efforts to effect service have been exhausted.
- 2010, c. 38, s. 54.

Settlement proposals

55 Where the Complaints Committee refers a matter to the Hearing Committee, the Association, before the commencement of a hearing by the Hearing Committee, may enter into a settlement proposal with the respondent, which proposal must be dealt with in accordance with the regulations. 2010, c. 38, s. 55.

Powers of Hearing Committee

56 Each person on the Hearing Committee has all the powers conferred by this Act and the regulations in the discharge of the person's functions, including all the rights, powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*. 2010, c. 38, s. 56.

Inadmissibility of evidence before Hearing Committee

57 (1) A proceeding held by the Hearing Committee must be conducted in accordance with the regulations.

(2) Evidence is not admissible before the Hearing Committee unless the opposing party has been given, at least ten days before a hearing,

- (a) in the case of written or documentary evidence, an opportunity to examine the evidence;
- (b) in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; and
- (c) in the case of evidence of any other witness, the identity of the witness.

(3) Notwithstanding subsection (2), the Hearing Committee may, in its discretion, allow the introduction of evidence that would be otherwise inadmissible under subsection (2) and may make directions it considers necessary to ensure that a party is not prejudiced. 2010, c. 38, s. 57.

Rights of parties

58 In a proceeding before the Hearing Committee, the parties have the right to

- (a) be represented by legal counsel;

(b) present evidence and make submissions, including the right to cross-examine witnesses; and

(c) receive written reasons for a decision within a reasonable time. 2010, c. 38, s. 58.

Finding of misconduct and revocation of membership

59 (1) Where the Hearing Committee finds professional misconduct, conduct unbecoming, incompetence or incapacity, the Hearing Committee shall process the matter or matters in accordance with the regulations.

(2) Where a Hearing Committee has revoked the registration of a member, the Hearing Committee shall determine whether the member is entitled to apply for reinstatement of registration, or whether the revocation is final.

(3) Where the Hearing Committee determines that a member whose registration has been revoked may apply for reinstatement, the Hearing Committee shall determine the time when the member may apply for reinstatement, which cannot be earlier than two years from the date of the Hearing Committee's decision. 2010, c. 38, s. 59.

Reinstatement Committee

60 (1) The Council shall appoint a Reinstatement Committee, composed of not fewer than three and not more than five members of the Council, at least one of whom must be a public representative.

(2) The Council shall appoint the Chair of the Reinstatement Committee.

(3) The Reinstatement Committee shall, in the circumstances set out in the Act and regulations, review applications for reinstatement of registration, and shall perform such other duties as set out in the Act and regulations.

(4) A quorum of the Reinstatement Committee consists of any three members of such committee, regardless of whether such members are members or a public representative.

(5) Applications for reinstatement must proceed in accordance with the regulations.

(6) Where a member's registration has been reinstated pursuant to this Section, the Reinstatement Committee, in its discretion, shall determine whether publication of the reinstatement is required in the interest of the public.

(7) The Reinstatement Committee has all the powers conferred by this Act and the regulations in the discharge of its functions, including the powers, privileges, and immunities of commissioners under the *Public Inquiries Act*.

(8) Evidence is not admissible before the Reinstatement Committee unless, at least ten days before the hearing, the opposing party has been given

- (a) in the case of written or documentary evidence, an opportunity to examine the evidence;
- (b) in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; and
- (c) in the case of evidence of any other witness, the identity of the witness.

(9) Notwithstanding subsection (8), the Reinstatement Committee may, in its discretion, allow the introduction of evidence that is otherwise inadmissible under subsection (8) and may make directions it considers necessary to ensure that a party is not prejudiced. 2010, c. 38, s. 60.

Rights of member

61 In a proceeding before the Reinstatement Committee, a member has the right to

- (a) be represented by legal counsel;
- (b) disclosure of any information to be provided to the Committee; and
- (c) a reasonable opportunity to present a response and make submissions. 2010, c. 38, s. 61.

Notification of registration sanction

62 (1) Subject to any publication bans in existence, where a registration sanction has been issued by the Complaints Committee or the Hearing Committee, the Executive Director shall

- (a) make such entries on the records of the Association and as set out in the regulations;
- (b) publish such information on the website of the Association and in official publications of the Association as set out in the regulations;
- (c) notify other professional land-surveying licensing bodies as set out in the regulations;
- (d) provide such information to individuals or the public as set out in the regulations.

(2) Where the Hearing Committee dismisses a matter, the Committee shall disclose its decision in such manner as the Committee determines. 2010, c. 38, s. 62.

Reinstatement of member

63 (1) Where the period of suspension of a member has expired, or the conditions imposed on the member have been satisfied, or the restrictions imposed on the member have been removed, the Executive Director shall restore the membership of the respondent in the form it existed before the imposition of the suspension, conditions or restrictions if the member otherwise meets the criteria for membership and entry on the relevant roster, including the payment of any prescribed fees for renewal.

- (2)** Where action has been taken pursuant to subsection (1),
- (a)** the Executive Director shall make the appropriate entries in the records of the Association;
 - (b)** where registering bodies in other Canadian professional land-surveying jurisdictions had previously been informed of the suspension, conditions or restrictions, the Executive Director shall notify such registering bodies of the lifting of such suspension, conditions or restrictions; and
 - (c)** the Executive Director shall notify such other persons as directed by the Committee that initially imposed the suspension, conditions or restrictions. 2010, c. 38, s. 63.

Retaining legal or other assistance

64 (1) For the purpose of the execution of its duties under this Act, the Association or any committee of the Association may retain such legal or other assistance as the Association or the committee, as the case may be, may think necessary or proper.

(2) Where authorized by this Act or the regulations, the costs of such legal or other assistance may be included, in whole or in part, as costs ordered by the committee. 2010, c. 38, s. 64.

Right of appeal and procedure on appeal

65 (1) A party may appeal on any point of law from the findings of the Hearing Committee to the Nova Scotia Court of Appeal.

(2) The notice of appeal must be filed at the Court of Appeal and served upon the other party not later than thirty days after service of the decision of the Hearing Committee.

(3) The record on appeal from the findings of the Hearing Committee consists of a copy of the transcript of the proceedings, the decision of the Committee and the evidence before the Hearing Committee certified by the Chair of the Hearing Committee.

(4) The *Civil Procedure Rules*, governing appeals from the Supreme Court of Nova Scotia to the Court of Appeal, that are not inconsistent with

this Act, apply *mutatis mutandis* to appeals to the Court of Appeal pursuant to this Section.

(5) Where a matter is appealed to the Court of Appeal pursuant to this Section, the decision of the Hearing Committee takes effect immediately unless the Court of Appeal grants a stay of any order made pursuant to this Act if, in its discretion, it deems fit. 2010, c. 38, s. 65.

Member duty to report

66 (1) A member has a duty to report to the Executive Director if the member has reasonable grounds to believe that another member of the Association

- (a) has engaged in professional misconduct, incompetence or conduct unbecoming;
- (b) is incapacitated; or
- (c) is practising in a manner that otherwise constitutes a danger to the public.

(2) No action for damages or other relief lies against a member for any report made pursuant to subsections (1), if such report was made in good faith. 2010, c. 38, s. 66.

Non-payment of fine

67 Any fine or cost ordered to be paid pursuant to the Act or regulations is a debt due to the Association recoverable by civil action, in addition to any other remedy available to the Association for non-payment of a fine or cost. 2010, c. 38, s. 67.

MISCELLANEOUS

Offence

68 No person shall, without the prior written consent of the member who prepared the same, alter or make additions to or deletions from or make an obliteration on a member's plan or on a copy or reproduction thereof, and any person who contravenes this Section is guilty of an offence pursuant to this Act. 2010, c. 38, s. 68.

No action lies

69 (1) No action for damages or other relief lies against the Association, the Council, the Board, the persons on the Council or Board, committees, subcommittees of the Council or Board, the persons on the committees or subcommittees, persons or groups conducting practice reviews, or the Executive Director, officers, agents or employees of the Association

- (a) for any act or failure to act, or any proceeding initiated or taken within the jurisdiction of the Association, or in carrying out the duties or obligations under this Act;

(b) for any decision, order or resolution made or enforced within the jurisdiction of the Association; or

(c) for any act or failure to act, proceeding initiated or taken, or any decision, order or resolution made or enforced outside the jurisdiction of the Association,

initiated, taken, carried out, made or enforced in good faith.

(2) No member of the Association, the Council, committees or subcommittees of the Association or the Council, or any officer, agent, or employee thereof, is personally liable for any of the debts or liabilities of the Association unless such person expressly agrees to be liable. 2010, c. 38, s. 69.

Additional members to obtain quorum

70 Whenever for any reason a quorum of members of any committee is not available for a meeting or hearing, the Council may, for the purpose of such meeting or hearing, appoint to the committee such additional members as are needed for a quorum. 2010, c. 38, s. 70.

Matter pending under former Act

71 (1) Upon the coming into force of this Act, any matter pending before a discipline committee appointed pursuant to the former Act, where not set down for a hearing to commence within sixty days of the coming into force of this Act, must be transferred to the committee appointed pursuant to this Act for hearing and determination, but otherwise must be heard and determined by a discipline committee appointed pursuant to the former Act.

(2) Notwithstanding subsection (1), the parties may agree that a matter pending may be transferred to the committee appointed pursuant to this Act.

(3) A complaint made pursuant to the former Act must be processed in accordance with this Act as nearly as circumstances permit.

(4) A discipline committee appointed pursuant to the former Act must be continued until all matters pending before it at the coming into force of this Act and not transferred to the committee appointed pursuant to this Act has been finally decided, and a complaints committee appointed pursuant to the former Act must be continued until all matters pending before the coming into force of this Act have been concluded by the complaints committee.

(5) Upon the coming into force of this Act, the Standards of Practice and the Code of Ethics applicable under the former Act continue in effect until revised by the Association pursuant to this Act.

(6) Upon the coming into force of this Act, the members of the Council and the Board under the former Act continue in those positions until the election or appointment of a new Council and Board as set out in the by-laws. 2010, c. 38, s. 71.

Application for reinstatement under former Act

72 Any applications for reinstatement under the former Act must be dealt with in accordance with this Act as nearly as circumstances permit. 2010, c. 38, s. 72.

Application for registration under former Act

73 Any applications for registration or for entry into a roster that are outstanding at the coming into force of this Act, must be processed in accordance with this Act as nearly as circumstances permit. 2010, c. 38, s. 73.

Continuation of registration under former Act

74 Notwithstanding anything in this Act or the regulations, a person who is a current practising member of the Association under the former Act at the time of the coming into force of this Act, shall be registered as an active member under this Act, and such active membership continues until the expiration of the registration year immediately following the coming into force of this Act. 2010, c. 38, s. 74.

Continuation of conditions and restrictions under former Act

75 In the event any conditions or restrictions apply to a person who is registered under the former Act at the time of the coming into force of this Act, such conditions or restrictions apply to the member's registration under this Act. 2010, c. 38, s. 75.

Application of Act to engineer

76 Subject to Sections 33 to 40, and the regulations, this Act does not apply to a professional engineer or partnership, association of persons or body corporate entitled under the *Engineering Profession Act* to practise or undertake the application of engineering, or a person employed by and acting under the supervision and direction of such professional engineer or such partnership, association or body corporate while practising or applying engineering within the meaning of the *Engineering Profession Act*. 2010, c. 38, s. 76.

Repeal of former Act

77 **The former Act is repealed.** 2010, c. 38, s. 77.

Effective date

78 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 2010, c. 38, s. 78.

Proclaimed	-	September 10, 2013
In force	-	September 10, 2013