

CHAPTER L•

THE LANDSCAPE ARCHITECTS ACT

(Assented to •)

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

Definitions

1(1) In this Act,

"Association" means The Manitoba Association of Landscape Architects established as a body corporate under this Act;

"Council" means the council for the management of the affairs and business of the Association;

"court" means the Court of Queen's Bench for Manitoba;

"Landscape Architect" means a person who:

- a. is qualified to practice Landscape Architecture by reason of knowledge and the use of biological, physical, mathematical, and social sciences and the principles and methods of analysis and design of land and water resources;
- b. has demonstrated knowledge and ability of the practice of Landscape Architecture; and,
- c. has been duly registered as a member of the Association.

"Landscape Architecture" means services relating to the planning and designing of the use, allocation, arrangement and management of land and water resources, through the creative and aesthetic application of biological, physical, mathematical and social processes.

"member" means a natural person who holds a valid certificate of registration issued by the Association and whose name is entered on the register of the Association;

"person" means a natural person, partnership, corporation, unincorporated association, unincorporated organization, trustee, executor, administrator or other legal personal representative of a natural person

Exemption

1(2) Nothing in this Act shall affect the work or services performed by a person who is a member of the Manitoba Association of Architects or to any firm of architects as described in The Architects Act or to any employee, servant, agent, contractor, subcontractor, draughtsman, student, clerk of works, superintendent or superintendent of buildings from acting under the direction and control of a firm of architects or member of the Manitoba Association of Architects.

Exemption

1(3) Nothing in this Act affects the work or services performed by a professional engineer or professional geoscientist within the meaning of The Engineering and Geoscientific Professions Act nor shall it affect the work or services performed by a firm of engineers or geoscientists or any employee, servant, agent, contractor or subcontractor acting under the direction and control of such engineer, geoscientist or firm.

Exemption

1(4) Nothing in this Act shall affect the work or services performed by a person who is a member of the Association of Manitoba Land Surveyors, nor shall it affect the work or services performed by a firm or any employee, servant, agent, contractor or subcontractor acting under the direction or control of a member of the

Association of Manitoba Land Surveyors.

Exemption

1(5) Nothing in this Act shall affect the work or services performed by a person who is a member of the Certified Technicians & Technologists Association of Manitoba Inc., nor shall it affect the work or services performed by a firm or any employee, servant, agent, contractor or subcontractor acting under the direction or control of a member of the Certified Technicians & Technologists Association of Manitoba Inc.

Exemption

1(6) Nothing in this Act shall affect the work or services performed by a person who is a member of the Professional Interior Designers Institute of Manitoba, PIDIM, nor shall it affect the work or services performed by a firm or any employee, servant, agent, contractor or subcontractor acting under the direction or control of a member of the Professional Interior Designers Institute of Manitoba.

Corporate status and powers

2 The Manitoba Association of Landscape Architects, as constituted as an unincorporated association before the coming into force of this Act, is hereby established as a body corporate under the name of The Manitoba Association of Landscape Architects and, subject to the provisions of this Act and The Corporations Act, has the capacity, rights, powers and privileges of a natural person.

Council

3(1) The affairs and business of the Association shall be managed by a Council consisting of not fewer than six and not more than nine members.

Constitution of Council

3(2) Subject to subsection (1), the Association shall, by by-law, provide for the number of members comprising the Council, the method of election or appointment of members and officers of Council and the conduct in all other particulars of the affairs of the Association.

Continuation of officers and Councillors

3(3) The members comprising the Council and the officers of the Association in office on the coming into force of this Act shall continue in office until their successors are elected or appointed.

By-laws

4(1) In addition to its powers under this Act and The Corporations Act, the Association may make, amend and repeal by-laws not inconsistent with this or any other Act of the Legislature

- (a) prescribing the qualifications for and conditions of registration for applicants for membership in the Association;
- (b) prescribing classes of membership and the rights, duties and responsibilities of such classes of membership;
- (c) prescribing a curriculum and courses of study to be pursued by applicants for membership and the subjects upon which such applicants shall be examined and providing for granting certificates of membership to applicants who pass the examinations;
- (d) regulating and governing the conduct of members of the Association in the practice of their business or profession by prescribing a code of ethics, rules of professional conduct and standards of practice and by providing for reprimand, censure, suspension of registration or cancellation of registration of members for professional misconduct, incapacity or incompetence; and
- (e) authorize the making of cooperative or affiliation arrangements with any institution, organization or professional body in any jurisdiction.

Continuation of by-law

4(2) By-laws of the Manitoba Association of Landscape Architects in existence on the coming into force of this Act remain in force until repealed or amended.

Inspection of by-laws

4(3) The by-laws of the Association shall be open to examination by the public at the head office of the Association during normal office hours.

Membership

5(1) The Association shall grant a membership in the Association to any individual who applies therefore in accordance with the by-laws, if the individual

- (a) has provided evidence of good character to the satisfaction of Council;
- (b) has complied with the academic and experience requirements specified in the by-laws for the issuance of membership;
- (c) has passed such examinations as Council may set or approve in accordance with the by-laws; and
- (d) has paid such fee or fees as are prescribed in the by-laws.

Continuation of membership

5(2) Every person appearing or entitled to appear as a member of the Manitoba Association of Landscape Architects on the list of members thereof on the coming into force of this Act is a member of the Association.

Reciprocity

5(3) Any person who is entitled to use any designation indicating that he or she was a member of an association or society pursuant to the laws governing or concerning the occupation of landscape architecture in any other jurisdiction and who has been suspended from using such designation in another jurisdiction by reason of misconduct, dishonesty or incompetence is not entitled to apply for certification under the Act until the suspension, restriction or disqualification has been removed in the other jurisdiction.

Register

6(1) The Association shall keep a register at the head office of the Association in which shall be entered the names of all members of the Association in good standing and their class of membership and only those persons so registered shall be entitled to the privileges of membership in the Association.

Inspection of register

6(2) The register shall be open to examination by the public at the head office of the Association during normal office hours.

Head office

7 The head office of the Association shall be at such place in the Province of Manitoba as may be determined by Council.

Review by Council

8(1) Where a person applies to be registered as a member of the Association and the application is refused, the applicant may, within 15 days after receiving written notice of the refusal, file at the head office of the Association a written request for a hearing by the Council to review the refusal and the Council shall, within 30 days after receipt of the request by the Association, cause a hearing to be held into the matter and may confirm the decision or cause the applicant to be registered.

Application of subsecs. 9(2) to (6)

8(2) Subsections 9(2), (3), (4), (5) and (6) apply with such modifications as the circumstances require to a hearing conducted under subsection (1).

Complaint of misconduct

9(1) Subject to subsection (2), where a written complaint is made to the Council at the head office of the Association that a member has been guilty of professional misconduct or has contravened a provision of this Act or the by-laws of the Association, the Council may direct an investigation of the complaint be undertaken in accordance with the Association's by-laws and may hold a hearing into the complaint.

Notice of hearing.

9(2) Before holding a hearing under subsection (1), the Council shall, at least 15 days before the date of the hearing, cause to be served upon the member against whom the complaint is made, by personal service, or by registered mail postage prepaid, addressed to the address of the member as recorded in the records of the Association, a statement of the particulars of the complaint and a notice of the date, time and place of the hearing, and a statement and notice sent by registered mail shall be deemed to have been served on the first day of regular postal delivery after the day on which it was posted.

Rights of member

9(3) Where the Council holds a hearing into a complaint against a member, the member is entitled to be present and to be represented by counsel or an agent and to cross-examine witnesses and adduce evidence at the hearing.

Hearing in absence of person

9(4) Where service of notice of the hearing on the member against whom the complaint is made is proved by affidavit or viva voce evidence and the member against whom the complaint has been made does not attend or give good and sufficient reason to the Council for failing to attend, the Council may proceed with the hearing in the absence of and without further notice to the member and take such action as is authorized under this Act.

Evidence and witnesses

9(5) In conducting a hearing under this section, the Council has the same powers of taking evidence, of compelling the attendance of witnesses and the production of books, papers and documents, as a commissioner appointed to hold a public inquiry under Part V of The Manitoba Evidence Act has under that Act.

Evidence to be sworn

9(6) All evidence received at a hearing under this section shall be given under oath and taken down in writing or otherwise recorded by a reporter duly sworn.

Decision of Council

9(7) After completing a hearing into a complaint against a member, if the Council finds the member to have

- (a) been guilty of professional misconduct; or
- (b) contravened a provision of this Act or the by-laws of the Association;

it may, subject to the by-laws, reprimand, censure, suspend the registration of, or cancel the registration of, the member against whom the complaint was made, and it may order the member to pay all or any part of the costs and expenses incurred by the Association in and for the investigation of the complaint and the conduct of the hearing.

Appeal from order of Council

10(1) Any person who considers himself or herself aggrieved by an order or decision of Council relating to a refusal of registration, a suspension or cancellation of registration, or a reprimand or censure, may appeal from the order or decision to a judge of the court at any time within two months from the date of the order or decision.

Order of judge

10(2) The judge may, upon hearing of the appeal, make such order or decision relating thereto and as to costs, as the court considers just.

Method of commencing appeal

10(3) An appeal shall be made by notice of application returnable before a judge of the court and shall be founded upon the record of proceedings and reports relating thereto and the order or decision of Council in the matter, certified by the person in charge with the responsibility of maintaining the register.

Association shall furnish copy

10(4) The Association shall, upon the request of a person desiring to appeal, furnish that person at the expense of the person a certified copy of all proceedings, reports, orders and papers upon which the Council acted in making the order or decision in respect of which the appeal is taken.

Failure to file transcript of evidence

10(5) If a transcript of evidence of a hearing is obtainable and the appellant has not filed two copies thereof with the court within 30 days of the date of receipt by the appellant of the transcript, the appeal shall be deemed to be abandoned unless the court extends the time for filing of the transcript.

No practice pending appeal

10(6) Pending an appeal under subsection (1), a member whose registration has been suspended or cancelled shall not use the designation "Landscape Architect" or "architecte paysagiste" and shall not use after his or her name the initials "MALA" or "AAPM" within the province.

Effect of suspension and cancellation

11 Where the registration of a member is suspended or cancelled under section 9 and the suspension or cancellation is not set aside under section 10, the member shall not use the designation "Landscape Architect" or "architecte paysagiste" and shall not use after his or her name the initials "MALA" or "AAPM" within the province until the suspension expires or the registration, where cancelled, is renewed.

No action to lie

12 No action lies against the Council, any committee of the Council, any member, or any officer or employee of the Association, for any act or proceedings taken or enforced or attempted under this Act or a by-law of the Association, if the act or proceeding was taken, enforced or attempted in good faith and without malice.

Designation

13(1) Every member may use the designation "Landscape Architect" or "architecte paysagiste" and may use after his or her name the initials "MALA" or "AAPM" indicating that he or she is a member.

Offence

13(2) Any person in Manitoba who, not being a member, takes or uses the designation "Landscape Architect" or "architecte paysagiste" alone or in combination with any other word, name, title or description or implies, suggests or holds out that he or she is a landscape architect is guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000 for the first offence and not exceeding \$2,000 for a subsequent offence.

Rights of non-members

14 This Act does not affect or interfere with the right of any person who is not a member

- (a) to practise landscape architecture in Manitoba; or
- (b) to use the initials "MALA" or "AAPM" after his or her name so long as the person is not a landscape architect or the use of such initials does not imply in any way that he or she is a landscape architect or providing similar service.

Conflict with The Corporations Act

15 Where a provision of this Act is inconsistent with any provision of The Corporations Act, for the purposes of this Act, the provision of this Act supersedes and prevails over the provision of The Corporations Act.

Reference in Continuing Consolidation

16 This Act may be referred to as chapter L in the Continuing Consolidation of the Statutes of Manitoba.

Commencement of Act

17 This Act comes into force on the day it receives the royal assent.

Consequential Amendment – The Architects Act (Manitoba)

Consequential amendments, C.C.S.M. c. A130

18(1) The Architects Act is amended by this section.

18(2) *Section 1 is amended by adding the following after subsection 1(2):*

1(3) Nothing in this Act restricts the right of a member of the Manitoba Association of Landscape Architects from using the title "landscape architect".