

1970 Bill 128<sup>v</sup>

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Third Session, 16th Legislature, 19 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ~~ALBERTA~~

## **BILL 128**

**An Act to amend The Legal Profession Act, 1966**

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THE ATTORNEY GENERAL

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First Reading .....

Second Reading .....

Third Reading .....

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# BILL 128

1970

An Act to amend The Legal Profession Act, 1966

(Assented to \_\_\_\_\_, 1970)

**H**ER 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. The following section is added after section 3:

3a. (1) Subject to the approval of the Lieutenant Governor in Council, the Attorney General and the Society may enter into an agreement respecting the operation by the Society of a plan to provide legal aid to persons in need thereof in civil matters or criminal matters or both.

(2) An agreement under this section may provide for the following:

- (a) the rules respecting the operation of the plan to be made by the Benchers pursuant to section 6, subsection (2), clause (h);
- (b) the establishment of a board, committee or other body to administer the plan consisting of persons nominated by the Attorney General and by the Benchers;
- (c) the payment by the Government to the Society of moneys for the purpose of the plan, to be paid from funds appropriated by the Legislature for that purpose;
- (d) the appointment by the Benchers of a director or chief executive officer for the plan;
- (e) any other matters pertaining to the establishment or operation of the plan.

3. Section 5 is amended by adding after clause (j) the following clause:

- (j1) establish and prescribe a course called the "bar admission course" for persons required to pass a bar admission examination,

## **Explanatory Notes**

- 1.** This Bill amends chapter 46 of the Statutes of Alberta, 1966.
- 2.** The new section 3a will provide for an agreement between the Government and the Law Society for the operation of a legal aid plan and financial assistance by the Government for the plan.

**3.** Section 5 enumerates various powers of the Benchers of The Law Society of Alberta. Other provisions of this Bill have the effect of eliminating practice examinations and statutes examinations in favour of one standard bar admission examination.

The new clause (j1) will permit the Benchers to establish and prescribe a bar admission course in preparation for the bar admission examination.

**4.** Section 6, subsection (2) is amended by adding after clause (f) the following clause:

- (f1) governing matters related to the operation of bar admission courses and prescribing fees for enrolment in such courses,

**5.** Section 35 is amended

- (a) by striking out clause (a) and by substituting the following:
  - (a) “bar admission examination” means an examination in general subjects related to the practice of law, including practice, procedure, ethics and statutes of Alberta or Canada or both;
  - (a1) “bar admission course” means a bar admission course established and operated by the Society;
- (b) by striking out clause (c).

**6.** Section 36 is amended

- (a) as to subsection (2) by striking out clause (c) and by substituting the following clause:
  - (c) subject to subsection (4), shall prescribe the content of bar admission examinations.
- (b) by striking out subsection (4) and by substituting the following:

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

(4a) Subject to subsection (4b), a person who is required to pass a bar admission examination shall also take a bar admission course in preparation for that examination.

(4b) Notwithstanding anything in this Part, the Education Committee, where it considers that special circumstances so warrant with respect to any person, may exempt that person from taking a bar admission course or a bar admission examination or both.

4. See note to clause 3.

5. Section 35, clauses (a) and (c) presently read:

35. In sections 36 to 44a,

(a) "bar admission examination" means an examination in general subjects related to the practice of law;

.....

(c) "practice examination" means an examination pertaining to practice procedure and ethics in the courts of Alberta;

See note to clause 3. Statutes examinations and practice examinations will now be combined with the bar admission examination.

6. Section 36, subsection (2), clause (c) and subsection (4) presently read:

(2) The Co-ordinating Council

.....

(c) subject to subsection (4), shall prescribe the content of practice examinations, bar admission examinations and examinations on statutes.

(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.

These provisions are rewritten to remove the reference to practice examinations and statutes examinations. The Education Committee of the Society will be able to exempt an applicant from the bar admission course or examination or both in a special case.

**7. Section 38 is amended**

- (a) as to subsection (1) by striking out clause (b) and by substituting the following clause:

(b) either

- (i) has received a degree from a university in Alberta or from a university recognized by a university in 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 a university in Alberta, or
- (ii) has successfully completed two years, or the equivalent of two years, of a full program of studies leading to the degree of Bachelor of Arts at a university in Alberta, or
- (iii) has, at a college or university recognized by a university in Alberta, successfully completed studies that are, in the opinion of the Co-ordinating Council, the equivalent of two years of a full program of studies leading to the degree of Bachelor of Arts at a university in Alberta,

- (b) as to subsection (2) by striking out clauses (d) and (e) and by substituting the following clauses:

- (d) has passed a bar admission examination, and
- (e) has passed any special examinations that the Co-ordinating Council may require him to take, if his degree in law was not granted by a university in Alberta.

**8. Section 39 is amended by striking out clauses (d), (e) and (f) and by substituting the following:**

- (d) has been actively engaged in the practice of law in a province or territory of Canada for a period or periods totalling at least three years and occurring in the five-year period immediately preceding his application for enrolment,
- (e) has passed a bar admission examination, and
- (f) has passed any special examinations that the Co-ordinating Council may require him to take, if he is not the holder of a degree in law or if his degree in law was not granted by a university in Alberta.

7. Section 38, subsection (1), clause (b) and subsection (2), clauses (d) and (e) presently read:

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

.....

(b) has received a degree from a university in 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 a university in Alberta, and

(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

.....

(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 a university in Alberta.

The amendment to section 38, subsection (1), clause (b) will permit a candidate who has passed two years of university in approved courses and who is also the holder of an Alberta Law Degree, or its equivalent, to become admitted as a student-at-law. At present the section requires a "pre-law degree" in all cases in addition to the law degree.

The amendments to subsection (2), clauses (d) and (e) are made to remove the references to practice examinations and statutes examinations.

8. Section 39 presently reads:

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,

(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 a university in Alberta.

Clause (d) is rewritten so that the three-year period does not necessarily have to immediately precede the application for employment. It may instead be in a period of three years occurring in the previous five years.

Clauses (e) and (f) are rewritten to remove references to practice examinations and statutes examinations. It also cures a drafting error in that the section presently fails to recognize those cases where the lawyer from the other province or territory did not hold a degree in law, e.g., an English solicitor who became qualified through the articling system and who became enrolled elsewhere in Canada.

**9. Section 40 is amended**

- (a) as to subsection (1) by striking out clause (b) and by substituting the following:
  - (b) either
    - (i) has received a degree from a university in Alberta or from a university recognized by a university in 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 a university in Alberta, or
    - (ii) has successfully completed two years, or the equivalent of two years, of a full program of studies leading to the degree of Bachelor of Arts at a university in Alberta, or
    - (iii) has, at a college or university recognized by a university in Alberta, successfully completed studies that are, in the opinion of the Co-ordinating Council, the equivalent of two years of a full program of studies leading to the degree of Bachelor of Arts at a university in Alberta,
- (b) as to subsection (1) by striking out clause (e) and by substituting the following clause:
  - (e) has not been actively engaged in the practice of law in a province or territory of Canada for a period or periods totaling at least three years in the five-year period immediately preceding his application for enrolment,
- (c) as to subsection (2) by striking out clauses (c) and (d) and by substituting the following clauses:
  - (c) has passed a bar admission examination, and
  - (d) has passed any special examinations that the Co-ordinating Council may require him to take, if his degree in law was not granted by a university in Alberta.

**10. Section 41 is amended**

- (a) as to subsection (1) by striking out clauses (b) and (c) and by substituting the following
  - (b) has been called to the bar of England, Scotland, Northern Ireland, Eire, New Zealand or Australia, or is a solicitor of the Supreme Court of Judicature in England or Northern Ireland, a writer to the signet in Scotland, or a solicitor of any Supreme or High Court in New Zealand, Australia or Eire, and



**9. Section 40, subsection (1), clauses (b) and (e) and subsection (2) presently read:**

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

.....

(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,

.....

(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,

(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 a university in Alberta.

**10. Section 41, subsections (1) and (2) presently read:**

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

(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 a university in Alberta, and

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

The new subsection (1), clause (b) will permit the admission of barristers and solicitors from Eire. The new subsection (1), clause (c) will relax the requirement so that the three-year practice may be served in the preceding five years.

- (c) has been actively engaged in the practice of law in any of the jurisdictions mentioned in clause (b) for a period or periods totaling at least three years and occurring in the five-year period immediately preceding his application for enrolment,
- (b) as to subsection (2) by striking out clauses (b) and (c) and by substituting the following clauses:
  - (b) has passed a bar admission examination,
  - (c) has passed any special examinations that the Co-ordinating Council may require him to take, if he is not the holder of a degree in law or if his degree in law was not granted by a university in Alberta, and

**11.** Section 44 is amended

- (a) as to subsection (1) by striking out clause (c) and by substituting the following clause:
  - (c) is enrolled as a barrister or solicitor in any province or territory in Canada and has been actively engaged in the practice of law therein for a period or periods totaling at least three years and occurring in the five-year period immediately preceding his application for enrolment.
- (b) as to subsection (2) by striking out clauses (a) and (b) and by substituting the following clauses:
  - (a) has passed a bar admission examination, and
  - (b) has passed any special examinations that the Co-ordinating Council may require him to take, if he is not the holder of a degree in law or if his degree in law was not granted by a university in Alberta.

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

**11. Section 44 presently reads:**

44. (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, and
- (c) is enrolled as a barrister or solicitor in any province or territory in Canada.

(2) A person enrolled as a member pursuant to an approval given under this section may act as counsel in any civil or criminal proceedings in Alberta and in any matters in connection with or incidental to those proceedings, but shall not carry on a general practice in Alberta as a barrister or solicitor until he has proved to the satisfaction of the Education Committee and in accordance with the rules that he

- (a) has passed a practice examination, and
- (b) 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 a university in Alberta.

Admission of outside counsel under section 44 will be on a basis similar to the requirements under section 39 for the enrolment of lawyers from elsewhere in Canada.