

No. 99

5th Session, 13th Legislature, Alberta
7 Elizabeth II, 1959

BILL 99

A Bill to amend The Legal Profession Act

HON. MR. MANNING

Explanatory Note

2. (d) The power of the benchers of the Law Society is being extended. Section 30(1) begins:

“30. (1) The benchers may make rules and regulations respecting

(d1) See note above. Clause (d) presently reads:

“(d) the suspension from practice of any member for non-payment of fees due to the Society and the reinstatement of such member upon such terms as the benchers see fit.”.

3. This new section will enable the Law Society of Alberta to apply for an order to seize the property of a suspended, disbarred or mentally incompetent member or of a member who has deserted his practice or died. In this manner the Society can assist in protecting the documents and moneys of persons who had availed themselves of the services of that member, and not leave each such person to become aware himself that his interests might suffer and belatedly seek his own remedy thereafter.

BILL

No. 99 of 1959

An Act to amend The Legal Profession Act

(Assented to _____, 1959)

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

1. *The Legal Profession Act*, being chapter 173 of the Revised Statutes, is hereby amended.

2. Section 30, subsection (1) is amended by striking out clause (d) and by substituting the following:

(d) the books, ledgers, journals, records and accounts required to be kept and maintained by a member of the Society with respect to trust funds, and the furnishing of evidence that books, ledgers, journals, records and accounts are being kept and maintained in accordance with the rules and regulations and the inspection of the said books, ledgers, journals, records and accounts from time to time by the officers, auditors or agents of the Society,

(d1) the suspension from practice of any member for non-payment of fees due to the Society or for contravention of any rules or regulations of the Society and the reinstatement of the suspended member upon such terms as the benchers see fit,

3. The following section is added immediately after section 56:

56a. (1) In this section,

(a) "custodian" means a person designated by an order to have custody of the property of a member;

(b) "member" means a member, a suspended member or a former member of the Society;

(c) "property" means any thing, wherever situate, acquired by or given to a member by or for a client or any other person and not wholly owned by the member, and without restricting the generality of the foregoing, includes chattels, files, records, securities, books of account, records of transactions, trust moneys in cash or on deposit, negotiable instruments, corporate seals, documents and papers or any of them, where the same in any way relate to the practice of his profession or former profession

or the business or affairs of his clients or former clients or any of them and whether or not the same have been acquired before or after he has ceased to practise his profession.

- (2) In any of the following cases, that is to say,
- (a) where the name of a member has been struck off the roll,
 - (b) where a member has been suspended,
 - (c) where a member has died or become mentally incapacitated,
 - (d) where by reason of illness or for any other reason a member has become and remains unable to practise as a barrister and solicitor,
 - (e) where a member has absconded or is otherwise improperly absent from his place of business or has neglected his practice for an unduly extended period, or
 - (f) where sufficient grounds otherwise exist,
- a judge of the Supreme Court, if in his opinion it is just and proper to do so, may, upon application being made to him by the Society either *ex parte* or on such notice as the judge may require, order the sheriff of a judicial district
- (g) to enter from time to time upon any premises and open any safety deposit box or any other receptacle, wherein the information or material filed on such application gives reasonable grounds for belief that any property is or may be kept, and
 - (h) to seize and take possession of such property and to remove the same and place it in the custody of the Secretary of the Society, a trust company or such person as the order may designate.
- (3) Unless otherwise ordered the order shall be served upon the member and such other person and within such time after the granting thereof, as the judge may direct.
- (4) The order may provide that the member shall file with the custodian any claims for a solicitor's lien within thirty days after the service of the order.
- (5) Upon the receipt by a person of notice that an order has been made pursuant to this section, he shall retain and shall not dispose of any property of a member until directed by the custodian or by order of the court as to the disposition thereof.
- (6) Where an order has been made under subsection (2) a judge of the Supreme Court, upon application of the Society or of any other person, may, at any time and from time to time by order made *ex parte* or upon such notice as the judge may require,
- (a) remove any custodian appointed by such order and appoint another custodian,
 - (b) direct any bank or other depository of property of a member to deal with, hold or dispose of the property in such manner as the judge may deem proper,

- (c) give directions and advice to the custodian as to the disposition of the property in the hands of a custodian or any part or parts thereof, or
- (d) give such directions or make such further orders as the nature of the case requires.

(7) Where property of a member has been placed in the custody of a custodian pursuant to an order under this section, the Secretary of the Society, its solicitor and such other solicitors, or other person, if any, as the benchers may designate shall examine the property and thereafter the custodian shall, by such notice as he thinks proper, including publication in a newspaper, inform such clients of the member or other persons as he may deem necessary

- (a) that property of the member is in the custody of the custodian and that an examination thereof indicates that the client or other person appears to have an interest therein, and
- (b) that the client or other person may apply to the custodian in person or by solicitor or agent for the delivery to him of the property in which he appears to have an interest or for leave to make copies of any documents and papers among the property that he may deem necessary to copy, in respect of any transactions or dealings he has had with the member, subject to any solicitor's lien of the member upon or with respect to such property.

(8) Where the custodian is satisfied that a person is entitled to any property in his custody and that no solicitor's lien is claimed thereon or appears to exist, or if any such lien is satisfied, he may deliver the property to the person claiming it.

(9) Where a member whose property has been placed in the custody of a custodian under this section claims to be entitled to a solicitor's lien upon or in respect of any part or parts thereof,

- (a) he shall, within thirty days from the service of the order upon him, file notice of his claim for lien with the custodian with particulars thereof, and
- (b) the custodian shall forthwith give notice of the claim for lien to the apparent owner of the property against which the lien is claimed and thereafter the rights of the parties shall be determined according to law.

(10) Where a member fails to file a claim for lien pursuant to this section any lien that he might otherwise be entitled to shall be deemed to be extinguished and the custodian is entitled to deliver any property to the claimant thereof if otherwise satisfied that it is proper to do so.

(11) Notwithstanding anything in this section, a judge of the Supreme Court may at any time enlarge or shorten the time within which any thing is required to be done under this section or dispense with any of such requirements.

4. The new subsection (2) will give express authority to publish notices of a disbarment or suspension and will provide express protection from defamation or other actions therefor.

(12) Notwithstanding anything in this section, a judge of the Supreme Court may summarily determine the validity of any claim to a solicitor's lien.

(13) Neither the custodian, the Society, its officers, the benchers, any one designated by the benchers, nor anyone acting for any of them, incurs any liability or obligation as trustee or otherwise to the member or to any of the member's clients or former clients or to the member's estate or to any other person by reason of any proceeding taken under this section.

(14) No liability attaches to the persons enumerated in subsection (13) or any of them for any thing done or omitted in good faith under this section.

(15) The court may fix and award the costs and fees to be taxed, allowed and paid by the member or any other person in respect of proceedings under this section, but no costs shall be awarded against the custodian, the Society, its officers, the benchers or anyone designated by the benchers or anyone acting for any of them by reason of or in respect of any proceedings under this section and taken in good faith.

(16) Nothing in this section shall be construed to derogate from or impair the inherent jurisdiction of the Supreme Court of Alberta over its officers.

4. Section 57 is amended

- (a) by renumbering the section as subsection (1),
- (b) by adding immediately after the renumbered subsection (1) the following:

(2) Where a barrister and solicitor has been struck off the roll or suspended the Secretary of the Society shall, if authorized by the benchers in any particular case, or by all of the members of the investigating committee ordering a suspension, publish or cause to be published notice thereof in such form, in such manner and through such media of disseminating news as the benchers or the members of the investigating committee may direct, and shall also, if so directed, cause a notice or notices of the disbarment or suspension to be posted in or at the member's office or his other place or places of business, and no liability attaches to the Society, the benchers or to any person acting for the Society or the benchers or on instructions of the Society or benchers, for publishing, posting or otherwise circulating or disseminating any such notice.

5. This Act comes into force on the day upon which it is assented to.

No. 99

FIFTH SESSION

THIRTEENTH LEGISLATURE

7 ELIZABETH II

1959

BILL

An Act to amend The Legal
Profession Act

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MANNING
