

1971 Bill 33

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Fourth Session, 16th Legislature, 20 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

## **BILL 33**

**An Act to amend The Chartered Accountants Act**

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THE PROVINCIAL SECRETARY

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First Reading .....

Second Reading .....

Third Reading .....

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# BILL 33

1971

## AN ACT TO AMEND THE CHARTERED ACCOUNTANTS ACT

(Assented to , 1971)

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

1. *The Chartered Accountants Act is hereby amended.*

2. *Section 7 is struck out and the following is substituted:*

**7.** (1) The affairs and business of the Institute shall be managed by a Council consisting of not less than six and not more than 21 members elected as provided for by by-law.

(2) The Council may make such regulations for the election of members and matters incidental thereto as it considers necessary.

3. *Section 12 is struck out.*

4. *Sections 22 to 31 inclusive are struck out and the following are substituted:*

**22.** (1) In sections 22 to 31 "member" means a person who is admitted to membership in the Institute under section 10 or section 15.

(2) The question of whether a person is guilty of conduct unbecoming a chartered accountant or a student, as the case may be, shall be determined by the Council or by an investigating committee under section 38, or on appeal, by the Appellate Division of the Supreme Court.

(3) Any act or conduct that, in the judgment of the Council or an investigating committee or, on appeal the Appellate Division, as the case may be

(a) is such as to be inimical to the best interests of the public or members of the Institute, or

(b) tends to harm the standing of the accounting profession generally,

is conduct unbecoming a chartered accountant or a student, as the case may be, within the meaning of this section.

## **Explanatory Notes**

**1.** This Bill amends chapter 42 of the Revised Statutes of Alberta 1970.

**2.** Section 7 presently reads:

7. (1) The affairs and business of the Institute shall be managed by a Council, which shall consist of not less than six and not more than 21 members who shall hold office until the annual meeting next following their election.

(2) Members of the Council shall be elected at the annual meeting of the Institute.

(3) A candidate for membership of the Council shall be nominated in writing by at least two members of the Institute and the nomination paper shall be delivered to the secretary at least 14 days before the date of the annual meeting.

(4) If at the annual meeting the number of candidates nominated does not exceed the number of members to be elected, the secretary shall report the names of the candidates nominated to the chairman of the annual meeting, and the chairman shall at that meeting declare the candidates so nominated to have been duly elected.

(5) If the number of candidates nominated exceeds the number of members to be elected to the Council, the secretary shall

(a) procure voting papers containing in alphabetical order the names of the candidates nominated, and

(b) at least 10 days before the date of the annual meeting, send or cause to be sent a voting paper by mail to each member of the Institute in good standing.

(6) If at the annual meeting the number of candidates nominated exceeds the number of members to be elected to the Council, the meeting shall hold an election and at such election those voting papers only shall be counted that

(a) are delivered to the secretary by members of the Institute present at such meeting, or

(b) in the case of members of the Institute not personally present at the meeting, have been delivered to the secretary not later than the day before the day upon which the election is held.

(7) Vacancies that occur in the membership of the Council by reason of death or otherwise in the interval between the two annual meetings or by reason of failure to elect the required number of members at an annual meeting may be filled by the Council.

**3.** Section 12 presently reads:

12. The Institute may by by-law make regulations

(a) relating to the conduct of all students articulated to members of the Institute, and

(b) for the investigation into the conduct of any student,

and if any student is found upon investigation to be guilty of misconduct or to have contravened any of the by-laws of the Institute, such regulations may provide that the student so found guilty be disqualified from taking any examination of the Institute either during a fixed period or indefinitely.

**4.** Discipline.

(4) Except where specific provision is made with respect to students the provisions and rules applicable to members apply, with the necessary changes, to students.

**23.** (1) The Council shall appoint a committee of chartered accountants, not less than three in number, which shall be known as the discipline committee.

(2) The chairman of the committee shall be a member of the Council.

**24.** The Council may, subject to this Act, make rules

- (a) providing for the composition and tenure of office of the discipline committee,
- (b) governing proceedings of the discipline committee, prescribing the powers and duties of the committee and its chairman,
- (c) providing for the making of preliminary investigations into any matter regarding the conduct of a member or student whether a complaint is made or not,
- (d) prescribing the powers and duties of a person conducting a preliminary investigation and of the investigating committee,
- (e) prescribing the procedure for preliminary investigations and for proceedings of the investigating committee, and
- (f) governing proceedings before the Council in matters pertaining to discipline.

**25.** The chairman or member of the discipline committee shall review any matter regarding the conduct of a member of the Institute, brought to his attention by the secretary or otherwise, whether a complaint is made or not and shall either

- (a) direct that no further action be taken if he is of the opinion that the matter concerning the member's conduct does not constitute conduct unbecoming a chartered accountant, or
- (b) direct that a preliminary investigation be held regarding the matter, and thereupon report to the Council as to the action taken, or
- (c) recommend to the Council that the matter be dealt with by an investigating committee.

**26.** (1) A person conducting a preliminary investigation may require the member concerned and any other member to produce to him any books, papers and other documents in the member's possession or under the member's control and may require the attendance at the investigation of the member concerned and any other member.



(2) The Institute may summarily apply ex parte to the Supreme Court for an order

- (a) directing the member concerned and any other member to produce to the person conducting a preliminary investigation any books, papers and other documents in his possession or under his control if it is shown that the member has failed to produce them when required by that person, or
- (b) directing any person or corporation to produce to a person conducting a preliminary inquiry any books, papers, documents or records that are or may be related to the subject matter of the complaint being investigated.

**27.** Upon the conclusion of a preliminary investigation, the chairman or a member of the discipline committee shall either

- (a) direct that no further action be taken if he is of the opinion that the matter concerning the member's conduct does not constitute conduct unbecoming a chartered accountant, or
- (b) recommend to the Council that the matter be dealt with by an investigating committee.

**28.** Where a matter regarding the conduct of a member is brought to the attention of the chairman or member of the discipline committee as a result of a complaint and where the chairman or member of the discipline committee directs pursuant to section 25 or 27 that no further action be taken with respect to the matter, the complainant may appeal his direction to the Council who, in either or both cases, may make any direction regarding it that the chairman could have made under those sections.

**29.** Where the chairman or member of the discipline committee recommends that a matter regarding the conduct of a member should be dealt with by an investigating committee, the Council, in its sole discretion, shall either

- (a) dismiss the complaint if the Council is of the opinion that the matter concerning the member's conduct does not constitute conduct unbecoming a chartered accountant, or
- (b) direct the secretary to give the member notice with reasonable particulars of the matter to be investigated, and
- (c) appoint an investigating committee to conduct an investigation into the matter.

**30.** (1) An investigating committee shall consist of not less than three members of whom at least one shall be a member of the Council other than the president or the chairman of the discipline committee.



(2) Notwithstanding section 29, clause (c) the president or a vice-president may on behalf of the Council appoint an investigating committee and so report forthwith, to each member of the Council.

(3) An investigating committee shall investigate the facts relevant to the matter of the conduct of the member concerned.

(4) An investigating committee may also investigate any other matter concerning the conduct of a member that arises in the course of the investigation and that in its opinion might constitute conduct unbecoming a chartered accountant but, in that event, the committee shall declare its intention to investigate and report on the new matter and shall permit the member sufficient opportunity to prepare his answer to the new matter.

(5) An investigating committee may continue to act as such for the purposes of completing and reporting upon an investigation notwithstanding that it no longer includes a member of the Council as required by subsection (1).

**31.** (1) Testimony may be adduced before the investigating committee in such manner as the committee considers proper and the committee is not bound by the rules of law concerning evidence applicable to judicial proceedings.

(2) Any member of the investigating committee may administer an oath to any witness who is to give evidence before it.

**32.** Except where the member being investigated requests that proceedings be held in public, proceedings before a person conducting a preliminary investigation, an investigating committee or the Council shall be held in camera.

**33.** (1) The member whose conduct is being investigated is a compellable witness in proceedings before the investigating committee or before the Council.

(2) A witness may be examined on oath on all matters relevant to the investigation and shall not be excused from answering any question on the ground that the answer

(a) might tend to criminate him, or

(b) might subject him to punishment under this Act, or

(c) might tend to establish his liability

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

(ii) to prosecution under any statute,

but the answer so given, if it is such as tends to criminate him, shall not be used or received against him in any civil proceedings or in any proceedings under any other Act of the Province.





(3) A member may not in any proceedings under this Act refuse to give evidence or produce any books, papers or documents on the ground of professional privilege.

**34.** (1) The attendance of witnesses before the investigating committee and the production of books, papers and other documents may be enforced by a notice issued by the secretary of the Institute requiring the witness to attend and stating the time and place at which the witness is to attend and the documents, if any, he is required to produce.

(2) Upon the written request of the member whose conduct is being investigated or his counsel or agent, the secretary shall, without charge, issue and deliver to the member such notices as he may require for the attendance of witnesses or the production of documents.

**35.** A witness other than the member charged who has been served with a notice to attend and a notice for the production of documents, books or papers is entitled to be paid the same fees as are payable to a witness in an action in the Supreme Court.

**36.** (1) A witness

(a) who fails

(i) to attend before the investigating committee in obedience to a notice to attend, or

(ii) to produce any books, papers or other documents in obedience to a notice to produce them,  
or

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

(b) who refuses to be sworn or to answer any question directed or directed to be answered by the chairman of the investigating committee

is liable to attachment upon application to a judge of the Supreme Court and may be proceeded against as for a civil contempt of the Court.

(2) Where the witness under subsection (1) is the member whose conduct is being investigated, his failure or refusal may be held to be conduct unbecoming a chartered accountant.

(3) The investigating committee upon proof of service of the notice of the investigation upon the member whose conduct is being investigated may

(a) proceed with the investigation in the absence of the member, and

(b) act and report upon the matter being investigated in the same way as though the member were in attendance.



**37.** The Institute and the member whose conduct is being investigated may be represented by counsel before the investigating committee and the Council.

**38.** (1) If an investigating committee unanimously considers that the conduct of the member is conduct unbecoming a chartered accountant but that a warning would be sufficient punishment, it may find him guilty of conduct unbecoming a chartered accountant and warn the member in writing that continued conduct similar to that which had been investigated could lead to additional investigation and punishment.

(2) If an investigating committee unanimously considers that the conduct of the member is conduct unbecoming a chartered accountant but that a reprimand is sufficient punishment with or without the imposition of a fine or costs under subsection (3), it may find him guilty of conduct unbecoming a chartered accountant and reprimand him.

(3) Where the committee has reprimanded a member under subsection (2) it may, in addition

(a) order the member to pay for each matter concerning his conduct of which he is found guilty, a fine of not more than \$300 within the time fixed by the order, or

(b) order the member to pay the costs of the investigation in accordance with the rules,

and may order that the member be suspended in default of paying any fine or costs so ordered to be paid, until such payment is made.

(4) Where an investigating committee unanimously considers the conduct of the member is not conduct unbecoming a chartered accountant, it may so find and in that case unless an appeal is taken by the chairman of the discipline committee under subsection (7), no further proceedings shall be taken under this Act in respect of the matters investigated by the committee.

(5) Where the committee makes findings under subsection (1), (2) or (4), the committee shall at the first opportunity report to the Council its finding, any order made under subsection (3) and the reasons for its decision.

(6) Where the member is found guilty by the investigating committee of conduct unbecoming a chartered accountant he may, in accordance with the rules, appeal the committee's finding of guilt or its order, if any, under subsection (3), or both, to the Council.

(7) Where the chairman of the discipline committee receives a report from the committee under subsection (5), he may, in accordance with the rules, appeal to the Council the punishment given by the committee or an order of the committee under subsection (3) or its finding under subsection (4).



(8) Where an appeal is made to the Council under this section, the investigating committee shall comply with section 39, subsection (1) and the matter shall be thereafter proceeded with under this Act as if the committee had made no finding or order under this section.

**39.** (1) In this section and hereafter the documents comprising the evidence and the exhibits supplied to the secretary shall be known as "the record".

(2) Except where the investigating committee has made a finding under section 38 and no appeal has been taken under that section either by the member or the chairman of the discipline committee, the investigating committee shall forward its findings of fact regarding all matters investigated by it in the form of a written report to the secretary.

(3) The secretary shall obtain a copy of the evidence adduced before the committee and copies of such exhibits as the committee considers essential for a proper understanding of the evidence.

(4) After the conclusion of the investigation the investigating committee may suspend the member whose conduct is being investigated until such time as its report and the record of the investigation are considered by the Council.

**40.** Where an appeal is made to the Council under section 38, subsection (6) or (7) or where the investigating committee does not make a finding and an order under section 38, subsection (1) or (2), the secretary shall, on receiving a copy of the report of the investigating committee and the record of the proceedings before it

- (a) furnish the member whose conduct is being investigated with a copy of the report, and the record, inform him of the time and place at which they are to be considered by the Council, and inform him that he may appear before the Council at the time in person or by counsel or agent, and
- (b) furnish each member of the Council with a copy of the report and the record.

**41.** (1) At its next meeting the Council shall consider the report and record and such representations as the member or his counsel or agent wish to make respecting the report and record.

(2) All Council members, including the chairman of the discipline committee and any Council member of an investigating committee may participate in and vote on any proceedings of the Council under this Act.

(3) Notwithstanding subsection (2), where the proceedings before the Council are the result of an appeal taken under section 38, a Council member who



- (a) was a member of the investigating committee, or
- (b) appealed the committee's finding or order under section 38 in his capacity as chairman of the discipline committee,

shall not participate in or vote at those proceedings.

(4) The Council may

- (a) amend or substitute or add to the particulars of the matters being investigated, or
  - (b) grant adjournments of the proceedings or reserve the determination of the matters before them for a future meeting of the Council, or
  - (c) upon granting special leave therefor, receive further evidence in the same manner and subject to the same rules and with the same powers as are provided in this Act with respect to hearings before an investigating committee, or
  - (d) draw inferences of fact and make any determination or finding which, in their opinion, ought to have been made by the investigating committee, or
  - (e) order that the matter be referred back to the same or another investigating committee.
- (5) The Council shall, at or within a reasonable time after the conclusion of all proceedings before them, find the member guilty or not guilty of conduct unbecoming a chartered accountant.

**42.** (1) Where a member is found guilty by the Council of conduct unbecoming a chartered accountant, the Council may

- (a) order that the name of the member be struck off the register, or
  - (b) order that the member be suspended for a stated period of time, or
  - (c) order that the member be reprimanded.
- (2) In addition to an order under subsection (1) the Council may
- (a) order the member to pay for each offence of which he is found guilty, a fine of not more than \$1000 to the Institute, within the time fixed by the order,
  - (b) order the member to pay the costs of the investigation in an amount and within a time fixed by the Council, and
  - (c) order that the member be suspended in default of paying any fine or costs ordered to be paid until such time as the fine or costs are paid.





(3) When a complaint against a member is dismissed on the grounds that it is frivolous or vexatious, the Council may order the payment by the Institute of such costs as it considers just to the member whose conduct was investigated as a result of the complaint.

**43.** (1) When a student has been found guilty by the Council of conduct unbecoming a student, the Council may

- (a) terminate his registration, or
- (b) order that his registration be suspended for a stated period of time, or
- (c) reprimand him.

(2) In addition to an order of suspension or a reprimand, the Council may

- (a) order the student to pay for each offence of which he is found guilty, a fine of not more than \$200 to the Institute, within a time to be fixed by the order,
- (b) order the student to pay the costs of the investigation in an amount and within the time fixed by the Council, and
- (c) order that the registration of the student be suspended in default of paying any fine or costs ordered to be paid until such time as the fine or costs are paid.

**44.** (1) Where a member has been found guilty of conduct unbecoming a chartered accountant, the member may appeal to the Appellate Division of the Supreme Court from the finding of guilt or the order of punishment or both.

(2) An appeal shall be commenced

- (a) by filing a notice of appeal with the Registrar of the Court in Edmonton or Calgary, and
- (b) by serving a copy of the notice of appeal upon the secretary

both within 30 days from the date on which the finding and the order of punishment, if any, is made by the Council.

(3) The president or a person acting for him, may extend the time for filing or service under subsection (2).

(4) The member may, after commencing the appeal and upon notice to the secretary, apply to any judge of the Supreme Court for an order staying the imposition of any punishment imposed by the Council but the order shall be refused if the judge is satisfied that having regard to the nature of the offence it is proper to refuse it.

**45.** (1) The Court upon hearing the appeal may

- (a) make any other finding that in its opinion ought to have been made, or



- (b) quash or confirm the finding of guilt, or
  - (c) confirm or vary the punishment imposed or order a different punishment, or
  - (d) confirm or vary any order of the Council as to costs or make a new order as to costs, or
  - (e) refer the matter to the Council for further consideration by it.
- (2) The Court shall make no award as to costs of the appeal.

**46.** Where a member or a student has been convicted of an indictable offence, the Council may, without notice or an investigation under this Act

- (a) suspend the member or the registration of the student pending the determination of any appeal from the conviction or of any proceedings to have the conviction quashed, or
- (b) upon the conclusion of an appeal from the conviction or any other proceeding to quash the conviction and whether or not a suspension has been ordered under clause (a)
  - (i) suspend the member or the registration of the student for a stated period of time, or
  - (ii) order that the name of the member be struck off the roll or terminate the registration of the student.

**47.** (1) Where the name of a member has been struck off the register or where a member has been suspended, the Council may

- (a) publish or cause to be published notice thereof in such form and in such manner and through such media of disseminating news as the Council may direct, and
- (b) cause a notice or notices of the striking off or suspension to be posted in or at the member's office or his other place or places of business

and no liability attaches to the Institute or the Council or any person acting for or on the instructions of either of them for publishing, posting or otherwise circulating or disseminating such a notice.

(2) No notice shall be published pursuant to subsection (1) until

- (a) any appeal by or on behalf of the member charged has been heard and a decision made in such appeal, or
- (b) where no appeal is made, the time for making an appeal has expired.



**48.** When the name of any member has been struck off the register, he shall not be reinstated as a member except by order of the Council and no such order shall be made within one year after the date on which the person's name was struck off the register.

**49.** No action lies against any Council member, any person conducting a preliminary investigation, any member of an investigating committee or the discipline committee appointed under this Act, the secretary or any officer or servant of the Institute, for any thing done by him in good faith and in purporting to act under this Act or the rules.

**50.** No action for defamation may be founded on a communication that consists of, or pertains to, a complaint regarding the conduct of a member if the communication is published to or by the Institute, a Council member, or any officer or employee of the Institute in the course of investigating the complaint or in the course of any proceedings relating to the complaint.

*5. Section 32 is amended by renumbering it as "51".*

*6. This Act comes into force on the day upon which it is assented to.*

**5.** Section renumbered.