

1980

c 394 Professional Engineers Act

Ontario

© Queen's Printer for Ontario, 1980

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/rso>

Bibliographic Citation

Professional Engineers Act, RSO 1980, c 394

Repository Citation

Ontario (1980) "c 394 Professional Engineers Act," *Ontario: Revised Statutes*: Vol. 1980: Iss. 6, Article 34.

Available at: <http://digitalcommons.osgoode.yorku.ca/rso/vol1980/iss6/34>

CHAPTER 394

Professional Engineers Act

INTERPRETATION

1. In this Act,

Inter-
pretation

- (a) "Association" means the Association of Professional Engineers of the Province of Ontario;
- (b) "by-law" means a by-law of the Association;
- (c) "chapter" means a group of members constituted and governed by by-law;
- (d) "council" means the council of the Association;
- (e) "graduate" means a graduate of a university or other educational institution in a course in any branch of engineering or science, the practice of which constitutes professional engineering and which is recognized by the council;
- (f) "licence" means a licence to practise professional engineering issued under this Act;
- (g) "licensee" means a person who holds a subsisting licence;
- (h) "member" means a member of the Association;
- (i) "practice of professional engineering" means the doing of one or more acts of advising on, reporting on, designing of or supervising of the construction of, all public utilities, industrial works, railways, tramways, bridges, tunnels, highways, roads, canals, harbour works, lighthouses, river improvements, wet docks, dry docks, floating docks, dredges, cranes, drainage works, irrigation works, waterworks, water purification plants, sewerage works, sewage disposal works, incinerators, hydraulic works, power transmission systems, steel, concrete or reinforced concrete structures, electric lighting systems, electric power plants, electric machinery, electric or electronic apparatus, electrical or electronic communication

systems or equipment, mineral property, mining machinery, mining development, mining operations, gas or oil developments, smelters, refineries, metallurgical machinery, or equipment or apparatus for carrying out such operations, machinery, boilers or their auxiliaries, steam engines, hydraulic turbines, pumps, internal combustion engines or other mechanical structures, chemical or metallurgical machinery, apparatus or processes, or aircraft, and generally all other engineering works including the engineering works and installations relating to airports, airfields or landing strips or relating to town and community planning;

- (j) "professional engineer" means a person who is a member or licensee;
- (k) "region" means a geographical area of Ontario as defined by by-law;
- (l) "register" means the record of registrants maintained by the registrar;
- (m) "registrant" means a person recorded in the register as a member, licensee, an assistant to a professional engineer, a graduate or an undergraduate;
- (n) "registrar" means the registrar of the Association;
- (o) "regulation" means a regulation of the Association;
- (p) "undergraduate" means a student enrolled at but not graduated from a university or other educational institution in a course in any branch of engineering or science, the practice of which constitutes professional engineering and that is recognized by the council. R.S.O. 1970, c. 366, s. 1.

Activities
not affected

2. Nothing in this Act prevents,

- (a) any person from performing his duties in the Canadian Forces;
- (b) any member or licensee of the Ontario Association of Architects under the *Architects Act* or any employee of such member or licensee acting under the direction and responsibility of such member or licensee from performing professional engineering services in the course of any work undertaken or proposed to be undertaken by such member or licensee as an architect;

R.S.O. 1980,
c. 26

- (c) any person who holds a certificate of qualification under the *Operating Engineers Act* from practising or designating himself as an operating engineer; R.S.O. 1980, c. 363
- (d) any person from practising as a bacteriologist, chemist, geologist, mineralogist or physicist;
- (e) any person from advising on or reporting on any mineral property or prospect;
- (f) any person from operating, executing or supervising any works as owner, contractor, superintendent, foreman, inspector or master,

or requires any such person to become registered or licensed under this Act in order to do any such thing. R.S.O. 1970, c. 366, s. 2.

ASSOCIATION

3.—(1) The body politic and corporate known as the "Association of Professional Engineers of the Province of Ontario" incorporated under *The Professional Engineers Act, 1922* is hereby continued. Association continued 1922, c. 59

(2) All persons who were members of the Association on the 1st day of August, 1969 or who have been admitted as members since that day constitute the Association. Members

(3) The objects of the Association are, Objects

- (a) to regulate the practice of professional engineering and to govern the profession in accordance with this Act, the regulations and the by-laws;
- (b) to establish and maintain standards of knowledge and skill among its members; and
- (c) to establish and maintain standards of professional ethics among its members,

in order that the public interest may be served and protected. R.S.O. 1970, c. 366, s. 3 (1-3).

(4) The head office of the Association shall be in The Municipality of Metropolitan Toronto. 1972, c. 45, s. 1. Head office

(5) The Association may purchase, acquire or take by gift, devise or bequest for the purposes of the Association and the furtherance of its objects, but for no other purposes Property

or objects, any real or personal property, and may sell, mortgage, lease or otherwise dispose of any such property. R.S.O. 1970, c. 366, s. 3 (5).

COUNCIL

Council

4.—(1) There shall be a council which shall consist of a president, a first vice-president, a second vice-president, an immediate past president, two elected councillors-at-large, ten elected regional councillors and five appointed councillors, all of whom shall be members and residents of Ontario.

President
and vice-
presidents

(2) The president and the vice-presidents shall have such qualifications as are prescribed by by-law and shall be elected annually by vote of the members.

Councillors-
at-large

(3) One councillor-at-large shall be elected each year for a two-year term by vote of the members.

Regional
councillors

(4) There shall be elected from each of the five regions established and defined by by-law two regional councillors, one to be elected from each region each year for a two-year term by vote of the members who are recorded as residents in that region at the time the election is held.

Appointed
councillors

(5) The five appointed councillors shall be appointed by the Lieutenant Governor in Council for a term of three years and shall be qualified respectively in the following fields of engineering:

1. Civil.
2. Mechanical, Aeronautical and Industrial.
3. Electrical.
4. Chemical and Metallurgical.
5. Mining and Geology.

Lay
councillor:
legal
councillor

(6) In addition to the councillors mentioned in subsection (1), the Lieutenant Governor in Council may appoint as councillors,

- (a) a person who is not a member; and
- (b) a person who is a barrister and solicitor of at least ten years standing at the bar of Ontario,

both of whom are residents of Ontario.

(7) Persons appointed under subsection (6) shall serve for ^{Term} a term of three years but are eligible for reappointment.

(8) Where the president, a vice-president or a councillor ^{Vacancies} resigns, is absent from three consecutive meetings of the council, becomes incapacitated or dies, the office may be declared vacant by the council, and, if such office should be declared vacant, except in a case of a councillor appointed by the Lieutenant Governor in Council, the council shall fill the vacancy in such manner as is provided by by-law, and in the case of a vacancy in the office of a councillor appointed by the Lieutenant Governor in Council, the Lieutenant Governor in Council may fill the vacancy by appointment of a person of the same class as the councillor causing the vacancy.

(9) No person shall be appointed or elected to the ^{Councillors to be Canadians} council unless he is a Canadian citizen or other British subject, and no person shall continue to hold any such office if he ceases to be so qualified. R.S.O. 1970, c. 366, s. 4.

5. The council,

(a) shall appoint a registrar and a treasurer; and

(b) may appoint a secretary, an executive director and such other officials as the council considers appropriate,

**Registrar,
treasurer,
secretary,
executive
director**

and any two or more of such offices may be held by one person. R.S.O. 1970, c. 366, s. 5.

6. No action or other proceedings for damages shall be instituted against the council, or any member or official of the council or any person appointed by the council for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of any such duty or power. R.S.O. 1970, c. 366, s. 6.

**Liability
of council,
officers and
members**

7.—(1) The council may make regulations respecting ^{Regulations} any matter that is outside the scope of the power to pass by-laws specified in section 8 and, without limiting the generality of the foregoing,

(a) prescribing the scope and conduct of examinations of candidates for registration;

- (b) prescribing the form of the summons referred to in subsection 25 (10);
- (c) respecting the practice and procedure for hearings held under this Act;
- (d) defining "professional misconduct" for the purpose of this Act and the regulations;
- (e) defining classes of specialists in the various fields of engineering;
- (f) prescribing the qualifications required of specialists or any class thereof;
- (g) providing for the designation of specialists upon application and examination or otherwise, for the suspension or revocation of such designations, and for the regulation and prohibition of the use of terms, titles or designations by professional engineers indicating specialization in any field of engineering;
- (h) regulating and prohibiting the use of terms, titles or designations by professional engineers in independent practice.

Approvals

(2) No regulation is effective,

- (a) until it has been submitted to the members for approval by means of a letter ballot returnable within thirty days after the mailing thereof and it has been approved by a majority of those voting within the prescribed time; and
- (b) until it has been approved by the Lieutenant Governor in Council. R.S.O. 1970, c. 366, s. 7.

By-laws

8.—(1) The council may pass by-laws relating to the administrative and domestic affairs of the Association, and, without limiting the generality of the foregoing,

- (a) respecting the determination and modification of the boundaries of regions and the determination of regions in which members shall be deemed to reside for the purposes of the election of councillors;
- (b) prescribing procedures for the nomination and election of the councillors and the nomination and election of the president and the vice-presidents and the qualifications necessary to hold any such office;

- (c) prescribing the duties of the councillors and rules governing their conduct;
- (d) respecting the remuneration and reimbursement of members of the council;
- (e) respecting the calling, holding and conduct of meetings of the council and the Association;
- (f) providing for the establishment and regulation of chapters;
- (g) respecting the management of the property of the Association;
- (h) providing for the borrowing of money on the credit of the Association and the charging, mortgaging, hypothecating or pledging of any of the real or personal property of the Association to secure any money borrowed or other debt or any other obligation or liability of the Association;
- (i) respecting the application of the funds of the Association, and the investment and reinvestment of any of its funds not immediately required in any investments that may from time to time be authorized investments for joint stock insurance companies and cash mutual insurance corporations under the *Corporations Act*;
- (j) defining the composition and functions of the board of examiners;
- (k) providing for the establishment of scholarships, bursaries and prizes;
- (l) providing for the appointment of committees of the council and defining their composition and functions;
- (m) providing for the closing of the register and the restriction of recording changes of addresses of the registrants for a period of time not exceeding forty-eight hours, exclusive of Sundays and holidays, immediately preceding any meeting of the members or any election;

- (n) respecting the registration of members and the recording of licensees, graduates, undergraduates and assistants to professional engineers;
- (o) for maintaining a system for the recording of registrants, their residence addresses and the regions in which they are resident and for the recording of the names of official representatives of partnerships, associations of persons or corporations;
- (p) providing for services to encourage and assist members in the development of their professional competence and conduct and in carrying on the practice of professional engineering;
- (q) fixing and providing for levying and collecting or remitting annual and other fees, levies and assessments;
- (r) prescribing forms and providing for their use;
- (s) respecting all other things that are deemed necessary or convenient for the attainment of the objects of the Association and the efficient conduct of its business.

Approval

(2) No by-law is effective until it has been submitted to the members for approval by means of a letter ballot returnable within thirty days after the mailing thereof and unless it has been approved by a majority of those voting within the prescribed time.

Construction

(3) As between a registrant and the Association, the ruling of the council on the construction and interpretation of any by-law is final. R.S.O. 1970, c. 366, s. 8.

Code of ethics

9.—(1) The council shall prepare and publish from time to time a code of ethics containing standards of conduct designed for the protection of the public, which standards members and licensees must subscribe to and follow in the practice of professional engineering.

Copies

(2) Copies of the code of ethics shall be sent to the members and licensees and shall be available free of charge to members of the public who apply therefor. R.S.O. 1970, c. 366, s. 9.

Canadian Council of Professional Engineers

10. The council may authorize participation by the Association in the activities of the Canadian Council of Professional Engineers, as a constituent association thereof. R.S.O. 1970, c. 366, s. 10.

MEMBERSHIP

11.—(1) Any applicant for membership who,

Qualification
for
membership

(a) resides,

(i) in Ontario,

(ii) out of Ontario and is employed for an indefinite period as a full-time employee of an employer having works or facilities in Ontario and is required by the terms of his employment to practise professional engineering in respect of such works or facilities or has a place of employment in Ontario and practises or proposes to practise professional engineering in Ontario on a full-time basis;

(b) is twenty-one or more years of age;

(c) has passed the examinations prescribed by the council or is exempted therefrom pursuant to subsection (3) or (6);

(d) has had six or more years of experience in engineering work satisfactory to the council; and

(e) provides satisfactory evidence of good character,

shall be admitted as a member by the council.

(2) Each applicant for membership shall submit upon the prescribed form evidence of his educational qualifications and engineering experience, information as to his residence and at least three references as to his character and engineering experience, and he may be required by the council to verify the statements set out in his application by affidavit.

Evidence of
qualification

(3) The council may exempt an applicant from any of the examinations mentioned in clause (1) (c) if the council is of the opinion that the applicant has adequate academic and other qualifications.

Credit for
academic
and other
qualifica-
tions

(4) Where the applicant is a graduate, upon presenting evidence of the actual time during which he was under instruction as an undergraduate in a university, the council shall grant him the time spent under such instruction in reduction of the six-year period of engineering experience required by clause (1) (d), but only in so far as the total exemption granted does not exceed four years.

Credit for
time spent
at a
university

Board of
examiners
to consider
applications

(5) The council may for the purpose of subsection (3) or (4) require the board of examiners to consider and make recommendations to the council with respect to any application for exemption, including an application for exemption of a graduate in honours science. R.S.O. 1970, c. 366, s. 11.

Admission
of members
to consider
associations

12. The council may, upon application and satisfactory proof of residence, admit as a member any person who resides in Ontario, or who resides out of Ontario under the circumstances set out in subclause 11 (1) (a) (ii), and who furnishes satisfactory proof,

- (a) that he is a member of an association of professional engineers in another province or a territory of Canada that has objects similar to those of the Association and requirements for membership no less exacting than those in effect in Ontario; or
- (b) that he is a member of an association of professional engineers in another part of the Commonwealth or in the United States of America that has objects similar to those of the Association and requirements for membership no less exacting than those in effect in Ontario. R.S.O. 1970, c. 366, s. 12.

Students
and
assistants

13.—(1) Persons who are engaged as assistants to professional engineers in categories recognized by the council and graduates and undergraduates who have not completed the period of engineering experience required by this Act and who contemplate applying for membership on the completion of the period of engineering experience may, upon application in the prescribed form, be recorded in the register but not as members of the Association until fully qualified, and upon being so recorded are subject to the control of the council in accordance with this Act, the regulations and the by-laws.

Deletion
of names

(2) Any registrant whose name is recorded in the register pursuant to subsection (1) may, upon application, have his name deleted from the register. R.S.O. 1970, c. 366, s. 13.

Annual fee

14.—(1) The annual fee from a registrant shall be deemed to be a debt due to the Association and is recoverable from him in the name of the Association in any court of competent jurisdiction.

Non-
payment of
annual fee

(2) Where the annual fee is not paid within six months from the date upon which it became due, the treasurer shall send a written notice of such default by prepaid mail

addressed to the registrant's latest address as shown on the register, and, if payment is not made within one month thereafter, the registrar, upon the direction of the council, shall delete or cause the name of the registrant to be deleted from the register, and thereupon the registrant ceases to be a member, a licensee, an assistant to a professional engineer, or a graduate or undergraduate recorded pursuant to section 13, as the case may be. R.S.O. 1970, c. 366, s. 14.

15. Any member who intends to withdraw from the practice of professional engineering and whose fees are paid up shall send written notice thereof to the registrar, whereupon the registrar shall delete his name from the register. R.S.O. 1970, c. 366, s. 15. Resignations

16. Any person who ceased to be a member under subsection 14 (2), upon payment of the fees owing at the time he ceased to be a member and the fee for the current year, or any person whose name has been deleted from the register under section 15, upon payment of the fee for the current year, and, in either case, upon production of evidence of good character satisfactory in the council, shall, upon the direction of the council, have his name restored on the register. R.S.O. 1970, c. 366, s. 16. Restorations

LICENSING

17.—(1) The registrar may upon application issue a licence to any person who resides in Canada but not in Ontario and who furnishes satisfactory proof that he is a member of an association of professional engineers in another province or a territory of Canada that has objects similar to those of the Association. Issue of licences to members of associations of other provinces

(2) Any person who does not reside in Canada but who in the opinion of the council is a consulting specialist in a field of professional engineering who has had not less than ten years experience in the practice of his profession, or who furnishes satisfactory evidence that he has qualifications at least equal to those required for registration as a professional engineer in Ontario, may, with the approval of the council, be issued a licence. Issue of licences to consulting specialists

(3) Any person practising or proposing to practise professional engineering in Ontario who resides in a province or territory of Canada in which there is no association of professional engineers that has objects similar to those of the Association, may, with the approval of the council, be issued a licence. Issue of licences to persons from provinces without associations

Practise by applicant for a licence

(4) Where an applicant for a licence fails to obtain it promptly for any reason unrelated to his professional capacity or his own neglect, he may practise professional engineering in Ontario for a period of not more than three months without a licence.

Licence to be issued by the registrar

(5) The registrar shall issue a licence in the prescribed form to any person entitled thereto and shall specify therein the work upon which and the name of the employer in Ontario by whom the holder of the licence is to be employed and the period for which it is issued, but in no case shall the period extend beyond the end of the calendar year in which the licence is issued.

Additional condition

(6) The council may direct that any licence issued under subsection (2) shall, in addition to the conditions mentioned in subsection (5), contain a condition that the licensee may practise professional engineering in Ontario only in collaboration with a member who shall sign and seal any plans and specifications together with the licensee. R.S.O. 1970, c. 366, s. 17.

Where licence not required

18. Any person who is employed as a professional engineer by a public service corporation carrying on an interprovincial undertaking or by the Government of Canada and who is by reason of his employment required to practise professional engineering in a province or territory of Canada other than that of his residence may practise professional engineering in Ontario without a licence, but he shall on demand of the council furnish satisfactory evidence that he is a member of an association of professional engineers in another province or a territory of Canada that has objects similar to those of the Association. R.S.O. 1970, c. 366, s. 18.

Seals, members

19.—(1) Every member shall have a seal of a design approved by the council, the impression of which shall contain the name of the engineer and the words "Registered Professional Engineer" and "Province of Ontario".

Idem, licensees

(2) Every licensee shall have a seal of a design approved by the council, the impression of which shall contain the name of the licensee and the words "Licensed Professional Engineer" and "Province of Ontario".

Signature and use of seal

(3) All final drawings, specifications, plans, reports and other documents involving the practice of professional engineering when issued shall bear the signature and seal of the professional engineer who prepared or approved them. R.S.O. 1970, c. 366, s. 19.

PARTNERSHIPS, CORPORATIONS

20.—(1) No partnership, association of persons or corporation as such shall be a member or a licensee, or shall, except as authorized by this section, practise professional engineering. Practice prohibited by partnerships and corporations

(2) A partnership, association of persons or corporation that holds a certificate of authorization may, in its own name, practise professional engineering, Certificates of authorization

- (a) if one of its principal or customary functions is to engage in the practice of professional engineering; and
- (b) if the practice of professional engineering is done under the responsibility and supervision of a member of the partnership or association of persons, or of a director or full-time employee of the corporation, as the case may be, who,
 - (i) is a member, or
 - (ii) is a licensee, in which case the practice of professional engineering shall be restricted to the work specified in the licence of the licensee.

(3) A partnership, association of persons or corporation that desires a certificate of authorization shall submit to the registrar an application in the prescribed form containing, Applications for certificates

- (a) the names and addresses of all its partners, members, officers or directors, as the case may be;
- (b) the names of all its partners, members of associations of persons, directors of corporations, or full-time employees of corporations, as the case may be, who are the members or licensees who will be in charge of professional engineering on its behalf;
- (c) from among the names specified under clause (b) the name or names of its official representative or representatives whose duty it is to ensure that this Act, and the regulations and the by-laws are complied with by the partnership, the association of persons or the corporation, as the case may be,

and shall, whenever there is a change in the particulars given in its application, give notice of the change to the registrar within thirty days after the effective date of the change.

Issue of
certificates

(4) If subsection (3) is complied with, the registrar shall issue to the applicant a certificate of authorization.

Ipsa facto
revocation of
certificate

(5) Where the holder of a certificate of authorization ceases to have any official representative, the certificate is *ipso facto* revoked, and the partnership, association of persons or corporation shall not practise professional engineering until a new certificate of authorization is issued.

Reprimand
of licensee,
etc.

(6) Where the council finds that the holder of a certificate of authorization has failed to observe any of the provisions of this section or has been guilty of conduct that would, in the case of a member or licensee, have been professional misconduct, the council may reprimand the holder or suspend or revoke the certificate of authorization.

Application
of ss. 24-26

(7) Sections 24, 25 and 26 apply with necessary modifications to the refusal to issue a certificate of authorization and to the revocation or suspension of a certificate of authorization. R.S.O. 1970, c. 366, s. 20.

EXAMINATIONS

Board

21.—(1) The council shall appoint annually a board of examiners.

Central
examining
board

(2) The council may establish conjointly with the council of any association in one or more of the provinces or territories of Canada that has objects similar to those of the Association a central examining board and may delegate to the central examining board all or any of the powers of the council respecting the examination of candidates for admission as members, but any examinations conducted by the central examining board shall be held in at least one place in Ontario. R.S.O. 1970, c. 366, s. 21.

REGISTRAR

Registrar
to record
members,
etc.

22.—(1) The registrar shall register in a system of recording approved by the council the names of the members, the licensees, the assistants to professional engineers, and the graduates and the undergraduates.

Registrar
to be
correct

(2) The registrar shall keep the register correct and in accordance with this Act, the regulations and the by-laws.

Evidence of
membership

(3) The certificate of the registrar respecting the registration of a person is *prima facie* evidence of the facts certified to therein.

(4) The registrar shall send to the Lieutenant Governor ^{Quarterly report} in Council quarterly as of the last days of March, June, September and December in each year a report containing, with respect to the immediately preceding three-month period, the names of the persons,

- (a) who have been granted partial exemption from examinations;
- (b) who have been granted no exemption from examinations;
- (c) who have been refused permission to write examinations; or
- (d) who have not been admitted to membership in the Association because,
 - (i) their experience in engineering work was not satisfactory to the council, or
 - (ii) they did not provide satisfactory evidence of good character,

giving, in each case, the reason for the decision, together with such further information and particulars with respect to such matters as the Lieutenant Governor in Council may require. R.S.O. 1970, c. 366, s. 22.

23.—(1) The registrar shall issue to each member admitted to the Association a certificate of membership ^{Certificate of membership} signed by the president or a vice-president and by the registrar, and bearing the seal of the Association.

(2) Every member shall keep his certificate of membership ^{Certificate to be displayed} prominently displayed in his place of business. R.S.O. 1970, c. 366, s. 23.

HEARINGS, UPON APPLICATION

24.—(1) Where an applicant for membership or a licence has met the academic and experience requirements, or an applicant for restoration of his name on the register has paid the required fees and has produced the required evidence of good character, and his application is refused, ^{Hearing where application for membership, etc., refused} the council shall, upon the written request of the applicant received by the registrar within fifteen days of the receipt by the applicant of written notice of the refusal, conduct a hearing of the matter.

Conduct of
hearing

(2) Section 25 applies with necessary modifications to any hearing conducted under this section except that upon any such hearing the council may make findings of fact by such standards of proof as are commonly relied upon by reasonable and prudent men in the conduct of their own affairs. R.S.O. 1970, c. 366, s. 24.

HEARINGS, DISCIPLINARY

Powers of
council to
discipline
members

25.—(1) Subject to subsection (2), where the council finds that a person who is a member or licensee is guilty of professional misconduct or has obtained registration as a member or has been issued a licence by reason of misrepresentation by such person, the council may by order do one or more of the following:

1. Reprimand such person and, if considered proper, direct that the fact of the reprimand be recorded on the register.
2. Suspend the membership or licence of such person for such time as the council considers proper and direct that the reinstatement of such membership or licence on the termination of such suspension be subject to such conditions, if any, as the council considers proper.
3. Direct that the imposition of any penalty be suspended or postponed for such period and upon such terms as the council considers proper and that at the end of such period and upon the compliance with such terms any penalty be remitted.
4. Direct that the membership or licence of such person be cancelled and that the name of such person be removed from the register.
5. Direct that the decision of the council be published in detail or in summary in the official journal of the Association or in such other manner or medium as the council considers appropriate in any particular case.
6. Direct that, where it appears that the proceedings were unwarranted, such costs as to the council seem just be paid by the Association to the member or licensee whose conduct was the subject of such proceedings.

(2) The council shall not take any action under sub-section (1) unless, Complaint and hearing

(a) a complaint under oath has been filed with the registrar and a copy thereof has been served on the person whose conduct is being investigated;

(b) the person whose conduct is being investigated has been served with a notice of the time and place of the hearing; and

(c) the council has heard evidence of or on behalf of the complainant and, if the person whose conduct is being investigated appears at the hearing and so requests, has heard his evidence or evidence on his behalf and has reached the decision that he is guilty.

(3) Any person presiding at a hearing may administer oaths to witnesses and require them to give evidence under oath. Power to take sworn evidence

(4) If the person whose conduct is being investigated fails to appear in answer to the notice at the time and place appointed, the hearing may be conducted in his absence. Failure to appear

(5) Hearings shall be held *in camera*, but if the person whose conduct is being investigated requests otherwise by a notice in writing delivered to the registrar before the day fixed for the hearing, the council shall conduct the hearing in public or otherwise as it considers proper. Disciplinary hearings to be held in camera

(6) The council may adjourn any hearing at any time and from time to time. Adjournments

(7) A person whose conduct is being investigated, if present in person at the hearing, has the right to be represented by counsel or agent, to adduce evidence and to make submissions, and any such person may be compelled to attend and give evidence in the manner provided in subsection (10), but such person shall be advised of his right to object to answer any question under section 9 of the *Evidence Act* and section 5 of the *Canada Evidence Act*. Attendance of person being investigated

R.S.O. 1980, c. 145
R.S.C. 1970, c. E-10

(8) The oral evidence submitted at a hearing shall be taken down in writing or by any other method authorized by the *Evidence Act*. Hearing of evidence

(9) The rules of evidence applicable in civil proceedings are applicable at hearings, but at a hearing members of Rules of evidence

the council may take notice of generally recognized technical or scientific facts or opinions within the specialized knowledge of members of the council if the person whose conduct is being investigated has been informed before or during the hearing of any such matters noticed and he has been given an opportunity to contest the material so noticed.

Summons
to witness

(10) The president, a vice-president, the immediate past president or the registrar may, and the registrar upon application of a person whose conduct is being investigated shall, issue a summons in the form prescribed by regulation, commanding the attendance and examination of any person as a witness, and the production of any document the production of which could be compelled at the trial of an action, to appear before the council at the time and place mentioned in the summons and stating that failure to obey the summons will render the person liable to imprisonment on an application to the Supreme Court, but the person whose attendance is required is entitled to the like conduct money and payment for expenses and loss of time as upon attendance as a witness at a trial in the Supreme Court.

Failure of
witness to
appear, etc.

(11) If any person,

- (a) on being duly summoned to appear as a witness makes default in attending; or
- (b) being in attendance as a witness refuses to take an oath legally required to be taken, or to produce any document in his power or control legally required to be produced by him, or to answer any question which he is legally required to answer; or
- (c) does any other thing which would, if the council had been a court of law having power to commit for contempt, have been contempt of that court,

the person presiding at the hearing may certify the offence of that person under his hand to the Supreme Court and the court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statements that may be offered in defence, punish or take steps for the punishment of that person in the like manner as if he had been guilty of contempt of court.

Examination
and cross-
examination

(12) At a hearing the complainant and the person whose conduct is being investigated have the right to examine the witnesses called by them respectively, and to cross-examine the witnesses opposed in interest.

(13) The decision taken after a hearing shall be in writing and shall contain or be accompanied by the reasons for the decision in which are set out the findings of fact and the conclusions of law, if any, based thereon, and a copy of the decision and the reasons therefor, together with a notice to the person whose conduct is being investigated of his right of appeal, shall be served upon him within thirty days after the date of the decision. Decisions

(14) A record shall be compiled for every hearing consisting of the complaint and the notice referred to in subsection (2), any intermediate rulings or orders made in the course of the proceedings, a transcript of the oral evidence, if a transcript has been prepared, such documentary evidence and things as were received in evidence and the decision and the reasons therefor, provided that documents and things received in evidence may be released to the persons tendering them when all appeals have been finally disposed of or the right to appeal has terminated. Record

(15) Any document required to be served under this Act upon a person whose conduct is being investigated shall be served personally upon him, but where it appears that service cannot be effected personally, the document may be served by mailing a copy thereof in a registered letter addressed to him at his last known residence or office address as shown by the records of the Association, and service shall be effected not less than ten days before the date of the hearing or the event or thing required to be done, as the case may be, and proof by affidavit of the service is sufficient. Service of documents

(16) Where a member or licensee has been suspended from practising under this section, he may, upon payment of all fees and other costs owing by him to the Association, apply to the council to be reinstated as a member or licensee, as the case may be, and the council may terminate the suspension of such member or licensee upon such terms, as it considers proper. Reinstatement after suspension

(17) A person whose membership or licence has been cancelled under this section may apply to the council for membership or for a licence, as the case may be, and the council shall, subject to subsection (18), hear the application and make such order as it considers proper and may include as a term of any such order such conditions as the council considers proper to be fulfilled before the applicant is admitted to membership or granted a licence or to be observed by such member or licensee thereafter. Re-admission after expulsion

Idem

(18) Except with the consent of the council, no application under subsection (17) shall be heard before the expiry of two years from the date of the cancellation of membership or licence or the date of the final disposition of any appeal.

Idem

(19) Upon a hearing for admission to membership or for the granting of a licence under subsection (17), the council shall follow, in so far as practicable, the procedure provided for in the case of a complaint under this section, and a former member or licensee has the same right of appeal from an order made by the council under subsection (17) as is provided in section 26.

Committee
of council

(20) The council may appoint a committee to act for and on its behalf composed of not fewer than five members of the council, one of whom shall be the president, a vice-president or the immediate past president, and may delegate to the committee all or any of its powers and duties under this section upon such terms and conditions, if any, as the council considers proper, and a decision or order of the committee is the decision or order of the council.

Practice
pending
appeal

(21) Except in the case of professional misconduct constituting incompetence on the part of the person whose conduct was investigated, the suspension or cancellation of the membership or licence of a person whose conduct was investigated under this section does not become effective until any appeal has been finally disposed of or the right of appeal has terminated. R.S.O. 1970, c. 366, s. 25.

APPEAL

Appeal

26.—(1) Any person whom the council has refused to register for membership or whose name the council has refused to restore on the register or to whom the council has refused to issue a licence or who has been reprimanded or whose membership or licence is suspended or cancelled may appeal from the order of refusal, reprimand, suspension or cancellation to the Divisional Court within fifteen days from the day upon which he is served with the order of refusal, reprimand, suspension or cancellation.

Certified
copies of
papers

(2) Upon the request of any person desiring to appeal and upon payment of the cost thereof, the registrar shall furnish such person with a certified copy of all proceedings, evidence, reports, orders and papers received as evidence by the council and any committee thereof appointed pursuant to subsection 25 (20) in dealing with and disposing of the matter complained of.

(3) If the appellant fails to pay the cost of the certified copy and the cost of such additional copies of the evidence as may be reasonably required for the purposes of the appeal within fifteen days after written demand from the registrar, the appeal shall be deemed to be abandoned. ^{Failure to pay costs}

(4) Notice of an appeal under this section shall be served upon the registrar, and the record shall consist of a copy, certified by the registrar, of the proceedings before the council or committee thereof, the evidence taken, the report of the council or committee thereof and all decisions, findings and order of the council or committee thereof in the matter. ^{Procedure and record}

(5) Upon the hearing of an appeal under this section, the Divisional Court may make such order as the court considers proper or may refer the matter or any part thereof back to the council with such directions as the court considers proper. ^{Orders}

(6) The Divisional Court may make such order as to the costs of the appeal as the court considers proper. R.S.O. 1970, c. 366, s. 26. ^{Costs}

OFFENCES

27.—(1) Every person, other than a member or a licensee, who, ^{Offences, persons}

(a) takes and uses orally or otherwise the title "Professional Engineer" or "Registered Professional Engineer" or uses any addition to or abbreviation of either such titles, or any word, name or designation that will lead to the belief that he is a professional engineer, a member or a licensee or, except as permitted by section 2, uses the title or designation "engineer" in such a manner as will lead to the belief that he is a professional engineer, a member or a licensee;

(b) advertises, holds himself out, or conducts himself in any way or by any means as a member or a licensee; or

(c) engages in the practice of professional engineering,

is guilty of an offence.

Idem

(2) Every person who,

- (a) wilfully procures or attempts to procure registration under this Act for himself or for another person by making, producing or causing to be made or produced any fraudulent representation or declaration either verbal or written; or
- (b) knowingly makes any false statement in any application or declaration signed or filed by him under this Act,

is guilty of an offence.

Offences,
partnerships,
associations
and
corporations

(3) Where a partnership, association of persons or corporation that has no subsisting certificate of authorization,

- (a) practices professional engineering;
- (b) uses orally or otherwise any name, title, description or designation that will lead to the belief that it is entitled to practice professional engineering; or
- (c) advertises, holds itself out or conducts itself in any way or in such manner as to lead to the belief that it is entitled to practise professional engineering,

every member of the partnership, every member of the association or persons, or the corporation and every director thereof, is guilty of an offence.

Idem

(4) Where a partnership, association of persons or corporation that has a subsisting certificate of authorization practises professional engineering in contravention of this Act, every member of the partnership, every member of the association of persons, or the corporation and every director thereof, is guilty of an offence.

Penalties

(5) Every person, member of a partnership, member of an association of persons, and every corporation and director thereof, who is guilty of an offence under this section is on conviction liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than six months, or to both.

Limitation
of
proceedings

(6) No proceedings shall be commenced for a contravention of any of the provisions of this section after two years from the date of the commission of such contravention. R.S.O. 1970, c. 366, s. 27.

LIMITATION OF ACTIONS

28.—(1) Except as provided in subsection (2), an action ^{Limitation of actions} against a member or a licensee for negligence or malpractice in connection with professional services requested of him or rendered by him or under his direction or control shall be commenced within and not later than twelve months after the cause of action arose.

(2) The court in which an action mentioned in subsection (1) has been or may be brought may extend the period of ^{Extension} limitation specified therein either before or after it has expired if the court is satisfied that to do so is just.

(3) This section does not apply to proceedings under ^{Does not apply to disciplinary proceedings} section 25. R.S.O. 1970, c. 366, s. 28.

