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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL Pr 13

CERTIFIED MANAGEMENT CONSULTANTS ACT

MR. PAYNE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill Pr 13
Mr. Payne

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1986

CERTIFIED MANAGEMENT CONSULTANTS ACT

(Assented to , 1986)

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

Definitions

1(1) In this Act,

- (a) “Board of Directors” or “Board” means the Board of Directors of the Institute;
- (b) “Institute” means the Institute of Certified Management Consultants of Alberta incorporated by this Act;
- (c) “Investigation Committee” means the Investigation Committee established under section 25;
- (d) “member of the public” means an individual who is not a registered member or a member of any organization whose membership consists wholly or primarily of individuals engaged in the practice of management consulting inside or outside Alberta;
- (e) “Minister” means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;
- (f) “Practice Review Board” means the Practice Review Board established under section 19;
- (g) “Professional Conduct Committee” means the Professional Conduct Committee established under section 24;
- (h) “prospective regular member” means an individual registered under this Act as a prospective regular member of the Institute;
- (i) “register” means a register referred to in section 11(1);

(j) “registered member” means an individual registered under this Act as a regular member or a prospective regular member of the Institute or a person who is a member of any class or category of membership of the Institute established under the by laws;

(k) “Registrar” means the Registrar of the Institute appointed under this Act;

(l) “Registration Committee” means the Registration Committee established under section 12;

(m) “regular member” means an individual registered under this Act as a regular member of the Institute;

(n) “Society” means the Institute of Management Consultants of Alberta, a body corporate incorporated under the *Societies Act*.

(2) In this Act, “the practice of management consulting” or “practice” means

(a) the provision, after appropriate education and experience, of independent and professional consulting services in investigating and identifying management problems,

(b) through systematic analysis and the application of objective judgment, specialized knowledge and skills, the making of recommendations and the provision of help to implement solutions to management problems, and

(c) the provision, by way of interim management services, of support and assistance for the benefit of the client.

PART 1 THE INSTITUTE

Incorporation

2(1) The persons who are the members of the Society immediately before the commencement of this Act, together with the persons who become members of the Institute after the commencement of this Act, are incorporated as a body corporate under the name “Institute of Certified Management Consultants of Alberta”.

(2) Upon the commencement of this Act,

(a) the Society is dissolved;

(b) the rights, property, obligations and liabilities of the Society become the rights, property, obligations and liabilities of the Institute;

(c) the persons who were the members of the board of directors of the Society immediately before the commencement of this Act become the members of the Board of Directors of the Institute until their successors are elected or appointed pursuant to this Act;

(d) the persons who were, immediately before the commencement of this Act, regular members and prospective members of the Society according to the by laws of the Society, become regular members and prospective regular members respectively of the Institute;

(e) the persons who were the officers of the Society immediately before the commencement of this Act become the respective officers of the Institute until their successors are appointed pursuant to this Act;

(f) the by laws of the Society in effect immediately before the commencement of this Act, to the extent that they are not repugnant to this Act, become the by laws of the Institute until they are re-enacted or repealed under this Act;

(g) any reference to the Society in any document, other than a document relating to the registration of the Society under the *Societies Act*, shall be deemed to be a reference to the Institute.

(3) As soon as practicable after the commencement of this Act, the Registrar of Corporations shall cancel the registration of the Society under the *Societies Act* effective as of the date of the commencement of this Act.

Capacity and
general powers

3 The Institute has the capacity and, subject to this Act, the rights, powers and privileges of a natural person.

Head office

4 The head office of the Institute shall be located in Alberta at the place specified in the by laws.

Annual meeting

5 An annual general meeting of the Institute shall be held not more than 14 months after the last annual general meeting and shall be held at a time and place decided by the Board of Directors.

Board of
Directors

6(1) There shall be a Board of Directors of the Institute consisting of the persons elected or appointed as members of the Board pursuant to section 7.

(2) The Board of Directors shall manage and conduct the business and affairs of the Institute and shall exercise the powers of the Institute in the name of and on behalf of the Institute.

(3) A member of the Board of Directors continues to hold office after the expiry of his term of office until his successor is elected or appointed, as the case may be.

7(1) The Board shall consist of

(a) not fewer than 6 regular members or a greater number that may be prescribed by the by laws, not to exceed 25, each of whom shall be elected by and from among regular members at the time, in the manner and for the period provided for by the by laws,

(b) when the number of elected Board members does not exceed 10, 1 member of the public, or when the number of elected Board members is more than 10, 2 members of the public, who shall be appointed by the Minister for a 2 year term of office from a list of no fewer than 3 members of the public nominated by the elected Board members, and

(c) any other members of the public who are elected or appointed by regular members at the time, in the manner and for the period provided for by the by laws.

(2) If the Board fails, within a reasonable time after being requested to do so by the Minister, to make a nomination for the purpose of subsection (1)(b), the Minister may appoint the members of the public to the Board without the Board's nomination.

(3) The members of the Board of Directors shall elect from among themselves the officers of the Institute specified in the by laws in the manner and for the term prescribed in the by laws.

(4) A member of the Board of Directors referred to in subsection (1)(b) continues to hold office after the expiry of his term of office until he is reappointed or his successor is appointed.

(5) The Minister may, after consultation with the Board of Directors, revoke the appointment of a member of the Board referred to in subsection (1)(b).

(6) The Minister may, in the absence of any payment by the Institute to the member for that purpose, pay to a member of the Board of Directors referred to in subsection (1)(b) travelling and living expenses incurred by that member for his attendance at any meeting of the Board while away from his usual place of residence, and fees in an amount prescribed by the Minister.

(7) The powers, duties and operations of the Board of Directors under this Act, the regulations and the by laws are not affected by

(a) the fact that no member of the public is appointed as a member of the Board pursuant to subsection (1)(b),

(b) the revocation under subsection (5) of the appointment of a member of the Board, or

(c) the resignation from the Board of a member of the public.

(8) The failure of a member of the public appointed pursuant to subsection (1)(b) to attend a meeting of the Board of Directors shall not be construed to affect or restrict the Board from exercising any powers or performing any duties under this Act, the regulations or the by laws at that meeting.

Officers

8(1) The Board of Directors shall appoint a Registrar and the other officers of the Institute.

(2) In addition to the powers, duties and functions of the Registrar under this Act, the Registrar has any additional powers, duties and functions prescribed by resolution of the Board of Directors or by the regulations or by laws.

PART 2 USE OF NAME

Use of
designations and
initials

9(1) No person other than a regular member shall use

(a) the name “Certified Management Consultant” or the initials “C.M.C.”, or

(b) any title, description, abbreviation, letter or symbol representing the name “Certified Management Consultant” or the initials “C.M.C.”,

alone or in combination with any other title, description, abbreviation, letter or group of letters, in such a way as to represent expressly or by implication that he is a regular member.

(2) Subject to and in accordance with the regulations, regular members may use the designation “Certified Management Consultant” or the initials “C.M.C.”.

(3) The Court of Queen’s Bench, on application by the Institute by way of originating notice, may grant an injunction enjoining any person from doing any act in contravention of subsection (1), whether or not a prosecution has been commenced or concluded under subsection (4).

(4) Every person who contravenes subsection (1) is guilty of an offence.

Fellow of
Institute

10 Subject to the by laws, the Board of Directors may confer on a regular member or former regular member the privilege of using the designation “Fellow of the Institute of Management Consultants of Alberta” and the initials “F.M.C.”.

PART 3 REGISTRATION OF MEMBERS

Membership
and registers

11(1) The Registrar shall establish and maintain, in accordance with this Act, the regulations and by laws and in accordance with the directions of the Board of Directors, the following registers:

- (a) a register of regular members;
- (b) a register of prospective regular members;
- (c) a register for each other class or category of membership established under the by laws.

(2) The Registrar shall enter in the appropriate register the name of a person

- (a) whose application has been approved
 - (i) by the Registration Committee or, on review, the Board of Directors, in the case of a regular member, or
 - (ii) in accordance with the by laws, in the case of a prospective regular member or a member of another class or category of membership established under the by laws,

and

- (b) who has paid the fee prescribed in the by laws.

(3) The Registrar shall, during regular office hours, permit any person to inspect the registers.

Registration
Committee

12(1) There is hereby established a Registration Committee consisting of the regular members appointed in accordance with the regulations.

(2) The Registration Committee shall, in accordance with this Part, the regulations and the by laws, consider applications for the registration of applicants as regular members, and may approve or refuse to approve the registration or defer the approval of registration until it is satisfied that the applicant has fulfilled all of the applicable requirements for registration.

(3) On approving or refusing or deferring approval of registration, the Registration Committee shall

- (a) cause a written notice of the approval, refusal or deferral to be sent to the applicant, and

(b) in the case of an approval, cause a notice of the approval to be published to regular members in the manner prescribed in the by laws.

(4) A regular member may, within 15 days of publication of a notice of approval under subsection (3), request the Board of Directors to review the application and approval by serving on the Registrar a written request for review by the Board of Directors setting out the reasons why, in his opinion, the application and approval of the applicant concerned should be reviewed.

(5) A request for review under subsection (4) acts as a stay of the approval of registration by the Registration Committee.

(6) An applicant whose application for registration in accordance with this Part has been refused may, within 30 days of receiving a notice of refusal and the reasons for the refusal, request the Board of Directors to review the refusal by serving on the Registrar a written request for review by the Board of Directors setting out the reasons why, in his opinion, his application for registration as a regular member should be approved.

Reviews

13(1) The Board of Directors shall, after receipt of a request for review under section 12(4) or (6), review the request so received.

(2) The Board of Directors shall, on receipt of a request for review under section 12(4) or (6), direct the Registrar to notify in writing

(a) in the case of a request for review pursuant to section 12(4), the person who requested the review and the applicant for registration, and

(b) in the case of a request for review pursuant to section 12(6), the applicant,

of the date, place and time that it will consider the matter requested to be reviewed.

(3) Each person entitled to notification under subsection (2) is entitled to appear with counsel and make representations to the Board of Directors when it considers the matter under review.

(4) The Board of Directors shall review the matter requested to be reviewed within 30 days after the date of service of the notification under subsection (2).

(5) The Board of Directors may, on the written request of the applicant or the Registrar, extend the period mentioned in subsection (4) for 1 or more additional periods, each not exceeding 30 days.

(6) A member of the Registration Committee who is also a member of the Board of Directors may participate at a review by the Board of Directors under this section but shall not vote in a decision of the Board of Directors at a review under this section.

(7) On reviewing an application under this section, the Board of Directors may make any decision that the Registration Committee could have made.

Certificate of membership

14 On entering the name of an individual in the register of regular members, the Registrar shall issue to that individual a certificate of membership.

Suspension of registration

15(1) The registration of a registered member is suspended when a decision to suspend the registration is made in accordance with this Act.

(2) The Registrar shall, after a decision to suspend a registration has been made, enter a memorandum of the suspension of the registration in the appropriate register, indicating

- (a) the period of the suspension, and
- (b) the reason for the suspension.

(3) The registration of a registered member is cancelled when a decision to cancel the registration is made in accordance with this Act.

(4) The Registrar shall, after a decision to cancel a registration has been made, enter a memorandum of the cancellation of the registration in the appropriate register.

(5) The Registrar shall not remove from the registers any memorandum made by him under subsection (2) or (4) except in accordance with the by laws.

Cancellation on request

16 The Registrar may, at the request of a registered member, cancel the registration of the registered member.

Non-payment of fees, etc.

17(1) The Registrar may cancel the registration of

- (a) a registered member who is in default of payment of any fees, costs, dues or levies payable by him under this Act, the regulations or the by laws, or
- (b) a regular member who has ceased to carry on the practice of management consulting in Alberta,

after the expiration of 1 month following the service on that registered member of a written notice that the Registrar intends to cancel the registration unless the registered member on whom the notice is served complies with the notice.

- (2) The notice under subsection (1) shall state that the Registrar may cancel the registration unless, as the case may be,
- (a) the fees, dues, costs or levies are paid as indicated in the notice, or
 - (b) evidence satisfactory to the Registrar has been received by him within the time prescribed in the notice that the regular member is continuing to carry on the practice of management consulting in Alberta.
- (3) The Registrar may cancel the registration of any registered member that was entered in error in a register.
- (4) The Registrar shall cancel the registration of a person as a prospective regular member when that person becomes registered as a regular member.

Reinstatement

18 The Board of Directors may direct the Registrar, subject to any conditions respecting the payment of arrears and any reinstatement fee that the Board of Directors may prescribe,

- (a) to reinstate in the applicable register a registration that was cancelled under section 22(1), and
- (b) in the case of reinstatement of the registration of a regular member, to re issue the certificate of membership to the regular member.

PART 4

PRACTICE REVIEW BOARD

Membership

19 There is hereby established a Practice Review Board consisting of not fewer than 4 registered members appointed by the Board of Directors in the number and manner set out in the by laws.

Duties

20(1) The Practice Review Board

- (a) shall on its own initiative or at the request of the Board of Directors inquire into and report to and advise the Board of Directors in respect of
 - (i) the assessment and development of educational standards and experience requirements that are conditions precedent to obtaining and continuing registration as a regular member under this Act,
 - (ii) the evaluation of desirable standards of competence of regular members generally,

(iii) any other matter that the Board of Directors from time to time considers necessary or appropriate in connection with the exercise of its powers and the performance of its duties in relation to competence in the practice of management consulting under this Act, the regulations and the by laws, and

(iv) the practice of management consulting generally,

and

(b) may conduct a review of the practice of a regular member in accordance with this Act and the by laws.

(2) If a regular member does not co operate with the Practice Review Board in carrying out an inquiry or review, the chairman of the Practice Review Board may make a complaint in writing to the Registrar and the failure or refusal to co operate may be held by the Professional Conduct Committee to be professional misconduct.

Inquiries

21 Sections 35 to 39 apply, with all necessary modifications, to an inquiry or review by the Practice Review Board as if that Board were the Professional Conduct Committee.

Powers re
reviews

22(1) After each inquiry or review under section 20, the Practice Review Board

(a) shall make a written report to the Board of Directors on the inquiry or review and, where appropriate, on its decision,

(b) may make recommendations to the Board of Directors regarding the matter inquired into or reviewed, with reasons for the recommendations,

(c) may make recommendations to a regular member as to his practice,

(d) may assess and levy the costs of any inquiry or review against the regular member in respect of whom the review was conducted in accordance with the by laws, and

(e) if it is of the opinion that the conduct of a regular member constitutes or may constitute either unskilled practice or professional misconduct,

(i) shall forthwith refer the matter relating to that conduct to the Registrar for an investigation under Part 5, and in such a case the Registrar shall deal with the referral as if it were a complaint, and

(ii) may, if it makes a referral under subclause (i), recommend to the chairman of the Board of Directors that the registration of the regular member be temporarily suspended pending the outcome of proceedings under Part 5.

(2) On receiving a recommendation under subsection (1)(e)(ii), the chairman of the Board of Directors may suspend the registration.

(3) The regular member may, by filing an originating notice with the Court of Queen's Bench and serving a copy on the chairman of the Practice Review Board, apply for an order of the Court staying the decision of the chairman.

(4) If the costs of a practice review are not paid at or within the time prescribed for payment, the regular member is, by virtue of the non payment, suspended while the costs remain unpaid.

PART 5 DISCIPLINE

Definitions

23 In this Part,

- (a) "conduct" includes any act or omission;
- (b) "investigated person" means a registered member with respect to whose conduct an investigation or hearing is held under this Part;
- (c) "records" means
 - (i) accounts, books, returns, statements, reports, correspondence, financial documents, financial statements, working papers, or other memoranda of financial or non financial information whether in writing or in electronic form or represented or reproduced by any other means, and
 - (ii) the results of the recording of details of electronic data processing systems and programs to illustrate what the systems and programs do and how they operate.

Professional
Conduct
Committee

24(1) There is hereby established a committee called the Professional Conduct Committee composed of not fewer than 3 persons as follows:

- (a) at least 2 regular members appointed by the Board of Directors in accordance with the by laws;
- (b) 1 person who is appointed by the Minister from a list of no fewer than 3 members of the public nominated by the Board of Directors.

(2) If the Board of Directors fails, within a reasonable time after being requested to do so by the Minister, to make a nomination for the purpose of subsection (1)(b), the Minister may appoint a member of the public to the Professional Conduct Committee without the Board's nomination.

(3) The Minister may, in the absence of any payment by the Institute to the member for that purpose, pay to the member of the Professional Conduct Committee referred to in subsection (1)(b) travelling and living expenses incurred by that member for attendance at a hearing of the Professional Conduct Committee away from his usual place of residence and fees in an amount prescribed by the Minister.

(4) The Minister may, after consultation with the Board of Directors, revoke the appointment of the member of the Professional Conduct Committee referred to in subsection (1)(b).

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

(6) The powers, duties and operations of the Professional Conduct Committee under this Act, the regulations and the by laws are not affected by

(a) the fact that no member of the public is appointed as a member of the Professional Conduct Committee pursuant to subsection (1)(b),

(b) the revocation under subsection (4) of the appointment of a member of the public, or

(c) the resignation as a member of the Professional Conduct Committee of a member of the public.

(7) Subject to the by laws prescribing a quorum of the Professional Conduct Committee, the failure of a member of the public appointed pursuant to subsection (1)(b) to attend a meeting of the Professional Conduct Committee shall not be construed to affect or restrict the Professional Conduct Committee from exercising any powers or performing any duties under this Act, the regulations and the by laws at that meeting.

Investigation
Committee

25(1) There is hereby established a committee called the Investigation Committee composed of at least 2 regular members appointed by the Board of Directors in accordance with the by laws.

(2) No person who is a member of the Professional Conduct Committee may be a member of the Investigation Committee.

26 Any conduct of a registered member that, in the opinion of the Professional Conduct Committee,

- (a) is detrimental to the best interests of the public or the members of the Institute,
- (b) contravenes this Act or the regulations,
- (c) harms or tends to harm the standing of the profession of management consulting generally, or
- (d) displays lack of knowledge of or lack of skill or judgment in the practice of management consulting,

constitutes either unskilled practice of management consulting or professional misconduct, whichever the Professional Conduct Committee determines, whether or not that conduct is disgraceful or dishonourable.

27(1) A person may complain to the Registrar about the conduct of a registered member, and the complaint shall be dealt with in accordance with this Part and the regulations.

(2) If, after the registration of a registered member is removed, suspended or cancelled under this Act,

- (a) a complaint is made about the former registered member, and
- (b) the complaint relates to conduct occurring before the removal, suspension or cancellation occurred,

the complaint may, notwithstanding the removal, suspension or cancellation, be dealt with within 2 years following the date of removal, suspension or cancellation as if the removal, suspension or cancellation had not occurred.

(3) A person designated by the Board of Directors as a mediator may assist in settling a complaint made to the Registrar if the complainant and the person about whose conduct the complaint was made so agree, but if within 30 days from the date of receipt of the complaint, or a longer period agreed to by those persons, a settlement of the complaint between those persons does not occur, or in the mediator's opinion is not likely to occur, the mediator shall forthwith refer the complaint to the Registrar.

(4) If a registered member fails to comply with the terms of any settlement reached under subsection (3), the mediator may make a complaint in writing to the Registrar under subsection (1) and the failure may be held by the Professional Conduct Committee to be professional misconduct.

Preliminary
investigation

28(1) The Registrar, on receipt of a complaint under section 27(1) or, if section 27(3) applies, on receipt of the referral from the mediator, shall forthwith forward the complaint to the chairman of the Investigation Committee.

(2) The chairman of the Investigation Committee shall, within 30 days from the date on which he receives a complaint under subsection (1), conduct or appoint a person to conduct a preliminary investigation into the conduct of the registered member.

(3) The chairman of the Board of Directors may at the request of the chairman of the Investigation Committee extend the 30 day period mentioned in subsection (2).

(4) A person conducting a preliminary investigation may

(a) request any person to answer any questions and to produce to him any records that are relevant to the investigation, and

(b) copy and keep copies of any of the records that are produced to him under clause (a).

(5) A person conducting a preliminary investigation shall conduct the investigation in a manner considered by him to be most suitable in all the circumstances.

(6) A person conducting a preliminary investigation may investigate any other matter related to the professional conduct or skill in practice of the investigated person that arises in the course of the investigation and may include that matter in the complaint being investigated.

(7) The person conducting a preliminary investigation shall, forthwith on concluding the preliminary investigation, report his finding to the Investigation Committee.

(8) If an investigated person or any other registered member does not co operate with a person conducting a preliminary investigation, the person conducting the preliminary investigation may make a complaint in writing to the Registrar and the failure or refusal to co operate may be held by the Professional Conduct Committee to be professional misconduct.

Duties of
Investigation
Committee

29(1) The Investigation Committee shall, forthwith on receipt of a report under section 28(7),

(a) direct that no further action be taken, if it determines that

(i) the complaint is frivolous or vexatious, or

(ii) there is insufficient evidence of unskilled practice or professional misconduct to warrant consideration of the conduct by the Professional Conduct Committee,

or

(b) refer the complaint to the Professional Conduct Committee if it determines that there is sufficient evidence of unskilled practice or professional misconduct to warrant consideration of the conduct by the Professional Conduct Committee.

(2) A member of the Investigation Committee may participate in and vote on any decision made under subsection (1), notwithstanding that he may have conducted the preliminary investigation of the complaint.

(3) The Investigation Committee is not required to hold a hearing for the purpose of making a decision under subsection (1).

Notice

30 The chairman of the Investigation Committee shall direct the Registrar to serve on the investigated person and on the complainant, if any, a notice that no further action will be taken or that the matter has been referred to the Professional Conduct Committee, as the case may be.

Appeal by
complainant

31(1) A complainant who is served with a notice under section 30 that no further action will be taken may, by notice in writing given to and received by the Registrar within 30 days of receipt of the notice, appeal that decision to the Board of Directors.

(2) On an appeal under subsection (1), the Board of Directors shall determine whether

(a) the complaint is frivolous or vexatious, or

(b) there is sufficient evidence of unskilled practice or professional misconduct to warrant consideration of the conduct by the Professional Conduct Committee

and shall notify the complainant and the investigated person in writing of its decision.

(3) The Board of Directors is not required to hold a hearing for the purpose of making a decision under subsection (2).

Suspension
pending decision

32(1) Notwithstanding anything in this Act, the chairman of the Professional Conduct Committee may at any time and without a hearing suspend the registration of an investigated person pending the decision of the Professional Conduct Committee with respect to the conduct of that investigated person and in such a case the chairman shall forthwith notify the investigated person in writing of the suspension.

(2) The investigated person may, by filing an originating notice with the Court of Queen's Bench and serving a copy on the chairman, apply for an order of the Court staying the decision of the chairman.

Hearings

33(1) On referral to it of a matter under this Part, the Professional Conduct Committee shall hold a hearing.

(2) The Institute and the investigated person may appear and be represented by counsel at a hearing before the Professional Conduct Committee.

(3) The Professional Conduct Committee and the Board of Directors may direct that proceedings before them be held in private.

Notice of hearing

34(1) The chairman of the Professional Conduct Committee shall direct the Registrar to serve and the Registrar on being so directed shall, at least 15 days before the hearing date, serve on the investigated person a notice of hearing stating the date, time and place at which the Professional Conduct Committee will hold a hearing and giving reasonable particulars of the complaint or conduct in respect of which the hearing will be held.

(2) The Professional Conduct Committee shall hold a hearing on the complaint or conduct referred to in the notice within 30 days after the date of service of the notice of hearing under subsection (1).

(3) The chairman of the Board of Directors may, on the written request of the chairman of the Professional Conduct Committee, extend the period mentioned in subsection (2) for 1 or more additional periods, each not exceeding 30 days.

(4) The Professional Conduct Committee may also hear any other matter concerning the professional conduct or skill in practice of the investigated person that arises in the course of a hearing, but in that event the Professional Conduct Committee shall declare its intention to hear the further matter and shall permit the investigated person sufficient opportunity to prepare his answer to the further matter.

Evidence

35(1) Evidence may be given before the Professional Conduct Committee in any manner that the Professional Conduct Committee considers appropriate, and the Professional Conduct Committee is not bound by the rules of law respecting evidence applicable to judicial proceedings.

(2) For the purpose of an investigation, hearing or review under this Act, a member of the Investigation Committee, a person conducting a preliminary investigation, a member of the Professional Conduct Committee, a member of the Practice Review Board and a member of the Board of Directors are conferred with the power of a commissioner for oaths under the *Commissioners for Oaths Act*.

36(1) The investigated person and any other person who, in the opinion of the Professional Conduct Committee, has knowledge of the complaint or any conduct being investigated are compellable witnesses in a hearing under this Part.

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

- (a) tend to incriminate him,
- (b) subject him to punishment under this Part, or
- (c) tend to establish his liability
 - (i) to a civil proceeding at the instance of the Crown or of any other person, or
 - (ii) to prosecution under any Act or regulations under any Act,

but if the answer so given tends to incriminate him, subject him to punishment or establish his liability, it shall not be used or received against him in any civil proceedings, in a prosecution under Part 8 or in any proceedings under any other Act, except in a prosecution for or proceedings in respect of perjury or the giving of contradictory evidence.

(3) For the purpose of obtaining the testimony of a witness who is out of Alberta, the Court of Queen's Bench on an application ex parte by the Institute may direct the issuing of a commission for the obtaining of the evidence of the witness, and the commission shall be issued and the evidence taken pursuant to the Alberta Rules of Court.

37(1) The attendance of witnesses before the Professional Conduct Committee and the production of records that are relevant to the investigation may be enforced by a notice issued by the Registrar requiring the witness to attend and stating the date, time and place at which the witness is to attend and the records, if any, he is required to produce.

(2) On the written request of the investigated person or of his counsel or agent, the Registrar shall without charge issue and deliver to that person or his counsel or agent any notices that he may require under subsection (1).

(3) A witness, other than the investigated person, who has been served with a notice under subsection (1) or (2) is entitled to be paid the same fees as are payable to a witness in an action in the Court of Queen's Bench.

Failure to
attend or give
evidence

38(1) Proceedings for civil contempt of court may be brought against a witness

(a) who fails

(i) to attend before the Professional Conduct Committee in compliance with a notice to attend,

(ii) to produce any records in compliance with a notice to produce them, or

(iii) in any way to comply with either notice,

or

(b) who refuses to be sworn or to answer any question directed to be answered by the Professional Conduct Committee.

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

Absence of
investigated
person

39 The Professional Conduct Committee, on proof of service on the investigated person of the notice of hearing, may

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

(b) act, decide or report on the matter being heard in the same way as though the investigated person were in attendance.

No finding of
unskilled
practice or
professional
misconduct

40 If the Professional Conduct Committee determines that the conduct of an investigated person constitutes neither unskilled practice of nor professional misconduct, it shall so find.

No finding of
unskilled
practice or
professional
misconduct

41 If the Professional Conduct Committee determines that the conduct of an investigated person constitutes unskilled practice of or professional misconduct or both, it shall so find and shall deal with that conduct in accordance with this Part.

Orders

42(1) If the Professional Conduct Committee finds that the conduct of an investigated person constitutes unskilled practice or professional misconduct or both, the Professional Conduct Committee may make any order it considers appropriate including, without limitation, one or more of the following orders:

(a) reprimand the investigated person;

(b) suspend the registration of an investigated person either generally or from any field of the practice of management consulting;

(c) suspend the registration of an investigated person either generally or from any field of the practice of management consulting until

(i) he has completed a specific course of studies or obtained supervised practical experience, or

(ii) the Professional Conduct Committee is satisfied as to the competence of the investigated person generally or in a specified field of the practice of management consulting;

(d) accept in place of a suspension the investigated person's undertaking to limit his practice;

(e) impose conditions on the investigated person's eligibility to engage in the practice of management consulting generally or in any field of the practice, including the conditions that he

(i) practice under supervision,

(ii) not engage in sole practice,

(iii) permit periodic inspections by a person authorized by the Professional Conduct Committee, or

(iv) report to the Professional Conduct Committee on specific matters;

(f) direct the investigated person to pass a particular course of study or satisfy the Professional Conduct Committee as to his practical competence generally or in a field of practice;

(g) direct the investigated person to satisfy the Professional Conduct Committee that a disability or addiction can be or has been overcome, and suspend the person's registration until the Professional Conduct Committee is so satisfied;

(h) require the investigated person to take counselling that in the opinion of the Professional Conduct Committee is appropriate and to report thereon to the Committee;

(i) direct the investigated person to waive, reduce or repay a fee for services rendered by the investigated person if, in the opinion of the Professional Conduct Committee,

(i) the services were not rendered or were improperly rendered, or

(ii) the fee for the services was unjustified for any reason;

(j) cancel the registration of the investigated person.

(2) The Professional Conduct Committee may make any ancillary order that is appropriate or required in connection with any order mentioned in subsection (1) or may make any other order that it considers appropriate in the circumstances including an order that

(a) a further or new investigation into any matter be held,

(b) the Professional Conduct Committee be convened to hear a complaint without a preliminary investigation,

(c) a matter be referred to the Practice Review Board, or

(d) a complaint or conduct be referred to any other entity having jurisdiction to review complaints.

(3) Where the Professional Conduct Committee is satisfied that an investigated person has contravened an order under subsection (1), an order of the Board of Directors under section 50(6) or an order of the Court of Appeal under section 50(1), it may, without the necessity of a further hearing, cancel or suspend his registration subject to any terms and conditions it considers appropriate.

Costs and
penalties

43(1) The Professional Conduct Committee may, in addition to or instead of dealing with the conduct of an investigated person in accordance with section 42, order that the investigated person pay

(a) all or part of the costs of the investigation and hearing to the Institute in accordance with the by laws,

(b) a fine not exceeding \$10 000 to the Institute, or

(c) both the costs under clause (a) and the fine under clause (b),

within the time set by the order.

(2) If the person ordered to pay a fine, costs or both under subsection (1) fails to pay the fine, costs or both within the time ordered, the Professional Conduct Committee may suspend the registration of that person until he has paid the fine, costs or both.

(3) If the Professional Conduct committee finds that a complaint is frivolous or vexatious, it may order the complainant to pay the costs of the preliminary investigation and the hearing before the Professional Conduct Committee determined in accordance with the regulations.

(4) A fine or costs ordered to be paid to the Institute under this section is a debt due to the Institute and may be recovered by the Institute by civil action for debt.

Written decision

44 The Professional Conduct Committee shall, within a reasonable time after the conclusion of a hearing before it, make a written decision on the matter, in which it shall

- (a) describe each finding made by it in accordance with this Part,
- (b) state the reasons for each finding made by it, and
- (c) state any order made under this Part.

Service of
decision

45(1) When the Professional Conduct Committee has made a decision, the chairman of the Professional Conduct Committee shall immediately forward to the Registrar

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

(2) The Registrar shall, on receiving the decision of the Professional Conduct Committee and the record of the hearing referred to in subsection (1), serve

- (a) a copy of the decision on
 - (i) the investigated person, and
 - (ii) the chairman of the Board of Directors,

and

- (b) a notice of the nature of the decision on the complainant, if any.

(3) A person served under subsection (2)(a) with a copy of a decision of the Professional Conduct Committee is entitled to examine the record of the proceedings before the Professional Conduct Committee and to hear any tape recording or examine any mechanical or handwritten form of record of any testimony given before the Professional Conduct Committee.

Effectiveness of
decision

46 The decision of the Professional Conduct Committee remains in effect pending an appeal to the Board of Directors unless the Board of Directors on application stays the decision pending the appeal.

Rehearing

47 If new evidence is available which was not available or for good reason was not presented at a hearing under this Part, the Professional Conduct Committee may, with the consent of the investigated person, rehear any matter already heard by it under this Part and, for that purpose, has all the same power and authority and is subject to the same duties as it had and was subject to in connection with the first hearing.

Appeal to Board

48(1) An investigated person or the Registrar may appeal to the Board of Directors

(a) a finding made by the Professional Conduct Committee in accordance with section 40 or 41,

(b) any order of the Professional Conduct Committee under section 42 or 43, or

(c) both a finding referred to in clause (a) and an order referred to in clause (b).

(2) An appeal under subsection (1) shall be commenced by a written notice of appeal which shall

(a) describe the finding or order appealed, and

(b) state the reasons for the appeal.

(3) A notice of appeal under subsection (2) shall,

(a) when it is filed by the investigated person, be filed with the Registrar within 30 days after the date of service of the decision of the Professional Conduct Committee on the investigated person, and

(b) when it is filed by the Registrar, be filed by him within 30 days after the date he receives the decision of the Professional Conduct Committee.

(4) The Registrar shall, forthwith on receiving a notice of appeal under subsection (3) or on filing a notice of appeal himself, give to each member of the Board of Directors a copy of the notice of appeal.

(5) The Registrar shall, forthwith on filing a notice of appeal himself, serve a copy of it on the investigated person.

(6) Each member of the Board of Directors is entitled on receiving a copy of a notice of appeal to examine the record or any part of the record of the proceedings before the Professional Conduct Committee and to hear any tape recording or examine any mechanical or handwritten form of record of any testimony given before the Professional Conduct Committee.

Notice of hearing

49(1) The Registrar shall, on the direction of the Board of Directors, and not less than 15 days before the date set for the hearing, serve on the investigated person a notice of hearing of an appeal stating the date, time and place when the Board of Directors will hear the matters appealed.

(2) The Board of Directors shall hear an appeal within 30 days after the date of service of the notice under subsection (1).

(3) The Board of Directors may, on the written request of the investigated person or the Registrar, extend the period mentioned in subsection (2) for 1 or more additional periods, each not exceeding 30 days.

Conduct of
appeal

50(1) The Registrar and the investigated person may appear and be represented by counsel at the hearing of an appeal before the Board of Directors.

(2) A member of the Professional Conduct Committee who is also a member of the Board of Directors may participate in an appeal before the Board of Directors but shall not vote in a decision of the Board of Directors on the appeal.

(3) The appeal to the Board of Directors shall be founded on a copy of the record of the proceedings before the Professional Conduct Committee and the decision and order of the Professional Conduct Committee.

(4) Sections 35 to 39, with all necessary modifications, apply to proceedings before the Board of Directors.

(5) The Board of Directors on an appeal may do any or all of the following:

(a) grant adjournments of the proceedings or reserve the determination of the matters before it for a future meeting of the Board of Directors;

(b) on granting special leave for that purpose, receive further evidence;

(c) draw inferences of fact and make a determination or finding that, in its opinion, ought to have been made by the Professional Conduct Committee.

(6) The Board of Directors shall, within 30 days from the date of the conclusion of all proceedings before it, do any or all of the following:

(a) make any finding that, in its opinion, ought to have been made by the Professional Conduct Committee;

(b) quash, vary or confirm the order or decision of the Professional Conduct Committee under this Part or substitute or make an order or decision of its own;

(c) refer the matter back to the Professional Conduct Committee for further consideration in accordance with any direction that the Board of Directors may make.

(7) The Board of Directors may make an order respecting the payment of the costs of the hearing before it in accordance with the by laws.

(8) When the Board of Directors makes a decision, the chairman or vice chairman shall immediately forward a copy of the decision to the Registrar.

(9) The Registrar shall, on receiving a copy of the Board's decision under subsection (8), serve a copy of the decision on the investigated person.

Effectiveness of
decision

51 The decision of the Board of Directors remains in effect pending an appeal to the Court of Appeal unless the Court on application stays the decision pending the appeal.

Appeal to Court
of Appeal

52(1) An investigated person or the Registrar may appeal to the Court of Appeal a finding or order made by the Board of Directors under section 50.

(2) An appeal under this section shall be commenced

(a) by filing a notice of appeal with the Registrar of the Court at Edmonton or Calgary, and

(b) by serving a copy of the notice of appeal

(i) on the Registrar of the Institute, where the investigated person is the appellant, or

(ii) on the investigated person, where the Registrar of the Institute is the appellant,

both within 30 days from the date on which the decision of the Board of Directors is served under section 50(9).

Appeal on the
record

53(1) An appeal under section 52 shall be founded on the record of the proceedings before the Board of Directors and the decision and order of the Board of Directors.

(2) The Registrar, on being paid any disbursements and expenses in connection with a request made by the appellant or his counsel or agent, shall furnish to the appellant or his counsel or agent the number of copies so requested of the documents mentioned in subsection (1).

(3) The procedure in an appeal shall be the same, with the necessary changes, as that provided in the Alberta Rules of Court for appeals from the judgment of the Court of Queen's Bench to the Court of Appeal.

Powers of Court **54(1)** The Court of Appeal on hearing the appeal may do any or all of the following:

- (a) make any finding that in its opinion ought to have been made;
- (b) quash, confirm or vary the order or decision of the Board of Directors or any part of it;
- (c) refer the matter back to the Board of Directors for further consideration in accordance with any direction of the Court;
- (d) direct that a new trial of any mixed questions of law and fact relating to a finding, order or decision of the Board of Directors under section 50 be held before the Court of Queen's Bench.

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

Sanction by Board **55** If a registered member has been convicted of an indictable offence, the Board of Directors may, without notice or an investigation under this Act,

- (a) suspend the registration of the registered member pending the determination of an appeal from the conviction or a proceeding to have the conviction quashed, or
- (b) on the conclusion of an appeal from the conviction or a proceeding to quash the conviction, and whether or not a suspension has been ordered under clause (a),
 - (i) suspend the registration of the registered member for a stated period of time, or
 - (ii) order the cancellation of the registration of the registered member.

Falsely obtained registration **56(1)** If the Board of Directors is satisfied, after a hearing on the matter, that a person whose registration is entered in the register obtained registration by means of any false or fraudulent representation or declaration, either oral or written, the Board of Directors shall order that his registration be cancelled.

Cancellation
and reinstatement

(2) The provisions of this Part respecting the procedures at a hearing before the Professional Conduct Committee apply with all necessary modifications to a hearing held by the Board of Directors under subsection (1).

57(1) A certificate of membership remains the property of the Institute and if the registration of a regular member has been cancelled or suspended under section 16 or 17 or this Part, the certificate of membership is deemed to be cancelled or suspended, and that person shall surrender to the Registrar, when requested, the certificate of membership.

(2) If the registration of a registered member has been cancelled under this Part, the registration shall not be reinstated in the register except by order of the Board of Directors or a court of competent jurisdiction.

(3) If the registration of a registered member has been suspended under this Part for a fixed period, the registration shall not be reinstated before the expiration of that period except by order of the Board of Directors or a court of competent jurisdiction.

(4) Where the registration of a registered member has been

- (a) cancelled under this Part, or
- (b) suspended under this Part for a fixed period of more than 1 year,

no order shall be made under subsection (2) or (3), as the case may be, within 1 year after

(c) the date on which the registration was cancelled or suspended, or

(d) if an order was granted under section 46 or 51 staying the imposition of a punishment imposed by the Professional Conduct Committee or the Board of Directors, as the case may be, and the punishment is later confirmed by the Board of Directors or the Court of Appeal, the date on which the Board of Directors or the Court made its order confirming the punishment.

(5) A member of the Board of Directors who is a member of a committee of inquiry appointed pursuant to the regulations to consider an application under this Part for reinstatement of registration may participate in or vote at any proceedings of the Board of Directors under this section, and the Institute's counsel may participate in those proceedings.

Publication of
findings and
order

58 Where a finding or order is made by the Professional Conduct Committee, the Board of Directors or the Court of Appeal under this Part, the Registrar may, in accordance with the by laws, publish the name of the investigated person and the nature of the finding or order.

Mis-
representation
of status

59 The conduct of a person who is or was registered as a registered member and who represents or holds out that he is registered and in good standing while his registration is suspended or cancelled may be dealt with as being professional misconduct in accordance with this Part.

PART 6 GENERAL

Certificate of
Registrar

60(1) A certificate purporting to be signed by the Registrar and stating that a named person was or was not, on a specified day or during a specified period, a registered member shall be admitted in evidence as prima facie proof of the facts stated in it without proof of the Registrar's appointment or signature.

(2) A certificate purporting to be signed by the Registrar and stating that a named person was or was not, on a specified day or during a specified period

(a) an officer or employee of the Institute, or

(b) a member of the Board of Directors or of any committee established under this Act, the regulations or the by laws

shall be admitted in evidence as prima facie proof of the facts stated in it without proof of the Registrar's appointment or signature.

Protection from
legal action

61(1) No action lies against

(a) a member of the Investigation Committee, the Professional Conduct Committee, the Registration Committee, the Board of Directors or the Practice Review Board, the Registrar, the Institute or any person acting on the instructions of any of them, or

(b) any member, officer or employee of the Institute

for anything done by him in good faith and in purporting to act under

(c) this Act,

(d) the regulations, or

(e) a by law that relates to or is incidental to a professional matter or a matter of public interest that is or may be the subject of a regulation under section 63.

(2) No action for defamation may be founded on a communication that consists of or pertains to the conduct of a registered member if the communication is published to or by

- (a) the Institute,
- (b) a member of the Board of Directors, the Investigation Committee, the Professional Conduct Committee, the Registration Committee or the Practice Review Board,
- (c) an officer or employee of the Institute, or
- (d) a person acting on the instructions of any person or body referred to in clauses (a) to (c),

in good faith in the course of investigating the conduct, in the course of any proceeding under this Act relating to the conduct or in relation to any finding or order under Part 5 relating to the conduct.

Service of documents

62 When this Act, the regulations or the by laws require that a document or notice be given to or served on any person, the document or notice is sufficiently given or served

- (a) if it is served personally on that person or sent to him by registered mail at his address last shown in the appropriate register, or
- (b) if personal service or service by mail is not reasonably possible, then by publishing the document at least twice, and not more than a week apart, in a local newspaper circulating at or near the address last shown for that person in the appropriate register.

PART 7 REGULATIONS AND BY LAWS

Regulations

63(1) The Board of Directors may make regulations

- (a) respecting the establishment and publication of a code of ethics and rules of professional conduct respecting the practice of management consulting, the maintenance of the dignity and honour of the profession of management consulting and the protection of the public interest;
- (b) respecting the establishment or adoption of standards for the practice of management consulting by registered members;
- (c) respecting the academic qualifications of and training requirements for applicants for registration as regular members;

- (d) providing for the evaluation by the Board of Directors, the Registration Committee, the Practice Review Board or any other committee or Board established or designated under the by laws of the academic qualifications of and the training requirements for applicants for registration as regular members, and the examination of those applicants with respect to those qualifications or requirements;
 - (e) prescribing restrictions, conditions and limitations on the practice of management consulting by registered members or classes of them;
 - (f) governing the names under which registered members may engage in the practice of management consulting and the use by any registered member of any of the names or designations referred to in section 9;
 - (g) respecting the procedures of the Investigation Committee, the Professional Conduct Committee and the Board of Directors in matters relating to the conduct or practice of registered members, whether or not a complaint has been made;
 - (h) respecting the establishment by the Board of Directors of a compulsory continuing education program for regular members;
 - (i) governing the nature and content of advertising, if any, permitted by regular members or classes of them;
 - (j) respecting committees of inquiry for reinstatement under Part 5;
 - (k) respecting the manner of determining the amount and the payment of costs for the purposes of section 45(3).
- (2) A regulation under subsection (1) does not come into force unless it has been approved by
- (a) a majority of those regular members who
 - (i) attend and vote in person at a general meeting, or
 - (ii) vote in a mail vote conducted in accordance with the by laws, and
 - (b) the Lieutenant Governor in Council.

By-laws

64(1) The Board of Directors may make by laws

- (a) for the government of the Institute and the management and conduct of its business and affairs;

- (a.1) determining the location of the head office of the Institute;
- (b) respecting affiliation of the Institute with any other body or organization of management consultants;
- (b.1) respecting the calling of and the conduct of meetings of the Institute and the Board of Directors;
- (c) respecting the nomination, election and removal and the number and term of office of Board members and officers of the Institute, the filling of vacancies on the Board of Directors and in the offices of the Institute and the appointment of individuals as ex officio members of the Board of Directors and of any committee established by the Board of Directors and prescribing their powers, duties and functions;
- (c.1) governing, subject to this Act, the operation and proceedings of the Registration Committee, the Practice Review Board, the Investigation Committee and the Professional Conduct Committee, including the designation of chairmen and vice chairmen, the nomination of members of the public for appointment by the Minister, the appointment, term of and removal of members, the procedures for filling vacancies and the appointment of ex officio members and prescribing the powers, duties and functions of members and ex officio members;
- (d) respecting reviews of the practice of a regular member by the Practice Review Board or a person authorized by the Practice Review Board;
- (e) providing for the appointment of acting members of the Board of Directors and procedures for the election of registered members to the Board of Directors and the nomination of members of the public for appointment by the Minister or for appointment or election by the registered members;
- (f) establishing conditions respecting the registration of an applicant as a regular member including, without limitation, the fee payable and residence, age and character requirements;
- (g) establishing conditions respecting the registration of prospective regular members and prescribing the rights, privileges, obligations and conditions of membership of prospective regular members;
- (h) establishing classes or categories of membership in the Institute in addition to regular members and prospective regular members, establishing conditions respecting registration in classes or categories of membership so established and prescribing the rights, privileges, obligations and conditions of membership of classes or categories of membership so established;

- (i) respecting the granting to and use by any person of a designation as a fellow of the Institute;
- (j) providing for the appointment of an individual as an Acting Registrar who has all of the powers and performs all of the duties of the Registrar under this Act, the regulations and the by laws when the Registrar is absent or unable to act or when there is a vacancy in the office of Registrar;
- (k) governing the establishment, operation and proceedings of chapters of the Institute;
- (l) governing the establishment, operation and proceedings of committees, the appointment of members of committees, the appointment of acting members and procedures for filling vacancies on committees and the delegation of any powers or duties of the Board of Directors under this Act, the regulations or the by laws to a committee established by the Board of Directors or under this Act;
- (m) prescribing the number of regular members that constitutes a quorum at meetings of the Institute, the Board of Directors, the Professional Conduct Committee, the Practice Review Committee, the Investigation Committee and the Registration Committee;
- (n) prescribing fees and expenses payable to members of the Board of Directors, the Practice Review Board, the Investigation Committee, the Professional Conduct Committee, the Registration Committee or any other committee of the Board of Directors of the Institute or to a regular member representing the Institute on a committee;
- (o) respecting the establishment of and payment of sums of money for scholarships, fellowships and any other educational incentive or benefit programs that the Board of Directors considers appropriate;
- (p) respecting the establishing and payment of fees, dues and levies to the Institute by registered members;
- (q) respecting the manner of determining the amount and the payment of costs for the purposes of sections 22(1)(d), 43(1) and 50(7);
- (r) respecting the establishment, content and maintenance of registers, lists and records that the Registrar is required to keep;
- (s) respecting the removal from the registers, lists and records of any memorandum or entry made in them under this Act, the regulations or the by laws;

- (t) governing the publication of notices of approval respecting applicants for registration as regular members;
 - (u) governing the publication of a notice of findings and orders made under Part 5;
 - (v) requiring registered members to maintain an address in Alberta and to inform the Registrar in writing of that address and of any change in that address forthwith after the change occurs;
 - (w) providing for the filing and contents of periodic returns by registered members;
 - (x) authorizing the Board of Directors to prescribe the form of a certificate of membership and any other form or document that may be required for the purposes of this Act, the regulations or the by laws;
 - (y) respecting certificates of membership generally;
 - (z) governing the holding of mail votes.
- (2) A by law under subsection (1) does not come into force unless it has been approved by a majority of those regular members who
- (a) attend and vote in person at a general meeting, or
 - (b) vote in a mail vote conducted in accordance with the by laws.
- (3) The *Regulations Act* does not apply to by laws of the Institute.

PART 8 OFFENCES AND PENALTIES

Offences and
penalties

- 65(1)** Every person and every officer, employee or agent of a corporation or firm who contravenes this Act is guilty of an offence and liable
- (a) for a first offence, to a fine of not more than \$2000,
 - (b) for a 2nd offence, to a fine of not more than \$4000, and
 - (c) for a 3rd and every subsequent offence, to a fine of not more than \$6000 or to imprisonment for a term of not more than 6 months or to both fine and imprisonment.
- (2) A prosecution under this section may be commenced within 2 years after the commission of the alleged offence, but not afterwards.

(3) In a prosecution under this Act, it is sufficient to prove that the accused contravened the Act on a single occasion.

Commencement **66** This Act comes into force on Proclamation.