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ARCHITECTS' ASSOCIATION OF NEW BRUNSWICK ASSOCIATION DES ARCHITECTES DU NOUVEAU-BRUNSWICK **ACT**

AN ACT RESPECTING THE ARCHITECTS' ASSOCIATION OF NEW BRUNSWICK

WHEREAS the Architects' Association of New Brunswick prays that it be enacted as hereinafter set forth;

AND WHEREAS it is desirable, in the interests of the public and members of the architectural profession, to continue the Architects' Association of New Brunswick as a body corporate for the purpose of advancing and maintaining the standards of architecture in the Province, for governing and regulating those offering architectural services and for the safeguarding of members of the public and the profession;

THEREFORE, Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

PART I – INTERPRETATION

SHORT TITLE

1 This Act may be cited as the “*Architects Act*”

DEFINITIONS

2 In this Act, unless the context otherwise requires:

“annual meeting” means the annual meeting of the members of the Association;

“architect” means a registered member or licensee of the Association and, when used in Part IV of this Act, includes former members, former licensees, and proprietorships, partnerships and corporations which practice or formerly practiced architecture pursuant to section 13;

“Association” means the Architects' Association of New Brunswick;

“Board” means the Board of Examiners of the Association;

“building” means a structure consisting of a wall, roof, and floor, or any one or more of them;

“by-law” means a by-law of the Association;

“Certificate of Practice” means a Certificate of Practice issued pursuant to section 14 of the Act;

“Certificate of Registration” means a Certificate of Registration issued pursuant to section 9 of this Act;

“construction” means the doing of anything in the erection, installation, extension or repair of a building and includes the installation of a building unit or fabricated or moved from elsewhere, and “constructed” has a corresponding meaning;

“Council” means the Council of the Association;

“Court” means the Provincial Court of New Brunswick, or the Court of Queen's Bench of New Brunswick, Trial Division, as the context may require;

“Court of Appeal” means the Court of Appeal of New Brunswick;

“design” means a plan, sketch, drawing, graphic representation or specification intended to govern the construction, enlargement or alternation of a building or part of a building and related site development;

“engineer” means an individual who is a member or licensee of the Association of Professional Engineers of the Province of New Brunswick and is authorized to practice engineering in New Brunswick under the *Engineering Profession Act*;



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“Executive Secretary” means the Executive Secretary appointed pursuant to subsection 6(11) of the Act;

“general review”, in relation to the construction, enlargement or alteration of a building, means an examination of the building to determine whether the construction, enlargement or alteration is in general conformity with the design governing the construction, enlargement or alteration, and reporting thereon;

“graphic representation” means a representation produced by electrical, electronic, photographic, hand-drawn, or printing methods, and includes a representation produced on a video display terminal;

“individual” means a natural person;

“Joint Practice Committee” means the Architect-Engineer Joint Practice Committee established pursuant to section 39 of this Act;

“license” means a license issued pursuant to section 10 of this Act;

“licensee” means an individual who holds a license issued pursuant to section 10 of this Act;

“member” means an individual who holds a Certificate of Registration issued pursuant to section 9 of this Act;

“practice of architecture” means

- (a) the preparation or provision of a design to govern the construction, enlargement or alteration of a building, or the related site development,
- (b) evaluating, advising on, or reporting on the construction, enlargement or alteration of a building, or the related site development, or
- (c) a general review of the construction, enlargement or alteration of a building, or the related site development;

“President” means the President of the Association;

“proprietorship” means an individual carrying on business under a name other than his own and in the case of the practice of architecture means an architect engaged in the practice of architecture under a name other than his own;

“Registrar” means the Registrar of the Association;

“registration” means the admission of an individual to membership in the Association and the enrollment of that person’s name in a register maintained pursuant to section 11 of this Act.

PART II – ADMINISTRATION

THE ASSOCIATION

- 3(1) The Architects’ Association of New Brunswick continued as a body corporate by the *New Brunswick Architects’ Act*, Chapter 52 of the Statutes of New Brunswick 1970 is hereby continued as a body corporate and politic without share capital under the name “Architects’ Association of New Brunswick” and, subject to this Act, has the capacity, rights, powers and privileges of a natural person.
- 3(2) The Association shall maintain a registered office in New Brunswick within a municipality prescribed by by-law.
- 3(3) The books of account, registers and other records of the Association shall be kept at the registered office or at such other place as may be prescribed by by-law.



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MEMBERSHIP

- 4 The membership of the Association shall consist of the classes of members and the qualifications, rights, privileges and obligations thereof as may be prescribed by by-law.

ANNUAL MEETING

- 5 An annual meeting of the members of the Association shall be held in accordance with the by-laws at such time and place as the Council may determine.

COUNCIL

- 6(1) The Association shall have a Council who shall control, govern and manage, or supervise the control, government and management, of the business and affairs of the Association and all aspects of the practice of architecture.
- 6(2) The Council shall consist of not less than five and not more than fifteen members of the Association as prescribed by the by-laws who shall have the qualifications prescribed by the by-laws and shall be elected by the members of the Association at each annual meeting in the manner and for the terms prescribed in the by-laws, together with
- (a) The immediate Past-President of the Association,
 - (b) Not more than two non-members of the Association, if any, qualified and appointed or elected in the manner prescribed by the by-laws, and
 - (c) The Registrar, who shall be a member of the Association with the qualifications prescribed by by-law and appointed annually by the other members of the Council.
- 6(3) A member of Council may be removed from office by resolution of the members duly passed at a meeting of the members called for such purpose.
- 6(4) The officers of the Association shall consist of a President, a Vice-President, and a Treasurer all of whom shall be members and who shall be elected in the manner and for the terms prescribed in the by-law, by the members of Council from the membership of the Council at the first meeting of the Council held following the annual meeting of the members.
- 6(5) The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and Council and shall have such other duties and responsibilities as may be prescribed by by-law.
- 6(6) The Vice-President shall have such duties and responsibilities as may be prescribed by by-law and in the absence or inability of the President to act shall assume the duties and responsibilities of the President.
- 6(7) The Treasurer shall have such duties and responsibilities as may be prescribed by by-law.
- 6(8) The Registrar shall have such duties and responsibilities as may be prescribed by by-law.
- 6(9) In the event that the office of President becomes vacant, the Vice-President shall assume the office of President until the first meeting of Council following the annual meeting.
- 6(10) In the event of a vacancy in an office of the Association or in Council, other than in the office of the immediate Past-President, the Council may fill such vacancy by the appointment thereto of any duly qualified person.
- 6(11) The Council may appoint an Executive Secretary of the Association who shall hold office during the pleasure of the Council and who shall have such duties and responsibilities as may be prescribed by by-law.
- 6(12) The President, Vice-President or Treasurer of the Association may be removed from office by a resolution of the members of Council duly passed by two-thirds majority vote of all members of Council.



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BY-LAWS

- 7(1) The Council may by resolution make by-laws not inconsistent with the provisions of this Act for
- (a) the management of the Association and its property and affairs;
 - (b) the establishment of classes of members and licensees of the Association, and the qualifications, rights, privileges, and obligations thereof, and the acceptance of resignations from membership in the Association;
 - (c) the duties and responsibilities of officers and employees of the Association;
 - (d) the holding of annual and other meetings of the members and of Council and the Rules of Procedure to govern the conduct of such meetings, including when members may vote by proxy and the form thereof;
 - (e) the discipline and honour of the profession, and the discipline and control of the members, licensees, or persons authorized to practice architecture hereunder;
 - (f) the fixing, levying, and collecting of annual and other fees or dues from members, licensees or persons authorized to practice architecture hereunder;
 - (g) the standards for qualification, examination and admission or approval of members or licensees;
 - (h) the establishment of the form, classes and duration of licenses and the terms and conditions upon which such licenses may be issued;
 - (i) the establishment of the form, class and duration of Certificates of Practice and the terms and conditions upon which a Certificate of Practice may be issued;
 - (j) the qualifications, terms, and manner of election of members of Council and officers of the Association, and the acceptance of resignations there from;
 - (k) the establishment or approval of conditions of engagement between architect and Client;
 - (l) the establishment of a schedule of recommended minimum fees;
 - (m) the establishment of standards of practice, professional conduct and advertising, an inspection program, and a Code of Ethics;
 - (n) the establishment of minimum requirements of professional liability insurance to be maintained by persons entitled to practice architecture hereunder;
 - (o) the definition of terms used in this Act, or in the by-laws passed pursuant hereto;
 - (p) the registration of members and licensing of non-members, and the educational, residential and other qualifications of applicants for membership or licensing under this Act;
 - (q) the qualification of applicants for a Certificate of Practice;
 - (r) the establishment of a Board of Examiners and rules regarding examinations to be taken by applicants for registration or licensing;
 - (s) determining the relationship between the Association and any like association outside New Brunswick, including any central certification board established by like associations in Canada; and
 - (t) all other purposes respecting and governing such other subjects, matters and things as the Council considers appropriate to advance or protect the interest of the public, the Association, or its members, or to carry out its obligations hereunder.



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- 7(2) Every by-law enacted by the Council shall remain in effect only until confirmed, repealed, or amended by resolution of the members at the next annual meeting of the Association and if not dealt with as such meeting shall no longer be in effect.
- 7(3) The Council shall cause the text of any by-law enacted by it to be sent to all members with the notice of the annual meeting following such enactment or with the notice of any special or general meeting of the Association called for the purpose of considering the same, and a such meeting the by-law shall be confirmed, repealed or amended by resolution.
- 7(4) No act or thing done in reliance upon, or right acquired under or pursuant, to, a by-law that is subsequently repealed or amended shall be prejudicially affected by such repeal or amendment.
- 7(5) The Association shall not be required to publish or file its by-laws, but all the by-laws of the Association shall be available for inspection by any person, free of charge, at the registered office of the Association, at all reasonable times during business hours.
- 7(6) A certificate purporting to be signed by the Registrar stating that a certain by-law or by-laws of the Association were, on a specified day or during a specified period, duly enacted by-laws of the Association in full force and effect constitutes *prima facie* evidence in any court of that fact without proof that the person signing it is the Registrar or that it is his signature.
- 7(7) A resolution in writing, or counterparts of a resolution, signed by all members entitled to vote thereon at a meeting of the members of the Association shall be as valid and effective as if duly passed at a meeting of the members.
- 7(8) Resolutions in writing, or counterparts of a resolution, signed by all members of Council or a committee or board of Council or of the Association, shall be as valid and effective as if duly passed at a meeting of Council, the committee or the board.
- 7(9) With the unanimous consent of all members of Council, a member may participate in any meeting of Council by telephone or other communications facilities that permit all persons participating in a meeting to hear each other, and a member of Council participating in a meeting by such means is deemed to be present at the meeting.
- 7(10) With the unanimous consent of all members of Council, a meeting of Council may be held by conference telephone call or other communications facilities that permit all persons participating in a meeting to hear each other, and all members of Council participating in a meeting by such means are deemed to have been present at a meeting of Council.

PART III - REGISTRATION AND LICENSING

DESIGNATION AS ARCHITECT

- 8(1) Except as otherwise provided in this Act or in the by-laws, only the members or licensees, or proprietorship, partnerships or corporations holding a Certificate of Practice shall be entitled within New Brunswick to take or use, directly or indirectly, the title or designation "architect", "registered architect", "licensed architect", "qualified architect", "duly qualified architect", or any like words, initials, or expression.
- 8(2) The words "architect", "registered architect", "duly qualified architect", "qualified architect", "licensed architect" or any like words or expressions used alone or in combination with other words or expressions connoting a person recognized by law as an architect entitled to carry on the practice of architecture or connoting a member of the Association, when used in any provision of an Act of the Legislature or any regulation, rule, order or by-law made under an act of the Legislature enacted before or after the enactment of the Act or when used in any public document, shall be read as including a member or licensee of the Association or a person authorized to practice architecture under the provisions of this Act.
- 8(3) Except as otherwise provided in this Act or in the by-laws, only a member authorized by by-law may represent himself to be a member of the Association, or take or use, in connection with his name, the designation "AANB".



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REGISTRATION

- 9(1) Upon the approval of Council and upon payment of the prescribed fees, the Registrar shall issue a certificate of Registration as a member to any individual entitled thereto in accordance with this Act or the by-laws.
- 9(2) A Certificate of Registration shall be issued in the form and in the manner prescribed by by-law and shall be signed by the Registrar or any officer authorized by by-law and bear the seal of the Association.
- 9(3) The Council may refuse to approve the issuance of a Certificate of Registration unless the applicant has completed the application forms prescribed by the by-laws, fulfilled the requirements of the by-laws respecting applications for membership, and paid the prescribed fee.

LICENSING

- 10(1) The Council may, on application; approve the issuance of a license to practice architecture in New Brunswick to any individual who is a member in good standing of an Association of Architects recognized by the Council.
- 10(2) A license shall be issued in such form, and for such period and upon such terms and conditions as this Act or the by-laws may authorize or prescribe and shall be signed by the Registrar and bear the seal of the Association.
- 10(3) The Council may refuse to approve the issuance of a license unless the applicant has completed the application forms prescribed by the by-laws, fulfilled the requirements of the by-laws respecting applications for a license, and paid the prescribed fee.

REGISTERS

- 11(1) The Registrar shall maintain a Register of Members, a Register of Licensees, and a Register of approved Proprietorships, Partnerships and Corporations holding Certificates of Practice.
- 11(2) A Certificate purporting to be signed by the Registrar stating that any person named therein was or was not, on a specified period, a member or licensee of the Association constitutes *prima facie* evidence in any court of that fact without proof that the person signing it is the Registrar or that it is his signature.
- 11(3) A Certificate purporting to be signed by the Registrar stating that an architect, proprietorship, partnership or corporation named therein was or was not, on a specified day or during a specified period, the holder of a valid Certificate of Practice issued pursuant to this Act or the by-laws, constitutes *prima facie* evidence in any court of that fact without proof that the person signing it is the Registrar or that it is his signature.

MEMBER OR LICENSEE PRACTICE

- 12(1) A member or licensee may practice architecture as an individual in his own name as long as he complies with this Act and the by-laws and holds a valid Certificate of Practice.
- 12(2) Any member who is an employee of the Governments of New Brunswick or Canada including the Armed Forces or an employee of a Crown Corporation of New Brunswick or Canada, or an employee of a New Brunswick public utility, and who by such service is required to practice as an architect in New Brunswick, may so practice with respect to work directly related to his employment or service without holding a valid Certificate of Practice.
- 12(3) Any non-resident of New Brunswick who is an employee of the Government of Canada including the Armed Forces and who by such service is required to practice as an architect in New Brunswick, may so practice with respect to work directly related to his employment or service without holding a license or a valid Certificate of Practice and without payment of any fee if he is a member of an Association of Architects of another Province or Territory of Canada having an act of incorporation similar to that of the Association and is authorized to practice architecture in such Province or Territory.



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PROPRIETORSHIP/ PARTNERSHIP / CORPORATE PRACTICE

- 13(1) A proprietorship, partnership or corporation shall not be granted membership in or be a licensee of the Association.
- 13(2) Members or licensees may practice architecture in a name other than their own and conduct their business as a sole proprietorship if
- (a) one of the principal and customary functions of the sole proprietorship is the practice of architecture;
 - (b) the practice of architecture is carried out under the responsibility and supervision of the principal of the sole proprietorship who is an architect; and
 - (c) the sole proprietorship holds a valid Certificate of Practice.
- 13(3) Members or licensees may practice architecture in a name other than their own and conduct their business as partnership with members, licensees, engineers or other individual, or with corporations meeting the requirements of paragraphs 13(4)(a) and (c) if
- (a) at least two-thirds of the partners who are individuals are architects or engineers and at least one of whom is an architect;
 - (b) one of the principal and customary functions of the partnership is the practice of architecture;
 - (c) the practice of architecture is carried out under the responsibility and supervision of an architect who is a partner, an employee of the partnership or an officer, director, or employee of a corporate partner; and
 - (d) the partnership holds a valid Certificate of Practice.
- 13(4) A corporation may practice architecture in its own name or in partnership with a member, licensee, or other corporation if
- (a) one of the principal and customary functions of the corporation or of each corporate partner is the practice of architecture;
 - (b) the practice of architecture is carried out under the responsibility and supervision of a director, officer or employee of the corporation or partnership who is an architect;
 - (c) at least two-thirds of the directors of the corporation or of each corporate partner are architects or engineers and a least one of whom, for each corporation, is an architect, and the majority of the issued shares of each class of voting shares of the corporation are beneficially owned by and registered in the name of the architects and engineers; and
 - (d) the corporation holds a valid Certificate of Practice.
- 13(5) Any non-resident partnership or corporation applying for a Certificate of Practice to practice architecture in New Brunswick shall satisfy the Council that
- (a) at least two-thirds of the partners, principals or directors of the partnership or corporation as the case may be are architects or engineers and at least one of who is an architect; and
 - (b) the majority of the issued shares of each class of voting shares of the corporation are beneficially owned by and registered in the name of architects and engineers.
- 13(6) Any member, licensee, proprietorship, partnership or corporation holding a valid Certificate of Practice may practice architecture in New Brunswick as part of more comprehensive service which may include construction, engineering, landscaping, surveying, soil testing and analysis, construction inspection, management, finance and computer programming of building construction and operation if the practice of architecture within such comprehensive service is performed under the responsibility and supervision of an architect.



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- 13(7) Any member, licensee, proprietorship, partnership or corporation entitled to practice architecture in New Brunswick who practices architecture as part of a more comprehensive service referred to in subsection (6) shall immediately advise the Association in writing of the name or names under which the architectural services are being offered, the terms of the arrangement under which the services are being offered and the names of the individuals, proprietorships, partnerships, persons, firms or corporations with whom the more comprehensive service is being offered.

CERTIFICATE OF PRACTICE

- 14(1) The Council shall approve an application for a Certificate of Practice to practice architecture in New Brunswick if it is satisfied that the member, licensee, sole proprietorship, partnership or corporation applying for a Certificate has fulfilled all of the requirements of this Act and the by-laws.
- 14(2) The Registrar, upon the approval of Council, shall issue a Certificate of Practice in the form and signed in the manner prescribed by by-law.
- 14(3) A Certificate of Practice is no longer valid and becomes void when the member, licensee, sole proprietorship, partnership or corporation to which it was issued undergoes any changes which would result in the member, licensee, sole proprietorship, partnership or corporation being ineligible to receive a Certificate of Practice under the provisions of this Act or by-laws.
- 14(4) No person shall practice architecture in New Brunswick unless that person holds a valid Certificate of Practice.
- 14(5) No individual practicing architecture in New Brunswick shall be entitled to recover any charge in any court of law for any service included within the practice of architecture unless he was a member or licensee of the Association and held a valid Certificate of Practice at the time the services were performed.
- 14(6) No proprietorship, partnership or corporation shall be entitled to recover any charge in any court of law for any service included within the practice of architecture unless the proprietorship, partnership or corporation held a valid Certificate of Practice at the time the services were performed.

STAMPS

- 15(1) The Council shall issue to every member or licensee who holds a Certificate of Practice a stamp of a design prescribed by by-law.
- 15(2) The Council shall issue to every proprietorship, partnership or corporation which holds a Certificate of Practice a stamp of design prescribed by by-law.
- 15(3) Unless exempted by by-law, every member or licensee practicing architecture in New Brunswick in his own name shall sign, date, and affix his stamp to all designs, specifications, reports, contracts, and other documents pertaining to the practice of architecture which have been prepared by the member or licensee, or under the direct supervision of the member or licensee.
- 15(4) Unless exempted by by-law, every sole proprietorship, partnership, or corporation practising architecture in New Brunswick shall
- (a) date and affix its stamp to all designs, specifications, reports, contracts, and other documents pertaining to the practice of architecture which have been prepared by the proprietorship, partnership, or corporation; and
 - (b) have all such designs, specifications, reports, contracts, and other documents signed by a member or licensee if the Association designated on the Certificate of Practice.
- 15(5) Every person authorized to practice architecture under this Act who fails to sign and affix their stamp to a final construction document, as required by this section, is guilty of professional misconduct.



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PART IV - DISCIPLINE

COMPLAINTS

- 16(1) In this Part “complaint” means any complaint, report or allegation in writing and signed by the complainant regarding the conduct, actions, competence, character fitness, health or ability of an architects or any similar complaint, report or allegation initiated by Council of its own motion.
- 16(2) All complaints against an architect which are received or initiated by the Council shall be forwarded forthwith to the Registrar, who shall mail by registered or certified mail or otherwise cause to be delivered to the architect, at his last know address, a copy of the complaint, inviting him to respond in writing to the Registrar regarding the complaint.
- 16(3) Within sixty days from the date on which the Registrar received the complaint, the Registrar shall, in an informal manner, consider and investigate the complaint and, upon the completion of such investigation as he deems necessary, the Registrar may make recommendations to the complainant and the architect in question as the how the complaint may be resolved and, in any event, shall report to Council and send a copy of such report to the architect.
- 16(4) If at any time the Registrar considers the subject matter complained of to be of sufficient importance, whether or not the Registrar has made recommendations pursuant to subsection (3), or if the complaint has not been resolved by his recommendations, the Registrar shall immediately refer the complaint to Council.
- 16(5) The Council may, in its absolute discretion, after considering the report of the Registrar on his investigation of the complaint
- (a) appoint a Committee of Inquiry consisting of a Chairman and two other members, all of whom shall be members of the Association and not members of Council, to deal with the complaint by means of a Disciplinary Hearing pursuant to the procedure set out in this Act and the by-laws, or
 - (b) take no further action with respect to the complaint.

POWERS OF INVESTIGATION

- 17(1) If the Council in its absolute discretion at any time after the receipt or institution of a complaint deems it necessary or advisable, it may with out a hearing, require the architect in respect of whom a complaint is made to submit to a physical or mental health examination by such qualified person or persons as the Council may designate, and if the architect fails to submit to any such examination, the Council may, without further notice, revoke or suspend the architect’s Certificate of Practice, membership or license until he does so.
- 17(2) If the Council in its absolute discretion at any time after the receipt or institution of a complaint deems it necessary or advisable, it may with out a hearing, require the architect in respect of whom a complaint is made to undergo such examinations as the Council may designate in order to determine whether the architect has adequate skill and knowledge to practice architecture, and if the architect fails to undergo any such examination, the Council may, without further notice, revoke or suspend the architect’s Certificate of Practice, membership or license until he does so.
- 17(3) If the Council in its absolute discretion at any time after the receipt or institution of a complaint deems it necessary or advisable, it may without a hearing, require any architect to produce records and documents in his possession or custody or under his control or in the possession or custody or control of any corporation of which he is a director officer or shareholder, and if the architect fails to produce such records and documents the Council may without further notice revoke or suspend the architect’s Certificate of Practice, membership or license until he does so, unless the architect is by law prohibited from producing such records and documents.
- 17(4) If the Council in its absolute discretion at any time after the receipt or institution of a complaint deems it necessary or advisable, it may with out a hearing require any architect to submit to an audit or other examination of its business, books and records by such person or persons as the Council may designate, and if the architect fails to submit to such audit or examination, the Council may, without further notice revoke or suspend the Certificate of Practice membership, or license of the member, licensee, proprietorship, partnership or corporation, until it so submits.



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- 17(5) Where Council revokes or suspends a Certificate of Practice, membership, or license pursuant to this section the person whose Certificate of Practice, membership or license has been suspended or revoked may, by notice in writing to the Registrar, require Council to reconsider its decision and Council shall within 7 days of receipt of notice, hold a hearing and shall render a decision within 7 days of the hearing.
- 17(6) The provisions of Section 18 shall apply to a hearing held pursuant to subsection 17(5) if requested by the person requiring the hearing or if Council directs.

PROCEDURE

- 18(1) A Committee of Inquiry, when acting pursuant to this Part, shall conduct its proceedings in accordance with its own rules of procedure and may do all things and engage such persons including legal counsel as it deems necessary to provide for the investigation, hearing, and consideration of the complaint, and in no case is the Committee of Inquiry bound to follow the rules of evidence or procedure applicable in judicial proceedings except as hereinafter set out.
- 18(2) Where a Committee of Inquiry is established for the purpose of a Disciplinary Hearing, the architect concerned shall be entitled to at least fourteen days' notice of the hearing, which notice may be given by personal service, or by registered or certified mail in accordance with the applicable provisions of section 38 hereof, in the discretion of the Registrar.
- 18(3) Upon the application of
- (a) the architect concerned,
 - (b) a member of the Committee of Inquiry, or
 - (c) legal counsel for the Committee of Inquiry.
- and on payment of any fees prescribed by the Rules of Court, the Registrar of the Association or any Clerk of the Court of Queen's Bench of New Brunswick shall sign and issue a Summons to Witness for the purpose of procuring and compelling the attendance and evidence of witnesses and the production of things relating to matters in question before the Committee of Inquiry.
- 18(4) A Summons to Witness which is issued pursuant to this section shall be equally enforceable and shall have equal effect as if issued pursuant to the Rules of Court, and the Rules of Court with respect to the attendance of witnesses shall be deemed to apply, *mutatis mutandis*, to a Summons to Witness issued pursuant to this section.
- 18(5) The testimony of witnesses shall be taken under oath or solemn affirmation which any member of the Committee of Inquiry is authorized to administer, or testimony may be taken by affidavit or otherwise, if the witness is not available for attendance.
- 18(6) If the architect whose conduct is being investigated fails to appear in answer to the notice at the time and place appointed, the hearing may proceed in his absence.
- 18(7) Hearings under this Part shall be held in camera, but if the architect whose conduct is being investigated requests otherwise by a notice in writing delivered to the Registrar before the day fixed for the hearing, the Committee of Inquiry may in its absolute discretion conduct the hearing in public or otherwise as it seems fit.
- 18(8) The Committee of Inquiry may adjourn any hearing at any time, and from time to time.
- 18(9) At any hearing pursuant to this Part, the architect in question
- (a) may present evidence or make representations in either English or French;
 - (b) may be represented by legal counsel at his own expense;



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- (c) shall be entitled to a full right to examine, cross-examine, and re-examine witnesses in accordance with the rules of procedure established by the Committee of Inquiry; and
 - (d) shall be entitled to receive copies of all documents presented to the Committee of Inquiry in connection with the complaint or investigation unless such documents are privileged by law.
- 18(10) Upon the request of the architect in question at least 7 days prior to the hearing or upon the direction of the Committee of Inquiry the oral evidence submitted at a hearing shall be taken down in writing or by any other method authorized by the *Evidence Act*.
- 18(11) Notwithstanding the death of a member of a Committee of Inquiry, or his disability or inability to act or continue to act with respect to a hearing in progress, such hearing may continue with the remaining two members whose decision shall constitute and be for all purposes a decision of the Committee of Inquiry, or if the taking of evidence has not commenced at the time when such member of the Committee dies or becomes disabled or unable to continue to act, the Council may in its discretion appoint another member to take the place of such member or reconstitute the Committee of Inquiry.
- 18(12) In any proceedings pursuant to this Part, the Committee of Inquiry may in its absolute discretion appoint legal counsel to lead the evidence tending to substantiate the complaint, and to advise the Committee on any relevant matter of law or procedure.

PENALTIES

- 19(1) Following a hearing pursuant to this Part, the Committee of Inquiry may dismiss the complaint, or may find that:
- (a) the architect concerned is guilty of conduct unbecoming an architect;
 - (b) the architect concerned is guilty of professional misconduct;
 - (c) the architect concerned is guilty of incompetence;
 - (d) the architect concerned is guilty of negligence in the practice of architecture;
 - (e) the architect concerned has been found by a Court to be negligent in the practice of architecture;
 - (f) the architect concerned has contravened this Act or the by-laws;
 - (g) the architect concerned has been convicted by a court of an offence contrary to this Act;
 - (h) the architect concerned has obtained registration as a member or has been issued a license or has obtained a Certificate of Practice by fraud, deceit or misrepresentation; or
 - (i) the complaint has not been substantiated or does not warrant disciplinary action;

and the Committee of Inquiry shall, in any event, deliver a decision in writing to Council and to the architect concerned which shall include a statement of the facts as found by the Committee of Inquiry, the reasons for its finding, and recommendations as to the penalty to be imposed on the architect.

- 19(2) Upon receiving a report from the Committee of Inquiry pursuant to subsection (1) hereof, and upon hearing submissions from the architect and the Committee of Inquiry with respect to imposition of penalty, if either should wish to make such submissions, the Council may by order do one or more of the following:
- (a) reprimand such architect and, if considered proper, direct that the fact of the reprimand be recorded on the register;
 - (b) suspend the membership, license or Certificate of Practice of such person for such time as the Council considers proper, and direct that the reinstatement of such membership or license or Certificate on the termination of such suspension be subject to such conditions, if any, as the Council considers proper;



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- (c) direct that the membership or license or Certificate of Practice of such person be cancelled or revoked, and that the name of such person be removed from the appropriate register or registers;
- (d) direct that the imposition of any penalty be suspended or postponed for such period and upon such terms as the Council deems proper, and that at the end of such period, and upon the compliance with such terms, that any penalty be remitted;
- (e) direct that the decision of the Committee of Inquiry or Council be published in detail or in summary in the official journal of the Association, or in such other manner or medium as the Council considers appropriated in any particular case;
- (f) direct that the suspension, cancellation or revocation of membership, license or Certificate of Practice be advertised publicly in such manner as Council may determine;
- (g) impose such fine as the Council may consider to be appropriate not exceeding \$1,000.00 to be paid by the architect to the Association for use by the Association;
- (h) make such other order as it considers just and fair in the circumstances.

COSTS

- 20(1) The Council, and on appeal, the Court of Appeal, may order that the costs of the Association for any investigation, proceeding, hearing or appeal pursuant to this Act be paid, in whole or in part
- (a) by the architect against whom the complaint was made, unless the complaint is dismissed without any decision or order adverse to the architect; or
 - (b) by the complainant at whose request the complaint was made, or an investigation was commenced where the Council or Court of Appeal is of the opinion that the complaint was frivolous, vexatious or malicious,
- and may make it a condition of the architect's membership or license, or issuance of a Certificate of Practice to the architect that such costs be paid forthwith.
- 20(2) The costs including disbursements payable under subsection (1) may be taxed by the Registrar of the Court of Queens Bench or any Clerk thereof as between solicitor and client on filing with the Registrar the order as to costs and payment of any required fees, and judgment may be entered for such taxed costs in Form "A" of this Act, with any necessary modifications.
- 20(3) Before the hearing of an appeal, where there is reason to believe that the Appellant has not sufficient assets in New Brunswick to pay the costs of the Association if ordered to do so, a judge of the Court of Appeal may order that security for costs be paid to the Association by the Appellant in such amount, or given in such form and upon such terms as may be deemed just.
- 20(4) For the purposes of this Act, "costs" shall include:
- (a) all costs, expenses and disbursements and all legal and other expenses of any kind incurred by the Association, the Council, a Committee of Inquiry, or the Registrar, in relation to an investigation, proceeding, hearing or appeal;
 - (b) honoraria and expenses paid to the Registrar, members of Council or of a Committee of Inquiry, in relation to an investigation, proceeding, hearing or appeal; and
 - (c) the legal costs, expenses and disbursements incurred by any other party to an investigation, proceeding, hearing or appeal.



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SUSPENSION AND REINSTATEMENT

- 21(1) Where an architect has had his membership, license or Certificate of Practice suspended, cancelled or revoked under this Part, he shall return to the Association forthwith any certificates or licenses, issued by the Association, and shall return to the Association the stamp issued pursuant to section 15 hereof, and the Registrar shall make a note of such suspension, cancellation or revocation in the proper register or registers.
- 21(2) Where an architect has been ordered to pay a fine, costs or disbursements pursuant to this Part, and where such fine, costs or disbursements have not been paid in the time provided therefore, the Council may suspend the membership or license or Certificate of Practice of the architect, pending payment by the architect of all monies owing to the Association.
- 21(3) Where an architect has had his membership, license or Certificate of Practice cancelled or revoked under this Part, he may not apply for membership, licensing, or a Certificate of Practice as the case may be until at least two years from the time of such cancellation or revocation or at least one year from the date of Councils refusal of his most recent application for membership, licensing or a Certificate of Practice.

PART V – APPEALS

APPEALS

- 22(1) A person against whom a decision or order has been made or a complainant not satisfied with a decision or order made pursuant to Part IV hereof may appeal such decision or order to the Court of Appeal on any ground of appeal that involves a question of penalty or law alone, by filing a Notice of Appeal within thirty days of the date on which notice of the decision or order was personally served or mailed by registered or certified mail to the last known address of the person, in accordance with Section 38.
- 22(2) The Notice of Appeal referred to in subsection (1) shall be served upon the Registrar, and the record on the appeal shall consist of
- (a) the Notice of Hearing referred to in subsection 18(2);
 - (b) a transcript of the oral evidence if a transcript has been prepared;
 - (c) such documentary evidence and other things as were received in evidence;
 - (d) the report and decision of the Committee of Inquiry to the Council; and
 - (e) the decision of the Council with respect to penalty.
- 22(3) Except as otherwise provided, appeals under this section shall be in accordance with the practice on appeal from a decision or order of a judge of the Court of Queen's Bench.
- 22(4) Upon the hearing of an appeal under this section, the Court of Appeal may make such order as the Council may make or may refer the matter or any part thereof back to the Council or Committee of Inquiry as the case may be, with such directions as the Court deems proper.

PART VI – OFFENCES

INDIVIDUAL – PRACTICE OF ARCHITECTURE

- 23 Except as provided in this Act or the by-laws, every individual, other than a member or a licensee, who
- (a) engages in the practice of architecture;
 - (b) uses orally or otherwise the title "Architect", the initials "AANB", or any name, title, description, or designation that will lead to the belief such a person is an architect;



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- (c) advertises, holds himself out or conducts himself in any way or in any manner as an architect; or
 - (d) uses a stamp or seal that will lead to the belief that the person is an architect,
- and does not hold a valid Certificate of Practice, is guilty of an offence, punishable on summary conviction.

PARTNERSHIP & CORPORATION – PRACTICE OF ARCHITECTURE

24 Where a sole proprietorship, partnership or corporation not holding a valid Certificate of Practice,

- (a) engages in the practice of architecture;
- (b) uses orally or otherwise the title “Architect” or any name, title, description, or designation that will lead to the belief that it is entitled to practice architecture;
- (c) advertises, holds itself out or conducts itself in any way or in such manner as to lead to the belief that it is entitled to practice architecture; or
- (d) uses a stamp or seal that will lead to the belief that it is entitled to practice architecture;

the sole proprietorship, partnership or the corporation, and every principal, partner, director, or officer thereof having knowledge of the activity, or member or licensee who is an employee thereof and who participates in the activity, is guilty of an offence, punishable on summary conviction.

EXCEPTIONS

25(1) Subsections 14(5) and 14(6), and sections 23, 24 and 28 do not apply to

- (a) the preparation or provision of a design for the construction, enlargement, or alteration of a building
 - (i) that is not more than three storeys and not more than 600 square metres in gross area as constructed, enlarged, or altered, and
 - (ii) that is used or intended for business or mercantile occupancy, residential, occupancy, personal services occupancy or industrial occupancy, or a combination thereof,
- (b) the preparation or provision of a design for the construction, enlargement or alteration of a building used directly in the extraction, processing, or storage of ore from a mine;
- (c) the preparation or provision, under the supervision and direction of a member or licensee of the Association, of a design for the construction, enlargement, or alteration of a building;
- (d) the preparation or provision of a design, complying with the provisions of the National Building Code or other applicable building codes, for interior space for a building regardless of occupancy type, including signs, finishes, fixed or loose furnishings, equipment, fixtures and portioning of space and related exterior elements, including signs, finishes and glazed openings used for display purposes, if the design does not, or is not likely to, produce a reduction in the structural integrity of the building or the safety of
 - (i) fire safety system or fire separation;
 - (ii) main entrance or any public corridor on a floor;
 - (iii) the construction or location of an exterior wall; or
 - (iv) the usable floor space through the addition of a mezzanine, infill, or other similar element,of the building; and



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- (e) the preparation or provision of design, complying with the provisions of the National Building Code or other applicable building codes, for alterations within a dwelling unit that do not, or are not likely to, produce a reduction in the structural integrity of the building or the safety of a fire safety system or fire separation, fire walls or persons in the building.

25(2) Sections 23 and 24 hereof do not apply to prevent a person from

- (a) evaluating, advising on, or reporting on the construction enlargement or alteration of a building that does not, or is not intended to, take the place of evaluating, advising, or reporting by an architect; or
- (b) carrying out a general review of the construction, enlargement or alteration of a building that does not, or is not intended to, take place of a general review by an architect.

25(3) Nothing contained in this Act shall be taken or construed to prohibit or preclude;

- (a) subject to section 39 hereof, any engineer who is registered under the *Engineering Profession Act* from carrying on the practice of architecture in connection with his work as an engineer;
- (b) any engineering technician or technologist certified under the *Engineering Technology Act* from performing work which constitutes the practice of architecture primarily, where an architect takes responsibility for such work;
- (c) any interior designer from performing work which constitutes the practice of architecture where an architect takes responsibility for such work; or
- (d) any person from practicing any profession or occupation, carrying out any inspection, or working in any trade or calling with respect to which he is registered, licensed, certified, or otherwise authorized under any other public or private Act of the Province of New Brunswick;

or require any person to become registered or licensed, or to hold a Certificate of Practice issued under this Act in order to do any such thing.

MEMBERSHIP

26 Every person who

- (a) willfully procures or attempts to procure membership or licensing or a Certificate of a practice under this Act for himself or for another person by making, producing, or causing to be made or produced, any fraudulent representation or declaration, either verbal or written; or
- (b) knowingly makes any false statements in any application or declaration signed or filed by him under this Act, is guilty of an offence, punishable on summary conviction.

CONTRAVENTION OF ACT

27 Where a member, licensee, sole proprietorship, partnership or corporation that holds a valid Certificate of Practice practices architecture in contravention of this Act or the by-laws, the member or licensee, or the sole proprietorship, partnership or corporation, and every partner, director or officer thereof having knowledge of the activity, or member or licensee who is an employee thereof and who participates in the activity is guilty of an offence, punishable on summary conviction.

STAMP OFFENCE

28 Every person who uses or relies upon a design, where such design has not been signed and stamped in accordance with the requirements of section 15 hereof, is guilty of an offence punishable on summary conviction.



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PENALTY

- 29(1) Every person who violates any provision of this Act commits an offence punishable on summary conviction and is liable,
- (a) for a first offence under this Act, to a fine of not less than \$500 and not more than \$5000, or to imprisonment for a term not exceeding six months, or to both, and
 - (b) for a second or any subsequent offence under this Act, to a fine of not less than \$1000 and not more than \$10,000, or to imprisonment for a term not exceeding six months, or to both.
- 29(2) Where a violation of any provision of this Act continues for more than one day the offender is guilty of a separate offence for each day that the violation continues.

LIMITATION ON PROSECUTION

- 30(1) No proceedings shall be instituted for a contravention of any of the provisions of this Act after two years from the date of the commission of such contravention.
- 30(2) Subsection (1) hereof does not apply to any disciplinary proceedings pursuant to Part IV hereof.

RESTRAINT ORDERS

- 31(1) In passing sentence for an offence hereunder, the Court may, in addition to fining the person or sentencing him to imprisonment, make an Order restraining the continuation or repetition of the act or acts for which the individual, person proprietorship, partnership or corporation has been convicted.
- 31(2) A person who is bound by an Order under subsection (1) hereof, and who fails or refuses to comply with such Order, is guilty of a separate offence punishable on Summary Conviction.

INJUNCTION

- 32(1) Where an individual, person, proprietorship, association of persons, partnership or corporation does or attempts to do anything contrary to the provisions of this Act the doing of such thing may be restrained by an injunction of the Court of Queen's Bench of New Brunswick at the instance of the Council acting in the name of the Association.
- 32(2) Where an architect or former architect, or any sole proprietor, partnership or corporation that holds or formerly held a Certificate of Practice, does or attempts to do anything contrary to the provisions of this Act or any by-law of the Association, the doing of such thing may be restrained by an injunction of the Court of Queen's Bench of New Brunswick at the instance of the Council acting in the name of the Association.

FINES

- 33(1) All fines and penalties imposed under this Act shall be recoverable, with costs, under the provisions of the *Summary Convictions Act*.
- 33(2) Any information for the recovering of any fine or penalty imposed under this Act may be laid by the Registrar of the Association or any member of the Association appointed by the Council.

PAYMENT TO ASSOCIATION

- 34 All fees, fines, and penalties payable under this Act shall upon being recovered belong to the Association for the use thereof.

EVIDENCE OF OFFENCES

- 35(1) For the purposes of this Part, proof of the performance of one act in the practice of architecture on one occasion is sufficient to establish that a person has engaged in the practice of architecture.



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- 35(2) In proceedings under this Part, the burden of proving that a person was registered or licensed, or the holder of a valid Certificate of Practice, or that a person was a partner or employee of a partnership, or an officer director or employee of a corporation, holding a valid Certificate of Practice, lies upon such person.

PART VII – GENERAL

IMMUNITY

- 36 No action or other proceeding for damages shall be instituted against the Association, the Council, a committee of the Association or a member of the Association Council or committee, or an officer, employee, agent or appointee of the Association 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, any previous Act, or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power.

LIMITATION OF ACTIONS

- 37 No action shall be brought against an architect or former architect or proprietorship or partnership or corporation practicing architecture in New Brunswick, or any principal, partner, officer, director or employee thereof, for negligence, malpractice, breach of contract or otherwise by reason of architectural services requested or rendered, except within
- (a) two years from the day when, in the matter complained of such professional services terminated;
 - (b) two years after the person commencing the action knew or ought to have known the facts upon which he alleges negligence, malpractice, breach of contract or other cause of action; or
 - (c) where the person entitled to bring an action is, at the time the cause of action arises, an infant, a mental incompetent, or a person of unsound mind, two years from the date when such person becomes of full age, or of sound mind, as the case may be,

whichever period is longer.

NOTICE

- 38 Whenever notice is required or permitted to be made or given pursuant to this Act or the by-laws, any such notice shall be deemed to have been received four days after the mailing by ordinary, registered, or certified, mail or any such notice to the last know residence or office address as shown by the records of the Association of the person to whom it is directed.

PART VIII - ARCHITECT-ENGINEER

ARCHITECT-ENGINEER JOINT PRACTICE COMMITTEE

- 39(1) There shall be a committee called the "Architect-Engineer Joint Practice Committee" for the purpose of assisting the Association and the Association of Professional Engineers of New Brunswick in the maintenance and development of the professional relationship between the two associations, including the considerations of questions or complaints relating thereto.
- 39(2) The Committee shall be composed of two members from each Association plus a chairman appointed by the members.
- 39(3) The Council shall appoint to the Committee two members representing the Association and shall prescribe the term of each appointment.
- 39(4) The Chairman shall hold office in accordance with the guidelines enacted pursuant to subsection (5) and shall be a member of either of the associations.



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- 39(5) The Committee may enact guidelines
- (a) governing the relationship between the Engineering and Architecture professions, including business relations with the public, and relations between members of the associations;
 - (b) establishing the procedure to be followed in handling any dispute or complaint referred to it for determination;
 - (c) governing its practice and procedure; and
 - (d) relating to any other matter directed to the Committee by the Council of either association for consideration.
- 39(6) All guidelines provided pursuant to subsection (5) are subject to approval by the Council.
- 39(7) Where a dispute arises between an architect and an engineer concerning jurisdiction with respect to professional services, the Registrar may refer it to the Committee which shall assist the architect and engineer to resolve the dispute in accordance with the guidelines enacted pursuant to subsection (5).

PART IX – TRANSITIONAL

CONTINUATION

- 40(1) Every person who at the coming into force of this Act is a member or licensee of the Association or a member of the Council of the Association pursuant to the previous Act and the by-laws made thereunder shall be deemed to be a member or licensee of the Association or member of the Council, as the case may be, under this Act.
- 40(2) Every person who at the coming into force of this Act holds a valid Certificate of Approval issued pursuant to the previous Act and the by-laws made thereunder shall be deemed to hold a valid Certificate of Practice under this Act.

PRIOR RIGHTS

- 41(1) Nothing in this Act shall affect the powers and duties, tenure of office, or terms of remuneration of any officer or employee or member of Council of the Association or any committee appointed before the commencement of this act, or anything done or suffered, or any right, title or interest acquired before the commencement of this Act, or any legal proceedings or remedy in respect of any such thing, right, title or interest.
- 41(2) Until repealed, altered, or amended pursuant to this Act, any by-law made, or fees prescribed under any enactment repealed by this Act and in force at the commencement of this Act shall, notwithstanding any conflict with this Act, continue in force and have effect as if made or prescribed under this Act.

REPEAL

- 42 *The New Brunswick Architect's Act, Chapter 52 of the Statutes of New Brunswick 1970, is repealed.*

EFFECTIVE DATE

- 43 *This Act shall come into force on January 1st, 1988.*



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FORM A

**IN THE COURT OF QUEEN'S BENCH
OF NEW BRUNSWICK
JUDGMENT**

(The Council, or the Court as the case may be) having on the _____ day of _____, 19__
ordered that _____ pay the costs incurred by the Architects' Association of New
Brunswick for an investigation, proceeding, hearing or appeal of a complaint made by
_____;

AND THE COSTS including disbursements of the Architects' Association of New Brunswick, having been taxed by
the Registrar (or Clerk) of the Court of Queen's Bench of New Brunswick on the _____ day of
_____, 19 __;

IT IS ORDERED AND ADJUDGED that the Architects' Association of New Brunswick recover from
_____ the sum of \$ _____ for costs and \$ _____ for
disbursement, together with interest on such costs and disbursements from the _____ day _____, 19 __
to the date of this Judgment and thereafter until payment.

Dated this _____ day of _____, 19 ____.

REGISTRAR (OR CLERK),
COURT OF QUEEN'S BENCH,
NEW BRUNSWICK