

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N: )  
)  
COLLEGE OF OPTOMETRISTS OF ) Roy E. Stephenson, Brian  
ONTARIO ) Moher, counsel on behalf of  
) the Applicant  
Applicant )  
)  
- and - )  
)  
SHS OPTICAL LTD., DUNDURN ) Bruce Bergez - self  
OPTICAL LTD. and JOHN DOE, all )  
carrying on business under the )  
name GREAT GLASSES; JOANNE )  
MARIE BERGEZ; and BRUCE BERGEZ )  
)  
Respondents )  
)  
- and - )  
)  
COLLEGE OF OPTICIANS OF ONTARIO ) Robert W. Cosman, Melisse L.  
) Willems, counsel on behalf of  
Intervenor ) the Intervenor  
)  
) HEARD: October 25 and 26,  
) 2006  
) (at Hamilton)

CRANE J.

[1] The applicant, College of Optometrists of Ontario applies to this Court for an Order of Contempt of Court against the respondents for failure to comply with the Judgment of this Court dated 24 June, 2003, together with the imposition of penalties and the purging of contempt so found, all as set out

in detail in the Application. The College of Opticians of Ontario has intervened to support the Application. The Application is brought under the authority of the Procedural Code, schedule 2 of the **Regulated Health Professions** Act, 1991 s. 87, which provides that a College may apply to the Superior Court for an Order directing a person to comply with the health care legislation.

[2] The three named corporate respondents, (John Doe, now identified as Plains Road Optical Ltd.), are the means by which the respondent, Bruce Bergez, carries on business at the Great Glasses locations of 286 York Road, Dundas, Ontario, 1550 Upper James Street, Hamilton, Ontario, and 1025 Plains Road, Burlington, Ontario. The respondent, Joanne Marie Bergez, is the wife of Bruce Bergez and the sole named director, officer and shareholder of each of the respondent corporations. She has not participated in any of the proceedings. The evidence is that she resides with her husband. The respondent Bruce Bergez is the directing mind and ultimate owner of the undertaking trading under the name Great Glasses.

[3] Reasons for Judgment were released by Harris J. on 24 June, 2003 following a hearing on 24, 26 March and 8 April, 2003. The Reasons are comprised within 97 paragraphs. The issue

for determination on the Application is whether or not the respondent, Bruce Bergez, and the three respondent optical stores, through the Great Glasses mode of operations, are conducting their businesses in accordance with the health care legislation in Ontario.

[4] In the course of the Reasons, Harris J. makes findings of fact resulting in the formal Judgment as issued. There has been no appeal.

[5] Mr. Justice Harris made findings that:

*The employees of Great Glasses contravened s. 27(2)9 of the Regulated Health Professions Act, S.O. 1991. (para. 74 of the Reasons)*

*The employees of Great Glasses, whether opticians or non-opticians, wrote their own prescriptions and "dispensed" without a prescription of a physician or optometrist. In doing so Great Glasses and its employees contravened the controlled act of "dispensing" in s. 27(2)9.*

[6] Mr. Justice Harris at para. 95 of the Reasons enjoined each of the respondents to this Application and ordered each of them to comply with the requirements of the **Regulated Health Professions Act** and that each ensure that all employees under their respective control and direction comply. In particular, the respondents and their employees shall refrain:

- (i) *From prescribing for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers, unless the person prescribing is an optometrist or physician.*
- (ii) *From dispensing subnormal vision devices, contact lenses or eye glasses other than simple magnifiers without the prescription of an optometrist or physician.*
- (iii) *From allowing any Great Glasses employees who are not opticians, physicians, or optometrists, to dispense subnormal vision devices, contact lenses or eyeglasses other than simple magnifiers unless the controlled act of dispensing has been delegated to that person in accordance with ss. 27 and 28 of the Regulated Health Professions Act.*

[7] What has followed the Judgment has been three years of investigative activity by the applicant and elaborate evasions, false statements and sham corporate structures by and from the respondent, Bruce Bergez.

[8] On the basis of the very extensive Record before me I have no hesitation in concluding that the respondent, Mr. Bergez, created and operates the three optical stores named as respondents in this Application, receiving through payments on behalf of his family, the proceeds of these businesses. I also find that Mr. Bergez has, through a sham structure, franchised a further 14 Great Glasses stores under a "*Franchise Agreement*"

that provides the franchisor with the right to determine the manner and mode of business by each of the franchisees. I also find that the Great Glasses mode of operation has not changed from that found by Mr. Justice Harris to what has now been presented in this Application Record.

[9] Mr. Bergez has responded with an affidavit stating, without particulars, that the Great Glasses businesses are operated in compliance with the **Regulated Health Professions Act**. He has, over the course of this Record, raised three defences.

[10] Initially Mr. Bergez stated that Great Glasses was in compliance with the **Regulated Health Professions Act** as each store had the delegated right to prescribe eye wear from two physicians in accordance with s. 27(1)(b):

*The performance of the controlled Act has been delegated to the person by a member described in clause (a).*

[11] On his cross-examination Mr. Bergez refused to name the alleged delegating physicians. A motion was taken and an Order of this Court obtained that compelled him to answer on a finding of contempt. When re-examined Mr. Bergez stated that he actually did not operate Great Glasses on that basis and the two

unnamed persons were only person that could be available to him should he need them.

[12] Mr. Bergez then stated that he was in compliance as there was a "*Delegation Agreement*". This document purports to be between an unincorporated entity styled "*Physicians for Eyelogic*" and an Ontario corporation, "*Ontario Optical Development Corp*". The former is stated to be the "*Delegated Prescriber*". See document at Tab 19 - Further Supplementary Application Record (Vol. 3 of 5).

[13] Ontario Optical Development Corp. was incorporated in March 2002 in the name of Leo Bertuzzi as the sole shareholder, officer and director. On cross-examination within this Record Mr. Bertuzzi indicated that he is the brother-in-law of Bruce Bergez and that he was willing to allow his name to be used in this incorporation on the representation of Mr. Bergez that the company was simply set up to hold Great Glasses store leases. Mr. Bertuzzi stated that all correspondence and business of the corporation went through a drop box in which he had no control or interest, with the exception of bank statements, which the bank mailed to him. Mr. Bertuzzi stated that he put this mail in his side yard mailbox unopened, to be picked up by Mr. Bergez. Mr. Bertuzzi expressed total surprise, during his examination,

at the extent of the purported operations of Ontario Optical Developments Corp.

[14] Mr. Bergez's position for some considerable time in these proceedings was that a group of physicians, not named, constituting the "*Physicians for Eyelogic*" entity, had given to Ontario Optical Development Corp., through the aforesaid agreement, the right to prescribe eyewear. Mr. Bergez then stated that Ontario Optical Development Corp., as the purported franchisor to the Great Glasses stores, assigned that delegation to the employees at each of the stores.

[15] It is more than clear that the aforesaid arrangement is a sham, that Mr. Bergez, when required by Court Order to name the physicians, stated he did not know who they were. In any event I find that the purported arrangement, even if it were real, would not meet the requirements of the **Regulated Health Professions Act**. However, clearly, the arrangement is an attempt to deceive.

[16] The third defence in point of time was put forward for the first time, according to counsel, during oral submissions in this Application.

[17] Mr. Bergez submitted that a Doctor Dyer (who the Court is advised, is a physician or optometrist licensed to practice in Alberta) has invented the Eyelogic computerized machine that measures refractory error in eyes; that he, by the sale or provision of these machines to the Great Glasses stores, is a physician prescribing eyewear each time the machine prints out the readings on refraction for the customers of Great Glasses. Accordingly, the Great Glasses stores are in compliance with s. 27(2)9 of the **Regulated Health Professions Act**.

[18] There is no affidavit or any other evidence from this Doctor Dyer on this Record, or any evidence of such an intent by Doctor Dyer. Even should there be such evidence, the arrangement is so far removed from the requirements of the **Regulated Health Professions Act** to be virtually nonsense and a highly superficial, glib and arrogant response to this Application of contempt of court.

[19] I find that the respondents, Bergez, have been in contempt of the Judgment and Orders of this Court since the issuance of that Judgment on 24 June, 2003 continuously to the hearing of this Application. I find that those persons engaged in prescribing and/or dispensing at each Great Glasses store - 17 or more stores - are doing so unlawfully, in breach of the

**Regulated Health Professions Act.** The control and responsibility of the delegation is in law, placed on the delegator. Here, Mr. Bergez has unlawfully represented that he may delegate. Where, as here, there is no person authorized to perform the controlled act of prescribing and thereby no person authorized to delegate, the persons engaged at Great Glasses that are prescribing eyewear are in direct breach of the **Regulated Health Professions Act**, s. 27(1) and (2), the performance of a controlled act.

[20] I have found the breaches of the Order of this Court to be egregious. As Mr. Bergez has represented to many persons that his business undertaking is lawful, I will outline the statutory structure under which all persons engaged in eye care in Ontario are governed. Mr. Bergez is a member of the College of Opticians. Mrs. Bergez has no professional designation. The respondent corporations are not persons for the purpose of membership in a College or for qualification as a health care professional. Only individuals can be trained and have academic qualifications, **O. Reg. 224/03, s2(1)2**. See also s. 34.1 of the **Regulated Health Professions Act**.

[21] Since the enactment of the **Regulated Health Professions Act** the regulatory scheme for health professionals in Ontario has been governed by this legislation. The regulated

and controlled acts for each profession are designated by unique profession-specific legislative language.<sup>1</sup> As such, the **Regulated Health Professions Act** and the profession specific acts operate in a co-dependent and co-ordinated manner.

[22] The co-dependent nature of the statutory scheme is evident in the manner in which activities are restricted. The **Regulated Health Professions Act** refers to 13 "controlled acts" which are inherently dangerous and which are taken out of the public domain. While these controlled acts are listed in section 27(2) of the **Regulated Health Professions Act**, it is necessary to turn to the statutes governing the various health care professions to see if a person is authorized to perform a controlled act.

[23] If an activity is not a controlled act to be performed by particular authorized practitioners, the **Regulated Health Professions Act** provides for any pre-conditions to performing that particular act. For instance, in the case of dispensing hearing aids this is not a controlled act. Section 31 of the

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<sup>1</sup> Dykeman, M.J. (ed.) *Canadian Health Law Practice Manual*, looseleaf (Toronto: Butterworths, 2000).

**Regulated Health Professions Act** requires a prescription to be issued for such aids to be dispensed.<sup>2</sup>

[24] In the context of eyewear, s.27(2)(9) of the **Regulated Health Professions Act** states that "[p]rescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers" is a controlled act. Section 27(1) of the **Regulated health Professions Act** states that only individuals who fall in one of two categories may perform these acts:

(a) the person is a member authorized by a health profession Act to perform the controlled act; or

(b) the performance of the controlled act has been delegated to the person by a member described in clause (a).

[25] To understand who may perform such acts one must look to the various "health profession **Act[s]**" including the **Medicine Act**<sup>3</sup>, the **Optometry Act**<sup>4</sup> and the **Opticianry Act**.<sup>5</sup>

[26] The **Medicine Act** defines the scope of practice and authorized acts of a physician as follows:

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<sup>2</sup> L. Bohnen, *Regulated Health Professions Act: A Practical Guide* (Toronto: Emond Montgomery Publications, 1994).

<sup>3</sup> S.O. 1991, c. 30.

<sup>4</sup> S.O. 1991, c. 35.

<sup>5</sup> S.O. 1991, c. 34.

*Scope of Practice*

3. The practice of medicine is the assessment of the physical or mental condition of an individual and the diagnosis, treatment and prevention of any disease, disorder or dysfunction.

*Authorized Acts*

4. In the course of engaging in the practice of medicine, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to perform the following:

1. Communicating a diagnosis identifying a disease or disorder as the cause of a person's symptoms.

2. Performing a procedure on tissue below the dermis, below the surface of a mucous membrane, in or below the surface of the cornea or in or below the surfaces of the teeth.

...

7. Applying or ordering the application of a prescribed form of energy.

8. Prescribing, dispensing, selling or compounding a drug.

9. Prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses.

[Selected provisions omitted]

[27] The **Optometry Act** defines the scope of practice and authorized acts of an optometrist as follows:

*Scope of Practice*

3. The practice of optometry is the assessment of the eye and vision system and the diagnosis, treatment and prevention of,

(a) disorders of refraction;

(b) sensory and oculomotor disorders and dysfunctions of the eye and vision system; and

(c) prescribed diseases.

*Authorized Acts*

4. In the course of engaging in the practice of optometry, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to perform the following:

1. Communicating a diagnosis identifying, as the cause of a person's symptoms, a disorder of refraction, a sensory or oculomotor disorder of the eye or vision system or a prescribed disease.

2. Applying a prescribed form of energy.

3. Prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses.

[28] The **Opticianry Act** defines the scope of practice and authorized acts of an optician as follows:

*Scope of Practice*

3. The practice of opticianry is the provision, fitting and adjustment of subnormal vision devices, contact lenses or eye glasses. 1991, c. 34, s. 3.

*Authorized Acts*

4. *In the course of engaging in the practice of opticianry, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to dispense subnormal vision devices, contact lenses or eye glasses.*

*Additional Requirements for Authorized Acts*

5. (1) *A member shall not dispense subnormal vision devices, contact lenses or eye glasses under the authority of section 4 except upon the prescription of an optometrist or physician.*

[29] In summary, there is a range of authorized acts to which each profession is accorded. The authorized acts correspond with the scope of practice. Both the scope of practice and authorized acts mirror the training and registration requirements of each profession.

[30] These training and registration requirements are established by the College governing each profession. The governing College defines the requirements to qualify as a member. Section 3(1) of the **Health Professions Procedural Code** (the "**Code**"), which is schedule 2 of the **Regulated Health Professions Act**, details the objects of each College. These objects include regulating the practice of the profession, governing its members in accordance with the various pieces of

legislation and developing, maintaining and establishing "standards of qualification for persons to be issued certificates of registration". As outlined earlier, these registration requirements are congruent with the scope of practice of each profession.

[31] For opticians to be registered, they must provide evidence of training in the dispensing of eyewear. (See: O. Reg. 869/93, s. 5). At the other end of the spectrum, physicians must have more comprehensive training, covering a variety of fields. As such, the latter are accorded more scope and are authorized to perform a greater variety of acts. (See: O. Reg. 865/93)

[32] The requirement of section 27(1) that "*no person shall perform a controlled act...unless...the person is a member authorized by a health profession Act*" thus ensures that only those individuals with the appropriate skills and knowledge, as evidenced by their registration with a particular College, perform particular tasks.

[33] What emerges from the co-dependent nature of the legislation is a process for an individual in Ontario to obtain sub-normal eyewear other than simple magnifiers. For such eyewear to be dispensed by an optician, it must be prescribed.

The prescribing is done by individuals who are trained and qualified - physicians or optometrists.

## **THE ISSUES**

[34] The respondents' business model turns on the determination of the meaning of "prescribing" and "*dispensing*" as used in s.27(2)(9) as well as "*delegating*" as used in s.27(1)(b). As such, the issues raised in this Application are:

1. What do "prescribing" and "dispensing" mean as used in s.27(2)(9) of the ***Regulated Health Professions Act***?
2. What does the term "*delegated*" mean as used in s.27(1)(b) of the ***Regulated Health Professions Act***?

## **ANALYSIS**

**What do "*prescribing*" and "*dispensing*" mean as used in s.27(2)(9) of the *Regulated Health Professions Act*?**

### **"*Dispensing*"**

[35] The Ontario Court of Appeal in ***King Optical Group Inc. v. College of Opticians of Ontario***<sup>6</sup> had the opportunity to consider the definition of "*dispensing*" as used in s.27(2)(9) of the ***Regulated Health Professions Act***. The Court upheld the trial

judge's definition of dispensing as "*the preparation, adaptation and delivery of eye glasses, ... to a person*". Simmons J.A. speaking for the Court stated:

[28] Here the trial judge heard expert evidence as to the meaning of dispensing. He defined the term in a manner consistent with that evidence, dictionary definitions and the definition of dispensing as it appeared in predecessor legislation.

...

[32] I see no error in the definition of dispensing adopted by the trial judge. However, I add that I do not view the words chosen by him as exclusive or all encompassing. Further, I wish to clarify that I do not equate the term "preparation" with "fabrication". Rather, I view its meaning as "all actions necessary to be performed prior to adaptation and delivery".

[34] ...I observe, however, that dispensing may be a single act or part of a continuum of activities. Carried out in isolation, activities such as commenting on the appearance of frames, and receiving payment would not in and of themselves constitute dispensing. Nevertheless, I find no error in the trial judge's overall finding of guilt.

[36] Given the thorough analysis of the trial judge in **King** and the approval of the Court of Appeal in that case, the definition of dispensing and the qualifications thereto, as enunciated in **King**, is the law governing this application. (see para. 65 of these Reasons)

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<sup>6</sup> [2001] O.J. No. 4779 [King].

**"Prescribing"**

[37] The respondent claims that the computer printout generated by the Eyelogic system is a prescription of its inventor, Dr. Dyer, for each person who has submitted to the process.

[38] The noun "*prescription*" is not mentioned in the **Regulated Health Professions Act** with regard to eyewear. The verb or adverb "*prescribing*" is used. A prescription for eyewear would presumably be written by a physician or optometrist pursuant to his or her authorization to prescribe. A prescription is generated by a valid execution of this power.

[39] In interpreting the requirements of the term "*prescribing*" I have regard to the well-established rules of statutory interpretation. The Supreme Court of Canada in **Rizzo & Rizzo Shoes Ltd. (Re)** outlined the preferred approach to statutory interpretation.<sup>7</sup> At paragraph 21, Iacobucci J. stated:

*Although much has been written about the interpretation of legislation...Elmer Driedger in Construction of Statutes (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:*

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<sup>7</sup> [1998] 1 S.C.R. 27.

*Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.*

*Recent cases which have cited the above passage with approval include: R. v. Hydro-Québec, [1997] 1 S.C.R. 213; Royal Bank of Canada v. Sparrow Electric Corp., [1997] 1 S.C.R. 411; Verdun v. Toronto-Dominion Bank, [1996] 3 S.C.R. 550; Friesen v. Canada, [1995] 3 S.C.R. 103.<sup>8</sup>*

[40] Driedger reduces the principle to five steps:

*1. The Act as a whole is to be read in its entire context so as to ascertain the intention of Parliament (the law as expressly or impliedly enacted by the words), the object of the Act (the ends sought to be achieved), and the scheme of the Act (the relation between the individual provisions of the Act).*

*2. The words of the individual provisions to be applied to the particular case under consideration are then to be read in their grammatical and ordinary sense in the light of the intention of Parliament embodied in the Act as a whole, the object of the Act and the scheme of the Act, and if they are clear and unambiguous and in harmony with that intention, object and scheme and with the general body of the law, that is the end.*

*3. If the words are apparently obscure or ambiguous, then a meaning that best accords with the intention of Parliament, the object of the Act and the scheme of the Act, but*

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<sup>8</sup> *Ibid.*

*one that the words are reasonably capable of bearing, is to be given them.*

*4. If, notwithstanding that the words are clear and unambiguous when read in their grammatical and ordinary sense, there is disharmony within the statute, statutes in pari materia, or the general law, then an unordinary meaning that will produce harmony is to be given the words, if they are reasonably capable of bearing that meaning.*

*5. If obscurity, ambiguity or disharmony cannot be resolved objectively by reference to the intention of Parliament, the object of the Act or the scheme of the Act, then a meaning that appears to be the most reasonable may be selected.*

[41] Having enacted the **Regulated Health Professions Act**, it is clear that the Legislature intended to deem prescribing as an activity to be performed or delegated by individuals with particular qualifications. Within the context of prescribing for vision or eye-problems, the power to prescribe is only granted to physicians and optometrists - individuals whose practice may include the assessment, diagnosis and treatment of eye-related conditions. (See: **Medicine Act**, s.3; **Optometry Act**, s.3). This restriction would not have been drawn unless there was a reason for doing so. As such, there is the implicit expectation that these individuals will engage their skills and qualifications in the act of prescribing.

[42] The Legislature's clear statement of the qualifications necessary to prescribe indicates that such an act must only be done responsibly. This is consistent with the intent of the legislation as a whole.

[43] In **King** the Ontario Court of Appeal discussed the origins and goals of the **Regulated Health Professions Act**:

*[19] The origins of the Regulated Health Professions Act lie in the Health Professions Legislative Review, Striking a New Balance: A Blueprint for the Regulation of Ontario's Health Professions (Toronto: The Review, 1989), generally referred to as the Schwartz Report. The Executive Summary to that report includes the following comments:*

*The Review's mandate was to make recommendations to the Minister in the form of draft legislation, with respect to:*

- which health professions should be regulated;*
- updating and reforming the Health Disciplines Act; [and]*
- devising a new structure for all legislation governing the health professions*

*...*

*Through professional regulation the nature and quality of health care services can be regulated. Professional regulation is aimed at advancing the public interest, not the interests of the professions. The Review's recommendations are aimed at advancing the public interest in four ways:*

- Protecting the public, to the extent possible, from unqualified,*

*incompetent and unfit health care providers.*

- *Developing mechanisms to encourage the provision of high quality care.*
- *Permitting the public to exercise freedom of choice of health care provider within a range of safe options.*
- *Promoting evolution in the roles played by individual professions and flexibility in how individual professionals can be utilized, so that health services are delivered with maximum efficiency. [emphasis added]*

...

*The Review recommends that a uniform or omnibus Health Professions Procedural Code be enacted and that the Code be coupled with an individual Professional Act for every profession...to be regulated.*

*[20] As noted by Laskin J.A. in M.F. v. Sutherland at page 309, "t]he relevance and use of government reports in interpreting legislative provisions has been much debated" however, I adopt his conclusion that "here legislation is closely tied to the recommendations of a government report ...then the report should be considered in interpreting the statute [i]t is relevant, though not determinative"*

[44] In **King**, the Court of Appeal noted that a primary purpose of the **Regulated Health Professions Act** was to protect the public from harm.

[45] Harris J. in the 2003 Judgment cited from several commentators who have discussed the purpose of the **Regulated Health Professions Act**:

[26] In its 2001 report, Adjusting the Balance: A Review of the Regulated Health Professions Act, the Health Professions Regulatory Advisory Council, an independent body that advises the Minister of Health on policy issues, noted that the Regulated Health Professions Act has several objectives:

- to protect the public from harm;
- to promote high quality care;
- to make regulated health professions accountable to the public;
- to give patients/clients access to health care professions of their choice;
- to achieve regulatory equality by making all regulated health professions adhere to the same purposes and public interest principles; and
- to treat individual patients/clients and health professionals in an equitable manner.

[27] Bohnen, *supra*, and another commentator, note that "the primary goal of the Regulated Health Professions Act is to protect the public from unqualified, unfit and unethical health professionals. It is also intended to maximize consumer freedom of choice of health care providers and to enhance efficiency and flexibility in how both regulated and unregulated providers are utilized within the health care system":

M.K. McKelvey, L.S. Bohnen, *Ontario Health Legislation: An Annotated Guide* (Aurora: Canada Law Book Inc., 1998).

[46] In **R. ex rel. Doughty v. Manuel**, Blair, J. dealt with the question of the interpretation of words of a statute which refer to a particular business or profession:

*Words in a statute are presumed to be used in their popular sense and expert evidence is inadmissible to explain the meaning of ordinary terms: Phipson on Evidence, 12th ed. (1976), p. 501, para. 1231. A different rule applies where the words used refer to particular businesses or professions. In such cases Maxwell on the Interpretation of Statutes, 12th ed. (1969), states at p. 84 "words are presumed to be used with the particular meaning with which they are used and understood in the business in question". The classic statement of this principle was made by Lord Esher in Unwin v. Hanson, [1891] 2 Q.B. 115 at 119:*

*If the Act is directed to dealing with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language. If the Act is one passed with reference to a particular trade, business, or transaction, and words are used which everybody conversant with that trade, business, or transaction, knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words.<sup>9</sup>*

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<sup>9</sup> (1982), 38 O.R. (2d) 321, 136 D.L.R. (3d) 302, 67 C.C.C. (2d) 385, sub nom. *R. v. Manuel* (C.A.),

[47] The **Oxford English Dictionary, Second Edition**, defines "to prescribe" as:

*To write or lay down as a rule or direction to be followed; to appoint ordain, direct, enjoin.*

*To advise or order the use of (a medicine, remedy or treatment), with directions for the manner of applying it.*

[48] The Legislature has decided that public protection is best served by limiting the act of prescribing to an authorized person. Correspondingly, the act of prescribing in the context of eye and vision care, whatever this act may include, will only be properly discharged by an authorized individual who has turned his or her appropriately trained mind to the eye and vision system of the individual patient, assessed it and made a diagnosis based on this assessment.

[49] For a prescription to be valid it must be one generated based on the above principles. Diagnostic equipment, such as a computer system, are not persons in law, nor can they be registered members of the respective governing Colleges. As such, they would not satisfy s.27(1)(a) of the **Regulated Health Professions Act**. A computer printout that has not been reviewed by an optometrist or physician who in turn can engage their training by turning their mind to the patient at hand would not

constitute a prescription under s.5(1) of the **Opticianry Act**. To hold otherwise would be antithetical to the congruency of the legislative scheme and permit those who the legislation intended not to prescribe to do exactly that.

[50] While the valid exercise of the power to prescribe may require the above requirements, this should be distinguished from what is or is not included in the bounds of prescribing pursuant to section 27(2)(9). I resist in offering an all inclusive definition of "*prescribing*" as that is not necessary to dispose of the present case, having found that there is no prescription. The evidence of this case is in regard to eyes and hence does not consider other non-related health care professions.

**What does the term "delegated" mean as used in s.27(1)(b) of the Regulated Health Professions Act?**

**"Delegation"**

[51] Delegation is not defined in the **Regulated Health Professions Act**. There is no explicit restriction in the legislation as to whom delegation may be given. The legislation indicates that delegation must be in accordance with any regulations in force. Currently, there are no regulations that specifically direct the terms or limits of lawful delegation.

There are regulations under the statutes establishing the health care Colleges that control their members conduct.

[52] The bounds of legal delegation are not established by the bounds of a guideline or standard of practice of a particular profession. Steinecke, **A Complete Guide to the Regulated Health Professions Act** (Aurora, Canada Law Book Inc. 2002) offers support to this statement by confirming that "*[i]n 1999 clause 27(1)(b) was amended for the specific purpose of clarifying this interpretation as the correct one*". Harris J. in the 2003 Judgment noted that "*[b]ased on ss.27(1) and 28 of the Regulated Health Professions Act, a delegation, to be legal, only requires compliance with the applicable regulations. These regulations are silent on delegation*".

[53] While there are no regulations to specify the exact process for delegation, certain aspects of how delegation must work are clear from the legislation.

[54] First, delegation is to come only from a person authorized to perform the controlled act. If a person is not authorized by a health profession **Act** to perform a controlled act, s.27(1) of the **Regulated Health Professions Act** prohibits a person from doing so, unless "*the performance of the controlled act has been delegated to the person by a member*" authorized by

a health profession **Act** to perform the controlled act. It is clear that delegation is the choice of the person delegating (the delegator) and that it extends only to the performance of a specific act.

[55] In addition, there are other indicators as to what may be delegated. Steinecke provides a helpful analysis of the term delegation based on the use of terms within the **Regulated Health Professions Act**:

*The Regulated Health Professions Act does not define delegation. It would appear to be different from ordering the performance of a controlled act because there are some controlled acts that must be ordered by another profession before they can be performed. Ordering the performance of a controlled act implies that the orderer does not have to know who will be performing the act so long as the performer has certain qualifications, such as registration in the required profession, and that the orderer does not normally take responsibility for the performance of the act. Delegation on the other hand, suggests that the delegator takes responsibility for the proper performance of the act. Therefore, the delegator must be confident that the performer of the act is competent to do it. This confidence must come from either personal knowledge of the performer or knowledge of a process that evaluates and ensures the continuing competence of the performer...* [Emphasis added]

*Other provisions in the Regulated Health Professions Act refer to supervising an unauthorized person in the performance of a*

certain act. [See: ss. 29(1)(b), 30(5)(b), 32(1)(a) and (3)]. This suggests that delegation is different from supervising. Supervising implies a more intense control over the performance of the act than does delegation. Supervisors would likely be physically present and would probably review the results of the act on each occasion. Delegation would not require such intense control.

[56] This analysis of the legislation is sound. Delegation of responsibility is neither explicit nor implicit in s.27(1)(b). Delegation does not equate to an abrogation of responsibility for a particular act. An optometrist or physician may delegate portions of the eye examination in an exercise of professional judgment. However, the optometrist or physician may not delegate the *responsibility* for the restricted act. The person delegating must be aware of what he or she is delegating and to whom it is being delegated.

[57] In addition to interpreting delegation in a manner consistent with the **Regulated Health Professions Act**, delegation must be interpreted in a manner consistent with the broader statutory scheme.

[58] The value of the contextual approach, particularly where an act is a part of a larger statutory scheme, was

discussed in **Bell Express Vu Limited Partnership v. Rex**.<sup>10</sup> In that case Justice Iacobucci commented as follows:

*The preferred approach recognizes the important role that context must inevitably play when a court construes the written words of a statute: as Professor John Willis incisively noted in his seminal article "Statute Interpretation in a Nutshell" (1938), 16 Can. Bar Rev. 1, at p. 6, "words, like people, take their colour from their surroundings". This being the case, where the provision under consideration is found in an Act that is itself a component of a larger statutory scheme, the surroundings that colour the words and the scheme of the Act are more expansive. In such an instance, the application of Driedger's principle gives rise to what was described in R. v. Ulybel Enterprises Ltd., [2001] 2 S.C.R. 867, 2001 SCC 56, at para. 52, as "the principle of interpretation that presumes a harmony, coherence, and consistency between statutes dealing with the same subject matter"...<sup>11</sup>*

[59] Delegation is to be interpreted that the Legislature intended to make use of, and not derogate from, the skill and scope of practice detailed in the various profession-specific acts. Yet, interpretation of delegation must give effect to the legislature's explicit intent that the delegating practitioner need not perform the particular task.

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<sup>10</sup> [2002] SCC 42 at para.26.

<sup>11</sup> *Ibid.* at para.27.

[60] The appropriate meaning of lawful delegation in the context of eye-examinations was faced by the Manitoba Court of Queen's Bench in the case of **Manitoba Assn. of Optometrists v. 3437613 Manitoba Ltd.**<sup>12</sup> In that case, the delegating practitioners were physicians. Justice MacInnes noted:

[22] *For Dr. Ramsay to delegate there must be a doctor/patient relationship. The recent Manitoba Court of Appeal decision of Narynski v. Dow Corning Canada Inc. [1997] M.J. No. 237 provides much useful comment on this subject. At paragraph 22, Scott, C.J. writes:*

*While it is appropriate to classify as medical practice that which is carried out by a physician in furtherance of a patient's care, there must always be some direct involvement by the defendant doctor. In other words, there must be no question that the plaintiff was the defendant doctor's patient. There must be some doctor/patient relationship for it to be said that the doctor is providing medical professional services even if the extent of the connection as we have seen need not be overwhelming. The nature and basis of the plaintiff's claim must have its roots in the care (broadly defined) provided to the patient by his or her defendant physician.*

*While it is clear that the question to be decided and the factual circumstances of Narynski were very different than in this case, nevertheless, I conclude that for the respondents to be able to enjoy the benefit*

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<sup>12</sup> [1997] M.J. No. 584.

of the exemption afforded to medical practitioners under s. 20 of the Act there must be a true doctor/patient relationship. On the facts of this case I conclude that there was none. There was no communication, visit or relationship whatsoever between Mr. Brown and Dr. Ramsay. In reality, Mr. Brown was a client/patient of the respondents who was referred or delegated by them to Dr. Ramsay. The exemption in the Act to medical practitioners can be extended to those who assist them in providing treatment to the medical practitioners' patients. As Mr. Brown was in reality never Dr. Ramsay's patient, there was nothing to delegate, and the exemption does not apply.

[23] As well, I question whether in the factual circumstances of this case Dr. Ramsay could have delegated to the respondents in any event. The real purpose of the Act is to protect the public. Here, the personal respondents are licenced ophthalmic dispensers. The Ophthalmic Dispensers Act which is likewise legislation enacted for the protection of the public to ensure that those who practice as such are qualified and competent to do so, describes what licenced ophthalmic dispensers are permitted to do. The personal respondents are not licenced or certified by their own licencing body to do that which they did here. True, Dr. Ramsay says he is satisfied with the competence of the personal respondents, but is that sufficient, particularly when their own professional association and licencing body does not authorize or purport to certify its members as qualified to perform this kind of service? I think not.

[27] The legislature has decided what services can be performed by those licenced under the Act and has given the applicant the responsibility for certifying the skill

*levels of those permitted to provide such service and for ensuring that such services are provided only by those sufficiently skilled, all in the interest of public safety. It is my view, therefore, that when the court finds that an individual is providing a service(s) for which he/she is not licenced or not qualified to provide, the result ought not to be a case by case analysis by the court with a view to determining whether public safety is met. Rather, the individual in breach should be enjoined from continuing to provide the service, leaving him/her to satisfy either the licencing body or the legislature as to requisite skill level and the legitimacy of the service and/or equipment in question, in the public interest.*

[61] This, in my view, is an appropriate analysis of how delegation may be achieved in a manner consistent with the legislative framework in the case at bar. Delegation is to assist the practitioner in providing care to a patient, not to circumvent the need for care from a practitioner and not to repudiate his or her responsibility for a patient. Despite delegation, the physician must put his or her mind to the relevant aspects of the patient's condition, consider it and act accordingly. The legislative scheme expects each health care professional to consider, and when deemed appropriate for the health care of each patient, to "refer" up the chain or "delegate" down the chain.

[62] Persons that do not meet the requirements of the **Regulated Health Professions Act** will be discussed more fully

later. The conclusion is that a corporation cannot be a person capable of delegating any portion of a controlled act under the **Regulated Health Professions Act**.

[63] Everyone in Ontario, in order to have sub-normal eyewear dispensed, other than simple magnifiers, must obtain a prescription. In order to obtain a prescription, the person must have an eye examination.

[64] The need for a prescription is clear from s.5(1) of the **Opticianry Act** which requires opticians to dispense eyewear only "upon the prescription of an optometrist or physician". Correspondingly, physicians and optometrists are authorized to prescribe for vision or eye problems as well as sub-normal vision devices. (**Optometry Act**, s.4; **Medicine Act**, s.4).

[65] Dispensing is defined as "the preparation, adaptation and delivery of eye glasses,...to a person". (**King Optical Group Inc. v. College of Opticians of Ontario** [2001] O.J. No. 4779 at para. 6. Simmon, J.A., made observations upon the definition (paras. 32 and 34) to the effect that refinements are open for future cases.

[66] A prescription is based on the optometrist or physician exercising his or her power to prescribe.

[67] A prescription is a direction for treatment that follows a diagnosis that is itself the result of investigation, including an eye examination. An eye examination is a controlled act that may only be performed by an optometrist or a physician.

[68] This accords with the scope of practice legislatively granted to these professions. In the case of optometrists, s.3 of the **Optometry Act** notes that the practice of optometry is the *"assessment of the eye and vision system and the diagnosis, treatment and prevention of"* a variety of conditions. In the case of a physician s.3 of the **Medicine Act** describes the practice of medicine as *"the assessment of the physical or mental condition of an individual and the diagnosis, treatment and prevention of any disease, disorder or dysfunction"*.

[69] Each College defines the scope of practice with the College of Optometry defining the requirements of an eye examination.

[70] Section 3(1) of the **Health Professions Procedural Code**, which is schedule 2 of the **Regulated Health Professions Act**, states that one object of each College is *"to regulate the practice of the profession and to govern the members in accordance with the health profession Act, this Code and the Regulated Health Professions Act, 1991 and the regulations and*

*by-laws*". Each College is charged with administering the above legislation as it pertains to their respective profession and with maintaining the standard of practice therein.

[71] Section 95 of the **Health Professions Procedural Code** states that the Council of each College may make regulations "prescribing the standards of practice of the profession and prohibiting members from acting beyond the scope of practice of the profession..."

[72] An optometrist or physician may delegate portions of the eye examination in an exercise of professional judgment. But the optometrist or physician may not delegate the responsibility for the restricted act nor the accountability to the patient for the restricted act.

[73] Section 27(1) of the **Regulated Health Professions Act** prohibits a person from performing a controlled act, unless (s.b) "*the performance of the controlled act has been delegated to the person by a member*" authorized by a health profession **Act** to perform the controlled act. It is clear that delegation extends only to the performance of a specific act. No delegation of responsibility is explicit or implicit.

[74] Here the refractory portion of an eye examination may be delegated to an optician with an Eyelogic system - if the optometrist or physician in his or her professional judgment decides it is in the interest of his or her patient to do so. The decision is not the optician's.

[75] Section 27(1) mandates that delegation must come from the member authorized to perform the controlled act. Only an optometrist or physician is authorized to perform the controlled acts of diagnosing and prescribing and, as such, he or she must be the delegating party. Authority to perform these controlled acts and the discretion as to who should perform them, and in what manner they should be performed lies solely with the optometrist or the physician.

[76] A "doctor"-patient relationship is required for valid delegation. (***Manitoba Assn. of Optometrists v. 3437613 Manitoba Ltd.*** [1997] M.J. No. 584.) This is a doctor of medicine or a doctor of optometry in this Application.

[77] A primary objective of the ***Regulated Health Professions Act*** and associated legislation is the protection of the public. (***King, supra***)

[78] The College of Optometry is responsible for the regulation of optometrists under the **Optometry Act** which defines the professional responsibility of optometrists, include the detection of diseases and disorders of the eye through referral for diagnosis and, if necessary, treatment by a physician (ophthalmologist). It is common knowledge that much pathology in the human body exists before the person is aware of symptoms. Consequently, the healthcare comprehensive scheme includes as an integral part, the function of optometrists in providing eye examinations of those persons who are seeking assisted eyewear to have this larger responsibility. In acceptance of this responsibility of care, the College of Optometry ensures that each member has had the appropriate training and possesses the equipment for these purposes. In addition, there is a common law duty under the law of negligence upon an optometrist. See, for example, **Christien Semple et al. v. Conron**, S.C. released 25 June, 1993. (Action # 23071/90) A case that held an optometrist liable for failure to diagnose glaucoma.

[79] The respondents, by their mode of business of offering what they advertise as free "eye examinations" and only calculating refractory error in a customer's eyes, takes from the public the very important safeguard of early diagnosis, or

any diagnosis, of eye disease and has, in its mode of practice, distorted the integrated healthcare system in Ontario as it applies to eyes and related sight functions. Pursuant to the **Optometry Act** the scope of practice of an optometrist includes *"the assessment of the eye and vision system and the diagnosis, treatment and prevention of prescribed diseases"*. (S.3(c) **Optometry Act**.) Ontario Regulation 119/94 defines prescribed diseases for the purposes of s. 3(c); s. 21,1 *"In relation to diagnosis and prevention, diseases of the eye and vision system that can be determined by the findings from an oculo-visual assessment"*. That is, in lay terms, an eye examination.

[80] It is common knowledge that aging often occasions failing visual acuity and resultant corrective eyewear. It is also common knowledge that the same aging process and loss of visual acuity may be due to diseases of the eyes including macular degeneration, cataracts, glaucoma and diabetic retinopathy; diseases that can be suspected, if not determined, on an oculo-visual assessment. In my view it is seriously irresponsible conduct to advertise a *"free eye examination"* and then to by-pass an eye examination by an optometrist or ophthalmologist.

**DISPOSITION**

[81] The Application before Harris, J. was brought by the College of Optometry. The Court ruled that the jurisdiction to proceed under s.87 of the **Practice Code** given to the respective healthcare colleges applies to the enforcement of those areas of practice granted to the respective colleges. Accordingly, Harris, J. found that this Application as brought by the College of Optometry is limited to issues of prescribing corrective eyewear, with the corollary finding that should a challenge be made under s. 87 to the manner in which Great Glasses dispenses eyewear, that such a challenge to the Superior Court is required to be made by the College of Opticianry. It is to be noted that on this Record that the College of Opticianry has taken an alternative mode of enforcement of professional conduct of its member, Mr. Bergez, instituting a summary conviction procedure which did result in a conviction and also by a hearing and a finding of its disciplinary committee, of professional misconduct by its member, the respondent Bruce Bergez.

[82] The Intervenor, College of Opticians of Ontario, has produced evidence, *inter alia*, the Order of the Discipline Committee of the College of Opticians of Ontario in which it was

found that the respondent herein, Bruce Bergez, committed acts of professional misconduct contrary to:

*(a) s. 5 of the Opticianry Act, S.O. 1991, c.34 in that on or about February 20, 2002 he dispensed eyeglasses without the prescription of an optometrist or a physician, having used the results of a refractometry test to prepare and dispense eyeglasses, which conduct is also professional misconduct as defined in s. 1, paragraph 26 of Regulation 828/93 as amended, promulgated pursuant to the Opticianry Act, 1991;*

[83] The respondent, Bruce Bergez, is knowledgeable, indeed sophisticated, in his facility with the Ontario healthcare legislation. He knows that the term "*eye examination*" is defined in the ***Optometry Act***.

[84] The Great Glasses blanket advertising of "*Free Eye Examinations*" is in fact and, to the certain knowledge of Mr. Bergez, a gross deception on the public, putting his customers at risk of their health, done solely for the commercial profit of the respondents.

[85] The evidence on this Record is that the dispensing of subnormal eyewear is done at Great Glasses without any direct involvement of an optician. Should a customer be wrongly dispensed and suffer personal injury due to a sight failure, there is seemingly, on Mr. Bergez's mode of business, no

optician to be held accountable in law. I find that Mr. Bergez intends this situation.

[86] The Record shows a series of what purports to be franchise agreements styled "*Great Glasses Franchise Agreement Between Ontario Optical Development Corp. as franchisor and Ferdinand Carrere Holdings Ltd., the Franchisee*". In this Agreement at clause 4.03 royalty rent is provided for and include a consideration of the franchisor:

*(b) arranging an agreement from a physician or physicians and conferring upon the Franchisee the authority to prescribe and dispense subnormal vision devices, contact lenses, and eye glasses pursuant to the Opticianry Act, S.O. 1991 c.34 and the Regulated Health Professions Act, S.O. 1991, c.18 and for and on behalf of Great Glasses;*

Clause 7.02(b) states the Franchisee shall not:

*(b) Represent themselves as either a physician, optometrist or optician in accordance with s. 9 of the Medicine Act, S.O. 1991, c.30, the Optometry Act, S.O. 1991, c.35 and the Opticianry Act, S.O. 1991, c.34.*

[87] I find that all those customers of Great Glasses that have been deprived of an eye examination as performed by an ophthalmologist or optometrist have been put at risk of continuing undiagnosed eye disease.

[88] In the sphere of business activity I find the conduct of Mr. Bergez to be highly provocative, arrogant and egregious. It is economically harmful to those professionals who are providing health care services in accordance with the law in the fields of optometry and opticianry. It is predatory practice on the health of the public and on the legitimate and economic interests of professional competitors.

[89] Mr. Bergez and his business operations must be compelled to desist from the present manner and mode of business and must, as a matter of deterrence, be subject to punishment that disgorges the profits that have been made pursuant to the illegal activities originally enjoined by Order of this Court in 2003. The Great Glasses business, both through the respondent stores and through all of the "*franchised*" stores has been structured as a sham for the purpose of evading the law to create an unjust competitive advantage for monetary gain.

#### **THE INCOME OF GREAT GLASSES**

[90] The Record in this Application contains highly informed and credible evidence as to the income accruing from the Great Glasses business and flowing to Mr. Bergez. In

particular, although not limited to, I refer to the evidence by affidavit of James McLean (Application Record, Tab 5), Robert Beaudry (Application Record, Tab 4), Cole Piekney (Supplementary Application Record, Tab 3) and Ann Richards (Application Record, Tab 3). The evidence has established a factual basis beyond a balance of probabilities to impute income. None of the respondents has disputed the evidence of these affiants.

[91] On the evidence of the Record, I make the following findings:

- That the three respondent Great Glasses stores have had average gross revenues from the time of the subject Judgment to the present of not less than \$190,000.00 per month, (\$2.28 million per year). The gross revenues may well have been significantly greater - see Beaudry affidavit, para. 15.
- That approximately 80 per cent of the gross revenue is earned from customers who are dispensed eyewear without having a prescription.
- That the business volume of Great Glasses at the respondent stores has been at an annual increase and

that the profit margin is at a minimum 50 per cent of gross revenue.

- That the calculation of the impugned income is not less than \$900,000.00 per year ( $\$2,280,000 \times 80\% \times 50\%$ ) times three and a half years from the Judgment to the present, yielding approximately a sum of \$3,000,000.00 as rounded. In addition, Mr. Bergez has now sold 14 franchises. The building of the franchise business has been over a period of time between the time of the Judgment to the present. I accept the evidence that in addition to a very substantial purchase fee of a franchise, the franchisee pays to the franchisor, whom I have found to be Mr. Bergez, seven percent of gross sales. I therefore impute a relatively modest gross revenue of each franchise store at \$50,000.00 per month or \$600,000.00 per year, yielding an annual royalty fee at seven percent, to be \$42,000.00 per year. Given the progressive building of the franchise empire, I assess to Mr. Bergez, royalty income for one year and accordingly I make the sum to be  $(\$42,000.00 \times 14 \times \text{one year}) \neq \$600,000.00$  as rounded.

[92] I conclude that the respondents, Mr. and Mrs. Bergez, have obtained through unlawful business activity of the enterprises known as Great Glasses, not less than \$3,600,000.00 in revenues. It is appropriate and a just result that they be required to disgorge the profit by way of a fine. Generous allowance is made for the costs of doing business, including income tax.

[93] I impose a fine of \$1,000,000.00. This Court orders the respondent, Bruce Bergez, to pay the aforesaid fine of \$1,000,000.00, by cheque or other financial instrument, payable to the Minister of Finance of Ontario by deposit with the Registrar of the Superior Court, located on the first floor of the John Sopinka Court House, within 14 days of the date of this judgment.

[94] Following the 14 days, should the fine not be paid as above ordered, enforcement will be by the Attorney General of Ontario pursuant to s. 143(2) of the **Courts of Justice Act**, R.S.O. 1990 C.43, as against each respondent, jointly and severally, including warrants for committal to each of Bruce Bergez and Joanne Marie Bergez. The Registrar will deliver a copy of this Order to the Director of Provincial Offences Act and Strategic Planning, 2<sup>nd</sup> Floor, 720 Bay Street, Toronto, Ontario.

[95] I further order that the corporations SHS Optical Ltd., Dundurn Optical Ltd. and Plains Road Optical Ltd. and Ontario Optical Development Corp., all corporations controlled by the named respondents Bergez, are jointly and severally liable for the payment of the aforesaid fine.

[96] The respondents, Bruce Bergez and Joanne Marie Bergez, will jointly and severally be accountable to this Court to purge their contempt by forthwith doing the following:

- (i) The respondents shall permanently post a prominent sign in all of their stores, in a form to be approved by the Court, stating that customers must have a prescription from an optometrist or a physician before Great Glasses can dispense subnormal vision devices, contact lenses or eyeglasses and that these items cannot be dispensed on the basis of the Eyelogic test performed by Great Glasses.
- (ii) The respondents shall run a prominent notice in the Hamilton Spectator once a week for four weeks, in a form to be approved by the Court, to the same effect as the notice requested in subparagraph (i) above.
- (iii) The respondents shall permanently refrain from advertising in any form to the public in such a way

as to lead the public to believe that subnormal vision devices, contact lenses or eyeglasses can be dispensed to them on the basis of the eye tests performed by Great Glasses and all Great Glasses advertisements shall contain a specific prominent statement that glasses cannot be dispensed on the basis of the Great Glasses eye tests and that customers must have a prescription from an optometrist or a physician.

- (iv) The respondents shall give to any person who has purchased a Great Glasses franchise or who inquires about purchasing such a franchise:
  - (a) a true copy of the Judgment; and
  - (b) a true copy of the contempt order issued by this Court.
- (v) The respondents shall insert into all their franchise agreements a specific term that the franchise operation must be operated in strict accordance with the Judgment.
- (vi) The respondent, Bruce Bergez, shall personally ensure through the institution of appropriate business practices, mode of business and instructions, that dispensing of subnormal eyewear

is in accordance with a prescription written by an optometrist or qualified physician specifically for that patient and for the time of dispensing.

[97] The applicant is granted leave to motion this Court for such Orders as may be required to carry out these mandatory Orders.

[98] In order that the respondents comply with the Judgment, going forward there will be a fine of \$50,000.00 for each and every day that the respondents are not in compliance with the Judgment.

[99] It is just that the applicant and the intervenor should each have its costs of the present Application, to be fixed by me on a substantial indemnity scale. A motion may be made with appropriate materials served upon the respondents Bergez.

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CRANE J.

**Released: November 24, 2006**

COURT FILE NO.: 05-18863  
DATE: 20061124

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

COLLEGE OF OPTOMETRISTS OF ONTARIO

Applicant

- and -

SHS OPTICAL LTD., DUNDURN OPTICAL  
LTD. and JOHN DOE, all carrying on  
business under the name GREAT  
GLASSES; JOANNE MARIE BERGEZ; and  
BRUCE BERGEZ

Respondents

- and -

COLLEGE OF OPTICIANS OF ONTARIO

Intervenor

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REASONS FOR JUDGMENT

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CRANE J.

DSC/sh

**Released: November 24, 2006**