

1987 BILL 34

Second Session, 21st Legislature, 36 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 34

OCCUPATIONAL THERAPY PROFESSION ACT

MR. JONSON

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 34
Mr. Jonson

BILL 34

1987

OCCUPATIONAL THERAPY PROFESSION ACT

(Assented to , 1987)

Table of Contents

Definitions	1
Part 1	
Exclusive Use of Title	
Exclusive use of title	2
Injunction	3
Part 2	
Association of Registered Occupational Therapists	
Association	4
Council	5
Composition of Council	6
Part 3	
Registration	
Register	7
Registrar	8
Duties of Registrar	9
Decision of Registrar and review	10
Approved occupational therapy education program	11
Application for registration	12
Registration	13
Annual certificate	14
Restricted permit	15
Part 4	
Suspension and Cancellation	
Suspension and cancellation	16
Cancellation by request	17
Cancellation	18
Duty of Registrar	19
Notice to Minister	20
Falsely obtained registration	21
Misrepresentation of status	22
Part 5	
Practice Review Board	
Practice Review Board	23
Powers of the Board	24
Duties on conclusion of inquiry or review	25

Part 6
Discipline

Definitions
Discipline Committee
Unskilled practice or professional misconduct
Complaint
Preliminary investigation
Report of preliminary investigation
Referral to Discipline Committee
Notice
Complainant's appeal to Discipline Committee
Suspension pending decision
Rights of investigated person
Notice of hearing
Further investigation
Evidence before Discipline Committee
Witnesses
Attendance of witnesses and production of documents
Failure to attend or give evidence
Hearing in absence of investigated person
Findings of Discipline Committee
Orders of Discipline Committee
Payment of costs and fine
Written decision
Service of decision and record of hearing
Examination of record
Rehearing
Stay pending appeal
Appeal to Council
Notice and hearing of appeal
Council's powers on appeal
Appeal to Court
Appeal on the record
Power of Court on appeal

Part 7
General

Recognition of order, direction or decision
Service of documents
Certificate of Registrar
Protection from liability

Part 8
Regulations and By-laws

Regulations
By-laws

Part 9
Penalties

Penalties

Part 10
Transitional and Commencement

Registration continued
Officers continued
Coming into force

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

Definitions

1 In this Act,

- (a) “approved occupational therapy education program” means an occupational therapy education program designated as an approved occupational therapy education program under section 11;
- (b) “Association” means The Alberta Association of Registered Occupational Therapists;
- (c) “by-laws” means by-laws of the Council made pursuant to section 63;
- (d) “Council” means the Council of the Association;
- (e) “Discipline Committee” means the Discipline Committee established under this Act;
- (f) “Minister” means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;
- (g) “occupational therapist” means a person who is issued a certificate of registration as an occupational therapist under this Act and who holds an annual certificate;
- (h) “practice of occupational therapy” means the provision of services that focus on self-care, work and leisure through the identification or assessment of human physical, emotional, developmental or cognitive dysfunction from whatever cause in order to alleviate the dysfunction, restore, improve or maintain optimal function or develop latent ability, and may include
 - (i) the application and interpretation of selected evaluative procedures and assessments,
 - (ii) the planning, administration and evaluation of restorative, developmental, preventive, educational and health maintenance programs, and
 - (iii) the provision of consultative, advisory, research and other professional services to complement or implement the services referred to in this clause;
- (i) “Practice Review Board” means the Practice Review Board established under this Act;
- (j) “Registrar” means the Registrar appointed under section 8;
- (k) “restricted practitioner” means a person registered in a register referred to in section 9(1)(b) who is entitled to practise occupational therapy subject to conditions or restrictions, but does not include an occupational therapist;
- (l) “Universities Co-ordinating Council” means the Universities Co-ordinating Council established under the *Universities Act*.

PART 1
EXCLUSIVE USE OF TITLE

Exclusive
use of title

2(1) No person except an occupational therapist shall

(a) use the title “occupational therapist” or any other abbreviation of those titles alone or in combination with any other word, or

(b) use the initials “O.T.” or any other initials either in combination with any other word, letter, symbol, initial or abbreviation, except when designating a degree,

to represent expressly or by implication that the person is an occupational therapist, or use any title, name, description, abbreviation, letter or symbol representing the title “occupational therapist” or initials “O.T.”.

(2) No person except an occupational therapist shall hold out expressly or by implication that he is an occupational therapist.

(3) This section does not apply to a restricted practitioner in section 9(1)(b)(iii).

Injunction

3 The Court of Queen’s Bench, on application by the Clerk of the Court, 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 contravention.

PART 2
ASSOCIATION OF REGISTERED OCCUPATIONAL THERAPISTS

Association

4(1) There is hereby established a corporation to be called the Alberta Association of Registered Occupational Therapists.

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

Council

5(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 of and on behalf of the Association.

(3) The Council shall submit to the Minister an annual report 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 or, if it is not then sitting, within 15 days after the commencement of the next ensuing sitting.

Composition
Council

6(1) The Council shall consist of

(a) not fewer than 6 occupational therapists or a greater number that may be prescribed by or determined in accordance with the by-laws, each of whom shall be elected in accordance with the by-laws;

(b) when the number of persons elected under clause (a) does not exceed 10, 1 member of the public, or, when the number of persons elected under clause (a) is more than 10, 2 members of the public, who shall be appointed by the Minister, after consultation with the Council, for a 2-year term of office;

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

(2) A member of the public referred to in subsection (1)(b) continues to hold office after the expiry of his term of office until he is reappointed or his successor is appointed.

(3) The Minister may revoke the appointment of a member of the public referred to in subsection (1)(b).

(4) The Minister may pay to a member of the public referred to in subsection (1)(b) travelling and living expenses incurred by that member for his attendance at a meeting of the Council while away from his usual place of residence and fees in an amount prescribed by the Minister.

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

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

(b) the revocation under subsection (3) of the appointment of a member of the Council, or

(c) the resignation from the Council of a member appointed under subsection (1)(b).

(6) The failure of a member of the public appointed under subsection (1)(b) to attend a meeting of the Council shall not be construed to affect or restrict the Council in exercising any powers or performing any duties under this Act, the regulations or the by-laws at that meeting.

(7) The members of the Council elected under subsection (1) shall elect from among themselves the officers of the Association specified in the by-laws in the manner and for the term prescribed by the by-laws.

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

PART 3

REGISTRATION

Register

7 The Council shall establish a register of occupational therapists.

Registrar

8 The Council shall appoint a Registrar for the purposes of this Act.

Duties of
Registrar

9(1) The Registrar shall maintain, subject to the direction of the Council, the following registers:

(a) a register of occupational therapists;

(b) a register for each of the following classes of restrictioner:

(i) graduates of an occupational therapy education program that has not been designated as an approved occupational therapy education program under section 11;

(ii) graduates of an approved occupational therapy education program who have not complied with section 12;

(iii) researchers, educators or other persons from Alberta who engage in the practice of occupational therapy in Alberta on an exchange program or other temporary basis;

(iv) other persons who, pursuant to the regulations, are registered as restricted practitioners.

(2) The Registrar shall, during regular office hours, permit a person to inspect the registers described in subsection (1).

(3) The Registrar shall consider an application for the registration of an applicant as an occupational therapist, and may

(a) approve the registration,

(b) refuse to approve the registration, or

(c) defer the approval of registration until the applicant has gained further experience of a kind and for a period specified by the Registrar in accordance with the regulations.

(4) The Registrar, in accordance with the regulations, may enter in the register referred to in subsection (1)(b) the name of a person whose application for registration has been deferred under subsection (3)(c).

Decision of
Registrar
and review

10(1) The Registrar shall send a written notice of a decision by him to the applicant within 60 days of receipt of the application.

(2) If the decision of the Registrar 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 referred to the Council may, within 30 days of receiving a notice of refusal, request a review by the Council by serving on the Registrar a request for a review by the Council setting out the reasons in his opinion, his application for registration as an occupational therapist should be approved.

(4) The Council shall, after receipt of a request for review under subsection (3), review the applicant's application for registration as an occupational therapist.

(5) An applicant who requests a review pursuant to subsection (3) shall

(a) be notified in writing by the Council of the date, time and place at which the review shall be established within 60 days of receipt of the request for review, and the place and time at which the Council shall review the applicant's application, and

(b) is entitled to appear with counsel and make representations to the Council at the review of his application.

(6) On reviewing an application under this section, the Council may make any decision the Registrar could have made.

Approved
occupational
therapy
education
program

11(1) The Universities Co-ordinating Council may grant to and withdraw from an academic institution the designation "approved occupational therapy education program".

(2) A grant or withdrawal of a designation under subsection (1) is subject to the approval of the Lieutenant Governor in Council.

Application for
registration

12(1) An application for registration as an occupational therapist shall be approved by the Registrar if the applicant

(a) produces documentation satisfactory to the Registrar that shows that

(i) the applicant has obtained an undergraduate degree in occupational therapy from an approved occupational therapy education program, or

(ii) the Universities Co-ordinating Council is satisfied that the applicant's academic qualifications are substantially equivalent to an undergraduate degree in occupational therapy from an approved occupational therapy education program,

(b) has completed field work as required by the Universities Co-ordinating Council,

(c) has passed an examination as approved by the Universities Co-ordinating Council, and

(d) meets the character and other requirements prescribed in the regulations.

(2) Notwithstanding subsection (1), the Registrar shall approve an application for registration as an occupational therapist if the applicant

(a) produces documentation satisfactory to the Registrar that shows that he was eligible for membership in the Alberta Association of Registered Occupational Therapists on January 31, 1986, and

(b) applies for registration as an occupational therapist within 2 years after this Act comes into force.

Registration

13(1) The Registrar shall enter in the register of occupational therapists the name of a person

(a) whose application for registration as an occupational therapist has been approved under this Act, and

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

(2) On entering the name of a person in the register of occupational therapists, the Registrar shall issue a certificate of registration to him.

Annual certificate **14(1)** An occupational therapist shall pay the annual fee prescribed by the by-laws to the Registrar or to any person authorized by the Registrar to accept payment of the fee.

(2) The Registrar shall issue an annual certificate in the form prescribed by the by-laws to an occupational therapist

(a) whose registration is not under suspension or cancellation

(b) who meets any requirements or conditions prescribed by the regulations for the issuance of an annual certificate, and

(c) who has complied with subsection (1).

(3) Subject to this Act, an annual certificate entitles an occupational therapist to practise occupational therapy as an occupational therapist during the year for which the annual certificate is issued.

Restricted permit **15(1)** The Registrar shall issue a restricted permit in the form prescribed in the by-laws to a person whose name is registered in the register referred to in section 9(1)(b).

(2) The holder of a restricted permit shall not practise occupational therapy except in accordance with the conditions or restrictions specified on the permit.

(3) A restricted permit

(a) is valid for up to 1 year, and

(b) may be renewed not more than twice in consecutive years at the discretion of the Council.

PART 4

SUSPENSION AND CANCELLATION

Suspension and cancellation **16(1)** The certificate of registration or annual certificate of an occupational therapist or the permit of a restricted practitioner is suspended when a decision to suspend the certificate of registration, annual certificate or permit is made in accordance with this Act.

(2) The Registrar shall, after a decision to suspend a certificate of registration, an annual certificate or a permit has been made, prepare a memorandum of the suspension in the appropriate register and file it in the register.

(a) the period of the suspension, and

(b) the reason for the suspension.

(3) The certificate of registration or annual certificate of an occupational therapist or the permit of a restricted practitioner is cancelled when a decision to cancel the certificate of registration, annual certificate or permit is made in accordance with this Act.

(4) The Registrar shall, after a decision to cancel a certificate of registration, an annual certificate or a permit has been made, prepare a memorandum of the cancellation in the register, indicating

(a) the date of the cancellation, and

(b) the reason for the cancellation.

(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.

cancellation
by request

17(1) The Registrar shall not cancel the registration of an occupational therapist or restricted practitioner 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 and enter a memorandum to that effect in the register.

cancellation

18(1) The Council may direct the Registrar to cancel, in accordance with subsection (2), the certificate of registration or annual certificate of an occupational therapist or the permit of a restricted practitioner who defaults in the payment of any fee, penalty, cost, dues or levy payable under this Act, the regulations or the by-laws.

(2) The Registrar may cancel a certificate of registration, annual certificate or permit if the default referred to in subsection (1) continues for more than 30 days after the service on the occupational therapist or restricted practitioner of a notice in accordance with subsection (3).

(3) The notice under subsection (2) shall state that the Registrar may cancel a certificate of registration, annual certificate or permit unless the fee, penalty, cost, dues or levy is paid as indicated in the notice.

(4) The Council may direct the Registrar to cancel a registration made in error.

(5) If the certificate of registration or annual certificate of an occupational therapist or the permit of a restricted practitioner has been cancelled under this Act, the occupational therapist or restricted practitioner shall surrender to the Registrar the certificate of registration, annual certificate or permit, as the case may be.

(6) 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 register a registration that was cancelled under subsection (1), and

(b) to re-issue a certificate of registration, an annual certificate or a permit, as the case may be.

duty of Registrar

19 If the registration of an occupational therapist or restricted practitioner has been suspended or cancelled, or the practice of an occupational therapist or restricted practitioner has been limited by the Practice Review Board, Discipline Committee, Council or Court of Appeal, the Registrar shall notify the employer of the occupational therapist or restricted practitioner of the suspension, cancellation or limitation.

duty to
minister

20 The Registrar shall notify the Minister in writing forthwith on

(a) the cancellation or suspension of the certificate of registration or annual certificate of an occupational therapist or the permit of a restricted practitioner, and

(b) the reinstatement or other termination of suspension, cancellation or suspended certificate of registration, annual certificate or permit.

Falsely obtained
registration

21(1) If the Council is satisfied, after a hearing on the matter, that the registration in a register established under this Act was obtained by means of any false or fraudulent representation or declaration, oral or written, the Council may order that the registration be cancelled, and the certificate of registration, annual certificate or permit, as the case may be, shall be surrendered in accordance with section 18(5).

(2) Part 6 applies to a hearing held by the Council under subsection (1).

Misrepresentation
of status

22 The conduct of an occupational therapist or a restricted practitioner who is or was registered under this Act and represents himself or herself as being registered and is in good standing while his registration is suspended or cancelled constitutes professional misconduct.

PART 5

PRACTICE REVIEW BOARD

Practice
Review Board

23(1) There is hereby established a Practice Review Board composed of not fewer than 4 persons as follows:

(a) not fewer than 3 occupational therapists who, in the opinion of the Council, have a combination of knowledge and experience suitable for determining the academic qualifications and requirements necessary for a person to continue to practice occupational therapy and are appointed by the Council, and

(b) 1 person appointed by the Minister from a list of not fewer than 3 members of the public nominated by the Council.

(2) If the Council fails, within a reasonable period of time after being requested to do so by the Minister, to make nomination pursuant to 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) A member of the Practice Review Board appointed pursuant to subsection (1)(b) continues to hold office after the expiry of his term of office until he is reappointed or his successor is appointed.

(4) 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 accordance with those prescribed by the Minister.

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

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

- (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 (5) 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.

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

owers of
e Board

24(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 registration under this Act,
- (ii) the evaluation of desirable standards of competence of occupational therapists and restricted practitioners 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 occupational therapy under this Act and the regulations, and
- (iv) the practice of occupational therapy generally,

and

(b) may conduct, in accordance with this Act and the regulations, a review of the practice of an occupational therapist or restricted practitioner.

(2) Sections 39 to 43 apply to any matter referred to or initiated by the Practice Review Board as if that Board were the Discipline Committee.

uties on
onclusion of
quiry or review

25(1) After each inquiry or review under section 24, the Practice Review Board

- (a) shall make a written report to the Council on the inquiry or review and, where appropriate, on its decision,
- (b) may make recommendations to the Council regarding the matter inquired into or reviewed, with reasons for the recommendations,
- (c) may make recommendations to an occupational therapist or restricted practitioner as to his conduct in the practice of occupational therapy, and

(d) if it is of the opinion that the conduct of an occupational therapist or restricted practitioner constitutes or may constitute unskilled practice of occupational therapy or professional misconduct within the meaning of section 28,

(i) shall forthwith refer the matter relating to that conduct to the Registrar for an inquiry under Part 6, and in such case the Registrar shall deal with the referral as if it were a complaint, and

(ii) may, if it makes a referral under subclause (i), recommend to the president of the Association that the certificate of registration or annual certificate or both of that occupational therapist or the permit of the restricted practitioner be temporarily suspended pending the outcome of proceedings under Part 6.

(2) On receiving a recommendation under subsection (1), the president may suspend the certificate of registration, annual certificate or permit accordingly.

(3) The occupational therapist or restricted practitioner may bring an originating notice with the Court of Queen's Bench, and the court may, on the application of the chairman of the Practice Review Board, make an order of the Court staying the decision of the president.

PART 6 DISCIPLINE

Definitions

26 In this Part,

(a) "chairman" means the chairman of the Discipline Committee and includes a vice-chairman;

(b) "conduct" includes any act or omission;

(c) "investigated person" means

(i) an occupational therapist or restricted practitioner

(ii) in a case to which section 29(3) applies, a former occupational therapist or former restricted practitioner

with respect to whose conduct an investigation or hearing is held under this Part.

Discipline Committee

27(1) There is hereby established a Discipline Committee composed of not fewer than 4 persons as follows:

(a) not fewer than 3 occupational therapists appointed by the Council in accordance with the by-laws, and

(b) 1 person who is appointed by the Minister from among not fewer than 3 members of the public nominated by the Minister.

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

(3) A member of the Discipline Committee appointed under subsection (1)(b) continues to hold office after the expiry of his term of office until he is reappointed or his successor is appointed.

(4) The Minister may pay to the member of the Discipline 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.

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

(6) The powers, duties and operations of the Discipline Committee 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 (5) 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.

(7) 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 at that meeting.

Unskilled
practice or
professional
misconduct

28(1) Any conduct of an occupational therapist or restricted practitioner that, in the opinion of the Discipline Committee,

(a) is detrimental to the best interests of the public,

(b) contravenes this Act or the regulations,

(c) harms or tends to harm the standing of the profession of occupational therapy generally, or

(d) displays a lack of knowledge of or lack of skill or judgment in the practice of occupational therapy,

whether or not that conduct is disgraceful or dishonourable, may constitute either unskilled practice of occupational therapy or professional misconduct, whichever the Discipline Committee finds.

(2) If an investigated person contravenes this Act, the regulations or 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 professional misconduct whether or not it would be so found under subsection (1).

Complaint

29(1) A person may complain in writing to the Registrar about the conduct of an occupational therapist or restricted practitioner, and the complaint shall be dealt with in accordance with this Part and the regulations.

(2) A complaint under subsection (1) shall be accompanied by an address for service for the complainant.

(3) A complaint respecting the conduct of an occupational therapist or restricted practitioner whose certificate of registration, certificate or permit, as the case may be, was cancelled or pursuant to this Act may, notwithstanding the cancellation or suspension, be dealt with within 5 years following the date of cancellation or suspension as if the cancellation or suspension had occurred.

Preliminary
investigation

30 The Registrar

(a) shall, in a case where a complaint in writing is made under section 29, forthwith on receipt of the complaint

(b) may, in a case where he believes the conduct of an occupational therapist or restricted practitioner constitutes or constitutes unskilled practice of occupational therapy or professional misconduct,

commence or appoint a person or persons to commence a preliminary investigation into the conduct of the occupational therapist or restricted practitioner, and shall, orally or in writing, notify the occupational therapist or restricted practitioner that a preliminary investigation into his conduct will be conducted, giving particulars of the matter to be investigated.

Report of
preliminary
investigation

31(1) A person conducting a preliminary investigation may

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

(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 may inquire into any other matter related to the professional conduct or skill of the investigated person that arises in the course of the investigation.

(3) If an occupational therapist or restricted practitioner 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 refusal to co-operate may be held by the Discipline Committee to be professional misconduct.

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

(a) the Registrar, if the Registrar is not conducting the preliminary investigation, or

(b) a member of the Discipline Committee, if the Registrar is conducting the preliminary investigation.

Referral to
Discipline
Committee

32 The Registrar or the member of the Discipline Committee to whom a report is provided under section 31(5) 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 occupational therapy or professional misconduct,

or

(b) refer the matter under investigation in writing to the Discipline Committee.

Notice

33 The Registrar or the member of the Discipline Committee 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.

Complainant's
appeal to
Discipline
Committee

34(1) A complainant who is served with a notice under section 33 that no further action will be taken may, within 30 days of the receipt of the notice and by notice in writing to the Registrar, appeal that direction to the Discipline Committee.

(2) On an appeal under subsection (1), the Discipline Committee shall determine whether

(a) the complaint is frivolous or vexatious, or

(b) there is sufficient evidence of unskilled practice or professional misconduct, and the matter under investigation should be the subject of a hearing,

and shall notify the complainant in writing of its decision.

Suspension
pending decision

35(1) Notwithstanding anything in this Act, the chairman may recommend to the president of the Association that the certificate of registration or annual certificate or both of the occupational therapist or the permit of the restricted practitioner be temporarily suspended pending the outcome of proceedings under this Part, and the president may suspend the certificate of registration, annual certificate or permit accordingly.

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

Rights of
investigated
person

36(1) The Association and the investigated person may appear and be represented by counsel at a hearing before the Discipline Committee.

(2) The Discipline Committee may be represented by counsel at a hearing before the Committee.

(3) Proceedings before the Discipline Committee or the Council shall be held in private.

Notice of hearing	<p>37(1) On referral to it of a matter under section 32(b) or mining under section 34(2)(b) that a hearing should be Discipline Committee shall hold a hearing.</p> <p>(2) The hearing referred to in subsection (1) shall be scheduled date not more than 90 days after the date on which the matter is referred to the Discipline Committee or the determination of the matter or within such other period as may be prescribed by the Council.</p> <p>(3) The Registrar shall cause to be served on the investigated person at least 15 days before the hearing date a notice of hearing stating the date, time and place that the Discipline Committee will hold a hearing and giving reasonable particulars of the complaint in respect of which the hearing will be held.</p>
Further investigation	<p>38 The Discipline Committee may investigate and hear a matter related to the professional conduct or skill in practice of an investigated person that arises in the course of an investigation, but in that event the Discipline Committee shall cause notice to be served on the investigated person at least 15 days before the hearing of the matter with particulars of its intention to do so, giving reasonable particulars of the matters to be investigated.</p>
Evidence before Discipline Committee	<p>39(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 in civil or judicial proceedings.</p> <p>(2) For the purposes of an investigation, hearing or review under this Part, the Registrar, a person appointed by him under section 37, any member of the Council, the Discipline Committee or the Review Board are conferred with the powers of a commissioner for oaths under the <i>Commissioners for Oaths Act</i>.</p>
Witnesses	<p>40(1) The investigated person and any other person who, in the opinion of the Discipline Committee, has knowledge of the facts of the complaint or matter being investigated is a compellable witness in a proceeding under this Part.</p> <p>(2) A witness may be examined under oath on all matters relevant to the investigation or hearing before the Discipline Committee. A witness shall not be excused from answering any question on the ground that the answer might tend to</p> <ul style="list-style-type: none"> (a) incriminate him, (b) subject him to punishment under this Act, or (c) establish his liability <ul style="list-style-type: none"> (i) to a civil proceeding at the instance of the Crown or any other person, or (ii) to prosecution under any Act, <p>but if the answer so given tends to incriminate him, subject him to punishment or establish his liability, it shall not be used against him in any civil proceedings, in a prosecution under</p>

or in any proceeding under any other Act, except in a prosecution for or proceedings in respect of perjury or the giving of contradictory evidence.

(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 to obtain the evidence of the witness, and the commission shall be issued and the evidence taken pursuant to the Rules of Court.

Attendance of
witnesses and
production of
documents

41(1) The attendance of witnesses before the Discipline Committee and the production of models, 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 models, 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 of his counsel or agent, the Registrar shall without charge issue and deliver to that person or his counsel or agent any notices that he requires for the attendance of witnesses or for production under subsection (1).

(3) A witness other than the investigated person 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 in the same manner as are payable to a witness in an action in the Court of Queen's Bench.

Failure to attend
or give evidence

42(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, or

(ii) to produce any models, charts, documents, papers, notes, records and other materials or things in compliance with a notice to produce them,

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 the investigated person, his failure or refusal may be held to be professional misconduct.

Hearing in
absence of
investigated
person

43 The Discipline Committee, on proof of service of the notice of hearing in accordance with this Act on the investigated person, may

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

(b) act, decide or report on the matter being heard in the same way as though the investigated person were in attendance.

Findings of
Discipline
Committee

44(1) The Discipline Committee may find that the conduct of an investigated person constitutes neither unskilled practice of occupational therapy nor professional misconduct.

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

Orders of
Discipline
Committee

45(1) If the Discipline Committee finds that the conduct of an investigated person constitutes unskilled practice of occupational therapy or professional misconduct, or both, the Committee may make any 1 or more of the following orders:

- (a) that the investigated person be reprimanded;
- (b) that the certificate of registration or annual certificate, of an occupational therapist or the permit of a restricted practitioner be suspended, either generally or with respect to the practice of occupational therapy for a stated period;
- (c) that the certificate of registration or annual certificate, of an occupational therapist or the permit of a restricted practitioner be suspended, either generally or with respect to the practice of occupational therapy, until
 - (i) he has completed a specified course of studies or supervised practical experience, or
 - (ii) the Committee is satisfied as to the competence of the investigated person generally or in that specified field of practice;
- (d) that, in place of a suspension, the investigated person take steps to limit his practice;
- (e) that conditions be imposed on the investigated person in the practice of occupational therapy generally or in any field of practice, including any of the following conditions:
 - (i) that he practise under supervision;
 - (ii) that he not engage in sole practice;
 - (iii) that he permit periodic inspections by a person authorized by the Council;
 - (iv) that he report to the Committee or Council on specified matters;
- (f) that the investigated person pass a particular course or satisfy the Committee or Council as to his practical competence generally or in any field of the practice of occupational therapy;
- (g) that the investigated person satisfy the Committee that his alcoholism or drug addiction can be or has been overcome, and his certificate of registration, annual certificate or permit be suspended until the Committee is so satisfied;

(h) that the investigated person take counselling that in the opinion of the Committee is appropriate;

(i) that the investigated person 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) that the certificate of registration or annual certificate, or both, of an occupational therapist or the permit of a restricted practitioner be cancelled.

(2) The Discipline Committee may make any ancillary order that is appropriate or required in connection with any order mentioned in subsection (1) or may make any other order that it considers appropriate in the circumstances, including

(a) that a further or new investigation be held into any matter,

(b) that the Discipline Committee be convened to hear a complaint without a preliminary investigation,

(c) that a matter be referred to the Practice Review Board, or

(d) that a complaint or conduct be referred to any other entity having jurisdiction to review complaints.

(3) If the Discipline Committee is satisfied that an investigated person has contravened an order under subsection (1) it may, without necessity of a further hearing, cancel or suspend his certificate of registration, annual certificate or permit, as the case may be, subject to any terms it considers appropriate and shall serve the investigated person with notice of the cancellation or suspension.

Payment of
costs and fine

46(1) The Discipline Committee may, in addition to or instead of dealing with the conduct of an investigated person in accordance with section 45, order that the investigated person pay

(a) all or part of the costs of the hearing or appeal, as determined in accordance with the regulations,

(b) to the Association, a fine not exceeding \$5000 for each finding of unskilled practice or professional misconduct and \$10 000 in the aggregate for all such findings arising out of the hearing, or

(c) both the costs under clause (a) and the fine under clause (b)

within the time set by the order.

(2) If a person ordered to pay a fine, costs or both under subsection (1) fails to pay the fine or costs within the time ordered, the Council may suspend the certificate of registration, annual certificate or permit of the person, as the case may be, until he has paid the fine and costs and shall serve the person with notice of the suspension.

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

- (5) 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.
- (6) The Council shall, within 90 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 Discipline Committee or substitute or make a finding or order of its own, or
 - (c) refer the matter back to the Discipline Committee for further consideration in accordance with any direction that the Council may make.
- (7) The Council may make any award as to costs in proceedings, whether before it or the Discipline Committee, that it considers appropriate.
- (8) The Council shall, within a reasonable time after the conclusion of the proceedings before it, give its decision in writing, in which it shall
 - (a) describe each finding made by it,
 - (b) state the reasons for each finding, and
 - (c) state any order made by it

and shall forward the decision to the Registrar.

- (9) The Registrar shall serve
 - (a) a copy of the decision on the investigated person and the Council, and
 - (b) a notice of the decision on the complainant, if any.

Appeal to Court **55(1)** An investigated person or the Association may appeal to the Court of Appeal any finding or order made by the Council under section 54.

- (2) An appeal under this section shall be commenced
 - (a) by filing a notice of appeal with the Registrar of the Court at Edmonton or Calgary, and
 - (b) by serving a copy of the notice of appeal
 - (i) on the Council where the investigated person is the appellant, or

(ii) on the investigated person where the Association is the appellant,

both within 30 days from the date on which the decision of the Council is served on the appellant.

Appeal on
the record

56(1) The appeal to the Court of Appeal shall be founded on a copy of the record of the Council proceedings and its decision and a copy of the findings and orders of the Council and any further evidence received by the Council, all of which shall be certified by the Registrar.

(2) The procedure in an appeal shall be the same, with the necessary changes, as that provided in the Rules of Court for appeals from a judgment of a judge of the Court of Queen's Bench to the Court of Appeal.

Power of Court
on appeal

57(1) The Court of Appeal on hearing the appeal may

- (a) make any finding that in its opinion ought to have been made,
- (b) quash, confirm or vary the order or decision of the Council or any part of it,
- (c) refer the matter back to the Council for further consideration in accordance with any direction of the Court, or
- (d) direct that a trial of any mixed questions of law and fact related 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.

(2) The Court of Appeal may make any award as to the costs of any appeal to it that it considers appropriate.

PART 7

GENERAL

Recognition of
order, direction
or decision

58 No employer or other person shall knowingly require an occupational therapist or restricted practitioner to perform a service or undertake any work that would result in the occupational therapist's or restricted practitioner's contravening an order, direction or decision of the Council or a court of competent jurisdiction.

Service of
documents

59 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 sent to him by single registered mail at the address last shown on the register or records of the Association or provided under section 29.

Certificate of
Registrar

60 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) an occupational therapist or a restricted practitioner, or

(b) an officer of the Association, a member of the Council or a member of a committee established by this Act, the regulations or the by-laws,

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

Protection
from liability

61(1) No action lies against

(a) a person conducting a preliminary investigation, a member of the Council or of a committee established by this Act, the Registrar or the Association, or any person acting on the instructions of any of them, or

(b) a 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 a by-law that relates to or is incidental to a professional matter or a matter of public interest that is or may be the subject of a regulation under section 62.

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

(a) the Association,

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

(c) a person conducting a preliminary investigation,

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

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

in good faith in the course of an investigation or proceeding conducted under this Act in relation to the conduct.

PART 8

REGULATIONS AND BY-LAWS

Regulations

62(1) The Council may make regulations

(a) respecting procedures for the registration of persons as occupational therapists or restricted practitioners;

(b) establishing conditions, including character requirements, to be met by applicants for registration as occupational therapists or restricted practitioners;

(c) providing for the evaluation of experience and training requirements for applicants for registration as occupational therapists and restricted practitioners and for the examination of those applicants with respect to those requirements;

(d) prescribing restrictions, conditions or limitations on the practice of occupational therapy by occupational therapists and restricted practitioners;

- (e) providing for the kind and duration of further experience that may be required by the Registrar pursuant to section 9(3)(c);
 - (f) providing for the registration, pursuant to section 9(4), of a person whose application for registration has been deferred;
 - (g) respecting committees of inquiry for reinstatement under Part 4, and governing persons whose certificates of registration, annual certificates or permits have been suspended or cancelled under this Act;
 - (h) prescribing conditions to be met before an annual certificate is issued;
 - (i) respecting the procedures for hearings, inquiries, reviews and preliminary investigations by the Registrar or a person appointed by him, the Practice Review Board, the Discipline Committee and the Council in matters relating to the conduct or practice of occupational therapists and restricted practitioners whether or not a complaint has been made;
 - (j) respecting the costs payable by an occupational therapist or a restricted practitioner on the conclusion of an investigation or hearing by the Registrar, the Discipline Committee or the Council;
 - (k) respecting reviews of the practice of an occupational therapist or restricted practitioner by the Practice Review Board or the Discipline Committee or a person authorized by that Committee;
 - (l) governing the publication of a notice of the suspension or cancellation of a certificate of registration, annual certificate or permit or of a reprimand in a form and manner prescribed by the Council;
 - (m) establishing and providing for the publishing of a code of conduct respecting the practice of occupational therapy, the maintenance of the dignity and honour of the profession of occupational therapy and the protection of the public interest;
 - (n) prescribing standards for the practice of occupational therapy;
 - (o) governing the nature or content of advertising, if any, which may be permitted;
 - (p) prescribing any additional rules applicable to a class of restricted practitioner referred to in section 9(1)(b);
 - (q) respecting the establishment, contents and maintenance of registers referred to in section 9(1)(b).
- (2) A regulation under subsection (1) does not come into force unless it is approved by
- (a) a majority of members of the Association
 - (i) present and voting at a general meeting, or

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

and

(b) the Lieutenant Governor in Council.

By-laws

63(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 the calling of and conduct of meetings of the Association and the Council;

(d) respecting the nomination, election, number and term of office of Council members, other than members appointed under section 6(1)(b), and officers of the Council and the Association;

(e) providing for the appointment of acting members and 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 and the Practice Review Board, the designation of chairmen and vice-chairmen, the appointment of acting members and the procedures for filling vacancies on the Committee or the Board;

(g) governing the establishment, operation and proceedings of committees, the appointment of members and of acting members and procedures for filling vacancies on committees;

(h) establishing honorary or other categories of membership in the Association and prescribing the privileges and obligations of the members of the categories;

(i) providing for the tenure of the Registrar and his additional duties, powers and functions, and the appointment of an Acting Registrar who has all of the powers and performs 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;

(j) prescribing the number of members that constitutes a quorum at meetings of the Association, the Council, the Practice Review Board or the Discipline Committee;

(k) providing for the delegation, with or without conditions, of any power or duty of the Council under this Act, the regulations or the by-laws, except the power to make or amend regulations or by-laws;

(l) prescribing fees and expenses payable to members of the Council and of committees established under this Act, the regulations or the by-laws for attending to the business of the Association;

- (m) respecting the establishment of and payment of sums of money for scholarships, fellowships and any other educational incentive or benefit program that the Association considers appropriate;
 - (n) respecting the fees, dues and levies payable to the Association by occupational therapists and restricted practitioners;
 - (o) respecting the removal by the Registrar from the registers of a memorandum or entry made in them under this Act, the regulations or the by-laws;
 - (p) governing the publication of the names of applicants for registration by the Registrar;
 - (q) requiring occupational therapists and restricted practitioners to maintain an 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;
 - (r) authorizing the Council to prescribe the form of a certificate of registration, an annual certificate, a permit and any other form or document that may be required for the purposes of this Act, the regulations or the by-laws;
 - (s) prescribing the date on which an annual certificate expires;
 - (t) respecting the holding of votes by mail on any matter relating to the Association;
 - (u) respecting the establishment and operation by the Council of a compulsory continuing education program for occupational therapists.
- (2) A by-law under subsection (1) does not come into force unless it is approved by a majority of members of the Association
- (a) present and voting at a general meeting, or
 - (b) voting at a vote conducted by mail in accordance with the by-laws.
- (3) The *Regulations Act* does not apply to by-laws of the Association.

PART 9

PENALTIES

Penalties

- 64(1)** Every person 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 2nd offence, to a fine of not more than \$4000, and
 - (c) for a 3rd 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 a 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.

PART 10

TRANSITIONAL AND COMMENCEMENT

Registration
continued

65 *An individual who is a member of the Alberta Association of Registered Occupational Therapists at the time this Act comes into force is deemed to be registered as an occupational therapist under this Act.*

Officers
continued

66 *The officers of the Alberta Association of Registered Occupational Therapists at the time this Act comes into force are deemed to be members of the Council under this Act and shall continue in office until their successors are elected or appointed.*

Coming
into force

67 *This Act comes into force on Proclamation.*