

1981 BILL 91

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Third Session, 19th Legislature, 30 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 91**

**LEGAL PROFESSION AMENDMENT ACT, 1981**

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THE ATTORNEY GENERAL

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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## BILL 91

1981

### LEGAL PROFESSION AMENDMENT ACT, 1981

(Assented to \_\_\_\_\_, 1981)

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

1 *The Legal Profession Act is amended by this Act.*

2 *Section 5 is amended by adding the following after subsection (2):*

(3) The Benchers shall annually submit to the Attorney General a report on those matters of the business and affairs of the Society that the Attorney General may require in a form satisfactory to him.

(4) The Attorney General shall, on receipt of the annual report of the Society, lay it before the Legislative Assembly, if it is then sitting, and if it is not then sitting, within 15 days after the commencement of the next ensuing sitting.

3 *Section 6(c) is repealed and the following is substituted:*

(c) appoint or provide for the appointment of committees of

(i) Benchers,

(ii) Benchers and members, and

(iii) members

and confer on any of those committees power and authority to act for the Benchers in and in relation to any matters directed by the Benchers, but a member who is not a Bencher shall not be appointed to the Executive Committee, the Education Committee, the Discipline Committee, the Competence Committee or the Benchers Appeal Committee,

## **Explanatory Notes**

**1** This Bill will amend chapter 203 of the Revised Statutes of Alberta 1970.

**2** Section 5 presently reads:

*5(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.*

**3** Section 6(c) presently reads:

*6 The Benchers may by resolution*

*(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,*

*4 Section 7(2) is amended by striking out “and” at the end of clause (n), adding “and” at the end of clause (o) and by adding the following after clause (o):*

(p) establishing and prescribing ethical standards for members and students-at-law, including the nature and content of advertising, if any, which may be permitted.

*5 The following is added after section 9:*

**9.1(1)** In addition to the number of Benchers specified in section 9, the Benchers shall also include 2 members of the public, who shall be appointed by the Attorney General after consultation with the Society for a 2-year term of office.

(2) A member of the public referred to in subsection (1) continues to hold office after the expiry of his term of office until he is reappointed or his successor is appointed.

(3) The Attorney General may, after consultation with the Benchers, revoke the appointment of a member of the public referred to in subsection (1).

(4) The Attorney General may pay to a member of the public referred to in subsection (1) travelling and living expenses incurred by that member for his attendance at any meeting of the Benchers while away from his usual place of residence and fees in an amount prescribed by the Attorney General.

(5) The powers, duties and operations of the Benchers under this Act and the rules are not affected by

(a) the fact that no member of the public is appointed as a Bencher pursuant to subsection (1),

(b) the revocation, under subsection (3), of the appointment of a member of the public as a Bencher, or

(c) the resignation from the Benchers of a member of the public.

(6) Subject to the provisions of this Act respecting a quorum of the Benchers, the failure of a member of the public appointed pursuant to subsection (1) to attend a meeting of the Benchers shall not be construed to affect or restrict the Benchers from exercising any powers or performing any duties under this Act and the rules at that meeting.

**4** Section 7(2) presently reads in part:

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

*(n) 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*

*(o) prescribing the information that may be entered in the roll.*

**5** Appointment of members of the public as Benchers.

6 *Section 10(1) is amended by striking out “first” and substituting “2nd”.*

7 *Section 11(2) is repealed and the following is substituted:*

(2) A member is eligible for nomination, election and re-election as a Bencher in accordance with the rules.

8 *Section 12(1) is amended by adding the following after clause (a):*

(a.1) prescribe terms and conditions respecting eligibility for nomination, election and re-election of Benchers,

9 *Section 17 is amended by adding “, in accordance with the rules,” after “continuing Benchers may”.*

10 *Section 19 is amended by striking out “matters including decisions respecting disciplinary matters,” and substituting “matters other than decisions respecting conduct deserving of sanction”.*

11 *Section 20 is repealed and the following is substituted:*

20 Except as otherwise provided in this Act, with respect to the

**6** Section 10(1) presently reads:

*10(1) An election of Benchers shall be held on the first Monday of November in every odd-numbered year.*

**7** Section 11 presently reads in part:

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

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

*(a) has had his name struck off the roll by reason of having 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.*

**8** Section 12(1) presently reads in part:

*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 circumstances under which a member is not entitled to vote,*

**9** Section 17 presently reads:

*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.*

**10** Section 19 presently reads:

*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.*

The proposed amendment is consequential to the proposed amendments to the discipline process in Part 3 of the Act.

**11** Section 20 presently reads:

*20 With respect to the determination of any matter dealt with by a committee of the Benchers, including any decision made by an inves-*

determination of any matter dealt with by a Committee appointed by the Benchers,

- (a) a majority of the members of the committee constitutes a quorum at the meeting, and
- (b) an act or thing done by a majority of the members of the committee present at a meeting shall be deemed to have been done by the committee.

*12 Section 21 is amended by striking out “continue to” wherever it occurs.*

*13 Section 37 is amended*

*(a) in subsection (2)*

- (i) by striking out “from a university in Alberta”;*
- (ii) by adding “, the chief judge of the Provincial Court” before “or with”;*

*(b) by repealing subsection (3) and substituting the following:*

*(3) Where the Secretary approves or has approved the admission of a person as a student-at-law, the Secretary 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 Secretary*

*(a) may make his permission subject to any terms or conditions that he prescribes, and*

*(b) in the case of an admission under section 39 or 41, may direct that the total period to be served under articles by that person shall be the period, exceeding 1 year, that the Secretary prescribes.*

*14(1) In the following provisions “Education Committee” is struck out wherever it occurs and “Secretary” is substituted:*

*section 39;  
section 40;  
section 41;  
section 42.*



*titigating committee, the decision of a majority of the members of the committee is the determination or decision of the committee.*

**12** Section 21 presently reads:

*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.*

**13** Section 37(2) and (3) presently read:

*(2) 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 39, subsection (1) to serve a part of his period under articles with the Chief Justice of Alberta or any other judge of the Court of Appeal, the Chief Justice of the Court of Queen's Bench or any other judge of the Court of Queen's Bench or with the Chief Justice of Canada or any other judge of the Supreme Court of Canada 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.*

*(3) 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*

*(b) in the case of an admission under section 39 or 41, 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.*

**14** The proposed amendments will

(a) authorize the Secretary to approve non-contentious applications for admission to the Society;

(b) restrict admissions to Canadian citizens;

(c) permit degrees, including Bachelor of Arts, to be recognized by the Universities Co-ordinating Council, as degrees required for admission.

Sections 39 to 41 presently read:

*(2) In the following provisions “its satisfaction” is struck out wherever it occurs and “the Secretary’s satisfaction” is substituted:*

section 39;  
section 40;  
section 41;  
section 42.

*(3) In the following provisions “or a British subject” is struck out:*

section 39(2)(a);  
section 40(a);  
section 41(2)(a);  
section 42(2)(a);  
section 45(1)(a);  
section 46(1)(a).

*(4) In the following provisions “the degree of Bachelor of Arts” is struck out and “a degree” is substituted:*

section 39(1)(b)(ii) and (iii);  
section 41(1)(b)(ii) and (iii).

*39(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) 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,*

*and*

*(c) has received a degree in law from a university in Alberta or has received a degree in law from a university outside Alberta 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) 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 18 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 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.*

*40 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 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.*

*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) 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,*

*(c) has received a degree in law from a university in Alberta or has received a degree in law from a university outside Alberta which, in the opinion of the Co-ordinating Council, is equivalent to the degree of Bachelor of Laws granted by a university in 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 period or periods totalling at least three years in the five-year period 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 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.*

*42(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, 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*
- (c) has been actively engaged in the practice of law in any of the jurisdictions mentioned in clause (b) for a period or periods totalling at least three years and occurring in the five-year period immediately preceding his application for enrolment,*

*and shall prescribe the period of articles to be served by that person.*

*(1.1) The Education Committee may waive the requirements of subsection (1), clause (c) in the case of an application by a solicitor of the Supreme Court of Judicature in England where the applicant provides satisfactory evidence that he has been performing in Alberta services of a legal nature for the Department of the Attorney General of the Government of Alberta for a period or periods totalling at least three years and occurring in the five-year period immediately preceding his application for admission.*

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

15 *Section 43 is repealed and the following is substituted:*

**43(1)** The Secretary may, before making a decision, refer the matter to the Education Committee, who, without or after consultation with the Benchers, shall direct the Secretary as to the decision to be made.

(2) A person affected by a decision of the Secretary may appeal to the Benchers, who may confirm the decision or direct the Secretary to vary or reverse it.

(3) An appeal lies to the Court of Appeal from any decision or direction of the Benchers made pursuant to this section and to that appeal sections 70, 70.1, 71 and 72 apply.

16 *Section 44(1) is amended by striking out “received notice from the chairman or vice-chairman of the Education Committee that it has”.*

17 *The heading preceding section 46 is repealed and the following heading is substituted:*

**Admission of Law Faculty Members  
and Law Society Employees**

18 *Section 46 is amended*

(a) *by repealing subsection (1)(c) and substituting the following:*

(c) is a full-time

(i) 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, or



*(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.*

**15** Section 43 presently reads:

*43(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.*

*(3) An appeal lies to the Court of Appeal from any decision or direction of the Benchers made pursuant to this section and in any such appeal the provisions of sections 70, 71 and 72 apply with all necessary modifications.*

**16** Section 44(1) presently reads:

*44(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 39, 40, 41 or 42, as the case may be, or when the Benchers have approved the enrolment of a person under section 45 or 46, and the prescribed enrolment fee has been paid, the Secretary shall issue a certificate to that effect directed to a clerk of the Court of Queen's Bench.*

The proposed amendment is consequential to the proposed amendments to section 37 and sections 39 to 42.

**17** The heading preceding section 46 presently reads:

**Admission of Law Faculty Members**

**18** Section 46 presently reads:

*46(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*

(ii) employee of the Society and has been a full-time employee of the Society,

for a continuous period of at least 2 years immediately preceding the date of his application for enrolment, and

(b) *by repealing subsection (2) and substituting the following:*

(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 or ceases to be a full-time employee of the Society, his name shall be struck off the roll unless prior to the time he ceases to be a full-time member of that faculty or a full-time employee of the Society he has satisfied the Education Committee that he has met the requirements for enrolment under any other provision of this Part.

*19 The heading preceding section 47 is amended by adding "AND CONTROL OF COMPETENCE" after "DISCIPLINE".*

*20 Section 47 is repealed and the following is substituted:*

**47(1)** Except as otherwise provided in this Part, the question of whether the conduct of a member or student-at-law is conduct deserving of sanction shall be determined by the Benchers or, on appeal, by the Court of Appeal.

(2) Any act or conduct of a member or a student-at-law that

(a) is incompatible with 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 deserving of sanction within the meaning of this Part, whether or not that act or conduct is disgraceful or dishonourable and whether or not that act or conduct relates to the practice of law.

(3) Without restricting the generality of subsection (2), conduct deserving of sanction includes incompetently carrying on the practice of law and incompetently carrying out duties or obligations undertaken by a member or a student-at-law in his capacity as a member or student-at-law.

*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 Coordinating 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.*

The proposed amendment will permit the enrolment of Law Society employees on the same basis as the enrolment of Law Faculty members of universities in Alberta.

19 The heading preceding section 47 presently reads:

### **PART 3**

#### **DISCIPLINE**

20 Section 47 presently reads:

*47(1) Except as provided in section 64, 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 Court of Appeal.*

*(2) Any act or conduct that in the judgment of the Benchers or the Court of Appeal or an investigating committee acting under section 64, 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,*

*whether or not such act or conduct is disgraceful or dishonourable 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 under this Part applicable to members apply, with the necessary changes, to students-at-law.*

**47.1** Except where specific provision is made with respect to students-at-law, the provisions of this Part and the rules under this Part applicable to members apply, with the necessary changes, to students-at-law, and for that purpose “member” includes “student-at-law”.

21 *Section 48 is repealed and the following is substituted:*

**48** The Benchers shall appoint from among their members

- (a) a Discipline Committee,
- (b) a Competence Committee, and
- (c) a Benchers Appeal Committee,

and shall designate for each of those committees a chairman and one or more vice-chairmen.

22 *Section 49 is amended*

(a) *in clause (a) by adding “and respecting the appointment of persons to make preliminary investigations,” after “or not,”;*

(b) *by repealing clause (b);*

(c) *by striking out “and” at the end of clause (d) and by adding the following after clause (d):*

- (d.1) prescribing the powers and duties of
  - (i) the Discipline Committee,
  - (ii) the Competence Committee, and
  - (iii) the Benchers Appeal Committee

and of the chairman and vice-chairmen of each of those committees,

- (d.2) governing proceedings of

**21** Section 48 presently reads:

*48 The Benchers shall appoint from among their members a Discipline Committee and shall designate for it a chairman and one or more vice-chairmen.*

**22** Section 49 presently reads:

*49 The Benchers may make rules*

*(a) providing for the making of preliminary investigations into any matter regarding the conduct of a member or a student-at-law, whether a complaint is made or not,*

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

*(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,*

*(e) governing proceedings before the Benchers in matters pertaining to discipline.*

- (i) the Discipline Committee,
- (ii) the Competence Committee, and
- (iii) the Benchers Appeal Committee,

*(d) by adding “, and” at the end of clause (e) and by adding the following after clause (e):*

(f) respecting the taking of courses of study and examinations by members who have, in accordance with this Part, been found to have engaged in conduct deserving of sanction by reason of incompetence.

*23 Sections 50 and 51 are repealed and the following is substituted:*

**50(1)** The chairman or a member of the Discipline Committee or Competence Committee, as the case may be, shall review any matter regarding the conduct of a member brought to his attention by the Secretary or otherwise, whether a complaint is made or not, and shall either

- (a) direct that no further action be taken, if he is of the opinion that the matter concerning the member’s conduct is not conduct deserving of sanction,
- (b) direct that a preliminary investigation be held regarding the matter, or
- (c) direct that the matter be dealt with by an investigating committee.

(2) The chairman or member of the Discipline Committee or Competence Committee, as the case may be, may in reviewing a matter under subsection (1), if he considers it appropriate to do so, refer any matter brought to his attention to the chairman of the other Committee.

**51(1)** A person conducting a preliminary investigation may require the member concerned and any other member to produce to him any ledgers, books, papers, records, files and other documents in the member’s possession or under the member’s control that, in any way, relate to the matter 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 Court of Queen’s Bench for an order

- (a) directing the member concerned and any other member to produce to the person conducting a preliminary investigation any ledgers, books, papers, records, files and other

**23** Sections 50 and 51 presently read:

*50(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 Court of Queen's Bench 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.*

*(3) A person making a preliminary investigation into a matter concerning the conduct of a member may investigate any other matter regarding the conduct of the member concerned that arises in the course of the investigation.*

*51 The chairman or a member of the Discipline Committee shall review any matter regarding the conduct of a member of the Society brought to his attention by the Secretary or otherwise, whether a complaint is made or not, and shall either*

*(a) direct that no further action be taken if he is of the opinion that the matter concerning the member's conduct does not constitute conduct unbecoming a barrister and solicitor, or*

*(b) direct that a preliminary investigation be held regarding the matter, or*

*(c) direct that the matter be dealt with by an investigating committee.*

documents in his possession or under his control that, in any way, relate to the matter, or

(b) directing the member concerned to produce to the person conducting a preliminary investigation any ledgers, books, papers, records, files and other documents in his possession or under his control that, in any way, relate to his practice as a barrister and solicitor or his articles as a student-at-law.

(3) The Society in addition to the applications referred to in subsection (2) may summarily apply *ex parte* to the Court of Queen's Bench for an order directing any person, including any treasury branch or any bank, trust company or other corporation in which a member has trust money on deposit, to produce to a person conducting a preliminary investigation any ledgers, books, papers, records, files and other documents that are or may be related to the subject matter of the complaint being investigated.

(4) A person making a preliminary investigation into a matter concerning the conduct of a member may investigate any other matter regarding the conduct of the member concerned that arises in the course of the investigation.

*24 Section 52 is amended*

(a) by adding "or Competence Committee, as the case may be," after "the Discipline Committee";

(b) in clause (a) by striking out "unbecoming a barrister and solicitor" and substituting "deserving of sanction".

*25 Section 53 is repealed and the following is substituted:*

**53**(1) If a matter regarding the conduct of a member is brought to the attention of the chairman or a member of the Discipline Committee or Competence Committee, as the case may be, as the result of a complaint, and the chairman or member of the Discipline Committee or Competence Committee, as the case may be, directs pursuant to section 50 or 52 that no further action be taken with respect to the matter, the complainant may appeal the direction to a panel of not less than 3 members of the Benchers Appeal Committee designated by the chairman of the Benchers Appeal Committee.

(2) The panel of the Benchers Appeal Committee hearing an appeal under subsection (1) shall not include any member of the Discipline Committee or Competence Committee, as the case may be, who considered the original complaint.



**24** Section 52 presently reads:

*52 Upon the conclusion of a preliminary investigation, the chairman or a member of the Discipline Committee shall either*

*(a) direct that no further action be taken if he is of the opinion that the matter concerning the member's conduct does not constitute conduct unbecoming a barrister and solicitor, or*

*(b) direct that the matter be dealt with by an investigating committee.*

**25** Section 53 presently reads:

*53 Where a matter regarding the conduct of a member is brought to the attention of the chairman or member of the Discipline Committee as a result of a complaint and where the chairman or a member of the Discipline Committee directs pursuant to section 51 or 52 that no further action be taken with respect to the matter, the complainant may appeal his direction to the Discipline Committee who, in either or both cases may make any direction regarding it that the chairman could have made under those sections.*

(3) A panel of the Benchers Appeal Committee may make any direction that the chairman or the member of the Discipline Committee or Competence Committee, as the case may be, could have made under section 50 or 52, as the case may be.

26 *Section 54 is amended*

(a) *in subsection (1)*

(i) *by adding “or Competence Committee, as the case may be,” after “Discipline Committee”;*

(ii) *in clause (b) by adding “consisting of one or more Benchers other than the President or the chairman of the Discipline Committee or Competence Committee, as the case may be,” after “committee”;*

(b) *by repealing subsections (2) and (3).*

27 *Section 55 is amended*

(a) *by repealing subsection (1) and substituting the following:*

**55(1)** If the Benchers are satisfied that the circumstances of a case do not justify the continuation of proceedings commenced under section 54, the Benchers may by resolution, setting out the reasons for their action, discontinue the proceedings.

(1.1) When proceedings discontinued by the Benchers were commenced as a result of a complaint, the Benchers shall give notice of the discontinuation of the proceedings to the complainant.

(b) *by repealing subsection (3) and substituting the following:*

(3) Where the discontinuation of proceedings under subsection (1) is made after an investigating committee has found a member to have engaged in conduct deserving of sanction by reason of incompetence or to be guilty of a professional misdemeanor under section 64.1 and before the hearing of an appeal to the Benchers from the finding, the discontinuation operates to cancel the finding and any reprimand or penalty imposed by the committee, but without prejudice to any new or further proceedings that may subsequently be

**26** Section 54 presently reads:

*54(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.*

*(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.*

**27** Section 55 presently reads in part:

*55(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.*

*(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).*

taken under this Part with the approval of the Benchers given under subsection (2).

28 *Section 58(2) is repealed and the following is substituted:*

(2) An investigating committee may also at any time during a hearing amend any notice in writing given to the member being investigated and may also investigate any other matter concerning the conduct of the member that arises in the course of the investigation, but in either event the committee shall declare its intention to amend the notice in writing or to investigate the new matter and shall permit the member sufficient opportunity to prepare his answer to the amendment or the new matter.

(2.1) Sections 59 to 65 apply to any amendment or investigation referred to in subsection (2).

29 *Section 59 is amended by adding “unless his office as a Bencher is vacated because section 16 applies to him” after “he is no longer a Bencher”.*

30 *Section 60 is repealed and the following is substituted:*

**60(1)** Testimony may be adduced before an investigating committee, the Benchers Appeal Committee or a panel of that committee, or the Benchers in the manner the committee, panel or Benchers consider proper, and the committee, panel and Benchers are not bound by the rules of law concerning evidence in judicial proceedings.

(2) A member of a committee or panel referred to in subsection (1), or a Bencher, as the case may be, may administer an oath to a witness who is to give evidence before that committee or the Benchers.

31 *Section 62 is amended*

(a) *in subsection (3) by striking out “books, papers or” and substituting “ledgers, books, papers, records, files or other”;*

(b) *in subsection (5) by striking out “books, papers and” and substituting “ledgers, books, papers, records, files and”;*

(c) *in subsection (7) by striking out “books, papers” and substituting “ledgers, books, papers, records, files”.*

**28** Section 58(2) presently reads:

*(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 the new matter and shall permit the member sufficient opportunity to prepare his answer to the new matter and sections 59 to 65 apply to the investigation.*

**29** Section 59 presently reads:

*59 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.*

**30** Section 60 presently reads:

*60(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.*

**31** Section 62 presently reads in part:

*(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.*

*(5) 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.*

32 *Section 63(2) is amended by striking out “unbecoming a barrister and solicitor” and substituting “deserving of sanction”.*

33 *Sections 64 and 65, the heading preceding section 66 and sections 66 and 67 are repealed and the following is substituted:*

**64** If an investigating committee considers that the conduct of a member is not conduct deserving of sanction, it may so find and, unless the finding is appealed under section 64.6, no further proceedings shall be taken under this Part in respect of the matter that resulted in the finding.

**64.1(1)** If an investigating committee considers that

- (a) the conduct of a member is conduct deserving of sanction by reason of incompetence,
- (b) the matter is not sufficiently serious to warrant referral to the Benchers, and
- (c) a reprimand of the member is appropriate,

it may find that the member has engaged in conduct deserving of sanction by reason of incompetence and may reprimand the member.

(2) If an investigating committee considers that

- (a) the conduct of a member is conduct deserving of sanction, and
- (b) a reprimand of the member is appropriate,

it may find that the member is guilty of a professional misdemeanor and may reprimand the member.

**64.2** In addition to reprimanding a member under section 64.1, an investigating committee may

- (a) order the member to pay to the Society for each matter with respect to which the investigating committee has made a finding under section 64.1 a penalty of not more than \$3000 or, in the case of a student-at-law, a penalty of not more than \$1000, within the time specified in the order,

*(7) A witness, other than the member whose conduct is being investigated, who has been served with a notice to attend or a notice for the production of books, papers or other documents under subsection (5) or (6) is entitled to be paid the same fees as are payable to witnesses in an action in the Court of Queen's Bench.*

**32** Section 63(2) presently reads:

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

**33** Sections 64 to 67 presently read:

*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.*

*(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).*

(b) order the member to pay the costs of the investigation in accordance with the rules, or

(c) order the member to pay a penalty under clause (a) and the costs under clause (b),

and may order that, in default of the payment of any fine or costs ordered to be paid, the member is suspended until he has paid the fine or costs.

**64.3** If an investigating committee, before determining punishment on making a finding under section 64.1, is informed by counsel for the Society that the member or student-at-law on 1 or more previous occasions has been found to have engaged in conduct deserving of sanction by reason of incompetence or to be guilty of a professional misdemeanor or of conduct unbecoming a barrister and solicitor or student-at-law, the investigating committee may, instead of reprimanding the member, refer the matter to the Benchers for their determination of the appropriate punishment of the member.

**64.4(1)** An investigating committee, on finding

(a) under section 64, that a member's conduct is not conduct deserving of sanction,

(b) under section 64.1(1), that a member has engaged in conduct deserving of sanction by reason of incompetence, or

(c) under section 64.1(2), that a member is guilty of a professional misdemeanor,

shall give a written report of its findings, any order it has made under section 64.2 and the reasons for any reprimand of the member and for the order, if any, to the chairman of the Discipline Committee or Competence Committee, as the case may be, and to the Secretary.

(2) The Secretary shall, on receipt of a report under subsection (1), immediately deliver to the member or his counsel or agent a copy of the report and give notice of the nature of the findings or order to the complainant.

(3) If an investigating committee does not make any finding referred to in subsection (1) it shall give a written report to the Secretary setting out its determination of the facts involved in the matter investigated by it and the Secretary shall provide a summary of the determination to the complainant.

**64.5** An investigating committee may, on the conclusion of an investigation, suspend from the practice of law, in whole or in part, or from any field of the practice of law, a member whose conduct was investigated by it until the investigating committee's report under section 64.4(3) and the record required under section



*(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.*

*65(1) Except when 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.*

*(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 whose conduct is being investigated 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 concerned or his counsel or agent 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 wishes to make respecting the report and record.*

*(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) 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.*

65, have been considered by the Benchers in accordance with this Part.

### **Proceedings Before the Benchers**

#### **64.6(1) A member**

- (a) who has been found under section 64.1(1) to have engaged in conduct deserving of sanction by reason of incompetence,
- (b) who has been found under section 64.1(2) to be guilty of a professional misdemeanor,
- (c) who has been ordered under section 64.2 to pay a penalty or costs or both,

may appeal the finding, the order, if any, or both the finding and the order, to the Benchers in accordance with the rules.

(2) The chairman of the Discipline Committee or Competence Committee, on receipt of a report under section 64.4(1), may appeal the finding reported on, the order or both the finding and the order to the Benchers in accordance with the rules.

**65(1)** When an investigating committee has not made a finding under section 64 or 64.1 or has made a finding under section 64.1 but has referred the matter of punishment to the Benchers under section 64.3, or when an appeal has been taken under section 64.6 either by a member or the chairman of the Discipline Committee or the Competence Committee, as the case may be, the Secretary shall obtain a copy of the evidence adduced before the investigating committee and any exhibits or copies of those exhibits that the investigating committee considers essential for a proper understanding of the evidence.

(2) The documents comprising the evidence, a transcription of any tape recording entered as an exhibit at the proceedings and the exhibits obtained by the Secretary shall be known as "the record".

#### **66(1) The Secretary shall**

- (a) furnish the member concerned or his counsel or agent with copies of the report of the investigating committee and the record, inform him of the time and place at which the report and the record 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 copies of the report and record.

(2) If it is not reasonably practical for the Secretary to furnish

**(4) The Benchers may**

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

**(5) 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 conduct unbecoming a barrister and solicitor.**

the member or his counsel or agent or the Benchers with a copy of an exhibit forming part of the record, the Secretary shall

(a) with the authorization of the President, make the original exhibit available for examination and inspection or the tape recording for hearing by the member or his counsel or agent, and

(b) make the original exhibit available for examination and inspection or the tape recording for hearing by the Benchers for their consideration at the proceedings before them under this Part.

**66.1**(1) The Benchers shall, as soon as practical, consider the report and the record and shall hear any representations the member or his counsel or agent wishes to make respecting the report and the record.

(2) Notwithstanding section 18(3), a quorum of Benchers for considering a report and the record and for hearing any representations under this section shall consist of not less than 7 Benchers.

**67**(1) The President, the Vice-President, an Acting President, the chairman or any member of the Discipline Committee or Competence Committee, as the case may be, 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 counsel for the Society may participate in those proceedings.

(2) Notwithstanding subsection (1), if the proceedings before the Benchers are the result of an appeal taken under section 64.6, a Bencher who

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

(b) appealed the committee's finding or order under section 64.6(2) in his capacity as chairman of the Discipline Committee or Competence Committee, as the case may be,

shall not participate in or vote at those proceedings.

**67.1** The Benchers may, in any proceedings before them under this Part,

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

(b) adjourn the proceedings or reserve the determination of the matters before them for a future meeting of the Benchers,

(c) rehear all or any part of the evidence given before the investigating committee in the same manner and subject to



the same rules and with the same powers as are provided with respect to hearings before an investigating committee,

(d) on an application to receive further evidence, inquire as to the nature of that further evidence and, on granting leave, receive part or all of that further evidence in the same manner and subject to the same rules and with the same powers as are provided with respect to hearings before an investigating committee,

(e) draw inferences of fact and make any determination or finding which, in their opinion, ought to have been made by the investigating committee, or

(f) order that the matter be referred back to the same or another investigating committee.

**67.2(1)** If the proceedings before the Benchers are the result of an appeal by the member on the finding or order of the investigating committee the Benchers may either dismiss or allow the appeal.

(2) If the proceedings before the Benchers are the result of an appeal by the chairman of the Discipline Committee or Competence Committee, as the case may be, on the question of punishment, the Benchers may either dismiss or allow the appeal.

(3) The Benchers shall give notice of the nature of their decision under subsection (1) or (2) to the complainant.

**67.3** If the Benchers allow an appeal under section 67.2(1) on the matter of punishment, or under section 67.2(2), they may impose the punishment permitted under section 67.5(3), 67.6, 68.1(3) or 68.2, as the case may be.

**67.4(1)** The Benchers shall, if the proceedings before them are the result of

(a) a report by an investigating committee under section 64.4(3), or

(b) an appeal by the chairman of the Discipline Committee or Competence Committee, as the case may be, under section 64.6(2) on a finding of an investigating committee under section 64 or 64.1,

at or within a reasonable time after the conclusion of the proceedings before them, determine, by a resolution passed by the vote of a majority of the Benchers present, that the conduct of the member is conduct deserving of sanction, and in the case of an equality of votes under this subsection the chairman shall not have a 2nd or casting vote.

(2) If the Benchers find the member to have engaged in conduct



deserving of sanction by reason of incompetence, they shall proceed in accordance with section 67.5 or 68.1, as the case may be.

(3) If the Benchers consider that the conduct of the member is conduct deserving of sanction by a reason other than incompetence, they shall,

(a) if in their opinion the gravity of the offence is such that the member is guilty of conduct unbecoming a barrister and solicitor or the student-at-law is guilty of conduct unbecoming a student-at-law, by a resolution passed by votes of at least 2/3 of the Benchers present, find the member or student-at-law guilty of conduct unbecoming a barrister and solicitor or student-at-law, or

(b) if a resolution is not passed under clause (a), find the member guilty of a professional misdemeanor.

**67.5(1)** If the Benchers find a member to have engaged in conduct deserving of sanction by reason of incompetence, they may, by a resolution passed by at least 2/3 of the Benchers present,

(a) suspend the member from engaging in the whole or any part of the practice of law or in any field of law until the member has completed, to the satisfaction of the Benchers, a course or courses of study designated by the Benchers, or until the member has appeared before a Board of Examiners appointed by the Benchers and has satisfied the Board that he is competent to engage in the practice of law or in any field or fields of law, or both;

(b) require that the member complete successfully a course or courses of study designated by the Benchers within a period of time designated by the Benchers or require the member to appear before a Board of Examiners appointed by the Benchers and satisfy the Board that he is competent to engage in the practice of law or in any field or fields of law, or both, and on his failure to complete the prescribed course or courses to the satisfaction of the Benchers or to satisfy the Board of Examiners, or both, suspend the member from engaging in the whole or any part of the practice of law or in any field or fields of law until such time as the member has completed the prescribed course or courses to the satisfaction of the Benchers or has satisfied the Board of Examiners that he is competent to engage in the practice of law or in any field or fields of law, or both;

(c) suspend the member from engaging in the practice of law until the member has appeared before a Board of Examiners appointed by the Benchers and has satisfied the Board that his competence to practise is not adversely affected by any physical or mental disability, or addiction to alcohol or drugs;





- (d) require the member to appear before a Board of Examiners appointed by the Benchers within a period of time designated by the Benchers and to satisfy the Board that his competence to practise is not adversely affected by any physical or mental disability or addiction to alcohol or drugs, and on his failure to satisfy the Board, suspend the member from engaging in the practice of law until such time as the member has so satisfied the Board;
  - (e) suspend the member from engaging in the practice of law or in any field or fields of law until the member has undertaken in writing in a form specified by the Benchers that he will restrict his practice in a manner designated by the Benchers;
  - (f) reprimand the member;
  - (g) order the member to pay in respect of each finding of conduct deserving of sanction by reason of incompetence a penalty of not more than \$10 000 within the time fixed by the Benchers;
  - (h) order the member to pay the costs of the investigation in an amount and within the time fixed by the Benchers;
  - (i) order the member to pay a penalty under clause (g) and the costs under clause (h);
  - (j) order that in default of paying any penalty or costs ordered to be paid the member is suspended until he has paid the penalty or costs.
- (2) If the Benchers find a member to have engaged in conduct deserving of sanction by reason of incompetence and no resolution respecting the member is passed under subsection (1), the Benchers shall reprimand the member.
- (3) In addition to a reprimand under subsection (2) the Benchers may
- (a) order the member to pay in respect of each finding of conduct deserving of sanction by reason of incompetence a penalty of not more than \$5000 within the time fixed by the Benchers;
  - (b) order the member to pay the costs of the investigation in an amount and within the time fixed by the Benchers;
  - (c) order the member to pay a penalty under clause (a) and the costs under clause (b);
  - (d) order that in default of paying any penalty or costs ordered to be paid the member is suspended until he has paid the penalty, the costs or both, as the case may be.



**67.6(1)** If the Benchers find a member guilty of a professional misdemeanor only, or if the matter of punishment has been referred to the Benchers under section 64.3, they shall reprimand the member.

(2) In addition to a reprimand under subsection (1), the Benchers may

(a) order the member to pay, for each offence of which he is found guilty, a penalty of not more than \$5000 within the time fixed by the Benchers;

(b) order the member to pay the costs of the investigation in an amount and within the time fixed by the Benchers;

(c) order the member to pay a penalty under clause (a) and the costs under clause (b);

(d) order that in default of paying any penalty or costs ordered to be paid the member is suspended until he has paid the penalty, the costs or both.

*34 Section 68 is amended*

(a) *by repealing subsection (1)(b) and substituting the following:*

(b) order the member to be suspended during the period prescribed by the Benchers or until the Benchers revoke the suspension, or

(b) *in subsection (2)(a) by striking out “a fine of not more than one thousand dollars” and substituting “a penalty of not more than \$10 000”;*

(c) *by striking out “and” at the end of subsection (2)(b) and adding the following after subsection (2)(b):*

(b.1) order the member to pay a penalty under clause (a) and the costs under clause (b), and

(d) *in subsection (2)(c) by striking out “fine” wherever it occurs and substituting “penalty”.*

*35 The following is added after section 68:*

**68.1(1)** If the Benchers find a student-at-law to have engaged in conduct deserving of sanction by reason of incompetence, they may, by a resolution passed by at least 2/3 of the Benchers present,

**34** Section 68 presently reads:

*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.*

**35** New powers respecting students-at-law.

- (a) suspend the articles of the student-at-law until the student-at-law has completed, to the satisfaction of the Benchers, a course or courses of study designated by the Benchers, or until the student-at-law has appeared before a Board of Examiners appointed by the Benchers and has satisfied the Board that he is competent to resume his articles, or both;
- (b) require that the student-at-law complete successfully a course or courses of study designated by the Benchers within a period of time designated by the Benchers or require the student-at-law to appear before a Board of Examiners appointed by the Benchers and satisfy the Board that he is competent to continue his articles, and on his failure to complete the prescribed course or courses to the satisfaction of the Benchers or to satisfy the Board of Examiners, or both, suspend the articles of the student-at-law until such time as the student-at-law has completed the prescribed course or courses to the satisfaction of the Benchers or has satisfied the Board of Examiners that he is competent to resume his articles, or both;
- (c) suspend the articles of the student-at-law until the student-at-law has appeared before a Board of Examiners appointed by the Benchers and has satisfied the Board that his competence to resume his articles is not adversely affected by any physical or mental disability or addiction to alcohol or drugs;
- (d) require the student-at-law to appear before a Board of Examiners appointed by the Benchers within a period of time designated by the Benchers and to satisfy the Board that his competence to continue his articles is not adversely affected by any physical or mental disability or addiction to alcohol or drugs, and on his failure to satisfy the Board, suspend the articles of the student-at-law until such time as the student-at-law has so satisfied the Board;
- (e) reprimand the student-at-law;
- (f) order the student-at-law to pay in respect of each finding of conduct deserving of sanction by reason of incompetence a penalty of not more than \$3000 within the time fixed by the Benchers;
- (g) order the student-at-law to pay the costs of the investigation in an amount and within the time fixed by the Benchers;
- (h) order the student-at-law to pay the penalty under clause (f) and the costs under clause (g);
- (i) order that in default of paying any penalty or costs ordered to be paid the articles of the student-at-law are suspended until he has paid the penalty, the costs or both.



(2) If the Benchers find a student-at-law to have engaged in conduct deserving of sanction by reason of incompetence and no resolution respecting the student-at-law is passed under subsection (1), the Benchers shall reprimand the student-at-law.

(3) In addition to a reprimand under subsection (2), the Benchers may

(a) order the student-at-law to pay in respect of each finding of conduct deserving of sanction by reason of incompetence a penalty of not more than \$1000 within the time fixed by the Benchers,

(b) order the student-at-law to pay the costs of the investigation in an amount and within the time fixed by the Benchers,

(c) order the student-at-law to pay a penalty under clause (a) and the costs under clause (b), and

(d) order that in default of paying any penalty or costs ordered to be paid the articles of the student-at-law are suspended until he has paid the penalty, the costs or both.

**68.2(1)** If the Benchers find a student-at-law guilty of a professional misdemeanor only, or if the matter of punishment has been referred to the Benchers under section 64.3, they shall reprimand him.

(2) In addition to a reprimand under subsection (1) the Benchers may

(a) order the student-at-law to pay, for each offence of which he is found guilty, a penalty of not more than \$1000 within the time fixed by the Benchers,

(b) order the student-at-law to pay the costs of the investigation in an amount and within the time fixed by the Benchers,

(c) order the student-at-law to pay a penalty under clause (a) and the costs under clause (b), and

(d) order that in default of paying any penalty or costs ordered to be paid the articles of the student-at-law are suspended until he has paid the penalty, the costs or both.

36 *Section 69 is amended*

(a) *by repealing subsection (1)(b) and substituting the following:*

(b) order that his articles are suspended during the period prescribed by the Benchers or until the Benchers revoke the suspension, or



**36** Section 69 presently reads:

*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*

(b) in subsection (2)(a) by striking out “a fine of not more than two hundred dollars” and substituting “a penalty of not more than \$3000”;

(c) by striking out “and” at the end of subsection (2)(b) and adding the following after subsection (2)(b):

(b.1) order the member to pay a penalty under clause (a) and the costs under clause (b), and

(d) in subsection (2)(c) by striking out “fine” wherever it occurs and substituting “penalty”.

37 *The following is added after section 69:*

**69.1(1)** Proceedings before a person conducting a preliminary inquiry, the Benchers Appeal Committee or a panel of that committee, an investigating committee or the Benchers shall be in camera.

(2) Notwithstanding subsection (1), if the Benchers, following a finding of guilt, are of the opinion that there are reasonable and probable grounds to believe that the member has committed a criminal offence, a copy of the record as defined in section 65(2) may be forwarded to the Attorney General of Alberta.

38 *Section 70(1) is amended*

(a) by striking out “Where a member has been found guilty of conduct unbecoming a barrister and solicitor, the member” and substituting “A member whose conduct has been determined in accordance with this Part by the Benchers to be conduct deserving of sanction”, and

(b) by striking out “the finding of guilt” and substituting “that determination”.

39 *The following is added after section 70:*

**70.1** The Society shall be named as the respondent in any appeal under section 70 and the Society’s counsel may make representations on the hearing of the appeal.

40 *Section 72 is amended*

(a) in subsection (1)(b) by striking out “the finding of guilt” and substituting “any determination made by the Benchers in accordance with this Part”;

(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.*

**37** Hearings in camera.

**38** Section 70(1) presently reads:

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

**39** Society is respondent in appeal before the Court of Appeal.

**40** Section 72 presently reads in part:

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

(b) *quash or confirm the finding of guilt, or*

*(b) by adding “or” at the end of subsection (1)(e) and by adding the following after subsection (1)(e);*

(f) direct that a new trial of any mixed questions of law and fact relating to a finding or order or both a finding and an order of the Benchers made under this Part be held before the Court of Queen’s Bench.

*(c) by repealing subsection (2) and substituting the following:*

(2) The Court may make any award as to the costs of an appeal to it that the Court considers proper.

*41 Section 76(2) is amended*

*(a) by adding the following after clause (b):*

(b.1) providing for the levying on the active members of special assessments of such amounts as may be fixed by the Benchers from time to time for the purpose of maintaining and augmenting the Assurance Fund;

*(b) in clause (d) by adding “and special assessments referred to in clause (b.1)” after “in clause (b)”.*

*42 This Act comes into force on Proclamation.*

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

**41** Section 76 presently reads in part:

*(2) The Benchers may make rules*

*(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,*

*(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*