

BILL

No. 17 of 2001

An Act respecting Professional Corporations

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(Assented to , 2001)

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

PART I **Preliminary Matters**

Short title

1 This Act may be cited as *The Professional Corporations Act*.

Interpretation

2(1) In this Act:

- (a) **“appropriate minister”** means the member of the Executive Council to whom for the time being is assigned the administration of the Act that governs an association;
- (b) **“association”** means a corporation incorporated or continued by a designated Act for the purpose of regulating the members of a designated profession;

- (c) **“bylaws of the association”** means:
 - (i) bylaws of the association made in accordance with the Act that governs the association; and
 - (ii) bylaws of the association made in accordance with this Act;
- (d) **“corporate register”** means a corporate register kept pursuant to section 9;
- (e) **“council”** means the governing body of an association;
- (f) **“court”** means the Court of Queen’s Bench;
- (g) **“designated”** means designated in the regulations;
- (h) **“licence”** means an annual authorization to practise issued by an association to a member of the association;
- (i) **“permit”** means a permit issued pursuant to subsection 8(1);
- (j) **“professional corporation”** means a corporation described in section 4;
- (k) **“registrar”** means the registrar of an association or, if an association does not have a registrar, the official of the association who, pursuant to a designated Act, is responsible for the functions ordinarily carried out by a registrar;
- (l) **“spouse”** means, with respect to a member of an association:
 - (i) the legally married spouse of the member; or
 - (ii) a person who is cohabiting with the member as spouses and has cohabited with the member as spouses continuously for a period of not less than two years.

(2) The provisions of this Act are to be interpreted in a manner that recognizes the autonomous nature of each association to which this Act applies.

Application of Act

3 This Act applies only to designated associations and members of designated associations.

PART II

Professional Corporations

Incorporation

4(1) One or more members of an association may incorporate a corporation pursuant to *The Business Corporations Act* for the purpose of carrying on, in the name of the corporation, the business of providing professional services that may lawfully be performed by members of the association.

(2) The words “Professional Corporation” or the abbreviation “Prof. Corp.” or “P.C.” must be part of the name of a professional corporation and the name must appropriately depict, in accordance with the bylaws of the association, that the professional corporation is engaged in the business of providing professional services that may lawfully be performed by members of the association.

Provision of services by professional corporation

5(1) Subject to this Act, the regulations and the bylaws of the association, a professional corporation that holds a valid permit may carry on the business of providing professional services that may lawfully be performed by members of the association whose council issued the permit.

(2) The services mentioned in subsection (1) may only be provided by the professional corporation through one or more persons, each of whom is a member of the association.

Restrictions on practising in name of corporation

6(1) No person shall carry on, purport to carry on or advertise the carrying on of the business of providing professional services that may lawfully be performed by members of an association by, through or in the name of a professional corporation unless:

- (a) the professional corporation is registered and holds a valid permit;
 - (b) subject to subsection (2), all of the issued voting shares of the professional corporation are legally and beneficially owned by one or more members of the association;
 - (c) subject to subsection (2), all of the issued non-voting shares of the professional corporation are legally and beneficially owned by:
 - (i) members of the association;
 - (ii) spouses, children or parents of members of the association who own voting shares;
 - (iii) a corporation incorporated pursuant to *The Business Corporations Act*, all of the shares of which are owned by individuals mentioned in subclause (i) or (ii); or
 - (iv) a trust, all of the beneficiaries of which are individuals mentioned in subclause (i) or (ii);
 - (d) all of the directors of the professional corporation are members of the association; and
 - (e) all persons who carry on the business of providing professional services that may lawfully be performed by members of the association by, through or in the name of the professional corporation are members of the association.
- (2) The voting and non-voting shares of a professional corporation may be vested in:
- (a) an executor or administrator of the estate of a shareholder, for the limited purpose of permitting the executor or administrator to discharge his or her duties in relation to the administration of the estate; or
 - (b) a trustee in bankruptcy, for the limited purpose of permitting the trustee to discharge his or her duties as trustee in bankruptcy of the estate of a shareholder or the professional corporation.

Restriction on voting shares

7 No owner of voting shares of a professional corporation shall pledge or enter into a voting trust agreement or proxy or any other type of agreement that vests in a person who is not a member of the association the authority to exercise the voting rights attached to any or all of the owner's shares.

Registration, permit

8(1) The council of an association may register and issue a permit to a professional corporation that:

- (a) applies in the form prescribed by the council;
- (b) pays the fees prescribed for the purpose by the council; and
- (c) satisfies the council that:
 - (i) the professional corporation:
 - (A) is a corporation in good standing pursuant to *The Business Corporations Act*;
 - (B) meets the requirements of this Act; and
 - (C) meets the requirements of the bylaws of the association;
 - (ii) each member of the association who may carry on the business of providing professional services that may lawfully be performed by members of the association by, through or in the name of the professional corporation holds liability insurance that meets the requirements of the bylaws of the association; and
 - (iii) the articles of the professional corporation do not prevent it from carrying on all business and activities associated with the business of providing professional services that may lawfully be performed by members of the association.

(2) A professional corporation shall not be registered pursuant to any provision of a designated Act.

(3) A permit may contain any terms and conditions that the council considers appropriate.

(4) Subject to section 10, a permit expires on December 31 of the year for which it is issued.

(5) A council may renew a permit issued to a professional corporation that applies in the form prescribed by the council and pays the prescribed fees, if the council is satisfied that the professional corporation continues to meet the requirements set out in clause (1)(c).

(6) Where an application for renewal of a permit is refused, the registrar of the association shall send notice of that fact to the professional corporation.

Corporate register

9(1) The registrar of an association shall:

- (a) keep a register that is to be called the corporate register; and
 - (b) enter in the corporate register the name and address of each professional corporation that is registered by the council pursuant to section 8 and the name and address of each director of each professional corporation that is registered.
- (2) The corporate register of an association is to be kept at the head office of the association and is to be open for inspection by all persons, without fee, during normal office hours of the association.

Revocation of permit

10(1) The council of an association may revoke a permit issued to a professional corporation where the professional corporation:

- (a) does not meet one or more of the requirements set out in clause 8(1)(c); or
 - (b) fails to comply with a term or condition set out in the permit.
- (2) The council of an association shall revoke a permit issued to a professional corporation where only one member of the association carries on the business of providing professional services that may lawfully be performed by members of the association in the name of the professional corporation, and:
- (a) the member of the association dies or becomes incompetent; or
 - (b) the member's licence to practise as a member of the association is suspended or revoked.
- (3) Where a permit is revoked, the registrar of the association shall:
- (a) send notice of that fact to the professional corporation; and
 - (b) strike the name of the professional corporation from the corporate register.

Delegation to registrar

11(1) The council of an association may delegate to the registrar the power to do any of the following:

- (a) register professional corporations;
 - (b) issue permits to professional corporations;
 - (c) revoke a permit issued to a professional corporation.
- (2) Where a power is delegated pursuant to this section, the exercise of that power by the registrar is deemed to be an exercise of the power by the council.
- (3) The council of an association may impose any terms and conditions that it considers appropriate on a delegation of its powers.

Review of registrar's decision

12(1) A person who is aggrieved by a decision of the registrar of an association made pursuant to a power delegated pursuant to section 11 may apply to the council to review that decision.

(2) On a review pursuant to subsection (1), the council shall hear the review and may:

- (a) direct the registrar to exercise the power in a manner that the council considers appropriate; or
- (b) confirm the registrar's decision.

(3) On a review pursuant to subsection (1), the person aggrieved by the decision of the registrar has the right to appear in person before the council in support of the application.

(4) The council shall cause the applicant to be informed in writing of its decision regarding the review.

Appeal

13(1) A professional corporation may, in accordance with this section, appeal a decision of a council to the court where:

- (a) the application of the professional corporation for registration, for a permit or for renewal of a permit is rejected;
- (b) the permit of the professional corporation is issued subject to terms and conditions; or
- (c) the permit of the professional corporation is revoked.

(2) An appeal pursuant to subsection (1) must be commenced within 60 days after the date of the decision by a notice of appeal setting out the grounds of the appeal, a copy of which is to be served on the registrar of the association.

(3) On hearing an appeal pursuant to subsection (1), the court may:

- (a) confirm or vary the decision of the council or substitute its own decision for that of the council; and
- (b) make any order as to costs that it considers appropriate.

PART III
Effects on Other Laws

Application of designated Act

14 The relationship of a member of an association to a professional corporation does not affect the application to the member of the Act pursuant to which the member is licensed or the bylaws made pursuant to that Act.

Liability of member

15 The liability of a member of an association to a person who receives services from the member is not affected by the fact that the services were provided by the member as an employee of, or on behalf of, a professional corporation.

Client relations

16(1) Nothing in this Act affects any law applicable to the confidential, ethical or fiduciary relationships between a member of an association and a person who receives services from a member.

(2) The relationship between a professional corporation and a person who receives services from a professional corporation is subject to all applicable laws relating to the confidential, ethical and fiduciary relationship between the member of an association who provides the services in the name of the professional corporation and the person who receives the services.

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

Discipline

17 If the subject of a complaint, investigation or inquiry pursuant to a designated Act is the conduct of a member of an association through whom a professional corporation was carrying on the business of providing professional services that may lawfully be performed by members of the association when the conduct occurred:

(a) any power of inspection, investigation or inquiry that may be exercised with respect to the member or the member's records may be exercised with respect to the professional corporation or the professional corporation's records;

(b) the shareholders, directors, officers and employees of the professional corporation are compellable to give evidence in any proceeding pursuant to the designated Act; and

(c) the professional corporation and its shareholders are jointly and severally liable for all fines and costs that the member is ordered to pay.

PART IV
General

Certificate

18(1) A certificate purporting to be signed by the registrar of an association setting out one or more of the facts described in subsection (2) constitutes proof, in the absence of evidence to the contrary, of those facts without proof that the person signing it is the registrar or proof of the registrar's signature.

(2) Subsection (1) applies to a certificate stating that, on a specified day or during a specified period, a corporation named in the certificate:

(a) was or was not registered as a professional corporation; or

(b) was or was not the holder of a valid permit.

Bylaws re professional corporations

19(1) A council of an association may make bylaws:

- (a) prescribing the requirements, qualifications and procedures for the registration of professional corporations and the issuing of permits;
 - (b) prescribing the amounts of permit fees payable to the association, the times of payment and the penalties for late payment;
 - (c) regulating, controlling and prohibiting the use of names by which professional corporations and partnerships involving professional corporations may be known;
 - (d) respecting the disposition of shares in a professional corporation belonging to a shareholder who ceases to be a member of an association or whose licence to practise as a member of an association is suspended or revoked;
 - (e) prescribing requirements for the issuance or renewal of permits and conditions that may be attached to permits, including the establishment of amounts of insurance that professional corporations must carry or must provide to each of their employees for the purpose of providing indemnity against professional liability claims;
 - (f) respecting the corporate register;
 - (g) governing advertising by professional corporations;
 - (h) prescribing the records that are to be kept by professional corporations and governing the access to those records by the council or any committee of the council;
 - (i) prescribing any other matters respecting professional corporations that are considered necessary for the better carrying out of this Act.
- (2) A bylaw made pursuant to this section does not come into force until it is approved pursuant to section 20 by the appropriate minister and published in the Gazette.

Filing of bylaws

20(1) An association shall file its bylaws made pursuant to section 19:

- (a) if the Act that governs the association contains provisions respecting the filing of regulatory bylaws with the appropriate minister, in accordance with those provisions; or
 - (b) if the Act that governs the association does not contain provisions respecting the filing of regulatory bylaws with the appropriate minister, in accordance with subsections (2) to (5).
- (2) An association mentioned in clause (1)(b) shall file with the appropriate minister two copies, certified by its registrar to be true copies, of:
- (a) all bylaws made pursuant to section 19; and
 - (b) any amendment to a bylaw made pursuant to section 19, together with two certified copies of the bylaw to which the amendment relates.

(3) Where the appropriate minister does not advise an association in writing within 90 days after receiving copies of the bylaw or amendment that the minister approves the bylaw or amendment, the bylaw or amendment is deemed not to be approved.

(4) Where the appropriate minister approves a bylaw or an amendment to a bylaw, the minister shall file with the Department of Justice two copies, certified by the registrar of the association to be true copies, of the bylaw or amendment.

(5) Where an amendment to a bylaw is filed pursuant to subsection (4), the appropriate minister shall file two copies, certified by the registrar of the association to be true copies, of the bylaw with the amendment.

Review by Legislative Assembly

21(1) One copy of every bylaw and amendment filed with the Department of Justice pursuant to section 20 is to be laid before the Legislative Assembly by the Minister of Justice in accordance with *The Tabling of Documents Act, 1991*.

(2) Where any bylaw or amendment laid before the Legislative Assembly is found by the Assembly to be beyond the powers delegated by the Legislature or in any way prejudicial to the public interest, that bylaw or amendment ceases to have any effect and is deemed to have been revoked.

Record of revocation and notification

22(1) Where it appears from any Votes and Proceedings of the Legislative Assembly that any bylaw or amendment has ceased to have effect, the Clerk of the Legislative Assembly shall immediately:

- (a) forward two copies of the Votes and Proceedings to the Deputy Minister of Justice; and
- (b) advise the Deputy Minister of Justice that the copies are forwarded pursuant to this subsection.

(2) On receipt of the copies mentioned in subsection (1), the Deputy Minister of Justice shall immediately:

- (a) file one of the copies with the bylaw or amendment to which it relates;
- (b) forward the other copy to the association; and
- (c) advise the association that the copy is forwarded pursuant to this subsection.

Regulations

23(1) The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) designating Acts, professions and associations for the purposes of this Act;
- (c) respecting the application of this Act to a designated profession;
- (d) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (e) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

(2) Regulations pursuant to subsection (1) may make different provisions for different professions.

Offence

24 Every person who contravenes subsection 6(1) is guilty of an offence and liable on summary conviction:

- (a) in the case of a first offence, to a fine of not more than \$2,000; and
- (b) in the case of a second or subsequent offence, to a fine of not more than \$5,000.

Coming into force

25 This Act comes into force on assent.