

No. 13

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3rd Session, 15th Legislature, Alberta  
14 Elizabeth II

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## **BILL 13**

A Bill respecting the Legal Profession

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HON. MR. MANNING

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## **Explanatory Note**

General. This Bill is a general revision of the present Legal Profession Act, chapter 173 of the Revised Statutes. It is the first revision since the original enactment of 1907. In the explanatory notes, section references indicate the equivalent provisions of the present Act or those from which the section of the Bill is derived. "Rule" indicates a provision of the Rules of The Law Society of Alberta.

### **2. Definitions.**

### **3. Constitution and powers of Society. Section 2 (1).**

# BILL

No. 13 of 1966

An Act respecting the Legal Profession

(Assented to \_\_\_\_\_, 1966)

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

1. This Act may be cited as "*The Legal Profession Act, 1966*".

2. In this Act,

- (a) "active member" means a member other than an inactive member or a suspended member;
- (b) "Bencher" means a member who has been elected or appointed as a Bencher of the Society under this Act;
- (c) "inactive member" means a member shown on the roll as being an inactive member;
- (d) "investigating committee" means an investigating committee appointed under Part 3;
- (e) "member" means a person enrolled as a member of the Society and does not include an honorary member;
- (f) "preliminary investigation" means a preliminary investigation conducted pursuant to Part 3;
- (g) "roll" means the Roll of The Law Society of Alberta;
- (h) "rules" means the rules of the Society made by the Benchers under this Act;
- (i) "Society" means The Law Society of Alberta;
- (j) "Supreme Court" or "Court" means the Supreme Court of Alberta;
- (k) "witness", with reference to any proceedings under Part 3, includes the member charged with conduct unbecoming a barrister and solicitor.

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## PART 1

### THE LAW SOCIETY OF ALBERTA

#### Constitution and Powers

3. (1) The Law Society of Alberta as heretofore constituted continues by that name as a body corporate and politic.

**4.** The Benchers. Section 6 (1).

**5.** Resolutions of Benchers. Section 30, in part, and section 66 (re libraries. Clauses (a), (b), (i) and (j) are new.

(2) The Society, in addition to the powers vested in it by section 14 of *The Interpretation Act, 1958* and by this Act, has the power to

- (a) acquire and hold real property and sell, lease or otherwise dispose of the same at pleasure, and
- (b) borrow money for the purposes of the Society and to mortgage or charge property of the Society or its sources of funds as security for moneys borrowed.

#### **The Benchers**

4. (1) There shall be a governing body of the Society called the Benchers.

(2) The Benchers shall manage and conduct the business and affairs of the Society and exercise in the name of or on behalf of the Society the powers of the Society.

5. The Benchers may by resolution

- (a) authorize the Society to enter into any contract that the Society may enter into,
- (b) appoint any person an honorary member of the Society or an honorary Bencher,
- (c) appoint, or provide for the appointment of, committees of Benchers and confer upon any such committee power and authority to act for the Benchers in and in relation to such matters as the Benchers direct,
- (d) appoint delegates and representatives to appear on behalf of and represent the Society,
- (e) provide for the reporting of legal decisions,
- (f) establish and maintain libraries for the use of the members of the Society,
- (g) make arrangements with the Attorney General respecting the contribution of the Society to the cost of the acquisition of books and periodicals for libraries maintained by the Province,
- (h) maintain a special fund for the relief of aged, infirm or disabled members or former members of the Society or their dependants and the dependants of deceased members, either by setting aside a portion of the moneys of the Society or by paying into such fund a portion of the revenues of the Society, and may discontinue the fund in whole or in part,
- (i) authorize the Society to enter into group insurance contracts insuring the lives or incomes of members or any class thereof or insuring against any risks incurred by members or any class thereof that are related to the practice of law,
- (j) authorize the distribution to members of memoranda or publications relating to ethical standards of professional conduct in the practice of law, and

**6.** General powers as to rules. Section 30 in part. The present Rules provide for all the matters enumerated in subsection (2) except for those matters referred to in clauses (d), (g), (h) and (k).

- (k) take such action and incur such expenses as the Benchers consider necessary for the promotion, protection, interest or welfare of the Society.

**6.** (1) The Benchers may make rules for the government of the Society, the management and conduct of its business and affairs and for the exercise or carrying out of the powers and duties conferred or imposed on the Society or the Benchers under this or any other Act.

(2) Without restricting the generality of subsection (1), the Benchers may make rules

- (a) prescribing the manner of proof as to matters required to be proven by applicants for admission as students-at-law or for enrolment as members,
- (b) fixing the fees payable to the Society for the admission of students-at-law or the enrolment of members, the fees payable annually by members and any other fees incidental to the conduct of the business and affairs of the Society,
- (c) providing, with respect to any rule, that a member is suspended without notice or investigation upon contravening that rule, if it requires the member to pay a fee or assessment, file a document or do any other act by a specified or ascertainable date, and providing for the reinstatement of a member so suspended,
- (d) providing for the striking off of the roll of the name of a member who has been suspended for a period of at least two years pursuant to the rules made under clause (c),
- (e) providing for the reinstatement of former members and of members and students-at-law under suspension pursuant to orders of the Benchers under Part 3, and prescribing the terms and conditions upon which reinstatement may be granted,
- (f) providing for the reinstatement of inactive members as active members and prescribing the terms and conditions upon which reinstatement may be granted,
- (g) prescribing the terms and conditions upon which permission may be granted to persons to act as counsel in Alberta under section 44,
- (h) providing for the establishment and operation of a plan or plans to provide legal aid to persons in need thereof in civil and criminal matters,
- (i) requiring members to open and keep trust accounts for clients' money at a chartered bank, a treasury branch or a corporation that is an approved corporation under *The Trustee Act*,
- (j) requiring members to keep books of account and records containing particulars and information as to

**7.** Honourary members. Section 7 revised.

**8.** Number of Benchers. Section 8.

**9.** Election of Benchers. Section 9 revised.

**10.** Eligibility for election. Section 10.



moneys received, held or paid for or on account of clients, requiring the furnishing of evidence that those accounts and records are being kept and maintained and providing for the inspection of those books and records from time to time by the officers, auditors or agents of the Society,

- (k) requiring any member to pay to the Society the cost of any inspection or audit of his books and accounts where the rules under clause (i) or (j) have not been complied with,
- (l) providing for the administration of the special relief fund referred to in clause (h) of section 5,
- (m) governing the use of libraries maintained wholly or partly by funds of the Society, and providing for the levying of assessments against the membership of the Society or the members in any area, for the purpose of recovering the cost of lost books, and
- (n) prescribing the information that may be entered in the roll.

**7.** (1) The Attorney General of Alberta and the past Presidents of the Society are honorary Benchers.

(2) An honorary Bencher may attend and participate in any meeting or other proceedings of the Benchers but is not entitled to be notified of or to move or second any motion at or to vote at any meeting or other proceeding.

**8.** (1) Subject to subsection (2), the number of Benchers shall be seventeen.

(2) For each five hundred active members by which the membership of the Society is increased over one thousand, an additional Bencher shall be elected but the number of Benchers shall in no case exceed twenty.

(3) For the purposes of this section, the membership of the Society shall be determined as of the first day of July preceding each regular election.

**9.** (1) The first election of Benchers after the commencement of this Act shall be held on the first Monday of November, 1967, and elections shall be held on the first Monday of November in every second year thereafter.

(2) The Benchers elected take office at their first meeting following their election and the Benchers in office immediately prior to the election continue in office until that time, notwithstanding that the terms of office of the retiring Benchers are thereby shortened or extended.

**10.** (1) Only an active member resident in the Province is eligible for nomination and election as a Bencher.

(2) Retiring Benchers are eligible for nomination and re-election.

**11.** Eligibility to vote. Section 11 (1).

**12.** Rules as to elections. The election procedure is presently found in sections 12 to 28 but will now be provided for in the rules. Under the new rules, Benchers may be elected for districts. Subsections (2) and (3) are new. The present Act fixes the term of office at two years but under the new rules this could be increased to four years.

**13.** President's powers as to elections. New.

**14.** Notice as to Benchers elected. Section 22.

(3) No one is eligible for nomination or election as a Benchers who before or after the commencement of this Act and at any time before the date of the election

(a) has been found guilty of conduct unbecoming a barrister and solicitor, or

(b) has been convicted of an indictable offence and has had his name struck off the roll by the Benchers by reason of the conviction.

**11.** Only active members resident in the Province are entitled to vote in an election of Benchers.

**12.** (1) The Benchers may make rules governing elections of Benchers and such rules may

(a) provide the procedure for the nomination of candidates,

(b) prescribe the terms of office of Benchers,

(c) prescribe the circumstances under which a member is not entitled to vote,

(d) provide for the division of the Province into districts and prescribe the number of Benchers to be elected from each district,

(e) provide for the appointment or designation of presiding officers for the election,

(f) prescribe the forms to be used, and

(g) prescribe the procedure to be used for the holding of the elections and for determining the Benchers elected.

(2) The rules shall not prescribe any terms of office of Benchers in excess of four years.

(3) An election of Benchers shall be conducted with the use of secret ballots.

**13.** (1) In connection with an election of Benchers, if any thing to be done within a number of days or at or before a time fixed by or under this Act or the rules cannot be or is not so done, the President may from time to time by order appoint a further or other time for doing it, whether the time at or before or within which it ought to have been done has or has not arrived or expired, as the case may be.

(2) Any thing done at or before or within the time specified in an order under subsection (1) is as valid as if it had been done at or before or within the time fixed by or under this Act or the rules.

**14.** When the election is completed the Secretary shall forthwith send a notice containing the names of the Benchers elected to the Queen's Printer for publication in the *Gazette*.

**15.** Appeal re elections. Section 24 revised.

**16.** When Bencher's office vacated. New.

**17.** Appointment to fill vacancy. Section 27.

**18.** Meetings of Benchers. New. Cf. rules 10, 11, 14.

**15.** (1) A member may dispute the validity of an election of Benchers or the validity of the election of one or more of them by petition to the Supreme Court filed within ten days of the publication in the *Gazette* of the notice referred to in section 14.

(2) The petition shall be heard by a judge of the Supreme Court in chambers in a summary way.

(3) Where it appears to the judge that the election was conducted substantially in accordance with the requirements of this Act and the rules and that any non-compliance, violation, mistake or irregularity did not materially affect the result of the election, he may adjudge the election valid.

(4) Where the judge decides that the election is invalid, he shall

(a) give directions as to the holding of another election, and

(b) direct that the Benchers who held office immediately prior to the election shall continue in office or resume their offices until the next election.

(5) Where the judge decides that the election of one or more but not all of the Benchers is invalid, he shall either

(a) direct the remaining Benchers to appoint another or others in his or their stead to fill the vacancies until the next regular election of Benchers, or

(b) give directions as to the holding of another election to fill the vacancies and the terms for which they shall be elected.

(6) The decision of the Court is final and the costs of the proceedings are in the discretion of the judge.

**16.** If a Bencher is suspended pursuant to section 68 or 72 or clause (b) of subsection (1) of section 73 or his name is struck off the roll, his office as a Bencher is thereby vacated.

**17.** Where the required number of Benchers is not elected or a vacancy occurs in the number of Benchers on account of the death or resignation of a Bencher or otherwise, the remaining or continuing Benchers may appoint any active member to fill the vacancy until the first meeting of the Benchers following the next regular election of Benchers.

**18.** (1) Meetings of the Benchers shall be held at such places and times as the Benchers may determine.

(2) The President or any three Benchers may call a special meeting of the Benchers.

(3) A majority of the Benchers is a quorum at any meeting of the Benchers.

(4) Three days' notice in writing shall be given of any meeting of the Benchers.

**19.** Voting at meeting of Benchers. New. Cf. rule 16.

**20.** Voting at committee meeting. New.

**21.** Committee continues to act despite loss of member. New.

**22.** Officers of Society. Section 29. The reference to Deputy Secretary is new.

**23.** Appointment of Secretary, etc. New. Cf. rules 32 and 33.

(5) Where it appears for any reason that, in the opinion of the President, it is desirable to take a vote of the Benchers by mail, telegram or telephone or when in his opinion it is impracticable to hold a special meeting of the Benchers, a resolution agreed to by three-quarters of the Benchers present within the Province polled by mail, telegram or telephone is as valid as though the vote were taken at a properly constituted meeting of the Benchers.

**19.** At a meeting of the Benchers, matters including decisions respecting disciplinary matters, shall be determined by the majority of votes of those Benchers present at the meeting and in the case of an equality of votes the chairman has a second or casting vote.

**20.** With respect to the determination of any matter dealt with by a committee of the Benchers, including any decision made by an investigating committee, the decision of a majority of the members of the committee is the determination or decision of the committee.

**21.** Where a committee of the Benchers has been appointed by the Benchers or pursuant to the rules and one or more of its members cannot for any reason continue to act, the remaining members of the committee may continue to act and determine any matter.

#### **Officers of the Society**

**22.** (1) The officers of the Society shall be the President, the Vice-President, the Secretary, the Deputy Secretary and the Treasurer but the offices of Secretary and Treasurer may be held by the same person.

(2) The President and Vice-President shall be chosen by the Benchers from their own number.

(3) In the absence or inability of the President to act, the Vice-President shall be the Acting President.

(4) In the absence or inability of both the President and Vice-President to act, a majority of the Benchers may appoint one of their number as Acting President.

(5) The Acting President has the powers and shall perform the duties of the President.

**23.** (1) The Secretary, Deputy Secretary, and Treasurer and the Society's solicitor shall be appointed by the Benchers.

(2) Unless otherwise expressly provided in the rules or by a resolution of the Benchers, the Deputy Secretary may exercise and perform any powers, functions and duties of the Secretary.

**24.** Auditors. New. Cf. rules 32 and 33.

**25.** Meetings of Society. New.

**26.** Quorum. New.

**27.** Notice of meeting. New.

**28.** Special meetings. New.

**29.** Resolution not binding on Benchers. New.



(3) The President may appoint any person as Acting Secretary to act in the absence of the Secretary or the inability of the Secretary to act, and that person, when so acting, has the powers and shall perform the duties of the Secretary.

**24.** (1) The Benchers at their first meeting in each year shall appoint an auditor for the Society.

(2) Where the auditor is absent or for any reason cannot act the President may appoint any person as acting auditor and that person, while so acting, has the powers and shall perform the duties of the auditor.

#### **Meetings of the Society**

**25.** (1) There shall be a general meeting of the Society in each year to be held at such place and time as the Benchers decide.

(2) At each annual general meeting the President shall present a report of the proceedings of the Benchers since the last annual general meeting.

**26.** Twenty active members constitute a quorum at an annual general or special meeting of the Society.

**27.** At least ten days before an annual general meeting the Secretary shall cause to be mailed to each active member of the Society a notice of the meeting and a statement of the financial position of the Society during the previous fiscal year.

**28.** (1) A special meeting of the Society shall be called by the Secretary

(a) when the Benchers by resolution so direct, or

(b) within thirty days of the receipt by him of a written petition of fifty active members setting out the business to be discussed at the meeting.

(2) At least ten days before a special meeting the Secretary shall cause to be mailed to each active member of the Society a notice of such meeting.

(3) If the Secretary fails to call a meeting under subsection (1), the Benchers or petitioners, as the case may be, may call the meeting.

**29.** Any resolution passed at any annual general meeting or special meeting of the Society shall be considered by the Benchers at their next meeting but is not binding on the Benchers.

**30.** The roll and books re students-at-law. Section 64.

**31.** Entries in roll. New. Cf. rules 5 to 8.

**32.** Resignation of members. New.

**33.** Judicial appointment of members. New. Cf. rule 6 (3).

## **PART 2**

### **MEMBERSHIP AND ENROLMENT**

#### **The Roll**

**30.** (1) The Secretary shall keep and maintain a book or books called the "Roll of The Law Society of Alberta" in accordance with the rules.

(2) The Secretary shall keep and maintain a book or books pertaining to persons admitted to the Society as students-at-law.

(3) The roll and the books pertaining to students-at-law shall be kept at the Society's offices and shall be open for inspection by any person at any time that the offices are open.

**31.** (1) The roll shall consist of a separate page for each member or former member arranged in chronological order of enrolment.

(2) Every memorandum entered in the roll shall show the date of its entry and shall be signed by the Secretary.

(3) A person becomes enrolled as a member of the Society when a memorandum of his enrolment is entered in the page of the roll bearing his name.

(4) A member is suspended when a memorandum of the suspension has been entered in the roll and

(a) when the member has been suspended for a stated period of time the memorandum shall indicate the duration of the suspension, and

(b) when the member has been suspended for any reason other than as a penalty for conduct unbecoming a barrister and solicitor, the memorandum shall indicate the reason.

(5) The name of a member is struck off the roll when a memorandum to that effect has been entered in the roll.

(6) When a member dies, the Secretary shall enter a memorandum of that fact in the roll.

**32.** (1) No member may resign from the Society unless his resignation is submitted to and approved by the Benchers.

(2) When the resignation is approved, the member's name shall be struck off the roll.

**33.** When a member of the Society becomes a judge of the Supreme Court of Canada, the Exchequer Court of Canada, the Supreme Court of Alberta, a district court or a superior, district or county court in any other province or territory of Canada, his name shall be struck off the roll.

**34.** Inactive members. New.

**35.** Definitions. New. Sections 36 to 43 are a revision of sections 61 to 63. See also rules 102 and 103. The various categories of applicants are more explicitly set out here.

**36.** Role of Co-ordinating Council. Sections 61 (2) and 62.

**34.** (1) A member may file with the Secretary an election to become an inactive member and thereupon a memorandum to that effect shall be entered in the roll.

(2) Subject to the rules, an inactive member may apply to the Secretary at any time to be reinstated as an active member and if the application is approved, a memorandum of the reinstatement shall be entered in the roll.

#### **Enrolment**

**35.** In sections 36 to 41,

- (a) "bar admission examination" means an examination in general subjects related to the practice of law;
- (b) "Co-ordinating Council" means the Co-ordinating Council of the University of Alberta;
- (c) "practice examination" means an examination pertaining to practice and procedure in the Supreme Court of Alberta and the district courts;
- (d) "special examinations" means examinations at university standards in subjects pertaining to substantive law in force in the Province.

**36.** (1) The evaluation of the academic qualifications of, and the examination of, applicants for enrolment as members of the Society or for admission to the Society as students-at-law is under the control of the Co-ordinating Council.

(2) The Co-ordinating Council

- (a) shall evaluate the educational attainments of an applicant for enrolment as a member or for admission as a student-at-law whose degree in law was not granted by the University of Alberta,
- (b) shall, in the case of an applicant whose degree in law was not granted by the University of Alberta, prescribe the content of any examinations at university standards in subjects pertaining to substantive law in force in the Province that are required by the Council to be taken by the applicant, having regard to his educational attainments, and
- (c) subject to subsection (4), shall prescribe the content of practice examinations, bar admission examinations and examinations on statutes.

(3) The conducting of examinations shall be under the control of the Co-ordinating Council and in accordance with any arrangements that may be made with the Society for that purpose.

(4) The Co-ordinating Council may enter into arrangements with the Society under which the Benchers may prescribe the content of, and conduct, practice examinations, bar admission examinations and statutes examinations under the general supervision of the Co-ordinating Council.

(5) An applicant for admission as a student-at-law under section 38 or 40 shall obtain from the secretary of the

**37.** Education Committee. New.

**38.** Holders of Alberta or equivalent degrees. See section 61 (1) and (4).

**39.** Canadian lawyers of 3 years' standing or more. See section 61 (3).

Co-ordinating Council a certificate as to his compliance with clauses (b) and (c) of subsection (1) of section 38 or clauses (b) and (c) of subsection (1) of section 40, as the case may be.

**37.** The Benchers shall appoint from their number a committee called the "Education Committee" and shall designate its chairman and vice-chairman.

**38.** (1) The Education Committee shall approve the admission of a person as a student-at-law if he proves to its satisfaction and in accordance with the rules that he

- (a) is of good character and reputation,
- (b) has received a degree from the University of Alberta or from a university recognized by the University of Alberta that, in the opinion of the Co-ordinating Council, would entitle him to pursue a course leading to the degree of Bachelor of Laws at the University of Alberta, and
- (c) has received a degree in law from the University of Alberta or has received a degree in law recognized by the University of Alberta as equivalent to the degree of Bachelor of Laws granted by the University of Alberta.

(2) The Education Committee shall approve the enrolment of a person admitted as a student-at-law under subsection (1) if he proves to its satisfaction and in accordance with the rules that he

- (a) is a Canadian citizen or a British subject,
- (b) is of the full age of twenty-one years,
- (c) has served under articles for a continuous period of at least one year, or, with the approval of the Benchers, for periods totalling at least one year,
- (d) has passed a practice examination and a bar admission examination, and
- (e) has passed an examination on the statutes of Canada or Alberta or both and any special examinations that the Co-ordinating Council may require him to take, if his degree in law was not granted by the University of Alberta.

**39.** The Education Committee shall approve the enrolment of a person as a member of the Society if he proves to its satisfaction and in accordance with the rules that he

- (a) is a Canadian citizen or a British subject,
- (b) is of good character and reputation,
- (c) is enrolled as a barrister or solicitor in any province or territory of Canada,
- (d) has been actively engaged in the practice of law in a province or territory of Canada for a continuous period of at least three years immediately preceding his application for enrolment,

**40.** Canadian lawyers of less than 3 years' standing. See section 61 (4).

**41.** Lawyers of 3 years' standing in the United Kingdom, New Zealand and Australia. See section 61 (3).



- (e) has passed a practice examination, and
- (f) has passed an examination on Alberta statutes and any special examinations that the Co-ordinating Council may require him to take, if his degree in law was not granted by the University of Alberta.

**40.** (1) The Education Committee shall approve the admission of a person as a student-at-law if he proves to its satisfaction and in accordance with the rules that he

- (a) is of good character and reputation,
- (b) has received a degree from the University of Alberta or from a university recognized by the University of Alberta that, in the opinion of the Co-ordinating Council, would entitle him to pursue a course leading to the degree of Bachelor of Laws at the University of Alberta,
- (c) has received a degree in law from the University of Alberta or has received a degree in law recognized by the University of Alberta as equivalent to the degree of Bachelor of Laws granted by the University of Alberta,
- (d) is enrolled as a barrister or solicitor in any province or territory of Canada, and
- (e) has not been actively engaged in the practice of law in a province or territory of Canada for a continuous period of three years immediately preceding his application for enrolment,

and shall prescribe the period of articles, not exceeding one year, to be served by that person.

(2) The Education Committee shall approve the enrolment of a person admitted as a student-at-law under subsection (1) if he proves to its satisfaction and in accordance with the rules that he

- (a) is a Canadian citizen or a British subject,
- (b) has served under articles for the period prescribed by the Education Committee,
- (c) has passed a practice examination and a bar admission examination, and
- (d) has passed an examination on Alberta statutes and any special examinations that the Co-ordinating Council may require him to take, if his degree in law was not granted by the University of Alberta.

**41.** (1) The Education Committee shall approve the admission of a person as a student-at-law if he proves to its satisfaction and in accordance with the rules that he

- (a) is of good character and reputation,
- (b) has been called to the bar of England, Scotland, Northern Ireland, New Zealand or Australia or is an advocate, writer to the signet or solicitor in any of Her Majesty's Courts in England, Scotland, Northern Ireland, New Zealand or Australia, and

**42.** Appeal of Education Committee's decision. New.

**43.** Admission to bar and enrolment as a member. Section 63.

(c) has been actively engaged in the practice of law in any of the jurisdictions mentioned in clause (b) for a continuous period of at least three years immediately preceding his application for enrolment, and shall prescribe the period of articles to be served by that person.

(2) The Education Committee shall approve the enrolment of a person admitted as a student-at-law under subsection (1) if he proves to its satisfaction and in accordance with the rules that he

(a) is a Canadian citizen or a British subject,

(b) has passed a practice examination,

(c) has passed an examination on the statutes of Canada or Alberta or both and any special examinations that the Co-ordinating Council may require him to take, if his degree in law was not granted by the University of Alberta, and

(d) has served under articles for the term prescribed by the Education Committee.

(3) The Education Committee may in any case under this section waive the requirement for service under articles and shall approve the enrolment of a person as a member of the Society if he proves to its satisfaction and in accordance with the rules that he has complied with all the requirements of subsections (1) and (2), other than the requirement to serve under articles.

**42.** (1) A person affected by a decision of the Education Committee may appeal to the Benchers who may confirm the decision or direct the Committee to vary or reverse it.

(2) The Education Committee may, before making a decision, refer the matter to the Benchers who shall direct the Committee as to the decision to be made.

**43.** (1) When the Secretary has received notice from the chairman or vice-chairman of the Education Committee that it has approved the enrolment of a person under section 38, 39, 40 or 41, as the case may be, and the prescribed enrolment fee has been paid, the Secretary shall issue a certificate to that effect directed to a clerk of the Supreme Court.

(2) When the certificate of the Secretary has been delivered to the clerk, the applicant for enrolment shall within two years of the date of the certificate, take and subscribe before a judge or judges of the Supreme Court, in open court

(a) an oath of allegiance in the form prescribed by *The Oaths of Office Act*, and

(b) the official oath prescribed by *The Oaths of Office Act*, to which shall be added the following:

“That I will as a Barrister and Solicitor conduct all causes and matters faithfully and to the best of my ability; I will

**44.** Permission to counsel from outside Alberta. New.

**45.** Section 34 but with the addition of reference to students-at-law.

not seek to destroy any man's property; I will not promote suits upon frivolous pretences; I will not pervert the law to favour or prejudice any man; but in all things conduct myself truly and with integrity; in fine, the Sovereign's interest and that of my fellow citizens I will uphold and maintain according to the law in force in this Province."

(3) The Benchers may extend the two year period mentioned in subsection (2), whether the application for the extension was made before or after the expiration of that period.

(4) When the applicant for enrolment has taken and subscribed the oaths referred to in subsection (2), the clerk or deputy clerk of the Court shall issue a certificate to that effect and send it forthwith to the Secretary.

(5) The Secretary shall enrol a person as a member of the Society when he has received in respect of that person the certificate of the clerk or deputy clerk of the Supreme Court issued under subsection (4).

#### **Permission to Outside Counsel**

44. (1) Notwithstanding anything in this Act but subject to the rules, the Benchers may by resolution permit a barrister or solicitor from any other province or territory of Canada to act as counsel before any court of civil or criminal jurisdiction in Alberta in a proceeding specified in the resolution.

(2) The privileges of a person to whom permission is given under this section cease upon the termination of the proceeding and any appeal resulting from it.

(3) A person to whom permission is given under this section is subject to Part 3 to the same extent as if he were a member of the Society.

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### **PART 3**

#### **DISCIPLINE**

45. (1) The question of whether a person is guilty of conduct unbecoming a barrister and solicitor or a student-at-law, as the case may be, shall be determined by the Benchers or, on appeal, by the Appellate Division of the Supreme Court.

(2) Any act or conduct that in the judgment of the Benchers or the Appellate Division, as the case may be,

(a) is such as to be inimical to the best interests of the public or the members of the Society, or

(b) tends to harm the standing of the legal profession generally,

is conduct unbecoming a barrister and solicitor or a student-at-law, as the case may be, within the meaning of this section.

(3) Except where specific provision is made with respect to students-at-law, the provisions of this Part and the rules

**46.** Appointment of Discipline Committee. New.

**47.** Rules governing disciplinary matters. New. The rules will provide a procedure for "preliminary investigations" so that it will not be necessary for all complaints to be dealt with in a formal hearing by an investigating committee of 3 Benchers.

**48.** Evidence required for preliminary investigation. New.

**49.** Review of complaints by chairman. New. A direction that no further action be taken on a complaint may be appealed to the Benchers under section 51.

under this Part applicable to members apply, with the necessary changes, to students-at-law.

**46.** The Benchers shall appoint from their number a committee called the "Discipline Committee" and shall designate for it a chairman and one or more vice-chairmen.

**47.** The Benchers may make rules

- (a) providing for the making of preliminary investigations into complaints regarding the conduct of members or students-at-law by the chairman or vice-chairman of the Discipline Committee, the Secretary or the Society's solicitor,
- (b) governing proceedings of the Discipline Committee, prescribing the powers and duties of the Committee and its chairman and vice-chairmen,
- (c) subject to this Part, prescribing the powers and duties of a person conducting a preliminary investigation and of an investigating committee appointed under this Part,
- (d) subject to this Part, prescribing the procedure for preliminary investigations and for proceedings of an investigating committee, and
- (e) governing proceedings before the Benchers in matters pertaining to discipline.

**48.** (1) A person conducting a preliminary investigation may require the member concerned and any other member to produce to him any books, papers and other documents in the member's possession or under the member's control and may require the attendance at the investigation of the member concerned and any other member.

(2) The Society may summarily apply *ex parte* to the Supreme Court for an order

- (a) directing the member concerned and any other member to produce to the person conducting a preliminary investigation any books, papers and other documents in his possession or under his control, if it is shown that the member has failed to produce them when required by that person, or
- (b) directing any person, including any treasury branch or any bank, trust company or other corporation in which a member has trust moneys on deposit, to produce to a person conducting a preliminary inquiry any books, papers, documents or records that are or may be related to the subject matter of the complaint being investigated.

**49.** The chairman or a vice-chairman of the Discipline Committee shall review all complaints received against members of the Society and shall either

- (a) direct that no further action be taken, if he is of the opinion that the complaint is frivolous or with-

**50.** Procedure following preliminary investigation. New. See also section 51.

**51.** Appeal to Benchers by complainant. New.

**52.** Appointment of investigating committee. New. Cf. section 35.

**53.** Suspension pending investigation. Section 52 (b).

**54.** Right to counsel. New. Section 45.



- out basis or, if proven, would not constitute conduct unbecoming a barrister and solicitor, or
- (b) direct that a preliminary investigation be held regarding the complaint, or
  - (c) direct that the complaint be dealt with by an investigating committee under this Part.

**50.** Upon the conclusion of a preliminary investigation, the chairman or a vice-chairman of the Discipline Committee shall either

- (a) direct that no further action be taken if he is of the opinion that the complaint is frivolous or without basis or, if proven, would not constitute conduct unbecoming a barrister and solicitor, or
- (b) direct that the complaint be dealt with by an investigating committee.

**51.** Where the chairman or a vice-chairman of the Discipline Committee directs, pursuant to section 49 or 50, that no further action be taken regarding a complaint, the complainant may appeal his direction to the Benchers who, in either or both cases, may make any direction regarding it that the chairman could have made under those sections.

**52.** (1) Where the chairman or a vice-chairman of the Discipline Committee directs that a complaint is to be dealt with by an investigating committee under this Part, he shall

- (a) direct the Secretary to lay a charge of conduct unbecoming a barrister and solicitor against the member concerned containing particulars of the complaint, and
- (b) appoint an investigating committee to conduct an investigation regarding the charge.

(2) An investigating committee shall consist of three Benchers other than the President or the chairman of the Discipline Committee.

(3) Proceedings before a person conducting a preliminary inquiry or before an investigating committee shall be held in camera.

**53.** Notwithstanding any other provision of this Act, the Benchers in their discretion may suspend a member pending the investigation of a charge against the member of conduct unbecoming a barrister and solicitor and pending the making of its own finding as to the charge.

**54.** The Society and the member charged may be represented by counsel before an investigating committee and the Benchers.

**55.** Committee to investigate charge. Section 32 revised.

**56.** Former Benchers may continue to act on committee. Section 33.

**57.** Testimony. Sections 36, 37 and 41.

**58.** Burden of proof re trust funds. Section 51.

**59.** (1) Member charged is compellable witness.

(2) Protection re incriminating testimony.

(3) No solicitor and client privilege.

Section 53. Subsection (3) is new.

### **Proceedings Before Investigating Committee**

**55.** (1) An investigating committee shall investigate the facts concerning the charge against the member concerned.

(2) An investigating committee may also investigate any matter that arises in the course of the investigation and that in its opinion might be the subject matter of a separate charge of conduct unbecoming a barrister and solicitor, but in that event the committee shall declare its intention to investigate and report on the new matter and shall permit the member charged sufficient opportunity to prepare his defence to the new matter.

**56.** A member of an investigating committee may continue to act as such for the purpose of completing and reporting upon any investigation begun while he was a Bencher notwithstanding that he is no longer a Bencher.

**57.** (1) Testimony may be adduced before an investigating committee in such manner as the committee considers proper and the committee is not bound by the rules of law concerning evidence applicable to judicial proceedings.

(2) Any member of the investigating committee may administer an oath to any witness who is to give evidence before it.

**58.** Where it is established or admitted that a member has received any moneys upon trust, the burden of proof that the moneys have been properly dealt with lies upon the member.

**59.** (1) The member charged is a compellable witness in any proceedings under this Part.

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

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

but the answer so given, if it is such as tends to criminate him, shall not be used or received against him in any civil proceedings or in any proceedings under any other Act of the Province.

(3) A member may not in any proceedings under this Part refuse to give evidence or produce any books, papers or documents on the ground of solicitor and client privilege.

**60.** Testimony of witness outside Alberta. New.

**61.** Enforcement of attendance and production of documents.  
Section 38.

**62.** Witness fees. Section 39.

**63.** Witness' refusal to answer or attend. Sections 40 and 42.

**60.** For the purpose of obtaining the testimony of a witness who is out of the Province a judge of the Supreme Court upon an application *ex parte* by the Society 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 rules of the Supreme Court in that behalf.

**61.** (1) The attendance of witnesses before an investigating committee and the production of books, papers and other documents, may be enforced by a notice issued by the Secretary requiring the witness to attend, and stating the time and place at which the witness is to attend and the documents, if any, he is required to produce.

(2) Upon the written request of the member charged or of his counsel or agent, the Secretary shall without charge issue and deliver to the member such notices as he may require for the attendance of witnesses or the production of documents.

**62.** A witness, other than the member charged, who has been served with a notice to attend or a notice for the production of books, papers or other documents under section 61 is entitled to be paid the same fees as are payable to witnesses in an action in the Supreme Court.

**63.** (1) A witness

(a) who fails

(i) to attend before an investigating committee in obedience to a notice to attend,

(ii) to produce any books, papers or other documents in obedience to 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 chairman of an investigating committee,

is liable to attachment upon application to a judge of the Supreme Court and may be punished as for contempt of that Court.

(2) Where the witness under subsection (1) is the member charged, his failure or refusal may be held to be conduct unbecoming a barrister and solicitor.

(3) The committee, upon proof of service of the notice of the investigation upon the member charged, may

(a) proceed with the investigation in the absence of the member, and

(b) act and report upon the matter being investigated in the same way as though the member were in attendance.

**64.** Reprimand by investigating committee. New.

**65.** Committee's report to Benchers. Section 42 (2).

**66.** Procedure leading to hearing before the Benchers. New.

**67.** Proceedings before the Benchers. New, except that subsection (1) is derived from section 44 (1).

**64.** (1) Notwithstanding section 45, if the committee unanimously considers that the charge is proven but that a reprimand is sufficient punishment, it may find the member guilty of the charge and reprimand him and may order the member to pay the costs of the investigation in an amount to be fixed by the committee.

(2) This section does not apply where the charge involves the theft or conversion of or failing to account for any property.

(3) Where the member charged is reprimanded by the committee he may in accordance with the rules appeal the committee's decision to the Benchers and in that case the matter shall be dealt with under section 65 as if no finding of guilt had been made by the committee.

**65.** (1) Except where the member has been reprimanded under section 64 and no appeal has been taken, the investigating committee shall forward its findings of fact regarding all matters investigated by it in the form of a written report to the Secretary.

(2) The Secretary shall obtain a copy of the evidence adduced before the committee and with copies of such exhibits as the committee considers essential for a proper understanding of the evidence.

(3) The documents comprising the evidence and the exhibits supplied to the Secretary shall be known as "the record".

(4) After the conclusion of the investigation, the investigating committee may suspend the member charged until such time as its report and the record of the investigation are considered at a meeting of the Benchers.

#### **Proceedings Before the Benchers**

**66.** On receiving a copy of the report of an investigating committee and the record of the proceedings before it, the Secretary shall

- (a) furnish the member charged with a copy of both the report and the record, inform him of the time and place at which they are to be considered by the Benchers, and inform him that he may appear before the Benchers at that time in person or by counsel or agent, and
- (b) furnish each Bencher with a copy of the report and the record.

**67.** (1) The Benchers shall at their next meeting consider the report and record and shall hear such representations as the member or his counsel or agent wish to make respecting the report and record.

**68.** Powers as to punishment of member. Section 44 (2) and (3)  
The maximum fine is increased from \$400 to \$1,000.



(2) The President, the Vice-President, an Acting President, the chairman or any member of the Discipline Committee and any member of an investigating committee, may participate in or vote at any proceedings of the Benchers under this Part and the Secretary and the Society's solicitor may participate in those proceedings.

(3) The Benchers may

- (a) amend or substitute the charge or add a new charge, or
- (b) grant adjournments of the proceedings or reserve the determination of the matters before them for a future meeting of the Benchers, or
- (c) upon granting special leave therefor, receive further evidence in the same manner and subject to the same rules and with the same powers as are provided in this Part with respect to hearings before an investigating committee, or
- (d) draw inferences of fact and make any determination or finding which, in their opinion, ought to have been made by the investigating committee, or
- (e) order that the matter be referred back to the same or another investigating committee.

(4) The Benchers shall, at or within a reasonable time after the conclusion of all proceedings before them, find the member guilty or not guilty of the charge against him.

(5) The Benchers may find the member guilty of conduct unbecoming a barrister and solicitor on the basis of matters investigated pursuant to subsection (2) of section 55 if they are satisfied that that subsection has been complied with.

**68.** (1) Where a member is found guilty by the Benchers of conduct unbecoming a barrister and solicitor, the Benchers may

- (a) order that the name of the member be struck off the roll, or
- (b) order that the member be suspended for a stated period of time, or
- (c) reprimand the member.

(2) In addition to an order of suspension or a reprimand, the Benchers may

- (a) order the member to pay for each offence of which he is found guilty, a fine of not more than one thousand dollars to the Society, within the time fixed by the order,
- (b) order the member to pay the costs of the investigation in an amount and within the time fixed by the Benchers, and
- (c) order that the member be suspended in default of paying any fine or costs ordered to be paid until such time as the fine or costs are paid.

**69.** Punishment of student-at-law. Section 59 revised.

**70.** Appeal to Appellate Division. Section 46 (1).

**71.** Material in appeal. Section 47.

**69.** (1) When a student-at-law has been found guilty by the Benchers of conduct unbecoming a student-at-law, the Benchers may

- (a) terminate his articles, or
- (b) order that his articles be suspended for a stated period of time, or
- (c) reprimand him.

(2) In addition to an order of suspension or a reprimand, the Benchers may

- (a) order the student-at-law to pay for each offence of which he is found guilty, a fine of not more than two hundred dollars to the Society, within a time to be fixed by the order,
- (b) order the student-at-law to pay the costs of the investigation in an amount and within the time fixed by the Benchers, and
- (c) order that the articles of the student-at-law be suspended in default of paying any fine or costs ordered to be paid until such time as the fine or costs are paid.

#### **Appeal to Appellate Division**

**70.** (1) Where a member has been found guilty of conduct unbecoming a barrister and solicitor, the member may appeal to the Appellate Division of the Supreme Court from the finding of guilt or the order of punishment or both.

(2) The appeal 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 upon the Secretary,

both within thirty days from the date on which the finding and the order of punishment, if any, is made by the Benchers.

(3) The President or Vice-President may extend the time for filing or service under subsection (2).

(4) The member may, after commencing the appeal and upon notice to the Secretary, apply to any judge of the Supreme Court for an order staying the imposition of any punishment imposed by the Benchers but the order shall be refused if the judge is satisfied that the offence involves the conversion or misappropriation of property or that, having regard to the nature of the offence, it is proper to refuse it.

**71.** (1) The appeal shall be founded upon a copy of the report of the investigating committee, a copy of the record, a copy of the finding and order, if any, of the Benchers and a copy of the evidence, if any, received by the Benchers, all of which shall be certified by the Secretary.

**72.** Powers of Court. Section 46 (2).

**73.** Benchers' powers as to member following criminal conviction.  
Section 48 and rule 6 (1) (e).

**74.** Notice of suspension or striking off. Section 57.

(2) The Secretary on being paid the sum of twenty-five dollars as well as any disbursements and expenses in connection therewith, shall on request furnish to the appellant or to his solicitor or agent the number of copies of the documents mentioned in subsection (1) so requested but not exceeding nine in any case.

(3) The procedure in an appeal shall, with the necessary changes, be the same as that provided in the rules of the Supreme Court for appeals from a judgment of a judge of the Supreme Court to the Appellate Division.

**72.** (1) The Court upon hearing the appeal may

- (a) make any other finding that in its opinion ought to have been made, or
- (b) quash or confirm the finding of guilt, or
- (c) confirm or vary the punishment imposed or order a different punishment, or
- (d) confirm or vary any order of the Benchers as to costs or make a new order as to costs, or
- (e) refer the matter to the Benchers for further consideration by them.

(2) The Court shall make no award as to costs of the appeal.

#### **General**

**73.** (1) Where a member or a student-at-law has been convicted of an indictable offence, the Benchers may, without notice or an investigation under this Part,

- (a) suspend the member or the articles of the student-at-law pending the determination of any appeal from the conviction or of any proceedings to have the conviction quashed, or
- (b) whether or not an appeal from the conviction or any other proceeding to quash the conviction is pending or has been concluded and whether or not a suspension has been ordered under clause (a),
  - (i) suspend the member or the articles of the student-at-law for a stated period of time, or
  - (ii) order that the name of the member be struck off the roll or terminate the articles of the student-at-law.

(2) If it is proved to the satisfaction of the Benchers that a member is neither a Canadian citizen nor a British subject, the Benchers shall order that his name be struck off the roll.

(3) Subsection (2) does not apply to a student-at-law.

**74.** (1) Where a member's name has been struck off the roll under this Part or a member has been suspended,

**75.** Reinstatement. Section 58.

**76.** Assurance Fund. Section 31 (1) to (4).

a notice thereof shall be given forthwith by the Secretary to the judges and clerks of the Supreme Court and the district courts.

(2) Where the name of a member has been struck off the roll under this Part or when a member has been suspended, the Secretary shall, if authorized by the Benchers or an investigating committee, as the case may be,

(a) publish or cause to be published notice thereof in such form and in such manner and through such media of disseminating news as the Benchers or the investigating committee may direct, and

(b) if so directed, cause a notice or notices of the striking off 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, the investigating committee or to any person acting for or on the instructions of the Benchers or the committee for publishing, posting or otherwise circulating or disseminating such a notice.

**75.** (1) When the name of any member has been struck off the roll under this Part he shall not be reinstated as a member except by order of the Benchers.

(2) When the articles of a student-at-law are terminated under this Part, he shall not be admitted again as a student-at-law except by order of the Benchers.

(3) No order shall be made under this section within one year of the date on which the person's name was struck off the roll or his articles terminated, as the case may be.

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#### **PART 4**

#### **PROTECTION OF PERSONS DEALING WITH MEMBERS**

##### **Division 1**

##### **The Assurance Fund**

**76.** (1) The Society shall maintain a fund known as the "Assurance Fund", for the reimbursement, in whole or in part at the discretion of the Benchers, of persons sustaining pecuniary loss by reason of the misappropriation or wrongful conversion by a member of the Society of money or other property entrusted to or received by him in his capacity as a barrister and solicitor.

(2) The Benchers may make rules

(a) respecting the administration of the Assurance Fund,

(b) providing for the levying upon the active members of an annual assessment of such amount as may be

**77.** Report to Attorney General. Section 31 (5).

**78.** Subrogation of rights to Society. New.

**79.** Definitions. Sectio



fixed by the Benchers from time to time for the purpose of maintaining and augmenting the Assurance Fund, and

- (c) providing for the charging to the Assurance Fund of expenses incurred by a custodian appointed under section 82 or in connection with audits, investigations and hearings pertaining to members' accounts.

(3) The Society may, in such manner and upon such terms and conditions as the Benchers consider advisable, enter into contracts with insurers or other persons whereby the Assurance Fund may be protected in whole or in part against any claim or loss to the Fund and the costs incurred by the Society under any such contracts may be defrayed from the Fund or the proceeds of the Fund.

(4) The Assurance Fund shall be kept separate and apart from any other funds of the Society, and

- (a) shall be invested as the Benchers may from time to time determine, but in so doing the Benchers are not subject to the provisions of *The Trustee Act* governing the investment of trust funds,
- (b) shall be administered by the Benchers in such manner as they consider proper, and
- (c) is not subject to any trust.

**77.** Not later than the thirty-first day of March in each year, the Benchers shall cause a report to be prepared as to the Assurance Fund and all dispositions made from it and not later than that date shall cause a copy thereof to be delivered to the Attorney General of Alberta.

**78.** Where any payment has been made from the Assurance Fund, the Society is subrogated to the rights, remedies and securities to which the person receiving the payment was entitled as against the defaulting member or against the defaulting member's trustee, assign, estate or personal representative and those rights, remedies and securities may be enforced or realized, as the case may be, in the name of the Society.

## **Division 2**

### **Seizure and Custody of Property in Member's Possession**

**79.** In this Division,

- (a) "depository" means any bank, treasury branch, trust company or person holding by way of deposit or otherwise any moneys, trust funds or assets of any kind relating to the business of a member as a barrister and solicitor;
- (b) "member" includes a former member of the Society;
- (c) "property" or "property of a member" means any thing wherever situated kept by, acquired by or

**30.** Accounting for property. Section 49.

**31.** Seizure of property. Section 40a.

given to a member by or for a client or any other person and without restricting the generality of the foregoing includes ledgers, books of account, records, files, documents, papers, securities, shares, trust moneys in cash or on deposit, negotiable instruments, corporate seals and chattels or any of them, where they in any way relate to his practice or former practice as a barrister and solicitor or the business or affairs of his clients or former clients or any of them, and whether or not they were acquired before or after he ceased to practice as a barrister and solicitor.

#### **Accounting by Members**

**80.** (1) The chairman or a vice-chairman of the Discipline Committee may at any time if he is of the opinion that a member has failed to account to a client or to deliver to a client any property

- (a) instruct the Secretary to direct the member to give to the client or to the Secretary, or both, an accounting of the property, or
- (b) instruct the Secretary to direct the member to pay the property into or deposit the property with the Supreme Court,

and may fix a time within which the member is to comply with the direction.

(2) Property paid or deposited under subsection (1) may, upon a summary order of a judge of the Supreme Court, be paid out or delivered to the person or persons named in the order as being entitled thereto.

(3) Failure of a member to comply with a direction given under subsection (1) subjects the member to attachment by a judge of the Supreme Court and may be the subject matter of a charge of conduct unbecoming a barrister and solicitor.

#### **Seizure of Property**

**81.** (1) Upon a summary application made *ex parte* by the Society, a judge of the Supreme Court may order the sheriff of a judicial district to enter upon any premises where any property that relates to a transaction between the member and any of his clients, is or may be kept, and to seize and remove the property and place it in the custody of the Secretary or any other person named in the order.

(2) A sheriff executing an order under subsection (1) has all the powers of a person lawfully charged with the execution of a writ of execution or a distress warrant under section 24 of *The Seizures Act*.

(3) The Secretary shall cause any property placed in custody under subsection (1) to be examined by such persons as may be designated by the chairman or vice-

**32.** Custodian. Section 56a (2) to (6).

chairman of the Discipline Committee or by the chairman of an investigating committee and thereafter shall return the property to the member or otherwise deal with it as a judge of the Supreme Court may direct on notice being given to the member.

(4) An order under this section may be varied or set aside on two days' notice.

#### **Custodian**

**82.** (1) In any of the following cases, namely,

- (a) when the name of a member has been struck off the roll,
- (b) when a member has been suspended,
- (c) when a member has died or become mentally incapacitated,
- (d) when by reason of illness or for any other reason a member is unable to practise as a barrister and solicitor,
- (e) when a member has absconded or is otherwise improperly absent from his place of business or has neglected his practice for an unduly extended period,
- (f) when there is reason to believe that the trust moneys held by a member are not sufficient to meet his trust liabilities, or
- (g) when sufficient grounds otherwise exist,

a judge of the Supreme Court may, upon application by the Society either *ex parte* or on such notice as the judge may require, by order appoint a person as custodian to have custody of the property of the member and to manage or wind up the legal business of the member.

(2) An order under subsection (1) may direct the sheriff of any judicial district within the Province to seize and remove and place in the custody of the custodian all property of the member, and to that end the order may authorize the sheriff to enter upon any premises or open any safety deposit box or other receptacle when there are grounds for believing that property of the member may be found thereon or therein.

(3) Unless otherwise directed, the order shall be promptly served upon the member.

(4) Upon the receipt by any 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.

(5) A judge of the Supreme Court may in an order under subsection (1) or may at any time and from time to time by a subsequent order made *ex parte* or upon such notice as the judge may require,

**83.** Examination and disposal of property in custody. Section 56a  
(7), (8), (9), (10) and (12).

- (a) direct any bank or other depository of property of a member to deal with, hold, pay over or dispose of such property to the custodian, or in such other manner as the judge may deem proper,
- (b) remove any custodian appointed by such order and appoint another custodian,
- (c) give directions and advice to the custodian as to the disposition of the property in his hands or any part or parts thereof, and
- (d) give such directions or make such further orders as the nature of the situation requires.

**83.** (1) Where property of a member has been placed in the custody of a custodian under section 82 the Secretary or the Society's solicitor and such other solicitors or other persons, if any, as the chairman or vice-chairman of the Discipline Committee may designate, shall examine the property and thereafter the custodian shall, by such notice as he thinks proper, including publication in a newspaper if he thinks fit, inform clients of the member or other persons as he may consider necessary,

- (a) that the 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 had with the member, subject to any solicitor's lien of the member upon or with respect to such property.

(2) 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.

(3) Where a member whose property has been placed in the custody of a custodian under section 82 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.

**84.** General. Section 56a (11), (13), (14) and (15).

**85.** Members designated barristers and solicitors. Sections 2 (2) and 3.

**86.** Recovery of fees. Section 78.



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

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

#### **General**

**84.** (1) Notwithstanding anything in this Division, 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 Division or dispense with any of such requirements.

(2) Neither the custodian, the Society, its officers, any Benchers, any one designated by the Benchers nor any one 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 Division.

(3) No liability attaches to the persons enumerated in subsection (2) or any of them for any thing done or omitted to be done in good faith under this Division.

(4) A judge 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 section 82 or 83, including the costs and fees payable to a custodian, but no costs shall be awarded against the Society, its officers, the Benchers or any one designated by the Benchers or any one acting for any of them by reason of or in respect of any proceedings under this section and taken in good faith.

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### **PART 5**

#### **GENERAL**

##### **Rights of Members and Students-at-Law**

**85.** (1) Members of the Society shall be known and designated as barristers and solicitors.

(2) Active members are officers of the Supreme Court and all other courts of record in the Province and have a right of audience in those courts.

**86.** A person may sue for fees for services performed by him in his capacity as an active member at any time after the services are performed.

**37.** Rights of students-at-law to act as counsel. New.

**38.** (1) Offences. Clauses (a), (b) and (c) are intended to clarify and simplify a number of particular prohibitions now contained in sections 70, 73 and 75. Clauses (d) and (e) are new but are found in legislation in B.C. and Manitoba.

(2) Exceptions to prohibitions. See section 75 (3).

(3) New.

**87.** An articled student-at-law may

- (a) act as counsel or agent before a magistrate or justice
  - (i) in a civil proceeding, or
  - (ii) in a proceeding pertaining to an offence punishable on summary conviction,or
- (b) act as counsel or agent before a magistrate in a proceeding pertaining to an indictable offence in respect of which a magistrate has absolute jurisdiction, or
- (c) act as counsel on any motion, petition or other proceeding before a judge sitting in chambers, or
- (d) act as counsel in any proceeding in district court in which the rules of court pertaining to small debt procedure apply.

**Prohibitions and Penalties**

**88.** (1) No person shall, unless he is an active member of the Society,

- (a) practise or act as a barrister or as a solicitor, or
  - (b) act as a barrister or as a solicitor in any court of civil or criminal jurisdiction, or
  - (c) commence, carry on or defend any action or proceeding before a court or judge on behalf of any other person, or
  - (d) settle or negotiate in any way for the settlement of any claim for loss or damage founded in tort, or
  - (e) place or agree to place at the disposal of any other person the services of an active member in his capacity as a barrister or solicitor.
- (2) Subsection (1) does not apply to
- (a) any public officer who draws or prepares any document in the course of his duties,
  - (b) a notary public exercising the powers conferred upon him by law,
  - (c) any person who acts on his own behalf in an action, matter or proceeding to which he is a party,
  - (d) any person who draws, prepares, revises or settles for his own use any will, any conveyance or other instrument pertaining to real or personal property, or any other instrument or document that is or intended to be enforceable by law or have a legal effect,
  - (e) any insurance adjuster acting under *The Alberta Insurance Act*,
  - (f) any person who appears as an agent for another person before a justice of the peace or magistrate when authorized to do so under an Act of the Parliament of Canada or the Province, or

**89.** (1) and (2). Idem. Section 74. Subsections (3) and (4) are new.

**90.** Idem. Section 72 revised.

**91.** General penalty. New. This is similar to the penalty section in most of the other professional Acts.

(g) an articled student-at-law in the course of acting as counsel in any of the cases enumerated in section 87 or in doing any thing in the course of his service under articles, if it is done under the direction or supervision of an active member.

(3) The exemption provided by clause (c) of subsection (2) does not apply to a person to whom a debt has been assigned for collection purposes only.

**89.** (1) No person shall, unless he is an active member of the Society, hold himself out as or represent himself to be an active member of the Society, or a person lawfully entitled to practise law or to carry on the practice or profession of a barrister or solicitor.

(2) No person shall, unless he is a member of the Society, hold himself out as or represent himself to be a member of the Society, or a barrister and solicitor.

(3) No suspended member shall, while suspended, hold himself out as or represent himself to be a member in good standing or a member not under suspension.

(4) No person shall, unless he is admitted to the Society as a student-at-law, hold himself out as or represent himself to be a student-at-law or an articled law student or clerk.

**90.** (1) No active member shall, except under the authority of a resolution of the Benchers, employ in connection with his practice, a suspended member or a member whose name has been struck off the roll.

(2) The Benchers may by resolution permit an active member to employ in connection with his practice a suspended member or a member whose name has been struck off the roll but the employment shall be in such capacity and subject to such terms and conditions as the resolution prescribes.

**91.** Every person, including a corporation and every officer, employee or agent of a corporation, who contravenes a provision of this Part is guilty of an offence and liable on summary conviction

(a) for the first offence, to a fine of not more than one hundred dollars or in default of payment to imprisonment for a term of not more than two months,

(b) for the second offence, to a fine of not more than two hundred dollars or in default of payment to a term of imprisonment of not more than four months, and

(c) for the third and every subsequent offence, to a term of imprisonment for a term of not more than six months.

**92.** Proof of single act as offence. New.

**93.** Injunction. New.

**94.** Secretary's certificate. New. Cf. section 77.

**95.** Protection from liability. New.

**96.** Communications to or from the Society re complaints are not actionable.

**97.** Fees, etc. belong to Society. Section 65 (1).

**98.** Transitional.

**92.** In a prosecution under this Part it is sufficient proof of an offence if it is proved that the accused committed a single act prohibited by this Part.

**93.** The Supreme Court, on application by the Society by way of originating notice, may grant an injunction enjoining any person who has been convicted of an offence against section 88 from practising or acting as a barrister or solicitor, notwithstanding that a fine has been imposed.

**94.** A certificate purporting to be signed by the Secretary and stating that a named person was or was not, on a specified day or during a specified period,

- (a) a member, an active member, an inactive member or a suspended member, according to the roll, or
- (b) an articled student-at-law according to the records of the Society, or
- (c) an officer of the Society or a Benchers, according to the records of the Society,

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

**95.** No action lies against any Benchers, any person conducting a preliminary investigation, any member of an investigating committee or the Discipline Committee appointed under Part 3, the Secretary or any officer or servant of the Society, for any thing done by him in good faith and in purporting to act under this Act or the rules.

**96.** No action for defamation may be founded on a communication that consists of or pertains to a complaint regarding the conduct of a member, if the communication is published to or by the Society, a Benchers, or any officer or employee of the Society in the course of investigating the complaint or in the course of any proceedings under Part 3 relating to the complaint.

**97.** All fees, assessments, costs or other moneys payable by a member under this Act or the rules and any fines imposed by the Benchers are the property of the Society and shall be paid to the Treasurer of the Society.

#### **Transitional and Repeal**

**98.** Upon the commencement of this Act,

- (a) the roll under the Act repealed by section 99 (in this section called the "former Act") becomes the roll under this Act,
- (b) the members, officers, Benchers and committees of the Society under the former Act continue respectively to be the members, officers, Benchers and committees under this Act,

**99.** Repeal of present Act.

**100.** Commencement of Act.



- (c) the Assurance Fund and any other fund created under the former Act continues as such under this Act, and
- (d) proceedings or appeals pertaining to discipline commenced under the former Act shall continue as if it had not been repealed.

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

**100.** This Act comes into force on the first day of July, 1966.

No. 13

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THIRD SESSION  
FIFTEENTH LEGISLATURE  
14 ELIZABETH II  
1966

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**BILL**

An Act respecting the Legal  
Profession

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Received and read the

First time .....

Second time .....

Third time .....

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HON. MR. MANNING

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