

DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act*, and in the matter of a complaint regarding the conduct of A MEMBER of the Association of Professional Engineers of Ontario and A HOLDER of a Certificate of Authorization.

This matter was heard before a panel of the Discipline Committee on September 21, 2009, at the offices of the Association of Professional Engineers of Ontario (association) in Toronto. The association was represented by Aviva R. Harari. The member and Certificate of Authorization holder were represented by Christopher J. Edwards. David P. Jacobs acted as independent legal counsel.

In the Statement of Allegations of the association dated January 27, 2009, against the member and the Certificate of Authorization holder, it was alleged that the member and holder are guilty of professional misconduct for failing to maintain professional engineering liability insurance when so required.

THE ALLEGATIONS

The association filed a Statement of Allegations alleging that the member and holder are guilty of professional misconduct. The Statement of Allegations is appended in Annex 1 to this decision.

The association alleged that the member and holder are guilty of professional misconduct on the following basis:

In or about March 2001, the member and Certificate of Authorization holder were retained by an Ontario automobile dealership (dealership) to conduct a phase I environmental assessment of its property. Later in year 2001, they were asked again to conduct further investigative work and to oversee the remedial work for the removal of all contaminated soils.

During this 2001 retainer, the holder was insured against professional liability claims in accordance with subsection 74(1) of O. Regulation 941 (regulation) made under the *Professional Engineers Act*, R.S.O. 1990, c. P-28 (act).

In February 2006, the member and holder were retained once again by the dealership to prepare an updated phase I audit report for the same property. During this period, the member and/or the holder were not insured against professional liability as required by subsection 74 of the regulation

made under the act. They did not receive written authority from the dealership to provide services without insurance.

It is alleged that the member and holder breached subsection 74(1) of Regulation 941 made under the act by offering and engaging in the business of providing services to the public that were within the practice of engineering at a time when they were not insured against professional liability.

It is alleged that the member and holder are guilty of professional misconduct as defined in section 28(2)(b) of the act.

AGREED STATEMENT OF FACTS

At the hearing, the parties submitted an Agreed Statement of Facts to the panel as follows:

- The member has been licensed as a professional engineer since on or about February 10, 1984;
- The member has been licensed as a professional geoscientist in the Province of Ontario since on or about November 6, 2002;
- The member is a licensed well technician in the Province of Ontario;
- The member has worked in the field of hydrogeology since 1982;
- The holder has held a Certificate of Authorization since on or about September 13, 1990;
- In or about March 2001, the member and holder were retained by the dealership to conduct a phase I environmental audit report of its property. Later in 2001, the member and holder were retained for further work with respect to the property, and completed a phase III site assessment report;
- At all material times, in 2001, the member and holder had professional liability insurance as required by the *Professional Engineers Act*, Regulation 941, section 74(1);
- On or about August 24, 2005, the member and holder completed a renewal application for the Certificate of Authorization. On the renewal application, the member

completed section “G” and checked off box “E” confirming the obligation to make compulsory written disclosure regarding insurance;

- In or about February 2006, the member and holder were again retained by the dealership to complete certain reports with respect to the above referred to property. In particular, they were retained to update the 2001 phase I environmental audit report;
- At the time of undertaking the work in 2006 and completing the report, the member and holder were not insured against professional liability as required by the *Professional Engineers Act*, Regulation 941, section 74(1);
- At the time of being retained by the dealership, the member and holder failed to notify the client that they were not insured as required by the *Professional Engineers Act*, Regulation 941, section 74(1), and failed to obtain written confirmation from the client to provide the services without insurance;
- In or about February 2006, with respect to the work referred to above, on behalf of the dealer, the member and holder offered and engaged in the business of providing services within the practice of professional engineering;
- A lawsuit was initiated on behalf of the dealership. On or about May 23, 2008, the plaintiffs obtained judgment in the amount of \$278,755.57, plus interest and costs, against the member and holder. The claim related to the February 2006 work performed by the member and holder on behalf of the dealership;
- When the holder undertook the work in 2001, the member was insured pursuant to a “claims based” policy. The insurance would not respond to the claim issued in May 2008 as the member did not have “trail off” insurance; and
- To date, the judgment remains outstanding.

PLEA INQUIRY

The member and holder pled guilty to allegations of professional misconduct as set out in the Agreed Statement of Facts. The panel finds such admission to have been free and voluntary. The panel reviewed the Agreed Statement of Facts and finds that the facts support a finding of professional misconduct.

SUBMISSIONS ON PENALTY

The parties’ joint submissions as to penalty were as follows:

The parties to this proceeding, the Association of Professional Engineers of Ontario and the member, make the following joint submission on penalty:

- (a) The member shall be reprimanded and that the fact of the reprimand be recorded on the register for one year;
- (b) It shall be a term and condition of the member’s licence and Certificate of Authorization that the member write the environmental impact and risk assessment exam (98-Env-A6), at the member’s own expense, within 12 months of the date of the hearing;
- (c) There shall be publication of a summary of the Decision and Reasons of the panel; however, the parties shall make submissions with respect to publication with names;
- (d) The member’s Certificate of Authorization be suspended for three months from the date of the hearing; and
- (e) There shall be no order with respect to costs.

The member has had independent legal advice, or has had the opportunity to obtain independent legal advice, with respect to the member’s agreement to the penalty set out herein.

Counsel for the defendants asked that, if the panel determines to order publication, the name of the engineer be omitted.

PANEL’S DECISION ON PENALTY

The panel delivered its decision on penalty orally at the hearing, and did not accept the parties’ joint submissions on penalty. Instead, the panel ordered the following sanction, with reasons for not imposing the requested penalties in the joint submissions to the panel. The panel was of the view that, on the facts, the penalty proposed in the joint submission was sufficiently beyond the range of appropriate penalties in all of the circumstances and that it should be rejected and the following imposed:

- (a) An oral reprimand to follow the requirements of the regulation made under the act on professional liability insurance was considered as an appropriate sanction;
- (b) The panel was of the view that the member was highly qualified in the field and, therefore, exam 98-Env-A6 was not necessary. The panel determined that publication of the decision without names was an appropriate, fair and sufficient way to bring the concerns of the Discipline Committee to the public and serve the principle of general deterrence;
- (c) A cost penalty was not appropriate in this case; and
- (d) An appropriate waiver of appeal has been obtained, which reduces any future cost related to the disposition of the matter.

The written Decision and Reasons was signed by Gina Cody, P.Eng., as chair on behalf of the other members of the discipline panel: Corneliu Chisu, P.Eng., Santosh Gupta, P.Eng., Ken Lopez, P.Eng., and Nick Monsour, P.Eng.

ANNEX 1—STATEMENT OF ALLEGATIONS

In the matter of a complaint regarding the actions and conduct of a member of the Association of Professional Engineers of Ontario and a holder of a Certificate of Authorization issued by the Association of Professional Engineers of Ontario.

STATEMENT OF ALLEGATIONS

Pursuant to its powers under sections 24(2)(a) and 28(1)(a) of the *Professional Engineers Act*, the Complaints Committee of the Association of Professional Engineers of Ontario has referred the allegations of professional misconduct and incompetence contained within the Statement of Allegations to a hearing of the Discipline Committee.

It is alleged that the member and holder are guilty of professional misconduct, the particulars of which are as follows:

1. The member was at all material times a member of the Association of Professional Engineers of Ontario (association).
2. The holder was, at all material times, the holder of a Certificate of Authorization to offer and provide to the public services that are within the practice of professional engineering and was responsible for supervising the conduct of its employees and taking all reasonable steps to ensure that its employees, including the member, carried on the practice of professional engineering in a proper and lawful manner.
3. In or about March 2001, the member and holder were retained by an Ontario automobile dealership (dealership) to conduct a phase I environmental site assessment of its property. Later in the year 2001, they were retained again to conduct further investigative work and to oversee the remedial work for the removal of all contaminated soils. The member and holder did, in fact, perform a phase I environmental site assessment and provide a phase III site assessment report in respect to the property.
4. During the period of the 2001 retainer, the holder was the holder of a Certificate of Authorization and was insured against professional liability in accordance with subsection 74(1) of the *Professional Engineers Act*.
5. In or about February 2006, the member and holder were retained once again by the dealership to prepare an updated phase I environmental audit report with respect to the same property.
6. During the period of the 2006 retainer, the member and/or the holder was the holder of a Certificate of Authorization; however, neither were insured against professional liability in accordance with subsection 74(1) of the *Professional Engineers Act*. At the time of the retainer, the member and holder failed to notify the dealership that they were not insured in accordance with the minimum requirements and failed to obtain written authority from the dealership to provide these services without that insurance.
7. In 2006, the member and holder offered and engaged in the business of providing to the dealership services that were within the practice of professional engineering in regards to the work related to their phase I environmental audit update dated February 13, 2006.
8. On May 23, 2008, in an Ontario Superior Court civil action, a judgment was awarded against the member and holder in the sum of \$278,755.57 plus interest and costs in relation to a claim of negligence against the member and holder arising from their work related to the above-mentioned environmental assessments.
9. It is alleged that the member and holder:
 - (a) breached subsection 74(1) of Regulation 941 made under the *Professional Engineers Act*, R.S.O. 1990, c. P-28 (act), by offering and engaging in the business of providing to the public services that were within the practice of professional engineering at a time when they were not insured against professional liability;
 - (b) breached subsection 74(2)(d) of Regulation 941, by failing to notify the person to whom they intended to provide professional engineering services, namely the dealership, that they were not insured in accordance with the minimum requirements of section 74 of Regulation 941 and by failing to obtain written authority from the dealership to provide these services without that insurance; and
 - (c) acted in an unprofessional manner.

It is alleged that the member and holder are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

The Statement of Allegations was signed by M. Jane Phillips, PhD, P.Eng., chair, Complaints Committee, Association of Professional Engineers of Ontario.

PROFESSIONAL ENGINEERS ACT AMENDED

On October 21, 2010, the *Open for Business Act, 2010* passed third reading in the Ontario legislature. It received royal assent and was enacted on October 25. The act amends over 50 pieces of legislation, including the *Professional Engineers Act* (PEA). About two-thirds of the changes to PEO's act were effective on October 25. The remainder will be effective on a future date when proclaimed by the lieutenant governor. Also enacted on October 25 was the *Not-for-Profit Corporations Act, 2010*, which made two amendments to the PEA that will be effective on a future date when proclaimed by the lieutenant governor. To view the PEA as amended, visit peo.on.ca.

CHANGES TO THE ACT EFFECTIVE OCTOBER 25

Following is the text of the amended or new sections effective on October 25.

Definitions

1. In this Act, ...
 "practice of professional engineering" means any act of planning, designing, composing, evaluating, advising, reporting, directing or supervising that requires the application of engineering principles and concerns the safeguarding of life, health, property, economic interests, the public welfare, or the environment, or the managing of any such act; ("exercice de la profession d'ingénieur"). 2010, c. 16, Sched. 2, s. 5(1).

Association

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

Same

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

Deemed reappointment

- 3.(5.1) On the expiry of a term referred to in subsection (5), the person whose term expired is deemed to have been reappointed until his or her successor takes office. 2010, c. 16, Sched. 2, s. 5(5).

Regulations

- 7.(1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations, ...
 3. prescribing the conditions disqualifying members of the Council from sitting on the Council and governing the filling of vacancies on the Council; 2010, c. 16, Sched. 2, s. 5(6).
- 7.(1) 9. respecting any matter ancillary to the provisions of this Act with regard to the issuing, suspension and revocation of licences, certificates of authorization, temporary licences, provisional licences and limited licences, including but not limited to regulations respecting,
 - v. the academic, experience and other requirements for the issuance of a licence or any class of licence,
 - v.1 the circumstances in which the Registrar shall refer an application for a licence to a committee for the purposes of clause 14(4)(b),
 - v.2 the establishment of an engineering technologist class of limited licence, including prescribing requirements and qualifications for the issuance of an engineering technologist class of limited licence and terms and conditions that shall apply to the engineering technologist class of limited licence, and 2010, c. 16, Sched. 2, s. 5(10).
- 7.(1) 9. vi. other classes of certificates of authorization, temporary licences, provisional licences

and limited licences, including prescribing requirements and qualifications for the issuance of specified classes of certificates of authorization, temporary licences, provisional licences and limited licences, and terms and conditions that shall apply to specified classes of certificates of authorization, temporary licences, provisional licences and limited licences; 2010, c. 16, Sched. 2, s. 5(11).

7.(1) 17. respecting and governing standards of practice and performance standards for the profession; 2010, c. 16, Sched. 2, s. 5(12).

7.(1) 33. REPEALED: 2010, c. 16, Sched. 2, s. 5(14).

By-laws effective

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

Confirmation

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

Issuance of licence

14.(1) The Registrar shall issue a licence to a natural person who applies therefor in accordance with the regulations and,
(a) REPEALED: 2010, c. 16, Sched. 2: s. 5(19).

14.(1) (c) has complied with the academic requirements specified in the regulations for the issuance of the licence, including passing such examinations as the Council sets or approves in accordance with the regulations, or is exempted by the Council from complying with the requirements; 2010, c. 16, Sched. 2, s. 5(20).

14.(1) (d) has complied with the experience requirements specified in the regulations for the issuance of the licence;
(d.1) has complied with any other requirements specified in the regulations for the issuance of the licence; and
2010, c. 16, Sched. 2, s. 5(21).

Referral to committee

14.(3) The Registrar may refer the application of the applicant for the issuance of a licence, 2010, c. 16, Sched. 2, s. 5(22).

Same

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

Terms and conditions

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

Issuance of temporary, provisional or limited licence

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

Membership

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

Hearing

19.(5) Within 30 days after receiving a notice under subsection (3) requiring a hearing, the Registration Committee shall schedule the hearing. R.S.O. 1990, c. P.28, s. 19(5); 2010, c. 16, Sched. 2, s. 5(35).

Continuation on expiry of Committee membership

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

for cause before the proceeding is disposed of but after evidence is heard, the member shall be deemed to remain a member of the Registration Committee for the purpose of completing the disposition of the proceeding in the same manner as if the member's term of office had not expired or been terminated. R.S.O. 1990, c. P.28, s. 19(6); 2010, c. 16, Sched. 2, s. 5(36).

Powers of Registration Committee

- 19.(7) Following a hearing under this section, the Registration Committee shall make one of the following orders:
1. If the Committee determines on reasonable grounds that the applicant meets the requirements and qualifications of this Act and the regulations and will engage in the practice of professional engineering or in the business of providing services that are within the practice of professional engineering with competence and integrity, the Committee shall direct the Registrar to issue a licence, certificate of authorization, temporary licence, provisional licence or limited licence, as the case may be, to the applicant.
 2. If the Committee determines on reasonable grounds that the applicant does not meet the requirements and qualifications of this Act and the regulations, the Committee shall,
 - i direct the Registrar to refuse to issue a licence, certificate of authorization, temporary licence, provisional licence or limited licence, or to suspend or revoke the certificate of authorization issued to the applicant, as the case may be,
 - ii exempt the applicant from any of the requirements of this Act or the regulations and direct the Registrar to issue a licence, certificate of authorization, temporary licence, provisional licence or limited licence, as the case may be, if the Committee determines on reasonable grounds that the applicant will engage in the practice of professional engineering with competence and integrity, or
 - iii direct the Registrar to issue a licence, certificate of authorization, temporary licence, provisional licence or limited licence, as the case may be, subject to such terms, conditions or limitations as the Committee specifies, if the Committee determines on reasonable grounds that the terms, condi-

tions or limitations are necessary in order to ensure that the applicant will engage in the practice of professional engineering or in the business of providing services that are within the practice of professional engineering with competence and integrity. 2010, c. 16, Sched. 2, s. 5(37).

Opportunity to show compliance

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

Complaints Committee

- 23.(1) The Complaints Committee is continued and shall be composed of the following persons appointed by the Council:
1. At least one person who is either,
 - i a member of the Council appointed by the Lieutenant Governor in Council, or
 - ii a person who is neither a member of the Council nor a member of the Association, and approved by the Attorney General.
 2. At least two members of the Association. 2010, c. 16, Sched. 2, s. 5(43).

Quorum

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

Complaints Review Councillor

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

Powers of Complaints Review Councillor

Examination by Complaints Review Councillor

- 26.(1) The Complaints Review Councillor may examine from time to time the procedures for the treat-

ment of complaints by the Complaints Committee. R.S.O. 1990, c. P.28, s. 26(1); 2010, c. 16, Sched. 2, s. 5(46).

Notice of application

26.(3.1) A complainant who applies for a review under subsection (2) or (3) shall give the person complained against notice of the application. 2010, c. 16, Sched. 2, s. 5(47).

No inquiry into merits

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

Discretionary power of Complaints Review Councillor

26.(5) The Complaints Review Councillor may decide not to make or continue a review under subsection (2) or (3) if, ...
R.S.O. 1990, c. P.28, s. 26(5); 2010, c. 16, Sched. 2, s. 5(49).

26.(5) (a) the review is or would be in respect of the treatment of a complaint that was disposed of by the Complaints Committee more than twelve months before the matter came to the attention of the Complaints Review Councillor; or
R.S.O. 1990, c. P.28, s. 26(5); 2010, c. 16, Sched. 2, s. 5(50).

Notice, no review

26.(5.1) If the Complaints Review Councillor decides under subsection (5) not to make or continue a review, he or she shall give notice of the decision to the Complaints Committee, to the complainant and to the person complained against. 2010, c. 16, Sched. 2, s. 5(51).

Notice of examination or review

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

Privacy

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

Receipt of information

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

Hearing not required

26.(10) The Complaints Review Councillor is not required to hold or to afford to any person an opportunity for a hearing in relation to an examination, review or report under this section. R.S.O. 1990, c. P.28, s. 26(10); 2010, c. 16, Sched. 2, s. 5(55).

Duty to provide information

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

Report

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

Report re-examination

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

Report re review

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

Report to Minister

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

Recommendations

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

Consideration of report by Council

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

Consideration of report by Complaints Committee

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

Professional misconduct

28.(2) A member of the Association or a holder of a certificate of authorization, a temporary licence, a provisional licence or a limited licence may be found guilty of professional misconduct by the Committee if,
 (a) the member or holder has been found guilty of an offence relevant to suitability to practise, upon proof of such conviction; or
 R.S.O. 1990, c. P.28, s. 28(2); 2001, c. 9, Sched. B, s. 11(36); 2010, c. 16, Sched. 2, s. 5(62).

Procedure

32.(4) Where the Fees Mediation Committee acts as arbitrator under subsection (3), the *Arbitration Act, 1991* does

not apply. R.S.O. 1990, c. P.28, s. 32(4); 2010, c. 16, Sched. 2, s. 5(63).

The following is the new text of a section of the French version of the act amended as of October 25.

Conditions

15.(4) Dans le cas où les services relevant de l'exercice de la profession d'ingénieur fournis par le titulaire d'un certificat d'autorisation sont placés sous la responsabilité et la surveillance du titulaire d'un permis temporaire, le certificat d'autorisation est subordonné aux conditions prescrites par règlement qui s'appliquent au permis temporaire. L.R.O. 1990, chap. P.28, par. 15(4); 2010, c. 16, Sched. 2, s. 5(25).

CHANGES TO THE ACT EFFECTIVE AT A FUTURE DATE

The following is the text of amended or new sections of the act that will come into force on a day to be named by proclamation of the lieutenant governor.

Definitions

1. In this Act, ...
 "provisional licence" means a provisional licence to engage in the practice of professional engineering issued under this Act; ("permis provisoire"). 2010, c. 16, Sched. 2, s. 5(2).

Regulations

- 7.(1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,
- 5. respecting the composition of the committees required by this Act, other than the Complaints Committee, the Discipline Committee and the Registration Committee, the mechanism of the appointment of members of the committees and procedures ancillary to those specified in this Act in respect of any committee; 2010, c. 16, Sched. 2, s. 5(7).
- 7.(1) 7. prescribing the quorums of the committees required by this Act other than the Complaints Committee, the Discipline Committee and the Registration Committee; 2010, c. 16, Sched. 2, s. 5(8).
- 7.(1) 8. governing persons as engineering interns under section 20.1, including setting out the academic

requirements necessary for acceptance as an engineering intern and the rights and privileges of engineering interns, and prescribing and governing other classes of persons whose interests are related to those of the Association; 2010, c. 16, Sched. 2, s. 5(9).

7.(1) 25. REPEALED: 2010, c. 16, Sched. 2, s. 5(13).

7.(1) 34. prescribing provisions of the *Not for Profit Corporations Act, 2010* that apply to the Association. 2010, c. 15, s. 238(1).

By-laws

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

16. specifying the amount and requiring the payment of,
 - i fees, including annual fees, by holders of licences, certificates of authorization, temporary licences, provisional licences and limited licences, and by engineering interns, students and members of other classes of persons prescribed under paragraph 8 of subsection 7(1),
 - ii fees for registration, designations, examinations and continuing education,
 - iii fees for anything the Registrar is required or authorized to do, and
 - iv penalties for late payment of any of the fees; 2010, c. 16, Sched. 2, s. 5(15).

Exceptions

12.(3) Subsections (1) and (2) do not apply to prevent a person,

- (a) REPEALED: 2010, c. 16, Sched. 2, s. 5(17).

12.(3) (b) from doing an act that is within the practice of professional engineering where a professional engineer or limited licence holder assumes responsibility for the services within the practice of professional engineering to which the act is related; 2010, c. 16, Sched. 2, s. 5(18).

Provisional licence

14.(7) REPEALED: 2010, c. 16, Sched. 2, s. 5(24).

Same

15.(4.1) Where the holder of a limited licence assumes responsibility for and supervises the practice of professional engineering related to the services provided by the holder of a certificate of authorization, the certificate of authorization is subject to the same terms and conditions prescribed by the regulations that apply to the limited licence. 2010, c. 16, Sched. 2, s. 5(26).

Suspension of effect of certificate of authorization

15.(5) A holder of a certificate of authorization ceases to be entitled to offer to the public or to provide to the public services that are within the practice of professional engineering as soon as there is no holder of a licence, temporary licence or limited licence who assumes responsibility for and supervises the practice of professional engineering provided by the holder of the certificate of authorization. 2010, c. 16, Sched. 2, s. 5(27).

Notice to Registrar by holder of certificate of authorization

15.(6) The holder of a certificate of authorization must give notice to the Registrar when there ceases to be a holder of a licence, temporary licence or limited licence who assumes responsibility for and supervises the practice of professional engineering by the holder of the certificate of authorization and when the holder of the certificate of authorization designates another holder of a licence, temporary licence or limited licence to assume such responsibility and carry out such supervision. 2010, c. 16, Sched. 2, s. 5(28).

Notice to Registrar by person in position of professional responsibility

15.(7) A holder of a licence, temporary licence or limited licence who ceases to be responsible for and to supervise the practice of professional engineering by a holder of a certificate of authorization as the person so designated by the holder of the certificate of authorization shall give notice of the cessation forthwith to the Registrar. R.S.O. 1990, 2010, c. 16, Sched. 2, s. 5(29).

Supervision under certificate of authorization

17.(1) It is a condition of every certificate of authorization that the holder of the certificate shall provide services that are within the practice of professional engineering only under the personal supervision and direction

of a holder of a licence, temporary licence, or limited licence. 2010, s. 16, Sched. 2, s. 5(30).

Professional responsibility of supervising engineer

17.(2) A holder of a licence, temporary licence or limited licence who personally supervises and directs the providing of services within the practice of professional engineering by a holder of a certificate of authorization or who assumes responsibility for and supervises the practice of professional engineering related to the providing of services by a holder of a certificate of authorization is subject to the same standards of professional conduct and competence in respect of the services and the related practice of professional engineering as if the services were provided or the practice of professional engineering was engaged in by the holder of a licence, temporary licence or limited licence. 2010, c. 16, Sched. 2, s. 5(31).

Referral to committee

18.(3) Subsections 14(3) to (6) (which relate to the Academic Requirements Committee and the Experience Requirements Committee) apply with necessary modifications in respect of an applicant for a temporary licence, a provisional licence or a limited licence. 2010, c. 16, Sched. 2, s. 5(33).

Registration Committee

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

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

Quorum

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

Chair, vice-chair

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

Same

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

Engineering interns

20.1(1) The Registrar shall accept as an engineering intern any applicant for a licence, if,

- (a) in submitting the application for a licence, the applicant requests in writing to become an engineering intern;
- (b) the applicant is enrolled in the Association's engineering intern training program; and
- (c) the applicant meets the academic requirements prescribed by the regulations. 2010, c. 16, Sched. 2, s. 5(40).

Revocation for non-payment

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

Termination

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

Registers

21.(1) The Registrar shall maintain one or more registers containing the following information:

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

Cancellation for default of fees

22.(1) The Registrar may cancel a licence, certificate of authorization, temporary licence, provisional licence or limited licence for non-payment of any fee payable under this Act after giving the member or the holder of the certificate of authorization, temporary licence, provisional licence or limited licence at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the Association in respect of any disciplinary action arising out of the person's professional conduct while a member or holder. R.S.O. 1990, c. P.28, s. 22(1); 2001, c. 9, Sched. B, s. 11(28); 2010, c. 16, Sched. 2, s. 5(42).

Discipline Committee

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

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

Quorum

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

Chair, vice-chair

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

Same

- (4) Any power, duty or function of the chair of the Discipline Committee may be exercised by the vice-

chair, if the chair is absent or unable to act. 2010, c. 16, Sched. 2, s. 5(59).

Referral to panel

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

Powers of panel

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

Majority required

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

Inability to act

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

Transition

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

Repeal

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

Reference by Council or Executive Committee

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

Duties of Discipline Committee

28. The Discipline Committee shall, ...
 (b) hear and determine matters referred to it under section 24, 27.1 or 37; and
 2010, c. 16, Sched. 2, s. 5(61).

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

- 40.(3.1) Every person who is not the holder of the engineering technologist class of limited licence prescribed under subparagraph 9 v.2 of subsection 7(1) and who uses the title "Licensed Engineering Technologist" or "technologue en ingénierie titulaire de permis" or the initials "LET" or "TITP" in a manner that will lead to a belief that the person is the holder of the engineering technologist class of limited licence is guilty of an offence, and on conviction is liable for the first offence to a fine of not more than \$10,000 and for each subsequent offence to a fine of not more than \$25,000. 2010, c. 16, Sched. 2, s. 5(64).

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

- (3.2) Every person who is not an engineering intern under section 20.1 and who uses any of the following terms, titles or descriptions in a manner that will lead to a belief that the person is an engineering intern under that section is guilty of an offence, and on conviction is liable for the first offence to a fine of not more than \$10,000 and for each subsequent offence to a fine of not more than \$25,000:
1. The title "engineering intern" or "stagiaire en ingénierie" or any abbreviation or variation of the title.
 2. The initials "EIT" or "SI".

3. Any other term, title or description that will lead to the belief that the person is an engineering intern under section 20.1. 2010, c. 16, Sched. 2, s. 5(64).

Liability of partners

- 40.(6) Where a person who is guilty of an offence under subsection (1), (2), (3), (3.1), (3.2) or (4) is a member or an employee of a partnership, every member of the partnership who authorizes, permits or acquiesces in the offence is guilty of an offence and on conviction is liable to a fine of not more than \$50,000. 2010, c. 16, Sched. 2, s. 5(65).

Limitation

- 40.(7) Proceedings shall not be commenced in respect of an offence under subsection (1), (2), (3), (3.1), (3.2) (4), (5) or (6) after two years after the date on which the offence was, or is alleged to have been, committed. 2010, c. 16, Sched. 2, s. 5(66).

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

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