

1992 BILL 50

Fourth Session, 22nd Legislature, 41 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 50

PROFESSIONAL STATUTES AMENDMENT ACT, 1992

MRS. MIROSH

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 50
Mrs. Mirosh

BILL 50

1992

PROFESSIONAL STATUTES AMENDMENT ACT, 1992

(Assented to , 1992)

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

Health Disciplines Act

1(1) The Health Disciplines Act is amended by this section.

(2) Section 1 is amended

(a) by adding the following after clause (d):

(d.01) “Director” means the Director of Health
Disciplines;

*(b) by repealing clause (f) and substituting the
following:*

(f) “registered member” means a person
registered under this Act as a member of a
designated health discipline;

(g) “registrar” means the registrar of a
designated health discipline.

Explanatory Notes

Health Disciplines Act

1(1) This section will amend chapter H-3.5 of the Revised Statutes of Alberta 1980.

(2) Section 1 presently reads:

1 In this Act,

- (a) "Board" means the Health Disciplines Board established under this Act;*
- (b) "Committee" means a Health Discipline Committee established under this Act;*
- (c) repealed 1985 c31 s2;*
- (d) "designated health discipline" means a health discipline listed in the Schedule;*
- (d.1) "health discipline association" means a health discipline association named in an order under section 4.2;*
- (e) "Minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;*
- (f) "Registrar", unless the context indicates otherwise, means*

(3) Section 2(1) to (2.1) are repealed and the following is substituted:

Prohibitions
and
exclusions
from Act

2(1) No person other than a registered member of a designated health discipline shall

- (a) use the name of the designated health discipline, alone or in combination with other words, in a manner so as to express or imply that the person is a registered member of that designated health discipline, or
- (b) use any name, title, description or abbreviation in any manner so as to express or imply that the person is a registered member of that designated health discipline.

(2) A registered member may provide

- (a) the health services prescribed in the regulations, and
- (b) if the member has the training approved by the Minister of Health, any experimental or developmental health services approved by that minister.

(2.1) A registered member shall provide health services in accordance with any conditions or restrictions that may be prescribed in the regulations.

(4) Section 3(4) is amended by striking out "Registrar" and substituting "Director".

(5) The following is added after section 3:

- (i) *in respect of a designated health discipline that is governed by a Committee, the Registrar of Health Disciplines, or*
- (ii) *in respect of a designated health discipline that is governed by a health discipline association, a registrar appointed under section 7.4(1).*

(3) Section 2(1) to (2.1) presently read:

2(1) No person other than a person who is registered under this Act shall use

- (a) *the name of a designated health discipline, alone or in combination with other words, in a manner so as to express or imply that he is entitled to practise in that designated health discipline, or*
- (b) *any name, title, description or abbreviation in any manner so as to express or imply that he is registered under this Act.*

(2) A person who is registered under this Act shall

- (a) *perform only those health services that are prescribed in the regulations for the designated health discipline for which he is registered, and*
- (b) *perform the services referred to in clause (a) only in accordance with any conditions or restrictions that are prescribed in the regulations with respect to them.*

(2.1) Notwithstanding subsections (2) and (5), a person who is registered under section 12(1.1) shall not perform any health services referred to in subsection (2) or (5) unless he is also registered under section 12(1).

(4) Section 3(4) presently reads:

(4) The Registrar shall act as secretary to the Board.

(5) Director of Health Disciplines.

3.1(1) In accordance with the *Public Service Act* there may be appointed a Director of Health Disciplines and any staff necessary to carry out the duties of the Director under this Act.

(2) The Director may authorize an employee of the Government or a member of a Committee or an advisory committee to do any act or thing required or permitted to be done by the Director under this Act or the regulations.

(3) The Director, when directed to do so by the Minister, shall examine, inquire into, study and report to the Minister on any matter relating to the administration of this Act.

(4) The Director shall submit to the Minister an annual report that reflects the activities of the Board, Committees, health discipline associations and advisory committees.

(5) The Minister shall lay a copy of the annual report 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 sitting.

(6) *Section 4 is amended by adding the following after subsection (1.1):*

(1.2) An application under subsection (1) or (1.1) must

- (a) be in the form and contain the information required by the Board, and
- (b) be accompanied by the fee prescribed by the Minister by order.

(6) Section 4(1) and (1.1) presently read:

4(1) The Board shall conduct an investigation into a health discipline in respect of which

(a) an application has been made by or on behalf of an association of persons who are engaged in that health discipline for it to be designated as a designated health discipline under this Act, or

(b) the Minister has directed the Board to make an investigation

for the purpose of determining if the health discipline should be designated as a designated health discipline under this Act.

(1.1) The Board shall conduct an investigation into a health discipline if an application has been made by a professional association representing the majority of the persons who are

(a) engaged in that health discipline, and

(b) entitled to practise the health discipline pursuant to any other Act

(7) Section 5(5) is repealed and the following is substituted:

(5) The Director is the registrar of a designated health discipline that is governed by a Committee and shall act as secretary to the Committee.

(8) Section 6 is repealed and the following is substituted:

Duties of
Committee

6 A Committee, in relation to the designated health discipline for which it is established, shall

- (a) govern the registered members in accordance with this Act and the regulations in a manner that serves and protects the public interest,
- (b) review applications for registration under Part 3,
- (c) hear complaints respecting the conduct or competency of registered members under Part 4, and
- (d) advise the Board with respect to
 - (i) health services that may be provided by registered members, including any conditions or restrictions applicable to those services,
 - (ii) standards of conduct and competency for registered members,
 - (iii) qualifications and conditions of eligibility for applicants for registration and renewal of registration,
 - (iv) standards to ensure continuing competency of registered members,
 - (v) training programs for applicants for registration and renewal of registration,

for the purpose of determining if the health discipline should be designated as a designated health discipline under this Act.

(7) Section 5(5) presently reads:

(5) The Registrar shall act as secretary to a Committee.

(8) Section 6 presently reads:

6 A Committee shall, in relation to the designated health discipline for which it was established,

- (a) advise the Registrar with respect to applications for registration to practise in that designated health discipline,*
- (b) investigate complaints respecting unprofessional conduct or incompetence of a registered member of that designated health discipline,*
- (c) advise the Board with respect to the services that may be provided by registered members of that designated health discipline, including any limitations or conditions under which those services may be provided,*
- (d) advise the Board with respect to standards of conduct for and competency of registered members of that designated health discipline in the practice of their occupation,*
- (e) advise the Board with respect to applications for registration to practise in that designated health discipline to which section 12(2) applies, and*
- (f) advise the Board with respect to the qualifications of and training desirable for applicants for registration to practise in that designated health discipline.*

- (vi) examinations for purposes of registration and renewal of registration, and
- (vii) proposed regulations relating to the designated health discipline.

(9) Section 7.1 is amended

(a) in subsection (1) by adding “or 7.9(2)(a)” after “4.2(b)”;

(b) by repealing subsection (3) and substituting the following:

(3) A registered member of a designated health discipline that is governed by a health discipline association is a member of a corporation referred to in subsection (1).

(10) Section 7.2(2) is repealed and the following is substituted:

(2) The governing body of a health discipline association shall

- (a) manage and conduct the business and affairs of the health discipline association and govern the registered members of the designated health discipline in accordance with this Act, the regulations and the by-laws in a manner that serves and protects the public interest,**
- (b) advise the Board with respect to**
 - (i) health services that may be provided by registered members, including any conditions or restrictions applicable to those services,**
 - (ii) standards of conduct and competency for registered members,**
 - (iii) qualifications and conditions of eligibility for applicants for**

(9) Section 7.1(1) and (3) presently read:

7.1(1) A health discipline association named in an order under section 4.2(b) is a corporation.

(3) A person who is a member of a health discipline association and registered to practise in the designated health discipline that is governed by that health discipline association is a member of a corporation referred to in subsection (1).

(10) Section 7.2(2) presently reads:

(2) The governing body of a health discipline association shall manage and conduct the business and affairs of the health discipline association and exercise the rights, powers and privileges of the health discipline association in the name and on behalf of the health discipline association.

registration and renewal of
registration,

(iv) standards to ensure continuing
competency of registered
members,

(v) training programs for applicants
for registration and renewal of
registration,

(vi) examinations for purposes of
registration and renewal of
registration, and

(vii) proposed regulations relating to
the designated health discipline,

(c) develop, establish and maintain programs to
promote continuing competency of
registered members, and

(d) develop, establish and maintain standards
of professional ethics for registered
members.

(11) Section 7.3 is amended

*(a) by repealing subsection (1)(b) and substituting the
following:*

(b) when the number of persons elected under
clause (a) does not exceed 10, 2 members
of the public, or when the number of
persons elected under clause (a) is more
than 10, 3 members of the public, who
shall be appointed by the Lieutenant
Governor in Council for a term of not more
than 3 years.

(b) by adding the following after subsection (3):

(3.1) A member of a governing body appointed
under subsection (1)(b) is eligible to be reappointed
for not more than one additional consecutive term
and may not hold office for more than 6 consecutive
years.

(11) Section 7.3(1) and (4) presently read:

7.3(1) The governing body of a health discipline association shall consist of

(a) the number of members of the health discipline association prescribed in the regulations, each of whom shall be elected by and from among members of the health discipline association in accordance with the by-laws, and

(b) 1 member of the public who shall be appointed by the Minister after consultation with the governing body for a 2-year term of office.

(4) The Minister may, after consultation with the governing body, revoke the appointment of a member of a governing body appointed under subsection (1)(b).

- (c) *in subsection (4) by striking out “Minister” and substituting “Lieutenant Governor in Council”.*

(12) Section 7.4(2) and (3) are repealed.

(13) Section 7.5 is amended

- (a) *in subsection (1) by striking out “health association” and substituting “health discipline association”;*
- (b) *by repealing subsection (2).*

(14) Section 7.6 is repealed and the following is substituted:

Conduct and
competency
committee

7.6(1) A health discipline association shall establish, in accordance with the regulations, a conduct and competency committee consisting of

- (a) not fewer than 3 and not more than 9 members of the health discipline association, and
- (b) one member of the public who shall be appointed by the Lieutenant Governor in Council for a term of not more than 3 years.

(2) A member of a conduct and competency committee appointed under subsection (1)(b) continues to hold office after the expiry of the member's term of office until the member is reappointed or a successor is appointed.

(3) A member of a conduct and competency committee appointed under subsection (1)(b) is eligible to be reappointed for not more than one additional

(12) Section 7.4 presently reads:

7.4(1) A health discipline association shall appoint a registrar.

(2) A registrar appointed under subsection (1) has, with all necessary modifications, the powers and duties of the Registrar of Health Disciplines under Part 3, except section 11(3), and Part 4 in respect of the designated health discipline that appointed him.

(3) Sections 20 to 27 apply to a registrar appointed under subsection (1) as if he were the Registrar of Health Disciplines.

(13) Section 7.5 presently reads:

7.5(1) A health discipline association shall establish in accordance with the regulations a registration committee consisting of not fewer than 3 and not more than 9 members of the health association.

(2) A registration committee has, with all necessary modifications, the powers and duties of a Committee under Part 3.

(14) Section 7.6 presently reads:

7.6(1) A health discipline association shall establish in accordance with the regulations a conduct and competency committee consisting of not fewer than 3 and not more than 9 members of the health association.

(2) The conduct and competency committee has, with all necessary modifications, the powers and duties of a Committee under Parts 4 and 5.

(3) The Registrar of Health Disciplines shall be notified of and may attend discipline proceedings conducted by a conduct and competency committee.

consecutive term and may not hold office for more than 6 consecutive years.

(4) The Lieutenant Governor in Council may, after consultation with the governing body of the health discipline association, revoke the appointment of a member of the conduct and competency committee appointed under subsection (1)(b).

(5) The Minister may pay to a member of the conduct and competency committee appointed under subsection (1)(b) remuneration and travelling and living expenses incurred in the performance of the member's duties at the rates prescribed by the Minister.

(6) The powers, duties and operation of a conduct and competency committee are not affected by

- (a) the fact that no one 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 committee, or
- (c) the resignation from the committee of a member appointed under subsection (1)(b).

(7) The failure of a member appointed under subsection (1)(b) to attend a meeting of the conduct and competency committee does not affect or restrict the committee in exercising any powers or performing any duties at that meeting.

(8) The Director shall be notified of and may attend and make representations at a hearing before the conduct and competency committee.

(15) Section 7.7 is repealed.

(16) Section 7.8 is amended by striking out "Registrar of Health Disciplines" and substituting "Director".

(15) Section 7.7 presently reads:

7.7 A health discipline association has, with all necessary modifications, the powers and duties of a Committee set out in section 6(c) to (f).

(16) Section 7.8 presently reads:

(17) Parts 3, 4 and 5 are repealed and the following is substituted:

PART 3 REGISTRATION

Definition	8 In this Part, “committee” means a Committee established under section 5(1)(a) or a registration committee established under section 7.5(1).
Register	9(1) The registrar shall establish and maintain a register of registered members of the designated health discipline. (2) The registrar shall permit the inspection of the register by any person during regular office hours.
Registration requirements	9.1 The registrar shall register as a registered member of the designated health discipline a person who <ul style="list-style-type: none">(a) meets the qualifications prescribed in the regulations,(b) is of good character and reputation, and(c) has paid the fees prescribed by the Minister by order or in the by-laws of the health discipline association, as the case may be.
Referral to committee	10(1) The registrar shall refer an application for registration to the committee if the registrar <ul style="list-style-type: none">(a) is not satisfied, on reasonable grounds, that an applicant is eligible for registration under section 9.1, or(b) believes that terms, conditions or limitations should be imposed on the registration or practice of the applicant. (2) If the registrar refers an application to the committee, the registrar shall give the applicant notice of the grounds for referral and of the right to make submissions under subsection (3). (3) The applicant may make oral or written submissions to the committee within 30 days after receiving a notice under subsection (2) or within any longer period specified in the notice.

7.8 A health discipline association shall annually on or before the date prescribed in the regulations submit to the Registrar of Health Disciplines a report in the form required by the Board.

(17) Parts 3, 4 and 5 have been replaced with more modern registration, discipline and appeal provisions that are consistent with those in professional statutes.

(4) On completing a review of an application referred to it and any submissions made by the applicant, the committee shall direct the registrar to register the applicant if it is satisfied that the applicant

- (a) is eligible under section 9.1, or
- (b) has training and experience that is substantially equivalent to the qualifications required for registration under section 9.1 and is otherwise eligible under section 9.1.

(5) If the committee is not satisfied that the applicant meets the requirements of subsection (4), it may direct the registrar

- (a) to defer the registration until the applicant has successfully completed specified additional training or examinations, or both, within the time specified by the committee,
- (b) to issue, with the consent of the applicant, a restricted registration imposing specified terms, conditions or limitations on the applicant's registration or practice, or
- (c) to refuse to register the applicant.

(6) If the committee gives a direction under subsection (5), it shall inform the registrar in writing of its decision, the reasons for it and the steps, if any, the applicant must take to become eligible for registration.

(7) The registrar shall, not more than 90 days after receiving an application for registration,

- (a) send the applicant written notice of the decision under this section, and
- (b) if applicable,
 - (i) send the applicant a copy of the information received from the committee under subsection (6), and
 - (ii) inform the applicant in writing of the right under section 11 to request a review of the committee's decision.

Annual
renewal of
registration

10.1(1) A registered member shall submit to the registrar annually by the date prescribed in the regulations an application for renewal of registration in the form prescribed by the Minister.

(2) If a registered member does not submit an application for renewal of registration as required, the registrar may cancel the member's registration not earlier than 30 days after the member is served with a written notice of the intention to cancel the registration, unless the member submits the application within the time prescribed in the notice.

(3) The registrar shall issue an annual certificate to a registered member who

- (a)** has practised the designated health discipline in accordance with the regulations,
- (b)** meets any continuing education requirements prescribed in the regulations, and
- (c)** pays the annual fees prescribed by the Minister by order or in the by-laws, as the case may be.

(4) If a registered member does not meet the requirements in subsection (3)(a) or (b), the registrar shall

- (a)** refer the application to the committee, and
- (b)** give the registered member notice of the grounds for referral and of the right to make submissions under subsection (5).

(5) The registered member may make oral or written submissions to the committee within 30 days after receiving a notice under subsection (4)(b) or within any longer period specified in the notice.

(6) On completing a review of an application referred to it and any submissions made by the registered member, the committee shall direct the registrar to issue an annual certificate if it is satisfied that the registered member has maintained competency in the designated health discipline either through actively engaging in the

practice of that health discipline or through involvement in education or training that relates to that health discipline.

(7) If the committee is not satisfied that the registered member has maintained competency in the designated health discipline, it may direct the registrar

- (a) to defer issuing an annual certificate until the registered member has successfully completed specified additional training or examinations, or both, within the time specified by the committee, or
- (b) to issue, with the consent of the registered member, a restricted annual certificate imposing specified terms, conditions or limitations on the registered member's registration or practice.

(8) If a registered member does not comply with a direction under subsection (7)(a) within the time specified, the committee may direct the registrar to cancel the registered member's registration.

(9) If the committee gives a direction under subsection (7), it shall inform the registrar in writing of its decision, the reasons for it and the steps, if any, the registered member must take to become eligible for renewal of registration.

(10) The registrar shall, not more than 90 days after receiving an application for renewal of registration,

- (a) send the registered member written notice of the decision under this section, and
- (b) if applicable,
 - (i) send the registered member a copy of the information received from the committee under subsection (9), and
 - (ii) inform the registered member in writing of the right under section 11 to request a review of the committee's decision.

**Review by
Board**

11(1) An applicant whose registration has been deferred, restricted or refused or whose renewal of registration has been deferred or restricted may, not more than 30 days after receiving notice of the committee's decision, request a review of the decision by serving on the Director

- (a) a written request for a review by the Board, and
- (b) written reasons why, in the applicant's opinion, the registration or renewal of registration should be approved or approved without restrictions.

(2) On receipt of a request for a review, the Director shall notify the applicant of the date, time and place at which the Board will review the decision of the committee.

(3) The review must be commenced not more than 90 days after the Director receives the request for a review.

(4) An applicant is entitled to appear and be represented by counsel at the review.

(5) On reviewing a decision of the committee under this section, the Board may

- (a) make any decision the committee could have made, or
- (b) refer the matter back to the committee for further review.

(6) The committee, on reviewing a matter referred back to it by the Board, may confirm, reverse or vary its original decision.

(7) The Director shall serve the applicant, the registrar and the committee with a copy of the Board's decision and the reasons for its decision.

(8) The registrar shall do all things necessary to carry out the decision of the Board.

Cancellation
on request

11.1 The registrar may cancel the registration of a registered member

- (a) at the request or with the consent of the member, or
- (b) that is made in error, with the approval of the Board.

Registration
proceedings
to be
concluded
under this
Part

12 *An application for registration as a registered member that has not been concluded before the coming into force of this Part shall be dealt with as an application for registration as a registered member under this Part.*

PART 4

COMPLAINT PROCEEDINGS

Definitions

12.1 In this Part,

- (a) “chair” means the chair of the committee and includes a vice-chair;
- (b) “committee” means a Committee established under section 5(1)(a) or a conduct and competency committee established under section 7.6(1);
- (c) “complaint” means a complaint made in writing and signed by the person making it about the conduct, skill, judgment or fitness to practise of a registered member;
- (d) “conduct” includes any act or omission;
- (e) “investigated person” means a registered member or former registered member with respect to whom an investigation or hearing is held under this Part;
- (f) “preliminary investigator” includes the registrar or any person appointed by the registrar who conducts a preliminary investigation under this Part.

Complaint

13(1) A person may make a complaint to the registrar regarding a registered member 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 the complainant's mailing address.

(3) A complaint about a person whose registration has been cancelled or suspended under 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 not occurred.

Preliminary investigation

13.1(1) Forthwith on receipt of a complaint, the registrar shall conduct or appoint a preliminary investigator to conduct a preliminary investigation regarding the registered member.

(2) In the absence of a complaint, if the registrar has evidence showing that the conduct, skill, judgment or fitness to practise of a registered member poses a significant risk to the public, the registrar may, after consultation with the Director, conduct or appoint a preliminary investigator to conduct a preliminary investigation regarding the registered member.

(3) The registrar shall notify the registered member that a preliminary investigation will be conducted, giving reasonable particulars of the matter to be investigated.

(4) A preliminary investigator may request any person to produce to the preliminary investigator any models, charts, documents, papers, notes, records, radiographs or other materials or things in the person's possession or under the person's control and to attend the preliminary investigation.

(5) The preliminary investigator may copy and keep copies of any of the things produced under subsection (4).

(6) A preliminary investigator may investigate any other matter regarding the investigated person that arises in the course of the preliminary investigation.

(7) If a registered member does not co-operate with a preliminary investigator, the preliminary investigator

may make a complaint in writing to the committee, and failure or refusal to co-operate may be held by the committee to be professional misconduct.

(8) Forthwith on concluding a preliminary investigation, the preliminary investigator shall report the findings

- (a) to the chair, if the registrar is conducting the preliminary investigation, or
- (b) to the registrar, if the registrar is not conducting the preliminary investigation.

Conclusion of preliminary investigation

14(1) The registrar or the chair, as the case may be, on receipt of a report by the preliminary investigator, shall

- (a) direct that no further action be taken, if in the opinion of the registrar or the chair,
 - (i) the complaint is frivolous or vexatious, or
 - (ii) there is insufficient evidence of unskilled practice or professional misconduct,

or

- (b) refer the matter under investigation in writing to the committee.

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

(3) If the registrar serves a notice on the complainant that no further action will be taken, the registrar shall inform the complainant in writing that the complainant has the right under section 14.1 to request a review of that decision.

Review by committee

14.1(1) A complainant who is served with a notice that no further action will be taken may, within 30 days of receipt of the notice, request a review of that decision by the committee.

(2) A request for a review must be made in writing and sent to the registrar.

(3) On receiving a request for a review, the committee

(a) shall determine

(i) whether the complaint is frivolous or vexatious, or

(ii) whether there is sufficient evidence of unskilled practice or professional misconduct to warrant the matter under investigation being the subject of a hearing,

and

(b) shall notify the complainant and the investigated person in writing of its decision and the reasons for its decision.

(3) Before coming to a decision, the committee shall invite the complainant and the investigated person to attend before the committee and make representations to it.

Suspension
pending
decision

15(1) Notwithstanding anything in this Act, the chair may recommend that the registration of an investigated person be temporarily suspended pending the outcome of proceedings under this Part, and the registrar may suspend the registration accordingly.

(2) An investigated person whose registration is suspended under subsection (1) may, by filing an originating notice with the Court of Queen's Bench and serving a copy on the chair, apply for an order staying the action of the registrar.

Hearing
before
committee

15.1(1) On referral to it of a matter under section 14 or on determining under section 14.1 that a hearing should be held, the committee shall hold a hearing.

(2) A hearing under subsection (1) shall be commenced not more than 90 days after the date on which the matter is referred to the committee or the determination that a hearing should be held is made.

(3) The registrar, not less than 30 days before the date set for the hearing, shall serve

	<ul style="list-style-type: none"> (a) on the investigated person a copy of the complaint, if any, and a notice of the hearing stating the date, time and place at which the committee will hold the hearing, and (b) on the complainant, if any, a notice of the hearing stating the date, time and place at which the committee will hold the hearing.
Rights at a hearing	<p>16(1) The investigated person and the complainant, if any, may appear and be represented by counsel at the hearing.</p> <p>(2) The committee may be represented by counsel at the hearing.</p> <p>(3) The hearing shall be open to the public unless</p> <ul style="list-style-type: none"> (a) the complainant requests that the hearing be held in private because of the confidential nature of the matters to be heard, or (b) in the opinion of the committee, the interests of any person other than the investigated person may be detrimentally affected if the hearing is not held in private.
Further investigation	<p>16.1 If any other matter concerning the conduct of the investigated person arises in the course of the hearing, the committee may investigate and hear the matter, but in that event the committee shall declare its intention to hear the further matter and shall permit the investigated person a reasonable opportunity to prepare an answer to the further matter.</p>
Evidence	<p>17(1) The committee is not bound by the rules of law respecting evidence applicable to judicial proceedings.</p> <p>(2) For the purpose of a hearing under this Act, the registrar and the members of the committee are conferred with the powers of a commissioner for oaths under the <i>Commissioners for Oaths Act</i>.</p>

Witnesses

17.1(1) The investigated person and any other person who, in the opinion of the committee, has knowledge of the matter being heard are compellable witnesses in any proceedings under this Part.

(2) A witness may be examined under oath on all matters relevant to the hearing before the committee and shall not be excused from answering any questions on the ground that the answer might tend to

- (a) incriminate the witness,
- (b) subject the witness to punishment under this Act, or
- (c) establish the witness's liability
 - (i) to a civil proceeding at the instance of the Crown or of any other person, or
 - (ii) to prosecution under any Act,

but if the answer so given tends to incriminate the witness, subject the witness to punishment or establish the witness's liability, it shall not be used or received against the witness in any civil proceedings, in a prosecution under this Act 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 a health discipline association or the Director, 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 Alberta Rules of Court.

**Enforcement
of attendance
and
production of
documents**

18(1) The attendance of witnesses before the committee and the production of models, charts, documents, papers, notes, records, radiographs or other materials or 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, radiographs or other materials or things, if any, that the witness is required to produce.

(2) On the written request of the investigated person or of the person's counsel or agent, the registrar shall, without charge, issue and deliver to that person or the person's counsel or agent any notices that the person requires for the attendance of witnesses or for the production of any item 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 as are payable to a witness in an action in the Court of Queen's Bench.

Failure to
attend or give
evidence

18.1(1) Proceedings for civil contempt of court may be brought against a witness

(a) who fails

(i) to attend before the committee in compliance with a notice to attend, or

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

or

(b) who refuses to be sworn or to answer any question the witness is directed to answer by the committee.

(2) If the witness referred to in subsection (1) is a registered member, the failure or refusal may be held by the committee to be professional misconduct.

Hearing in
absence of
investigated
person

19 The committee, on proof of service of the notice of the hearing on the investigated person in accordance with this Act, may

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

(b) act and decide on the matter being heard in the same way as if the investigated person were in attendance.

Findings by
committee

19.1(1) Any conduct of a registered member that, in the opinion of the committee,

- (a) is detrimental to the best interests of the public,
- (b) contravenes this Act or the regulations, or
- (c) displays a lack of knowledge, skill or judgment in the practice of the designated health discipline,

whether or not that conduct is disgraceful or dishonourable, may constitute either unskilled practice of the designated health discipline or professional misconduct, whichever the committee finds.

(2) The committee may find that the conduct of an investigated person constitutes or does not constitute unskilled practice of the designated health discipline or professional misconduct, or both.

Order of
committee

20(1) If a committee finds that the conduct of an investigated person constitutes unskilled practice of the designated health discipline or professional misconduct, or both, the committee may make one or more of the following orders:

- (a) reprimand the investigated person;
- (b) suspend the registration of the investigated person for a specified period;
- (c) suspend the registration of the investigated person until
 - (i) the investigated person has completed a specified course of studies or obtained supervised practical experience, or
 - (ii) the committee is satisfied as to the competency of the investigated person;
- (d) accept, in place of a suspension, the investigated person's undertaking to limit his practice;

- (e) impose any conditions or limitations on the practice of the designated health discipline by the investigated person that it considers appropriate;
- (f) direct the investigated person to pass a particular course of studies or satisfy the committee as to the investigated person's professional competency;
- (g) direct the investigated person to satisfy the committee that a disability or addiction can be or has been overcome, and suspend the investigated person's registration until the committee is so satisfied;
- (h) require the investigated person to take counselling that, in the opinion of the committee, is appropriate;
- (i) require the investigated person to waive, reduce or repay a fee for services provided by the investigated person that, in the opinion of the committee, were not provided or were improperly provided;
- (j) cancel the registration of the investigated person;
- (k) make any further or other order that it considers appropriate.

(2) If the committee is satisfied that an investigated person has contravened an order under subsection (1), it may, without the necessity of a further hearing, order that the registration of the investigated person be suspended or cancelled 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

20.1(1) The committee may, in addition to or instead of dealing with the conduct of an investigated person in accordance with section 20, order that the investigated person pay, within the specified time,

- (a) all or part of the costs of the hearing,
- (b) 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) the costs under clause (a) and the fines under clause (b).

(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 registrar may suspend the registration of the person until the fine and costs are paid and shall serve the person with notice of the suspension.

(3) A fine or costs ordered to be paid pursuant to subsection (1) shall be paid

- (a) if the order is made by a conduct and competency committee, to the health discipline association, or
- (b) if the order is made by a Committee established under section 5(1)(a), to the General Revenue Fund.

Effect of
suspension

21 A person whose registration as a registered member of a designated health discipline is suspended under this Act shall not practise the designated health discipline until notified by the registrar in writing that the suspension has been revoked or the suspension has expired in accordance with its terms.

Decision and
record of
hearing

21.1(1) The committee shall, within a reasonable time after the conclusion of the hearing, provide 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 by it.

(2) The committee shall forward to the registrar

- (a) the decision, and
- (b) the record of the hearing, consisting of all evidence presented before it, including
 - (i) all exhibits,

(ii) all documents, and

(iii) a summary of all testimony given before it.

(3) The registrar, on receiving the decision of the committee and the record of the hearing referred to in subsection (2), shall serve on the investigated person and on the complainant, if any,

(a) a copy of the decision, and

(b) a statement of the right of the investigated person and the complainant, if any, to appeal the decision to the Board.

(4) The registrar shall send a copy of the decision to the Director.

(5) The investigated person, the Director and the complainant, if any, may examine the record of the hearing before the committee or any part of the record.

Rehearing

22 If there is new evidence available that was not available or for good reason was not presented at the hearing before the committee, the committee may, with the consent of the investigated person, rehear any matter already heard by it and, for that purpose, has the same powers and duties that it had and was subject to in connection with the first hearing.

Stay pending appeal

22.1(1) Subject to subsection (2), a decision of the committee remains in effect until the Board makes a decision on an appeal.

(2) An investigated person may apply to the Board for an order staying the decision of the committee pending the outcome of the appeal to the Board.

Complaints and discipline proceedings in progress

23(1) *A complaint made or discipline proceedings commenced but not concluded before the coming into force of this Part and Part 5 shall be concluded as if this Part and Part 5 had not come into force.*

(2) *A complaint made or discipline proceedings commenced after the coming into force of this Part and Part 5 when the complaint or discipline proceedings relate to conduct occurring all or partly before the coming into force of this Part and Part 5 shall be dealt with under this Part and Part 5.*

PART 5

APPEALS

Appeal to
Board

23.1(1) An investigated person or the complainant, if any, may appeal a finding or an order, or both, of the committee to the Board by notice in writing.

(2) A notice of appeal under subsection (1) shall

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

(3) A notice of appeal under this section shall be served on the Director not less than 30 days after the date on which the decision of the committee is served on the investigated person or the complainant, as the case may be.

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

Notice and
hearing

24(1) The Director, on receiving a notice of appeal, shall serve on the investigated person and the complainant, if any, a notice of hearing of an appeal stating the date, time and place at which the Board will hear the appeal.

(2) The Board shall,

- (a)** if the registration of the investigated person has been cancelled or suspended, hear the appeal within 30 days after the date of service of the notice of appeal, or
- (b)** if the registration of the investigated person has not been cancelled or suspended, hear the appeal within 90 days after the date of service of the notice of appeal.

(3) The Board may extend the periods referred to in subsection (2) for one or more additional periods, but

- (a) in a case to which subsection (2)(a) applies, no extension may be granted without the consent of the investigated person, and
- (b) in a case to which subsection (2)(b) applies, no extension may be granted for a period of more than 90 days.

Proceedings
before Board

24.1(1) The investigated person and the complainant, if any, may appear and be represented by counsel at the hearing of an appeal before the Board.

(2) The appeal to the Board shall be founded on the record of the hearing before the committee and the decision of the committee.

(3) Sections 17 to 19 apply to proceedings before the Board.

(4) The Board may

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

(5) The hearing before the Board shall be open to the public unless

- (a) the complainant requests that the hearing be held in private because of the confidential nature of the matter to be heard, or
- (b) in the opinion of the Board, the interests of any person other than the investigated person may be detrimentally affected if the hearing is not held in private.

Decision of
Board

25(1) The Board, not more than 90 days after the conclusion of all proceedings before it, shall

- (a) make any finding or order that in its opinion ought to have been made by the committee,
- (b) quash, confirm or vary 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 further consideration in accordance with any direction that the Board may make.

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

(3) The Board shall, within a reasonable time after the conclusion of the proceedings before it, make a written decision on the matter and shall forward the decision to the Director.

(4) The Director shall

- (a) serve a copy of the decision on the investigated person, the complainant, if any, the registrar and the committee, and
- (b) inform the investigated person, the complainant, if any, and the committee in writing of the right to appeal the decision to the Court of Appeal.

(5) Subject to subsection (6), the decision of the Board remains in effect until the Court of Appeal makes a decision on an appeal.

(6) An investigated person may, by filing an originating notice with the Court of Queen's Bench and serving a copy on the Director, apply for an order staying the decision of the Board pending the outcome of the appeal to the Court of Appeal.

Appeal to
Court of
Appeal

25.1(1) Any of the following may appeal a decision of the Board to the Court of Appeal:

- (a) the investigated person;
- (b) the complainant, if any;

- (c) if the designated health discipline is governed by a health discipline association, the governing body of that association;
- (d) if the designated health discipline is governed by a Committee, the chair of that Committee.

(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 on the Board,

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

(3) The appeal to the Court of Appeal shall be founded on the record of the proceedings before the Board and the decision of the Board.

Powers of
Court

26(1) The Court of Appeal on hearing an appeal may

- (a) make any finding or order that in its opinion ought to have been made,
- (b) quash, confirm or vary the decision of the Board or any part of it,
- (c) refer the matter back to the Board 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, of the Board be held before the Court of Queen's Bench.

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

Termination of
employment
by employer

26.1 If the employment of a registered member is terminated because of conduct that is, in the opinion of the former employer or that is alleged by the former employer to be, professional misconduct, conduct that displays a lack of skill or judgment in the practice of a designated health discipline or conduct that indicates

that the person is unfit to practise a designated health discipline, the former employer shall report the matter to the registrar or the Director and provide a copy of the report to the registered member.

(18) Section 27(1) is amended

- (a) by repealing clauses (a) to (c) and substituting the following:*
 - (a) prescribing the health services that registered members of each designated health discipline may provide;
 - (b) prescribing the conditions or restrictions, if any, under which registered members of each designated health discipline may provide health services;
 - (c) establishing the qualifications and conditions of eligibility for applicants for registration and renewal of registration in each designated health discipline;
- (b) in clause (e) by striking out “under section 11(1)” and substituting “by the registrar”;*
- (c) by repealing clause (f) and substituting the following:*
 - (f) prescribing standards of conduct and competency for registered members of each designated health discipline;
- (d) in clause (g) by striking out “16(1)” and substituting “10.1”;*
- (e) by repealing clauses (h) and (i) and substituting the following:*
 - (h) respecting training programs for applicants for registration and renewal of registration in each designated health discipline;
 - (i) respecting examinations for the purposes of registration and renewal of registration in each designated health discipline;

(18) Section 27(1) presently reads:

27(1) The Board may make regulations

- (a) prescribing the services that a designated health discipline may provide;*
- (b) prescribing conditions under which or limitations within which a designated health discipline may provide services;*
- (c) establishing the qualifications and conditions of eligibility of persons who may apply for registration to practise in a designated health discipline;*
- (d) repealed 1986 c18 s12;*
- (e) respecting registers to be kept under section 11(1);*
- (f) prescribing standards of conduct and competency of members of a designated health discipline;*
- (g) prescribing, in respect of a designated health discipline, a date or dates for the purposes of section 16(1);*
- (h) respecting training programs for applicants for registration to practise in a designated health discipline;*
- (i) respecting examinations to determine the eligibility of a person who has participated in and successfully completed a training program;*
- (j) prescribing the matters to be entered by the Registrar in a register described in clause (e);*
- (k) prescribing the conditions for renewal of registration to be met by a registered member of a designated health discipline pursuant to section 16(3)(a) and (b);*
- (l) respecting training programs and examinations for the purposes of section 16(4);*
- (m) respecting the name, title, description, abbreviation or initial that a registered member of a designated health discipline may use to indicate that he is a member of a designated health discipline;*

- (f) *in clause (j) by striking out “Registrar” and substituting “registrar”;*
- (g) *in clause (k) by striking out “16(2)(a) and (b)” and substituting “10.1(3)(a) and (b)”;*
- (h) *by repealing clause (l);*
- (i) *in clause (o) by striking out “who is entitled to engage”;*
- (j) *in clause (q) by striking out “Registrar” and substituting “registrar”.*

(19) Section 28.1(1) is amended

- (a) *by repealing clause (1.1);*
- (b) *in clause (1.2) by adding “student, associate and” before “honorary”.*

(20) Section 29.1 is amended

- (a) *by striking out “Registrar” wherever it occurs and substituting “registrar”;*
- (b) *in subsection (7) by striking out “Registrar of Health Disciplines” and substituting “Director”.*

- (n) *respecting fees payable to the Provincial Treasurer for registration, conducting an examination, and the renewal of registration;*
- (o) *respecting the temporary registration of a person who is entitled to engage in a designated health discipline;*
- (p) *respecting the limitations and restrictions on the practice of a designated health discipline by a person described in clause (o);*
- (q) *prescribing the information that the Registrar may include on an annual certificate;*
- (r) *prescribing the number of members on the governing body of a health discipline association;*
- (s) *providing for the establishment of a registration committee and a conduct and competency committee for a health discipline association;*
- (t) *prescribing the date by which a health discipline association shall submit the report required under section 7.8;*
- (u) *respecting inspections under section 29.1.*

(19) Section 28.1(1)(l.1) and (l.2) presently read:

28.1(1) The governing body of a health discipline association may make by-laws

- (l.1) respecting a register to be kept under section 11(1.1);*
- (l.2) respecting qualifications and conditions to be met by candidates for registration as honorary members;*

(20) Section 29.1 presently reads:

29.1(1) The Lieutenant Governor in Council may, on the recommendation of the Minister, permit the Registrar to conduct, in accordance with this section, an inspection of the practice of any registered member of the designated health discipline named in the order for the purpose of determining whether the regulations relating to that designated health discipline are being complied with.

(2) The Registrar or a person designated by him may, during ordinary business hours, enter and inspect the business premises of a registered member of a designated health discipline for the purpose set out in subsection (1).

(3) A person who enters premises under subsection (2)

- (a) *shall provide at least 48 hours' notice to the registered member before he enters the premises, and*
 - (b) *may require the production for the purpose of inspection of any documents or records required to be maintained under the regulations.*
- (4) *If a person other than the Registrar carries out an inspection under this section that person shall, on concluding the inspection, report to the Registrar.*
- (5) *On concluding an inspection under subsection (2) or on receiving a report under subsection (4), the Registrar*
- (a) *shall, if there is evidence that the regulations are not being complied with, serve the registered member with a notice in writing specifying*
 - (i) *the manner in which the regulations are not being complied with,*
 - (ii) *any remedial action to be taken by the registered member, and*
 - (iii) *the date by which any remedial action shall be completed,*
- or*
- (b) *may, if there is evidence of conduct that is or is alleged to be unbecoming conduct or that shows or is alleged to show a lack of skill or judgment in the practice of the health discipline, refer the matter to be dealt with as a complaint under Part 4.*
- (6) *If a registered member fails to carry out the remedial action required under subsection (5) by the date specified in the notice, the Registrar shall refer the matter to be dealt with as a complaint under Part 4.*
- (7) *The Registrar shall provide to the Registrar of Health Disciplines a written report of each inspection carried out under this section setting out*
- (a) *the evidence that the regulations are not being complied with and the matters referred to in subsection (5)(a),*
 - (b) *the evidence of conduct that is or is alleged to be unbecoming conduct or that shows or is alleged to show a lack of skill or judgment in the practice of a health discipline, or*
 - (c) *a statement that the regulations are being complied with.*

(21) Section 31.1(1)(a) is amended by striking out “Registrar of Health Disciplines, a registrar appointed under section 7.4” and substituting “Director, a registrar”.

(22) Section 32 is repealed and the following is substituted:

Offence

32(1) A person who contravenes section 2 or 30 or who practises a designated health discipline of which the person is a registered member when the person’s registration is suspended 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.

Injunction

32.1 The Court of Queen’s Bench, on application by the Director or a health discipline association 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.

(23) The Schedule is amended

(a) by repealing clause (d) and substituting the following:

- (d) Licensed Practical Nurses;

(21) Section 31.1(1)(a) presently reads:

31.1(1) No action lies against

(a) a member of the Board, a Committee, a health discipline association or a committee appointed by a health discipline association, the Registrar of Health Disciplines, a registrar appointed under section 7.4, or any person acting on the instructions of any of them, or

(22) These amendments bring the Act into line with other professional statutes.

(23) Amendment of list of designated health disciplines.

(b) *by adding the following after clause (j):*

(k) Medical Laboratory Technologists;

(l) Midwives.

(24) *The Alberta Health Care Insurance Act is amended by repealing section 13(4)(i) and substituting the following:*

(i) *to the Health Disciplines Board, a health discipline association or a Committee under the Health Disciplines Act, if the information is furnished in compliance with a notice under section 18(1) of the Health Disciplines Act.*

(25) *The Hospitals Act is amended in section 40(6)(e) by striking out “section 20” and substituting “section 18(1)”.*

(26) *The Mental Health Act is amended in section 17(6)(p) by striking out “section 20” and substituting “section 18(1)”.*

(27) *Subsection (23)(b) comes into force on Proclamation.*

Ophthalmic Dispensers Act

2(1) *The Ophthalmic Dispensers Act is amended by this section.*

(2) *The title is repealed and the following is substituted:*

OPTICIANS ACT

(3) *Section 1 is amended*

(a) *by repealing clause (a) and substituting the following:*

(a) “Advisory Committee” means the Eye Care Disciplines Advisory Committee;

(a.1) “Association” means the Alberta Opticians Association;

(b) *by repealing clause (b);*

(24) Consequential amendment.

(25) Consequential amendment.

(26) Consequential amendment.

(27) Coming into force.

Ophthalmic Dispensers Act

2(1) This section will amend chapter O-8 of the Revised Statutes of Alberta 1980.

(2) The title presently reads:

OPHTHALMIC DISPENSERS ACT

(3) Section 1(a), (b), (c), (e), (g), (i), (j), (k), (l) and (m) presently read:

1 In this Act,

- (a) "Board" means the Ophthalmic Dispensers Examining Board appointed under this Act;*
- (b) "certificate of competency" means a certificate of competency issued by the Board;*
- (c) "certificate of registration" means a certificate of registration of membership in the Guild;*

(c) *in clause (c) by striking out “of membership in the Guild” and substituting “in the eye glasses dispensing register or in the contact lens dispensing register”;*

(d) *by repealing clauses (e), (g) and (i);*

(e) *by repealing clauses (j), (k), (l) and (m) and substituting the following:*

(k) “optical prescription” means a written record of the power of the refractive error of the eye, including, when appropriate, reading add, prisms and back vertex distance;

(l) “optician” means a person who is registered as a member of the Association;

(m) “practice of opticianry” means

(i) the supplying, preparing or dispensing of ophthalmic appliances,

(ii) the interpretation of prescriptions from ophthalmologists or optometrists in respect of ophthalmic appliances, or

(iii) the fitting, adjusting or adapting of ophthalmic appliances to the needs of the intended wearer in accordance with a prescription from an ophthalmologist or optometrist, or without a prescription when lenses are duplicated with no change in their refractive value,

whether for hire, gain or reward or not but does not include the measurement of ocular refractive error of an individual through refraction, providing a prescription or diagnosing a condition;

(f) *by striking out “Guild” wherever it occurs and substituting “Association”.*

- (e) *"Guild" means The Alberta Guild of Ophthalmic Dispensers;*
- (g) *"non-participating member" means a member of the Guild enrolled as a non-active member;*
- (i) *"ophthalmic dispenser" means a person who performs services of ophthalmic dispensing;*
- (j) *"ophthalmic dispensing" means*
- (k) *"ophthalmologist" means a physician who is entitled to practise as a specialist in ophthalmology;*
- (l) *"optometrist" means a person registered under the Optometry Profession Act;*
- (m) *"participating member" means a member of the Guild enrolled as an active member;*

(4) The heading preceding section 2 and section 2 are repealed and the following is substituted:

The Association

Association

2(1) The Alberta Guild of Ophthalmic Dispensers is continued as a corporation under the name “Alberta Opticians Association”.

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

(5) Sections 3, 4 and 5 are repealed.

- (4) The heading preceding section 2 and section 2 presently read:

The Guild

2 The Alberta Guild of Ophthalmic Dispensers heretofore established is continued as a corporation under that name.

- (5) Sections 3, 4 and 5 presently read:

3(1) A person is entitled to be registered as a member of the Guild on payment of the enrolment fee and annual fee, if that person

- (a) is the holder of a certificate of competency,*
- (b) on July 1, 1965, had been practising as an ophthalmic dispenser or optician in Alberta for a continuous period of not less than 3 years prior to that date and has never been suspended from practice or had his name removed from the register pursuant to this Act, or*
- (c) obtains an order under section 4(2)(b).*

(2) On registration as a member of the Guild, the registrar shall issue the member a certificate of registration.

(3) Unless otherwise provided in the by-laws, the enrolment fee shall be \$25.

4(1) If a dispute arises as to whether or not a person is entitled to be registered as a member of the Guild pursuant to section 3(1)(b), the person requesting registration may apply by originating notice to the Court of Queen's Bench for an order directing the registrar to register him as a member of the Guild.

(2) On hearing the application and any evidence either oral or by affidavit that may be required, the Court may

- (a) refuse the application, or*
- (b) grant the application and order the registrar to register the applicant as a member of the Guild,*

(6) *Section 8(2) is amended by striking out “participating”.*

(7) *Section 10 is repealed and the following is substituted:*

Council

10(1) The council of the Association shall consist of the following:

- (a) not fewer than 6 members 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, 2 members of the public, or when the number of persons elected under clause (a) is more than 10, 3 members of the public, who shall be appointed for a term of not more than 3 years by the Lieutenant Governor in Council after consultation with the council;
- (c) members, if any, appointed by the council by virtue of their office.

(2) A member of the council 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.

(3) Notwithstanding subsection (2), a member of the council appointed under subsection (1)(b) may hold office for not more than 6 consecutive years.

with or without costs in any case.

5(1) Any person who is registered as a member of the Guild shall, according to his choice, be classified as either a participating member or a non-participating member of the Guild.

(2) Participating membership entitles the member to all rights, privileges and benefits of the Guild.

(3) Non-participating members are governed by this Act and all by-laws made under it and affecting the members of the Guild, but they do not have a vote at any meeting of the Guild and are not entitled to any benefits of the Guild.

(6) Section 8(2) presently reads:

(2) The president and the vice-president shall be elected by the participating members of the Guild from their number.

(7) Section 10 presently reads:

10 The council of the Guild shall consist of the president, the vice-president and any other number of participating members that may be prescribed in the by-laws of the Guild.

(4) The Lieutenant Governor in Council may revoke the appointment of a member of the council appointed under subsection (1)(b).

(5) The Minister may pay to a member of the council appointed under 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.

(6) 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 (4) of the appointment of a member of the council, or
- (c) the resignation from the council of a member appointed under subsection (1)(b).

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

(8) A person who is a member of the council by virtue of his office does not have voting rights on the council.

(8) Section 11 is repealed.

(8) Section 11 presently reads:

11(1) A quorum of the council must not be fewer than 1/2 the members.

(2) When a vacancy occurs in the council by reason of the suspension from practice of a council member or the removal of a council member's name from the register or from any other cause or when the council declares a vacancy by reason of the physical or mental disability of a council member, the council shall appoint a participating member of the Guild to fill the vacancy until the next annual meeting of the Guild.

(9) Section 12 is repealed and the following is substituted:

Council's
duties

12 The council shall manage and conduct the business and affairs of the Association and may exercise all the rights and powers of the Association.

(10) The following is added after section 12:

Annual report

12.1(1) The council shall submit to the Minister an annual report on the business and affairs of the Association as the Minister requires in a form satisfactory to the Minister.

(2) The Minister, on receipt of the annual report of the Association, shall 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.

(11) The heading preceding section 13 is repealed and the following is substituted:

Regulations and By-laws

(12) Sections 13, 14 and 15 are repealed and the following is substituted:

Regulations

13(1) The council may make regulations

- (a) respecting procedures for the registration of persons as members of the Association;
- (b) establishing conditions, including character requirements, to be met by applicants for registration as members of the Association;
- (c) establishing a register for each category of member of the Association;
- (d) prescribing the matters to be entered by the registrar in the registers;
- (e) respecting conditions to be met by an applicant for annual enrolment as a member of the Association;

(3) The council shall hold 2 meetings in each year at the times and places that are from time to time fixed by the council.

(9) Section 12 presently reads:

12 The council shall manage and conduct the business and affairs of the Guild and may exercise all powers of the Guild.

(10) Requirement for an annual report.

(11) The heading preceding section 13 presently reads:

By-laws of the Guild

(12) Sections 13, 14 and 15 presently read:

13(1) All by-laws of the Guild are subject to the approval of the Lieutenant Governor in Council.

(2) A by-law of the Guild may only be passed by the Guild at an annual general meeting or at a general meeting called for that purpose.

14(1) The Guild may make by-laws providing for

- (a) the government and discipline of the members of the Guild;*
- (b) the purchase, management and sale of the property of the Guild;*
- (c) the maintenance of the Guild by levy or contributions or otherwise;*
- (d) the management of the Guild generally;*
- (e) the advancement of the standards of ophthalmic dispensers;*

- (f) respecting temporary certificates of registration in eye glasses dispensing or contact lens dispensing, who may hold a temporary certificate, the conditions under which a temporary certificate may be issued and the procedures a holder may perform;
- (g) respecting the procedures for hearings, inquiries and preliminary investigations by the registrar or a person appointed by him, the discipline committee or the council in respect of the practice of a member of the Association against whom a complaint has been made;
- (h) respecting the costs payable by a member of the Association that may be awarded under section 26(1);
- (i) governing the publication of a notice of a reprimand or of suspension or cancellation of a certificate of registration in a form and manner prescribed by the council;
- (j) prescribing standards for the practice of opticianry and for the conduct of opticians;
- (k) respecting the establishment and operation by the council of a compulsory continuing education program for members of the Association;
- (l) respecting any restrictions on advertising by members of the Association;
- (m) prescribing the standards of quality of ophthalmic appliances dispensed or supplied by members of the Association;
- (n) prescribing the information that members of the Association are required to provide to the Association;
- (o) requiring members to carry professional liability insurance and governing the minimum to be carried.

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

- (f) *the advancement of standards for ophthalmic appliances;*
- (g) *enrolment fees and annual fees;*
- (h) *the calling and conduct of its meetings and proceedings;*
- (i) *the appointment, duties and removal of officers or servants of the Guild and their remuneration;*
- (j) *the time and place of the annual meeting and other meetings of the Guild and the necessary notice.*
- (k) *any other matter or thing pertaining to the management and affairs of the Guild.*

(2) *An annual fee prescribed by the by-laws must not exceed \$150 in any year.*

15 The Guild may make by-laws governing the election of the president, the vice-president and the members of the council and without restricting the generality of the foregoing the by-laws may provide for

- (a) *the time and place of the election;*
- (b) *the division of Alberta into electoral districts;*
- (c) *the nomination and qualifications of candidates;*
- (d) *the appointment of a presiding officer;*
- (e) *the form of ballot to be used;*
- (f) *the procedure for the holding of the election and determining the persons elected;*
- (g) *the duration of the terms of office of the persons elected.*

(a) a majority of the members of the Association

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

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

and

(b) the Lieutenant Governor in Council.

(3) For the purposes of subsection (2), “members” does not include honorary members or other non-practising members.

By-laws

14(1) The council may make by-laws

(a) providing 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 purchase, management and sale of the property of the Association;

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

(e) subject to this Act, respecting the nomination, election, number and terms of office of council members, other than members appointed under section 10(1)(b), and of officers of the Association;

(f) respecting the division of Alberta into electoral districts;

(g) providing for the appointment of acting members and those who are members by virtue of their office and prescribing their procedures, duties and functions;

(h) providing for the term of office of a 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 a 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;

- (i) prescribing the number of members that constitutes a quorum at meetings of the Association, the council, the practice review board or the discipline committee;
- (j) 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;
- (k) respecting the fees, dues and levies payable to the Association by members of the Association;
- (l) respecting the removal by the registrar from the register of a memorandum or entry made in it under this Act, the regulations or the by-laws;
- (m) governing the publication by a registrar of the names of successful applicants for registration;
- (n) subject to this Act, governing the appointment of members to the discipline committee and the practice review board, the designation of the chair and vice-chair, and the procedures for filling any vacancy on the discipline committee or the practice review board;
- (o) governing the establishment, operation and procedures of committees, the appointment of members and the procedures for filling vacancies on committees;
- (p) establishing honorary or other non-practising categories of membership in the Association and prescribing the privileges and obligations of such membership;

- (q) 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, amend or repeal regulations or by-laws;
- (r) prescribing fees and expenses payable to members of the council and members of committees established under this Act or the by-laws for attending to the business of the Association;
- (s) requiring members to maintain an address in Alberta and to inform the registrar of any change to that address;
- (t) authorizing the council to prescribe forms for registration or any other documents required under this Act;
- (u) prescribing the date on which annual registrations expire;
- (v) respecting the holding of votes by mail;
- (w) establishing and providing for the publishing of a code of ethics respecting the practice of opticianry, the maintenance of the dignity and honour of the profession and the protection of the public interest.

(2) A by-law under subsection (1) does not come into force unless it is approved by a majority of the members of the Association

- (a) present and voting at a general meeting, or
- (b) voting in a vote by mail conducted in accordance with the by-laws.

(3) For the purposes of subsection (2), “members” does not include honorary members or other non-practising members.

(4) The *Regulations Act* does not apply to by-laws of the Association.

(13) *Section 16(1) is repealed and the following is substituted:*

(13) Section 16(1) presently reads:

Voting at
election

16(1) Every member of the Association in good standing is entitled to vote at an election.

(1.1) For the purposes of subsection (1), “member” does not include an honorary member or other non-practising member.

(14) The heading preceding section 18 and sections 18 and 19 are repealed.

(15) Sections 20 to 30 are repealed and the following is substituted:

Definitions

20 For the purposes of sections 21 to 29.2,

- (a) “chair” means the chair of the discipline committee and includes a vice-chair;

16(1) Every participating member of the Guild in good standing is entitled to vote at an election.

(14) The heading preceding section 18 and sections 18 and 19 presently read:

Annual Roll

18(1) The registrar shall prepare an annual roll in June of each year.

(2) The annual roll shall contain the name and the business and home address of each participating and non-participating member of the Guild who has paid his annual fee for the current year.

(3) The annual roll shall be divided according to electoral districts and the names of the members residing in each district shall be listed in alphabetical order for that district.

(4) If it is at any time established to the satisfaction of the council that there has been entered in the annual roll the name of a person who is not entitled to have his name so entered, the name shall be removed from the roll by order of the council.

(5) If it is at any time established to the satisfaction of the council that there has been removed or not entered in the annual roll the name of a person who is entitled to have his name so entered, the name shall be entered in the roll by order of the council.

(6) The registrar when called on to do so shall provide the Minister with a copy of an annual roll.

19 Notwithstanding anything in this Act, the council may suspend a member who is in default of payment for a period exceeding 3 months of an amount owing by him to the Guild as an annual fee, levy or contribution, but on payment of the amount owing and a fee of \$5, the suspension is thereby cancelled.

(15) Sections 20 to 30 presently read:

20(1) The council may order

*(a) the removal of the name of a member from the register,
or*

- (b) “conduct” includes any act or omission;
- (c) “investigated person” means
 - (i) a member of the Association, or
 - (ii) if section 21(3) applies, a former member of the Association

with respect to whose conduct an investigation or hearing is held under this Act;

- (d) “preliminary investigator” means a person appointed to conduct a preliminary investigation under this Act.

Discipline
committee

20.1(1) There is hereby established a discipline committee composed of not fewer than 4 persons as follows:

- (a) not fewer than 3 members of the Association appointed by the council in accordance with the by-laws, and
- (b) one member of the public who is appointed for a term of not more than 3 years by the Lieutenant Governor in Council in consultation with the council.

(2) Notwithstanding subsection (3), a member of the discipline committee appointed under subsection (1)(b) may hold office for not more than 6 consecutive years.

(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 a member of the discipline committee appointed under subsection (1)(b) travelling and living expenses incurred by that member for attendance at a meeting of the discipline committee away from his usual place of residence and fees in an amount prescribed by the Minister.

(5) The Lieutenant Governor in Council may, after consultation with the council, revoke the appointment of a member of the discipline committee appointed under subsection (1)(b).

- (b) the suspension from practice of a member for a fixed period,*

when that member is guilty of conduct unbecoming an ophthalmic dispenser.

(2) The question of whether a member of the Guild is guilty of conduct unbecoming an ophthalmic dispenser shall be determined by the council or, on appeal, by the Court of Queen's Bench.

(3) For the purposes of subsection (1), the following acts are deemed to be conduct unbecoming an ophthalmic dispenser:

- (a) supplying frames and lenses of poor optical and mechanical quality or supplying any ophthalmic appliance that is of a lesser standard of quality than that prescribed by the Board;*
- (b) making unreasonable charges to the public;*
- (c) soliciting or canvassing from house to house or place to place or by mail;*
- (d) advertising of his practice or business premises by means prohibited by the by-laws of the Guild;*
- (e) allowing a person who is not a member of the Guild to practise ophthalmic dispensing with him, in his name, or under his patronage, or under any style in his business premises;*
- (f) the committing of an indictable offence;*
- (g) the committing of an offence under this Act or the regulations;*
- (h) any act specified by the by-laws of the Guild to be conduct unbecoming an ophthalmic dispenser.*

21(1) The council shall appoint an investigating committee of 3 members of the Guild to inquire into and ascertain the facts of any matter of complaint against a member of the Guild which may be referred to the committee by the council or the president.

(2) The committee, subject to this Act and the by-laws of the Guild, may regulate

- (a) the convening, notice, place, management, conduct and adjournment of its meetings,*
- (b) the mode of deciding questions,*
- (c) its rules of procedure and evidence, and*
- (d) generally, the transaction and management of its business.*

Unskilled
practice or
professional
misconduct

(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 discipline committee under subsection (1)(b),
- (b) the revocation under subsection (5) of the appointment of a member of the discipline committee, or
- (c) the resignation as a member of the discipline committee of a member appointed under subsection (1)(b).

(7) The failure of a member of the discipline committee appointed under subsection (1)(b) to attend a meeting of the discipline committee shall not be construed as affecting or restricting the discipline committee from exercising any powers or performing any duties at that meeting.

20.2(1) Any conduct of an investigated person 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 opticianry generally, or
- (d) displays a lack of knowledge of or lack of skill or judgment in the practice of opticianry

whether or not that conduct is disgraceful or dishonourable, may constitute either unskilled practice of opticianry 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 found to be so under subsection (1).

22(1) At least 10 days' notice of the date, time and place of the meeting of the committee for taking evidence or otherwise ascertaining the facts shall be served on the member whose conduct is the subject of inquiry.

(2) The notice shall contain a statement of the complaint against the member.

(3) If the person whose conduct is the subject of the inquiry does not attend, though notified, the committee may proceed in his absence.

(4) The meetings of the committee shall be held in private.

23(1) The member whose conduct is the subject of inquiry may be represented by counsel.

(2) The evidence of the witnesses shall be taken under oath.

(3) The chairman of the committee may administer oaths to witnesses.

(4) There shall be full right to cross-examine all witnesses called, and examine all documents and reports, and to adduce evidence in defence and in reply.

24(1) The committee and any party to the proceedings may obtain by praecipe from the Court of Queen's Bench a subpoena for the attendance of witnesses and the production of relevant books, documents and things.

(2) Witnesses are entitled to the same allowances as witnesses attending on the trial of an action in the Court of Queen's Bench.

25(1) The committee shall report in writing to the council giving a summary of the evidence adduced, its findings and any recommendations it considers advisable.

(2) The absence of one member of the committee during the inquiry does not invalidate the report.

(3) On considering the report of the committee the council shall dismiss the complaint or make an order under section 20(1).

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

(5) A copy of the order, with the council's findings and reasons, shall be served on the member whose conduct was the subject of the inquiry.

(6) When the complaint is found to be frivolous or vexatious the council may order the payment by the Guild or the person making the complaint of any costs it considers just to the member whose conduct has been the subject of the inquiry.

Complaints

21(1) A person may complain in writing to the registrar about the conduct of a member of the Association, and the complaint shall be dealt with in accordance with this Act and the regulations.

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

(3) A complaint respecting the conduct of a member of the Association whose membership has been cancelled or suspended 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 not occurred.

Preliminary investigation

21.1 If a complaint is made to the registrar under section 21, the registrar, forthwith on receipt of the complaint, may commence or appoint a preliminary investigator who is not a member of the discipline committee or the council to commence a preliminary investigation into the conduct of the member of the Association and shall notify the member of the Association in writing that a preliminary investigation into his conduct will be conducted, giving reasonable particulars of the matter to be investigated.

Report of preliminary investigator

21.2(1) A preliminary investigator may

- (a)** request any person to answer any questions and to produce to him any models, 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 preliminary investigator 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.

(3) If a member of the Association does not co-operate with a preliminary investigator, the preliminary investigator 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 professional misconduct.

26(1) When the council orders the removal of a member's name from the register or orders the suspension of a member from practice, it may direct that the costs of and incidental to the inquiry be paid by that member.

(2) After taxation of the costs by the taxing officer of the Court at Edmonton or Calgary, execution may issue out of the Court of Queen's Bench for the recovery thereof in like manner as on a judgment in an action in that Court.

(3) The costs to be taxed and allowed shall, as far as practical, be the same as the like costs in an action in the Court.

(4) The taxing officer may also allow any fees and disbursements for work done or proceedings taken before notice of complaint he considers just.

(5) Any costs that are not ordered to be paid by the member whose conduct was the subject of the inquiry or by the person who made the complaint shall be paid by the Guild.

27 No action lies against the Guild, the council or the committee or any member thereof for any act done in proceedings taken in good faith or orders made or enforced under the disciplinary provisions of this Act or the by-laws of the Guild.

28 A person whose name has been removed from the register or who has been suspended from practice by order of the council may appeal from the order either

- (a) to a general meeting of the Guild by ordinary resolution, or*
- (b) directly to a judge of the Court of Queen's Bench in chambers by originating notice.*

29(1) The judge shall consider

- (a) the proceedings before the committee and the evidence taken,*
- (b) the report of the committee, and*
- (c) the order of the council certified by the chairman of the committee or by the registrar.*

(2) The judge may

- (a) receive further evidence by oral examination or by affidavit, or*
- (b) direct a trial to determine any or all of the matters in issue.*

(3) The judge on the hearing of the appeal may

(4) A preliminary investigator shall forthwith 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

22(1) The registrar or the member of the discipline committee to whom a report is provided under section 21.2(4) 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 opticianry or professional misconduct,

or

- (b) refer the matter under investigation in writing to the discipline committee.

(2) 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 Committee, as the case may be.

Appeal of
complainant
to discipline
committee

22.1(1) A complainant who is served with a notice under section 22 that no further action will be taken may, within 30 days of the receipt of the notice, 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

- (a) confirm the order to the council,*
- (b) restore the name of the appellant to the register,*
- (c) cancel, reduce or lengthen the appellant's suspension from practice, or*
- (d) make any other order that to the judge seems just, and award costs in his discretion.*

30 Except during the period that an appeal is pending before a judge, the council at any time may

- (a) order the restoration to the register of the name of a person whose name has been removed, or*
- (b) cancel or reduce the period of suspension of a person from practice,*

on any terms and conditions the council considers just.

	<p>matter under investigation should be the subject of a hearing,</p> <p>and shall notify the complainant in writing of its decision.</p>
Representa- tion by counsel	<p>22.2(1) The Association and the investigated person may be heard and be represented by counsel at a hearing before the discipline committee.</p> <p>(2) The discipline committee may be represented by counsel at a hearing before the discipline committee.</p> <p>(3) A hearing before the discipline committee shall be open to the public unless</p> <ul style="list-style-type: none"> (a) the complainant requests that the hearing be held in private because of the confidential nature of the matters to be heard, or (b) in the opinion of the discipline committee, the interests of any person other than the investigated person would be detrimentally affected if the hearing were not held in private.
Hearing before discipline committee	<p>23(1) On referral to it of a matter under section 22(1)(b) or on determining under section 22.1(2)(b) that a hearing should be held, the discipline committee shall hold a hearing within 90 days.</p> <p>(2) The registrar shall cause to be served on the investigated person at least 30 days before the hearing date a notice of hearing stating the date, time and place at which the discipline committee will hold a hearing and giving reasonable particulars of the complaint or matter in respect of which the hearing will be held.</p>
Further investigation	<p>23.1 The discipline committee may investigate and hear any other matter related to the professional conduct or skill in practice of the investigated person that arises in the course of an investigation or hearing, but in that event the discipline committee shall serve that person at least 15 days before the hearing of the matter with notice of its intention to do so, giving reasonable particulars of the matter to be investigated.</p>

Evidence
before
discipline
committee

23.2(1) Evidence may be given before the discipline committee in any manner that the discipline 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 an investigation, hearing or review under this Act, the registrar, a preliminary investigator and any member of the council or the discipline committee are conferred with the powers of a commissioner for oaths under the *Commissioners for Oaths Act*.

Witness

24(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 any proceeding under this Act.

(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 tend to

- (a) incriminate him,
- (b) subject him to punishment under this Act,
or
- (c) 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,

but if the answer so given tends to incriminate him, subject him to punishment or establish his liability, it shall not be used or received against him in any civil proceedings, in a prosecution under this Act 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 Alberta Rules of Court.

Attendance
and
production of
documents

24.1(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 the production of any item 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

24.2(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.

Hearing in
absence of
investigated
person

(2) If the witness referred to in subsection (1) is the investigated person, his failure or refusal may be held to be professional misconduct.

25 The discipline committee, on proof of service of the notice of hearing on the investigated person in accordance with this Act, 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.

Finding of
discipline
committee

25.1(1) The discipline committee may find that the conduct of an investigated person constitutes neither unskilled practice of opticianry nor professional misconduct.

(2) The discipline committee may find that the conduct of an investigated person constitutes unskilled practice of opticianry or professional misconduct, or both, and shall deal with the investigated person in accordance with this Act.

Orders of
discipline
committee

25.2(1) If the discipline committee finds that the conduct of an investigated person constitutes unskilled practice of opticianry or professional misconduct, or both, the discipline committee may make any one or more of the following orders:

- (a) that the investigated person be reprimanded;
- (b) that the investigated person's membership in the Association be suspended, either generally or with respect to any field of the practice of opticianry for a stated period;
- (c) that the investigated person's membership in the Association be suspended, either generally or with respect to any field of the practice of opticianry, until
 - (i) he has completed a specified course of studies or obtained supervised practical experience, or

- (ii) the discipline 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 undertake to limit his practice;
- (e) that conditions be imposed on the investigated person's practice of opticianry generally or in any field of the 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 discipline committee or the council on specific matters;
- (f) that the investigated person pass a particular course of study or satisfy the discipline committee or council as to his practical competence generally or in any field of the practice of opticianry;
- (g) that the investigated person satisfy the discipline committee that a disability or addiction can be or has been overcome, and that the person's membership in the Association be suspended until the discipline committee is so satisfied;
- (h) that the investigated person take counselling that in the opinion of the discipline 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 discipline committee, were not rendered or were improperly rendered;

- (j) that the investigated person's membership in the Association be cancelled.

(2) If the discipline committee is satisfied that an investigated person has contravened an order under subsection (1), it may, without the necessity of a further hearing, cancel or suspend his membership in the Association subject to any terms it considers appropriate and shall serve the investigated person with notice of the cancellation or suspension.

Payment of
fine or costs

26(1) The discipline committee may, in addition to or instead of dealing with the conduct of an investigated person in accordance with section 25.2, order that the investigated person pay, within the time set by the order,

- (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).

(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 person's membership in the Association 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.

Written
decision

26.1 The discipline committee shall, within 60 days after the conclusion of a hearing 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 made by it, and

- (c) set out any order made under section 25.2 or 26.

Service of
decision

26.2(1) The discipline committee shall forward to the registrar

- (a) the decision, and
- (b) the record of the hearing, consisting of all evidence presented before it, including
 - (i) all exhibits,
 - (ii) all documents, and
 - (iii) a transcript of all testimony given before it, whether recorded electronically, mechanically or in handwritten form.

(2) The registrar shall, on receiving the decision of the discipline committee and the record of the hearing referred to in subsection (1), 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.

Examination
of record

27 The investigated person 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 discipline committee.

Rehearing

27.1 If there is new evidence available that was not available or that for good reason was not presented at the hearing held under section 23, the discipline committee may, with the consent of the investigated person, rehear any matter already heard by it and, for that purpose, has the same power and authority and is subject to the same duties as it had and was subject to in connection with the first hearing.

Stay of
decision

27.2(1) A decision of the discipline committee remains in effect pending an appeal to the council unless the council on application stays the decision pending the appeal.

Appeal to
council

(2) A decision of the council remains in effect pending an appeal to the Court of Appeal unless the Court on application stays the decision pending the appeal.

28(1) An investigated person or the Association may appeal to the council a finding or an 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 is served

- (a) on the investigated person, if he is appealing the decision, or
- (b) on the council, if the Association is appealing the decision.

(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.

Time of
hearing

28.1(1) The registrar shall, on receiving a notice of appeal under section 28, cause to be served on the investigated person a notice of hearing of an appeal stating the date, time and place at which the council will hear the matters appealed.

(2) The council shall 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 or the Association, extend the period referred to in subsection (2) for one or more additional periods, but no one extension may be for a period of more than 90 days.

Conduct of
hearing

28.2(1) The Association and the investigated person may appear, be heard and be represented by counsel at the hearing of an appeal before the council.

(2) 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.

(3) The appeal to the council shall be founded on a copy of the record of the proceedings before the discipline committee and the decision and order of the committee.

(4) Sections 23.2 to 25 apply to an appeal before the council.

(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) A hearing of an appeal before the council shall be open to the public unless, in the opinion of the council, the interests of any person other than the investigated person would be detrimentally affected if the hearing were not held in private.

(7) 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.

(8) The council may make any award as to the costs of the proceedings, whether before it or before the discipline committee, that it considers appropriate.

(9) 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) set out any order made by it

and shall forward the decision to the registrar.

(10) 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 of
Appeal

29(1) An investigated person or the Association may appeal to the Court of Appeal any finding or order made by the council under section 28.2.

(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

29.1(1) An appeal to the Court of Appeal shall be founded on a copy of the record of the proceedings before the council and a copy of the decision, findings and orders of the council and any further evidence received by the council, all of which must be certified by the registrar.

(2) The procedure in an appeal shall be the same, with the necessary changes, as that provided in the Alberta 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 of Appeal

29.2(1) The Court of Appeal on hearing an 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 28.2 be held before the Court of Queen's Bench.

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

Practice Review

Practice review board

29.3(1) There is hereby established the practice review board consisting of not fewer than 5 members appointed by the council.

(2) The members appointed under subsection (1) must have, in the opinion of the council, 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 opticianry.

**Powers of the
practice
review board**

29.4(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 to practise opticianry,
 - (ii) the evaluation of desirable standards of competency of opticians 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 opticianry under this Act and the regulations, and
 - (iv) the practice of opticianry generally,

and

- (b) may conduct a review of the practice of a member of the Association in accordance with this Act and the regulations.

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

(3) The practice review board has all the powers and duties of the discipline committee under this Act for the purpose of carrying out its powers under subsection (1).

(4) Sections 21 to 29.2 apply to an inquiry or review by the practice review board as if the inquiry or review

Referral to
discipline
committee

were an investigation or hearing by the discipline committee under those sections.

29.5(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 discipline committee in accordance with sections 21 to 29.2.

(2) On receiving a reference under subsection (1), the discipline committee shall proceed with an investigation and hearing under sections 21 to 29.2 as if the reference were a complaint.

(16) The heading preceding section 31 and section 31 are repealed and the following is substituted:

Registration

Authority of
Universities
Co-ordinating
Council

31(1) The Universities Co-ordinating Council

- (a)** may grant to and withdraw from an academic institution the designations “approved program in eye glasses dispensing” and “approved program in contact lens dispensing”,
- (b)** shall set the term of practical experience, if any, to be completed by applicants for registration under this Act, and
- (c)** shall set or approve the examination, if any, to be passed by applicants for registration as members of the Association.

(2) A grant or withdrawal of a designation under subsection (1)(a) and a term of practical experience set under subsection (1)(b) are subject to the approval of the Lieutenant Governor in Council.

(3) The programs in eye glasses dispensing and in contact lens dispensing that exist in Alberta on the date this section comes into force for the training of persons who apply to be registered as members of the Association are deemed to be approved programs in eye glasses dispensing or in contact lens dispensing.

(16) The heading preceding section 31 and section 31 presently read:

Ophthalmic Dispensers Examining Board

31(1) There is hereby established a board to be known as the Ophthalmic Dispensers Examining Board consisting of 7 members appointed by the Minister

- (a) 2 of whom must be members of the Guild,*
- (b) one of whom must be a physician,*
- (c) 2 of whom must be members of the public at large, and*
- (d) one of whom must be the secretary appointed under subsection (3).*

(2) The Minister shall appoint one of the members of the Board as chairman and may appoint one of the members as acting chairman.

(3) The Minister may appoint a secretary of the Board who must be an employee of the Government whose position is under the Minister's administration.

(4) Members of the Board or its delegates, other than employees of the Government, shall receive expenses, allowances and remuneration for their services as the Minister may prescribe.

Application for
registration

31.1(1) An application for registration as a member of the Association shall be approved by the registrar if the applicant

- (a) produces documentation satisfactory to the registrar that shows that
 - (i) the applicant is a graduate of an approved program in eye glasses dispensing or an approved program in contact lens dispensing required for membership in the Association, or
 - (ii) the Universities Co-ordinating Council is satisfied that the applicant's academic qualifications are substantially equivalent to the qualifications required for graduation from an approved program in eye glasses dispensing or an approved program in contact lens dispensing required for membership in the Association,
- (b) has completed the term of practical experience, if any, required by the Universities Co-ordinating Council or the regulations,
- (c) has passed the examination, if any, set or approved by the Universities Co-ordinating Council or the Association, and
- (d) meets the character and other conditions established in the regulations of the Association.

(2) Notwithstanding subsection (1), the registrar shall approve an application for registration as a member if the applicant applies on or before September 1, 1994 and produces documentation satisfactory to the registrar that shows that the applicant was eligible for membership in the Association on September 1, 1992.

Registration

31.2(1) The registrar shall enter in the eye glasses dispensing register or in the contact lens dispensing register of the Association the name of a person

- (a) whose application for registration as an eye glasses dispensing member or a contact lens dispensing member has been approved under this Act, and
- (b) who has paid the fees prescribed in the by-laws of the Association.

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

Removal from register

31.3(1) The registrar shall not remove the registration of a member from a register on the member's request unless the request has been approved by the council.

(2) When a request for the removal of a registration from a register is approved by the council,

- (a) the registration shall be removed from the register, and
- (b) the member requesting the removal shall, on being notified of the approval, send to the registrar any certificate of registration issued to him.

Cancellation of registration

31.4(1) The registrar, after the expiration of 30 days following the service of a written notice on a member or a person whose name appears on a register, may cancel the registration of that person if he

- (a) is in default of payment of annual fees, or
- (b) fails to pay a penalty, costs or any other fees, dues or levies payable under this Act.

(2) The notice under subsection (1) shall state that the registrar may cancel the registration of a person unless

- (a) annual fees are paid, or
- (b) any other penalties, costs, dues or levies are paid as indicated in the notice.

(3) If the registration of a person is cancelled under this section, that person shall, on request, send his certificate of registration to the registrar.

(4) If a registration is cancelled under this section, the registrar may, subject to the regulations and by-laws, reinstate that registration in a register and, if necessary, reissue the certificate of registration.

(17) Section 32 is repealed.

(17) Section 32 presently reads:

32 Subject to the approval of the Lieutenant Governor in Council, the Board may make regulations

- (a) prescribing standards of competency and proficiency to be maintained and observed by members of the Guild;*
- (b) prescribing standards of quality of ophthalmic appliances supplied by members of the Guild;*
- (c) governing the time, place and manner of examinations of applicants for certificates of competency and for special certificates of competency in dispensing contact lenses;*
- (d) prescribing the qualifications which applicants for certificates of competency must possess in order to take either written or practical examinations set by the Board;*
- (e) prescribing the manner of proof as to technical qualifications, experience, education and good character;*
- (f) providing for any matter in connection with applications for or the issuing of certificates of competency or special certificates of competency in dispensing contact lenses;*
- (g) prescribing the conditions under which a certificate of competency or a special certificate of competency in dispensing contact lenses may be cancelled;*
- (h) providing for the maintenance of records of the Board;*
- (i) providing for the establishment of educational training and apprenticeship programs and prescribing the qualifications of persons to be admitted to apprenticeship and the length of apprenticeship;*
- (j) providing for the rules of procedure of the Board;*
- (k) prescribing the fees payable to the Department under the Minister's administration in connection with applications*

(18) Section 33 is repealed.

(19) Sections 34 to 36 are repealed and the following is substituted:

to the Board, the issuing of certificates, examinations, or any service provided by the Board;

- (l) prescribing forms for use in connection with the regulations;*
- (m) specifying the contraventions of the regulations that constitute offences;*
- (n) governing any other matter considered necessary to carry out the purposes of this Act.*

(18) Section 33 presently reads:

33(1) The Board shall

- (a) prescribe a program of studies and training for student ophthalmic dispensers,*
- (b) evaluate the credentials of applicants for certificates,*
- (c) set and conduct practical examinations,*
- (d) set written examinations, and*
- (e) evaluate the qualifications of applicants and the proof of their qualifications submitted to the Board.*

(2) A certificate of competency or a special certificate of competency in dispensing contact lenses shall be issued on behalf of the Board by the chairman or, in his absence, by the acting chairman.

(3) The Board may, by resolution approved by the Minister, delegate

- (a) to a committee consisting of members of the Board, any of the Board's duties under subsection (1) either generally or in respect of any class of applicant, or*
- (b) to any person who in the opinion of the Board is qualified for the purpose, any of the Board's duties under subsection (1)(b), (c) or (e) either generally or in respect of any class of applicant.*

(19) The Eye Care Disciplines Advisory Committee is established. Sections 34 to 36 presently read:

34(1) A certificate of competency shall be issued to a person who

- (a) passes a written examination set by the Board, or*
- (b) passes a practical examination set by the Board,*

Advisory
Committee
established

Eye Care Disciplines Advisory Committee

34(1) There is hereby established the Eye Care Disciplines Advisory Committee consisting of

- (a) one member of each of the following, appointed by the Minister from a list of nominees prepared by each respective Association:
 - (i) The Alberta College of Optometrists;
 - (ii) the Alberta Opticians Association;
 - (iii) The Ophthalmological Society of Alberta,

and

- (b) not fewer than 4 members of the public appointed by the Minister.

(2) The Minister shall designate one of the members appointed under subsection (1)(b) to act as the chair of the Advisory Committee and shall appoint an employee of the Government to act as the secretary of the Advisory Committee.

(3) The failure of a member of the Advisory Committee appointed under subsection (1)(b) to attend a meeting of the Committee does not affect or restrict the Advisory Committee in exercising any powers or performing its duties.

(4) A member of the Advisory Committee may hold office for not more than 6 consecutive years.

(5) The Minister shall pay to a member of the Advisory Committee appointed under subsection (1)(b) who is not an employee of the Government remuneration for his services and an allowance for the expenses necessarily incurred in the performance of his duties under this Act at the rates set by the Minister.

Authority of
Committee

34.1 The Advisory Committee shall examine and make recommendations to the Minister or the Minister of Health, as the case may be, relating to any matter concerning eye care that is referred to it by that minister.

and who pays any prescribed fees and otherwise qualifies under the regulations.

(2) A special certificate of competency in dispensing contact lenses shall be issued to a holder of a certificate of competency who

(a) passes a written examination set by the Board, or

(b) passes a practical examination set by the Board

and who pays any prescribed fee and otherwise qualifies under the regulations.

35(1) If the Board refuses to allow an applicant for a certificate of competency, or a special certificate of competency, to take a practical examination set by the Board on the grounds that the applicant is not qualified to take the examination, the applicant may apply by originating notice to the Court of Queen's Bench for an order directing the Board to permit the applicant to take that examination.

(2) On hearing the application and any evidence, either oral or by affidavit that may be required, the Court may

(a) refuse the application, or

(b) grant the application and order the Board to permit the applicant to take a practical examination set by the Board,

with or without costs in any case.

36 The Board or the Court, in assessing the qualifications of any applicant for registration as a member of the Guild, or for a certificate of competency or a special certificate of competency, may credit the applicant with any experience in Alberta prior to April 1, 1975, notwithstanding that it was or may have been in contravention of section 37(1) or (2) or 38.

Meetings	<p>35(1) The Advisory Committee shall meet at least twice in each year.</p> <p>(2) An employee of the Department of Health designated by the Minister of Health must be given notice of and may attend meetings of the Advisory Committee.</p>
Supplies and services	<p>35.1 The Minister may provide to the Advisory Committee, at no cost to it, supplies and the services of employees of the Government under his administration to carry out any work that in the opinion of the Minister may reasonably be required by the Advisory Committee to enable it to perform its functions under this Act.</p>
Annual report	<p>36 As soon as possible after the end of each year, the Advisory Committee shall prepare and submit to the Minister a report summarizing the activities of the Advisory Committee in that year.</p>

(20) Section 37 is amended

	<p><i>(a) by repealing subsection (1) and substituting the following:</i></p>
Membership	<p>37(1) No person shall practise as an optician or undertake any act within the practice of opticianry unless he is a member of the Association.</p>
	<p><i>(b) by repealing subsection (2) and substituting the following:</i></p> <p>(2) No person other than a member of the Association shall use the designation “optician”, “registered optician”, “ophthalmic dispenser”, “registered ophthalmic dispenser”, “optical dispenser” or any other style or designation implying that he is an optician.</p>
	<p><i>(c) by repealing subsection (4) and substituting the following:</i></p> <p>(4) No person whose registration as a member of the Association has been cancelled or suspended shall practise as an optician or undertake any act within the practice of opticianry until the registration has been reinstated or the suspension has ended.</p>

(20) Section 37 presently reads:

37(1) No person shall practise as an ophthalmic dispenser or perform any act of ophthalmic dispensing unless he is a member of the Guild.

(2) No person other than a member of the Guild shall use the designation "ophthalmic dispenser", "registered ophthalmic dispenser", "optical dispenser" or any other style or designation implying that he is an ophthalmic dispenser.

(3) When a member uses any designation mentioned in subsection (2) he shall use the full designation and not an abbreviation of it.

(4) No member of the Guild whose certificate of competency has been cancelled shall practise as an ophthalmic dispenser or do any act of ophthalmic dispensing until a new certificate of competency has been issued to him.

(21) *Section 38 is amended*

- (a) *by striking out* “Guild and the holder of a certificate of competency in dispensing contact lenses” *and substituting* “Association and registered in the contact lens dispensing register under this Act”;
- (b) *by striking out* “a complete prescription of, and subject to the direction of and under the supervision of, an ophthalmologist or optometrist” *and substituting* “an optical prescription”.

(22) *The following is added after section 38:*

Contact lens
information

38.1 Prior to dispensing contact lenses, a member of the Association shall advise the patient in writing to return to the person who prescribed the contact lenses for an evaluation, and after completing all the services required to dispense contact lenses, a member of the Association shall offer the patient a written copy of the specifications of the contact lenses dispensed.

(23) *Section 39 is amended by striking out “section 37 or 38” and substituting “section 37, 38 or 38.1”.*

(24) *The following is added after section 39:*

Injunction

39.1 Subject to sections 40 to 42, 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 37, 38 or 38.1, notwithstanding any penalty that may be provided for by this Act in respect of that contravention.

(25) *Section 40 is amended*

- (a) *by repealing clause (a);*
- (b) *by striking out “Guild” wherever it occurs and substituting “Association”.*

(21) Section 38 presently reads:

38 No person shall

- (a) supply or prepare a contact lens, or*
- (b) measure, adjust or adapt a contact lens for an intended wearer,*

unless he is a member of the Guild and the holder of a certificate of competency in dispensing contact lenses and does so in accordance with a complete prescription of, and subject to the direction of and under the supervision of, an ophthalmologist or optometrist.

(22) Requirement for giving information.

(23) Section 39 presently reads:

39 A person who contravenes section 37 or 38 is guilty of an offence.

(24) Injunction.

(25) Section 40 presently reads:

40 Nothing in this Act prohibits

- (a) an optician who is employed in a wholesale or retail optical laboratory or an apprentice ophthalmic dispenser who is apprenticing in accordance with the regulations,*

Application of
the Optometry
Profession
Act

(26) *Section 42 is repealed and the following is substituted:*

42 Nothing in the *Optometry Profession Act* shall be construed as prohibiting a member of the Association from practising as an optician or undertaking any act within the practice of opticianry, including using verification devices for the practice of opticianry.

(27) *Section 44 is amended*

- (a) *by striking out “or the regulations”;*
- (b) *in clause (a) by striking out “\$500” and substituting “\$2000”;*
- (c) *in clause (b) by striking out “\$1000” and substituting “\$4000”;*
- (d) *by repealing clause (c) and substituting the following:*
 - (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.

(28) *Section 45 is amended*

- (a) *by striking out “or the regulations” wherever it occurs;*
- (b) *in subsection (2) by striking out “, as the case may be”.*

from performing work or services ordinarily performed by an ophthalmic dispenser,

- (b) the sale of protective glasses for industrial purposes, coloured glasses that are not ophthalmic appliances, goggles or magnifying glasses not sold or designed for the relief, prevention or correction of visual or ocular anomalies of the eyes, or*
- (c) any person from operating a business devoted wholly or partly to the supplying of ophthalmic appliances for intended wearers, if at all times a member of the Guild is in charge of supplying the ophthalmic appliances and all ophthalmic dispensing done in the course of the operation of that business is performed by members of the Guild.*

(26) Section 42 presently reads:

42 Nothing in the Optometry Profession Act shall be construed as prohibiting a member of the Guild from practising as an ophthalmic dispenser or performing any act of ophthalmic dispensing.

(27) Section 44 presently reads:

44 A person who is guilty of an offence under this Act or the regulations is liable

- (a) for a first offence to a fine of not more than \$500 and in default of payment to imprisonment for not more than 30 days,*
- (b) for a 2nd offence to a fine of not more than \$1000 and in default of payment to imprisonment for not more than 60 days, and*
- (c) for a 3rd or subsequent offence to imprisonment for not more than 6 months.*

(28) Section 45 presently reads:

45(1) A prosecution under this Act or the regulations may be commenced within one year from the day the alleged offence was committed, but not thereafter.

(2) In a prosecution under this Act or the regulations it is sufficient proof of an offence if it is proved that the accused has committed a

(29) *Section 46(2) is amended*

- (a) *by striking out “secretary of the Board” and substituting “registrar”;*
- (b) *by striking out “competency or a special certificate of competency in dispensing contact lenses” and substituting “registration in the eye glasses dispensing register or in the contact lens dispensing register”.*

(30) *In the following provisions “Guild” is struck out wherever it occurs and “Association” is substituted:*

sections 6 to 9;
section 17;
section 43;
sections 46 and 47.

(31) *The Alberta Health Care Insurance Act is amended*

- (a) *by repealing section 1(p) and substituting the following:*

(p) “optician” means

- (i) with reference to goods and services provided in Alberta, a person who is a member of the Alberta Opticians Association and holds a certificate of registration in the eye glasses dispensing register or a certificate of registration in the contact lens dispensing register under the *Opticians Act*, and
 - (ii) with reference to goods and services provided in a place outside Alberta, a person lawfully entitled to practise opticianry in that place;
- (b) *in section 1(x) by striking out “ophthalmic dispenser” and substituting “optician”;*
 - (c) *by repealing section 8(4)(g) and substituting the following:*

single act prohibited by this Act or the regulations, as the case may be.

(29) Section 46(2) presently reads:

(2) In any action, proceeding or prosecution a certificate purporting to be signed by the secretary of the Board shall be admitted in evidence as prima facie proof that the person named therein was or was not on the date specified therein, the holder of a certificate of competency or a special certificate of competency in dispensing contact lenses, without proof of the office or signature of the person certifying.

(30) Consequential to the change to the name of the organization.

(31) Consequential to the change to the name of the organization.

- (g) the council of the Alberta Opticians Association, when the practitioner concerned is an optician;
- (d) *by repealing section 13(8)(g) and substituting the following:*
 - (g) the council of the Alberta Opticians Association or the discipline committee of that Association,

Optometry Profession Act

3(1) The Optometry Profession Act is amended by this section.

(2) Section 1 is amended

- (a) *in clause (a) by adding “established under section 8.1” after “Optometrists”;*
- (b) *by adding the following after clause (b):*
 - (b.1) “College” means The Alberta College of Optometrists;
- (c) *in clause (c) by striking out “Association” and substituting “College”;*
- (d) *in clause (g) by adding the following after subclause (ii):*
 - (iii) the provision of other vision care services prescribed in the regulations if an authorized entity has met the requirements prescribed in the regulations;
- (e) *in clause (k) by striking out “Association” and substituting “College”.*

(3) The heading preceding section 5 is repealed and the following is substituted:

Optometry Profession Act

3(1) This section will amend chapter O-10 of the Statutes of Alberta, 1983.

(2) Section 1(a), (c), (g) and (k) presently read:

1 In this Act,

(a) "Association" means The Alberta Association of Optometrists;

(c) "Council" means the Council of the Association;

(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;

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

(3) The heading preceding section 5 presently reads:

PART 2

ALBERTA COLLEGE OF OPTOMETRISTS AND ALBERTA ASSOCIATION OF OPTOMETRISTS

(4) Section 5 is amended

- (a) *by repealing subsection (1) and substituting the following:*

Alberta
College of
Optometrists

5(1) The Alberta Association of Optometrists is continued as a corporation with the name "The Alberta College of Optometrists".

- (b) *in subsections (2) and (3) by striking out "Association" and substituting "College";*

- (c) *by repealing subsection (4).*

(5) Section 8 is repealed and the following is substituted:

Council
membership

8(1) The Council shall consist of

- (a) not fewer than 6 registered optometrists or a greater number that may be prescribed in the by-laws, each of whom shall be elected in accordance with the by-laws, and
- (b) when the number of persons elected under clause (a) is not more than 10, 2 members of the public, or when the number of persons elected under clause (a) is more than 10, 3 members of the public, who shall be appointed for a term of not more than 3 years by the Lieutenant Governor in Council after consultation with the Council.

(2) A member of the Council appointed under subsection (1)(b) may hold office for not more than 6 consecutive years.

(3) The Minister may pay to a member of the Council appointed under subsection (1)(b) fees in an amount determined by the Minister and travelling and living expenses incurred by that member for his attendance at

ASSOCIATION

(4) Section 5 presently reads:

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.

(5) Section 8 presently reads:

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.

a meeting of the Council away from his usual place of residence.

(4) The Lieutenant Governor in Council may revoke the appointment of a member of the Council appointed under subsection (1)(b).

(5) The powers, duties and operations of the Council are not affected by

- (a) the fact that no member is appointed under subsection (1)(b),
- (b) the revocation under subsection (4) 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 appointed under subsection (1)(b) to attend a meeting of the Council shall not be construed as affecting or restricting the Council in exercising any powers or performing any duties at that meeting.

(6) The following is added after section 8:

Alberta
Association of
Optometrists

8.1(1) There is hereby established a body to be known as the Alberta Association of Optometrists.

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

(3) A registered optometrist is a member of the Association and shall pay fees to the Association in accordance with the by-laws of the Association.

(4) The Association may represent registered optometrists in all matters not covered by this Act.

(5) The Association may make by-laws relating to any matter not covered by sections 9 and 10.

(6) No registered optometrist may concurrently serve on

(6) Sections 8.1 to 8.3 establish a new organization that will carry out functions such as negotiating fees payable to optometrists by the Government, and provide for a governing body for the organization.

- (a) the Council or any committee or board established by this Act, and
- (b) the governing body of the Association or any committee established by the Association to deal with the financial interests of its members.

Governing
body

8.2(1) There is hereby established a governing body for the Alberta Association of Optometrists.

(2) The governing body 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.

Office and
staff

8.3(1) The Association and the College shall each maintain a separate office and staff.

(2) Notwithstanding subsection (1), the Association and the College may have the same address until January 31, 1995.

(7) Section 9 is amended

(a) in subsection (1)

(i) by repealing clauses (i), (k), (p) and (t);

(ii) by adding the following after clause (u):

(v) prescribing vision care services for the purposes of section 1(g)(iii) and the requirements that must be met by authorized entities to be eligible to carry out those services.

(iii) by striking out "Association" wherever it occurs and substituting "College";

(b) by adding the following after subsection (2):

(3) Before the Lieutenant Governor in Council approves a regulation under subsection (1)(v), the Minister shall consult with the Eye Care Disciplines Advisory Committee established under the *Opticians Act*.

(7) Section 9(1)(i), (k), (p) and (t) and (2) presently read:

9(1) The Council may make regulations

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

(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*

(8) *Section 10 is amended*

(a) *in subsection (1)*

(i) *in clause (f) by striking out “, the Practice Review Board and the Optometric Facility Assessment Committee” and substituting “and the Practice Review Board”;*

(ii) *by adding the following after clause (w):*

(x) *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;*

(y) *prescribing the number of voting members that constitutes a quorum of the Council, the Practice Review Board, the Registration Committee or the Discipline Committee;*

(z) *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.*

(b) *by striking out “Association” wherever it occurs and substituting “College”.*

(9) *Section 12 is repealed and the following is substituted:*

Registration
Committee

12 There is hereby established a Registration Committee consisting of not fewer than 3 registered optometrists who are appointed by the Council and who, in the opinion of the Council, have a combination of knowledge and experience suitable for determining the academic qualifications and training requirements

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

and

(b) *the Lieutenant Governor in Council.*

(8) This amendment enables the Council to pass by-laws relating to these 3 matters, rather than regulations. Also changes "Association" to "College".

(9) Section 12 presently reads:

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

necessary for a person to engage in the practice of optometry.

(10) Section 25 is repealed and the following is substituted:

Practice
Review Board

25(1) There is hereby established the Practice Review Board consisting of not fewer than 5 registered optometrists who are appointed by the Council and 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.

(2) The Minister may, after consulting with the College, appoint a person who is not a registered

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.

(10) Section 25 presently reads:

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*

optometrist as a member of the Practice Review Board and may revoke the appointment of that member.

(3) The College is responsible for the travelling and living expenses and fees payable to a member appointed under subsection (2).

(4) The failure of a member appointed under subsection (2) to attend a meeting of the Board shall not be construed as affecting or restricting the Board in exercising any powers or performing any duties under this Act, the regulations or the by-laws at that meeting.

(11) Section 26 is amended

(a) in subsection (1)(a) by adding the following after subclause (ii):

(ii.1) the minimum standards to be maintained by authorized entities when carrying out diagnostic and treatment procedures,

(b) in subsections (2) and (4) by striking out “or review” wherever it occurs and substituting “, review or investigation”.

(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.

(11) Section 26 presently reads:

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,

(12) Section 27(1) is amended by striking out “or review” and substituting “, review or investigation”.

(13) Section 29 is repealed and the following is substituted:

Discipline
Committee

29(1) There is hereby established a Discipline Committee consisting of

- (a) not fewer than 3 registered optometrists appointed by the Council in accordance with the by-laws, and
- (b) one member of the public appointed for a term of not more than 3 years by the Lieutenant Governor in Council after consultation with the Council.

(2) The member of the Discipline Committee appointed under subsection (1)(b) may hold office for not more than 6 consecutive years.

(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.*

(12) Section 27(1) presently reads:

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.

(13) Section 29 presently reads:

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.

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

(4) The Lieutenant Governor in Council may revoke the appointment of the member of the Discipline Committee appointed under subsection (1)(b).

(5) The powers, duties and operations of the Discipline Committee are not affected by

- (a) the fact that no member is appointed under subsection (1)(b),
- (b) the revocation under subsection (4) of the appointment of a member of the Committee, or
- (c) the resignation from the Committee of a member appointed under subsection (1)(b).

(6) The failure of the member appointed under subsection (1)(b) to attend a meeting of the Committee shall not be construed as affecting or restricting the Committee in exercising any powers or performing any duties at that meeting.

(14) Section 32 is repealed and the following is substituted:

Preliminary
investigation

32 The Registrar shall carry out or appoint a person to carry out a preliminary investigation into the conduct of an authorized entity or student

- (a) if a complaint is made or referred to the Registrar under section 31, or
- (b) if the Registrar has reason to believe that the conduct of the authorized entity or student constitutes or may constitute unskilled practice of optometry or unprofessional conduct, whether a complaint is made or not.

(15) Section 36 is repealed.

(14) Section 32 presently reads:

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.

(15) Section 36 presently reads:

(16) Section 38(3) is amended by striking out “and the complainant”.

(17) The following is added after section 39:

Public hearing

39.1 A hearing before the Discipline Committee shall be open to the public unless

- (a) the complainant requests that the hearing be held in private because of the confidential nature of the matters to be heard, or
- (b) in the opinion of the Committee, the interests of any person other than the investigated person may be detrimentally affected if the hearing is not held in private.

(18) Section 44 is amended by striking out “or the complainant” wherever it occurs.

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.

(16) Section 38 presently reads in part:

(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.

(17) Adds a new section.

(18) Section 44 presently reads:

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

(19) Section 49 is amended

- (a) in subsection (1) by striking out “and on the complainant, if any”;*
- (b) in subsection (2) by striking out “and the complainant”.*

(20) Section 51(1) is amended by striking out “complainant” and substituting “Registrar”.

(21) Section 52 is amended

- (a) in subsection (1) by striking out “and the complainant”;*
- (b) in subsection (3) by striking out “, the complainant”.*

(22) The following is added after section 53:

Public hearing

53.1 A hearing of an appeal before the Council shall be open to the public unless, in the opinion of the Council, the interests of any person other than the investigated person may be detrimentally affected if the hearing is not held in private.

(23) Section 56(1) is amended by striking out “complainant” and substituting “Registrar”.

- (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.*

(19) Section 49 presently reads:

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.

(20) Section 51(1) presently reads:

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

(21) Section 52 presently reads in part:

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.

(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.

(22) Adds a new section.

(23) Section 56(1) presently reads:

56(1) The investigated person or the complainant may appeal to the Court of Appeal any finding or order made by the Council under section 54.

(24) *Section 61(2) is amended by striking out “Association’s” and substituting “College’s”.*

(25) *Section 62 is amended*

(a) *in subsection (1)*

(i) *by adding “, the Registrar” after “complainant”;*

(ii) *by striking out “Association” and substituting “College”;*

(b) *by repealing subsection (2).*

(26) *The following is added after section 63:*

Patient's right
to obtain
prescription or
specifications

63.1(1) In this section, “optical prescription” means a written record of the refractive error of the eye including, if appropriate, reading add, prisms and back vertex distance.

(2) An authorized entity who prescribes an ophthalmic appliance or other visual aid shall offer the patient a written copy of the optical prescription.

(3) After completing all the services required to dispense contact lenses, an authorized entity shall offer the patient a written copy of the specifications of the contact lenses.

(27) *Section 68 is repealed.*

(24) Section 61(2) presently reads:

(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.

(25) Section 62 presently reads:

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.

(26) Adds a new section.

(27) Section 68 presently reads:

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

(28) Sections 73 to 75 are repealed.

*(29) In the following sections, “Association” is struck out
wherever it occurs and “College” is substituted:*

section 6;
section 13;
section 16;

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.

(28) Sections 73 to 75 presently read:

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.

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.

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

(29) Changes all remaining references to the Association to references to the College.

section 41;
section 47;
section 64;
section 65;
section 66.

(30) *Subsection (6) comes into force on Proclamation.*

(31) *The Alberta Health Care Insurance Act is amended by repealing section 13(8)(c) and substituting the following:*

- (c) the Council of The Alberta College of Optometrists or the Discipline Committee of that College,

Pharmaceutical Profession Act

4(1) *The Pharmaceutical Profession Act is amended by this section.*

(2) *Section 1(1) is amended*

- (a) *by repealing clause (d) and substituting the following:*

- (d) “certified pharmacy” means a pharmacy located in a wholesale operation, compounding centre, repackaging facility or other operation that handles drugs in which the practice of pharmacy takes place, in respect of which a pharmacy certificate is issued under section 31;

- (b) *by adding the following after clause (h):*

- (h.1) “exclusive scope areas of the practice of pharmacy” means

- (i) responsibility for preparing, distributing and controlling drugs in a pharmacy,
- (ii) compounding drugs,
- (iii) dispensing drugs,
- (iv) selling drugs by retail,

(30) Coming into force.

(31) Consequential amendment.

Pharmaceutical Profession Act

4(1) This section will amend unproclaimed chapter P-7.1 of the Statutes of Alberta, 1988.

(2) Section 1(1)(d), (q), (t) and (v) presently read:

1(1) In this Act,

(d) "certified pharmacy" means a pharmacy located in

(i) a hospital, health unit, correctional institution or other health or social care institution or facility, or

(ii) a wholesale operation, compounding centre, repackaging facility or other operation that handles drugs in which the practice of pharmacy takes place,

in respect of which a pharmacy certificate is issued under section 31;

(q) "patient" means a person to whom a drug is dispensed or administered pursuant to an order or prescription from a physician or dentist;

(t) "practice of pharmacy" means

(i) responsibility for preparing, distributing and controlling drugs in a pharmacy,

(ii) compounding a drug,

- (v) disseminating information on the appropriate use of a drug when dispensing or selling the drug,
 - (vi) subdividing or breaking up a manufacturer's original package of a drug for the purpose of re-packaging the drug in larger or smaller quantities for re-distribution or sale by retail,
 - (vii) operating a pharmacy insofar as the operation relates to the responsibilities and activities referred to in subclauses (i) to (vi), and
 - (viii) supervising the practice of pharmacy;
- (c) *in clause (q) by striking out "an order or prescription from a physician or dentist" and substituting "a prescription";*
- (d) *by repealing clause (t) and substituting the following:*
- (t) "practice of pharmacy" means the preparation, compounding, dispensing, storing, controlling, handling and selling of drugs, non-prescription medications and health related products, and includes
 - (i) the exclusive scope areas of the practice of pharmacy,
 - (ii) the dissemination of information on the appropriate use of drugs, non-prescription medications and health related products,
 - (iii) the operation of a pharmacy, and
 - (iv) other related activities, including patient counselling, drug therapy monitoring and drug use evaluation;

- (iii) *dispensing a drug,*
 - (iv) *selling a drug by retail,*
 - (v) *disseminating information on the safe and effective use of a drug when dispensing or selling the drug,*
 - (vi) *subdividing or breaking up a manufacturer's original package of a drug for the purpose of re-packaging the drug in larger or smaller quantities for re-distribution or sale by retail,*
 - (vii) *operating a pharmacy insofar as the operation relates to the practice of pharmacy, or*
 - (viii) *supervising the practice of pharmacy;*
- (v) *"prescription" means a direction given verbally or in writing by a physician, dentist, registered veterinarian or podiatrist directing a pharmacist or restricted practitioner to dispense, for the person named in the direction, a stated amount of a drug specified in the direction;*

(e) *in clause (v) by adding “or any other practitioner who is authorized by the Lieutenant Governor in Council to prescribe drugs” after “podiatrist”;*

(f) *by adding the following after clause (z):*

(z.1) “publicly funded pharmacy” means a pharmacy that is

(i) funded by a government or municipality, and

(ii) operated by a hospital, health unit, long-term care institution, correctional institution or other health or social care institution or facility that is approved or funded under a provincial or federal Act;

(3) *The following sections are amended by adding “exclusive scope areas of the” before “practice of pharmacy” wherever it occurs:*

section 2(1), (2), (3) and (4)(e);
section 3(1)(a) and (3);
section 4.

(3) Sections 2(1), (2), (3) and (4)(e), 3(1) and (3) and 4 presently read:

2(1) Subject to subsections (4), (5) and (6), a person is guilty of an offence who, not being a pharmacist or restricted practitioner, engages in the practice of pharmacy.

(2) Nothing in this Act authorizes or allows a restricted practitioner who is a holder of a certificate of registration to engage in the practice of pharmacy contrary to the limitations, conditions or restrictions applicable to his certificate of registration or to the restricted practitioner.

(3) Nothing in this Act authorizes or allows a licensee to engage in the practice of pharmacy contrary to the limitations, conditions or restrictions applicable to his pharmacy licence or to the licensee.

(4) Nothing in this Act

(e) prevents a person from engaging in the practice of pharmacy

3(1) No person, except a pharmacist or restricted practitioner, shall

(a) represent or hold out, expressly or by implication, that he is entitled to engage in the practice of pharmacy, or represent or hold himself out as a pharmacist or restricted practitioner, as the case may be, or

(b) use any sign, emblem, title or advertisement implying that he is a pharmacist or restricted practitioner.

(4) Section 8 is amended

- (a) in subsection (1)(b) by striking out “1 member of the public or, if the number of persons elected under clause (a) is more than 10, 2” and substituting “2 members of the public or, if the number of persons elected under clause (a) is more than 10, 3”;*
- (b) in subsection (5) by adding “but may not hold office for more than 6 consecutive years” after “is appointed”.*

(5) Section 18 is amended

- (a) by adding “exclusive scope areas of the” before “practice of pharmacy”;*
- (b) by repealing clause (c) and substituting the following:*

(3) No person except a pharmacist shall use the following titles:

- (a) pharmacist;*
- (b) pharmaceutical chemist;*
- (c) druggist;*
- (d) apothecary;*

or any similar designation or any suffix, prefix, word, title or designation, abbreviated or otherwise, implying that he is registered as a member of the Association or engaged in or entitled to engage in the practice of pharmacy.

4 No person shall knowingly employ a person who is not a pharmacist or restricted practitioner to engage in the practice of pharmacy except in accordance with section 2(4)(e).

(4) Section 8(1) and (5) presently read:

8(1) The Council shall consist of

- (a) not fewer than 9 pharmacists or the number of pharmacists prescribed by the by-laws, whichever is greater, each of whom shall be elected in accordance with the by-laws,*
- (b) if the number of persons elected under clause (a) does not exceed 10, 1 member of the public or, if the number of persons elected under clause (a) is more than 10, 2 members of the public, who shall be appointed by the Minister for a 2-year term of office from a list of not fewer than 3 members of the public nominated by the Council,*
- (c) the Dean of the Faculty of Pharmacy and Pharmaceutical Sciences at the University of Alberta or his designate, and*
- (d) ex officio members, if any, appointed by the Council.*

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

(5) Section 18 presently reads:

18 A pharmacist or restricted practitioner may engage in the practice of pharmacy only in

- (a) a licensed pharmacy,*
- (b) a certified pharmacy, or*

(c) a publicly funded pharmacy.

(6) *Section 19 is amended*

(a) *by repealing subsection (1)(b) and substituting the following:*

(b) a certified pharmacy shall apply for a pharmacy certificate.

(b) *in subsection (3) by adding “and no pharmacy may be operated as a certified pharmacy unless a pharmacy certificate has been issued in respect of that pharmacy” after “that pharmacy”;*

(c) *by repealing subsection (4).*

(7) *Section 20(2) is repealed.*

(8) *Section 23 is repealed and the following is substituted:*

Restrictions
on publicly
funded
pharmacies

23(1) In this section, “patient” means a person who is receiving services from the institution or facility referred to in subsection (2)(a), (b) or (c).

(2) A publicly funded pharmacy shall dispense drugs only to

(a) patients of the hospital, health unit, long-term care institution, correctional institution or other health or social care institution or facility in which the pharmacy is located,

(b) patients of a facility that is affiliated with the hospital, health unit, long-term care institution, correctional institution or other health or social care institution or facility in which the pharmacy is located, or

- (c) *a pharmacy located in a place referred to in section 1(1)(d) that operates without a pharmacy certificate.*

(6) Section 19 presently reads:

19(1) A pharmacist who intends to operate

- (a) *a licensed pharmacy shall apply for a pharmacy licence, or*
- (b) *a pharmacy other than a licensed pharmacy may apply for a pharmacy certificate.*

(2) An application under subsection (1) shall be forwarded to the Registrar.

(3) Subject to sections 24 and 25, no pharmacy may be operated as a licensed pharmacy unless a pharmacy licence has been issued in respect of that pharmacy.

(4) Nothing in this Act prevents the operation of a pharmacy referred to in section 18(c) if no pharmacy certificate has been issued in respect of that pharmacy.

(7) Section 20(2) presently reads:

(2) A pharmacy certificate may be cancelled at any time by the holder of the certificate.

(8) Section 23 presently reads:

23 A pharmacy that is located in a hospital, health unit, correctional institution or other health or social care institution or facility shall dispense drugs only to

- (a) *patients of the hospital, health unit, correctional institution or other health or social care institution or facility in which the pharmacy is located,*
- (b) *patients of a facility that is affiliated with the hospital, health unit, correctional institution or other health or social care institution or facility in which the pharmacy is located, or*
- (c) *patients of an institution or facility that has entered into an agreement with the hospital, health unit, correctional institution or other health or social care institution or facility in which the pharmacy is located providing for the sharing of pharmacy facilities and services.*

- (c) patients of an institution or facility that has entered into an agreement with the hospital, health unit, long-term care institution, correctional institution or other health or social care institution or facility in which the pharmacy is located providing for the sharing of pharmacy facilities and services.

(3) When a publicly funded pharmacy dispenses drugs to a patient who is being discharged from an institution or facility referred to in subsection (2), the patient must obtain any repeat of the drugs from a licensed pharmacy.

(4) A publicly funded pharmacy that sells or intends to sell drugs by retail to persons other than patients must be a licensed pharmacy.

(5) This section does not apply to a publicly funded pharmacy when selling or dispensing, alone or in combination with other drugs,

- (a) an investigational drug,
- (b) an emergency release drug,
- (c) a home parenteral therapy drug,
- (d) a drug provided under a special health care program for tuberculosis, cancer or another disease or condition,
- (e) a drug that is not readily available in a local licensed pharmacy, or
- (f) any drug in an emergency.

(9) *Section 24 is amended*

- (a) *in subsection (1) by adding “or pharmacy certificate” after “licence” wherever it occurs;*
- (b) *in subsection (2) by adding “or pharmacy certificate” after “licence”;*
- (c) *by repealing subsection (4).*

(9) Section 24 presently reads:

24(1) On the suspension or cancellation of a pharmacy licence pursuant to this Act, the pharmacy designated on the pharmacy licence may, if permitted by the Council, continue to operate for the period prescribed in the regulations if the proprietor or his agent immediately places the pharmacy under the personal management, control and supervision of a pharmacist other than the pharmacist whose pharmacy licence is suspended or cancelled.

(10) Section 25 is amended

- (a) in subsection (2) by striking out “A licensed pharmacy whose pharmacy licence” and substituting “A pharmacy whose pharmacy licence or pharmacy certificate”;*
- (b) in subsection (3) by adding “or pharmacy certificate” after “licence”;*
- (c) by repealing subsection (5).*

(11) Section 27(3)(b) is repealed and the following is substituted:

- (b) comply with the standards for the practice of pharmacy developed by the Association pursuant to section 89.1.*

(12) Section 31(1)(a) is amended by adding “but not in a publicly funded pharmacy” after “1(1)(d)”.

(2) A pharmacist hired under subsection (1) may manage, control and supervise a pharmacy without a pharmacy licence for the period prescribed in the regulations.

(3) Subject to subsection (2), this Part applies to a pharmacist hired under subsection (1) as if he were the licensee of the pharmacy for the period prescribed in the regulations.

(4) The Council may suspend or cancel a pharmacy certificate pursuant to this Act, but a suspension or cancellation does not preclude the pharmacy designated on the pharmacy certificate from continuing to operate.

(10) Section 25 presently reads:

25(1) If the holder of a pharmacy licence or pharmacy certificate dies or becomes incapacitated, his pharmacy licence or pharmacy certificate terminates.

(2) A licensed pharmacy whose pharmacy licence is terminated may, if permitted by the Council, continue to operate for the period prescribed in the regulations if the proprietor or his agent immediately places the pharmacy under the personal management, control and supervision of a pharmacist.

(3) A pharmacist hired under subsection (2) may manage, control and supervise a pharmacy without a pharmacy licence for the period prescribed in the regulations.

(4) Subject to subsection (3), this Part applies to a pharmacist hired under subsection (2) as if he were the licensee of the pharmacy for the period prescribed in the regulations.

(5) A certified pharmacy may continue to operate notwithstanding the termination of the pharmacy certificate relating to that pharmacy.

(11) Section 27(3) presently reads:

(3) A holder of a pharmacy licence shall

(a) maintain the pharmacy, stock and compounding and dispensing equipment in a clean and sanitary condition and in proper working condition, and

(b) comply with the standards for the practice of pharmacy prescribed in the regulations.

(12) Section 31(1) presently reads:

31(1) The Registrar shall not issue or renew a pharmacy certificate unless he is satisfied that the applicant

(13) Section 32(b) is repealed and the following is substituted:

- (b) comply with the standards for the practice of pharmacy developed by the Association pursuant to section 89.1.

(14) Section 35(1) is amended by striking out “or pharmacy licence” and substituting “, pharmacy licence or pharmacy certificate”.

(15) Section 57(a) is amended by adding the following after subclause (ii):

- (ii.1) does not comply with the standards for the practice of pharmacy developed by the Association pursuant to section 89.1,

- (a) *is a pharmacist engaging in the practice of pharmacy in a place referred to in section 1(1)(d),*
- (b) *will personally manage, control and supervise the pharmacy insofar as the management, control and supervision relate to the practice of pharmacy,*
- (c) *subject to the regulations, will ensure that a pharmacist is present in the pharmacy at all times,*
- (d) *has an adequate and suitable supply of drugs, and*
- (e) *has compounding and dispensing equipment and a pharmaceutical reference library that comply with the requirements of the regulations.*

(13) Section 32 presently reads:

32 The holder of a pharmacy certificate shall

- (a) *maintain the pharmacy, stock and compounding and dispensing equipment in a clean and sanitary condition and in proper working condition, and*
- (b) *comply with the standards for the practice of pharmacy prescribed in the regulations.*

(14) Section 35(1) presently reads:

35(1) The Registrar shall not cancel a certificate of registration, annual certificate or pharmacy licence of a member at the member's request unless the request for the cancellation has been approved by the Council.

(15) Section 57 presently reads:

57 Conduct of a member or proprietor that

- (a) *in the opinion of an Investigating Committee,*
 - (i) *is detrimental to the best interests of the public,*
 - (ii) *contravenes this Act or the regulations,*
 - (iii) *contravenes any Act of the Parliament of Canada or of the Legislature of Alberta relating to the compounding, dispensing, sale, supply or distribution of drugs,*
 - (iv) *harms or tends to harm the standing of the profession of pharmacy generally, or*

(16) *Section 58 is amended*

(a) *by repealing subsection (2) and substituting the following:*

(2) A hearing before the Investigating Committee shall be open to the public unless

- (a) the complainant requests that the hearing be held in private because of the confidential nature of the matters to be heard, or
- (b) in the opinion of the Investigating Committee, the interests of any person other than the investigated person may be detrimentally affected if the hearing is not held in private.

(b) *in subsection (3) by striking out “Notwithstanding subsection (2), the” and substituting “The”.*

(17) *Section 76 is amended by adding the following after subsection (2):*

(2.1) A hearing before the Council shall be open to the public unless, in the opinion of the Council, the interests of any person other than the investigated person may be detrimentally affected if the hearing is not held in private.

- (v) *displays a lack of knowledge of or lack of skill or judgment in the practice of pharmacy,*

or

- (b) *results in a conviction of an indictable offence,*

whether or not that conduct is disgraceful or dishonourable, constitutes either unskilled practice of pharmacy, professional misconduct or proprietary misconduct, whichever the Investigating Committee finds.

(16) Section 58(2) and (3) presently read:

(2) Proceedings before an Investigating Committee or the Council shall be held in private.

(3) Notwithstanding subsection (2), the Association may, after the expiration of any appeal period, publish in accordance with the regulations

- (a) the name of an investigated person in respect of whom an order is made under section 67 or 68, and*

- (b) the circumstances relevant to the finding of professional or proprietary misconduct.*

(17) Section 76 presently reads:

76(1) The Infringement Committee, the complainant and the investigated person may appear and be represented by counsel at the hearing of an appeal before the Council.

(2) The members of the Investigating Committee who heard the matter and whose decision is appealed from shall be excluded from participating in or voting on the matter appealed to the Council.

(3) Notwithstanding this Act, the regulations or the by-laws, the Council may perform its functions under this Part if it has a quorum of not fewer than 4 members.

(4) The appeal to the Council shall be founded on the record of the proceedings before the Investigating Committee and the decision of the Investigating Committee.

(18) The following is added after section 89:

Standards of
practice

89.1(1) The Association may, in accordance with the procedures set out in the regulations, develop standards for the practice of pharmacy respecting competency, ethical conduct and the application of pharmaceutical knowledge and skills.

(2) The Association must circulate all proposed standards to members and the Minister for comment and review.

(3) The Association shall not enforce standards developed under this section until it has reviewed and considered the comments received from members and the Minister.

(4) When standards have been developed in accordance with this section, the Association shall send copies of the standards to members and the Minister.

(5) Sections 61 to 65 apply to proceedings before the Council.

(6) 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 Investigating Committee.*

(7) The Council shall, within 90 days from the date of the conclusion of all proceedings before it, do any of the following:

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

(8) The Council may make an award as to costs under this Part determined in accordance with the regulations.

(18) These standards are currently to be set out in regulations. The change allows the Association to develop the standards, but the procedures for doing so will still be found in the regulations.

(19) *Section 90(1) is amended*

(a) *by repealing clause (g) and substituting the following:*

(g) *establishing procedures that the Association must follow when developing standards under section 89.1;*

(b) *in clause (j) by adding “in all pharmacies except publicly funded pharmacies” after “pharmacy”;*

(c) *in clause (z) by striking out “licensed”;*

(d) *in clause (hh) by striking out “a pharmacy for the purposes of sections 26 and 31” and substituting “all pharmacies except publicly funded pharmacies”.*

(19) Section 90(1)(g), (j), (z) and (hh) presently read:

90(1) The Council may make regulations

- (g) prescribing standards for the practice of pharmacy;*
- (j) regarding the use of computers in the practice of pharmacy;*
- (z) prescribing the period during which a licensed pharmacy may continue to operate pursuant to section 24 or 25, as the case may be;*
- (hh) prescribing compounding and dispensing equipment and prescribing the minimum pharmaceutical reference library required by a pharmacy for the purposes of sections 26 and 31;*