

# BILL NO. 17

(as passed)



*2nd Session, 58th General Assembly  
Nova Scotia  
50 Elizabeth II, 2001*

Government Bill

## Optometry Act (amended)

CHAPTER 17 OF THE ACTS OF 2001

The Honourable Jamie A. Muir  
Minister of Health

[First Reading](#): April 4, 2001

Second Reading: May 18, 2001

[Third Reading](#): May 29, 2001

Royal Assent: June 1, 2001



**An Act to Amend Chapter 328**

## of the Revised Statutes, 1989, the Optometry Act

Be it enacted by the Governor and Assembly as follows:

**1** Section 2 of Chapter 328 of the Revised Statutes, 1989, the *Optometry Act*, as amended by Chapter 40 of the Acts of 1990, is further amended by

(a) adding immediately after clause (h) the following clause:

(ha) "permit" means a permit issued to a professional corporation pursuant to this Act;

and

(b) adding immediately after clause (j) the following clause:

(ja) "professional corporation" means a company incorporated pursuant to the *Companies Act* and this Act for the purpose of carrying on the practice of optometry;

**2** Subsection 6(1) of Chapter 328, as amended by Chapter 40 of the Acts of 1990 and Chapter 26 of the Acts of 1992, is further amended by

(a) striking out "or" the second time it appears in the fourth line of clause (d) and substituting ", partnership or professional"; and

(b) adding immediately after clause (p) the following clauses:

(pa) prescribe by by-law the manner of proof as to matters required to be proven by applicants for permits;

(pb) fix in the manner prescribed by by-law the fees payable and the required forms for the issuance and renewal of permits;

(pc) provide by by-law that the permit of a professional corporation is suspended without notice or investigation upon contravention of any regulation that requires the corporation to pay a fee or assessment, file a document or do any other act by a specified or ascertainable date, and provide for the reinstatement of a permit so suspended;

(pd) prescribe by by-law the grounds upon which the Council may review a decision of the Secretary-treasurer pursuant to subsection 18D(7) and the procedures to be followed in reviewing any such decision;

(pe) provide by by-law for the reinstatement or re-issuance of any permit suspended or revoked pursuant to this Act and prescribe the terms and conditions upon which reinstatement or re-issuance of a permit may be granted;

(pf) provide by by-law for the creation and maintenance of a register of professional corporations;

(pg) provide by by-law for the filing of periodic returns by professional corporations;

(ph) provide by by-law for the annual renewal of permits and prescribe the terms and conditions upon which renewals may be granted;

(pi) prescribe by by-law the types of names and business names by which

(i) a member as a sole proprietor,

(ii) a professional corporation,

(iii) a partnership with one or more optometrists,

(iv) a partnership of two or more professional corporations, or

(v) a partnership of one or more professional corporations and one or more individual optometrists,

may be known;

(pj) prescribe by by-law access to the minute book records of a professional corporation by the Secretary-treasurer;

(pk) provide by by-law the type of professional liability insurance or other type of malpractice insurance a member or a professional corporation shall hold;

**3** The heading immediately preceding Section 18 and Section 18 of Chapter 328 are repealed and the following heading and Sections substituted:

### INCORPORATION

18 Subject to this Act and the by-laws, a professional corporation may engage in the practice of optometry and optometrists may be employed by a professional corporation for the purpose of engaging in the practice of optometry.

18A (1) A majority of the issued shares of a professional corporation must be legally and beneficially owned by one or more optometrists.

(2) A majority of the issued voting shares of a professional corporation must be legally and beneficially owned by one or more optometrists.

(3) Subject to subsections (1) and (2), the spouse or child of an optometrist or any other person may own, beneficially or legally, shares of a professional corporation.

(4) Notwithstanding subsection (2), a person resident in Canada may hold legal title to issued shares of a professional corporation solely as trustee for the exclusive benefit of an optometrist, or the spouse or child of an optometrist, or a group of such individuals so long as no one other than an optometrist, or the spouse or child of an optometrist, acts as such a trustee without the written consent of the Secretary-treasurer.

18B A majority of the directors of a professional corporation must be optometrists.

18C A professional corporation shall not engage in the practice of optometry unless the professional corporation is issued a permit under this Act and is in compliance with this Act and the by-laws.

18D (1) Notwithstanding anything contained in this Act, a professional corporation to which a permit is issued pursuant to this Section may practise optometry in its own name.

(2) Notwithstanding subsection (1), no professional corporation shall be registered as an optometrist under this Act.

(3) The Secretary-treasurer shall issue a permit to any professional corporation that fulfills the following conditions:

(a) files all required applications in the form prescribed by the by-laws;

(b) pays all fees prescribed by regulation;

(c) satisfies the Secretary-treasurer that it is a professional corporation limited by shares that is in good standing

with the Registrar of Joint Stock Companies under the *Companies Act* and the *Corporations Registration Act* and that it is a private company as defined by the *Securities Act*;

(d) satisfies the Secretary-treasurer that the name of the professional corporation is not objectionable and is in accordance with the by-laws;

(e) satisfies the Secretary-treasurer that the requirements of Sections 18A and 18B have been met;

(f) satisfies the Secretary-treasurer that the professional corporation holds such liability insurance as may be prescribed by the by-laws;

(g) satisfies the Secretary-treasurer that the persons who will carry on the practice of optometry for or on behalf of the professional corporation are optometrists; and

(h) satisfies the Secretary-treasurer that the professional corporation is in compliance with this Act and the by-laws.

(4) A permit issued pursuant to subsection (3), or any renewal of a permit pursuant to subsection (5), expires on December 31st of the year for which it was issued or renewed.

(5) The Secretary-treasurer may renew a permit upon such application and payment of such fee as may be required by the by-laws if the Secretary-treasurer determines that the requirements of subsection (3) are satisfied by the professional corporation.

(6) A permit issued pursuant to subsection (3), or renewed pursuant to subsection (5), may be suspended or revoked at any time by the Secretary-treasurer, upon giving fifteen days notice, subject to the by-laws, if a professional corporation fails to satisfy any of the requirements prescribed in subsection (3).

(7) The Council may, in its discretion, review a decision of the Secretary-treasurer to suspend or revoke a permit pursuant to subsection (6).

(8) Where, pursuant to subsection (6), a permit is suspended or revoked, the professional corporation may, within fifteen calendar days of the effective date of the notice of the suspension or revocation pursuant to subsection (7), request, in writing, that the Council review the Secretary-treasurer's decision pursuant to subsection (7).

(9) Where a professional corporation requests a review by the Council pursuant to subsection (8) and the Council, in its discretion, decides to review the Secretary-treasurer's decision, the professional corporation shall, within thirty days of receiving notice of the Secretary-treasurer's decision, make written submission to the Secretary-treasurer and to the Council.

(10) The Council may investigate the matter as it considers appropriate and may require the professional incorporation, or its directors, officers, employees or shareholders, to provide information and documentation to the Council.

(11) The Council may ratify, reverse or modify the decision of the Secretary-treasurer as it considers appropriate.

(12) Where the Council reinstates or re-issues a permit that has been suspended or revoked pursuant to subsection (6), the Council may prescribe terms and conditions upon which reinstatement or re-issuance of a permit may be granted.

(13) Notwithstanding subsection (6),

(a) the Secretary-treasurer shall suspend a permit without notice or investigation if the professional corporation has failed to pay a fee or assessment, file a document or do any other act by a specified or ascertainable date; and

(b) a permit suspended pursuant to clause (a) shall be reinstated by the Secretary-treasurer upon payment of the

required fee or assessment, receipt of a document required to be filed or performance of a required act by the professional corporation.

(14) For the purpose of this Act, the practice of optometry shall not be carried on by or be deemed to be carried on by clerks, secretaries and other persons employed by the professional corporation to perform services that are not usually and ordinarily considered by law, custom and practice to be services that may be performed only by an optometrist.

18E (1) Where a professional corporation practices optometry only through the services of one optometrist and that optometrist dies, retires, becomes incompetent or is no longer licensed pursuant to this Act, or is suspended under this Act, the permit of the professional corporation is deemed to be revoked and the professional corporation shall cease to practise optometry.

(2) Where a professional corporation practises optometry through the services of more than one optometrist and the professional corporation ceases to fulfil any requirement prescribed in subsection 18D(3) by reason of

- (a) the death of an optometrist;
- (b) the incompetency of an optometrist;
- (c) the revocation of the licence of an optometrist pursuant to this Act;
- (d) the suspension of the licence of an optometrist pursuant to this Act; or
- (e) the retirement from practice by an optometrist,

the professional corporation shall forthwith notify the Secretary-treasurer and shall fulfil the requirements in question within one hundred and twenty days from the date of death, incompetency, revocation, retirement or other removal or the suspension, as the case may be, of the optometrist, failing which the permit is deemed to be revoked and the professional corporation shall cease to practise optometry effective upon the expiration of the one hundred and twenty day period.

(3) Where the permit of a professional corporation is deemed to be revoked under this Section and thereafter the professional corporation is able to demonstrate that it is in compliance with subsection 18D(3), the professional corporation may apply to the Secretary-treasurer to have its permit reinstated and the Secretary-treasurer may, in the Secretary-treasurer's discretion, reinstate the permit subject to such conditions as the Secretary-treasurer may direct.

18F Where the shares of a professional corporation engaged in the practice of optometry are transferred or where there is a change in the shareholders, directors or officers of the professional corporation, or any change in the location where the professional corporation carries on business, the professional corporation shall, within fifteen calendar days, notify the Secretary-treasurer of the change.

18G The relationship of an optometrist to a professional corporation whether as a shareholder, director, officer or employee, does not affect, modify or diminish the application of this Act and the by-laws to the optometrist.

18H (1) All persons who carry on the practice of optometry by, through or on behalf of a professional corporation are liable in respect of acts or omissions done or omitted to be done by them in the course of the practice of optometry to the same extent and in the same manner as if such practice were carried on by them as an individual or a partnership, as the case may be, carrying on the practice of optometry.

(2) No owner of voting shares of a professional corporation shall pledge, hypothecate, enter into a voting trust, proxy or any other type of agreement vesting in any other person who is not an optometrist the authority to exercise the voting rights attached to any or all of the owner's shares.

18I (1) Nothing contained in this Act affects, modifies or limits any law applicable to the confidential or ethical relationships between an optometrist and a patient.

(2) The relationship between a professional corporation and a patient of the professional corporation is subject to all applicable laws relating to the confidential and ethical relationships between an optometrist and a patient.

(3) All rights and obligations pertaining to communications made to or information received by an optometrist apply to the shareholders, directors, officers and employees of a professional corporation.

18J All shareholders, directors, officers and employees of a professional corporation are compellable witnesses in any proceedings under this Act.

18K A certificate purporting to be signed by the Secretary-treasurer stating that a named professional corporation was or was not, on a specified day or during a specified period, a professional corporation entitled to practise optometry according to the records of the Secretary-treasurer, shall be admitted in evidence as *prima facie* proof of the facts stated therein without proof of the Secretary-treasurer's appointment or signature.

18L Where a professional corporation commits an offence contrary to this Act or the by-laws, every person who, at the time of the commission of the offence, was a director or officer of the corporation is guilty of the same offence and subject to the same penalties unless the act or omission constituting the offence took place without the person's knowledge or consent or the person exercised all due diligence to prevent the commission of the offence.

18M (1) Every person who contravenes Sections 18 to 18L or the associated by-laws is guilty of an offence and liable, on summary conviction, for a first offence to a fine not exceeding five hundred dollars and for a second or subsequent offence to a fine not exceeding one thousand dollars.

(2) Where a professional corporation is convicted of an offence contrary to Sections 18 to 18L or the associated by-laws, the permit of the corporation is suspended in default of paying any fine ordered to be paid until such time as the fine is paid.

(3) Where a professional corporation is convicted of a second or subsequent offence, the permit of the corporation may be revoked.

4 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

