

1980

c 444 Registered Insurance Brokers Act

Ontario

© Queen's Printer for Ontario, 1980

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

Bibliographic Citation

Registered Insurance Brokers Act, RSO 1980, c 444

Repository Citation

Ontario (1980) "c 444 Registered Insurance Brokers Act," *Ontario: Revised Statutes*: Vol. 1980: Iss. 7, Article 13.

Available at: <http://digitalcommons.osgoode.yorku.ca/rso/vol1980/iss7/13>

CHAPTER 444

Registered Insurance Brokers Act

1. In this Act,

Interpre-
tation

- (a) "applicant" means an individual, partnership or corporation that applies for registration under this Act;
- (b) "board of inquiry" means a board of inquiry appointed by the Council;
- (c) "certificate" means a certificate issued under this Act;
- (d) "Complaints Committee" means the Complaints Committee of the Council established under this Act;
- (e) "Council" means the Council of the Registered Insurance Brokers of Ontario;
- (f) "contract" has the same meaning as in the *Insurance Act* but does not include a contract of life insurance as defined in that Act; ^{R.S.O. 1980, c. 218}
- (g) "Corporation" means the body corporate known as the Registered Insurance Brokers of Ontario;
- (h) "Discipline Committee" means the Discipline Committee of the Council established under this Act;
- (i) "incapacitated member" means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interest of the public or the member that he no longer be permitted to carry on business as a registered insurance broker or that his business be restricted;
- (j) "insurance" has the same meaning as in the *Insurance Act* but does not include life insurance as defined in that Act;
- (k) "insurance agent" means an agent within the meaning of the *Insurance Act*;

- (l) "insurance broker" means any person who for any compensation, commission or other thing of value, with respect to persons or property in Ontario, deals directly with the public and,
- (i) acts or aids in any manner in soliciting, negotiating or procuring the making of any contract of insurance or reinsurance whether or not he has agreements with insurers allowing him to bind coverage and countersign insurance documents on behalf of insurers, or
 - (ii) provides risk management services including claims assistance where required, or
 - (iii) provides consulting or advisory services with respect to insurance or reinsurance, or
 - (iv) holds himself out as an insurance consultant or examines, appraises, reviews or evaluates any insurance policy, plan or program or makes recommendations or gives advice with regard to any of the above;
- (m) "Manager" means the Manager of the Registered Insurance Brokers of Ontario;
- (n) "member" means an individual, partnership or corporation registered under this Act to carry on business as an insurance broker;
- (o) "Minister" means the Minister of Consumer and Commercial Relations;
- (p) "misconduct" means misconduct as defined in the regulations;
- (q) "person" includes a partnership and an unincorporated association;
- (r) "public" means persons other than insurers, insurance brokers, insurance adjusters and insurance agents;
- (s) "Qualification and Registration Committee" means the Qualification and Registration Committee of the Council established under this Act;

(t) "registered insurance broker" means a person registered under this Act to carry on business as an insurance broker;

(u) "Superintendent" means the Superintendent of Insurance. 1980, c. 62, s. 1.

2.—(1) No person shall act as an insurance broker unless the person is a registered insurance broker under this Act. Prohibition

(2) Subsection (1) does not apply to, Exceptions

(a) lawyers, accountants or actuaries acting in their professional capacity;

(b) an insurance agent licensed under the *Insurance Act*, while acting within the authority of his licence; R.S.O. 1980,
c. 218

(c) an insurance adjuster licensed under the *Insurance Act*, while acting within the authority of his licence;

(d) any individual; partnership or corporation who acts solely as a reinsurance broker;

(e) a person registered under the *Travel Industry Act*, acting in respect of travel accident and sickness, baggage or trip cancellation insurance; R.S.O. 1980,
c. 509

(f) an employee of a person registered under this Act when the employee is acting for or on behalf of his employer engaged solely in the performance of clerical or administrative duties in the office of his employer;

(g) any regular salaried employee of an insured or of a subsidiary or affiliate or corporate insured whose duties in whole or in part are to negotiate for or procure insurance or render other services on behalf of such employer or employers in connection with the procuring or maintaining of insurance on the property or risks of such employer or employers if the employee does not receive compensation, commission or other thing of value from any insurance agent, broker, or insurer for, or in connection with such services;

(h) a trustee appointed under this Act;

(i) an insurer or a subsidiary or an affiliate of an insurer or any employee, officer or director thereof if he is not acting in any manner in soliciting, negotiating or procuring the making of any contract of insurance;

(j) such other persons as are exempted by the regulations. 1980, c. 62, s. 2.

- Prohibition **3.**—(1) No person shall hold himself or itself out as an insurance broker or as the holder of a certificate under this Act unless the person is the holder of a certificate under this Act.
- Use of title (2) No person shall use the title “registered insurance broker” or the designation “R.I.B. (Ont.)” or other designation representing or similar to the title unless the person is the holder of a certificate as a registered insurance broker under this Act. 1980, c. 62, s. 3.
- Corporation continued **4.**—(1) The Registered Insurance Brokers of Ontario is continued as a body corporate without share capital with power to acquire, hold, dispose of and otherwise deal with real and personal property for the purposes of this Act.
- Objects (2) The Corporation shall have the general purpose of carrying out the powers and duties conferred on it by this Act. 1980, c. 62, s. 4.
- Membership **5.**—(1) Every person who is registered by the Corporation is a member of the Corporation.
- Resignation of membership (2) An individual member may resign his membership by filing with the Manager his resignation in writing and his registration is thereupon cancelled subject to the continuing jurisdiction of the Corporation in respect of any disciplinary action arising out of his conduct while a member.
- Cancellation for default of fees (3) The Manager may cancel a registration for non-payment of any prescribed fee after giving the member at least one month notice in writing of the default and intention to cancel the registration subject to the continuing jurisdiction of the Corporation. 1980, c. 62, s. 5.
- Council **6.**—(1) The Council shall be the governing body and board of directors of the Corporation and shall manage and administer its affairs.
- Composition (2) Subject to the regulations, the Council shall be composed of,
(a) eight persons who are individual members of the Corporation and are elected by the members in the manner provided by the regulations;

(b) three persons who are not members of the Corporation and are appointed by the Lieutenant Governor in Council.

(3) The Lieutenant Governor in Council may, by regulation, vary the size of the Council but at least one-quarter of the members of the Council shall be persons appointed by the Lieutenant Governor in Council who are not members of the Corporation. Increased size of Council

(4) Notwithstanding clause (2) (a), when this Act comes into force, the Lieutenant Governor in Council shall appoint to the Council the eight persons who are individual members of the Corporation for a term of three years, in the case of four of the appointees, and five years, in the case of four of the appointees. Transition

(5) The appointment of every person appointed under clause (2) (b) shall be for a term not exceeding four years and a person whose appointment expires is eligible for one reappointment. 1980, c. 62, s. 6. Appointment

7. Every individual member who is, Qualifications to vote
(a) registered under this Act; and
(b) not in default of payment of any prescribed fee,

is qualified to vote at an election of members of the Council. 1980, c. 62, s. 7.

8.—(1) The Council shall elect annually a President and one or more Vice-Presidents from among its members. President and Vice-President

(2) The Council shall appoint during pleasure a Manager and such other officers and servants as may from time to time be necessary or desirable in the opinion of the Council to perform the work of the Corporation. Manager and officers

(3) A majority of the members of the Council, including at least one member who is not a member of the Corporation, constitutes a quorum. 1980, c. 62, s. 8. Quorum

9. The Superintendent shall be deemed to have an interest in the Corporation, as the representative of all persons who may be served by registered insurance brokers, and the Corporation shall, within a reasonable time, furnish the Superintendent with such information and financial statements with respect to the Corporation as the Superintendent may require. 1980, c. 62, s. 9. Superintendent

10.—(1) The Corporation shall, within four months after the termination of each financial year, provide to its members, the Annual report of Corporation

Minister and the Superintendent an annual report relating to its activities in that year including,

- (a) financial statements of the Corporation and the auditor's report thereon;
- (b) a summary of the complaints received against members, categorized by source, type and disposition of the complaint;
- (c) a summary of disciplinary proceedings undertaken against members, categorized by source, type and disposition of the proceedings;
- (d) a summary of the applications for registration and the disposition of the applications;
- (e) membership statistics of the Corporation, categorized by size and type of member;
- (f) an identification of matters of policy currently under review by the Council and of any proposed changes in policies or programs; and
- (g) any other information considered relevant by the Corporation or requested by the Minister or Superintendent.

Annual
report of
Super-
intendent

(2) The Superintendent shall make an annual examination of the affairs of the Corporation and shall report concerning the examination to the Minister and the Minister shall then lay the annual report of the Corporation and the report of the Superintendent before the Assembly if it is in session and, if not, at the next ensuing session. 1980, c. 62, s. 10.

By-laws

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

- (a) prescribing the seal of the Corporation;
- (b) providing for the execution of documents by the Corporation;
- (c) fixing the financial year of the Corporation and providing for the audit of the accounts and transactions of the Corporation;
- (d) providing procedures for the election of President, Vice-Presidents and other officers of the Corporation, the

filling of a vacancy in those offices, and prescribing their duties;

- (e) respecting the calling, holding and conducting of meetings of the Council and the duties of members of the Council;
- (f) respecting the calling, holding and conducting of meetings of the membership of the Corporation;
- (g) prescribing the remuneration of the members of the Council and committees and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (h) providing for the appointment, composition, powers and duties of the committees of Council as may be required, including the filling of vacancies and the setting of quorums;
- (i) prescribing forms and providing for their use;
- (j) providing procedures for the making, amending and revoking of by-laws;
- (k) respecting management of the property of the Corporation;
- (l) fixing and providing for the payment of annual fees and special assessments by members and fees for certificates and examinations;
- (m) providing for the borrowing of money on the credit of the Corporation and the charging, mortgaging, hypothecating or pledging of any of the real or personal property of the Corporation to secure any money borrowed or other debt or any other obligation or liability of the Corporation;
- (n) respecting the application of the funds of the Corporation and the investment and reinvestment of any of its funds not immediately required in any investments that are from time to time authorized investments for joint stock insurance companies and cash mutual insurance companies under the *Insurance Act*;
- (o) providing for classes of membership and for the designation of and the terms and conditions attaching to each class;

- (p) respecting the keeping of records by the Corporation, Council, committees and members;
- (q) respecting the duties and authority of the Manager;
- (r) respecting all other things that are considered necessary for the attainment of the objects of the Corporation and the efficient conduct of its affairs.

Idem

(2) A copy of the by-laws made under subsection (1) and amendments thereto,

(a) shall be forwarded to the Superintendent; and

(b) shall be available for public inspection in the office of the Corporation.

Signed
by-laws
and
resolutions

(3) Any by-law or resolution signed by all the members of the Council is as valid and effective as if passed at a meeting of the Council duly called, constituted and held for that purpose. 1980, c. 62, s. 11.

Establish-
ment of
committees

12.—(1) The Council shall establish and appoint as hereinafter provided the following committees:

(a) a Qualification and Registration Committee;

(b) one or more Complaints Committees;

(c) a Discipline Committee,

and may establish such other or additional committees as the Council from time to time considers necessary.

Panel of
lay persons

(2) The Lieutenant Governor in Council may appoint such number of persons as the Lieutenant Governor in Council considers appropriate who are not members of the Corporation or members of the Council to a panel of lay persons eligible to serve as members of a Complaints Committee and the Discipline Committee.

Term of
appointment

(3) The appointment of every person under subsection (2) shall be for a term not exceeding four years and a person whose appointment expires is eligible for one reappointment. 1980, c. 62, s. 12.

Issuance
of
certificates
of
registration

13.—(1) The Manager shall issue a certificate or renewal thereof to any applicant therefor who is qualified under this Act and the regulations and has passed such examinations as the Council may set or approve and the Manager shall refer to the Qualification and Registration Committee every application for a certificate or renewal thereof that he proposes to refuse.

(2) The Qualification and Registration Committee shall determine the eligibility of applicants for certificates or renewals thereof and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fees therefor as the Qualification and Registration Committee fixes or to take such additional training as the Qualification and Registration Committee specifies.

Powers and duties of Qualification and Registration Committee

(3) The Qualification and Registration Committee may direct the Manager to issue or refuse to issue certificates and renewals.

Conditions of certificates

(4) The Qualification and Registration Committee may review the qualifications of any member and may impose a limitation on the member's certificate pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

Review of qualifications

(5) The Manager shall maintain one or more registers in which is entered every person to whom a certificate has been issued identifying the terms of the certificate or the registration and every revocation, suspension, cancellation and expiration or other termination and every renewal of the certificate and such other information as the Qualification and Registration Committee or Discipline Committee directs. 1980, c. 62, s. 13.

Registers

14.—(1) Where the Qualification and Registration Committee proposes to refuse to grant a certificate to an applicant, the Manager on behalf of the Committee shall serve notice of the proposal of the Committee together with written reasons therefor, on the applicant.

Notice of proposal to refuse registration

(2) Subsection (1) does not apply to a refusal to grant a certificate to a person who was previously registered and whose registration was suspended or revoked as a result of a decision of the Discipline Committee.

Exemptions

(3) A notice under subsection (1) shall inform the applicant that he is entitled to a hearing by the Qualification and Registration Committee if he mails or delivers within fifteen days after the notice under subsection (1) is served on him, notice in writing to the Committee requiring a hearing.

Notice requiring hearing or review

(4) Where an applicant does not require a hearing by the Committee in accordance with subsection (3), the Committee may refuse the application.

Powers of Qualification and Registration Committee where hearing or review

(5) The findings of fact of the Committee pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

Findings of fact
R.S.O. 1980, c. 484

Procedures
on hearings

(6) The provisions of subsections 19 (2), (3), (4), (5), (7) and (8) apply with necessary modifications to proceedings before the Committee under this section.

Powers of
Committee
upon hearing
or review

(7) The Committee shall, after the hearing or review,

- (a) confirm the proposed decision; or
- (b) require the applicant to take qualifying examinations or additional training as a condition for registration, or both, as specified by the Committee; or
- (c) direct the Manager to register the applicant on any appropriate register subject to such conditions as the Committee considers appropriate in cases where the Committee finds that the applicant meets the requirements for registration. 1980, c. 62, s. 14.

Complaints
Committee

15.—(1) Each Complaints Committee shall be composed of such number of persons as the Council may determine but at least one member of the Committee shall be a person who is not a member of the Corporation and who is appointed to the Council or to the panel of lay persons by the Lieutenant Governor in Council.

Appointment

(2) The Council may appoint any individual member of the Corporation to a Complaints Committee.

Membership
in other
committees

(3) No person who is a member of the Discipline Committee shall be a member of a Complaints Committee.

Chairman

(4) The Council shall name one member of each Complaints Committee to be chairman of that Committee.

Quorum

(5) A majority of the members of a Complaints Committee constitutes a quorum. 1980, c. 62, s. 15.

Duties

16.—(1) A Complaints Committee shall consider and investigate complaints regarding the conduct or actions of any member of the Corporation, but no action shall be taken by the Committee under clause (2) (a) unless,

- (a) a written complaint has been filed with the Manager and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanation or representations he may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

(2) The Committee in accordance with the information it ^{Idem} receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee;
- (b) direct that the matter not be referred under clause (a);
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Act or the regulations or by-laws. 1980, c. 62, s. 16.

17.—(1) The Discipline Committee shall be composed of such ^{Discipline Committee} number of persons as the Council may determine but at least four members of the Committee shall be persons who are not members of the Corporation and who are appointed to the Council or to the panel of lay persons by the Lieutenant Governor in Council.

(2) The Council may appoint any individual member of the ^{Appointment} Corporation to the Discipline Committee.

(3) The Council shall appoint one of the members of the ^{Chairman} Discipline Committee who is a member of Council to be the chairman of the Committee.

(4) The chairman of the Discipline Committee may assign a ^{Composition of panels} panel of five members of the Committee to hold a hearing of whom one shall be a person appointed to the Council or to the panel of lay persons by the Lieutenant Governor in Council and a panel of the Discipline Committee is sufficient to exercise the jurisdiction and powers of the Discipline Committee if a quorum is present.

(5) Three members of a panel assigned under subsection (4), of ^{Quorum and votes} whom one shall be a person appointed to the Council or to the panel of lay persons by the Lieutenant Governor in Council, constitute a quorum for a hearing and all disciplinary decisions require the vote of a majority of members of the Discipline Committee presiding at the hearing.

(6) Where a panel of the Discipline Committee commences a ^{Disability of lay member} hearing and the member thereof who is appointed to the Council or to the panel of lay persons by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding his absence.

(7) The Council may direct the Discipline Committee to hold a ^{Reference by Council} hearing and determine any specified allegation of misconduct or incompetence on the part of a member. 1980, c. 62, s. 17.

Duties of
Discipline
Committee

18.—(1) The Discipline Committee shall,

- (a) when so directed by the Council or by a Complaints Committee, hear and determine allegations of misconduct or incompetence against any member;
- (b) hear and determine matters referred to it under sections 16 and 22; and
- (c) perform such other duties as are assigned to it by the Council.

Idem

(2) In the case of hearings into allegations of misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of misconduct or of incompetence.

Misconduct

(3) A member may be found guilty of misconduct by the Committee if,

- (a) the member has been found guilty of an offence relevant to the member's suitability to carry on business as a registered insurance broker upon proof of such conviction; or
- (b) the member has been guilty in the opinion of the Discipline Committee of misconduct as defined in the regulations.

Incompetence

(4) The Discipline Committee may find a member to be incompetent if in its opinion the member has, while acting as an insurance broker, displayed a serious lack of knowledge, skill or judgment or a serious disregard for the welfare of a member of the public.

Powers of
Discipline
Committee

(5) Where the Discipline Committee finds a member guilty of misconduct or incompetence it may by order,

- (a) revoke the certificate of the member;
- (b) suspend the certificate of the member for a stated period;
- (c) impose such restrictions on the certificate of the member for such a period and subject to such conditions as the Committee designates;

- (d) reprimand the member and, if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) impose such fine as the Committee considers appropriate to a maximum amount prescribed in the regulations to be paid by the member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;
- (f) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates;
- (g) impose a requirement that the member reimburse any person who made a complaint against the member for any costs incurred by such person in the proceedings,

or any combination thereof.

(6) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the Corporation reimburse the member for his costs or such portion thereof as the Discipline Committee fixes. Costs

(7) Where the Discipline Committee revokes, suspends or restricts the certificate of a member on the grounds of misconduct or incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision unless the court to which the appeal is taken orders otherwise. Stay

(8) Where the Discipline Committee finds a member guilty of misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member. Service of decision of Discipline Committee

(9) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated. 1980, c. 62, s. 18. Continuation on expiry of Committee membership

19.—(1) In proceedings before the Discipline Committee, the Corporation and the member of the Corporation whose conduct is being investigated in the proceedings are parties to the proceedings. Parties to discipline proceedings

(2) A member whose conduct is being investigated in proceedings before the Discipline Committee shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. Examination of documentary evidence

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

(3) Members of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation of the subject-matter of the hearing other than as a member of the Council considering the referral of the matter to the Discipline Committee or at a previous hearing of the Committee, and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate.

In camera
R.S.O. 1980,
c. 484

(4) Notwithstanding anything in the *Statutory Powers Procedure Act*, hearings of the Discipline Committee shall be held *in camera*, but, if the person whose conduct is being investigated requests otherwise by a notice delivered to the Manager before the day fixed for the hearing, the Committee shall conduct the hearing in public except where,

- (a) matters involving public security may be disclosed; or
- (b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.

Recording of evidence

(5) The oral evidence taken before the Discipline Committee shall be recorded and, if so required, copies or a transcript thereof shall be furnished to the parties at their own cost.

Evidence

(6) Notwithstanding the *Statutory Powers Procedure Act*, nothing is admissible in evidence before the Discipline Committee that would be inadmissible in a court in a civil case and the findings of the Discipline Committee shall be based exclusively on evidence admitted before it.

Only members at hearing to participate in decision

(7) No member of the Discipline Committee shall participate in a decision of the Committee pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties.

Release of documentary evidence

(8) Documents and things put in evidence at a hearing of the Discipline Committee shall, upon the request of the person who produced them, be released to him by the Committee within a reasonable time after the matter in issue has been finally determined. 1980, c. 62, s. 19.

Reference to board of inquiry

20.—(1) Where the Manager receives information leading him to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate and report to the Council who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the Corporation and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

Examination

(2) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit to physical

or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his certificate be suspended until he complies.

(3) The board of inquiry shall report its findings to the Council and deliver a copy thereof and a copy of any medical report obtained under subsection (2) to the member about whom the report is made and if, in the opinion of the Council, the evidence so warrants, the Council shall refer the matter to the Qualification and Registration Committee to hold a hearing and may suspend the member's certificate until the determination of the question of his capacity becomes final.

Hearing by
Qualification
and
Registration
Committee

(4) The Corporation, the person whose capacity is being investigated and any other person specified by the Qualification and Registration Committee are parties to a proceeding under this section.

Parties

(5) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceeding,

Medical
evidence

- (a) where the evidence is required by the Corporation, at least five days before the hearing commences; and
- (b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

(6) The Qualification and Registration Committee shall, after the hearing,

Powers of
Qualification
and
Registration
Committee

- (a) make a finding as to whether or not the member is an incapacitated member; and
- (b) where the member is found to be an incapacitated member, by order,
 - (i) revoke his certificate,

(ii) suspend his certificate for such period as the Committee considers appropriate, or

(iii) attach such terms and conditions to the certificate as the Committee considers appropriate. 1980, c. 62, s. 20.

Appeal to court

21.—(1) Any party to proceedings before the Discipline Committee or the Qualification and Registration Committee may appeal from its decision or order to the Divisional Court.

Powers of court on appeal

(2) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Committee appealed from and may exercise all powers of the Committee and may direct the Committee or the Corporation to take any action which the Committee or the Corporation may take and as the court considers proper, and for such purposes the court may substitute its opinion for that of the Committee, or the court may refer the matter back to the Committee for rehearing, in whole or in part, in accordance with such directions as the court considers proper. 1980, c. 62, s. 21.

Restoration of registration or certificate

22.—(1) A person whose certificate has been revoked or suspended for cause under this Act may apply at any time in writing to the Manager for the issuance of a certificate or removal of the suspension.

Reference to Discipline Committee

(2) The Manager shall refer the application to the Discipline Committee or, where the revocation or suspension was on the grounds of incapacity, to the Qualification and Registration Committee, which shall hold a hearing and decide upon the application, and shall report its decision and reasons to the Council and to the former member. 1980, c. 62, s. 22.

Restraining orders

23.—(1) Where it appears to the Corporation that a person does not comply with a provision of this Act or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the Corporation may apply to a judge of the Supreme Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Appeal

(2) An appeal lies to the Divisional Court from an order made under subsection (1). 1980, c. 62, s. 23.

Stop-orders

24.—(1) Where the Corporation made a *prima facie* case that a member has been or may be guilty of misconduct in connection with any property in his possession or under his control, a judge of the Supreme Court may, upon an *ex parte* application by the Corporation, order that the property described in the order shall

not be paid out or dealt with by the person or persons named in the order without the leave of a judge of the Supreme Court.

(2) Where the Corporation makes a *prima facie* case that the business of a member or former member is neglected to the prejudice of any person or that the interests of the clients of the member or former member are not being protected or that the member or former member has converted trust funds, a judge of the Supreme Court may, upon *ex parte* application by the Corporation, by order appoint a person as trustee with or without bond, to take possession of any property or undertaking in the possession of or under the control of the member or former member for the purpose of preserving, carrying on or winding up the business of the member or former member. Appoint-
ment of
trustee

(3) A person appointed under subsection (2) shall, in respect of any trust property of the member or former member, be the trustee thereof, and he shall in respect thereof take the place of a personal representative, committee or other representative, if any, of the member or former member. Idem

(4) Any person may apply to a judge of the Supreme Court for an order varying or discharging any order made under subsection (1) or (2). Variation,
discharge
of order

(5) The judge may, in an order made under subsection (2), make provision for the remuneration, disbursements and indemnification of the trustee out of such moneys or otherwise as the judge may specify. 1980, c. 62, s. 24. Remunera-
tion

25.—(1) Where the Manager, or in his absence, a person designated by the Manager, believes on reasonable and probable grounds that a member has committed an act of misconduct or incompetence, the Manager or the Manager's designate may by order appoint one or more persons to make an investigation to ascertain whether such an act has occurred, and the person appointed shall report the result of his investigation to the Manager or the Manager's designate. Investi-
gation of
members

(2) Where the Manager or the Manager's designate appoints persons to make an investigation to ascertain whether a member has committed an act of misconduct or incompetence involving trust funds, the persons appointed shall include two persons representing the insurers for whom funds were or ought to have been held in trust. Idem

(3) For purposes relevant to the subject-matter of an investigation under this section, a person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may, upon Powers of
investigator

production of his appointment, enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation, and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act.

R.S.O. 1980,
c. 411

Obstruction
of
investigator

(4) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Search
warrant

(5) Where a justice of the peace is satisfied, upon an *ex parte* application by a person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the justice of the peace may, whether or not an inspection has been made or attempted under subsection (3), issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation to make the search at night.

Removal of
books, etc.

(6) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection (3) or (5) relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

Admissi-
bility
of copies

(7) Any copy made as provided in subsection (6) and certified to be a true copy by a person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record or document and its contents.

Report of
Manager

(8) The Manager shall report the results of the investigation to the Council or such other committee as he considers appropriate.
1980, c. 62, s. 25.

26.—(1) Every person employed in the administration of this Act, including any person making an inquiry or investigation under section 25 and any member of the Council or a Committee, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation under section 25 and shall not communicate any such matters to any other person except,

Matters
confidential

- (a) as may be required in connection with the administration of this Act and the regulations and by-laws or any proceedings under this Act or the regulations;
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Act or the regulations or by-laws.

Testimony
in civil
suit

(3) Any information, document, record, statement or thing made or disclosed to the Manager, the Council or a committee of Council concerning a member or a person applying for registration under this Act is privileged and shall not be used as evidence in any civil action or proceeding in any court brought by or on behalf of such member or person. 1980, c. 62, s. 26.

Privileged
information

27.—(1) No certificate shall be issued to a corporation that acts as an insurance broker if the majority of its issued and outstanding shares that entitle the holder to any voting rights are owned beneficially or otherwise by a non-resident of Canada as defined in subsection 357 (4) of the *Insurance Act* unless the corporation was licensed as a broker under the *Insurance Act* on the 27th day of April, 1972.

Prohibition
re: non-
residents

R.S.O. 1980,
c. 218

(2) A corporation that was licensed as an insurance broker on or before the 27th day of April, 1972, and whose issued shares entitling the holders thereof to voting rights were more than 50 per cent owned, as of that date, beneficially or otherwise, by one or more non-residents of Canada is not entitled to continue to hold a certificate under this Act if it amalgamates, unites, merges, acquires the assets or business of, or acquires the shares of any other broker or a licensed agent or adjuster. 1980, c. 62, s. 27.

Prohibition
of a non-
resident to
amalgamate

28.—(1) Every member shall maintain a mailing address in Ontario, which address shall be suitable to permit service by registered mail, and shall register the mailing address with the Manager.

Mailing
address

Personal
service

(2) Any legal process and any notice or document served personally or served by registered mail at the mailing address registered with the Manager shall be deemed for all purposes to have been served personally upon the member.

Deemed
resident

(3) For the purpose of any civil action brought against a member, the member shall be deemed to be a resident of the county in which the mailing address is located. 1980, c. 62, s. 28.

Service of
notice

29.—(1) Subject to section 28, any notice or document required by this Act to be served may be served personally or by prepaid first class mail addressed to the person to whom notice is to be given at his last known address and, where notice is served by mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that he, acting in good faith, through absence, accident, illness or other cause beyond his control, did not receive the notice, or did not receive the notice until a later date.

Idem

(2) For a period of one year after the date on which a former member ceased to be a member of the Corporation, the mailing address of the former member registered with the Manager under section 28 shall be deemed to be the former member's last known address unless the former member registers a new mailing address with the Manager.

Administer-
ing oaths

(3) Every member of the Qualification and Registration Committee, the Discipline Committee and each Complaints Committee has power to administer oaths and affirmations for the purposes of any of its proceedings. 1980, c. 62, s. 29.

Registrar's
certificate
as evidence

30. Any statement containing information from the records required to be kept by the Manager under this Act, purporting to be certified by the Manager under the seal of the Corporation is admissible in evidence in all courts as *prima facie* proof of the facts stated therein without proof of the appointment or signature of the Manager and without proof of the seal. 1980, c. 62, s. 30.

Corporation,
Council and
committees

31. No action or other proceeding for damages shall be instituted against the Corporation, the Council, a Committee or any member of the Council or committee, or any officers, servants, agents or appointees of the Corporation, for any act done in good faith in the performance or intended performance of any duty or in the exercise or 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 such duty or power. 1980, c. 62, s. 31.

Trust
funds

32.—(1) All funds received or receivable by a member in the course of his business on behalf of insurers from members of the public or on behalf of members of the public from insurers are deemed to be trust funds.

(2) No member shall assign, pledge, hypothecate or mortgage ^{Idem} or in any way charge the funds referred to in subsection (1) whether or not such funds have been received or remain receivable.

(3) Any assignment, pledge, hypothecation, mortgage or other ^{Idem} charge of or on funds referred to in subsection (1) is null and void as against the beneficial owner of the funds. 1980, c. 62, s. 32.

33.—(1) No person shall make or cause to be made any wilful ^{Falsification of certificates} falsification in any matter relating to a register or issue a false certificate or document with respect to registration.

(2) No person shall wilfully procure or attempt to procure ^{False representations, etc.} himself or any other person to be registered under this Act by knowingly making any false representation or declaration or by making any fraudulent representation or declaration, either orally or in writing. 1980, c. 62, s. 33.

34.—(1) Every person who contravenes any provision of this ^{Offence} Act and every director or officer of a corporation or unincorporated association and every member of a partnership who knowingly concur in such contravention is guilty of an offence and on conviction is liable to a fine of \$5,000 or to imprisonment for a term of not more than six months, or to both.

(2) Where a corporation is convicted of an offence under ^{Corporation} subsection (1), the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein.

(3) No proceeding under this section shall be commenced more ^{Limitation period} than five years after the time when the subject-matter of the proceeding arose. 1980, c. 62, s. 34.

35. The Lieutenant Governor in Council may make ^{Regulations} regulations,

- (a) respecting and governing the nomination, election and term of office of the members to be elected to the Council, the filling of vacancies on the Council and controverted elections;
- (b) governing the size and composition of the Council;
- (c) respecting any matter ancillary to the provisions of this Act with regard to the issuing, renewal, suspension and revocation of certificates;
- (d) providing for the expiration of certificates and governing and establishing the requirements and qualifications for the issuing and renewal of certificates;

- (e) providing for the maintenance and inspection of registers;
- (f) governing standards of practice for registered insurance brokers;
- (g) defining misconduct for the purposes of this Act and providing for a code of conduct;
- (h) providing for a program for the continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (i) respecting the reporting and publication of decisions in disciplinary matters;
- (j) providing for the compilation of statistical information on the supply, distribution and business activities of members and requiring members to provide the information necessary to compile such statistics;
- (k) respecting returns, reports, information or disclosure to be provided or made by members to the Corporation, the Superintendent, members of the public or any other person or persons;
- (l) fixing maximum fines that may be imposed upon members found guilty of misconduct;
- (m) establishing rules of practice and procedure for hearings held under this Act;
- (n) respecting trust funds and the keeping of trust accounts by members;
- (o) respecting the reporting and auditing of members' accounts and specifying the type and nature thereof;
- (p) requiring the filing of financial guarantees by members of the Corporation and respecting the collateral security for terms, conditions and form of financial guarantees;
- (q) establishing and governing minimum indemnity insurance requirements for members and requiring and respecting errors and omissions insurance;
- (r) establishing and governing minimum equity capitalization requirements for members;

- (s) establishing and respecting restrictions and limitations on the sale and ownership of insurance brokers and the businesses of insurance brokers;
- (t) prescribing forms and providing for their use;
- (u) exempting any person or group of persons from all or part of the provisions of this Act and the regulations subject to such terms and conditions as may be set out in the regulations. 1980, c. 62, s. 35.

36.—(1) Notwithstanding any other provision of this Act, a person holding a valid licence as an insurance agent or an insurance broker under the *Insurance Act* issued before the day on which this section comes into force, who is an insurance broker within the meaning of insurance broker contained in this Act, shall be deemed to be a registered insurance broker under this Act and the person shall be so registered as a member by the Manager.

Transition

R.S.O. 1980,
c. 218

(2) Where the word “agency” or “agencies” appears in the name of a corporation that is an insurance broker, the corporation shall amend its articles of incorporation or other instrument by which the corporation is incorporated by deleting the word “agency” or “agencies” and substituting the word “broker” or “brokers”, as the case may be, within six months after the day on which this section comes into force.

Change of
name

(3) A corporation incorporated by or under the authority of the Legislature may change its name under subsection (2) by filing a notice with the Minister in the form prescribed by the regulations, and on the date of such filing, the name of the corporation is changed and its articles of incorporation are amended accordingly.

Idem

(4) Notwithstanding any other provision of this Act, a person who has carried on business as an insurance consultant for a period of five years before the day on which this Act comes into force and who complies with this Act and the regulations is entitled, upon application made within two months of the day on which this Act comes into force, to become a registered insurance broker and the person shall be so registered as a member by the Manager. 1980, c. 62, s. 36.

Idem

37. This Act does not come into force until a day to be named by proclamation of the Lieutenant Governor. 1980, c. 62, s. 46.

Commence-
ment

