

Optometry Act

CHAPTER 43 OF THE ACTS OF 2005

as amended by

2008, c. 3, s. 10; 2012, c. 48, s. 37



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CHAPTER 43 OF THE ACTS OF 2005
amended 2008, c. 3, s. 10; 2012, c. 48, s. 37

**An Act Respecting
the Practice of Optometry**

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Short title

1 This Act may be cited as the *Optometry Act*. 2005, c. 43, s. 1.

Interpretation

2 In this Act,

- (a) “Association” means the Nova Scotia Association of Optometrists;
- (b) “Board” means the Board of the College;
- (c) “College” means the Nova Scotia College of Optometrists;

- (d) “complaints committee” means a complaints committee of the College appointed pursuant to this Act;
- (e) “Council” means the Council of the Association;
- (f) “Executive” means the Executive of the Board;
- (g) “former Act” means Chapter 328 of the Revised Statutes, 1989, the *Optometry Act*;
- (h) “hearing committee” means a hearing committee of the College appointed pursuant to this Act;
- (i) “licence” means a valid and subsisting licence issued pursuant to this Act;
- (j) “optometrist” means a person licensed to practise optometry under this Act;
- (k) “permit” means a permit issued to a professional corporation pursuant to this Act;
- (l) “practice of optometry” means those functions usually performed by an optometrist including
- (i) the examination of the human eye and its adnexa by any acceptable procedure to diagnose visual defects or abnormal conditions,
 - (ii) the treatment of visual defects or abnormal conditions of the human eye or its adnexa by the use of any acceptable procedures, other than surgery, including the prescription and application of lenses or other devices, and the use of therapeutic drugs as set forth in the by-laws and regulations,
 - (iii) the removal of superficial foreign bodies from the human eye or its adnexa;
- (m) “professional corporation” means a company incorporated pursuant to the *Companies Act* for the purpose of carrying on the practice of optometry;
- (n) “register” means the register or registers of the College kept pursuant to this Act;
- (o) “registered” means registered pursuant to this Act;
- (p) “Registrar” means the person holding the office of Registrar pursuant to this Act. 2005, c. 43, s. 2.

NOVA SCOTIA ASSOCIATION OF OPTOMETRISTS

Association continued

3 (1) The Nova Scotia Association of Optometrists constituted by the former Act is continued as a body corporate.

(2) The Association has perpetual succession and a common seal, with power to acquire, hold, lease, mortgage and otherwise dispose of real and personal property, and may sue and be sued. 2005, c. 43, s. 3.

Objects

- 4 The objects of the Association are to
- (a) promote the professional interests of members;
 - (b) foster relations with associations of optometrists in other provinces of Canada and with other professional bodies within the Province;
 - (c) inform and educate the general public with respect to the advantages of maintaining good ocular health and the prevention of eye disease;
 - (d) represent, act on behalf of and enter into agreements for and on behalf of its members; and
 - (e) improve the proficiency of optometrists in all matters of professional practice through the dissemination of information and by providing and encouraging continuing education. 2005, c. 43, s. 4.

Powers

- 5 (1) The Association, in addition to all powers vested in corporations, may
- (a) borrow money for the purpose of carrying on the affairs of the Association and give security for any money so borrowed on any of the real or personal property of the Association by way of mortgage, pledge, charge or otherwise;
 - (b) draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, warrants and other negotiable and transferable instruments;
 - (c) engage such agents and employees as the Association may, from time to time, deem expedient;
 - (d) expend the moneys of the Association in the advancement of its objects and the interests of the profession of optometry in such manner as the Association deems expedient;
 - (e) establish and maintain such offices and agencies as the Association deems expedient;
 - (f) invest and deal with any moneys and funds of the Association that are not immediately required, in such manner as the Association deems expedient;
 - (g) borrow money for the use of the Association on its credit, limit or increase the amount to be borrowed, issue bonds, debentures, debenture stock and other securities on the credit of the

Association and pledge or sell such securities for such sums or at such prices as the Association deems expedient;

(h) publish or promote the publication of journals, newsletters, reports, brochures or other papers relative to its interests;

(i) act, as it deems expedient, as agent within the Province for the Canadian Association of Optometrists or other associations representing optometrists, and collect and remit fees levied by any such association;

(j) receive gifts and bequests from any person and make gifts to promote its interests;

(k) act on behalf of any and all of its members;

(l) do all other things as are incidental or necessary in furtherance of its objects or in the exercise of the foregoing powers.

(2) The Association may, subject to this Act and the by-laws, delegate the exercise of any of its powers to the Council or any committee of the Association or Council. 2005, c. 43, s. 5.

Power to enter into contracts with Crown

6 (1) The Association may enter into agreements with Her Majesty in right of the Province that bind its members and, for that purpose, is constituted the sole bargaining agent for any and all optometrists and, without limiting the generality of the foregoing, the Association may enter agreements with respect to

(a) the tariff of fees, other systems of payment and the management of the delivery of optometric services; and

(b) any other matter that may be agreed between the Association and the Minister of Health or the Minister's agents.

(2) For greater certainty,

(a) nothing in this Section requires Her Majesty in right of the Province to enter into an agreement with the Association; and

(b) this Section does not apply with respect to optometrists who are employed by the Department of Health, including optometric consultants and advisers to the Department. 2005, c. 43, s. 6.

Membership

7 (1) The Association may admit any registered optometrist into membership in the Association in accordance with the by-laws of the Association.

(2) Subject to the by-laws, the Association may admit persons to different classes of membership in the Association.

(3) Any person who is a member of the Association under the former Act continues, on the coming into force of this Act, to be a member under this Act until that membership expires, lapses or otherwise is terminated in accordance with this Act.

(4) All members have full voting rights upon the payment of the annual membership fees. 2005, c. 43, s. 7.

Council

8 (1) There shall be a Council of the Association consisting of the President, Vice-president, Secretary-treasurer and no fewer than four other members of the Association, who shall be elected by the membership of the Association in accordance with the by-laws and who shall, subject to this Act, control, govern and administer the affairs of the Association.

(2) The President holds office until a successor is elected and shall act as the presiding officer at the meetings of the Council and of the Association, voting only when the votes are evenly divided, and the President shall perform the duties assigned to the President by this Act and the by-laws of the Association.

(3) The Vice-president has all the powers of the President in the absence of the President.

(4) The Secretary-treasurer shall perform the duties assigned to that position by this Act or the by-laws of the Association.

(5) The members of the Council shall be paid such fees and expenses as may be prescribed by the by-laws of the Association.

(6) Notwithstanding subsection (1), the persons who were pursuant to the former Act members of the Council immediately before the coming into force of this Act continue to hold office until a new Council is elected under this Act. 2005, c. 43, s. 8.

Annual general meeting

9 There shall be an annual general meeting of the Association at such time and place as the Council may determine. 2005, c. 43, s. 9.

By-laws

10 (1) The Council may, subject to the approval of the members, make, amend and revoke by-laws, not inconsistent with this Act, relating to the management of the Association and, without limiting the generality of the foregoing, regarding

(a) fees for membership;

(b) the assessment of members for any ordinary or extraordinary expenditure that may be considered necessary or expedient in the exercise of the powers of the Association;

(c) the election of officers of the Association and their terms of office, duties and remuneration;

(d) the procedures for calling and conducting meetings of the Association or the Council;

(e) the establishment of committees of the Association;

(f) the engagement of persons whom the Association may employ;

(g) the procedure for enacting, amending or revoking any by-law of the Association;

(h) any other matter necessary or desirable for the attainment of its objects or the proper implementation of its powers.

(2) A by-law may be enacted, amended or revoked by the Association if

(a) notice of the by-law, amendment or revocation is given in writing to every member eligible to vote at least one month prior to the vote; and

(b) the procedures in the by-laws are complied with. 2005, c. 43, s. 10.

No action lies

11 No action for damages lies against the Association, an officer or employee of the Association or a member of the Council or a committee appointed by the Council for any act or proceeding taken or entered into in good faith under this Act. 2005, c. 43, s. 11.

NOVA SCOTIA COLLEGE OF OPTOMETRISTS

College

12 (1) The Nova Scotia College of Optometrists is hereby created and established as a body corporate and, subject to this Act, has all the capacity, rights, powers and privileges of a natural person.

(2) The College is composed of all optometrists licensed in accordance with this Act.

(3) The College has perpetual succession and a common seal, with power to acquire, hold, develop, lease, mortgage and otherwise dispose of real and personal property, and may sue or be sued. 2005, c. 43, s. 12.

Objects

13 In order that the public interest may be served and protected, the objects of the College are to regulate the practice of optometry in the Province and

to govern optometrists in accordance with this Act, the by-laws and the regulations by

- (a) establishing, developing, and maintaining standards of qualification for the practice of optometry;
- (b) establishing, developing, maintaining, and promoting standards of professional practice, conduct, ethics and competency for optometrists;
- (c) establishing and maintaining a register of optometrists and issuing licences to those entitled to practice optometry in the Province;
- (d) establishing and maintaining a register of professional corporations and issuing permits to professional corporations entitled to engage in the practice of optometry in the Province; and
- (e) administering Sections 12 to 67 and performing such other duties or exercising such other powers as are imposed or conferred on the College by or under any Act. 2005, c. 43, s. 13.

Board

- 14** (1) There shall be a Board of the College consisting of
- (a) a minimum of five optometrists elected by optometrists in accordance with the by-laws of the College; and
 - (b) two persons appointed by the Governor in Council, all of whom are persons who
 - (i) are not employed in the public service of the Province or any agency of Her Majesty in right of the Province;
 - (ii) are neither optometrists nor persons registered under any other Act governing another health care profession, practice or discipline, and
 - (iii) have no personal, financial or other interest in the practice of optometry or a related health profession that could give rise to a conflict of interest.

(2) Board members shall be elected or appointed for a term of three years and may be re-elected or re-appointed.

(3) Notwithstanding subsection (2), the terms of office for the first members of the Board appointed or elected pursuant to clause (1)(a) are

- (a) two members to serve for a term of one year;
- (b) two members to serve for a term of two years; and
- (c) the remaining members to serve for a term of three years.

(4) Notwithstanding subsections (2) and (3), members of the Board hold office until such time as they are re-elected or re-appointed, or their successors are elected or appointed, even if such election or re-election, appointment or re-appointment occurs after the expiry of their specified term of office.

(5) Notwithstanding subsection (1), those persons who, immediately before the coming into force of this Act, constituted the Board of Examiners of the Association pursuant to the former Act constitute the Board until the election and appointment of members to the Board pursuant to subsection (1).

(6) The first elections and appointments made pursuant to this Section shall take place no later than eight months after the coming into force of this Act.

(7) Every optometrist who is not a member of the Council is eligible to be elected by optometrists to serve as a member of the Board.

(8) No member of the Board shall serve for more than three consecutive terms.

(9) In subsection (8), “consecutive” means that twelve months or less occurred between the end of one term and the commencement of the next. 2005, c. 43, s. 14.

Member’s term ends

15 Notwithstanding Section 14, the term of a member of the Board comes to an end if the member

- (a) resigns from the Board by notice in writing delivered to the Registrar;
- (b) being an optometrist, ceases to hold a licence issued pursuant to this Act; or
- (c) is absent from three consecutive meetings of the Board, unless excused by the Board. 2005, c. 43, s. 15.

Executive

16 (1) The Board shall elect annually from among its numbers an Executive consisting of a Chair, a Vice-chair and a Treasurer and of a Registrar who must be an optometrist.

- (2) The Executive
 - (a) may exercise all of the powers; and
 - (b) shall perform all of the duties,

of the Board with respect to any matters that the Board may delegate to it or that, in the opinion of the Executive, require immediate attention. 2005, c. 43, s. 16.

Duty of Board

17 The Board shall, subject to this Act, govern, control and administer the affairs of the College. 2005, c. 43, s. 17.

By-laws

18 The College may make by-laws for governing and administering its own affairs and, without limiting the generality of the foregoing,

(a) for the establishment and maintenance of a register or registers of optometrists licensed to practise and professional corporations, to be kept pursuant to this Act;

(b) fixing the time and place and procedures for regular meetings of the Board, determining by whom meetings may be called, providing for emergency meetings, determining the notice required for meetings, determining quorum requirements for meetings, and determining the manner of voting at meetings, including voting by proxy;

(c) providing procedures for electing optometrists to the Board;

(d) providing for the appointment of such committees of the College as are deemed expedient;

(e) respecting the composition, powers and duties of such committees as may be appointed by the College and providing for the holding and conduct of meetings of such committees;

(f) respecting the powers and duties of the Registrar and any other officer, agent or employee of the College;

(g) respecting the information to be included in a register;

(h) prescribing fees payable by applicants for licences or permits and, where the College deems it advisable, designating different classes of applicants or licences and prescribing different fees for different classes;

(i) prescribing the fees and allowances to be paid to any member of the Board, or any committee of the College, and providing for the payment of necessary expenses of the Board and committees of the College;

(j) prescribing the seal of the College;

(k) respecting the execution of documents by the College;

(l) prescribing forms and providing for their use;

(m) providing procedures not inconsistent with this Act for the making, amending and revoking of by-laws;

(n) respecting the recognition of schools, examinations and competency assessments for registration and licensing. 2005, c. 43, s. 18.

Regulations

19 (1) The College may, after consultation with the Association, and with the approval of the Governor in Council, make regulations

- (a) respecting the registration and licensing of optometrists;
- (b) respecting the continuing competency requirements, including continuing education requirements or practice requirements of applicants for registration;
- (c) respecting the educational qualifications of applicants for registration;
- (d) respecting the limiting or qualifying of an optometrist's licence including, but not limited to, procedures and interventions;
- (e) respecting the evaluation of, and licencing requirements of, applicants for registration who have not regularly practised clinical optometry for such minimum period of time or hours as may be prescribed;
- (f) prescribing a code of ethics and rules of professional practice;
- (g) respecting a peer-assessment program or program of continuing education, including requiring optometrist to participate in any such program and providing for any other matter that will facilitate or give effect to such program;
- (h) respecting the drugs that may be used in the practice of optometry and the criteria to be satisfied by an optometrist seeking a licence to administer such drugs;
- (i) respecting supervised practice, monitoring supervised practice and the delegation of acts of optometry and any other ancillary matters and providing for the establishment of a committee or committees to deal with such matters;
- (j) constituting a complaints committee or committees to consider complaints relating to optometrists;
- (k) prescribing the powers and procedures of a complaints committee;
- (l) prescribing the actions that a complaints committee may take with respect to a complaint, which actions may include
 - (i) dismissing the complaint,
 - (ii) referring the complaint to a hearing committee,
 - (iii) counselling,
 - (iv) cautioning,
 - (v) reprimanding with the consent of the optometrist;

- (m) providing for appeals from a complaints committee to a hearing committee;
- (n) constituting a hearing committee or committees to hear complaints relating to optometrists;
- (o) prescribing the powers and procedures of a hearing committee;
- (p) prescribing the sanctions that may be imposed by a hearing committee that makes a finding against an optometrist in respect of a matter referred to it, which sanctions may include
 - (i) counselling,
 - (ii) cautioning,
 - (iii) reprimanding,
 - (iv) suspending or revoking a permit or licence with or without conditions,
 - (v) requiring the optometrist to undergo such treatment or re-education as the committee considers necessary,
 - (vi) requiring the optometrist to pay all or part of the costs of the hearing before a hearing committee, including the College's legal costs, if any,
 - (vii) any other sanction the College or the hearing committee considers appropriate;
- (q) respecting the publication of any decision of a hearing committee;
- (r) regulating, controlling and prohibiting the use of terms, titles or designations by optometrists or groups or associations of optometrists in respect of their practices;
- (s) prescribing the records and accounts to be kept by optometrists and professional corporations with respect to their practice, and providing for the production, inspection and examination of such records and accounts;
- (t) providing that the licence of an optometrist, or the permit of a professional corporation, be suspended without notice or investigation upon contravention of any regulation or by-law that requires the optometrist or the professional corporation to pay a fee, file a document or do any other act by a specified or ascertainable date, and providing for the re-instatement of a licence so suspended;
- (u) respecting exemptions pursuant to Section 64;
- (v) prescribing the grounds upon which the College or a committee of the College may review a decision of the Registrar and the procedures to be followed in reviewing any decision;

(w) respecting the protection, storage, transfer or possession of patient records of optometrists or former optometrists, including the protection and disposition of the patient records of a deceased optometrist;

(x) providing for the re-instatement or re-issuance of any licence or permit suspended or revoked pursuant to this Act and prescribing the terms and conditions upon which re-instatement or re-issuance of a licence or permit may be granted;

(y) providing for the filing of periodic returns by professional corporations;

(z) providing for the annual review of permits and prescribing the terms and conditions upon which renewals may be granted;

(aa) providing the Registrar with access to the minute book records of a professional corporation;

(ab) prescribing the type of professional liability insurance or other form of malpractice coverage an optometrist or professional corporation must hold;

(ac) prescribing the manner of proof as to matters required to be proven by applicants for licences or permits;

(ad) prescribing the types of names and business names by which a sole proprietor, a partnership or a professional corporation may be known;

(ae) prescribing the nature of communications with the public, including advertising, that may be undertaken by an optometrist as a sole proprietor, a partnership or a professional corporation;

(af) defining any word or expression used but not defined in this Act;

(ag) further defining any word or expression defined in this Act;

(ah) respecting and governing such other matters or things as may be required to give effect to the objects of the College under this Act.

(2) The by-laws and regulations of the College shall be available for inspection by any person, free of charge, at the head office of the College at all reasonable times during business hours.

(3) A certificate purporting to be signed by the Registrar stating that a certain by-law or regulation of the College was, on the specified day or during a specified period, a duly enacted by-law or regulation of the College in full force and effect constitutes *prima facie* evidence in any court of that fact without proof

that the person who signed it is the Registrar or that it is the Registrar's signature. 2005, c. 43, s. 19.

Power to delegate

20 The College has the right, subject to this Act and the by-laws and regulations, to delegate the exercise of any of its powers to the Executive or any committee of the College. 2005, c. 43, s. 20.

Register

21 (1) The College shall keep a register in which shall be entered the name, address and qualifications of all persons who are entitled pursuant to this Act to be registered therein.

(2) The name, address and qualifications of every person who, at the coming into force of this Act, is licenced pursuant to the former Act, must be entered in the register, but continues under any requirements or limitations attached to the person's previous licence.

(3) The Registrar shall issue a licence to every person who, at the coming into force of this Act, is licenced pursuant to Section 14 of the former Act.

(4) Every licence issued pursuant to subsection (3) is subject to any conditions or limitations attached to the registration pursuant to the former Act. 2005, c. 43, s. 21.

Registration and licence

22 (1) The College, or a committee of the College, shall direct the Registrar to enter in the register the name, address and qualifications of any person who

(a) satisfies the College that the person possesses the qualifications required in the regulations for registration in the register;

(b) produces a letter of good standing from the jurisdiction in which the person has practised optometry before applying pursuant to this Section;

(c) complies with this Act, the regulations and the by-laws and any conditions imposed by the Registrar and the College; and

(d) pays any fees and files any document required under this Act or any by-law or regulation enacted pursuant to this Act.

(2) Upon receiving a direction from the College pursuant to subsection (1), the Registrar shall

(a) enter the name, address and qualifications of the person named in the direction in the register; and

(b) issue a licence to the person. 2005, c. 43, s. 22.

Date licences expire

23 All licences to practice expire on December 31st in the year in which they are issued. 2005, c. 43, s. 23.

Application for renewal

24 (1) Every person who holds a licence to practise shall annually, on or before December 15th, apply for a renewal thereof in a manner prescribed by the by-laws and regulations and such renewal must be granted upon payment of the annual fees and satisfaction of any other requirements prescribed by the by-laws and the regulations.

(2) Where any person holding a licence to practise fails to pay the annual fees prescribed within three months of the date upon which such fees become payable, the Registrar, after issuing ten-days' notice by registered mail addressed to the last known address of such person on the register, shall cause the name of such person to be struck off the register and, subject to subsection (3), the person ceases to be licensed to practise.

(3) Where the name of a person has been struck off the register pursuant to subsection (2), the person shall, at any time within two years thereafter, upon paying such annual fees and any arrears, be entitled to have a licence to practise issued provided all other requirements of this Act and the by-laws and regulations are met. 2005, c. 43, s. 24.

PROFESSIONAL CONDUCT**Complaints committees**

25 The Board shall appoint one or more complaints committees to investigate, in accordance with this Act and by-laws and regulations, any allegation of unprofessional conduct, conduct unbecoming the profession, incompetence, incapacity or any breach of the code of ethics, standards or rules of professional practice established by the by-laws and regulations of or by an optometrist. 2005, c. 43, s. 25.

Composition of a committee

26 A complaints committee shall consist of at least two optometrists and one member of the Board who is not an optometrist. 2005, c. 43, s. 26.

Quorum

27 Notwithstanding Section 26, any two members of a complaints committee constitute a quorum. 2005, c. 43, s. 27.

Complaint

28 A complaint must be in writing and may be initiated by

- (a) any body corporate or association;
- (b) the Executive or the Registrar; or

- (c) any other person. 2005, c. 43, s. 28.

Copy of complaint to optometrist

29 An optometrist named in a complaint must be given a copy of the complaint prior to the commencement of any investigation. 2005, c. 43, s. 29.

Principles and enactments governing complaints committees

30 A complaints committee is governed by the principles of natural justice, this Act and the by-laws and regulations in the conduct of an investigation. 2005, c. 43, s. 30.

Complaints committee powers and immunities

30A The complaints committee and each member of the complaints committee have all of the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*, with the exception of the powers of contempt, arrest and imprisonment. 2012, c. 48, s. 37.

Power to engage assistance

31 A complaints committee may engage such legal or other assistance as it deems necessary in the exercise of its duties. 2005, c. 43, s. 31.

By-laws and regulations govern disposition of complaint

32 A complaints committee shall dispose of the complaint in accordance with the by-laws and regulations. 2005, c. 43, s. 32.

Temporary suspensions or restrictions

33 (1) Notwithstanding anything contained in this Act, where

(a) a complaints committee receives information that indicates that an optometrist may be incompetent or guilty of professional misconduct or conduct unbecoming; and

(b) the complaints committee concludes that it is in the public interest to suspend from practice or restrict the practice of the optometrist,

the complaints committee may immediately, without a hearing,

(c) suspend the licence of the optometrist on a temporary basis; or

(d) impose restrictions on the licence of the optometrist on a temporary basis.

(2) When a licence is suspended or restricted pursuant to subsection (1), the Registrar shall, forthwith, give written notice of the suspension, and the reasons for the suspension, to the optometrist.

(3) A complaints committee shall, upon receipt of a request from the optometrist, provide an opportunity for a meeting with the committee to the optometrist within ten days of the written request and, after the meeting, the committee may confirm, vary or terminate the suspension or restrictions imposed pursuant to subsection (1).

(4) Where a decision is made pursuant to subsection (1) and the suspension or any restrictions imposed by the complaints committee remain in place following the meeting referred to in subsection (3), the matter shall be referred to a hearing committee which must hold a hearing within thirty days unless the optometrist requests a hearing date that is more than thirty days after the referral of the matter to the hearing committee. 2005, c. 43, s. 33.

Settlement agreement

34 (1) At any time after a complaints committee refers a matter to a hearing committee and before the commencement of a hearing, the optometrist complained of may tender to the complaints committee a settlement agreement, in writing, consented to by legal counsel for the College, that includes an admission of unprofessional conduct, conduct unbecoming the profession, incompetence, incapacity or breach of the code of ethics or standards established by the by-laws and regulations and the optometrist's consent to a specified disposition, conditional upon the acceptance of the agreement by a hearing committee.

(2) A complaints committee may, in its discretion, recommend or refuse to recommend acceptance of the proposed settlement agreement to the hearing committee.

(3) Where a complaints committee recommends acceptance of the proposed settlement agreement, the committee shall instruct legal counsel for the College to advise the hearing committee hearing the complaint of its recommendation.

(4) Where the complaints committee refuses to recommend the proposed settlement agreement, the hearing committee shall proceed without reference to the proposed settlement agreement.

(5) Where the hearing committee appointed to hear the complaint accepts the recommendation of the complaints committee, the hearing committee shall confirm such acceptance by written decision that incorporates the settlement agreement.

(6) Where the hearing committee appointed to hear the complaint rejects the recommendation of the complaints committee,

(a) the hearing committee shall advise the Registrar of its decision;

(b) the hearing committee shall not proceed further with the hearing of the complaint;

(c) a new hearing committee shall be appointed to hear the complaint and no member of the committee that considered the proposed settlement agreement may be a member of the new committee; and

(d) the complaints committee retains jurisdiction over a complaint until the commencement of a hearing by a hearing committee. 2005, c. 43, s. 34.

Hearing committees

35 The Board shall appoint a hearing committee to conduct a hearing into any matter referred to it by a complaints committee or to consider an appeal by an optometrist from a decision of the complaints committee to impose a sanction. 2005, c. 43, s. 35.

Composition of committees

36 A hearing committee must consist of a minimum of one member of the Board who is not an optometrist and two members who are optometrists. 2005, c. 43, s. 36.

Quorum

37 Notwithstanding Section 36, any two members of a hearing committee constitute a quorum. 2005, c. 43, s. 37.

Principles and enactment

38 A hearing committee is governed by the principles of natural justice, this Act and the by-laws and regulations in the conduct of a hearing. 2005, c. 43, s. 38.

Power to engage assistance

39 A hearing committee may engage such legal or other assistance as it deems necessary in the exercise of its duties. 2005, c. 43, s. 39.

Conflict

40 No person may concurrently serve on a complaints committee and a hearing committee. 2005, c. 43, s. 40.

Public Inquiries Act

41 Each member of a hearing committee has all the rights, powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*. 2005, c. 43, s. 41.

Jurisdiction unaffected

42 The jurisdiction of a complaints committee or a hearing committee to deal with a complaint or a charge against an optometrist is not affected by the

optometrist's failure to renew the annual licence or by the fact the optometrist's name is no longer on the applicable register. 2005, c. 43, s. 42.

Publication of decisions

43 (1) Subject to any publication bans, the College shall publish a hearing committee's decision or a summary of the decision in its annual report and may publish the decision or summary in any other publication.

(2) Where the registration or licence of an optometrist has been revoked or suspended or where conditions, limitations or restrictions are imposed on the licence of an optometrist, the College shall place a notice in such publications as it deems necessary in order to inform the public. 2005, c. 43, s. 43.

Appeal

44 (1) An optometrist against whom a hearing committee has rendered a decision and imposed sanctions may appeal from the findings of the hearing committee on any point of law to the Nova Scotia Court of Appeal.

(2) The notice of appeal must be filed with the Nova Scotia Court of Appeal not later than thirty days after the decision of the hearing committee and must be served upon the Registrar and the complainant.

(3) The record on appeal from the findings of the hearing committee consists of a copy of the transcript of the proceedings, the decision of the hearing committee and the evidence before the hearing committee certified by the chair of the committee.

(4) The *Civil Procedure Rules* governing appeals from the Supreme Court of Nova Scotia to the Nova Scotia Court of Appeal that are not inconsistent with this Act apply *mutatis mutandis* to appeals to the Nova Scotia Court of Appeal pursuant to this Section.

(5) Where a matter is appealed to the Nova Scotia Court of Appeal pursuant to this Section, the Nova Scotia Court of Appeal may grant a stay of any order made pursuant to this Act pending the outcome of the appeal. 2005, c. 43, s. 44.

Inadmissibility of evidence in legal proceeding

44A (1) In this Section,

(a) "civil proceeding" means any proceeding of a civil nature other than an arbitration proceeding or a proceeding before an adjudicative tribunal, board or commission or inquiry; and

(b) "legal proceeding" means any civil proceeding, discovery, inquiry, proceeding before a tribunal, board or commission or arbitration, in which evidence may be given, and includes an action or proceeding for the imposition of punishment by fine, penalty or

imprisonment for the violation of a Provincial enactment, but does not include any proceeding or hearing conducted pursuant to this Act or the regulations.

(2) A witness in any legal proceeding, whether a party to the proceeding or not, is excused from answering any question as to any proceedings of a complaints committee or a hearing committee, and is excused from producing any report, statement, memorandum, recommendation, document or information prepared for the purpose of the investigative, disciplinary and hearing processes of the College, including any information gathered in the course of an investigation or produced for a complaints committee, a hearing committee or staff members of the College.

(3) Subsection (2) does not apply to documents or records that have been made available to the public by the College.

(4) Unless otherwise determined by a court of competent jurisdiction, a decision of a complaints committee or a hearing committee is not admissible in a civil proceeding other than in an appeal or a review pursuant to this Act. 2008, c. 3, s. 10.

Jurisdiction preserved

45 Notwithstanding that a member or members of a complaints committee or a hearing committee have ceased to hold office by reason of the lapse of their appointments, such member or members are seized with the jurisdiction to complete any matter the committees have commenced if necessary to retain a quorum and, for this purpose, such member or members continue to have the same powers, privileges, immunities and duties as are provided by this Act and the by-laws and regulations. 2005, c. 43, s. 45.

PROFESSIONAL CORPORATION

Corporation may practise optometry

46 Subject to this Act and the by-laws and regulations, 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. 2005, c. 43, s. 46.

Ownership of shares

47 (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 subsections (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 Registrar. 2005, c. 43, s. 47.

Directors

48 A majority of the directors of a professional corporation must be optometrists. 2005, c. 43, s. 48.

Permit required

49 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 and regulations. 2005, c. 43, s. 49.

Practising in own name and restriction on registration

50 (1) Notwithstanding anything contained in the Act, a professional corporation to which a permit is issued may practice optometry in its own name.

(2) Notwithstanding subsection (1), no professional corporation shall be registered as an optometrist under this Act. 2005, c. 43, s. 50.

Conditions for permit

51 (1) The Registrar shall issue a permit to any professional corporation that fulfils the following conditions:

- (a) files all required applications in the form prescribed by the by-laws and regulations;
- (b) pays all fees prescribed by the by-laws and regulations;
- (c) satisfies the Registrar 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 Registrar that the name of the professional corporation is not objectionable and is in accordance with the by-laws and regulations;
- (e) satisfies the Registrar that the requirements of Sections 47 and 48 have been met;

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

(g) satisfies the Registrar 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 Registrar that the professional corporation is in compliance with this Act and the by-laws and regulations.

(2) A permit issued pursuant to subsection (1), or any renewal of permit pursuant to subsection (3), expires on December 31st of the year in which it was issued or renewed.

(3) The Registrar may renew a permit upon such application and payment of such fee as may be required by the by-laws and regulations where the Registrar determines that the requirements of subsection (1) are satisfied by the professional corporation. 2005, c. 43, s. 51.

Suspension or revocation of permit

52 (1) A permit issued or renewed pursuant to Section 51, may be suspended or revoked at any time by the Registrar, upon giving fifteen days notice, in writing, subject to the by-laws and regulations, if a professional corporation fails to satisfy any of the requirements prescribed in subsection 51(1).

(2) The Executive may, in its discretion, and subject to subsection (9), review a decision of the Registrar to suspend or revoke a permit pursuant to subsection (1).

(3) Where, pursuant to subsection (1), 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 (1), request, in writing, that the Executive review the Registrar's decision pursuant to subsection (2).

(4) Where a professional corporation requests a review by the Executive pursuant to subsection (3), and the Executive, in its discretion, decides to review the Registrar's decision, the professional corporation shall, within thirty days of receiving notice of the Registrar's decision, make written submissions to the Registrar and the Executive.

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

(6) The Executive may ratify, reverse or modify the decision of the Registrar as it considers appropriate.

(7) Where the Executive re-instates or re-issues a permit that has been suspended or revoked pursuant to subsection (1), the Executive may prescribe terms and conditions upon which re-instatement or re-issuance of a permit may be granted.

(8) Notwithstanding subsection (1),

(a) the Registrar shall suspend a permit without notice or investigation where 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 re-instated by the Registrar 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.

(9) The Registrar shall not participate as a member of the Executive in any review of a decision of the Registrar by the Executive pursuant to this Section. 2005, c. 43, s. 52.

Restriction on practice of optometry

53 For the purpose of this Act, the practice of optometry must 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. 2005, c. 43, s. 53.

Deemed revocation of permit

54 (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 licenced pursuant to this Act, or is suspended under this Act, the permit of that professional corporation is deemed to be revoked and such professional corporation shall cease to practice optometry.

(2) Where a professional corporation practices optometry through the services of more than one optometrist and that professional corporation ceases to fulfil any requirement prescribed in subsection 51(1) 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;
- (e) the retirement from practice by an optometrist,

the professional corporation shall forthwith notify the Registrar and shall fulfill 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 51(1), the professional corporation may apply to the Registrar to have its permit re-instated and the Registrar may, in the Registrar's discretion, re-instate the permit subject to such conditions as the Registrar may direct. 2005, c. 43, s. 54.

Transfer of shares

55 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 Registrar of such change. 2005, c. 43, s. 55.

Application of Act, by-laws and regulations

56 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 and regulations to the optometrist. 2005, c. 43, s. 56.

Liability for acts

57 (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 those persons 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 those persons 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. 2005, c. 43, s. 57.

Laws not affected

58 (1) Nothing contained in this Act affects, modifies or limits any law applicable to the confidential or ethical relationships between and 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. 2005, c. 43, s. 58.

Compellable witnesses

59 All shareholders, directors, officers and employees of a professional corporation are compellable witnesses in any proceedings under this Act. 2005, c. 43, s. 59.

Certificate as evidence

60 A certificate purporting to be signed by the Registrar 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 Registrar, must be admitted in evidence as *prima facie* proof of the facts stated therein without proof of the Registrar's appointment or signature. 2005, c. 43, s. 60.

Directors and officers also guilty

61 Where a professional corporation commits an offence contrary to this Act or the by-laws and regulations, 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. 2005, c. 43, s. 61.

Offence and penalty

62 (1) Every person who contravenes Sections 46 to 61 or the associated by-laws and regulations is guilty of an offence and liable on summary conviction, in addition to any penalty otherwise provided for in this Act or the by-laws and regulations, for a first offence to a fine not exceeding one thousand dollars and for a second or subsequent offence to a fine not exceeding three thousand dollars.

(2) Where a professional corporation is convicted of an offence contrary to Sections 46 to 61 or the associated by-laws and regulations, the permit of the corporation is suspended in default of payment of 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. 2005, c. 43, s. 62.

PROHIBITIONS

Prohibited activity unless licensed

63 No person, unless that person is the holder of a licence to practise that has not been suspended or revoked under this Act, shall

- (a) practise optometry;
- (b) practise optometry in violation of any condition or limitation contained in a licence to practise;
- (c) use verbally or otherwise the title of optometrist or any abbreviation of such title, or any name, title, description or designation that may lead any person to believe that such a person is an optometrist licensed to practise or entitled to practise as an optometrist; or
- (d) advertise, hold out or conduct themselves in any way implying or leading any person to believe that such person is an optometrist licensed to practise or entitled to practise as an optometrist. 2005, c. 43, s. 63.

Further prohibitions and offences

64 (1) An optometrist who leaves and ceases to practise in the Province and upon return practises optometry before providing the Registrar with a certificate of good standing from all jurisdictions in which the optometrist practised during such absence, is guilty of an offence.

(2) The College may waive the requirement of subsection (1) and may make regulations exempting optometrists from the requirements of subsection (1) if the optometrist has been absent from the Province for a period shorter than the maximum period prescribed in the regulations.

(3) No person is entitled to receive a fee, reward or remuneration for professional services rendered to any person in the practice of optometry or any appliances or devices supplied to any person in the practice of optometry unless that person is registered in accordance with this Act at the time the service was provided or the appliances or devices were rendered.

(4) No person shall wilfully have or attempt to have themselves granted a certificate of registration, licence to practice or to be registered as an optometrist by making or producing or causing to be made or produced any false or fraudulent representation or declaration. 2005, c. 43, s. 64.

Summary Proceedings Act and prosecutions

65 (1) Except in respect of the penalty provided for a corporation, where a person violates any provision of this Act, the *Summary Proceedings Act* applies in addition to any penalty otherwise provided for in this Act or the by-laws and regulations.

(2) In a prosecution for an offence contrary to this Act or the by-laws and regulations, the onus of proof that a person accused of an offence has the

right to practise optometry, or that a person comes within any of the exemptions provided by this Act, is on the person accused.

(3) Where a violation of this Act or the by-laws and regulations, by a person who does not have the right to practise optometry, continues for more than one day, the offender is guilty of a separate offence for each day that the violation continues.

(4) For the purpose of this Act, proof of the performance of one act in the practice of optometry on one occasion is sufficient to establish that a person has engaged in the practice of optometry.

(5) Any information laid pursuant to this Act may be laid by the Registrar or any person authorized by the Executive.

(6) All fines and penalties payable under this Act or the by-laws and regulations as the result of a prosecution by or on behalf of the College belong to the College. 2005, c. 43, s. 65.

Act does not prohibit activity authorized under another Act

66 Nothing in this Act prohibits the activity of any person authorized by an Act of the Legislature, notwithstanding that the activity or any part of the activity constitutes the practice of optometry pursuant to this Act. 2005, c. 43, s. 66.

Injunctions

67 (1) Where an optometrist whose licence to practise has been suspended or restricted pursuant to this Act or the by-laws and regulations does or intends to do anything contrary to this Act, in addition to any other penalty which may be invoked, the doing of such thing may be restrained by an injunction of the Supreme Court of Nova Scotia at the instance of the College.

(2) Where a person other than an optometrist does or attempts to do anything contrary to this Act the doing of such thing may be restrained by an injunction of the Supreme Court of Nova Scotia at the instance of the College. 2005, c. 43, s. 67.

GENERAL

Duty to report

68 (1) In this Section, “motor vehicle” and “highway” have the same meaning as in the *Motor Vehicle Act*.

(2) An optometrist shall report to the Registrar of Motor Vehicles the name and address of any patient attending upon the optometrist for professional services who, in the opinion of the optometrist, is afflicted with visual infirmities or disabilities rendering it unsafe for such a patient to drive a motor vehicle upon a highway.

(3) No action lies against any optometrist for the disclosure of any information or any document or anything therein, pursuant to subsection (2), unless the disclosure is made with malice. 2005, c. 43, s. 68.

No action lies

69 (1) No action for damages lies against the College, the Board, the Executive, any committee of the College or any member of any committee of the College or any employee of the College for any act or failure to act or any proceeding initiated or taken in good faith under this Act or in carrying out of any duties or obligations in accordance with this Act.

(2) No action lies against any person for the disclosure of any information or any document or anything therein pursuant to this Act unless the disclosure is made with malice. 2005, c. 43, s. 69.

Regulations Act

70 All regulations made pursuant to this Act are regulations within the meaning of the *Regulations Act*. 2005, c. 43, s. 70.

Complaints under former Act

71 (1) A complaint made pursuant to the former Act shall continue to be proceeded with in accordance with this Act as nearly as circumstances permit.

(2) In respect of any complaint made pursuant to the former Act, the investigative committee appointed pursuant to the former Act is deemed to be a complaints committee appointed pursuant to this Act.

(3) Nothing in subsections (1) and (2) precludes a complaint made pursuant to the former Act being investigated by a complaints committee appointed pursuant to this Act and, in such a case, an investigative committee appointed pursuant to the former Act ceases to have any jurisdiction in respect of that complaint. 2005, c. 43, s. 71.

Transfer of pending matters

72 (1) Upon the coming into force of this Act, any matter pending before a discipline committee pursuant to the former Act must, where not set down for a hearing to commence within sixty days of the coming into force of this Act, be transferred to a hearing committee appointed pursuant to this Act for hearing and determination, but otherwise must be heard and determined by the discipline committee pursuant to the former Act.

(2) Notwithstanding subsection (1), the parties may agree that a matter pending be transferred to a hearing committee appointed pursuant to this Act.

(3) The discipline committee pursuant to the former Act is continued until all matters pending before it at the coming into force of this Act and not

transferred to a hearing committee appointed pursuant to this Act have been finally decided. 2005, c. 43, s. 72.

By-laws

73 All by-laws enacted under the former Act and in force immediately before the coming into force of this Act continue in force until amended or repealed pursuant to this Act. 2005, c. 43, s. 73.

Limitation of Actions Act amended

74 Subclause 2(1)(d)(i) of Chapter 258 of the Revised Statutes, 1989, the *Limitation of Actions Act*, is amended by adding “, *Optometry Act*” immediately after “Act” in the second line. 2005, c. 43, s. 74.

Repeal of former Act

75 **The former Act is repealed.** 2005, c. 43, s. 75.

Proclamation

76 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 2005, c. 43, s. 76.

Proclaimed	-	March 30, 2006
In force	-	April 1, 2006
