

1975 Bill 65  
(Second Session)

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First Session, 18th Legislature, 24 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 65**

THE OPTOMETRY AMENDMENT ACT, 1975

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HON. MR. BOGLE

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First Reading .....

Second Reading .....

Third Reading .....

# BILL 65

1975

(Second Session)

## THE OPTOMETRY AMENDMENT ACT, 1975

(Assented to \_\_\_\_\_, 1975)

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

1. *The Optometry Act is hereby amended.*

2. *Section 14 is amended by striking out subsection (2) and by substituting therefor the following subsection:*

(2) Where the Board makes a direction under subsection (1) and a fee of \$50 is paid to the Minister within one year of the date of the direction, the secretary of the Board shall issue to the applicant a certificate of approval for registration, and shall send a copy of it to the Registrar.

3. *Section 15 is amended by striking out subsection (1) and by substituting therefor the following subsections:*

**15.** (1) The Registrar shall issue a certificate of registration as a member of the Association within 14 days after the receipt of the registration fee, the current annual fees and a copy of the certificate of approval for registration.

(1.1) If the registration fee and current annual fees are not received by the Registrar within one year of the date of the certificate of approval for registration, then the certificate of approval for registration is deemed to be cancelled.

4. *Section 17 is amended*

(a) *by striking out the words "be guilty of" and by substituting the words "have committed an act constituting", and*

(b) *by adding after the words "conduct unbecoming an optometrist" the words "or to be incompetent to practise optometry".*

## Explanatory Notes

**1. This Bill will amend chapter 270 of the Revised Statutes of Alberta 1970.**

**2. A time limit placed on the payment of the fee for a certificate of approval for registration.**

Section 14 (2) presently reads:

(2) Where the Board makes a direction under subsection (1) and a fee of fifty dollars is paid to the Minister, the secretary of the Board shall issue to the applicant a certificate of approval for registration, and shall send a copy of it to the Registrar.

**3. Section 15 (1) presently reads:**

15. (1) The Registrar of the Association shall, within fourteen days after the filing of the certificate of approval for registration, issue to the holder thereof a certificate of registration as a member of the Association.

**4. Addition of incompetence as a ground for disciplinary action.**

Section 17 presently reads:

17. The council may order

- (a) the name of a member to be struck off the register, or
- (b) the suspension of a member for a fixed period, or
- (c) the imposition of a fine against a member not exceeding five hundred dollars.

where that member is found by the council to be guilty of conduct unbecoming an optometrist.

5. *Section 18 is struck out and the following section substituted:*

**18.** (1) The question of whether a member has committed an act constituting conduct unbecoming an optometrist, or is incompetent to practise optometry, is a question of fact which shall be determined by the council or, on appeal, the Supreme Court of Alberta.

(2) For the purpose of this Act, the following are deemed to be acts constituting conduct unbecoming an optometrist:

- (a) any act or omission or conduct that is inimical to the best interests of the public or the members of the Association, or
- (b) the contravention of any provision of this Act or the by-laws.

(3) For the purposes of this Act, a member is incompetent to practise optometry if he has displayed a lack of skill or judgment in the practice of optometry or is incapable or unfit to practise optometry.

6. *Section 21 is amended*

- (a) *as to subsection (1), clause (c) by adding after the words "conduct unbecoming an optometrist" the words "or show the member to be incompetent to practise optometry",*
- (b) *as to subsection (2), clause (b) by adding after the words "conduct unbecoming an optometrist" the words "or show the member to be incompetent to practise optometry".*

7. *Section 23 is struck out and the following section substituted:*

**23.** Where the chairman of the discipline committee or the council directs that a complaint is to be dealt with by the discipline committee, the chairman shall direct the discipline committee to conduct an investigation into the subject matter of the complaint.

8. *Section 24 is amended*

- (a) *as to subsection (1) by striking out the words "inquire into the charge" and by substituting the words "conduct an investigation into the subject matter of the complaint",*
- (b) *as to subsection (2) by striking out the words "the hearing of the charge shall be served on the member charged" and by substituting the words "the investigation into the subject matter of the complaint shall be served on the member under investigation",*

**5. Determining incompetence. Section 18 presently reads:**

18. (1) The question of whether a member is guilty of conduct unbecoming an optometrist shall be determined by the council or, on appeal, by the Supreme Court of Alberta.

(2) For the purposes of this Act, the following acts are deemed to be conduct unbecoming an optometrist.

- (a) any act or conduct that is inimical to the best interests of the public or the members of the Association, or
- (b) the contravention of any provision of this Act or the by-laws.

**6. Section 21 presently reads:**

21. (1) The chairman of the discipline committee shall review all complaints received against members of the Association and shall either

- (a) direct that the complaint be dealt with by the discipline committee, or
- (b) direct that a preliminary investigation be held regarding the complaint in accordance with the by-laws, or
- (c) direct that no further action be taken, if he is of the opinion that the complaint is frivolous or without basis or, if proven, would not constitute conduct unbecoming an optometrist.

(2) Upon receiving the report of a preliminary investigation, the chairman of the discipline committee shall either

- (a) direct that the complaint be dealt with by the discipline committee, or
- (b) direct that no further action be taken, if he is of the opinion that the complaint is frivolous or without basis or, if proven, would not constitute conduct unbecoming an optometrist.

**7. Section 23 presently reads:**

23. Where the chairman of the discipline committee or the council directs that a complaint is to be dealt with by the discipline committee,

- (a) the chairman shall direct the Secretary-Treasurer to lay a charge of conduct unbecoming an optometrist against the member concerned containing particulars of the complaint, and
- (b) the charge shall be heard by the discipline committee.

**8. Section 24 (1), (2) and (3) presently read:**

24. (1) The discipline committee shall inquire into the charge against the member.

(2) At least ten days' notice of the date, time and place of the meeting of the discipline committee for the hearing of the charge shall be served on the member charged.

(3) The notice shall contain a copy of the charge that forms the subject of the inquiry.

- (c) *as to subsection (3) by striking out the words “a copy of the charge that forms the subject of the inquiry” and by substituting the words “reasonable particulars of the matter to be investigated”.*

*9. Section 25, subsection (1) is amended by striking out the word “charged” and by substituting therefor the words “under investigation”.*

*10. Section 26 is amended*

- (a) *as to subsections (3) and (6) by striking out the word “charged” and by substituting therefor the words “under investigation”, and*
- (b) *as to subsection (7) by striking out the words “the charge” and by substituting therefor the words “the investigation”.*

*11. Section 27 is amended*

- (a) *as to subsection (3) by striking out the words “find the member either guilty or not guilty of the charge” and by substituting the words “make a finding as to whether or not the member committed an act constituting conduct unbecoming an optometrist or is incompetent to practise optometry, as the case may be”,*
- (b) *as to subsection (4)*
  - (i) *by striking out the words “inquiring into the particular charge” and by substituting the words “conducting an investigation into the subject matter of the complaint”, and*
  - (ii) *by striking out the words “that charge” and by substituting the words “that investigation”, and*
- (c) *as to subsection (5), by striking out the word “charged” and by substituting the words “under investigation”.*

*12. Section 28 is amended*

- (a) *by striking out subsection (1) and by substituting therefor the following:*

**28.** (1) When the council finds the member under investigation to have committed an act constituting conduct unbecoming an optometrist or to be incompetent to practise optometry, it may direct that the costs of and incidental to the investigation be paid by that member.

**9. Section 25 (1) presently reads:**

25. (1) The member charged may be represented by counsel.

**10. Section 26 (3), (6) and (7) presently read:**

(3) Where the witness referred to in subsection (1) is the member charged, his failure or refusal may be held to be conduct unbecoming an optometrist.

(6) The member charged is a compellable witness in any disciplinary proceedings under this Act.

(7) A witness in any proceedings before the discipline committee may be examined on oath on all matters relevant to the charge 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 the disciplinary provisions of this Act, or

(c) might tend to establish his liability

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

(ii) to prosecution under any 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.

**11. Section 27, subsections (3), (4) and (5) presently read:**

(3) Upon considering the report of the committee, the council shall find the member either guilty or not guilty of the charge.

(4) Any member of the council who has been a member of the committee inquiring into the particular charge shall not participate in any proceedings of the council relating to that charge.

(5) The member charged shall be served with a copy of the council's findings and the order, if any, made against the member pursuant to section 17.

**12. Section 28 (1) and (2) presently read:**

28. (1) When the council finds the member charged to be guilty of conduct unbecoming an optometrist, it may direct that the costs of and incidental to the inquiry be paid by that member.

(2) when the complaint is dismissed on the ground that it is frivolous or vexatious, the council may order the payment by the Association or the person making the complaint of such costs as it considers just to the member charged.

(b) *as to subsection (2) by striking out the word "when" and by substituting the word "When".*

13. *Section 30, subsection (1) is amended*

(a) *by striking out the words "guilty of conduct unbecoming an optometrist" and by substituting the words "to have committed an act constituting conduct unbecoming an optometrist or to be incompetent to practise optometry", and*

(b) *by striking out the words "of guilt" wherever they occur.*

14. *Section 31, subsection (3) is amended by striking out the words "of guilt" in clause (a) and by substituting the words "of the council".*

15. *Section 34 is struck out and the following section substituted:*

**34.** (1) The council may, after 14 days' notice to the member, suspend a member who is in default for a period of at least 60 days of payment of an amount owing by him to the Association as a fee, contribution or fine or as costs.

(2) The council may cancel the suspension of a member under subsection (1)

(a) if, within one year of the date of the commencement of the suspension, the member pays the amount owing and a fee prescribed by the by-laws, or

(b) if, where more than one year has elapsed since the date of commencement of the suspension, the member pays the amount owing and a fee of \$100 and obtains a supplementary certificate of approval from the Board.

(3) The Board may direct the issue of a supplementary certificate of approval to a member for the purpose of this section.

(4) Prior to the granting of a supplementary certificate of approval, the Board may

(a) require the member to take any examinations the Board may prescribe, or

(b) require the member to take a course of study determined by the Board at a school or college designated by the Board.

(5) Where a member fails to pass any examinations prescribed by the Board pursuant to subsection (4), clause (a), the Board may require the member to take a course of study determined by the Board at a school or college designated by the Board.



**13. Section 30 (1) presently reads:**

30. (1) A member who has been found guilty of conduct unbecoming an optometrist may appeal to The Supreme Court of Alberta by originating notice of motion

(a) from the finding of guilt, or

(b) if an order has been made against him under section 17, from the finding of guilt and the order or from the order only.

within thirty days of the date that the member was served with a copy of the council's findings and the order, if any, made under section 17.

**14. Section 31 (3) (a) presently reads:**

(3) The judge on the hearing of the appeal may, as the case may be,

(a) confirm the finding of guilt, or

**15. Section 34 presently reads:**

34. The council may, without notice, suspend a member who is in default of payment for a period of at least sixty days of an amount owing by him to the Association as an annual membership fee, levy or contribution or as a fine, and upon payment of the amount owing and a fee of five dollars, the suspension by reason of the default is thereby cancelled.

(6) Where a member passes the examinations required by subsection (4), clause (a) or completes to the satisfaction of the Board the course of study required pursuant to subsection (4), clause (b) or subsection (5), the Board shall direct the issue of a supplementary certificate of approval to the member.

(7) Where the Board makes a direction under subsection (3) or (6), the secretary of the Board shall issue to the member a supplementary certificate of approval and shall send a copy of it to the Registrar.

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