

2009 Bill 53

Second Session, 27th Legislature, 58 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 53

PROFESSIONAL CORPORATIONS STATUTES AMENDMENT ACT, 2009

MR. WEADICK

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 53
Mr. Weadick

BILL 53

2009

PROFESSIONAL CORPORATIONS STATUTES AMENDMENT ACT, 2009

(Assented to , 2009)

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

Health Professions Act

Amends RSA 2000 cH-7

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

(2) Section 107 is amended

- (a) by adding “voting” before “shareholder of a professional corporation”;**
- (b) by adding “voting” after “one”.**

Explanatory Notes

Health Professions Act

1(1) Amends chapter H-7 of the Revised Statutes of Alberta 2000.

(2) Section 107 presently reads:

107 Despite anything to the contrary in the Business Corporations Act and despite the providing of the professional services of a regulated member

- (a) of the College of Physicians and Surgeons of Alberta who is a physician, surgeon or osteopath,*
- (b) of the Alberta Dental Association and College,*
- (c) of the Alberta College and Association of Chiropractors, or*
- (d) of the Alberta College of Optometrists,*

on behalf of a professional corporation, every shareholder of a professional corporation is liable to the same extent and in the same way as if the

shareholder were, during that time, carrying on the business of the professional corporation as a partnership or, if there is only one shareholder, as an individual providing professional services.

(3) Section 109 is amended

(a) in subsection (1)

(i) in clause (e) by striking out “issued shares of the professional corporation are” **and substituting** “issued voting shares of the professional corporation is”;

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

(e.1) satisfies the registrar that the legal and beneficial ownership of all the issued non-voting shares of the professional corporation is vested in one or more of the following persons:

(i) one or more regulated members of the college who are also voting shareholders;

(ii) in respect of any regulated member of the college who is also a voting shareholder, one or more of the following persons:

(A) the spouse of the regulated member;

(B) the common-law partner of the regulated member;

(C) a child of the regulated member;

(D) subject to subsection (1.1), a trust, all of the beneficiaries of which are children of the regulated member;

(iii) in clause (f) by adding “voting” **before** “shareholder”;

(b) by adding the following after subsection (1):

(1.1) Where the legal and beneficial ownership of issued non-voting shares is vested in a trust on behalf of a child, the trust shall, within 90 days after the child attains the age of 18 years, transfer the shares to the child.

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

(3) For the purposes of subsection (1)(e.1)(ii) and section 114(2),

(3) Section 109(1)(e) and (f) presently read:

109(1) A regulated member who obtains an approval under section 108 and incorporates the proposed professional corporation under the Business Corporations Act may register the professional corporation under this Act if the regulated member

(e) satisfies the registrar that the legal and beneficial ownership of all the issued shares of the professional corporation are vested in one or more regulated members of the college and that all of the directors of the corporation are regulated members of the college,

(f) satisfies the registrar that no shareholder of the professional corporation has entered into a voting trust agreement, proxy or any other type of agreement vesting in another person who is not a regulated member of the same college the authority to exercise the voting rights attached to any or all of the shareholder's shares, and

- (a) “child”, with respect to a regulated member, includes
 - (i) a person of whom the regulated member is the legal parent,
 - (ii) a person who is wholly dependent on the regulated member for support and of whom the regulated member has, or immediately before the person attained the age of 19 years had, in law or in fact, the custody and control, and
 - (iii) a child of the regulated member’s spouse or common-law partner;
- (b) “common-law partner”, with respect to a regulated member at any time, means a person who cohabits in a conjugal relationship with the regulated member at that time and
 - (i) has so cohabited with the regulated member for a continuous period of at least one year, or
 - (ii) would be the parent of a child of whom the regulated member is a parent if this clause were read without reference to clause (a)(iii),

and, for the purposes of this clause, where at any time the regulated member and the person cohabit in a conjugal relationship, they are, at any particular time after that time, deemed to be cohabiting in a conjugal relationship unless they were not cohabiting at the particular time for a period of at least 90 days that includes the particular time because of a breakdown of their conjugal relationship.

(4) Section 111 is amended by adding “voting” before “shareholder”.

(4) Section 111 presently reads:

111 No shareholder of a professional corporation shall enter into a voting trust agreement, proxy or any other type of agreement vesting in another person who is not a regulated member of the same college the authority to exercise the voting rights attached to any or all of the shareholder's shares.

(5) Section 114 is amended

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

(2) Despite subsection (1), if a professional corporation ceases to comply with a condition specified in section 109(1)(a) and (d) to (f)

(a) only because of

(i) the death of a regulated member, or

(ii) the suspension or cancellation of the registration or practice permit of a regulated member,

who is a voting shareholder of the professional corporation, or

(b) only because

(i) of the death of a non-voting shareholder of the professional corporation, including a child whose shares are held in trust, or

(ii) a former spouse or former common-law partner of a regulated member who is a voting shareholder continues to own non-voting shares after their divorce or the breakdown of their common-law relationship,

the professional corporation has 90 days from the date of death, suspension, cancellation, divorce or breakdown of the common-law relationship, as the case may be, in which to fulfil the condition, failing which the annual permit is cancelled on the expiration of the 90-day period.

(b) in subsection (4) by adding “or the occurrence of an event or circumstance described in subsection (2)(b)” **after** “death of a regulated member”.

Legal Profession Act

Amends RSA 2000 cL-8

2(1) The *Legal Profession Act* is amended by this section.

(5) Section 114(2) and (4) presently read:

(2) Despite subsection (1), if a professional corporation ceases to comply with section 109(1)(a) and (d) to (f) only because of

(a) the death of a regulated member, or

(b) the suspension or cancellation of the registration or practice permit of a regulated member

who is a shareholder of the professional corporation, the professional corporation has 90 days from the date of death, suspension or cancellation in which to comply with section 109(1)(a) and (d) to (f), failing which the annual permit is cancelled on the expiration of the 90 days.

(4) In the event of the death of a regulated member, the council may in writing order that the 90-day period provided for in subsection (1) be extended for a further period that it considers reasonable.

Legal Profession Act

2(1) Amends chapter L-8 of the Revised Statutes of Alberta 2000.

(2) Section 131 is amended

(a) by repealing subsection (3)(f) and substituting the following:

- (f) satisfies the Executive Director that the legal and beneficial ownership of all the issued non-voting shares of the corporation is vested in one or more of the following persons:
 - (i) one or more active members who are also voting shareholders;
 - (ii) in respect of any active member who is also a voting shareholder, one or more of the following persons:
 - (A) the spouse of the active member;
 - (B) the common-law partner of the active member;
 - (C) a child of the active member;
 - (D) subject to subsection (3.1), a trust, all of the beneficiaries of which are children of the active member;

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

(3.1) Where the legal and beneficial ownership of issued non-voting shares is vested in a trust on behalf of a child, the trust shall, within 90 days after the child attains the age of 18 years, transfer the shares to the child.

(c) by adding the following after subsection (6):

- (7)** For the purposes of subsection (3)(f)(ii) and section 132(2),
 - (a) “child”, with respect to an active member, includes
 - (i) a person of whom the active member is the legal parent,
 - (ii) a person who is wholly dependent on the active member for support and of whom the active member has, or immediately before the person attained the

(2) Section 131(3)(f) presently reads:

(3) The Executive Director shall issue a permit to any corporation that fulfils the following conditions:

(f) satisfies the Executive Director that the legal and beneficial ownership of all issued non-voting shares of the corporation is vested in one or more active members who are also voting shareholders;

age of 19 years had, in law or in fact, the custody and control, and

- (iii) a child of the active member's spouse or common-law partner;
- (b) "common-law partner", with respect to an active member at any time, means a person who cohabits in a conjugal relationship with the active member at that time and
 - (i) has so cohabited with the active member for a continuous period of at least one year, or
 - (ii) would be the parent of a child of whom the active member is a parent if this clause were read without reference to clause (a)(iii),

and, for the purposes of this clause, where at any time the active member and the person cohabit in a conjugal relationship, they are, at any particular time after that time, deemed to be cohabiting in a conjugal relationship unless they were not cohabiting at the particular time for a period of at least 90 days that includes the particular time because of a breakdown of their conjugal relationship.

(3) Section 132 is repealed and the following is substituted:

Termination of permit

132(1) If a professional corporation ceases to fulfil any condition specified in section 131(3)

- (a) only because of the death or loss of active membership in the Society of a voting shareholder of the corporation, or
- (b) only because
 - (i) of the death of a non-voting shareholder of the corporation, including a child whose shares are held in trust, or
 - (ii) a former spouse or former common-law partner of an active member who is a voting shareholder continues

(3) Section 132 presently reads:

132 If a professional corporation ceases to fulfil any condition specified in section 131(3) by reason only of the death or loss of active membership in the Society of a voting shareholder of the corporation, the professional corporation has a period of 90 days from the date of the death or loss of active membership, as the case may be, in which to fulfil the condition, failing which the permit is automatically terminated effective on the expiration of the 90-day period without the necessity of an order of the Benchers.

to own non-voting shares after their divorce or the breakdown of their common-law relationship,

the professional corporation has a period of 90 days from the date of the death, loss of active membership, divorce or breakdown of the common-law relationship, as the case may be, in which to fulfil the condition, failing which the permit is automatically terminated effective on the expiration of the 90-day period without the necessity of an order of the Benchers.

(2) In the event of the death of a voting shareholder of the corporation or the occurrence of an event or circumstance described in subsection (1)(b), the Benchers may in writing order that the 90-day period provided for in subsection (1) be extended for a further period that it considers reasonable.

(4) Section 134 is amended by adding “voting” before “shareholder”.

Medical Profession Act

Amends RSA 2000 cM-11

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

(2) Section 75 is amended

(a) in subsection (1)

(i) in clause (f) by adding “voting” after “issued”;

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

(f.1) satisfies the registrar that the legal and beneficial ownership of all the issued non-voting shares of the professional corporation is vested in one or more of the following persons:

(i) one or more registered practitioners who are also voting shareholders;

(4) Section 134 presently reads:

134 No shareholder of a professional corporation shall enter into a voting trust agreement, proxy or any other type of agreement vesting in another person who is not an active member of the Society the authority to exercise the voting rights attached to any or all of the shareholder's shares.

Medical Profession Act

3(1) Amends chapter M-11 of the Revised Statutes of Alberta 2000.

(2) Section 75(1) presently reads:

75(1) The registrar shall issue a permit to any corporation that fulfils the following conditions:

- (a) files an application in the form prescribed by the council;*
- (b) pays all the fees prescribed by the council;*
- (c) satisfies the registrar that it is a company limited by shares that is in good standing with the Registrar of Companies under the Companies Act or that it is in good standing with the Registrar as defined in the Business Corporations Act;*

- (ii) in respect of any registered practitioner who is also a voting shareholder, one or more of the following persons:
 - (A) the spouse of the registered practitioner;
 - (B) the common-law partner of the registered practitioner;
 - (C) a child of the registered practitioner;
 - (D) subject to subsection (1.1), a trust, all of the beneficiaries of which are children of the registered practitioner;

(b) by adding the following after subsection (1):

(1.1) Where the legal and beneficial ownership of issued non-voting shares is vested in a trust on behalf of a child, the trust shall, within 90 days after the child attains the age of 18 years, transfer the shares to the child.

(c) by adding the following after subsection (4):

(5) For the purposes of subsection (1)(f.1)(ii) and section 76(1),

- (a) “child”, with respect to a registered practitioner, includes
 - (i) a person of whom the registered practitioner is the legal parent,
 - (ii) a person who is wholly dependent on the registered practitioner for support and of whom the registered practitioner has, or immediately before the person attained the age of 19 years had, in law or in fact, the custody and control, and
 - (iii) a child of the registered practitioner’s spouse or common-law partner;
- (b) “common-law partner”, with respect to a registered practitioner at any time, means a person who cohabits in a conjugal relationship with the registered practitioner at that time and

- (d) satisfies the registrar that the company, by law or by virtue of its incorporating documents, has the capacity to carry on the business and exercise the powers set out in the Schedule to this Act;*
- (e) satisfies the registrar that the name of the company is in accordance with the bylaws of the council and contains the words "Professional Corporation";*
- (f) satisfies the registrar that the legal and beneficial ownership of all the issued shares of the company is vested in one or more registered practitioners and that all of the directors of the company are registered practitioners;*
- (g) satisfies the registrar that the persons who will carry on the practice of medicine on behalf of the company are registered practitioners.*

- (i) has so cohabited with the registered practitioner for a continuous period of at least one year, or
- (ii) would be the parent of a child of whom the registered practitioner is a parent if this clause were read without reference to clause (a)(iii),

and, for the purposes of this clause, where at any time the registered practitioner and the person cohabit in a conjugal relationship, they are, at any particular time after that time, deemed to be cohabiting in a conjugal relationship unless they were not cohabiting at the particular time for a period of at least 90 days that includes the particular time because of a breakdown of their conjugal relationship.

(3) Section 76 is repealed and the following is substituted:

Termination of permit

76(1) If a professional corporation ceases to fulfil any condition specified in section 75

- (a) by reason only of
 - (i) the death of a registered practitioner,
 - (ii) the striking-off or other removal from the register of the name of a registered practitioner, or
 - (iii) the suspension of a registered practitioner by the College,

who is a voting shareholder of the corporation, or

- (b) by reason only of
 - (i) the death of a non-voting shareholder of the corporation, including a child whose shares are held in trust, or
 - (ii) a former spouse or former common-law partner of a registered practitioner who is a voting shareholder continuing to own non-voting shares after their divorce or the breakdown of their common-law relationship,

(3) Section 76 presently reads:

76 If a professional corporation ceases to fulfil any condition specified in section 75 by reason only of

- (a) the death of a registered practitioner,*
- (b) the striking off or other removal from the register of the name of a registered practitioner, or*
- (c) the suspension of a registered practitioner by the College,*

who is a shareholder of the corporation, the professional corporation has a period of 90 days from the date of death, striking off or other removal or the suspension, as the case may be, in which to fulfil the condition failing which the permit is automatically terminated effective on the expiration of the 90-day period without the necessity of an order of the council.

the professional corporation has a period of 90 days from the date of death, striking-off or other removal, suspension, divorce or breakdown of the common-law relationship, as the case may be, in which to fulfil the condition, failing which the permit is automatically terminated effective on the expiration of the 90-day period without the necessity of an order of the council.

(2) In the event of the death of a registered practitioner or the occurrence of an event or circumstance described in subsection (1)(b), the College may in writing order that the 90-day period provided for in subsection (1) be extended for a further period that it considers reasonable.

(4) Section 77(1) is amended

(a) by adding “voting” after “person who is a”;

(b) by adding “voting” after “one”.

(5) Section 78 is amended by adding “voting” before “shareholder”.

Regulated Accounting Profession Act

Amends RSA 2000 cR-12

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

(4) Section 77(1) presently reads:

77(1) Notwithstanding anything to the contrary in the Companies Act or the Business Corporations Act, every person who is a shareholder

(a) of a corporation during the time that it is the holder of a permit, or

(b) of a corporation during the time that it acts in contravention of section 86(1),

is liable to the same extent and in the same manner as if the shareholders of the corporation were during that time carrying on the business of the corporation as a partnership or, where there is only one shareholder, as an individual practising medicine.

(5) Section 78 presently reads:

78 No shareholder of a professional corporation shall enter into a voting trust agreement, proxy or any other type of agreement vesting in another person who is not a registered practitioner the authority to exercise the voting rights attached to any or all of the shareholder's shares.

Regulated Accounting Profession Act

4(1) Amends chapter R-12 of the Revised Statutes of Alberta 2000.

(2) Section 37 is amended

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

- (b) all of the directors of the corporation are members of the accounting organization,
- (b.1) all of the issued voting shares of the corporation are legally and beneficially vested in one or more members of the accounting organization,
- (b.2) all of the issued non-voting shares of the corporation are legally and beneficially vested in one or more of the following persons:
 - (i) one or more members of the accounting organization who are also voting shareholders;
 - (ii) in respect of any member of the accounting organization who is also a voting shareholder, one or more of the following persons:
 - (A) the spouse of the member;
 - (B) the common-law partner of the member;
 - (C) a child of the member;
 - (D) subject to subsection (1.1), a trust, all of the beneficiaries of which are children of the member,

and

(b) by adding the following after subsection (1):

(1.1) Where the legal and beneficial ownership of issued non-voting shares is vested in a trust on behalf of a child, the trust shall, within 90 days from the date the child attains the age of 18 years, transfer the shares to the child.

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

(3) For the purposes of subsection (1)(b.2)(ii) and section 43(2),

(2) Section 37 presently reads:

37(1) No person may engage in a public accounting practice under any name containing the words "Professional Corporation" or the abbreviation or initials "P.C." unless that person is incorporated or continued as a corporation under the Business Corporations Act and

- (a) the corporation is currently registered as a professional corporation by the accounting organization,*
- (b) all directors and shareholders of the corporation are members of the accounting organization, and*
- (c) the corporation meets the requirements of this Act and the regulations.*

(2) A person who contravenes subsection (1) is guilty of an offence and liable to a fine of not more than \$1000 for every day on which the prohibited name, abbreviation or initials are used.

- (a) “child”, with respect to a member of an accounting organization, includes
 - (i) a person of whom the member is the legal parent,
 - (ii) a person who is wholly dependent on the member for support and of whom the member has, or immediately before the person attained the age of 19 years had, in law or in fact, the custody and control, and
 - (iii) a child of the member’s spouse or common-law partner;
- (b) “common-law partner”, with respect to a member of an accounting organization at any time, means a person who cohabits in a conjugal relationship with the member at that time and
 - (i) has so cohabited with the member for a continuous period of at least one year, or
 - (ii) would be the parent of a child of whom the member is a parent if this clause were read without reference to clause (a)(iii),

and, for the purposes of this clause, where at any time the member and the person cohabit in a conjugal relationship, they are, at any particular time after that time, deemed to be cohabiting in a conjugal relationship unless they were not cohabiting at the particular time for a period of at least 90 days that includes the particular time because of a breakdown of their conjugal relationship.

(3) Section 38(1) is amended

- (a) **by adding** “voting” **before** “shareholder of a professional corporation”;
- (b) **by adding** “voting” **after** “one”.

(3) Section 38(1) presently reads:

38(1) Notwithstanding anything to the contrary in the Business Corporations Act, every shareholder of a professional corporation is liable to the same extent and in the same way as if the shareholder were, during that time, carrying on the business of the professional corporation as a partnership or, if there is only one shareholder, as an individual conducting a public accounting practice.

(4) Section 40(a) is amended by adding “, (b.1), (b.2)” after “37(1)(b)”.

(5) Section 41 is amended by adding “voting” before “shareholder”.

(6) Section 43 is amended

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

(2) Notwithstanding subsection (1), if a professional corporation ceases to comply with section 37 or 42

- (a) only because of
 - (i) the death of a member, or
 - (ii) the suspension or cancellation of the registration of a registrant,

who is a voting shareholder of the professional corporation, or

- (b) only because
 - (i) of the death of a non-voting shareholder of the professional corporation, including a child whose shares are held in trust, or
 - (ii) a former spouse or former common-law partner of a member who is a voting shareholder continues to own non-voting shares after their divorce or the breakdown of their common-law relationship,

(4) Section 40(a) presently reads:

40 An application for registration as a professional corporation is complete for the purpose of consideration under Division 1 of this Part if it is in the required form and provided to the accounting organization by the applicant together with

(a) evidence of compliance with section 37(1)(b) and (c).

(5) Section 41 presently reads:

41 No shareholder of a professional corporation shall enter into a voting trust agreement, proxy or any other type of agreement vesting in another person who is not a member of the same accounting organization the authority to exercise the voting rights attached to any or all of the shareholder's shares.

(6) Section 43(2) and (4) presently read:

(2) Notwithstanding subsection (1), if a professional corporation ceases to comply with section 37 or 42 only because of

(a) the death of a member, or

(b) the suspension or cancellation of the registration of a registrant,

who is a shareholder of the professional corporation, the professional corporation has 90 days from the date of the death, suspension or cancellation in which to comply with section 37 or 42, as the case may be, failing which the professional corporation's registration is cancelled on the expiration of the 90 days.

(4) In the event of the death of a member, the governing body may in writing order that the 90-day period provided for in subsection (2) be extended for a further period that it considers reasonable.

the professional corporation has 90 days from the date of the death, suspension, cancellation, divorce or breakdown of the common-law relationship, as the case may be, in which to comply with section 37 or 42, as the case may be, failing which the professional corporation's registration is cancelled on the expiration of the 90-day period.

- (b) in subsection (4) by adding** “or the occurrence of an event or circumstance described in subsection (2)(b)” **after** “death of a member”.

Coming into Force

- 5 This Act comes into force on Proclamation.**

Coming into Force

- 5** Coming into force.

