

**Bill \_\_\_\_\_**

**An Act to Incorporate the Association of Registered Professional Foresters of New Brunswick**

WHEREAS the Association of Registered Professional Foresters of New Brunswick prays that it be enacted as hereinafter set forth;

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

1 This Act may be cited as the *New Brunswick Registered Professional Foresters Act, 2011*.

**DEFINITIONS**

2 The following definitions apply in this Act, unless the context otherwise requires.

“ARPFNB” means the Association of Registered Professional Foresters of New Brunswick continued under section 3. (*AFANB*)

“Association” means the Association of Registered Professional Foresters of New Brunswick. (*Association*)

“Board” means the Board of Examiners as provided in section 13. (*commission*)

“by-Law” means a by-law made under Sections 7 or 22. (*règlement administratif*)

“Court” means The Court of Queen’s Bench of New Brunswick. (*Cour*)

“enrolled member” means a person enrolled under subsection 17(1). (*membre inscrit*)

“forester” means a person who is a graduate of a degree granting forestry institution whose program of studies meets the criteria defined in the by-law. (*forestier*)

“forester-in-training” means a person enrolled as a forester-in-training under subsection 17(1). (*forestier*

*stagiaire*)

“member” means a member of the Association in good standing and, for the purpose of disciplinary action and investigations under this Act, includes a person whose membership is suspended, revoked or expired, a member who has resigned and an enrolled member. (*membre*)

“member in good standing” means a member who is not in arrears with respect to any amount owing to the Association or is not under suspension. (*membre en règle*)

“Minister” means the Minister of Natural Resources or the Minister holding such equivalent office as named from time to time. (*Ministre*)

“practice of professional forestry” means the provision of services or undertakings which, because of their scope and implications respecting forests, forest lands, forest resources and forest ecosystems, require the specialized education, knowledge, training and experience of a registered member, and includes the following activities, as well as the responsibility for the implementation of such activities

- (a) designing and planning:
  - (i) the inventory, classification and appraisal of forests and forest lands,
  - (ii) silvicultural and harvest prescriptions for forest stands,
  - (iii) the analysis and assessment of the capability of forests, forest lands, and forest ecosystems to yield a flow of timber and other values,
  - (iv) the location of forest transportation systems,
  - (v) the conservation, protection and renewal of forests, forest lands, and forest ecosystems, and
  - (vi) the auditing of results of planned activities on forests, forest lands and forest ecosystems;
- (b) preparing, reviewing, amending and approving forest management and operating plans;
- (c) teaching core forestry subjects as defined in the by-laws at a college or university. (*exercice de la foresterie professionnelle*)

“registered member” means a person registered under subsection 17(2). (*membre immatriculé*)

“registered professional forester” means a person registered under subsection 17(2) as a registered professional forester. (*forestier autorisé*)

“registration” means the recording in a book of registry called the “register”, of the name of a person recommended by the Board and admitted by Council to practise as a forester in New Brunswick. (*immatriculation*)

## **ASSOCIATION**

3(1) The Association of Registered Professional Foresters of New Brunswick incorporated by the *New Brunswick Foresters Act, 2001*, chapter 50 of the Acts of New Brunswick, 2001, is continued as a corporation without share capital under the name Association of Registered Professional Foresters of New Brunswick.

3(2) The Association shall consist of persons who are members of ARPFNB on the date this Act comes into force.

3(3) The category of membership of a person who is a member of ARPFNB when this Act comes into force shall not change by reason thereof.

4(1) The head office of the Association shall be in the City of Fredericton or as provided in the by-laws.

4(2) The Association shall have a seal in a form provided in the by-laws.

## **OBJECTS**

5 The objects of the Association are

- (a) to uphold the public interest respecting the practice of professional forestry by
  - (i) ensuring the competence, independence, professional conduct and integrity of its members, and
  - (ii) ensuring that each person engaged in the practice of professional forestry is accountable to the Association,
- (b) to establish, monitor and enforce standards of education and qualifications for enrollment, registration and continued membership in the Association,
- (c) to establish, monitor and enforce codes of ethics and standards for the practice of professional forestry by its members,
- (d) to govern its members in accordance with this Act and the by-laws,

- (e) to advocate for and uphold principles of stewardship of forests, forest lands, forest resources, and forest ecosystems,
- (f) to promote public awareness of the role of the Association and the work of forest professionals, and to communicate and co-operate with other professional organizations for the advancement of the best interests of the Association, and
- (g) to provide means whereby it may participate in the development of public policy with respect to changes in the field of forestry.

### **POWERS OF ASSOCIATION**

- 6 The Association, in furtherance of its objects, shall have the power to
- (a) regulate the practice of professional forestry, including establishing
    - (i) standards of practice and codes of ethics to govern the conduct of its members,
    - (ii) standards for the use of a member's signature, stamp or seal,
    - (iii) procedures for the issuance, display and return to the Association of certificates of registration, professional seals and stamps, and
    - (iv) quality assurance programs in areas such as continuing education and peer or practice review,
  - (b) prescribe the qualifications as to education, character and experience required by any person before being registered to practise professional forestry in New Brunswick, including mandatory continuing education for members as a condition of maintaining registration, and establish and define fields of specialization and qualifications necessary to practise in a specialized field,
  - (c) provide for the determination, by examination or other means, of the competency of persons seeking to be registered to practise professional forestry, and to grant certificates of registration to persons qualified to practise, including the right to practise professional forestry on a temporary basis,
  - (d) establish categories of membership in the Association, and prescribe the privileges, obligations, scope of practice and conditions of membership,
  - (e) establish and maintain an official register of members registered to practise professional forestry in New Brunswick,

- (f) call and regulate meetings, including fixing the quorum, the method of voting, the time, place and conduct of the annual general meeting and other meetings of the Association and meetings of Council,
- (g) provide for the eligibility, nomination, election, number and term of office and duties of members of Council and committees, including the appointment and removal of persons as *ex officio* or honorary officers or members of Council or the Association,
- (h) provide for the establishment of committees by the Association or Council, and to prescribe their powers, duties, method of operation, procedures for meetings and filling vacancies, the form and frequency of reports to the Association or Council and to provide for the delegation of powers or duties of Council to any committee,
- (i) provide for investigations by the Complaints and Discipline Committees, and the procedures to be followed,
- (j) provide for meetings of Council and committees by conference telephone or other electronic means of communication by which all persons involved may participate,
- (k) organize branches of the Association throughout New Brunswick and provide for the administration, expenditures and activities of such branches, including representation on Council,
- (l) acquire property, both real and personal, by way of purchase, lease, grant, hire, exchange or otherwise, and to dispose of such property by any means,
- (m) provide for the management of its property, affairs and business, including the employment of staff,
- (n) borrow and spend money, and give security for money borrowed on any of its real or personal property by way of mortgage, pledge, charge or otherwise,
- (o) invest money of the Association, not immediately required for any of its objects, in any manner as it may from time to time determine,
- (p) fix and collect fees or other charges payable by any person
  - (i) upon being enrolled as an enrolled member,
  - (ii) upon being registered as a registered member,
  - (iii) upon writing an examination prescribed by the Association with a view to becoming a member or to maintain membership, or
  - (iv) as annual membership fees,

- (q) assess members for any ordinary, special or extraordinary expenditure that may be deemed necessary or expedient to further any of the objects of the Association,
- (r) exempt any person or class of persons from the payment of fees, dues, assessments or charges for such reason and upon such terms and conditions as the Association may from time to time determine, and suspend members for non-payment,
- (s) receive gifts, donations and bequests, and make gifts or donations for the promotion of the objects of the Association,
- (t) regulate advertising,
- (u) establish standard tariffs of fees,
- (v) provide for the establishment and payment of scholarships, fellowships, and other educational incentives, benefits and awards by the Association,
- (w) make grants or loans to branches or to any other professional forestry association or institute, or for any purpose deemed to be in the interests of the Association,
- (x) provide for professional liability insurance and determine whether such should be mandatory,
- (y) enter into agreements on behalf of the Association as may be necessary, incidental or conducive to carrying out the objects of the Association,
- (z) do all other things necessary or desirable to exercise the powers conferred by this Act, or any powers incidental thereto.

### **BY-LAWS**

7(1) For the purpose of achieving its objects and the implementation of its powers under section 6, the Association may make by-laws not inconsistent with the provisions of this Act.

7(2) No by-law, amendment, or repeal of a by-law shall be effective until passed by resolution of a majority of members voting

- (a) at the annual general meeting, or
- (b) at a special meeting of the Association called for that purpose.

7(3) A proposed new by-law, amendment or repeal of a by-law, shall be in writing signed by at least two members and, not less than forty-five days before the meeting, be presented to the secretary who shall include a copy in the notice calling the meeting.

### **ANNUAL GENERAL AND SPECIAL MEETINGS**

8(1) There shall be an annual general meeting of the Association to be held at a time and place and in such manner as provided by by-law.

8(2) Council may at any time call a special general meeting of the Association to be held at a time and place, for such purpose, and in such manner as provided by by-law.

8(3) Thirty registered members shall constitute a quorum for the transaction of business at an annual or special meeting, or as provided by by-law.

8(4) Subject to paragraph 9(1)(d), only members are entitled to vote at meetings of the Association, to be a member of Council or any committee of the Association, or to hold office in the Association.

### **COUNCIL**

9(1) The Association shall have a Council consisting of

- (a) a president, vice-president, immediate past-president and secretary-treasurer,
- (b) four councillors

all of whom shall be registered members elected by the membership of the Association in the manner provided in the by-laws, and

- (c) one public representative who shall be appointed by the Minister from a panel of not less than four persons named by Council.

9(2) The Association may by by-law increase the number of Council members.

9(3) There shall be an Executive Committee consisting of the president, vice-president, immediate past president and secretary-treasurer, together with such additional members as provided by by-law.

9(4) Subject to the provisions of this Act and the by-laws, the management of the Association shall be vested in Council and Executive Committee.

9(5) Five members of Council shall constitute a quorum for the transaction of business, or as provided by by-law.

10(1) The term of office of members of Council shall be fixed by by-law.

10(2) Notwithstanding subsection (1), in the event of a vacancy occurring on Council, except the office of president, the vacancy may be filled for the balance of the unexpired term

(a) where the vacancy is with respect to a person elected under paragraphs 9(1)(a) or (b), by Council appointing a replacement, and

(b) where the vacancy is with respect to a person appointed under paragraph 9(1)(c), by the Minister appointing a replacement from a panel of not less than four persons named by Council.

10(3) At the first meeting following the election of Council, or as soon after as possible, Council shall appoint such other persons or committees as may be necessary for carrying out the provisions of this Act and the by-laws, which persons or committees shall hold office during the pleasure of Council or as provided by by-law.

### **RULES BY COUNCIL**

11(1) Council may make rules not inconsistent with the provisions of this Act or the by-laws providing for

(a) the appointment, revocation and filling of vacancies on committees,

(b) calling and conducting meetings of all committees,

(c) calling and conducting meetings of Council and the duties of members of Council,

(d) the appointment, composition, powers and duties of additional or special committees,

(e) preliminary investigations into the conduct of a member,

(f) the custody and use of the Association seal,

(g) banking, finance, and disbursement of funds,

(h) the payment of necessary expenses of Council and committees in conducting the business of the Association,

(i) the application of the funds of the Association and the investment and reinvestment of any of its funds not immediately required, and for the safekeeping of its securities,

- (j) the management of the property of the Association,
- (k) the execution of documents by the Association,
- (l) the division of responsibility as between Council and the Executive Committee, and
- (m) the delegation of responsibilities to the executive director, registrar, or a committee of the Association.

11(2) All rules of Council shall be approved by resolution of Council.

### **REGISTRAR AND STAFF**

12(1) Council may appoint a member, or any other person it considers suitable, as registrar of the Association to perform such duties as provided by by-law, and may fix the registrar's salary and other terms and conditions of employment.

12(2) Council may appoint an executive director and such other staff as it considers necessary to administer the affairs of the Association, and may establish their duties and responsibilities, and may fix their salaries and other terms and conditions of employment.

12(3) Persons appointed under subsections (1) or (2) shall hold office during the pleasure of Council or as provided by contract with the person appointed.

### **BOARD OF EXAMINERS**

#### **Appointment**

13(1) Council shall appoint a Board of Examiners consisting of at least five members, and shall designate one member of the Board to act as chairperson and one as vice-chairperson.

13(2) Members of the Board shall be appointed for a term of two years and may be reappointed.

13(3) Decisions of the Board shall be by majority vote.

13(4) If a member of the Board is unable to continue to act for any reason, Council shall appoint another member to the Board.

13(5) The Board may determine its own procedure.

**Review of Applications**

14(1) The Board shall review

- (a) all applications for enrollment and registration in the Association,
- (b) all applications for reinstatement in the Association by a former member, and
- (c) any issues relating to qualifications for membership referred to it by Council or the Executive Committee.

14(2) The Board may, in acting under subsection (1)

- (a) administer examinations as provided by by-law,
- (b) conduct, or authorize any person to conduct an investigation with respect to the application.

14(3) An applicant whose application is being reviewed shall provide any documents and information that is within the applicant's possession or power and that the Board considers relevant to the application.

14(4) Where the Board conducts an investigation under paragraph (2)(b) it may, by written notice, require the applicant to appear before it to answer questions or provide additional information relevant to the application.

14(5) The Board may arrange for whatever clerical or administrative assistance it requires in carrying out its responsibilities under this section.

**Recommendation to Council**

15(1) The Board shall, after completing its review under section 14, make a recommendation to Council in writing with reasons

- (a) rejecting the application,
- (b) approving the application without conditions, or
- (c) approving the application, subject to conditions set out in its recommendation.

15(2) The recommendation of the Board shall be given to the applicant who shall be deemed to accept the recommendation unless, within twenty days after receiving the recommendation, the applicant requests a review by Council.

15(3) Council shall consider the review requested by the applicant under subsection (2) at the same time as it considers the application, and may, by majority vote

- (a) confirm the recommendation of the Board,
- (b) subject to section 17, allow the application upon such conditions as Council considers appropriate, or
- (c) refer the application to the Board to take such action as Council directs.

### **APPLICATION FOR ENROLLMENT AND REGISTRATION**

16 An application for enrollment or registration as a member of the Association under section 17 shall be made to Council which shall refer the application to the Board for review and recommendation.

17(1) Council, after considering the recommendation of the Board, may approve as an enrolled forester-in-training an applicant who is a forester who

- (a) pays the enrollment fees,
- (b) passes examinations in courses approved or specified by Council,
- (c) is of good character and repute, and
- (d) undertakes to comply with any requirements imposed by Council or the Board or as prescribed by by-law.

17(2) Council, after considering the recommendation of the Board, may approve as a registered professional forester an applicant who

- (a) pays the registration fees,
- (b) has successfully completed all requirements under subsection (1),
- (c) has had experience in forestry work as determined by Council, and
- (d) meets all other requirements which may be prescribed in the by-laws.

17(3) Council may approve as a registered member any person who is a registered member in good standing in a professional foresters association in another province or territory of Canada, recognized by the Association, and who

- (a) pays the required registration fees, and
- (b) meets all requirements under paragraphs (1)(b), (c) and (d).

18 A person who was a member of the Association but who has not practised professional forestry for at least three years out of the immediately preceding five years as of the date of application for registration, may be approved for registration by Council upon compliance with the requirements prescribed in the by-laws.

### **Special Permits**

19(1) Council may grant special permits, with or without terms and conditions, to persons who are not registered members and who wish to practise professional forestry in New Brunswick and who meet the requirements prescribed in the by-laws.

19(2) A special permit shall conspicuously state

- (a) the designation that the holder of the permit is entitled to use, and
- (b) any limitations on practice specified in granting the permit.

### **Refusal of Enrollment, Registration or Special Permit**

20 Notwithstanding anything in this Act, Council may refuse enrollment, registration or a special permit to any person who

- (a) has been convicted of an offence relevant, in the opinion of Council, to the person's suitability to practise professional forestry,
- (b) has been refused registration or is under investigation by a professional organization in another jurisdiction, or
- (c) for any other reason the person is considered by Council to be unfit to practise professional forestry in New Brunswick.

### **Certificate of Registration**

21(1) The registrar shall issue to each registered member a certificate of registration in accordance with the by-laws.

21(2) Certificates of registration, annual membership cards and decals, seals or stamps issued under this Act or the by-laws

- (a) remain the property of the Association,

- (b) are proof, in the absence of evidence to the contrary, of registration under this Act as at the date of issue, and
- (c) shall be returned to the Association on demand if the registered member ceases to practise or the member's registration is suspended, cancelled, or revoked.

### **Enrollment, Registration and Special Permit**

22 The Association may make by-laws

- (a) prescribing the universities and programs of studies from which education qualifications are acceptable for enrollment as an enrolled member or registration as a registered member,
- (b) prescribing evidence to be furnished as to education, good character and experience of persons who apply for enrollment or registration,
- (c) prescribing the subjects for examination of persons who apply for enrollment or registration,
- (d) relating to holding examinations, and the duties and functions of examiners,
- (e) prescribing requirements with respect to the granting of special permits,
- (f) setting the fees to be paid to take examinations, to apply for enrollment or registration and to hold a special permit, and
- (g) respecting such other matters as the Association considers necessary or advisable with respect to the discharge of its responsibilities in examining applicants, enrolling and registering members.

### **FEEES**

23(1) Each member shall pay to the Association

- (a) annual membership fees, and
- (b) such other fees, assessments, levies, charges or penalties

as required by this Act or the by-laws.

23(2) If a member fails to pay a fee, assessment, levy, charge or penalty under subsection (1), Council may by resolution direct that the member's name be removed from the register and, in the case of

- (a) an enrolled member, cancel the member's enrollment,
- (b) a registered member, cancel the member's registration,
- (c) a special permit holder, cancel the special permit, or
- (d) any other category of membership provided by by-law, cancel the member's membership.

23(3) Money that a member owes to the Association under this Act or the by-laws may be recovered as a debt owing to the Association.

### **DESIGNATIONS**

24(1) A person who is enrolled as a forester-in-training may use the designation "Forester-in-Training" or the abbreviation "FIT" in English, or "forestier stagiaire" or the abbreviation "f.s." in French.

24(2) A person registered as a member of the Association may use the designation "Professional Forester" or "Registered Professional Forester" or the abbreviations "PF" or "RPF" in English, or "forestier autorisé" or the abbreviation "f.a." in French.

24(3) In addition to the designations provided in subsections (1) and (2), the Association may provide for other designations by by-law.

### **RIGHT TO PRACTISE**

25 No person shall practise professional forestry in New Brunswick, either privately or employed by another, unless registered to practise under the provisions of this Act and the by-laws.

### **DISCIPLINE**

#### **Complaints Committee**

26(1) There shall be a Complaints Committee appointed by Council composed of

- (a) one member of Council who shall be chairperson, and
- (b) two other members appointed by Council.

26(2) Council may name up to five alternate members of the Complaints Committee to be called upon by the chairperson to act as necessary.

26(3) No person who is a member of the Complaints Committee shall be appointed a member of the Discipline Committee.

26(4) Three members of the Complaints Committee constitute a quorum and a decision shall be by majority vote.

### **Complaints**

27(1) Any person may make a complaint to the Association regarding the conduct of a member, or the competency or capacity of a member to engage in the practice of professional forestry.

27(2) Upon receipt of a complaint under subsection (1) it shall immediately be referred to the Complaints Committee for investigation.

### **Investigation by Complaints Committee**

28(1) The Complaints Committee shall consider and investigate complaints regarding the conduct, competency or capacity of a member, but no action shall be taken by the Committee under subsection (2) unless

- (a) a written complaint, containing particulars, has been filed with the registrar and the member being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations the member may wish to make concerning the complaint, and

- (b) the Committee has examined or has made every reasonable effort to examine relevant information and documents relating to the complaint.

28(2) After completion of the investigation, and after considering the reply of the member under subsection (1), if any, the Complaints Committee may

- (a) decide that no further action be taken if, in its opinion, the complaint is frivolous or vexatious, is not within the jurisdiction of the Association, or there is insufficient evidence of professional misconduct, incompetence or incapacity,

- (b) refer, in whole or in part, the allegations of professional misconduct, incompetence or incapacity to the Discipline Committee, or

- (c) take such other action as it considers appropriate in the circumstances to resolve the complaint, including referral to alternative complaint resolution as provided in the by-laws, provided such is not inconsistent with this Act or the by-laws.

28(3) The Complaints Committee shall give its decision in writing to the registrar who shall provide a copy to the complainant and the member complained against.

### **Request for Review of Complaint by Council**

29(1) A complainant who is not satisfied with the disposition of the complaint by the Complaints Committee may apply to Council within thirty days of receipt of the decision of the Committee for a review of the treatment of the complaint.

29(2) Upon a review under subsection (1) Council may, by resolution

- (a) dismiss the complaint,
- (b) return the complaint to the Complaints Committee with such instructions as it considers necessary with respect to further investigation and disposition under subsection 28(2), or
- (c) refer the complaint to the Discipline Committee to hold a hearing to determine any allegation of professional misconduct, incompetence or incapacity on the part of a member that Council considers appropriate.

### **Appointment of Discipline Committee**

30(1) There shall be a Discipline Committee appointed by Council composed of

- (a) four persons who are members of the Association, one of whom shall be appointed chairperson by Council, and
- (b) one person who has never been a member of the Association, appointed by the Minister.

30(2) Members of Council who are not appointed to the Discipline Committee shall be alternate members of the Committee and may be called upon by the chairperson of the Committee to act as necessary.

30(3) Subject to subsection (4), five members of the Discipline Committee constitute a quorum, and all decisions require the vote of a majority of the members present at the hearing.

30(4) Where the Discipline Committee commences a hearing and not more than one member becomes unable to act, the remaining members may complete the hearing and shall have the same authority as the full Committee.

### **Hearing by Discipline Committee**

31(1) The Discipline Committee shall hold a hearing respecting the allegations of professional misconduct, incompetence or incapacity of a member that have been referred to it by the Complaints Committee under paragraph 28(2)(b) or by Council under paragraph 29(2)(c).

31(2) The Discipline Committee shall commence a hearing as soon as possible, but not later than sixty days after the date on which a complaint is referred to it for hearing.

32(1) Members of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation of the subject matter of the hearing, and shall not communicate directly or indirectly in relation to the subject matter of the hearing with any person or with any party or representative of the party, except upon notice to and opportunity for all parties to participate, but the Committee may seek legal advice.

32(2) No member of the Discipline Committee shall participate in the decision of the Committee unless the member was present throughout the hearing and heard the evidence and argument of the parties.

### **Notice of Hearing**

33(1) The Discipline Committee shall, not less than fourteen days before the date set for the hearing, serve on the Association, the member against whom the complaint has been made, and the complainant, if any, a notice of hearing in a form prescribed by by-law setting out the date, time and place of the hearing.

33(2) The notice of hearing shall describe the subject matter of the hearing and advise the member that the Discipline Committee may proceed with the hearing in the absence of the member.

33(3) The Discipline Committee, may, on proof of service of the notice of hearing on the member against whom a complaint is made

- (a) proceed with the hearing in the absence of the member, and
- (b) without further notice to the member, take any action it is authorized to take under this Act or by-laws.

33(4) If any other matter concerning the conduct or actions of the member against whom the complaint has been made arises during the course of the hearing, the Discipline Committee may investigate and hear the matter, but not before advising the parties of its intention to do so and ensuring that the member is given a reasonable opportunity to respond to the matter.

### **Sanctions by Discipline Committee**

34(1) On the completion of a hearing the Discipline Committee may

- (a) dismiss the complaint, or

- (b) find that the member has committed an act of professional misconduct, is incompetent or incapacitated, or any combination of them.

34(2) If the Discipline Committee finds the member has committed an act of professional misconduct, or that the member is incompetent or incapacitated, it may do one or more of the following as in its opinion is appropriate to the circumstances:

- (a) reprimand the member;
- (b) order the member to waive, reduce or repay a fee for services that were not provided by the member or were improperly provided;
- (c) impose a fine to a maximum of ten thousand dollars to be paid by the member to the Association;
- (d) impose terms, conditions and limitations on the member's right to practise for a specified period of time or until the terms, conditions or limitations are satisfied, including the requirement to successfully complete courses of study, or require that the member do one or more of the following:
  - (i) practise professional forestry only under the personal supervision and direction of another registered member,
  - (ii) practise professional forestry only with another registered member,
  - (iii) allow periodic inspections by the Committee or its delegate of the member's work and practice, or
  - (iv) report to the registrar or a committee of the Association on such matters with respect to the member's practice for such period and times, and in such form, as the Committee may direct;
- (e) suspend the member from the practice of professional forestry for a fixed period of time or until specified conditions are satisfied;
- (f) revoke the right of the member to practise professional forestry, in which case the Committee may order that the member not be permitted to apply for reinstatement for a fixed period of time;
- (g) direct the registrar to give public notice of any order by the Committee that the registrar is not otherwise required to give under this Act;
- (h) order that the member pay to the Association the costs of any investigation or procedures by the Complaints Committee and the Discipline Committee, including legal costs and expenses; or

- (i) make such other order as the Committee considers appropriate, including retaining jurisdiction over the matter to assure that its decision is enforced.

34(3) The Discipline Committee may order the Association to pay all or part of the member's legal costs if in its opinion the hearing was unwarranted.

### **Decision**

35(1) The Discipline Committee shall give its decisions in writing stating the grounds for its findings and the penalty imposed, if any, along with a statement of the right of the parties to appeal the decision to the Court under section 41.

35(2) Subject to subsection 42(1), an order of the Discipline Committee under subsection 34(2) takes effect immediately, or at such other time as the Committee may direct.

### **Suspension on Failure to Pay Fine and Costs**

36 Where a member fails to pay a fine or costs imposed under subsection 34(2) within the time ordered, Council may suspend the right of the member to practise professional forestry until the fine or costs are paid and shall serve the member with notice of suspension.

### **Suspension for Violation of Order**

37(1) Notwithstanding paragraph 34(2)(i), if it is satisfied that a member has violated or failed to comply with an order of the Discipline Committee, Council may, without notice to the member, revoke or suspend the right of the member to practise professional forestry.

37(2) The registrar shall send the member a written notice of the revocation or suspension under subsection (1).

### **Decision and Record to Registrar**

38(1) The Discipline Committee shall immediately forward to the registrar

- (a) its written decision under section 35, and
- (b) the record of the hearing, including all documents and other things put in evidence.

38(2) The registrar shall immediately provide a copy of the decision to the parties and the complainant, if any.

38(3) Within a reasonable time after the matter in issue has been finally determined, the registrar shall release documents and other things put in evidence at a hearing on the request of the person who produced them.

**Hearing Procedure**

39(1) In a hearing before the Discipline Committee, the Association and the member against whom a complaint is made are parties to the hearing and may be represented by counsel.

39(2) A member against whom a complaint is made shall be given, before the hearing, a reasonable length of time to examine any written or documentary evidence that will be produced, or any report the contents of which will be given in evidence at the hearing.

39(3) A party intending to use expert evidence at a hearing shall give the other party, at least ten days before the hearing, the identity of the expert and a copy of the expert's written report or, if there is no written report, a written summary of the evidence to be given by the expert.

39(4) Oral evidence taken before the Discipline Committee shall be recorded by a properly qualified court stenographer, and if a party requests a copy of the transcript it shall be furnished at that party's expense.

39(5) In the conduct of a hearing before the Discipline Committee

- (a) the parties shall be allowed to call evidence and to cross-examine witnesses,
- (b) the Committee, subject to this Act, may determine its own rules of procedure,
- (c) the committee is not bound by the rules of evidence which apply in judicial proceedings,
- (d) the Committee may adjourn the hearing from time to time at the request of either party upon reasonable grounds being shown,
- (e) the burden of proof is the same as in civil cases,
- (f) the member against whom the complaint is made is a compellable witness,
- (g) a witness shall not be excused from answering any question on the ground that the answer
  - (i) tends to incriminate,
  - (ii) might subject the witness to punishment under this Act, or
  - (iii) might tend to establish liability in a civil proceeding or liability to prosecution.

**Attendance of Witnesses**

40(1) The Discipline Committee, or someone designated by it to act on its behalf, may, on the written request of any party to the proceedings, by summons in a form prescribed by by-law require the attendance before it of any person whose evidence may be material to the subject matter of the hearing and may order any person to produce such records, reports or other documents as appear necessary for the purpose of the hearing.

40(2) A person served with a summons shall attend and answer all questions concerning matters being inquired into at the hearing and shall produce to the Discipline Committee all records, reports or other documents that are under the person's custody or control.

40(3) The testimony of a witness may be taken under oath or affirmation administered by the chairperson of the Discipline Committee or any person designated to do so on the chairperson's behalf.

40(4) If a person on whom a summons has been served, either personally or by leaving a copy of the summons with some adult person at the person's last or most usual place of residence or business, fails to appear before the Discipline Committee or upon appearing refuses to be sworn or refuses without sufficient cause to answer any question relevant to the hearing, the Committee may by application to the Court, cause the person to be cited for contempt under the provisions of the Rules of Court in the same manner and to the same extent as if the alleged contempt took place in proceedings before the Court.

40(5) If the person referred to in subsection (4) is a member, refusal to attend and give evidence at the hearing is professional misconduct.

40(6) A person, other than the member whose conduct is the subject of the hearing, who is served with a summons under this section shall be tendered the same fees as are payable to a witness in an action in the Court at the time the summons is served.

## **Appeal**

41(1) A party to proceedings before the Discipline Committee may appeal within thirty days from the date of the decision or order of the Committee to the Court by way of notice of application in accordance with the Rules of Court.

41(2) When requested by a party intending to appeal, and on payment of any reasonable expenses relating to the request, the registrar shall provide the party with a copy of the record of the proceedings, including the documents received in evidence and the decision or order being appealed.

41(3) An appeal under this section shall be based on the record of the proceedings before the Discipline Committee and its decision, and may be on questions of law or fact, or both.

41(4) On an appeal from the decision of the Discipline Committee the Court may

- (a) affirm, vary or reverse the decision of the Committee,

- (b) exercise all powers of the Committee,
- (c) substitute its decision for that of the Committee,
- (d) refer the matter back to the Committee for rehearing in whole or in part, in accordance with such directions as the Court considers proper, or
- (e) make any order it considers appropriate with respect to costs.

### **Application for Stay**

42(1) A member who appeals a decision or order of the Discipline Committee may apply to the Court by way of a notice of application for a stay of the decision or order pending the disposition of the appeal, and the Court may make any order it considers appropriate.

42(2) A member shall give the Association at least seven days notice of an application under subsection (1) to stay a decision or order of the Committee.

## **INVESTIGATIONS**

43(1) In the absence of a complaint, Council may carry out an investigation if it has reason to believe that the conduct or actions of a member may constitute professional misconduct, incompetence or incapacity, or may direct that the Complaints Committee carry out such investigation.

43(2) Council may appoint one or more investigators to assist in an investigation under subsection (1), or to assist the Complaints Committee in any investigation it is required to conduct under this Act.

### **Responsibilities of Member**

44(1) A member who is being investigated under this Act shall cooperate with Council, the Complaints Committee and the investigator, and shall produce all documents and disclose to Council, the Complaints Committee and the investigator, all information that may be relevant to the investigation.

44(2) No member shall obstruct, or cause to be obstructed, an investigator while the investigator is performing duties under this Act.

44(3) No member shall withhold, conceal or destroy, or cause to be withheld, concealed or destroyed, anything that is relevant to an investigation under this Act.

44(4) A member who violates subsection (1), (2) or (3) commits an act of professional misconduct.

## OFFENCES

45(1) Any person not enrolled as a member or registered to practise professional forestry under this Act, or whose enrollment or registration has been revoked or suspended, and who

- (a) practises professional forestry,
- (b) uses any of the designations or abbreviations under section 24 or the by-laws, or
- (c) advertises or in any way or by any means represents to be a forester-in-training, a professional forester or a registered professional forester,

commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category H offence.

45(2) Any person who procures or attempts to procure admission to the Association for that person or another by making, or causing to be made, any false or fraudulent representation or declaration, either oral or written, or who makes any false statement in any application, declaration or other document under this Act or the by-laws, commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category H offence.

46 Where an offence under this Act is committed by a corporation, including a professional corporation, every director, manager, secretary or other officer of that corporation who has assented to the commission of the offence is a party to the offence.

47 In any prosecution under this Act, it shall be sufficient proof of an offence if it is proved that the accused has done or committed a single act of unlawful practice, or has committed on one occasion anything prohibited by this Act.

48 Any information alleging an offence under this Act may be laid in accordance with the *Provincial Offences Procedure Act* in the name of the Association on oath or solemn affirmation of the registrar or of a person authorized by Council.

49(1) Where an offence under this Act continues for more than one day,

- (a) the minimum fine that may be imposed is the minimum fine set by the *Provincial Offences Procedure Act* multiplied by the number of days during which the offence continues, and
- (b) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* multiplied by the number of days during which the offence continues.

49(2) All fines recoverable under this Act shall be paid to the Association, and shall form part of its funds.

50(1) The Court may, on application by the Association and on being satisfied that there is reason to believe that a person has violated or will violate this Act or a by-law, or has been charged with or convicted of an offence, and it is probable that the person will in future commit or continue to commit the offence, grant an injunction restraining the person from committing or continuing to commit such acts and, pending disposition of the application seeking the injunction, the Court may grant an interim injunction.

50(2) An injunction granted under this section may be enforced in the same manner as an injunction granted to enjoin a civil wrong.

51 A person who violates any provision of this Act shall not be entitled to recover or be paid any fee, reward, or disbursement for any service rendered while practising or purporting to practise professional forestry.

### EXCLUSIONS

52 Nothing in this Act shall be construed to prevent persons from

- (a) carrying out functions on their own land and for their own purposes that may include the practice of professional forestry,
- (b) performing the work of a forester-in-training or student, provided such work is performed under the direct supervision of a registered member who takes responsibility for the work,
- (c) practising engineering or geoscience under the *Engineering and Geoscience Professions Act*,
- (d) practising land surveying under the *New Brunswick Land Surveyors Act, 1986*,
- (e) practising agrology under the *Agrologist's Profession Act, 2004*,
- (f) carrying on any profession or occupation authorized by an Act of the Province of New Brunswick,

or requires such persons to become registered under this Act to perform such functions.

### GENERAL

53 No action lies against members, officers or directors of the Association, Council, or any committees of the Association, or its employees or agents for anything done in good faith under the provisions of this Act or the by-laws.

54 No member shall be personally liable for any debt of the Association beyond the amount of that member's unpaid dues, fees or other amounts for which a member may become liable under this Act or the by-laws.

55(1) All committees of ARPFNB in effect on the day this Act comes into force shall continue under the *New Brunswick Foresters Act, 2001*, chapter 50 of the Acts of New Brunswick, 2001, until replaced or reconstituted under the provisions of this Act or the by-laws.

55(2) All applications for membership in ARPFNB and all disciplinary proceedings in progress on the day this Act comes into force, shall be continued and disposed of under the *New Brunswick Foresters Act, 2001*, chapter 50 of the Acts of New Brunswick, 2001.

55(3) All complaints and investigations concerning matters of professional misconduct, incompetence or incapacity received after this Act comes into force shall be dealt with under this Act notwithstanding when the subject matter of the complaint arose.

56 *The New Brunswick Foresters Act, 2001*, chapter 50 of the Acts of New Brunswick, 2001, is repealed, provided that all by-laws made under the provisions of that Act, and in effect at the time of its repeal, shall continue in effect with such modifications as the circumstances require until repealed, amended, or replaced by by-laws enacted under the provisions of this Act.

57 ***This Act comes into force on \_\_\_\_\_, \_\_\_\_.***