

1983 BILL 52

---

First Session, 20th Legislature, 32 Elizabeth II

---

THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 52**

**OPTOMETRY PROFESSION ACT**

---

---

HON. MR. KING

---

---

First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

---

---

# BILL 52

1983

## OPTOMETRY PROFESSION ACT

(Assented to \_\_\_\_\_, 1983)

### TABLE OF CONTENTS

Definitions	1
<b>PART 1</b>	
<b>SCOPE OF PRACTICE</b>	
Exclusive scope of practice and use of name	2
Application of the Act	3
Injunction	4
<b>PART 2</b>	
<b>ASSOCIATION</b>	
Alberta Association of Optometrists	5
Council	6
Registrar	7
Council membership and election of officers	8
<b>PART 3</b>	
<b>REGULATIONS AND BY-LAWS</b>	
Regulations	9
By-laws	10
<b>PART 4</b>	
<b>REGISTRATION OF MEMBERS</b>	
Registers	11
Registration Committee	12
Registration of registered optometrist	13
Review by Council	14
Certificate of registration	15
Licence	16
Registration of professional corporation	17
Termination of permit	18
Liability of shareholders and employees	19
Proxy votes	20
Suspension and cancellation	21
List of registrants	22
Cancellation by request	23
Cancellation by default	24

**PART 5  
PRACTICE REVIEW BOARD**

Practice Review Board	25
Powers of the Practice Review Board	26
Referral to Discipline Committee	27

**PART 6  
DISCIPLINE**

Definitions	28
Discipline Committee	29
Unskilled or unprofessional conduct	30
Complaints	31
Investigation	32
Report of preliminary investigation	33
Referral to the Discipline Committee	34
Appeal from decision of Registrar	35
Appeal to the Court of Queen's Bench	36
Suspension pending hearing	37
Notice of hearing	38
Further investigation	39
Evidence before Committee	40
Witness	41
Enforcement of attendance and production of documents	42
Failure to attend or give evidence	43
Hearing in absence of a party	44
Findings of Discipline Committee	45
Orders of Discipline Committee	46
Payment of costs and fine	47
Written decision	48
Service of decision	49
Stay of decision of Discipline Committee	50
Appeal to Council	51
Notice and hearing of appeal	52
Appeal on record	53
Council's powers on appeal	54
Stay of decision of Council	55
Appeal to Court of Appeal	56
Appeal on the record	57
Power of Court on appeal	58
Misrepresentation of status	59
Cancellation of falsely obtained registration	60
Reinstatement of registration	61
Representation by counsel	62

**PART 7  
GENERAL**

Liability of authorized entity	63
Certificate of Registrar	64
Protection from legal action	65
Service of documents	66
Municipal licence	67
Assessment of optometric facilities	68

**PART 8  
PROHIBITIONS AND PENALTIES**

Practice prohibitions	69
Penalties	70
Onus of proof	71
Proof of the practice of optometry	72

**PART 9  
TRANSITIONAL**

Registration continued	73
Council continued	74
Application for registration continued	75
Regulations	76
Discipline proceedings continued	77

**PART 10  
CONSEQUENTIAL**

Amends RSA 1980 cA-24	78
Amends SA 1981 cB-15	79
Amends RSA 1980 cC-20	80
Amends RSA 1980 cL-13	81
Amends RSA 1980 cL-15	82
Amends RSA 1980 cO-8	83
Repeals RSA 1980 cO-9	84
Coming into force	85

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

Definitions

**1 In this Act,**

- (a) “Association” means The Alberta Association of Optometrists;
- (b) “authorized entity” means a registered optometrist, a professional corporation and a member of a class or category of practising members established under the regulations;
- (c) “Council” means the Council of the Association;
- (d) “Discipline Committee” means the Discipline Committee established under this Act;
- (e) “Minister” means the member of the Executive Council charged with the administration of this Act;
- (f) “optometric facility” means a place in which the practice of optometry is carried on, including the premises of a retail merchant;
- (g) “practice of optometry” means
  - (i) the examination of the human eye, its related structures and the human vision system in order to measure, assess, diagnose or refer for consultation or treatment any conditions of the human eye, its related structures and the human vision system;
  - (ii) the treatment of conditions of the human eye, its related structures and the human vision system, through the prescribing and dispensing of ophthalmic appliances or other aids, the prescribing and provision of orthoptics or perceptual

training and the offering of advice, consultation or counselling;

(h) "Practice Review Board" means the Practice Review Board established under section 25;

(i) "professional corporation" means a corporation that holds a permit under this Act;

(j) "registered optometrist" means an individual who holds a certificate of registration and a licence under this Act;

(k) "Registrar" means the Registrar of the Association appointed under section 7;

(l) "Registration Committee" means the Registration Committee established under section 12.

## PART 1

### SCOPE OF PRACTICE

Exclusive scope of practice and use of name

**2(1)** Except as otherwise provided in this Act, no person except an authorized entity shall engage in the practice of optometry.

**(2)** No person except an authorized entity shall

(a) use the name optometrist or any title, description, abbreviation, letter or symbol representing that name alone or in combination with any other name, title, description, abbreviation, letter or symbol that represents expressly or by implication that he is entitled to practise optometry, or

(b) represent or hold out, expressly or by implication, that he is entitled to engage in the practice of optometry or is an authorized entity.

Application of the Act

**3(1)** Nothing in this Act prevents a person who is not an authorized entity from giving necessary aid in an isolated case of urgent need or vital necessity if the aid is given without hire, gain or hope of reward.

**(2)** Nothing in this Act applies to or affects the practice of any profession or occupation by any person practising the same under the authority of any other Act.

**(3)** Nothing in this Act prevents

(a) the practice of optometry by a retail merchant or the carrying on of an optical department at the retail merchant's ordinary place of business, if the practice and the optical department are under the supervision and control of a registered optometrist or a physician, or

(b) the sale of protective glasses for industrial purposes, coloured glasses, goggles or magnifying glasses, none of which are sold or designed for the relief, prevention or correction of visual or ocular anomalies of the eye.

(4) An authorized entity is not authorized by the operation of this section to engage in the practice of optometry beyond the scope of the practice specified under this Act in respect of that authorized entity.

Injunction

**4** The Court of Queen's Bench, on application by the Council by way of originating notice, may grant an injunction enjoining any person from doing any act that contravenes section 2, notwithstanding any penalty that may be provided by this Act in respect of that contravention.

## **PART 2 ASSOCIATION**

Alberta  
Association of  
Optometrists

**5(1)** The Alberta Optometric Association is continued as a corporation under the name "The Alberta Association of Optometrists".

(2) The Association has the capacity and, subject to this Act, the rights, powers and privileges of a natural person.

(3) A registered optometrist is a member of the Association.

(4) Subject to the *Alberta Health Care Insurance Act*, the Association may enter into an agreement with any person, government or other authority in respect of the provision of optometric services and may require an authorized entity to comply with and perform any or all of the terms of the agreement.

Council

**6(1)** There is hereby established a governing body of the Association called the Council.

(2) The Council shall manage and conduct the business and affairs of the Association and exercise the rights, powers and privileges of the Association in the name and on behalf of the Association.

(3) The Council shall submit to the Minister an annual report on those matters of the business and affairs of the Association that the Minister requires in a form satisfactory to him.

(4) The Minister shall, on receipt of the annual report of the Association, lay it before the Legislative Assembly if it is then sitting and, if it is not then sitting, within 15 days after the commencement of the next ensuing sitting.

Registrar

**7** The Council shall appoint an individual as Registrar for the purposes of this Act.

Council  
membership and  
election of  
officers

**8(1)** The Council shall consist of

(a) at least 9 registered optometrists or a greater number that may be prescribed by the by-laws, each of whom shall be elected by and from among registered optometrists, at the time, in the manner and for the period provided by the by-laws, and

(b) ex officio members, if any, appointed by the Council.

(2) An ex officio member does not have voting rights on the Council.

**PART 3**  
**REGULATIONS AND BY-LAWS**

Regulations

**9(1) The Council may make regulations**

- (a) respecting the academic qualifications of and training requirements for applicants for registration as registered optometrists;
- (b) establishing conditions respecting the registration of an applicant referred to in clause (a), including residence and character requirements;
- (c) providing for the evaluation by the Registration Committee, the Universities Co-ordinating Council or the Council of the academic qualifications of and training requirements for applicants for registration as registered optometrists, and the examination of those applicants with respect to those qualifications or requirements;
- (d) respecting the establishment of categories of students, conditions respecting the registration of students and limitations on the practice of optometry by students;
- (e) respecting standards for the practice of optometry;
- (f) respecting the treatment of conditions of the human eye, its related structures and the human vision system, the prescribing and dispensing of ophthalmic appliances or other aids, the prescribing and provision of orthoptics or perceptual training and the offering of advice, consultation or counselling;
- (g) establishing classes or categories of members of the Association other than registered optometrists that may engage in the practice of optometry and prescribing the privileges and the obligations of the classes or categories so established;
- (h) prescribing restrictions, conditions or limitations on the practice of optometry by any class or category of membership of the Association other than a registered optometrist or a professional corporation;
- (i) establishing and providing for the publishing of a code of ethics respecting the practice of optometry, the maintenance of the dignity and honour of the profession of optometry and the protection of the public interest;
- (j) requiring authorized entities or a class of authorized entities to carry professional liability insurance and governing the minimum coverage required to be carried;
- (k) prescribing the number of voting members that constitutes a quorum of the Council, the Practice Review Board, the Registration Committee or the Discipline Committee;
- (l) respecting the procedures for hearings, preliminary investigations, inquiries and reviews by the Discipline Committee, the Practice Review Board, the Registration Committee and the

Council in matters relating to the conduct or practice of authorized entities, whether or not a complaint has been made;

(m) respecting inquiries and reviews of the practice of an authorized entity by the Practice Review Board or a person authorized by that Board;

(n) respecting registration, the review of complaints, disciplinary matters and the practice of optometry generally;

(o) respecting the establishment and operation by the Council of a compulsory continuing education program for registered optometrists;

(p) governing the publication of a notice of the suspension or cancellation of the registration of an authorized entity, in a form and manner prescribed by the Council;

(q) respecting advertising by authorized entities;

(r) respecting committees of inquiry for reinstatement under Part 6;

(s) respecting applications for reinstatement, including the time within which they may be made;

(t) respecting the membership and operation of an Optometric Facility Assessment Committee;

(u) respecting the establishment, operation, standards and procedures of optometric facilities.

(2) A regulation under subsection (1) does not come into force unless it has been approved by

(a) a majority of the registered optometrists

(i) present and voting at a general meeting, or

(ii) voting in a mail vote conducted in accordance with by-laws,

and

(b) the Lieutenant Governor in Council.

By-laws

**10(1)** The Council may make by-laws

(a) for the government of the Association and the management and conduct of its affairs;

(b) determining the location of the head office of the Association;

(c) respecting an official seal of the Association;

(d) respecting the calling of and conduct of meetings of the Association and the Council;



- (e) respecting the nomination, election, number and term of office of Council members and officers of the Association and the appointment of individuals as acting or ex officio members of the Council, and prescribing their powers, duties and functions;
- (f) governing, subject to this Act, the appointment of members of the Discipline Committee, the Registration Committee, the Practice Review Board and the Optometric Facility Assessment Committee, the designation of chairman and vice-chairman, the appointment of acting or alternate members and the procedures for filling vacancies on a Committee or the Board and the appointment of ex officio members of a Committee or the Board and prescribing their powers, duties and functions;
- (g) governing the establishment, operation and proceedings of boards and committees, the appointment of members and of acting members and procedures for filling vacancies on boards and committees;
- (h) providing for the division of the Province into electoral districts and prescribing the number of Council members to be elected from each district;
- (i) establishing classes or categories of membership in the Association other than registered optometrists and classes or categories established under the regulations, and prescribing the privileges and obligations of the classes or categories of memberships so established;
- (j) providing for the appointment of an Acting Registrar who has all of the powers and can perform all of the duties of the Registrar under this Act, the regulations and the by-laws when the Registrar is absent or unable to act or when there is a vacancy in the office of Registrar;
- (k) prescribing the number of members that constitutes a quorum at meetings of the Association;
- (l) providing for the delegation of any power or duty of the Council under the Act, regulations or by-laws, with or without conditions, except the power to amend, repeal or suspend any by-law of the Council;
- (m) prescribing fees and expenses payable to a member of the Council and of committees and boards established under the Act, regulations or by-laws for attending to the business of the Association;
- (n) governing the names under which authorized entities may engage in the practice of optometry;
- (o) respecting the establishment of and payment of sums of money for scholarships, fellowships and any other educational incentive or benefit program that the Council considers appropriate;
- (p) respecting the fixing of fees, dues and levies payable to the Association;

- (q) respecting the costs payable by any person on the conclusion of a hearing or review by the Practice Review Board or under Part 6;
  - (r) respecting the establishment, content and maintenance of registers and records of authorized entities and of records of other classes or categories of membership to be kept by the Registrar;
  - (s) respecting the removal from the registers and records of any memorandum or entry made in them under this Act, the regulations or the by-laws;
  - (t) governing the publication of the names of applicants for registration by the Registration Committee;
  - (u) requiring authorized entities to maintain a business address in Alberta and to inform the Registrar in writing of that address and of any change in that address forthwith after the change occurs;
  - (v) authorizing the Council to prescribe the form of a certificate of registration, an annual licence, a permit and any other form or document that may be required for the purposes of this Act, the regulations or the by-laws;
  - (w) respecting the holding of votes by mail in respect of any matter relating to the Association.
- (2) A by-law under subsection (1) does not come into force unless it has been approved by a majority of the registered optometrists
- (a) present and voting at a general meeting, or
  - (b) voting in a mail vote conducted in accordance with by-laws.
- (3) The *Regulations Act* does not apply to by-laws of the Association.

#### PART 4

#### REGISTRATION OF MEMBERS

Registers

- 11(1) The Registrar shall maintain, in accordance with the by-laws and subject to the direction of the Council, the following registers:
- (a) a register of registered optometrists;
  - (b) a register of professional corporations;
  - (c) a register of a class or category of members established under the regulations;
  - (d) any other register or record prescribed by the by-laws.
- (2) The Registrar shall enter in the appropriate register the name of a person
- (a) whose registration to engage in the practice of optometry has been approved by the Council, the Registration Committee or the Registrar, as the case may be, and

(b) who has paid the fee prescribed in the by-laws.

Registration  
Committee

**12(1)** There is hereby established a Registration Committee consisting of not fewer than 5 members as follows:

(a) the Council shall appoint at least 4 registered optometrists who, in the opinion of the Council, have a combination of knowledge and experience suitable for determining the academic qualifications and training requirements necessary for a person to engage in the practice of optometry, and

(b) the Minister shall appoint 1 member of the public nominated by the Council who is not a registered optometrist.

(2) If the Council fails, within a reasonable period of time after being requested to do so by the Minister, to make a nomination for the purposes of subsection (1)(b), the Minister may appoint a member of the public to the Registration Committee without the Council's nomination.

(3) The Minister may pay to the member of the Registration Committee appointed under subsection (1)(b) travelling and living expenses incurred by that member for attendance at a hearing of the Committee away from his usual place of residence and fees in an amount prescribed by the Minister.

(4) The Minister may, after consultation with the Council, revoke the appointment of the member of the Registration Committee appointed under subsection (1)(b).

(5) The powers, duties and operations of the Registration Committee under this Act, the regulations and by-laws are not affected by

(a) the fact that no member of the public is appointed as a member of the Committee under subsection (1)(b),

(b) the revocation under subsection (4) of the appointment of a member of the public, or

(c) the resignation as a member of the Committee of a member of the public.

(6) The failure of a member of the public appointed under subsection (1)(b) to attend a meeting of the Committee shall not be construed as affecting or restricting the Committee from exercising any powers or performing any duties under this Act, the regulations and the by-laws at that meeting.

Registration of  
registered  
optometrist

**13(1)** The Registration Committee shall, in accordance with this Part, the regulations and the by-laws, consider an application for the registration of the applicant as a registered optometrist, and may

(a) approve the registration,

(b) refuse to approve the registration, or

(c) defer the approval of registration until it is satisfied that the applicant has obtained further experience as required by the committee.

(2) The Registrar shall cause a written notice of all applications for registration to be published to registered optometrists in the manner prescribed in the by-laws.

(3) A registered optometrist may, within 15 days of publication of a notice of application under subsection (2), request the Registration Committee to consider further evidence concerning the application by serving on the Registrar a notice in writing setting out the reasons why, in his opinion, the application for registration should be refused or deferred.

(4) The receipt by the Registrar of a notice under subsection (3) acts as a stay of registration until the further evidence is considered by the Registration Committee.

(5) The Registration Committee shall approve for registration as a registered optometrist an individual who has applied under this Act and is eligible in accordance with this Act and the regulations to be registered as a registered optometrist.

(6) In proceedings before the Registration Committee and the Council under this Part, the applicant, the registered optometrist who serves a notice under subsection (3) and the Association may be represented by counsel.

(7) Proceedings before the Registration Committee and the Council under this Part may be held in camera.

Review by  
Council

**14(1)** The Registration Committee shall send a written notice of any decision made by it to the applicant.

(2) If the decision made by the Registration Committee is to refuse or defer registration of the applicant, reasons for the decision shall be sent in writing to the applicant.

(3) An applicant whose application for registration is refused or deferred may, within 30 days of receiving a notice of refusal and the reasons for the refusal, request the Council to review the refusal by serving on the Registrar a written request for review by the Council setting out the reasons why, in his opinion, his application for registration as a registered optometrist should be approved.

(4) For the purposes of subsection (3), if the Registration Committee does not approve, refuse to approve or defer the registration of an applicant within 60 days of the date on which an applicant applied for registration, the application shall be deemed to have been refused.

(5) The Council shall, after receipt of a request for review under subsection (3), review the request so received.

(6) The applicant who requests a review pursuant to subsection (3) shall be notified in writing by the Registrar of the date, place and time that the Council will consider the matter requested to be reviewed and the Council, after reviewing the matter, may make any decision that the Registration Committee could have made.

(7) A member of the Registration Committee who is also a member of the Council may participate at a review by the Council under this section but shall not vote on a decision of the Council.

Certificate of registration

**15** On entering the name of a registered optometrist in the register, the Registrar shall issue to him a certificate of registration.

Licence

**16(1)** A registered optometrist shall pay to the Association an annual fee prescribed under the by-laws.

(2) The Registrar shall issue a licence in accordance with the by-laws to a registered optometrist

- (a) whose registration is not under suspension or cancelled, and
- (b) who has paid the annual fee.

(3) Subject to this Act, a licence entitles a registered optometrist to engage in the practice of optometry during the year for which the licence is issued.

(4) A licence expires on December 31 of the year for which it is issued.

Registration of professional corporation

**17(1)** The Registrar shall issue a permit to any corporation or company that applies to him and fulfils the following conditions:

- (a) pays the fees prescribed by the by-laws;
- (b) satisfies the Registrar that it is a corporation or company that is in good standing with the Registrar as defined in the *Business Corporations Act*;
- (c) satisfies the Registrar that the corporation or company, by law or by virtue of its incorporating documents, has the capacity to carry on the practice of optometry;
- (d) satisfies the Registrar that the name of the corporation or company is in accordance with the by-laws and contains the words "Professional Corporation";
- (e) satisfies the Registrar that the legal and beneficial ownership of all the issued shares of the corporation or company are vested in 1 or more registered optometrists and that all of the directors of the corporation or company are registered optometrists;
- (f) satisfies the Registrar that the persons who will carry on the practice of optometry on behalf of the corporation or company are registered optometrists.

(2) Subject to this Act, a permit entitles a professional corporation to engage in the practice of optometry during the year for which it is issued.

(3) A permit expires on December 31 of the year for which it was issued.

(4) A permit may be revoked or its renewal withheld by the Council when any of the conditions specified in subsection (1) no longer continues to be met.

(5) On issuing a permit to a professional corporation, the Registrar shall enter its name in the register.

(6) For the purposes of subsection (1)(f), the practice of optometry shall not be deemed to be carried on by clerks, secretaries and other assistants employed by the professional corporation to perform services that are not services that may be performed only by a registered optometrist.

Termination  
of permit

**18** If a professional corporation ceases to fulfil any condition specified in section 17 by reason only of

(a) the death of a registered optometrist, or

(b) the cancellation or suspension of the registration of a registered optometrist,

who is a shareholder of the corporation, the professional corporation has a period of 90 days from the date of death, cancellation or suspension, as the case may be, in which to fulfil the condition, failing which the permit is automatically terminated effective on the expiration of the 90 day period without the necessity of an order of the Council.

Liability of  
shareholders and  
employers

**19(1)** Notwithstanding anything to the contrary in the *Companies Act* or the *Business Corporations Act*, every person who is a shareholder

(a) of a professional corporation during the time that it is the holder of a permit, or

(b) of a corporation or company during the time that it acts in contravention of section 2,

is liable to the same extent and in the same manner as if the shareholders were, during that time, carrying on the business of the corporation or company as a partnership or, if there is only 1 shareholder, as an individual carrying on the practice of optometry.

(2) The liability of a person in carrying on the practice of optometry is not affected by the fact that the practice of optometry is carried on by the person as an employee and on behalf of a professional corporation.

Proxy votes

**20** No shareholder of a professional corporation shall enter into a voting trust agreement, proxy or any other type of agreement vesting in another person who is not a registered optometrist the authority to exercise the voting rights attached to any or all of his shares.

Suspension and  
cancellation

**21(1)** The registration of an authorized entity is suspended when the decision to suspend the registration is made in accordance with this Act.

(2) The Registrar shall, after a decision to suspend a registration has been made, enter a memorandum of suspension of the registration in the appropriate register indicating

(a) the period of the suspension, and

(b) the nature of any finding under Part 6.

(3) The registration of an authorized entity is cancelled when a decision to cancel the registration is made in accordance with this Act.

(4) The Registrar shall, after a decision to cancel a registration has been made, enter a memorandum of the cancellation of the registration in the appropriate register.

(5) The Registrar shall not remove from the registers any memorandum made by him under subsection (2) or (4), except in accordance with the by-laws.

List of registrants **22** The Registrar shall maintain and, during regular office hours permit any person to inspect, a list of all the authorized entities in good standing.

Cancellation by request **23(1)** The Registrar shall not cancel the registration of an authorized entity at his request unless the request for the cancellation has been approved by the Council.

(2) When a request for the cancellation of registration is approved by the Council, the Registrar shall cancel that registration.

Cancellation by default **24(1)** The Council may direct the Registrar to cancel the registration of

(a) an authorized entity that is in default of payment of annual fees, penalties, costs or any other fees, dues or levies payable by him under this Act, the regulations or the by-laws, or

(b) an authorized entity that does not comply with the requirements specified in the by-laws requiring authorized entities to maintain a business address,

after the expiration of 30 days following the service on the authorized entity of a written notice by the Council pursuant to subsection (2), unless the authorized entity on whom the notice is served complies with the notice.

(2) The notice under subsection (1) shall state that the Registrar may cancel the registration unless, as the case may be,

(a) the fees, penalties, costs, dues or levies are paid as indicated in the notice, or

(b) evidence satisfactory to the Council is received by it within the time prescribed in the notice indicating that the authorized entity is complying with the requirement to maintain a business address.

(3) The Council may direct the Registrar to cancel the registration of any person made in error in the register.

(4) If the registration of an authorized entity has been cancelled under this Act, the certificate of registration, permit or licence of that authorized entity is deemed to be cancelled, and the authorized entity shall surrender to the Registrar the certificate of registration, permit or licence, as the case may be.

(5) The Council may direct the Registrar, subject to any conditions respecting the payment of arrears and any reinstatement fee that the Council may prescribe,

(a) to reinstate in the applicable register a registration that was cancelled under subsection (1), and

(b) to re-issue

(i) in the case of a registered optometrist, a certificate of registration and a licence, and

(ii) in the case of a professional corporation, a permit

to its former holder.

## PART 5

### PRACTICE REVIEW BOARD

Practice Review  
Board

**25(1)** There is hereby established the Practice Review Board consisting of not fewer than 5 members as follows:

(a) the Council shall appoint at least 4 registered optometrists who, in the opinion of the Council, have a combination of knowledge and experience suitable for determining the academic qualifications and training requirements necessary for a person to continue to engage in the practice of optometry, and

(b) the Minister shall appoint 1 member of the public nominated by the Council who is not a registered optometrist.

(2) If the Council fails, within a reasonable period of time after being requested to do so by the Minister, to make a nomination for the purposes of subsection (1)(b), the Minister may appoint a member of the public to the Practice Review Board without the Council's nomination.

(3) The Minister may pay to the member of the Practice Review Board appointed under subsection (1)(b) travelling and living expenses incurred by that member for attendance at a hearing of the Board away from his usual place of residence and fees in an amount prescribed by the Minister.

(4) The Minister may, after consultation with the Council, revoke the appointment of the member of the Practice Review Board appointed under subsection (1)(b).



(5) The powers, duties and operations of the Practice Review Board under this Act, the regulations and by-laws are not affected by

(a) the fact that no member of the public is appointed as a member of the Board under subsection (1)(b),

(b) the revocation under subsection (4) of the appointment of a member of the public, or

(c) the resignation as a member of the Board of a member of the public.

(6) The failure of a member of the public appointed under subsection (1)(b) to attend a meeting of the Board shall not be construed as affecting or restricting the Board from exercising any powers or performing any duties under this Act, the regulations and the by-laws at that meeting.

Powers of the  
Practice Review  
Board

**26(1) The Practice Review Board**

(a) may, on its own initiative and shall, at the request of the Council, inquire into and report to and advise the Council in respect of

(i) the assessment and development of educational standards and experience requirements that are conditions precedent to continuing as an authorized entity,

(ii) the evaluation of desirable standards of competency of authorized entities generally,

(iii) any other matter that the Board from time to time considers necessary or appropriate in connection with the exercise of its powers and the performance of its duties in relation to competence in the practice of optometry under this Act and the regulations, and

(iv) the practice of optometry generally,

and

(b) may conduct a review of the practice of an authorized entity in accordance with this Act and the regulations.

(2) After each inquiry or review under this section, the Board shall make a written report to the Council on the inquiry or review and may make any recommendations to the Council that the Board considers appropriate in connection with the matter, with reasons for the recommendations.

(3) The Board has all the powers and duties of the Discipline Committee under Part 6 for the purpose of carrying out its powers under subsection (1).

(4) Part 6 applies to an inquiry or review by the Board as if the inquiry or review were an investigation or hearing by the Discipline Committee under that Part.

Referral to  
Discipline  
Committee

**27(1)** The Practice Review Board may, at any time during an inquiry or review by it, refer any matter to the Discipline Committee for an investigation and hearing by that Committee in accordance with Part 6.

(2) On receiving a reference under subsection (1), the Discipline Committee shall proceed with an investigation and hearing under Part 6 as if the reference were a complaint.

## **PART 6 DISCIPLINE**

Definitions

**28** In this Part,

- (a) “conduct” includes an act or omission;
- (b) “investigated person” means an authorized entity or student with respect to whose conduct an investigation or hearing is held under this Part.

Discipline  
Committee

**29** There is hereby established a committee called the Discipline Committee composed of not fewer than 3 members appointed by the Council in accordance with the by-laws to exercise the powers and perform the duties set out in this Part.

Unskilled or  
unprofessional  
conduct

**30(1)** Any conduct of an authorized entity that, in the opinion of the Discipline Committee,

- (a) is detrimental to the best interests of the public,
- (b) harms or tends to harm the standing of the profession of optometry generally,
- (c) displays a lack of knowledge of or a lack of skill or judgment in the practice of optometry, or
- (d) is in contravention of this Act, the regulations or an order of the Practice Review Board under section 68(6),

whether or not that conduct is disgraceful or dishonourable, constitutes either unskilled practice of optometry or unprofessional conduct, whichever the Discipline Committee finds.

(2) If an authorized entity or student contravenes the by-laws, and the contravention is, in the opinion of the Discipline Committee, of a serious nature, the contravention may be found by the Discipline Committee to be unprofessional conduct whether or not it would be so found under subsection (1).

Complaints

**31(1)** A person may complain to the Registrar about the conduct of an authorized entity or student, and the complaint shall be dealt with in accordance with this Part and the regulations.

(2) A complaint respecting the conduct of an authorized entity whose registration was cancelled pursuant to this Act or any predecessor to this Act may, notwithstanding the cancellation, be dealt with within

5 years following the date of cancellation as if the cancellation had not occurred.

(3) A person designated by the Registrar as a mediator may assist in settling a complaint made to the Registrar if the complainant and the person about whose conduct the complaint was made so agree, but if within 30 days from the date of receipt of the complaint, or a longer period agreed to by those persons, settlement of the complaint between those persons does not occur, or in the mediator's opinion is not likely to occur, the complaint shall be referred forthwith by the mediator to the Registrar.

Investigation

**32** The Registrar, on receipt of a complaint made under section 31 or, if section 31(3) applies, on receipt of the referral from the mediator, shall conduct or appoint a person to conduct a preliminary investigation into the conduct of the authorized entity or student.

Report of preliminary investigation

**33(1)** A person conducting a preliminary investigation may

(a) request any person to answer any questions and to produce to him any ophthalmic appliances or supplies, charts, documents, papers, notes, records and other materials and things relevant to the investigation, and

(b) copy and keep copies of any of the things that are produced to him under clause (a).

(2) A person conducting a preliminary investigation shall conduct the investigation in a manner considered by him to be most suitable in all the circumstances.

(3) A person conducting a preliminary investigation may investigate any other matter related to the professional conduct or skill in practice of the investigated person that arises in the course of the investigation.

(4) A person conducting a preliminary investigation, on concluding the preliminary investigation, shall forthwith report his findings to the Registrar.

(5) If an authorized entity or student does not co-operate with a person conducting a preliminary investigation, the person conducting the preliminary investigation may make a complaint in writing to the Discipline Committee and the failure or refusal to co-operate may be held by the Discipline Committee to be unprofessional conduct.

Referral to the Discipline Committee

**34(1)** The Registrar, on the conclusion of a preliminary investigation, shall forthwith

(a) direct that no further action be taken, if he is of the opinion that

(i) the complaint is frivolous or vexatious, or

(ii) there is insufficient evidence of unskilled practice of optometry or unprofessional conduct,

or

(b) refer the matter under investigation or any other matter to the Discipline Committee.

(2) The Registrar shall serve on the investigated person and on the complainant, if any, a notice that no further action will be taken or that the matter has been referred to the Discipline Committee, as the case may be.

Appeal from  
decision of  
Registrar

**35(1)** A complainant who is served with a notice under section 34 that no further action will be taken may, within 30 days of receipt of the notice, appeal that direction to the Council by notice in writing to the Registrar.

(2) On an appeal under subsection (1), the Council shall direct that

(a) no further action be taken, if it is of the opinion that

(i) the complaint is frivolous or vexatious, or

(ii) there is insufficient evidence of unskilled practice or unprofessional conduct,

or

(b) a hearing should be held by the Discipline Committee in respect of the matter.

(3) The Registrar shall serve on the investigated person and on the complainant a notice that no further action will be taken or that the matter has been referred to the Discipline Committee for a hearing, as the case may be.

Appeal to the  
Court of Queen's  
Bench

**36(1)** A complainant who is served with a notice under section 35 that no further action will be taken may, within 30 days of receipt of the notice, appeal that direction to the Court of Queen's Bench by filing an originating notice and serving a copy on the Registrar.

(2) On hearing an application under subsection (1), the Court of Queen's Bench may direct that

(a) no further action be taken, if it is of the opinion that

(i) the complaint is frivolous or vexatious, or

(ii) there is insufficient evidence of unskilled practice or unprofessional conduct,

or

(b) a hearing should be held by the Discipline Committee in respect of the matter.

Suspension  
pending hearing

**37(1)** Notwithstanding anything in this Act, the Registrar may recommend to the Council that the registration of an investigated person be temporarily suspended pending the outcome of proceedings

under this Part, and the Council may suspend the registration accordingly.

(2) The investigated person may, by filing an originating notice with the Court of Queen's Bench and serving a copy on the Registrar, apply for an order of the Court staying the decision of the Council.

Notice of hearing **38(1)** The Discipline Committee, on referral to it of a matter under this Part, shall investigate the matter and hold a hearing.

(2) The hearing referred to in subsection (1) shall be held not more than 60 days after the date on which the matter is referred to the Discipline Committee or within any longer period that may be consented to by the Council.

(3) The Registrar shall serve on the investigated person and the complainant, not less than 30 days before the date of the hearing before the Discipline Committee, a notice stating

(a) the date, time and place of the hearing, and

(b) reasonable particulars of the complaint or matter in respect of which the hearing will be held.

Further investigation **39** The Discipline Committee may also investigate and hear any other matter concerning the conduct of the investigated person that arises in the course of an investigation or hearing, but in that event the Discipline Committee shall declare its intention to investigate and hear the further matter and shall permit the investigated person sufficient opportunity to prepare his answer to the further matter.

Evidence before Committee **40(1)** Evidence may be given before the Discipline Committee in any manner that the Committee considers appropriate, and the Committee is not bound by the rules of law respecting evidence applicable to judicial proceedings.

(2) For the purposes of proceedings under this Part, the Registrar, a person appointed by him under section 32, and any member of the Council, the Discipline Committee or the Practice Review Board is conferred with the power of a commissioner for oaths under the *Commissioners for Oaths Act*.

Witness **41(1)** The investigated person and any other person who, in the opinion of the Discipline Committee, has knowledge of the complaint or matter being investigated is a compellable witness in proceedings under this Part.

(2) A witness may be examined under oath on all matters relevant to the investigation or hearing before the Discipline Committee and shall not be excused from answering any question on the ground that the answer might

(a) tend to incriminate him,

(b) subject him to punishment under this Part, or

(c) 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 Act or regulations under any Act

but if the answer so given tends to incriminate him, subjects him to punishment or tends to establish his liability, it shall not be used or received against him in any civil proceedings or in any proceedings under any other Act.

(3) For the purpose of obtaining the testimony of a witness who is out of Alberta, a judge of the Court of Queen's Bench on an application made ex parte by the Association may direct the issuing of a commission for the obtaining of the evidence of the witness, and the commission shall be issued and the evidence taken pursuant to the Rules of Court.

Enforcement of attendance and production of documents

**42(1)** The attendance of witnesses before the Discipline Committee and the production of ophthalmic appliances or supplies, charts, documents, papers, notes, records and other materials and things may be enforced by a notice issued by the Registrar requiring the witness to attend and stating the date, time and place at which the witness is to attend and the ophthalmic appliances or supplies, charts, documents, papers, notes, records and other materials and things, if any, he is required to produce.

(2) On the written request of the investigated person or the complainant, or of his counsel or agent, the Registrar shall without charge issue and deliver to that person or his counsel or agent any notices for the attendance of witnesses or notices for production under subsection (1) that he requires.

(3) A witness, other than the investigated person or the complainant, who has been served with a notice to attend or a notice for production under subsection (1) or (2) is entitled to be paid the same fees as are payable to a witness in an action in the Court of Queen's Bench.

Failure to attend or give evidence

**43(1)** Proceedings for civil contempt of court may be brought against a witness

(a) who fails

(i) to attend before the Discipline Committee in compliance with a notice to attend,

(ii) to produce any ophthalmic appliances or supplies, charts, documents, papers, notes, records and other materials or things in compliance with 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 he is directed to answer by the Discipline Committee.

(2) If the witness referred to in subsection (1) is an authorized entity or student, his failure or refusal may be held to be unprofessional conduct.

Hearing in  
absence of a  
party

**44** The Discipline Committee, on proof of service on the investigated person or the complainant of the notice of the hearing, may

(a) proceed with the hearing in the absence of the investigated person or the complainant, and

(b) act or decide on the matter being heard as if the investigated person or the complainant were in attendance.

Findings of  
Discipline  
Committee

**45(1)** The Discipline Committee may find that the conduct of an investigated person constitutes neither unskilled practice of optometry nor unprofessional conduct.

(2) The Discipline Committee may find that the conduct of an investigated person constitutes unskilled practice of optometry or unprofessional conduct or both and shall deal with the investigated person in accordance with this Part.

Orders of  
Discipline  
Committee

**46** If the Discipline Committee finds that the conduct of an investigated person constitutes unskilled practice of optometry or unprofessional conduct or both, the Committee may make any 1 or more of the following orders:

(a) reprimand the investigated person;

(b) suspend the registration of an investigated person either generally or from any field of the practice of optometry for a stated period;

(c) suspend the registration of an investigated person either generally or from any field of practice until

(i) he has completed a specified course of studies or obtained supervised practical experience, or

(ii) the Committee is satisfied as to the competence of the investigated person generally or in a specified field of practice;

(d) accept in place of a suspension the investigated person's undertaking to limit his practice;

(e) impose conditions on the investigated person's entitlement to engage in the practice of optometry generally or in any field of the practice, including the conditions that he

(i) practise under supervision,

(ii) not engage in sole practice,

(iii) permit periodic inspections by a person authorized by the Committee, or

(iv) report to the Committee or Council on specific matters;

- (f) direct the investigated person to pass a particular course of study or satisfy the Committee or Council as to his practical competence generally or in a field of practice;
- (g) direct the investigated person to satisfy the Committee or Practice Review Board that a disability or addiction can be or has been overcome, and suspend the person's registration until the Committee or Practice Review Board is so satisfied;
- (h) require the investigated person to take counselling or to obtain any assistance that in the opinion of the Committee or Practice Review Board is appropriate;
- (i) direct the investigated person to waive, reduce or repay a fee for services rendered by the investigated person that, in the opinion of the Committee, were not rendered or were improperly rendered;
- (j) cancel the registration of the investigated person;
- (k) any other or further order it considers appropriate in the circumstances.

payment of costs  
and fine

**47(1)** The Discipline Committee, in addition to or instead of dealing with the conduct of an investigated person in accordance with section 46, may

- (a) make an award as to the costs of the hearing in accordance with the by-laws;
- (b) order that the investigated person pay to the Association a fine, not exceeding \$10 000 for each finding of unskilled practice or unprofessional conduct and \$50 000 in the aggregate for all of such findings arising out of the hearing;
- (c) order that the investigated person pay both costs under clause (a) and a fine under clause (b).

(2) If the person ordered to pay a fine, costs or both under subsection (1) fails to pay the fine, costs or both within the time ordered, the Council may suspend the registration of that person until he or it has paid the fine, costs or both.

(3) A fine or costs ordered to be paid to the Association under this section is a debt due to the Association and may be recovered by the Association by civil action for debt.

written decision

**48** The Discipline Committee shall, within a reasonable time after the conclusion of a hearing before it, issue a written decision on the matter, in which it shall

- (a) describe each finding made by it,
- (b) state the reasons for each finding made by it, and
- (c) state any order made under this Part.



Service of decision

**49(1)** The Registrar shall serve a copy of the decision of the Discipline Committee on the investigated person and on the complainant, if any.

(2) The investigated person and the complainant may examine the record or any part of the record of the proceedings before the Discipline Committee and hear any recording or examine any mechanical or handwritten form of record of any testimony given before the Committee.

Stay of decision of Discipline Committee

**50(1)** Notwithstanding an appeal under section 51, the Discipline Committee may order that its decision remain in effect until the time that the Council makes its decision on the appeal.

(2) An investigated person may, by filing an originating notice with the Court of Queen's Bench and serving a copy on the Registrar, apply for an order of the Court staying the decision of the Discipline Committee pending the determination of the appeal.

(3) On hearing an application made under this section the Court may, subject to any conditions that it considers proper, stay the decision of the Discipline Committee pending the determination of the appeal.

Appeal to Council

**51(1)** An investigated person or the complainant may appeal to the Council a finding or order of the Discipline Committee.

(2) An appeal under subsection (1) shall be commenced by a written notice of appeal which shall

- (a) describe the finding or order appealed, and
- (b) state the reasons for the appeal.

(3) A notice of appeal under this section shall be served on the Registrar within 30 days after the date on which the decision of the Discipline Committee was served on the appellant.

(4) The Registrar shall, on receiving a notice of appeal under subsection (3), give to each member of the Council a copy of the notice of appeal and make the record of the hearing available to each member of the Council.

(5) The Council has all the powers, duties and functions of the Discipline Committee under this Part for the purpose of an appeal under this section.

Notice and hearing of appeal

**52(1)** The Council shall, on receiving a notice of appeal under section 51, cause to be served on the investigated person and the complainant a notice of hearing of an appeal stating the date, time and place when the Council will hear the matters appealed.

(2) The Council shall

- (a) if the registration of the investigated person has been suspended under this Part pending the outcome of proceedings under

this Part, hear the appeal within 30 days after the date of service of the notice of appeal, and

(b) if the registration of the investigated person has not been suspended under this Part, hear the appeal within 90 days after the date of service of the notice of appeal.

(3) The Council may, on the written request of the investigated person, the complainant or the Registrar, extend the periods referred to in subsection (2) for 1 or more additional periods, each not exceeding 30 days.

appeal on record **53** The appeal to the Council shall be founded on a copy of the record of the proceedings before the Discipline Committee and its decision.

Council's powers on appeal **54(1)** The Council on an appeal may

- (a) grant adjournments of the proceedings or reserve the determination of the matters before it for a future meeting of the Council,
- (b) on granting special leave for that purpose, receive further evidence, and
- (c) draw inferences of fact and make a determination or finding that, in its opinion, ought to have been made by the Discipline Committee.

(2) The Council shall, within 30 days from the date of the conclusion of all proceedings before it, do all or any of the following:

- (a) make any finding that in its opinion ought to have been made by the Discipline Committee,
- (b) quash, vary or confirm the finding or order of the Committee or substitute or make a finding or order of its own, or
- (c) refer the matter back to the Committee for a rehearing or further consideration in accordance with any direction that the Council may make.

(3) A member of the Discipline Committee who is also a member of the Council may participate in an appeal before the Council but shall not vote in a decision of the Council on the appeal.

stay of decision Council **55(1)** Notwithstanding an appeal under section 56, the Council may order that its decision remain in effect until the time that the Court of Appeal makes its decision on the appeal.

(2) The investigated person may apply to the Court of Appeal for an order staying the decision of the Council pending the determination of the appeal.

(3) On hearing an application made under this section the Court may, subject to any conditions it considers proper, stay the decision of the Council pending the determination of the appeal.

Appeal to Court of Appeal	<p><b>56(1)</b> The investigated person or the complainant may appeal to the Court of Appeal any finding or order made by the Council under section 54.</p> <p>(2) An appeal under this section shall be commenced</p> <p style="padding-left: 40px;">(a) by filing a notice of appeal with the Registrar of the Court at Edmonton or Calgary, and</p> <p style="padding-left: 40px;">(b) by serving a copy of the notice of appeal on the Registrar</p> <p>both within 30 days from the date on which the decision of the Council is served on the investigated person.</p>
Appeal on the record	<p><b>57</b> The appeal to the Court of Appeal shall be founded on a copy of the record of the proceedings before the Council and its decision, all of which shall be certified by the Registrar.</p>
Power of Court on appeal	<p><b>58(1)</b> The Court of Appeal on hearing the appeal may</p> <p style="padding-left: 40px;">(a) make any finding that in its opinion ought to have been made,</p> <p style="padding-left: 40px;">(b) quash, confirm or vary the order or decision of the Council or any part of it,</p> <p style="padding-left: 40px;">(c) refer the matter back to the Council or the Discipline Committee for further consideration in accordance with any direction of the Court, or</p> <p style="padding-left: 40px;">(d) direct that a new hearing of any mixed questions of law and fact relating to a finding or order or both a finding and an order of the Council under section 54 be held before the Court of Queen's Bench.</p> <p>(2) The Court of Appeal may make any award as to costs, whether before it or the Discipline Committee or the Council, that the Court considers appropriate.</p>
Misrepresentation of status	<p><b>59</b> The conduct of a person who is or was registered under this Act, and who represents or holds out that he is registered and is in good standing while his registration is suspended or cancelled constitutes unprofessional conduct in accordance with this Part.</p>
Cancellation of falsely obtained registration	<p><b>60(1)</b> If the Council is satisfied, after a hearing on the matter, that an authorized entity whose registration is entered in the register obtained registration by means of any false or fraudulent representation or declaration, either oral or written, the Council shall order that his registration be cancelled, effective from the date of registration.</p> <p>(2) The provisions of this Part respecting the procedures of the Discipline Committee apply with all necessary modifications to a hearing held by the Council under subsection (1).</p>
Reinstatement of registration	<p><b>61(1)</b> If the registration of an authorized entity is cancelled, the registration shall not be reinstated except by order of the Council or by a court of competent jurisdiction.</p>

(2) A member of the Council who is a member of a committee of inquiry appointed pursuant to the regulations to consider an application under this Part for reinstatement of a registration may participate in or vote at any proceedings of the Council under this section, and the Registrar and the Association's solicitor may participate in those proceedings.

presentation  
by counsel

**62(1)** In any proceedings before the Discipline Committee and the Council under this Part, the investigated person, the complainant and the Association may be represented by counsel.

(2) Proceedings before the Discipline Committee and the Council under this Part shall be held in camera.

## **PART 7 GENERAL**

ability of  
authorized entity

**63(1)** The relationship between an authorized entity in the practice of optometry and a person receiving the professional services of that authorized entity is subject to this Act, the regulations and any other law applicable to the relationship between a registered optometrist and his patient.

(2) The relationship of a registered optometrist to a professional corporation, whether as shareholder, director, officer or employee of that corporation or firm, does not affect, modify or diminish the application of this Act, the regulations and the by-laws

- (a) to him personally as a registered optometrist, or
- (b) to the relationship between the registered optometrist and his patient.

certificate of  
Registrar

**64** A certificate purporting to be signed by the Registrar and stating that a named person was or was not, on a specified day or during a specified period,

- (a) a registered optometrist,
- (b) a professional corporation,
- (c) a member of a class or category of members established under the regulations,
- (d) a student, or
- (e) an officer of the Association or a member of the Council,

shall be admitted in evidence as prima facie proof of the facts stated in it without proof of the Registrar's appointment or signature.

objection from  
judicial action

**65(1)** No action lies against

- (a) any person conducting a preliminary investigation, a member of the Discipline Committee, the Council, the Practice Review

Board or the Registration Committee, the Registrar, the Association or any person acting on the instructions of any of them, or

(b) any member, officer or employee of the Association

for anything done by him in good faith and in purporting to act under this Act, the regulations or the by-laws.

(2) No action for defamation may be founded on a communication that consists of or pertains to the conduct of an authorized entity if the communication is published to or by

(a) the Association,

(b) a member of the Council, the Registration Committee, the Discipline Committee or the Practice Review Board,

(c) a person conducting a preliminary investigation,

(d) an officer or employee of the Association, or

(e) a person acting on the instructions of any person or entity referred to in clauses (a) to (d),

in good faith in the course of investigating the conduct or in the course of any proceeding under this Act relating to the conduct.

Service of documents

**66** When this Act, the regulations or the by-laws require that a document or notice be given to or served on any person, the document or notice is sufficiently given or served if it is served personally on that person or sent to him by registered mail at his business address last shown on the register or records of the Association or, if personal service or service by mail is not reasonably possible, then by publishing the document at least twice, and not more than a week apart, in a local newspaper circulating at or near the address last shown for that person on the Association's register or records.

Municipal licence

**67** Notwithstanding any other Act, no municipality has the power to require an authorized entity to obtain a licence from the municipality to engage in the practice of optometry or to carry on practice as an authorized entity.

Assessment of optometric facilities

**68(1)** This section applies to an optometric facility.

(2) There is hereby established an Optometric Facility Assessment Committee consisting of the members appointed by the Council in accordance with the regulations.

(3) The Optometric Facility Assessment Committee may investigate and inspect the ownership and operation of an optometric facility and the financial arrangements that pertain to that facility and shall make a report to the Council on each investigation and inspection.

(4) If the Committee reports to the Council that an optometric facility does not appear to meet the standards required under this Act, the Council shall forthwith refer the matter to the Practice Review Board for an investigation and hearing.

(5) Part 6 applies to a hearing by the Practice Review Board under this section.

(6) If the Practice Review Board determines that the optometric facility does not meet the standards required under this Act, the Board may order that no authorized entity may provide optometric services to a patient in that facility until the Board is satisfied that the standards have been met.

**PART 8  
PROHIBITIONS AND PENALTIES**

Practice prohibitions

**69(1)** A person whose registration is cancelled or suspended under this Act or any predecessor to this Act shall not, without the consent of the Council, engage in the practice of optometry or directly or indirectly associate himself with or employ or be employed by an authorized entity registered under this Act.

(2) No authorized entity shall, except with the consent of the Council, associate in the practice of optometry directly or indirectly with or employ or be employed by a person whose registration is cancelled or suspended.

(3) The Council may permit an authorized entity to associate with, employ, or be employed by a person whose registration has been cancelled or suspended under this Act, but the employment shall be in the capacity and subject to the terms and conditions that are prescribed by the Council.

Penalties

**70(1)** Every person and every officer, employee or agent of a corporation who contravenes this Act is guilty of an offence and liable

(a) for a first offence, to a fine of not more than \$2000,

(b) for a second offence, to a fine of not more than \$4000, and

(c) for a third and every subsequent offence, to a fine of not more than \$6000 or to imprisonment for a term of not more than 6 months or to both fine and imprisonment.

(2) A prosecution under this section may be commenced within 2 years after the commission of the alleged offence, but not afterwards.

Burden of proof

**71** In a prosecution under this Act, the burden of proving that a person is an authorized entity is on the accused.

Proof of the practice of optometry

**72** The use by a person of test lenses, charts or devices purporting to determine refractive status or of any other mechanical or electrical device for measuring the human eye, its related structures and the human vision system or for testing vision is deemed to be prima facie proof that the person is engaging in the practice of optometry.

**PART 9**  
**TRANSITIONAL**

Registration  
continued

**73(1)** In this Part, "former Act" means the *Optometry Act*, being chapter O-9 of the Revised Statutes of Alberta 1980.

(2) An individual who holds a certificate of registration and is otherwise in good standing under the former Act is deemed to be a registered optometrist under this Act.

(3) The Registrar shall, in the appropriate register established pursuant to this Act, register the names of those individuals referred to in subsection (2).

(4) An individual who holds a certificate of approval of registration and who was registered under the former Act but whose registration has lapsed shall be registered under this Act as a registered optometrist if he applies to the Registrar for registration not more than 2 years after the coming into force of this Act.

Council  
continued

**74(1)** The members of the Council of Management of the Association elected under the former Act are deemed to be members of the Council under this Act, elected for the same period and holding the same offices.

(2) The officers of the Association elected under the former Act are deemed to be the officers of the Association under this Act, elected for the same period and holding the same offices.

Application for  
registration  
continued

**75** An application for registration made but not concluded before the coming into force of this Act shall be dealt with under this Act.

Regulations

**76(1)** The Lieutenant Governor in Council, after consultation with the Council, may make regulations respecting the circumstances under which a body corporate that is

(a) incorporated under the *Companies Act* but not continued under the *Business Corporations Act*,

(b) incorporated under the *Companies Act* and continued under the *Business Corporations Act*, or

(c) incorporated under the *Business Corporations Act*,

may be registered under this Act as a professional corporation.

(2) A body corporate to which subsection 1(a), (b) or (c) applies that has been engaging in the practice of optometry before the coming into force of this Act

(a) may continue to engage in the practice of optometry until January 31, 1986, or

(b) if it complies with this Act, except section 17(1)(e), and the regulations, may apply for and receive a permit as a professional corporation under section 17.

(3) A body corporate that is not a professional corporation may not engage in the practice of optometry after January 31, 1986.

discipline  
proceedings  
continued

**77(1)** Any complaint made or discipline proceedings that were commenced but not concluded before the coming into force of this Act shall be concluded under the former Act as though this Act had not come into force.

(2) Any complaint made or discipline proceedings commenced after the coming into force of this Act when the complaint or proceedings relate to conduct occurring all or partly before the coming into force of this Act shall be dealt with under this Act.

## PART 10 CONSEQUENTIAL

amends RSA  
1980 cA-24

**78** *The Alberta Health Care Insurance Act is amended*

(a) in section 1(s)(i), by striking out "as a member of The Alberta Optometric Association" and substituting "under the *Optometry Profession Act* as an authorized entity";

(b) in section 8(4), by repealing clause (c) and substituting the following:

(c) the Council of The Alberta Association of Optometrists;

amends SA 1981  
cL-15

**79** *The Business Corporations Act is amended in section 7(2) by striking out "or" at the end of clause (c), by adding "or" at the end of clause (d) and by adding the following after clause (d):*

(e) the Council of The Alberta Association of Optometrists,

amends RSA  
1980 cC-20

**80** *The Companies Act is amended in section 16(2) and (3) by striking out "or Medical Profession Act" wherever it occurs and substituting " , Medical Profession Act or Optometry Profession Act".*

amends RSA  
1980 cL-13

**81** *The Licensing of Trades and Businesses Act is amended in section 2(b) by striking out "Optometry Act" and substituting "Optometry Profession Act".*

amends RSA  
1980 cL-15

**82** *The Limitation of Actions Act is amended by repealing section 55(f) and substituting the following:*

(f) an optometrist registered under the *Optometry Profession Act*,

amends RSA  
1980 cO-8

**83** *The Ophthalmic Dispensers Act is amended in the following provisions by striking out "Optometry Act" wherever it occurs and substituting "Optometry Profession Act":*

section 1(l);  
section 42.

amends RSA  
1980 cO-9

**84** *The Optometry Act is repealed on Proclamation.*

coming into

**85** *This Act comes into force on Proclamation.*