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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 28

THE LAND SURVEYORS ACT, 1981

MRS. EMBURY

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

THE LAND SURVEYORS ACT, 1981

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Bill 28
Mrs. Embury

BILL 28

1981

THE LAND SURVEYORS ACT, 1981

(Assented to _____, 1981)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1 In this Act

- (a) "Alberta land surveyor" means an individual who holds a certificate of registration and an annual certificate to engage in the practice of surveying under this Act;
- (b) "Association" means the Alberta Land Surveyors' Association;
- (c) "Board" means the Practice Review Board established by this Act;
- (d) "Council" means the Council of the Association;
- (e) "Court" means the Court of Queen's Bench;
- (f) "Discipline Committee" means the Discipline Committee established by this Act;
- (g) "member of the public" means a person who is
 - (i) a Canadian citizen or who is lawfully admitted to Canada for permanent residence,
 - (ii) resident in Alberta, and
 - (iii) not a member of the Association;
- (h) "Minister" means the member of the Executive Council charged with the administration of this Act;

(i) "practice of land surveying" means

(i) the survey of land to determine or establish boundaries;

(ii) the survey of land to determine or establish the boundaries of any right or interest in land or in air space;

(iii) the survey of air space to determine or establish boundaries;

(iv) the survey of land to determine the location of anything relative to a boundary for the purpose of certifying the location of the thing;

(v) the survey of lakes, rivers or watercourses to establish or determine their boundaries;

(vi) the survey by any means, including photogrammetric, electronic or astronomic methods, of land, water or air space for the purpose of preparing maps, plans and documents connected in any way with the establishment or determination of boundaries delineating any right or interest in land, water or air space;

(vii) cadastral operations and compiling and recording information related to the matters specified in subclauses (i) to (vi);

(viii) establishing and maintaining a network of geodetic points of any order of precision and establishing photogrammetric controls for the purposes of the work specified in subclauses (i) to (v),

including the preparation of maps, plans and documents and giving advice with respect to any of the matters specified in this clause;

(j) "practice of surveying" means

(i) the determination, establishment or recording by any means of the positions of points or natural or man-made features on, over or under the surface of the earth,

(ii) the determination of the form of the earth,

(iii) the practice of land surveying,

and includes the preparation of maps, plans, systems and documents and the giving of advice with respect to any of the matters referred to in this clause;

(k) "practitioner" means an Alberta land surveyor, surveyor's corporation or surveyor's partnership;

- (l) “Registrar” means the Registrar appointed under section 10;
- (m) “surveyor’s corporation” means a corporation that holds a permit to engage in the practice of surveying under this Act;
- (n) “surveyor’s partnership” means a partnership that holds a permit to engage in the practice of surveying under this Act.

PART 1

SCOPE OF PRACTICE

Practice of surveying

2 An Alberta land surveyor, surveyor’s corporation or surveyor’s partnership may engage in the practice of surveying.

Practice of land surveying

3(1) No person except an Alberta land surveyor, surveyor’s corporation or surveyor’s partnership shall engage in the practice of land surveying.

(2) Subsection (1) does not apply to a person engaged in the practice of land surveying while he is an employee of a practitioner in the course of his employment.

(3) Everything done in the practice of land surveying shall be done by or under the supervision, direction and control of a practitioner.

(4) No Alberta land surveyor shall sign a plan or document in the practice of surveying unless it is prepared by him or under his personal supervision, direction and control.

Exclusive use of name

4(1) No person except a practitioner shall

(a) use the name “Alberta land surveyor”, “surveyor” or “land surveyor” or any abbreviation of them either alone or in combination with any other word,

(b) use the initials “ALS” either alone or in combination with any other word, initial or abbreviation, or

(c) use any title, name, description, abbreviation, letter or symbol representing the name “Alberta land surveyor”, “surveyor” or “land surveyor”

that represents expressly or by implication that he is an Alberta land surveyor, surveyor’s corporation or surveyor’s partnership.

(2) No person except a practitioner shall represent or hold out, expressly or by implication, that

(a) he is entitled to engage in the practice of land surveying, or

(b) he is an Alberta land surveyor, surveyor's corporation or surveyor's partnership, as the case may be.

Use of stamp

5 No surveyor's corporation or surveyor's partnership shall affix its stamp or permit its stamp to be affixed to a plan or other document prepared in the practice of surveying unless the plan or document was prepared by or under the personal supervision, direction and control of an Alberta land surveyor.

Injunction

6 The Court, on application by the Council by way of originating notice, may grant an injunction enjoining any person from doing any act or thing that contravenes this Part notwithstanding any penalty that may be provided by this Act or the regulations in respect of that contravention.

PART 2 ASSOCIATION

Association

7 The Alberta Land Surveyors' Association is continued as a corporation.

Powers of the Association

8 In addition to the powers vested in it by this Act or any other Act, the Association has the powers expressed in section 16 of *The Interpretation Act, 1980* and the power to

(a) acquire and hold real property and sell, lease or otherwise dispose of it, and

(b) borrow money for the purposes of the Association and mortgage or charge real or personal property of the Association or its sources of funds as security.

Council

9(1) There is hereby established a governing body of the Association called the Council.

(2) The Council shall manage and conduct the business and affairs of the Association and exercise the powers of the Association in the name of and on behalf of the Association.

(3) The Council shall submit annually to the Minister in a form satisfactory to him a report on those matters of the business and affairs of the Association that the Minister requires.

(4) The Minister shall, on receipt of the annual report of the Association, lay it before the Legislative Assembly if it is then sitting, and if it is not then sitting, within 15 days after the commencement of the next ensuing sitting.

Registrar

10 The Council may appoint a Registrar for the purposes of this Act.

11(1) The Council shall consist of

- (a) at least 9 Alberta land surveyors or a greater number that may be prescribed by the by-laws, each of whom shall be elected by Alberta land surveyors at the time, in the manner and for the period provided for by the by-laws, and
 - (b) when the number of elected Alberta land surveyors does not exceed 10, 1 member of the public, or when the number of elected Alberta land surveyors is more than 10 but not more than 20, 2 members of the public, who shall be appointed by the Minister after consultation with the Association for a 1-year term of office.
- (2) A member of the Council appointed under subsection (1)(b) continues to hold office after the expiry of his term of office until he is reappointed or his successor is appointed.
- (3) The Minister may, after consultation with the Council, revoke the appointment under subsection (1)(b) of a member of the Council.
- (4) The Minister may pay to a member of the Council appointed under subsection (1)(b) travelling and living expenses incurred by that member for his attendance at any meeting of the Council while away from his usual place of residence and fees in an amount prescribed by the Minister.
- (5) The powers, duties and operations of the Council under this Act, the regulations and the by-laws are not affected by
- (a) the fact that no member of the public is appointed as a member of the Council under subsection (1)(b),
 - (b) the revocation of the appointment of a member of the Council, or
 - (c) the resignation from the Council of a member of the public.
- (6) The failure of a member of the public appointed under subsection (1)(b) to attend a meeting of the Council shall not be construed to affect or restrict the Council from exercising any powers or performing any duties under this Act, the regulations and the by-laws at that meeting.

12(1) There is hereby established a board called the Practice Review Board to exercise the powers and perform the duties given to it by the Council or under this Act, the regulations or the by-laws, consisting of not less than 5 members as follows:

- (a) the Council shall appoint not less than 4 Alberta land surveyors who have a combination of knowledge and experience suitable for determining the academic qualifications and training requirements necessary for a person to continue to engage in the practice of surveying;

(b) the Minister shall appoint 1 member of the public nominated by the Council.

(2) If the Council fails, within a reasonable period of time after being requested to do so by the Minister, to make a nomination for the purposes of subsection (1)(b), the Minister may appoint a member of the public to the Board without the Council's nomination.

(3) The Minister may pay to the member of the Board appointed under subsection (1)(b) travelling and living expenses incurred by that member for attendance at a hearing of the Board away from his usual place of residence and fees in an amount prescribed by the Minister.

(4) The Minister may, after consultation with the Council, revoke the appointment under subsection (1)(b) of a member of the public.

(5) The powers, duties and operations of the Board under this Act, the regulations and by-laws are not affected by

(a) the fact that no member of the public is appointed as a member of the Board under subsection (1)(b),

(b) the revocation under subsection (4) of the appointment of a member of the public, or

(c) the resignation as a member of the Board of a member of the public.

(6) The failure of a member of the public appointed pursuant to subsection (1)(b) to attend a meeting of the Board shall not be construed to affect or restrict the Board from exercising any powers or performing any duties under this Act, the regulations or the by-laws at that meeting.

Powers of the
Practice Review
Board

13(1) The Board shall at the request of the Council or after consultation with the Council

(a) inquire into and report to and advise the Council in respect of

(i) the assessment of existing and the development of new educational standards and experience requirements that are conditions precedent to obtaining and continuing registration under this Act,

(ii) the evaluation of desirable standards of competence of practitioners generally,

(iii) the practice of surveying by practitioners generally, and

(iv) any other matter that the Council from time to time considers necessary or appropriate in connection with the exercise of its powers and the performance of its duties in

relation to competence in the practice of surveying under this Act and the regulations, and

(b) conduct a review of the practice of a practitioner in accordance with this Act and the regulations.

(2) A person requested to appear at an inquiry or review under this section is entitled to be represented by counsel.

(3) The Board may at any time during an inquiry or review under this section recommend to the Discipline Committee that the inquiry or review be conducted by the Discipline Committee pursuant to Part 5.

(4) On receiving a recommendation under subsection (3), the Discipline Committee may proceed with an investigation and hearing under Part 5 as if the recommendation were a written complaint.

(5) The Board may, after a review under this section with respect to an individual practitioner, make any order that the Discipline Committee may make under section 52 or 53.

(6) The provisions of Part 5 with respect to an investigation and hearing by the Discipline Committee apply to a review of an individual practitioner by the Board.

(7) After each inquiry or review under this section the Board shall make a written report to the Council on the inquiry or review and may make any recommendations to the Council that the Board considers appropriate with reasons for the recommendations.

(8) The Council may direct that the whole or any portion of an inquiry by the Board under this section shall be held in camera if the Council is of the opinion that it is in the public interest to do so.

Appeal to Council

14 A practitioner who is the subject of a review by the Board may appeal to the Council any decision or order of the Board as if it were a decision or order of the Discipline Committee under Part 5.

PART 3

REGULATIONS AND BY-LAWS

Regulations

15(1) The Council may make regulations

(a) respecting the academic qualifications and experience and training requirements of applicants for registration as Alberta land surveyors and the examination of the applicants;

(b) establishing conditions with respect to the registration of an applicant, including age, character and residence requirements;

- (c) providing for the evaluation, by the Council, the Board, the Registration Committee or a committee established by the Council or a board, committee or council designated in the regulations, of the academic qualifications and experience and training requirements of applicants for registration to engage in the practice of surveying as an Alberta land surveyor and for the examination of those applicants;
- (d) establishing and governing the articling of pupils, the transfer and termination of articles, the discipline of pupils, the period of articles including conditions attached to them, who may take articulated pupils and all other matters related to articling;
- (e) applying all or some of the provisions of the Act, regulations or by-laws to articulated pupils;
- (f) prescribing the number of members that constitutes a quorum of the Council, the Board, the Registration Committee or the Discipline Committee;
- (g) prescribing standards and rules for the practice of surveying;
- (h) respecting the establishment by the Council of a compulsory continuing education program for practitioners;
- (i) governing the names under which an Alberta land surveyor, surveyor's corporation or surveyor's partnership may engage in the practice of surveying;
- (j) requiring an Alberta land surveyor to reside in Alberta if he is to maintain his registration as an Alberta land surveyor or in any other place that may be prescribed in the regulations or permitted by the Council;
- (k) requiring a surveyor's corporation or a surveyor's partnership to maintain a permanent business office in Alberta and to notify the Registrar forthwith in writing of any change in the address of that business office;
- (l) governing the registration of a corporation as a surveyor's corporation and prescribing the conditions to be met prior to and following registration by shareholders, directors or officers generally or with respect to a particular type of corporation;
- (m) governing the registration of a partnership as a surveyor's partnership and prescribing the conditions to be met prior to and following registration by a partnership and the members or proposed members of a partnership generally or with respect to a particular type of partnership;
- (n) governing the operation of a practitioner including advertising and branch offices;
- (o) establishing and providing for the publishing of a code of

ethics respecting the practice of surveying, the maintenance of the dignity and honour of the profession of surveying and the protection of the public interest;

(p) respecting preliminary investigations and proceedings of the Discipline Committee, the Board and the Council whether or not a complaint has been made;

(q) respecting the costs payable by any person on the conclusion of a hearing or review by the Board or under Part 5;

(r) respecting committees of inquiry for reinstatement under Part 5;

(s) respecting registration, licensing, disciplinary matters and the practice of surveying generally.

(2) A regulation under subsection (1) does not come into force unless it is approved by

(a) a majority of Alberta land surveyors

(i) present and voting at a general meeting, or

(ii) voting at a vote conducted by mail in accordance with the by-laws,

and

(b) the Lieutenant Governor in Council.

By-laws

16(1) The Council may make by-laws

(a) for the government of the Association and the management and conduct of its affairs;

(b) determining the location of the head office of the Association;

(c) respecting the calling and conduct of meetings of the Association and the Council;

(d) respecting the nomination, election, number and term of office of Council members and officers of the Council and of the Association;

(e) governing the appointment of individuals as members or ex officio members of the Council, the Association, the Discipline Committee, the Board, the Registration Committee and any other board or committee established by the Council or the Association and prescribing their term of office, duties and functions;

(f) establishing categories of membership in the Association in addition to Alberta land surveyors and prescribing the privileges and obligations of the categories of membership so established;

- (g) providing for the election or appointment of Alberta land surveyors to fill vacancies on the Council or any other elected office;
- (h) providing for the hiring of employees of the Association and the bonding of those employees;
- (i) providing for the appointment of an Acting Registrar who has all of the powers and may perform all of the duties of the Registrar under this Act, the regulations and the by-laws when the Registrar is absent or unable to act or when there is a vacancy in the office of Registrar;
- (j) prescribing the number of Alberta land surveyors that constitutes a quorum at meetings of the Association;
- (k) governing the establishment, operation and proceedings of boards and committees, the appointment and revocation of members of boards and committees, the appointment of acting members and procedures for filling vacancies on boards and committees and for delegating any power or duty of the Council under the Act, regulations or by-laws to a board or committee established by the Council or under this Act;
- (l) prescribing fees and expenses payable to members of the Council, the Discipline Committee, the Board or the Registration Committee and of any other board or committee for attending to the business of the Association;
- (m) respecting the establishment and payment of sums of money for scholarships, fellowships and any other educational incentive or benefit program that the Council considers appropriate;
- (n) governing the information to be engraved on stamps and the use of them by surveyor's corporations and surveyor's partnerships;
- (o) prescribing the date or dates on which an annual certificate expires;
- (p) requiring a practitioner or class of practitioners to carry professional liability insurance and governing the minimum coverage required to be carried by a practitioner or class of practitioners;
- (q) respecting the fees, dues and levies payable to the Association by practitioners and other members of the Association;
- (r) respecting the establishment, content and maintenance of registers of practitioners and of records of other categories of membership to be kept by the Registrar;
- (s) respecting the removal from the registers and records of a memorandum or entry made in them under this Act or the regulations or the by-laws;

- (t) governing the publication of a notice of the approval for or suspension or cancellation of the registration of a practitioner in a form and manner prescribed by the Council;
 - (u) authorizing the Council to prescribe the form of articles, a certificate of registration, a permit, an annual certificate and any other document that may be required;
 - (v) respecting the holding of votes by mail on any matter relating to the Association;
 - (w) prescribing an oath of office and requiring all applicants for registration as Alberta land surveyors to take that oath;
 - (x) governing the publication of lists of practitioners and other members and the information to be included in those lists.
- (2) A by-law under subsection (1) does not come into force unless it is approved by a majority of Alberta land surveyors
- (a) present and voting at a general meeting, or
 - (b) voting at a vote conducted by mail in accordance with the by-laws.
- (3) *The Regulations Act* does not apply to the by-laws of the Association made under this section.

PART 4

REGISTRATION

Registers

- 17(1)** The Registrar shall maintain, in accordance with the by-laws and subject to the direction of the Council, a register for each of the following:
- (a) Alberta land surveyors,
 - (b) surveyor's corporations, and
 - (c) surveyor's partnerships.
- (2) The Registrar shall enter in the appropriate register the name of a person
- (a) whose registration has been approved by the Council or the Registration Committee, and
 - (b) who has paid the fee prescribed under the by-laws.
- (3) The Registrar shall maintain, in accordance with the by-laws and subject to the direction of the Council, a membership record of

the members other than practitioners in each category of membership established under the by-laws.

(4) The Registrar shall enter in the appropriate membership record for the applicable category of membership the name of a person whose membership has been approved by the Council in accordance with the by-laws.

List of practitioners

18 The Registrar may publish from time to time in accordance with the by-laws a list of those practitioners who, at the date of publication of the list, are entitled to engage in the practice of land surveying.

Registration Committee

19(1) There is hereby established a Registration Committee composed of those persons appointed by the Council.

(2) The Registration Committee shall consider applications for the registration of applicants as Alberta land surveyors in accordance with this Part, the regulations and by-laws and may

(a) approve the registration,

(b) refuse the registration, or

(c) defer the approval of registration until it is satisfied that the applicant has complied with a requirement made under this section.

(3) The Registration Committee may, in its discretion, require an applicant for registration to obtain more experience of a kind satisfactory to the Registration Committee for a period set by the Committee before approving the registration.

Review by the Council

20(1) The Registration Committee shall send a written notice of any decision made by it under this Part to the applicant.

(2) If the decision made by the Registration Committee is to refuse or defer registration of the applicant, reasons for the decision shall be sent in writing to the applicant.

(3) An applicant whose application for registration has been refused by the Registration Committee may, within 30 days of receiving a notice of refusal and the reasons for the refusal, request the Council to review the application by serving on the Registrar a written request for review by the Council setting out the reasons why, in his opinion, his registration as an Alberta land surveyor should be approved.

(4) The Council shall, after receipt of a request for review under this section, review the application.

(5) The applicant for registration

(a) shall be notified in writing by the Council of the date, place and time that it will review the matter, and

(b) is entitled to appear and to make representations to the Council when it reviews the matter.

(6) A member of the Registration Committee who is also a member of the Council may participate at a review by the Council under this section but shall not vote in a decision of the Council.

(7) On considering a review under this section, the Council may make any decision the Registration Committee may make under this Part.

Registration as a surveyor's corporation

21 The Council may approve the registration of a corporation incorporated or registered under *The Companies Act* that has applied to the Council and is eligible under the regulations to be registered as a surveyor's corporation.

Registration as a surveyor's partnership

22(1) The Council may approve the registration of a surveyor's partnership that applies to the Council and is eligible under the regulations to be registered as a surveyor's partnership.

(2) Nothing in this Act or the regulations requires a partnership consisting solely of Alberta land surveyors or surveyor's corporations or both to hold a permit under this Act.

Certificate of registration

23 On entering the name of an Alberta land surveyor in the register, the Registrar shall issue to him a certificate of registration.

Permit

24(1) On entering the name of a surveyor's corporation or a surveyor's partnership in the register, the Registrar shall issue to that corporation or partnership

(a) a permit to engage in the practice of surveying, and

(b) a stamp engraved as prescribed in the by-laws.

(2) A permit issued under subsection (1) expires on January 31 of the year following its issue but may, subject to the approval of Council, be renewed for additional periods, each not exceeding 1 year, on payment of the prescribed fee.

Annual certificate

25(1) An Alberta land surveyor shall pay to the Association the annual fee prescribed in accordance with the by-laws.

(2) The Registrar shall issue an annual certificate in accordance with the by-laws to an Alberta land surveyor

(a) whose registration is not under suspension, and

(b) who has paid the annual fee.

(3) Subject to this Act, an annual certificate entitles the Alberta land surveyor to engage in the practice of surveying during the year for which the annual certificate is issued.

(4) An annual certificate expires on January 31 of the year following its issue or on such other date as is prescribed in the by-laws.

Entries in registers

26(1) The registration of a practitioner is suspended when the decision to suspend the registration is made.

(2) The Registrar shall enter a memorandum of suspension of a registration in the appropriate register indicating

- (a) the duration of the suspension, and
- (b) the reason for the suspension.

(3) The registration of a practitioner is cancelled when the decision to cancel the registration is made.

(4) The Registrar shall enter a memorandum of cancellation of registration in the appropriate register.

(5) The Registrar shall not remove from the registers any memorandum made by him under this section, except in accordance with the by-laws.

(6) The Registrar shall, during regular office hours, permit any person to inspect the registers.

Cancellation on request

27(1) The Registrar shall not cancel the registration of a practitioner at his request unless the request for the cancellation has been approved by the Council.

(2) When a request for the cancellation of registration is approved by the Council,

- (a) the Registrar shall cancel that registration, and
- (b) the practitioner requesting the cancellation shall, on being notified of the approval, surrender to the Registrar any certificate, permit or stamp issued to him.

Conditions respecting corporations

28(1) A surveyor's corporation may engage in the practice of surveying in its corporate name or any other name approved under the regulations.

(2) A surveyor's corporation shall advise the Registrar in writing of the names of the shareholders, directors and officers of the corporation and of any change in the shareholders, directors or officers forthwith after the change occurs.

(3) A surveyor's corporation shall cause all plans and documents prepared in the course of the practice of surveying that require certification to be

- (a) signed by the Alberta land surveyor who had personal supervision, direction and control over their preparation, and

Conditions
respecting
partnerships

(b) imprinted with the stamp issued to the corporation.

29(1) A surveyor's partnership may engage in the practice of surveying in its partnership name or any other name approved under the regulations.

(2) A surveyor's partnership shall advise the Registrar in writing of the names of the partners and of any change in the partnership or the partnership agreement forthwith after the change occurs.

(3) A surveyor's partnership shall cause all plans and documents prepared in the practice of surveying that require certification to be

(a) signed by the Alberta land surveyor who had personal supervision, direction and control over their preparation, and

(b) imprinted with the stamp issued to the partnership.

Cancellation

30(1) The Council may direct the Registrar to cancel the registration of

(a) a practitioner who is in default of payment of annual fees, a penalty, costs or any other fees, dues or levies payable under this Act, the regulations or the by-laws,

(b) an Alberta land surveyor who does not comply with the residency requirements specified in the regulations,

(c) a surveyor's corporation that does not have shareholders, directors or officers in accordance with the regulations,

(d) a surveyor's partnership that does not meet the requirements of the regulations in respect of partners, or

(e) a practitioner that does not comply with the business address requirements of the regulations

after the expiration of 30 days following the service on the practitioner of a written notice by the Council pursuant to subsection (2), unless the practitioner on whom the notice is served complies with the notice.

(2) The notice under subsection (1) shall state that the Registrar may cancel the registration unless, as the case may be,

(a) the fees, penalties, costs, dues or levies are paid as indicated in the notice, or

(b) evidence satisfactory to the Council is received by it within the time prescribed in the notice indicating that

(i) the Alberta land surveyor is complying with the residency requirements;

(ii) the surveyor's corporation has shareholders, directors or officers in accordance with the regulations;

(iii) the surveyor's partnership meets the requirements in respect of partners;

(iv) the practitioner has complied with the business address requirements.

(3) The Council may direct the Registrar to cancel a registration made in error in the register.

(4) If the registration of a practitioner is cancelled under this section, he shall forthwith surrender to the Registrar any certificate, permit or stamp issued to him.

Reinstatement

31(1) If a registration is cancelled pursuant to section 30, the Council may, subject to the regulations and the by-laws, direct the Registrar to reinstate that registration in the applicable register and reissue the certificate, permit or stamp.

(2) When the Registrar cancels a registration pursuant to section 30, he shall not re-enter that registration in the register or reissue a certificate, permit or stamp except when directed to do so by the Council or by an order of the Court.

PART 5

DISCIPLINE

Definitions

32 In this Part,

(a) "chairman" means the chairman of the Discipline Committee and includes a vice-chairman;

(b) "conduct" includes any act or omission;

(c) "investigated person" means an Alberta land surveyor, surveyor's corporation or surveyor's partnership with respect to whose conduct an investigation by the Discipline Committee is being held under this Part.

Discipline Committee

33(1) There is hereby established a Discipline Committee.

(2) The Discipline Committee shall consist of Alberta land surveyors appointed by the Council.

(3) The Council shall designate a chairman and 1 or more vice-chairmen from among the members of the Discipline Committee.

Unprofessional conduct and unskilled practice

34(1) Any conduct of a practitioner that, in the opinion of the Discipline Committee,

- (a) is detrimental to the best interests of the public,
- (b) contravenes a code of ethics of the profession as established under the regulations,
- (c) harms or tends to harm the standing of the profession of surveying generally,
- (d) displays a lack of knowledge of or lack of skill or judgment in the practice of surveying, or
- (e) displays a lack of knowledge of or lack of skill or judgment in the carrying out of any duty or obligation undertaken in the practice of surveying,

whether or not that conduct is disgraceful or dishonourable, constitutes either unskilled practice of surveying or unprofessional conduct, whichever the Discipline Committee finds.

(2) If an investigated person fails to comply with or contravenes this Act, the regulations or the by-laws, and the failure or contravention is, in the opinion of the Discipline Committee, of a serious nature, the failure or contravention may be found by the Discipline Committee to be unprofessional conduct whether or not it would be so found under subsection (1).

Complaints

35(1) A person may make a complaint to the Registrar about the conduct of a practitioner and the complaint shall be dealt with in accordance with this Part and the regulations.

(2) A complaint respecting the conduct of a practitioner whose registration was cancelled pursuant to this Act may, notwithstanding the cancellation, be dealt with within 1 year following the date of cancellation of the registration as if the cancellation had not occurred.

Mediation

36 A person designated by the Council as a mediator may assist in settling a complaint, whether in writing or not, made to the Registrar if the complainant and the practitioner about whose conduct the complaint is made so agree, but if within 30 days of the date of receipt of the complaint or a longer period agreed to by those persons a settlement of the complaint between those persons does not occur or in the mediator's opinion is not likely to occur, the complaint

- (a) if it is in writing, shall be referred forthwith by the mediator to the chairman, or
- (b) if it is not in writing, may be referred by the mediator or the complainant to the chairman.

Preliminary investigation

37(1) If a complaint has been made in writing, the chairman shall investigate the conduct of the practitioner within 30 days after the date on which the complaint is brought to his attention by a mediator, a complainant or any other person.

(2) The Council on the application of the chairman may extend the 30-day period mentioned in subsection (1).

(3) If a complaint is not made in writing, the chairman shall investigate the conduct of the practitioner as soon as is reasonable after the complaint is brought to his attention.

(4) The chairman may, at any time during an investigation of a complaint, conduct a preliminary investigation or appoint a person to conduct a preliminary investigation into the conduct or alleged conduct of a practitioner.

Report of
preliminary
investigation

38(1) A person conducting a preliminary investigation may

(a) request any person to answer any question and to produce to him any plans, documents, papers, notes or records in the person's possession or under his control,

(b) with the consent of the person producing them, copy and keep copies of any of the things that are produced to him under clause (a), and

(c) appoint an Alberta land surveyor to conduct a survey on his behalf for the purpose of assisting him in his preliminary investigation.

(2) The person conducting the preliminary investigation shall conduct the investigation in a manner considered by him to be most suitable in all the circumstances.

(3) A person conducting a preliminary investigation may investigate any other matter regarding the conduct of the investigated person that arises in the course of the investigation.

(4) If a person other than the chairman or vice-chairman conducts a preliminary investigation, that person shall forthwith, on concluding the preliminary investigation, report to the person who appointed him.

Referral to the
Discipline
Committee

39(1) The chairman, on concluding an investigation of a complaint made in writing, shall forthwith

(a) direct that no further action be taken, if he is of the opinion that the complaint is frivolous or vexatious, or

(b) refer the complaint to the Discipline Committee.

(2) On concluding a review or investigation that was not made as a result of a complaint in writing, the chairman may refer the matter to the Discipline Committee if he is of the opinion that it should be considered by that Committee.

40 If the chairman

- (a) directs that no further action be taken, or
- (b) refers a complaint to the Discipline Committee,

he shall serve on the investigated person and on the complainant, if any, a copy of the complaint and a notice that no further action will be taken or that the complaint has been referred to the Discipline Committee.

Appeal by complainant to the Discipline Committee

41(1) A complainant who is served with a notice under section 40 that no further action will be taken may, within 30 days of receipt of the notice and by notice in writing to the Registrar, appeal that direction to the Discipline Committee.

(2) On an appeal under subsection (1), the Discipline Committee shall determine whether the complaint

- (a) is frivolous or vexatious, or
- (b) should be investigated and heard by it in accordance with this Part.

(3) The Discipline Committee shall notify the complainant and the practitioner concerned in writing of its decision under subsection (2).

Right to counsel

42 The Association and the investigated person may appear and be represented by counsel at a hearing before the Discipline Committee.

Proceedings in camera

43 All proceedings under this Part except those before the Court or the Court of Appeal shall be held in camera.

Notice of hearing

44(1) The Discipline Committee shall, on referral to it by the chairman of a complaint or conduct, investigate the matter and hold a hearing.

(2) The hearing shall be held not more than 30 days from the date on which the matter is referred to the Discipline Committee by the chairman.

(3) The chairman may extend the period mentioned in subsection (2) for 1 or more additional periods, each not exceeding 30 days.

(4) The Discipline Committee shall serve on the investigated person a notice of hearing stating the date, time and place that the Discipline Committee will hold a hearing and giving reasonable particulars of the complaint in respect of which the hearing will be held.

Further investigation

45(1) The Discipline Committee may investigate and hear any other matter concerning the conduct of the investigated person that arises in the course of an investigation or hearing, but in that event the Discipline Committee shall declare its intention to hear the further matter and shall permit that person sufficient opportunity to prepare his answer to the further matter.

(2) This Part applies to an investigation of a further matter under subsection (1).

Evidence

46(1) Evidence may be given before the Discipline Committee in any manner that the Committee considers appropriate, and the Committee is not bound by the rules of law respecting evidence applicable to judicial proceedings.

(2) For the purposes of an investigation, hearing or review under this Act, the Registrar or any member of the Council, the Discipline Committee or the Board is conferred with the power of a commissioner for oaths under *The Commissioners for Oaths Act*.

Witness

47(1) The investigated person and any other person who in the opinion of the Discipline Committee has knowledge of the complaint or the conduct being investigated is a compellable witness in any proceeding under this Part.

(2) A witness may be examined under oath on all matters relevant to the investigation or hearing before the Discipline Committee and shall not be excused from answering any question on the ground that the answer might tend to

(a) incriminate him,

(b) subject him to punishment under this Part, or

(c) establish his liability

(i) to a civil proceeding at the instance of the Crown or of any other person, or

(ii) to prosecution under any Act,

but if the answer so given tends to incriminate him, subject him to punishment or establish his liability, it shall not be used or received against him in any civil proceedings or in any proceedings under any other Act.

(3) For the purpose of obtaining the testimony of a witness who is out of Alberta, a judge of the Court on an application ex parte by the Association may direct the issuing of a commission for the obtaining of the evidence of the witness, and the commission shall be issued and the evidence taken pursuant to the Alberta Rules of Court.

Enforcement of attendance and production of documents

48(1) The attendance of witnesses before the Discipline Committee and the production of plans, documents, papers, photographs, notes or records may be enforced by a notice issued by the Registrar requiring the witness to attend and stating the date, time and place at which the witness is to attend and the plans, documents, papers, photographs, notes or records, if any, he is required to produce.

(2) On the written request of the investigated person the Registrar shall without charge issue and deliver to that person any notices that

he may require for the attendance of witnesses or the production of documents.

(3) A witness other than the investigated person who has been served with a notice to attend or a notice for the production of any thing under subsection (1) or (2) is entitled to be paid the same fees as are payable to witnesses in an action before the Court.

Civil contempt **49(1)** Proceedings for civil contempt of court may be brought against a witness

(a) who fails

(i) to attend before the Discipline Committee in compliance with a notice to attend,

(ii) to produce any plans, documents, papers, notes or records in compliance with a notice to produce them, or

(iii) in any way to comply with either notice,

or

(b) who refuses to be sworn or to answer any question he is directed to answer by the Discipline Committee.

(2) If the witness referred to in subsection (1) is the investigated person, his failure or refusal may be held to be unprofessional conduct.

Absence of investigated person **50** The Discipline Committee, on proof of service of the notice of hearing on the investigated person, may

(a) proceed with the hearing in the absence of the investigated person, and

(b) act and report on the matter being heard in the same way as though the investigated person were in attendance.

Finding by the Discipline Committee **51(1)** The Discipline Committee may find that the conduct of an investigated person constitutes neither unskilled practice of surveying nor unprofessional conduct.

(2) The Discipline Committee may find that the conduct of an investigated person constitutes unskilled practice of surveying or unprofessional conduct or both and shall deal with the investigated person in accordance with this Part.

Powers of the Discipline Committee **52** If the Discipline Committee finds that the conduct of an investigated person constitutes unskilled practice of surveying or unprofessional conduct or both, the Discipline Committee may make any one or more of the following orders:

(a) reprimand the investigated person;

- (b) suspend the registration of an investigated person either generally or from any field of the practice of surveying for a period set by the Discipline Committee;
- (c) suspend the registration of an investigated person either generally or from any field of practice until
 - (i) he has completed a specified course of study or obtained supervised practical experience, or
 - (ii) the Discipline Committee is satisfied as to the competence of the investigated person generally or in a specified field of practice;
- (d) accept in place of a suspension the investigated person's undertaking to limit his practice;
- (e) impose conditions on the investigated person's entitlement to engage in the practice of surveying generally or in any field of practice, including the conditions that he
 - (i) practise under supervision,
 - (ii) not engage in sole practice,
 - (iii) permit periodic inspections by a person authorized by the Discipline Committee, or
 - (iv) report to the Discipline Committee on specific matters;
- (f) direct the investigated person to pass a particular course of study or satisfy the Discipline Committee as to his practical competence generally or in a field of practice;
- (g) direct the investigated person to satisfy the Discipline Committee that a disability or addiction can be or has been overcome, and suspend the person until the Discipline Committee is so satisfied;
- (h) require the investigated person to take counselling or to obtain any assistance that in the opinion of the Discipline Committee is appropriate;
- (i) direct the investigated person to waive, reduce or repay a fee for services rendered by the investigated person that, in the opinion of the Discipline Committee, were not rendered or were improperly rendered;
- (j) cancel the registration of the investigated person;
- (k) any other order that it considers appropriate in the circumstances.

Order to pay costs
or a fine

53(1) The Discipline Committee may, in addition to or instead of

dealing with the conduct of an investigated person in accordance with section 52, order that the investigated person pay

- (a) the costs of the hearing determined in accordance with the regulations,
- (b) a penalty not exceeding \$10 000 to the Association, or
- (c) both the costs and a penalty under clause (b),

within the time set by the order.

(2) If the investigated person ordered to pay a penalty, costs or both under subsection (1) fails to do so within the time ordered, the Council may suspend the registration of that person until he has paid the penalty, costs or both.

(3) The Discipline Committee, if it finds that a complaint is frivolous or vexatious, may order the complainant to pay the costs of the preliminary investigation and the hearing before the Discipline Committee determined in accordance with the regulations.

(4) A penalty or costs ordered to be paid to the Association under this section is a debt due to the Association and may be recovered by the Association by civil action for debt.

Service of written
decision

54(1) The Discipline Committee shall, within a reasonable time after the conclusion of a hearing before it, make a written decision on the matter, in which it shall

- (a) describe each finding made by it in accordance with this Part,
- (b) state the reasons for each finding made by it, and
- (c) state any order made under this Part.

(2) The Discipline Committee shall forward to the Registrar

- (a) the decision, and
- (b) the record of the hearing, consisting of all evidence presented before it, including
 - (i) all exhibits,
 - (ii) all documents and records, and
 - (iii) a transcript of all testimony given before it, whether recorded electronically, mechanically or in handwritten form.

(3) The Registrar shall, immediately on receiving the decision and the record of the hearing referred to in subsection (2), serve

- (a) a copy of the decision on the investigated person, and

(b) a notice of the nature of the decision on the complainant, if any.

(4) The investigated person or his counsel or agent may examine the record or any part of the record of the proceedings and hear any recording or examine any mechanical or handwritten form of record of any testimony.

Suspension
pending appeal

55(1) Notwithstanding an appeal under this Part, the Discipline Committee may order that its decision remain in effect until the time that the Council, the Court or the Court of Appeal, as the case may be, makes a decision on the appeal.

(2) An investigated person may, by filing an originating notice with the Court and serving a copy on the Registrar, apply for an order staying the decision of the Discipline Committee pending the determination of the appeal.

(3) The Court may hear an application made under this section not less than 10 days after the originating notice is served on the Registrar.

(4) On hearing an application made under this section the Court may, subject to any conditions that it considers proper, stay the decision of the Discipline Committee pending the determination of the appeal.

Appeal to Council

56(1) An investigated person may appeal to the Council on the record of the hearing before the Discipline Committee

(a) a finding made by the Discipline Committee, or

(b) an order of the Discipline Committee

or both.

(2) An appeal under subsection (1) shall be commenced by a written notice of appeal which shall

(a) describe the finding or order appealed,

(b) state the reasons for the appeal, and

(c) be served on the Registrar not more than 30 days after the date on which the decision of the Discipline Committee was served on the investigated person.

(3) The Registrar shall, on receiving a notice of appeal under subsection (2), give the Council a copy of the notice of appeal and make the record of the hearing available to each member of the Council.

Time of Appeal

57(1) The Council, on receiving a notice of appeal under section 56, shall serve on the investigated person a notice of hearing of an

appeal stating the date, time and place at which the Council will hear the matters appealed.

(2) The Council shall, at its first meeting following the expiration of at least 15 days after the date of service of a notice of appeal, consider the decision of the Discipline Committee and shall hear any representations that the investigated person or his counsel wish to make respecting the record and the decision.

(3) Notwithstanding subsection (2), the Council may, on the written request of the investigated person or the Registrar, postpone the hearing for 1 or more periods, each not exceeding 30 days.

Powers of Council
on appeal

58(1) The Association's counsel may participate in the hearing of an appeal before the Council.

(2) A member of the Council who is also a member of the Discipline Committee may participate in an appeal before the Council but shall not vote in a decision of the Council on the appeal.

(3) The Council on an appeal may do any or all of the following:

(a) grant adjournments of the proceedings or reserve the determination of the matters before it for a future meeting of the Council;

(b) receive further evidence on granting special leave for that purpose;

(c) draw inferences of fact and make a determination or finding that, in its opinion, ought to have been made by the Discipline Committee.

(4) The Council shall, not more than 30 days from the date of the conclusion of all proceedings before it, do any or all of the following:

(a) make any finding that in its opinion ought to have been made by the Discipline Committee;

(b) quash, vary or confirm the finding or order of the Discipline Committee or substitute or make a finding or order of its own;

(c) refer the matter back to the Discipline Committee for further consideration in accordance with any direction that the Council may make.

(5) The Council may order the investigated person to pay the costs of the appeal determined in accordance with the regulations.

(6) Sections 46, 50, 54 and 55 apply to the hearing of an appeal by the Council.

Appeal to the
Court

59(1) An investigated person may appeal to the Court on mixed

questions of law and fact relating to a finding or order made by the Council under section 58.

(2) The Association shall be the respondent in an appeal under subsection (1) and may make representations to the Court.

(3) An appeal under this section shall be commenced

(a) by filing an originating notice with the clerk of the Court, and

(b) by serving a copy of the originating notice on the Registrar,

both within 30 days from the date on which the decision of the Council is served on the investigated person.

(4) An appeal under this section shall be dealt with as a new trial.

Appeal to the Court of Appeal

60(1) An investigated person may appeal to the Court of Appeal on a question of law only that relates to a finding or order made by the Council in accordance with section 58.

(2) The Association shall be the respondent in an appeal under subsection (1) and may make representations to the Court of Appeal.

(3) An appeal under this section shall be commenced

(a) by filing a notice of appeal with the Registrar of the Court of Appeal in Edmonton or Calgary, and

(b) by serving a copy of the notice of appeal on the Registrar,

both within 30 days from the date on which the decision of the Council is served on the investigated person.

Order for stay pending appeal

61 The appellant may, after commencing an appeal and on notice to the Registrar, apply to the Court or the Court of Appeal, as the case may be, for an order staying all or any part of the order or decision of the Council appealed.

Material in support of appeal

62(1) An appeal under section 59 or 60 shall be supported by copies, certified by the Registrar, of the decision of the Council and of the record of the appeal before the Council.

(2) The Registrar, on being paid any disbursements and expenses in connection with a request made by the appellant, shall furnish to the appellant the number of copies so requested of the documents mentioned in subsection (1).

Power of the Court on appeal

63(1) The Court or the Court of Appeal on hearing the appeal may do any or all of the following:

(a) make any finding that in its opinion ought to have been made;

(b) quash, confirm or vary the order or decision of the Council or any part of it;

(c) refer the matter back to the Council for further consideration in accordance with any direction of the Court or the Court of Appeal.

(2) The Court or the Court of Appeal, as the case may be, may make any award as to the costs of an appeal to it that it considers appropriate.

Fraudulent registration

64(1) If after a hearing on the matter the Council is satisfied that a person whose registration is entered in the register obtained registration by means of any false or fraudulent representation or declaration either oral or written, the Council shall order that the registration be cancelled.

(2) The provisions of this Part respecting the procedures of the Discipline Committee apply to a hearing held by the Council under subsection (1).

Surrender of certificates

65(1) If the registration of a practitioner has been cancelled or suspended under this Part, the practitioner shall forthwith surrender to the Registrar any certificate, permit or stamp issued to him or it.

(2) If the registration of a practitioner has been cancelled under this Part, the registration shall not be reinstated in the register except by order of the Council, the Court or the Court of Appeal.

(3) No order shall be made under subsection (2) within 1 year after

(a) the date on which the registration was cancelled, or

(b) if an order was granted under this Part staying the imposition of a punishment imposed by the Council and the punishment is later confirmed by the Court or the Court of Appeal, the date on which the Court or the Court of Appeal made its order confirming the punishment.

(4) A member of the Council who is a member of a committee of inquiry appointed pursuant to the regulations to consider an application under this Part for reinstatement of registration may participate in or vote at any proceedings of the Council under this section, and the Registrar and the Association counsel may participate in those proceedings.

Misrepresentation of status

66 The conduct of a person who is or was registered as a practitioner who represents or holds out that he is registered and in good standing while his registration is suspended or cancelled may be dealt with under this Part as being unprofessional conduct.

PART 6

GENERAL

Liability to others

67(1) The relationship between a surveyor's corporation or surveyor's partnership engaged in the practice of surveying and a person receiving the professional services of the surveyor's corporation or surveyor's partnership is subject to this Act, the regulations and any other law applicable to the relationship between an Alberta land surveyor and his client.

(2) The relationship of an Alberta land surveyor to a surveyor's corporation, whether as shareholder, director, officer or employee of the surveyor's corporation, does not affect, modify or diminish the application of this Act, the regulations and by-laws

(a) to him personally as an Alberta land surveyor, or

(b) to the relationship between the Alberta land surveyor and his client.

Registrar's
certificate

68(1) A certificate purporting to be signed by the Registrar and stating that a named corporation or partnership was or was not, on a specified day or during a specified period, a surveyor's corporation or surveyor's partnership, as the case may be, shall be admitted in evidence as prima facie proof of the facts stated in it without proof of the Registrar's appointment or signature.

(2) A certificate purporting to be signed by the Registrar and stating that a named individual was or was not, on a specified day or during a specified period,

(a) an Alberta land surveyor, or

(b) an officer of the Association or member of the Council, the Discipline Committee or the Board

shall be admitted in evidence as prima facie proof of the facts stated in it without proof of the Registrar's appointment or signature.

Protection from
liability

69(1) No action lies against

(a) any person conducting a preliminary investigation, a member of the Discipline Committee, the Council, the Registration Committee or the Board, the Registrar, the Association or any person acting on the instructions if any of them, or

(b) any member, officer or employee of the Association

for anything done by him in good faith and in purporting to act under this Act, the regulations or the by-laws.

(2) No action for defamation may be founded on a communication

that consists of or pertains to a complaint regarding the conduct of a practitioner if the communication is published to or by

- (a) the Association,
- (b) a member of the Council, the Discipline Committee, the Registration Committee or the Board,
- (c) a person conducting a preliminary investigation,
- (d) an officer or employee of the Association, or
- (e) a person acting on the instructions of any of them

in good faith in the course of investigating the complaint or in the course of any proceeding under Part 5 relating to the complaint.

PART 7

PROHIBITIONS AND PENALTIES

Practice prohibitions

70(1) A person whose registration as a practitioner is cancelled or suspended under this Act shall not, without the consent of the Council, engage in the practice of land surveying under this Act or directly or indirectly associate himself in the practice of land surveying with any other practitioner.

(2) No practitioner shall, except with the consent of the Council, associate in the practice of land surveying directly or indirectly with or employ in connection with his practice a person whose registration has been cancelled or suspended under this Act.

(3) The Council may permit a practitioner to employ in connection with his practice a person whose registration has been cancelled or suspended under this Act, but the employment shall be in the capacity and subject to the terms and conditions that are prescribed by the Council.

Penalties

71(1) Every person and every officer, employee or agent of a corporation who contravenes section 3, 4, 5, 27(2)(b) or 30(4) or this Part is guilty of an offence and liable

- (a) for a 1st offence, to a fine of not more than \$2 000,
- (b) for a 2nd offence, to a fine of not more than \$4 000, and
- (c) for a 3rd and each subsequent offence, to a fine of not more than \$6 000 or to imprisonment for a term of not more than 6 months or both fine and imprisonment.

(2) A prosecution under this section may be commenced within 2 years after the commission of the alleged offence, but not afterwards.

Onus of proof **72** In a prosecution under this Act, the burden of proving that a person is a practitioner is on the accused.

PART 8

TRANSITIONAL AND CONSEQUENTIAL

Registration continued **73(1)** In this Part “former Act” means *The Land Surveyors Act*, being chapter 197 of the Revised Statutes of Alberta 1970.

(2) An individual who is an active member of the Association under the former Act is deemed to be an Alberta land surveyor and the holder of a certificate of registration and annual certificate under this Act.

(3) The Registrar shall, in the appropriate register established pursuant to this Act, record the names of those individuals referred to in subsection (2).

Council members continued **74** The members of the Council of Management of the Association elected under the former Act are deemed to be members of the Council under this Act, elected for the same period and holding the same office.

Application for registration **75** An application for registration made under the former Act but not concluded before the coming into force of this Act shall be dealt with under this Act.

Discipline proceedings continued **76** Any complaint or discipline proceeding commenced under the former Act but not concluded before the coming into force of this Act shall be concluded under the former Act as if this Act had not come into force.

Amends chapter 62 of the Revised Statutes of Alberta 1970. **77** *The Condominium Property Act is amended in section 8(1) by striking out “a land surveyor” wherever it appears and substituting “an Alberta land surveyor”.*

Amends chapter 246 of the Revised Statutes of Alberta 1970. **78** *The Municipal Government Act is amended by adding the following between sections 214 and 215:*

214.2 Section 214 does not empower a council to make a by-law that has the effect of requiring an Alberta land surveyor, a surveyor’s corporation or a surveyor’s partnership registered under *The Land Surveyors Act, 1981* to obtain a licence to engage in the practice of surveying or to carry on the practice or profession of land surveying in the municipality.

Amends chapter 358 of the Revised Statutes of Alberta 1970. **79** *The Surveys Act is amended as follows:*

(a) in section 2 by adding the following after clause (a):

(a.1) “Alberta land surveyor” means a person qualified to practice as an Alberta land surveyor according to the provisions of *The Land Surveyors Act, 1981*;

(b) in section 2(m) by striking out “practise as a surveyor” and substituting “practise as an Alberta land surveyor”;

(c) in section 94(3)(a) by striking out “a land surveyor” and substituting “an Alberta land surveyor”.

Repeal **80** *The Land Surveyors Act is repealed on Proclamation.*

Coming into force **81** This Act comes into force on Proclamation.