

1969 Bill 73

Second Session, 16th Legislature, 18 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 73

An Act to amend The Legal Profession Act, 1966

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

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1969

An Act to amend The Legal Profession Act, 1966

(Assented to _____, 1969)

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, 1966* is hereby amended.

2. Section 35 is amended

- (a) by striking out the figure “44” and by substituting the figure “44a”,
- (b) by adding the following clause:
 - (e) “university in Alberta” means a university under *The Universities Act*.

3. Section 36, subsection (2), section 38, section 39, clause (f), section 40 and section 41, subsection (2) are amended by striking out the words “the University of Alberta” wherever they occur and by substituting the words “a university in Alberta”.

4. The following section is added after section 36:

36a. (1) The Benchers may permit a person who holds a degree in law from a university in Alberta and who is admitted as a student-at-law under section 38, subsection (1) to serve a part of his period under articles with the Chief Justice of Alberta but in that event the Benchers may direct that the total period to be served under articles by that person shall be such period exceeding one year as the Benchers prescribe.

(2) Where the Education Committee approves or has approved the admission of a person as a student-at-law, it may permit that person to serve all or part of his period of articles under a person enrolled as a barrister and solicitor of the Northwest Territories but the Committee

- (a) may make its permission subject to any terms or conditions it may prescribe, and

Explanatory Notes

- 1.** This Bill amends chapter 46 of the Statutes of Alberta, 1966.
- 2.** Section 35 defines terms used in sections 36 to 44 under the heading "Enrolment". The reference to section 44 is changed by reason of the addition of section 44a by clause 6 of this Bill, as section 44a contains the newly defined term "university in Alberta".
- 3.** The enrolment provisions have a number of references to law degrees granted by The University of Alberta and similar references. The amendments anticipate the possibility in future of more than one Faculty of Law in Alberta.
- 4.** The new section will permit an Alberta law graduate to serve part of his articles under the Chief Justice of Alberta and will also enable a student to serve all or part of his articles in the Northwest Territories.

- (b) in the case of an admission under section 38 or 40, may direct that the total period to be served under articles by that person shall be such period exceeding one year as the Committee prescribes.

5. Section 43, subsection (1) is amended by adding after the words "under section 44" the words "or 44a".

6. The following heading and section are added after section 44:

Admission of Law Faculty Members

44a. (1) Subject to the rules, the Benchers may by resolution approve the enrolment of a person who proves to their satisfaction that he

- (a) is a Canadian citizen or a British subject,
- (b) is of good character and reputation,
- (c) is a full-time member of the Faculty of Law of a university in Alberta and has been a full-time member of a Faculty of Law of a university in Alberta for a continuous period of at least two years prior to the date of filing his application for enrolment, and
- (d) has received a degree in law from a university in Alberta or has received a degree in law which, in the opinion of the Co-ordinating Council, is equivalent to the degree of Bachelor of Laws granted by a university in Alberta.

(2) Where a person enrolled under subsection (1) ceases to be a full-time member of the Faculty of Law at a university in Alberta, his name shall be struck off the roll unless prior to the time he ceased to be a full-time member of that faculty he has satisfied the Education Committee that he has met the requirements for enrolment under any other provision of this Part.

7. Section 45 is amended

- (a) as to subsection (1), by striking out the words "The question" and by substituting the words "Except as provided in section 64, the question",
- (b) as to subsection (2), by adding after the words "Appellate Division," the words "or an investigating committee acting under section 64,".

8. Section 47, clause (b) is amended by striking out the words "and vice-chairmen".

9. Sections 49, 50 and 51 are amended by striking out the word "vice-chairman" wherever it occurs and by substituting the word "member".

5. Section 43 (1) presently reads:

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, or when the Benchers have approved the enrolment of a person under section 44, 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.

As to the new section 44a, see clause 6 of this Bill.

6. The new section 44a will enable the enrolment of a full-time member of the Faculty of Law at a university in Alberta if he has been on the Faculty for at least two years. If he ceases to be on the Faculty, he will lose his membership unless able to qualify under another section.

7. Section 45 (1) and (2) presently read:

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.

The amendments are made so that section 45 (1) and (2) will conform with section 64 which provides that an investigating committee may in certain circumstances find a member guilty of conduct unbecoming a barrister and solicitor.

8. Section 47 (b) presently reads:

47. The Benchers may make rules

.....

(b) governing proceedings of the Discipline Committee, prescribing the powers and duties of the Committee and its chairman and vice-chairmen,

.....

See note to clause 9 of this Bill.

9. This amendment will permit any member of the Discipline Committee to act in the event the chairman is absent or otherwise unable to fulfil his duties.

10. Section 52 is amended by striking out subsection (1) and by substituting the following:

52. (1) Where the chairman or a member of the Discipline Committee directs that a matter regarding the conduct of a member is to be dealt with by an investigating committee under this Part, he shall, in accordance with the rules,

- (a) direct the Secretary to give to the member notice, with reasonable particulars, of the matter to be investigated, and
- (b) appoint an investigating committee to conduct an investigation into the matter.

11. The following section is added after section 52:

52a. (1) The Benchers may by resolution direct that any proceedings commenced under this Part be discontinued where they are satisfied that the circumstances of the case do not justify the continuation of the proceedings and if the reasons for the discontinuance are given in the resolution.

(2) Where a discontinuance of proceedings is directed under subsection (1), no new or further proceedings shall be taken under this Part in respect of any of the same matters that were under investigation in the discontinued proceedings, except with the approval of the Benchers.

(3) Where the discontinuance of proceedings under subsection (1) is made after an investigating committee has found a member guilty of conduct unbecoming a barrister and solicitor under section 64 and before the hearing of an appeal to the Benchers from that finding, the discontinuance operates to cancel the finding of guilt and any reprimand or penalty imposed by the committee but without prejudice to any new or further proceedings that may subsequently be taken under this Part with the approval of the Benchers given under subsection (2).

(4) This section does not apply where the proceedings before the Benchers referred to in sections 67 to 69 have been concluded.

12. Sections 53, 54 and 55 are struck out and the following are substituted:

53. Notwithstanding any other provision of this Act, the Benchers in their discretion may suspend a member pending the investigation of a matter concerning his conduct and pending the making of its own finding as to the matter.

54. The Society and the member whose conduct is being investigated may be represented by counsel before an investigating committee and the Benchers.

10. Section 52 (1) presently reads:

52. (1) Where the chairman or a vice-chairman of the Discipline Committee directs that a matter regarding the conduct of a member 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 unbecoming conduct, and
- (b) appoint an investigating committee to conduct an investigation regarding the charge.

This amendment revises the wording of section 52 to make it consistent with the wording used in previous sections by removing the term "charge". Complementary changes in the rules will be required. Where an investigation is made into a member's conduct, it will relate to all matters that arise in the course of inquiring into the original complaint and will not be confined to the matter contained in a formal charge. References to "charge" and the "member charged" are being changed throughout Part 3 as a result.

11. The new section 52a will permit the Benchers to direct a discontinuance of proceedings involving disciplinary matters where circumstances justify it.

12. Sections 53, 54 and 55 presently read:

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. (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.

See the note to clause 10 of this Bill.

55. (1) An investigating committee shall investigate the facts relevant to the matter of the conduct of the member concerned.

(2) An investigating committee may also investigate any other matter concerning the conduct of the member that arises in the course of the investigation, but in that event, the committee shall declare its intention to investigate and report on the new matter and shall permit the member sufficient opportunity to prepare his answer to the new matter.

13. Section 59, subsection (1) is amended by striking out the word “charged” and by substituting the words “whose conduct is being investigated”.

14. Section 61, subsection (2) is amended by striking out the word “charged” and by substituting the words “whose conduct is being investigated”.

15. Section 62 is amended by striking out the word “charged” and by substituting the words “whose conduct is being investigated”.

16. Section 63, subsections (2) and (3) are amended by striking out the word “charged” wherever it occurs and by substituting the words “whose conduct is being investigated”.

17. Section 64 is struck out and the following is substituted:

64. (1) If an investigating committee unanimously considers that the conduct of the member is conduct unbecoming a barrister and solicitor but that a reprimand is sufficient punishment with or without the imposition of a fine or costs under subsection (2), it may find him guilty of conduct unbecoming a barrister and solicitor and reprimand him.

(2) Where the committee has reprimanded a member under subsection (1) it may, in addition,

(a) order the member to pay for each matter concerning his conduct of which he is found guilty, a fine of not more than \$300 within the time fixed by the order, or

(b) order the member to pay the costs of the investigation in accordance with the rules,
and may order that the member be suspended in default of paying any fine or costs so ordered to be paid until such payment is made.

13. Section 59 (1) presently reads:

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

See the note to clause 10 of this Bill.

14. Section 61 (2) presently reads:

(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.

See note to clause 10 of this Bill.

15. Section 62 presently reads:

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.

See note to clause 10 of this Bill.

16. Section 63 (2) and (3) presently read:

(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.

See note to clause 10 of this Bill.

17. Section 64 presently reads:

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.

Empowers a committee to fine a member up to \$300 in addition to reprimanding him. It also empowers a committee to find the member not guilty of conduct unbecoming a barrister and solicitor. The decision in either case must be unanimous and is subject to appeal by the member or the chairman of the Discipline Committee.

(3) Where an investigating committee unanimously considers that the conduct of the member is not conduct unbecoming a barrister and solicitor, it may so find and in that case, unless an appeal is taken by the chairman of the Discipline Committee under subsection (6), no further proceedings shall be taken under this Part in respect of the matters investigated by the committee.

(4) Where the committee makes a finding under subsection (1) or (3), the committee shall give a report containing its finding, any order made under subsection (2) and the reasons for its decision to the chairman of the Discipline Committee and the Secretary.

(5) Where the member is found guilty by the committee of conduct unbecoming a barrister and solicitor he may, in accordance with the rules, appeal the committee's finding of guilt or its order, if any, under subsection (2), or both, to the Benchers.

(6) Where the chairman of the Discipline Committee receives a report from the committee under subsection (4), he may, in accordance with the rules, appeal to the Benchers the reprimand given by the committee or an order of the committee under subsection (2) or its finding under subsection (3).

(7) Where an appeal is made to the Benchers under this section, the investigating committee shall comply with section 65, subsection (1) and the matter shall be thereafter proceeded with under this Part as if the committee had made no finding or order under this section.

18. Section 65 is amended

- (a) by striking out subsection (1) and by substituting the following:

65. (1) Except where the investigating committee has made a finding under section 64 and no appeal has been taken under that section either by the member or the chairman of the Discipline Committee, 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.

- (b) as to subsection (4), by striking out the word "charged" and by substituting the words "whose conduct is being investigated".

19. Section 66, clause (a) is amended by striking out the words "member charged" and by substituting the words "member concerned or his counsel or agent".

18. Section 65 (1) and (4) presently read:

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.

(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.

See notes to clauses 10 and 17 of this Bill. Under the new section 64 there will be two different appeals and section 65 (1) is rewritten as a result.

19. Section 66 presently reads:

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.

This amendment provides for service of the report and record on the member concerned or his counsel or agent.

20. Section 67 is amended

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

(2a) Notwithstanding subsection (2), where the proceedings before the Benchers are the result of an appeal taken under section 64, a Bencher who

(a) was a member of the investigating committee,
or

(b) appealed the committee's finding or order under section 64 in his capacity as chairman or acting chairman of the Discipline Committee,

shall not participate in or vote at those proceedings.

(b) as to subsection (3), by striking out clause (a) and by substituting the following:

(a) amend, substitute or add to the particulars of the matters being investigated, or

(c) as to subsection (4), by striking out the words "the charge against him" and by substituting the words "conduct unbecoming a barrister and solicitor".

21. Section 75 is amended by striking out subsection (3) and by substituting the following:

(3) No order shall be made under this section within one year after

(a) the date on which the person's name was struck off the roll or on which the person's articles were terminated, as the case may be, or

(b) where an order was granted under section 70, subsection (4) staying the imposition of a punishment imposed by the Benchers and the punishment is later confirmed by the Court under section 72, the date on which the Court made its order confirming the punishment.

22. Section 76, subsection (2) is amended by striking out the word "and" at the end of clause (b) and by adding the following clauses:

(d) providing for the exemption of categories of active members from the payment of annual assessments referred to in clause (b) and the conditions on which the exemptions may be given, and

(e) prescribing the conditions to be met before any claim may be paid from the Assurance Fund.

20. Section 67, subsections (2), (3) and (4) presently read:

(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.

See clauses 10 and 17 of this Bill.

21. Section 75 deals with reinstatement of a disbarred member and students whose articles were terminated. Subsection (3) presently reads:

(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.

The new subsection (3) is the same but with the addition of clause (b). The result is that, where an appeal is taken but the Benchers order to disbar the member is stayed pending disposition of the appeal, but that appeal later fails, the one-year period in which no reinstatement can be made will start to run from the time the Appellate Division confirms the Benchers' original order.

22. Section 76 (2) presently reads:

(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 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.

The new clauses (d) and (e) are added to make section 76 (2) uniform with subsection (2), clauses (c) and (g) of the new section 78b proposed in clause 23 of this Bill regarding the Professional Liability Claims Fund. Section 76 deals with the present Assurance Fund.

23. The following sections are added after section 84:

PART 4A

PROFESSIONAL LIABILITY CLAIMS

84a. In this Part,

- (a) “deductible amount” means,
 - (i) with reference to the Fund, the amount, if any, prescribed by the rules as the amount to be deducted from any claim paid from the Fund, and
 - (ii) with reference to a group contract, the amount, if any, specified in the contract as the amount that the insurer is entitled to deduct from the amount of any claim for which the insurer is liable under the contract;
- (b) “Fund” means the Professional Liability Claims Fund;
- (c) “group contract” means a group insurance contract entered into pursuant to section 84c, subsection (1);
- (d) “professional liability claim” means a claim against a member for an amount of money that the member is legally obligated to pay as damages arising out of the performance of professional services for another person in the member’s capacity as a barrister and solicitor and caused by the member or any other person for whose acts the member is legally liable.

84b. (1) The Benchers may by resolution create and maintain a fund to be known as the “Professional Liability Claims Fund”.

- (2) The Benchers may make rules
 - (a) specifying the purposes mentioned in subsection (3) for which the Fund may be used,
 - (b) respecting the administration of the Fund,
 - (c) providing for the levying upon active members of an annual assessment of such amount as may be fixed by the Benchers from time to time for the purpose of maintaining and augmenting the Fund,
 - (d) providing for the exemption of active members from the payment of annual assessments referred to in clause (c), and from entitlement to indemnification from the Fund or under a group contract, as the case may be, and the conditions on which the exemptions may be made, and

23. The new Part 4A will allow the Society to set up the “Professional Liability Claims Fund” to provide indemnification for damages for financial loss arising out of the performance by a lawyer of professional services (section 84b) and also to enter into a group insurance policy to provide similar protection (section 84c).

84a. Definitions.

84b. Professional Liability Claims Fund.

- (e) governing the payment and recovery of the whole or part of any deductible amounts pursuant to section 84*d*.

(3) Subject to and in accordance with the rules, the Fund may be used for any of the following purposes, whichever the rules specify:

- (a) the indemnification by the Society in whole or in part, in the discretion of the Benchers, of members liable to pay assessments referred to in subsection (2), clause (c) in respect of professional liability claims made against them;
- (b) the payment in whole or in part of deductible amounts pursuant to section 84*d*, subsection (1);
- (c) the payment of premiums payable by the Society under a group contract;
- (d) the payment of premiums or other costs payable by the Society under a contract entered into pursuant to subsection (5);
- (e) the payment of expenses incurred in connection with audits, investigations of claims against the Fund and hearings pertaining to such claims.

(4) Where the rules specify that the Fund may be used for the purpose referred to in subsection (3), clause (a), the Benchers may make rules

- (a) prescribing the deductible amount and the maximum amount that may be paid from the Fund in respect of any professional liability claim,
- (b) prescribing the conditions to be met before any claim may be paid from the Fund,
- (c) prescribing classes of professional liability claims in respect of which no payment or partial payment only shall be made from the Fund, and
- (d) providing for any matter or procedure in connection with the filing, settling, administration and payment of claims made against the Fund.

(5) 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 Fund may be protected in whole or in part against any claim or loss to the Fund.

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

- (a) may 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.

84c. (1) The Benchers may by resolution authorize the Society to enter into a group insurance contract providing for the indemnification by the insurer thereunder in whole or in part of members liable to pay assessments referred to in section 84b, subsection (2), clause (c) in respect of professional liability claims against them, on such terms and conditions as may be agreed upon.

(2) The Society may enter into a group contract with an insurer either alone or jointly with one or more law societies or governing bodies of the legal profession in other provinces or territories in Canada that are incorporated for purposes comparable to those of the Society.

(3) The Benchers may make rules

- (a) providing for any matter or procedure in connection with the filing, settling, administration and payment of claims made against the insurer under the group contract and which is not otherwise provided for in the group contract, and
- (b) respecting the notice required to be given by an active member to the Society of a claim or possible claim against him and for which the insurer may be liable for indemnification under the group contract.

84d. (1) Where an amount is paid or is intended to be paid from the Fund or by the insurer under a group contract as indemnification in respect of a professional liability claim, or where the amount of a professional liability claim is equal to or less than the deductible amount, the Society may, upon a resolution of the Benchers and in accordance with the rules,

- (a) pay the whole or part of the deductible amount to the claimant from the Fund in the event of the inability or failure of the member concerned or any other person to pay the whole or part of the deductible amount, or
- (b) pay the whole or part of the deductible amount to the claimant with the consent of and on behalf of the member concerned, upon such terms as to repayment by the member to the Society as the Benchers may prescribe.

(2) Where any payment is made by the Society pursuant to subsection (1), clause (a), the Society is subrogated to the rights, remedies and securities to which the claimant was entitled as against the member concerned or against the 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.

34c. Group insurance contract re professional liability claims.

34d. Payment of the deductible amount by the Society and the Society's rights of recovery from the member.

24. (1) This Act comes into force on the day upon which it is assented to.

(2) Sections 7, 10, and 12 to 20 do not apply to any proceedings under Part 3 of *The Legal Profession Act, 1966* where the charge was laid under section 52 of that Act before the commencement of this Act.

24. The amendments to the discipline provisions of the Act will not apply to proceedings already commenced.