

1990 BILL 46

Second Session, 22nd Legislature, 39 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 46

LEGAL PROFESSION ACT

MR. EVANS

First Reading .....  
Second Reading .....  
Committee of the Whole .....  
Third Reading .....  
Royal Assent .....

*Bill 46*  
*Mr. Evans*

## **BILL 46**

1990

### **LEGAL PROFESSION ACT**

*(Assented to , 1990)*

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

### Definitions

#### 1 In this Act,

- (a) “active member” means a member other than an inactive member or a member whose membership is under suspension;
- (b) “Bencher” means a person who holds office as a Bencher of the Society, but does not include an honorary Bencher;
- (c) “disbar” means terminate the membership of a person in the Society by
  - (i) an order made under Part 3 or an order under any predecessor of this Act of the Benchers then holding office,
  - or

- (ii) the resignation of that person under section 58;
- (d) "Hearing Committee" means a Hearing Committee appointed under Part 3;
- (e) "inactive member" means a member of the Society who, in accordance with the rules, has elected to be an inactive member of the Society;
- (f) "lay Benchers" means a person who holds office as a Benchers by reason of an appointment under section 10;
- (g) "member" means a member of the Society but does not include an honorary member;
- (h) "professional corporation" means a corporation that is the holder of a permit issued under Part 8;
- (i) "records" includes
  - (i) ledgers, books, accounts, files, papers or other documents, whether in writing or in electronic form or represented or reproduced by any other means, and
  - (ii) the results of the recording of details of electronic data processing systems and programs to illustrate what the systems and programs do and how they operate;
- (j) "roll" means the Roll of The Law Society of Alberta;
- (k) "rules" means the rules of the Society made by the Benchers under this Act;
- (l) "Society" means The Law Society of Alberta;
- (m) "student-at-law" means a person admitted to the Society as a student-at-law.

## PART 1

### THE LAW SOCIETY OF ALBERTA

#### The Society

- |                   |  |
|-------------------|--|
| Constitution      | <b>2</b> The Law Society of Alberta as heretofore constituted continues by that name as a corporation consisting of its members.         |
| Powers of Society | <b>3</b> The Society, in addition to the powers vested in it by this or any other Act, has the power to borrow money for the purposes of |

the Society and to mortgage or charge property of the Society or its sources of funds as security for money borrowed.

Legal aid plan

**4(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 of it 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 7(2)(i);

(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 money for the purpose of the plan, to be paid from funds voted 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) No action lies against

(a) a board, committee or other body referred to in subsection (2)(b), or

(b) any person who is or was a member or officer of a board or committee referred to in subsection (2)(b),

in respect of anything done by any of them in good faith in the operation of a legal aid plan established under this section.

### **The Benchers**

Benchers

**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 the powers of the Society in the name of or on behalf of the Society.



(3) The Benchers shall submit an annual report to the Attorney General 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.

**Powers of  
Benchers**

**6 The Benchers may by resolution**

(a) authorize the Society to enter into any contract that the Society may enter into;

(b) appoint any person as an honorary member of the Society or an honorary Bencher;

(c) establish committees and their powers and duties and provide for appointments to them;

(d) confer any powers or impose any duties on a committee established by this Act or the rules in addition to the powers conferred and the duties imposed on that committee by this Act or the rules;

(e) designate a chairman and one or more vice-chairmen for a committee established by or pursuant to this Act;

(f) appoint delegates and representatives to appear on behalf of and represent the Society;

(g) provide for the reporting of legal decisions;

(h) establish and maintain libraries for the use of the members of the Society;

(i) make arrangements with the Attorney General respecting the contribution of the Society to the cost of the acquisition of books and periodicals for libraries maintained by the Government;

(j) maintain a special fund for the relief of aged, infirm or disabled members or former members of the Society or their dependants and the dependants of deceased members, either by setting aside a portion of the money of the Society or by paying into that fund a portion of the revenues of the Society, and may discontinue the fund in whole or in part;

(k) authorize the Society to enter into group insurance contracts insuring the lives or incomes of members or any class of

members or insuring against any risks incurred by members or any class of members that are related to practising as a barrister or solicitor;

(l) authorize or establish a code of ethical standards for members and students-at-law and provide for its publication;

(m) establish and prescribe a course called the “bar admission course” for persons required to pass a bar admission examination;

(n) take any action and incur any expenses the Benchers consider necessary for the promotion, protection, interest or welfare of the Society.

7(1) The Benchers may make rules for the government of the Society, for the management and conduct of its business and affairs and for the exercise or carrying out of the powers and duties conferred or imposed on the Society or the Benchers under this or any other Act.

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

(a) prescribing the manner of proof as to matters required to be proven by applicants for admission as students-at-law or for enrolment as members;

(b) fixing the fees payable to the Society for the admission of students-at-law or the enrolment of members, the fees payable annually by members and any other fees incidental to the conduct of the business and affairs of the Society;

(c) respecting the imposition of a pecuniary penalty on a member or student-at-law or the suspension of the membership of a member or the registration of a student-at-law, without notice or hearing, if the member or student-at-law does not pay a fee or assessment, file a document or do any other act by the time specified by or determined in accordance with the rules;

(d) providing for the striking off the roll of the name of a member whose membership has been suspended for a period of at least 2 years pursuant to the rules made under clause (c);

(e) respecting the reinstatement of

(i) a former member as a member,

(ii) an inactive member as an active member, or

(iii) a former student-at-law as a student-at-law,

and respecting the terms and conditions on which reinstatement may be granted;

(f) respecting the termination of a suspension of the membership of a member or of the registration of a student-at-law, and respecting the conditions on which a termination may be granted;

(g) governing matters related to the operation of bar admission courses and prescribing fees for enrolment in those courses;

(h) respecting the powers and duties of the Secretary under section 37(4);

(i) respecting the establishment and operation of a plan or plans to provide legal aid to persons in need in civil or criminal matters;

(j) respecting the duties of members, professional corporations or law firms in relation to property, other than money, entrusted to or received by them in their capacity as barristers and solicitors;

(k) respecting the exemption of any class of active members from the operation of section 122(1);

(l) respecting the maintenance and regulation of records of members, professional corporations or law firms in respect of money entrusted to them or received, held or paid by them for or on account of their clients or others, in their capacity as barristers and solicitors;

(m) respecting the examination, review or audit of records referred to in clause (l) by officers, employees, auditors or agents of the Society and the recovery by the Society of the costs of those examinations, reviews or audits from those who are required to keep and maintain the records if the rules under clause (l) have not been complied with;

(n) respecting the rights and duties of law firms;

(o) defining “law firm” for any purpose under the rules or for the purpose of section 122;

(p) providing for the administration of the special relief fund referred to in section 6(j);

(q) 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;

(r) respecting the information required to be furnished to the Society by members or students-at-law or by persons acting for them;

(s) respecting the keeping and maintaining of the records referred to in section 29 and the confidentiality of any classes of information forming part of those records, and regulating the disclosure pursuant to section 29(3) of information forming part of those records;

(t) respecting the certification of active members as specialists in particular fields of law and the rights and duties of members holding certificates as specialists;

(u) respecting the registration of persons admitted to the Society as students-at-law and the maintenance of the register of students-at-law referred to in section 29(1);

(v) prescribing the methods by which a notice or other document may be served, given or furnished under this Act or the rules on or to a member, student-at-law or professional corporation otherwise than by personal service;

(w) respecting the establishment, composition and manner of appointment of committees for any purpose under the rules and the powers and duties of a committee so established, and respecting additional powers and duties of a committee established by this Act;

(x) subject to section 75, respecting the persons authorized or permitted to attend or participate in a hearing or meeting of the Benchers or of a committee established by or under this Act, other than Benchers or the members of the committee, as the case may be;

(y) respecting the quorum required for a committee established by this Act and the circumstances under which and the conditions on which such a committee may sit in panels;

(z) respecting the conduct of general and special meetings of the Society and the notice to be given of those meetings;

(aa) respecting the rights and duties of students-at-law and the circumstances in which they may act as counsel in proceedings before the courts and judges referred to in section 102.

**Honorary  
Benchers**

**8(1)** The honorary Benchers of the Society are

- (a) the Attorney General of Alberta,
- (b) past Presidents of the Society who do not hold office as Benchers, and
- (c) persons appointed as honorary Benchers under section 6(b).

(2) An honorary Bencher may participate in any meeting or proceeding of the Benchers, other than a meeting or proceeding under Part 3, but is not entitled to be notified of, to move or second any motion at or to vote at any meeting or other proceeding.

**Number of  
Benchers**

**9(1)** Subject to subsection (2), the number of Benchers shall be 17.

(2) For each 500 active members by which the membership of the Society is increased over 1000, an additional Bencher shall be elected but the number of Benchers shall in no case exceed 20.

(3) For the purposes of this section, the membership of the Society shall be determined as of July 1 preceding each regular election.

**Lay Benchers**

**10(1)** In addition to the number of Benchers specified in section 9, the Benchers shall include 3 members of the public, who shall be appointed as lay Benchers for a term of not more than 2 years by the Attorney General after consultation with the Benchers.

(2) A lay Bencher continues to hold office after the expiry of his term of office until he is reappointed or his successor is appointed.

(3) Notwithstanding subsections (1) and (2), a person ceases to hold office as a lay Bencher after holding the office for a period or periods totalling 6 consecutive years.

(4) The Attorney General may, after consultation with the Benchers, revoke the appointment of a lay Bencher.

(5) The Attorney General may pay to a lay Bencher travelling and living expenses incurred by that lay Bencher 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.

(6) The powers, duties and proceedings under this Act and the rules of the Benchers or a committee established under this Act are not affected by

(a) the fact that lay Benchers are not appointed under subsection (1),

(b) the revocation of the appointment of a lay Bencher under subsection (4),

(c) the resignation of a person as a lay Bencher, or

(d) the fact that one or more lay Benchers are not present.

**Election of  
Benchers**

**11(1)** An election of Benchers shall be held on the 2nd Monday of November in every odd-numbered year.

(2) The elected Benchers take office at the first meeting of the Benchers in the year following the year in which the election is held, and the elected Benchers in office immediately prior to the election continue in office until that time.

(3) Subsection (2) does not preclude the conducting of a vote under section 19(5) in the year following the election by Benchers holding office immediately before the election, if the vote is concluded before the first meeting of the Benchers in that year.

**Eligibility for  
election**

**12(1)** Only an active member resident in Alberta is eligible for nomination and election as a Bencher.

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

(3) A member is ineligible for nomination or election as a Bencher if at any time before the date of the election the member was disbarred.

(4) A member is ineligible for nomination or election as a Bencher if, within the 5-year period immediately before the date of the election,

(a) the member was found guilty of conduct deserving of sanction without an order being made for his disbarment as a result of the finding, unless the Hearing Committee, the Benchers or the Court of Appeal, as the case may be, made an order directing that the member is not ineligible by reason of the finding,

(b) an order of the Benchers was made under section 80(4) for the suspension of the membership of the member for a fixed period, or

(c) an order of the Benchers was made under section 81(3) for the suspension of the membership of the member for a fixed period, unless the Benchers made an order directing that the member is not ineligible by reason of the suspension order.

(5) A member is not ineligible because of subsection (3) or (4)(a) if the disbarment order or finding of guilt was successfully appealed.

Rules re  
elections

**13(1)** The Benchers may make rules governing elections of Benchers, and those rules may

(a) provide the procedure for the nomination of candidates for election as Benchers;

(b) prescribe terms and conditions respecting eligibility for nomination, election and re-election of Benchers;

(c) prescribe the circumstances under which an active member is not entitled to vote;

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

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

(f) prescribe the forms to be used;

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

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

(3) Only active members are entitled to vote in an election of Benchers.

Extension  
of time

**14(1)** In connection with an election of Benchers, if anything to be done within a number of days or at or before a time fixed by or under this Act or the rules cannot be or is not so done, the President may from time to time by order appoint a further or other time for doing it, whether the time at or before or within which it ought to have been done has or has not arrived or expired, as the case may be.

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

Notice of  
elected  
Benchers

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

Appeal re  
elections

**16(1)** A member may dispute the validity of an election of Benchers or the validity of the election of one or more of them by petition to the Court of Queen's Bench filed not later than 10 days after the publication in The Alberta Gazette of the notice referred to in section 15.

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

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

(4) If the Court decides that the election is invalid, it shall

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

(b) direct that the elected Benchers who held office immediately prior to the invalid election resume office as Benchers until the first meeting of the Benchers following the election held pursuant to the Court's directions.

(5) If the Court decides that the election of one or more but not all of the Benchers is invalid, it shall either

(a) direct the remaining Benchers to appoint another or others in his or their stead to fill the vacancies in accordance with section 18, or

(b) give directions as to the holding of another election to fill the vacancies and as to the terms for which the Benchers elected under this clause are to hold office.

(6) The decision of the Court is final.

Vacancy

**17(1)** A person ceases to hold office as a Bencher if

(a) that person ceases to be a member of the Society whether by disbarment or otherwise,



- (b) that person becomes an inactive member,
  - (c) that person's membership in the Society is suspended under section 69(1)(b), 74, 79, 80(4) or 81(3),
  - (d) an order of reprimand is made against that person under Part 3, or
  - (e) the Court of Appeal makes an order against that person under subsection (6).
- (2) Subject to subsection (3), a person who ceases to hold office as a Benchers by reason of the operation of subsection (1) does not resume office as a Benchers by reason of
- (a) that person's reinstatement as a member of the Society,
  - (b) that person's change of status from an inactive member to an active member, or
  - (c) the expiration or termination of a suspension referred to in subsection (1)(c).
- (3) A person resumes office as a Benchers if
- (a) the person ceased to hold office as a Benchers by reason of an order under Part 3,
  - (b) the finding of guilt on which the order was based was revoked by the Benchers or the Court of Appeal under Part 3,
  - (c) the person's term of office as a Benchers has not yet expired, and
  - (d) the person is not then otherwise disqualified from holding office as a Benchers.
- (4) If a member ceases to hold office as a Benchers by reason of a reprimand order made by a Hearing Committee or a panel of Benchers under Part 3, the Benchers may, on application, order that the member resume office as a Benchers.
- (5) If a member ceases to hold office as a Benchers by reason of a replacement reprimand order made by the Court of Appeal under section 79, the Court, on application or on its own motion, may order that the member resume office as a Benchers.
- (6) If the Benchers make an order under subsection (4) in favour of a member who appeals the reprimand order to the Court of Appeal under section 77, the Court may, on the appeal, revoke the order of the Benchers.

	<p>(7) If the membership of a member who is also a Bencher is suspended by an order under section 60, 80(2) or 81(2) or under the rules, the member's office as a Bencher is suspended for the period for which his membership is suspended.</p>
Appointment to fill vacancy	<p><b>18</b> If 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, in accordance with the rules, appoint any active member to fill the vacancy until the first meeting of the Benchers in the year following the year in which the next regular election of Benchers is held.</p>
Meetings	<p><b>19(1)</b> Meetings of the Benchers shall be held at the places and times the Benchers determine.</p> <p>(2) The President or any 3 Benchers may call a special meeting of the Benchers.</p> <p>(3) A majority of the Benchers holding office is a quorum at any meeting of the Benchers.</p> <p>(4) Three days' notice in writing shall be given of any meeting of the Benchers.</p> <p>(5) Where the President is of the opinion that it is desirable to take a vote of the Benchers on a resolution and that it is impracticable in the circumstances to vote by holding a meeting of the Benchers for that purpose,</p> <p style="padding-left: 40px;">(a) the President may direct that the vote be taken by the polling of the Benchers by mail, telegram, telephone or other mode of communication or by any combination of those modes, and</p> <p style="padding-left: 40px;">(b) if the resolution is agreed to in accordance with clause (a) by at least 2/3 of the Benchers so voting and the Benchers so voting constitute a majority of the Benchers then holding office, the resolution is as valid as if the vote were taken at a properly constituted meeting of the Benchers.</p>
Voting at meetings	<p><b>20(1)</b> At a meeting of the Benchers, matters shall be determined by a majority of votes of the Benchers present at the meeting, but if there is an equality of votes,</p> <p style="padding-left: 40px;">(a) the motion on the matter shall be declared defeated if</p> <p style="padding-left: 80px;">(i) the matter arises under Part 3, or</p>

(ii) the motion is for the reinstatement as a member of a disbarred person,

and

(b) in any other case, the chairman has a 2nd or casting vote.

(2) Notwithstanding subsection (1), if a vote is taken at a meeting of the Benchers on a resolution under section 60, 80(2) or 81(2), the resolution shall be declared carried only if 2/3 of the Benchers voting on the resolution vote in favour of it and the Benchers casting votes on the resolution constitute a majority of the Benchers then holding office.

Committee  
quorum

**21** Except as otherwise provided in this Act, with respect to the determination of any matter dealt with by a committee established by or under this Act,

(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 is deemed to have been done by the committee.

Committee  
acting when  
loss of member

**22** When one or more of the members of a committee established by or under this Act cannot act for any reason, the remaining members of the committee may act and determine any matter.

### **Officers of the Society**

Officers of  
the Society

**23(1)** The officers of the Society are the President, the President-Elect, the Secretary, the Deputy Secretaries, the Treasurer and the holders of any additional offices established by the rules or by the Benchers by resolution.

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

(3) If the President is absent or unable to act, the President-Elect is the Acting President.

(4) If both the President and the President-Elect are absent or unable to act, a majority of the Benchers may appoint one of their number as Acting President.

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

**Appointment  
of officers**

**24(1)** The Secretary, the Deputy Secretaries and the Treasurer shall be appointed by the Benchers.

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

(3) The President may appoint any person as Acting Secretary if the Secretary is absent or unable to act, and that person, while Acting Secretary, has the powers and shall perform the duties of the Secretary.

(4) The Benchers may, by resolution or by the rules, delegate any powers or duties of the Secretary under this Act to the Treasurer, the holder of an office established under section 23(1) or an employee of the Society and prescribe the circumstances in which or the conditions on which the delegation is to apply.

(5) A delegation made under subsection (4) does not affect the ability of the Secretary to exercise or perform the power or duty so delegated.

**Auditor**

**25(1)** The Benchers at their first meeting in each year shall appoint an auditor for the Society.

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

**Meetings of the Society**

**Meetings of  
Society**

**26(1)** There shall be a general meeting of the Society in each year to be held at the place and time the Benchers decide.

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

(3) Twenty active members constitutes a quorum at an annual general or special meeting of the Society.

(4) At least 10 days before an annual general meeting the Secretary shall have a notice of the meeting and a statement of the financial position of the Society during the previous fiscal year mailed to each active member of the Society.

**Special  
meetings**

**27(1)** The Secretary shall call a special meeting of the Society

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

(b) within 30 days of the receipt by him of a written petition of 50 active members setting out the business to be discussed at the meeting.

(2) At least 10 days before a special meeting the Secretary shall have a notice of the meeting mailed to each active member of the Society.

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

Effect of  
resolutions

**28(1)** A resolution passed at an annual general meeting or special meeting of the Society shall be considered by the Benchers at their next meeting but is not binding on the Benchers.

(2) If a resolution passed at an annual general meeting or special meeting of the Society is not implemented by the Benchers at their next meeting, then, on the filing with the Secretary of a petition signed by at least 50 active members requesting the Benchers to do so, the Benchers shall have a mail vote of all active members taken on the resolution, and if at least 2/3 of those voting vote in favour of the resolution, the Benchers shall implement the resolution to the extent that they are by law able to do so.

## **PART 2**

### **MEMBERSHIP AND QUALIFICATION TO PRACTICE**

#### **Membership**

Roll of  
members

**29(1)** The Secretary shall, in accordance with the rules, keep and maintain

(a) the records constituting the Roll of The Law Society of Alberta and other records of the Society pertaining to members and former members, and

(b) the records constituting the register of persons admitted to the Society as students-at-law and other records of the Society pertaining to students-at-law and former students-at-law.

(2) The records referred to in subsection (1) may be kept and maintained in any form that allows information contained in the records to be reproduced in written form.

(3) Information entered in the roll or in the register of students-at-law shall be made available for inspection by any person during normal business hours of the Society subject to any restrictions

relating to the confidentiality of that information prescribed by the rules.

**Students-at-law**     **30**(1) The termination under this Act of the registration of a student-at-law operates to terminate the articles of that person.

(2) The suspension under this Act of the registration of a student-at-law operates to suspend the articles of the student-at-law during the same period.

**Resignation of member**     **31**(1) No member may resign from the Society unless his resignation is submitted to and approved by the Benchers.

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

**Judicial appointment**     **32** A person ceases to be a member of the Society on becoming

(a) a judge of the Court of Appeal, the Court of Queen's Bench or the Provincial Court of Alberta,

(b) a judge of the Supreme Court of Canada, the Federal Court of Canada or the Tax Court of Canada,

(c) a Master in Chambers of the Court of Queen's Bench,

(d) a judge of a superior, district or county court in any other province of Canada,

(e) a judge of the provincial court of any other province of Canada, or

(f) a judge of the territorial court of a territory of Canada.

**Loss of status**     **33** If it is proved to the satisfaction of the Benchers that a member is neither a Canadian citizen nor a person lawfully admitted into Canada for permanent residence, the Benchers shall order that the member's name be struck off the roll.

**Inactive members**     **34** Subject to the rules,

(a) an active member may elect to become an inactive member, and

(b) an inactive member may be reinstated as an active member.

## Enrolment

### Definitions

**35** In sections 36 to 45,

- (a) “bar admission course” means a bar admission course established and operated by the Society;
- (b) “bar admission examination” means an examination in general subjects related to practise as a barrister or solicitor, including practice, procedure and ethics and statutes of Alberta or Canada or both;
- (c) “Co-ordinating Council” means the Universities Co-ordinating Council under the *Universities Act*;
- (d) “special examinations” means examinations at university standards in subjects pertaining to substantive law in force in Alberta;
- (e) “university in Alberta” means a university under the *Universities Act*.

### Role of Co-ordinating Council

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

(2) The Co-ordinating Council

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

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

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

examinations under the general supervision of the Co-ordinating Council.

(5) Subject to subsection (6), a person who is required to pass a bar admission examination shall also take a bar admission course in preparation for that examination.

(6) Notwithstanding anything in this Part, the Secretary, if he considers that special circumstances so warrant with respect to any person, may exempt that person from taking all or part of a bar admission course or of a bar admission examination or of both.

**Students-at-law** **37(1)** An applicant for admission as a student-at-law under section 39 or 41 shall obtain from the secretary of the Co-ordinating Council a certificate as to his compliance with section 39(1)(b) and (c) or section 41(1)(b) and (c), as the case may be.

(2) Subject to subsections (3) and (4), a student-at-law shall serve under articles in Alberta with an active member resident in Alberta.

(3) The Education Committee may permit a person admitted as a student-at-law under section 39(1) to serve part of the period under articles with

(a) the Chief Justice of Alberta or any other judge of the Court of Appeal,

(b) the Chief Justice of the Court of Queen's Bench or any other judge of that Court,

(c) the chief judge of the Provincial Court,

(d) the Chief Justice of Canada or any other judge of the Supreme Court of Canada,

(e) the Chief Justice of the Federal Court of Canada or any other judge of that Court, or

(f) the Chief Judge of the Tax Court of Canada or any other judge of that Court,

but in that event the Education Committee may direct that the total period to be served under articles by that person shall be a period exceeding one year that the Committee prescribes.

(4) Where the Secretary approves the admission of a person as a student-at-law, the Secretary, subject to the rules and with or without conditions, may determine that all or part of any period under articles served or to be served by that person in another province shall be considered as satisfying all or part of the



requirement for that person's service under articles in Alberta prescribed by or under this Part.

**Education  
Committee**

**38(1)** The Education Committee is established.

(2) The Benchers may appoint the members of the Education Committee, and the Committee may consist of

- (a) Benchers only, or
- (b) a majority of Benchers, with a minority consisting of
  - (i) members of the Society who are not Benchers, or
  - (ii) deans of the faculties of law of the University of Alberta and the University of Calgary.

**Enrolment of  
holders of  
Alberta degrees  
or equivalent**

**39(1)** The Secretary shall approve the admission of a person as a student-at-law if he proves to the Secretary's satisfaction and in accordance with the rules that

- (a) he is of good character and reputation,
- (b) he has
  - (i) received or is entitled to receive 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,
  - (ii) successfully completed 2 years, or the equivalent of 2 years, of a full program of studies leading to a degree at a university in Alberta, or
  - (iii) successfully completed, at a college or university recognized by a university in Alberta, studies that are, in the opinion of the Co-ordinating Council, the equivalent of 2 years of a full program of studies leading to a degree at a university in Alberta,

and

- (c) he has received or is entitled to receive a degree in law from a university in Alberta or has received or is entitled to receive a degree in law from a university outside Alberta that, 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 Secretary shall approve the enrolment of a person admitted as a student-at-law under subsection (1) if he proves to the Secretary's satisfaction and in accordance with the rules that he

- (a) is a Canadian citizen or is lawfully admitted into Canada for permanent residence,
- (b) is 18 years of age or older,
- (c) has served under articles for a continuous period of at least one year or, with the approval of the Education Committee, for periods totalling at least one year,
- (d) has passed a bar admission examination, and
- (e) if his degree in law was not granted by a university in Alberta, has passed any special examinations that the Co-ordinating Council may require him to take.

Enrolment of  
Canadian  
lawyers of 3  
years' standing

**40** The Secretary shall approve the enrolment of a person as a member of the Society if he proves to the Secretary's satisfaction and in accordance with the rules that he

- (a) is a Canadian citizen or is lawfully admitted into Canada for permanent residence,
- (b) is of good character and reputation,
- (c) is enrolled as a barrister or solicitor in any province or territory of Canada other than Alberta,
- (d) has been actively engaged in the practice of law in a province or territory of Canada other than Alberta for a period or periods totalling at least 3 years in the 5-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.

Enrolment of  
Canadian  
lawyers with  
less than 3  
years' standing

**41(1)** The Secretary shall approve the admission of a person as a student-at-law and shall prescribe the period of articles, not exceeding one year, to be served by that person if the person proves to the Secretary's satisfaction and in accordance with the rules that

- (a) he is of good character and reputation,

(b) he has

(i) received or is entitled to receive 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,

(ii) successfully completed 2 years, or the equivalent of 2 years, of a full program of studies leading to a degree at a university in Alberta, or

(iii) successfully completed, at a college or university recognized by a university in Alberta, studies that are, in the opinion of the Co-ordinating Council the equivalent of 2 years of a full program of studies leading to a degree at a university in Alberta,

(c) he has received or is entitled to receive a degree in law from a university in Alberta or has received or is entitled to receive a degree in law from a university outside Alberta that, in the opinion of the Co-ordinating Council, is equivalent to the degree of Bachelor of Laws granted by a university in Alberta,

(d) he is enrolled as a barrister or solicitor in any province or territory of Canada other than Alberta, and

(e) he has not been actively engaged in the practice of law in a province or territory of Canada other than Alberta for a period or periods totalling at least 3 years in the 5-year period immediately preceding his application for enrolment.

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

(a) is a Canadian citizen or is lawfully admitted into Canada for permanent residence,

(b) has served under articles for the period prescribed by the Secretary,

(c) has passed a bar admission examination, and

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

Enrolment of  
lawyers of 3  
years' standing  
in U.K., Eire,  
N.Z. or  
Australia

**42(1)** The Secretary shall approve the admission of a person as a student-at-law and shall prescribe the period of articles to be served by that person if the person proves to the Secretary's 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 3 years in the 5-year period immediately preceding his application for enrolment.

(2) The Secretary may waive the requirements of subsection (1)(c) in the case of an application by a solicitor of the Supreme Court of Judicature in England if 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 3 years in the 5-year period immediately preceding his application for admission.

(3) The Secretary shall approve the enrolment of a person admitted as a student-at-law under subsection (1) if he proves to the Secretary's satisfaction and in accordance with the rules that he

(a) is a Canadian citizen or is lawfully admitted into Canada for permanent residence,

(b) has passed a bar admission examination,

(c) 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, has passed any special examinations that the Co-ordinating Council may require him to take, and

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

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

Review of  
Secretary's  
decision

**43(1)** Before making a decision under section 37(4), 39, 40, 41 or 42, the Secretary may refer the matter to the Education Committee, who, with or without 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 under section 37(4), 39, 40, 41 or 42 may appeal to the Benchers, who may confirm the decision or direct the Secretary to vary or reverse it.

Admission to  
bar and  
enrolment as  
member

**44(1)** When the Secretary has approved the enrolment of a person under section 39, 40, 41 or 42 or the Benchers have approved the enrolment of a person under section 45, 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.

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

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

(b) the official oath prescribed by the *Oaths of Office Act*, and

(c) any other oath prescribed by the rules.

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

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

(5) A person becomes a member when a certificate in respect of that person is issued under subsection (4).

(6) On receiving a certificate issued in respect of a member under subsection (4), the Secretary shall enter the member's name in the roll in accordance with the rules.

Faculty member  
or Society  
employee

**45(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 is lawfully admitted into Canada for permanent residence,

- (b) is of good character and reputation,
  - (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 for a continuous period of at least 2 years immediately preceding the date of his application for enrolment, or
    - (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,
  - (d) has received a degree in law from a university in Alberta or has received a degree in law that, in the opinion of the Coordinating Council, is equivalent to the degree of Bachelor of Laws granted by a university in Alberta, and
  - (e) has passed any examinations and has fulfilled any other requirements prescribed by the Education Committee.
- (2) A person enrolled as a member as a result of a Benchers' resolution made before the coming into force of this subsection ceases to be a member of the Society on ceasing to be a full-time member of the Faculty of Law at a university in Alberta or on ceasing to be a full-time employee of the Society unless before that time
- (a) the Education Committee has approved the continuation of that person's membership under this section, or
  - (b) the member has applied to the Secretary for the approval of the Education Committee of the continuation of that person's membership under this section.
- (3) If a person applies under subsection (2)(b) for approval of the continuation of his membership under this section, the Education Committee may
- (a) approve the continuation of the applicant's membership, or
  - (b) order that the applicant's name be struck off the roll if the Committee determines that the applicant has failed to fulfil the requirements prescribed by the Committee as conditions to the applicant's continued membership.
- (4) The Education Committee may prescribe the requirements to be fulfilled by an applicant before its approval is given to the continuation of the applicant's membership under subsection (2)(a)

or (3)(a) and shall not give the approval unless it is satisfied that the applicant has fulfilled the requirements.

### **Authorizations**

Authorizations  
to outside  
counsel

**46(1)** Subject to the rules, the Secretary may authorize an individual enrolled as a member of a law society in any province or territory of Canada other than Alberta

(a) to act as counsel in specified proceedings before

(i) the Court of Appeal,

(ii) the Court of Queen's Bench,

(iii) the Surrogate Court,

(iv) the Provincial Court, or

(v) a judge or master of any of those Courts,

or

(b) to act as a solicitor in any specified matter in Alberta if that individual would be in contravention of section 103(1) if he did not hold an authorization under this section.

(2) The Benchers may make rules respecting

(a) the requirements to be met by an applicant before an authorization is granted under this section;

(b) the fees payable to the Society in respect of the granting or renewal of authorizations;

(c) the granting of authorizations;

(d) the conditions to which an authorization or any class of authorization is subject, and the powers of the Secretary to impose conditions on authorizations in particular cases;

(e) the rights and duties of persons to whom authorizations are granted;

(f) appeals from a refusal to grant an authorization or from any decision made pursuant to the rules under this section;

(g) the suspension, revocation or expiration of authorizations;

(h) the disciplining of the holder of an authorization for a contravention of the rules under this section or of a condition to which the authorization is subject;

(i) the circumstances in which or the conditions on which a person is, for the purposes of this Act, deemed to hold an authorization under this section.

(3) Rules under subsection (2)(h) may, without limitation, provide for

(a) proceedings relating to the investigation and adjudication of contraventions;

(b) the application of any or all of the provisions of sections 64 to 67 to proceedings referred to in clause (a);

(c) the imposition of punishment for contraventions in the form of suspension or revocation of the authorization, with or without the imposition of pecuniary penalties or costs or both;

(d) appeals from adjudications to the Court of Appeal.

(4) If

(a) an individual holds or is deemed to hold an authorization under this section, and

(b) that individual is a voting shareholder or employee of a law corporation or other corporation incorporated in the province or territory where that individual is enrolled and the corporation is comparable to a professional corporation under Part 8,

the authorization extends to that corporation for the purposes of this section and section 103(1), but only in relation to services provided by that individual on behalf of the corporation.

### **PART 3**

#### **CONDUCT OF MEMBERS**

##### **Definitions**

**47(1)** For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that

(a) is incompatible with the best interests of the public or of the members of the Society, or

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



is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

(2) In this Part,

(a) "Board of Examiners" means a Board of Examiners appointed pursuant to section 70;

(b) "conduct" in respect of a member includes any matter regarding the acts of the member or the conduct of the member;

(c) "costs of the proceedings" or "costs" means, with reference to any matter that is the subject of proceedings under this Part, the costs determined in accordance with the rules as being attributable to those proceedings;

(d) "hearing record" means

(i) a transcript of the proceedings at a hearing before a Hearing Committee or a commissioner appointed by an order under section 66(4),

(ii) a transcript of any recording entered as an exhibit at a hearing before a Hearing Committee or a commissioner,

(iii) any exhibits entered in evidence before a Hearing Committee or a commissioner that the Hearing Committee considers essential for a proper understanding of the evidence adduced at the hearing, or copies of those exhibits, and

(iv) a statement of admission of guilt, if any, referred to in section 57, or a copy of that statement;

(e) "hearing report" means the report of a Hearing Committee referred to in section 71(1) and a dissenting report referred to in section 71(2);

(f) "investigation" means an investigation made on the direction of the Secretary or the Conduct Committee that relates to the conduct of a member that is the subject of proceedings under Division 1.

(3) For the purposes of this Act, proceedings in respect of a member's conduct shall be considered as commencing under Division 1

(a) when a complaint respecting the conduct is received by the Secretary or when the conduct is first brought to the attention of the Secretary otherwise, or

(b) when the Conduct Committee makes its initial decision under section 55(7) in a case to which that subsection applies.

(4) Except as otherwise provided, this Part and the rules under this Part apply to students-at-law.

(5) For the purposes of applying subsection (4) and without limiting the generality of that subsection,

(a) references to a member include a student-at-law;

(b) references to the disbarment of a member shall, in relation to a student-at-law, be read as references to the termination of the registration of the student-at-law;

(c) references to the suspension of the membership of a member shall, in relation to a student-at-law, be read as references to the suspension of the registration of the student-at-law;

(d) references to the reinstatement of the membership of a former member shall, in relation to a former student-at-law, be read as references to the reinstatement of the registration of the former student-at-law.

(6) Proceedings may be taken under this Part against a member with respect to the member's conduct during any period when the member was a student-at-law.

(7) Proceedings may be commenced, maintained and concluded under Division 1 or section 80 or 81 with respect to a member's conduct whether or not that conduct has been, is or subsequently becomes the subject of proceedings under any other provision of this Act or under any other law in force in Alberta or outside Alberta.

Commencement  
of order

**48(1)** If an order of disbarment is made under this Part, the person against whom the order is made ceases to be a member when the order is made unless a future effective date is specified in the order.

(2) If an order is made under this Part for the suspension of the membership of a member, the suspension commences when the order is made unless a future effective date is specified in the order.

Establishment  
of Committees

**49(1)** The following committees are established:

(a) the Conduct Committee, the members of which are appointed by the Benchers, and which shall consist of

- (i) Benchers only, or
  - (ii) a majority of Benchers and a minority of members of the Society who are not Benchers;
- (b) the Conduct Review Committee, the members of which are appointed by the Benchers, and which shall consist of
- (i) Benchers only, or
  - (ii) a majority of Benchers and a minority of members of the Society who are not Benchers;
- (c) the Appeal Committee, consisting of
- (i) the lay Benchers, and
  - (ii) at least 3 other Benchers appointed by the Benchers.

(2) Notwithstanding section 19(3), a quorum of Benchers at any proceedings before the Benchers under this Part, other than proceedings under section 60, shall consist of a panel of no fewer than 7 Benchers.

**Rules of  
Benchers**

**50(1) The Benchers may make rules**

- (a) respecting the powers and duties of persons conducting investigations;
- (b) respecting the proceedings of the Conduct Committee, the Conduct Review Committee and the Appeal Committee and the powers and duties of those Committees and of their chairmen and vice-chairmen;
- (c) respecting the powers, duties and proceedings of a Hearing Committee;
- (d) respecting the powers and duties of the Secretary and of members and other persons in relation to any proceedings under this Part;
- (e) respecting the powers, duties and proceedings of the Benchers under this Part;
- (f) respecting the powers, duties and proceedings of a Board of Examiners, and respecting any matter pertaining to courses of study that may be specified by the Conduct Review Committee for the purposes of section 70;
- (g) respecting the determination of costs that may be attributed to proceedings under this Part and the powers and duties of a

Hearing Committee or the Benchers, as the case may be, in making orders under this Part against a member or former member for the payment of all or part of those costs;

(h) respecting any other matter incidental to the administration of this Part.

(2) Rules under subsection (1)(g) may, without limitation, include in the classes of costs attributable to proceedings under this Part reasonable costs for the indemnification of the Society for the cost of services performed in connection with those proceedings by any of its salaried employees.

### **Division 1 Proceedings Respecting Conduct Deserving of Sanction**

Review by  
Secretary

**51**(1) Any conduct of a member that comes to the attention of the Society, whether by way of a complaint or otherwise, shall first be reviewed by the Secretary.

(2) The Secretary, in the course of a review under subsection (1), may do either or both of the following:

(a) require the complainant or the member concerned to answer any inquiries or to furnish any records that the Secretary considers relevant for the purpose of the review;

(b) direct that the conduct be investigated.

(3) On the completion of a review under subsection (1), the Secretary shall either

(a) direct that the matter be dismissed, or

(b) refer the matter, together with his report respecting the review, to the Conduct Committee.

(4) If the conduct of a member comes to the attention of the Society by way of a complaint, the Secretary shall endeavour to resolve the complaint but shall perform his duties under subsections (1) to (3) whether the complaint is resolved or not.

Appeal to  
Appeal  
Committee

**52**(1) If a direction is made by the Secretary under section 51(3)(a) dismissing a complaint, the complainant may appeal the direction to the Appeal Committee in accordance with the rules.

(2) On hearing the appeal, the Appeal Committee shall either

- (a) direct that the complaint be dismissed, or
- (b) refer the matter to the Conduct Committee.

**Investigation**

**53(1)** An investigation may be conducted by an officer or employee of the Society or by a person engaged by or on behalf of the Society for that purpose.

(2) An investigator may direct the member concerned or any other member

- (a) to answer any inquiries the investigator may have relating to the investigation,
- (b) to produce to the investigator any records or other property in the member's possession or under the member's control that are or may be related in any way to the investigation,
- (c) to give up possession of any record referred to in clause (b) for the purpose of allowing the investigator to take it away, make a copy of it and return it within a reasonable time after receiving it, or
- (d) to attend before the investigator for the purpose of complying with clause (a), (b) or (c).

(3) The Society may apply to the Court of Queen's Bench for

- (a) an order directing the member concerned or any other member to comply with all or part of subsection (2);
- (b) an order directing any person
  - (i) to produce to the investigator any records or other property in the person's possession or under the person's control that are or may be related in any way to the investigation, or
  - (ii) to give up possession of any record referred to in subclause (i) for the purpose of allowing the investigator to take it away, make a copy of it and return it within a reasonable time after receiving it;
- (c) an order directing any person to attend before the investigator to answer any inquiries the investigator may have relating to the investigation.

(4) An application for an order under subsection (3) may be made without notice to the other party if the Court is satisfied that it is proper to make the order in the circumstances.

(5) A person may comply with a direction under subsection (2)(b) or (3)(b)(i) by providing to the investigator copies of the records that are directed to be produced.

(6) An investigator may investigate any other conduct of the member concerned that arises in the course of the investigation.

(7) An investigator shall make a report respecting the investigation to whoever directed that the investigation be made.

Review by  
Conduct  
Committee

**54(1)** The Conduct Committee shall review any conduct of a member referred to it by the Secretary under section 51 or by the Appeal Committee under section 52.

(2) The Conduct Committee, in the course of its review under subsection (1), may do either or both of the following:

(a) require the complainant or the member concerned to answer any inquiries or to produce any records that the Committee considers relevant for the purpose of the review;

(b) direct that the conduct be investigated or further investigated.

(3) On completing its review under subsection (1), the Conduct Committee shall either

(a) direct that the matter be dismissed, or

(b) direct that the conduct be dealt with by a Hearing Committee.

Conduct  
Review  
Committee

**55(1)** The Conduct Committee, at any time during or after a review by it under section 54 of a member's conduct, may direct the Conduct Review Committee to carry out a general review and assessment of the member's conduct in addition to the review under section 54.

(2) On being directed to carry out a review and assessment under this section, the Conduct Review Committee may delegate the carrying out of any aspect of the review and assessment to a subcommittee consisting of one or more persons, whether they are members of the Conduct Review Committee or of the Society or not, and in that case, the subcommittee shall submit a written report containing its findings and recommendations to the Conduct Review Committee.

(3) The Conduct Review Committee, in the course of a review and assessment carried out under this section, may require the member concerned to answer any inquiries or produce any records

or other property that the Committee considers relevant for the purposes of the review and assessment.

(4) After concluding its review and assessment, the Conduct Review Committee may

(a) make recommendations to the member concerned that it considers will, if followed, improve the conduct of the member in relation to the member's practice as a barrister and solicitor;

(b) obtain the member's undertaking respecting restrictions on the member's practice as a barrister and solicitor or the conditions on which the member's practice as a barrister and solicitor will be carried on.

(5) The Conduct Review Committee shall submit a report to the Conduct Committee containing the results of a review and assessment carried out under this section and any recommendations made to the member under subsection (4).

(6) The Conduct Review Committee may from time to time inquire into the manner in which the member has followed or is following the recommendations made to him under subsection (4) and, on being satisfied that the member has not been or is not following the recommendations, the Conduct Review Committee may submit a further report on the subject to the Conduct Committee.

(7) On receiving a report of the Conduct Review Committee, the Conduct Committee may, with respect to any conduct of the member that is mentioned in the report,

(a) direct that an investigation be made into the conduct and, on receiving the report of the investigator, direct that the conduct be dealt with by a Hearing Committee, or

(b) direct that the conduct be dealt with by a Hearing Committee.

Hearing  
Committee

**56(1)** If the Conduct Committee directs that the conduct of a member is to be dealt with by a Hearing Committee,

(a) the Secretary, on being informed of the direction, shall give the member notice of the hearing and of the acts or matters regarding the member's conduct to be dealt with, with reasonable particulars of each act or matter,

(b) the chairman of the Conduct Committee shall appoint a Hearing Committee consisting of 3 or more Benchers other than the President or any Benchers disqualified from sitting on the Committee, and

(c) the Hearing Committee so appointed shall hold a hearing respecting the member's conduct.

(2) A Benchler who is a member of the Conduct Committee, the Conduct Review Committee or the Appeal Committee is not disqualified from being appointed to or sitting on a Hearing Committee unless that Benchler participated in proceedings of the Conduct Committee, Conduct Review Committee or Appeal Committee, as the case may be, relating to the same conduct that is or is to be the subject of the hearing by the Hearing Committee.

Admission  
of guilt

**57**(1) Subject to the rules, a member may, at any time after the commencement of proceedings under this Division regarding the member's conduct and before a Hearing Committee makes its findings in respect of the member's conduct, submit to the Secretary a statement of admission of guilt of conduct deserving of sanction in respect of all or any of the acts or matters that are the subject of the proceedings.

(2) A statement of admission of guilt shall not be acted on until it is in a form acceptable to

(a) the Conduct Committee, if the statement is submitted before the day on which a Hearing Committee is appointed to conduct a hearing respecting the matter, or

(b) the Hearing Committee, if the statement is submitted on or after the day on which the Hearing Committee is appointed.

(3) If a statement of admission of guilt is accepted under subsection (2)(a), the chairman of the Conduct Committee shall appoint a Hearing Committee consisting of 3 or more Benchlers other than the President or any Benchlers disqualified from sitting on the Committee.

(4) If a statement of admission of guilt is accepted, each admission of guilt in the statement in respect of any act or matter regarding the member's conduct is deemed for all purposes to be a finding of

(a) the Hearing Committee appointed under subsection (3), or

(b) the Hearing Committee that accepted the statement,

as the case may be, that the conduct of the member is conduct deserving of sanction.

(5) The Hearing Committee appointed under subsection (3) or the Hearing Committee that accepted the statement, as the case may be, shall proceed with a hearing for the purpose of making its



determination, if any, under section 68(4), its order under section 69 and its order, if any, under section 70.

**Resignation  
in lieu**

**58(1)** Subject to the rules, a member whose conduct is the subject of proceedings under this Division may at any time during the proceedings apply to the Benchers for their approval of his resignation as a member in lieu of having the proceedings continue.

(2) The Benchers may reject the application or, if they accept it,

(a) may make their acceptance of the application subject to any conditions the Benchers consider appropriate in the circumstances, and

(b) shall give directions as to the information to be entered in the roll in relation to the member's resignation.

(3) If a person resigns as a member pursuant to this section, then, subject to any conditions prescribed by the Benchers pursuant to subsection (2)(b), proceedings under this Division shall be discontinued in respect of the conduct that was the subject of the proceedings and to which the resignation relates.

**Discontinuance  
of proceedings**

**59(1)** If at any time before a Hearing Committee has commenced its hearing in respect of the conduct of a member the Conduct Committee is satisfied that the circumstances of the conduct do not justify the continuation of proceedings under this Part respecting that conduct, the Conduct Committee may, by a resolution setting out the reasons for its decision, discontinue the proceedings under this Part in respect of that conduct.

(2) If a Hearing Committee has commenced its hearing in respect of the conduct of a member and is satisfied that the circumstances of the conduct do not justify the continuation of its proceedings respecting that conduct, the Hearing Committee may, by a resolution setting out the reasons for its decision, discontinue its proceedings in respect of that conduct.

(3) If the proceedings discontinued under subsection (1) or (2) in respect of any conduct were commenced as a result of a complaint, the Secretary shall notify the complainant of the discontinuance and shall give the complainant a copy of the resolution of the Conduct Committee or the Hearing Committee, as the case may be.

(4) If proceedings are discontinued under subsection (1) or (2), no new or further proceedings shall be taken under this Part in respect of the same conduct that was the subject of the discontinued proceedings without with the approval of the Benchers.

Suspension  
during  
proceedings

**60**(1) If the conduct of a member is the subject of proceedings under this Division, the Benchers, without prior notice or hearing, may order the suspension of the membership of the member at any stage of those proceedings if the Benchers consider the suspension warranted in the circumstances having regard to the nature of the conduct.

(2) An order of suspension under subsection (1)

(a) may be terminated by the Benchers at any time on application or on their own motion;

(b) may be terminated by a Hearing Committee on application or on its own motion if it considers the continuation of the suspension unwarranted in the circumstances or when it makes a finding under section 68(1) that the conduct of the member is not conduct deserving of sanction;

(c) terminates on the discontinuance of the proceedings against the member under section 59(1) or (2) unless it has been sooner terminated under to clause (a) or (b) of this subsection.

(3) If a Hearing Committee is directed to deal with a member's conduct and considers it warranted in the circumstances to do so having regard to the nature of the conduct, the Hearing Committee, at any time after the direction is made and without prior notice or hearing, may order the suspension of the membership of the member pending the making of the Committee's decision under section 68(1) and, if the Committee finds the member guilty of conduct deserving of sanction, pending the making of the Committee's order under section 69.

(4) An order of suspension under subsection (3)

(a) may be terminated by the Hearing Committee that made it or by the Benchers, on application or on the Committee's or the Benchers' own motion;

(b) terminates on the discontinuance of the proceedings against the member pursuant to section 59(1) or (2) unless it has been sooner terminated under clause (a) of this subsection.

(5) A termination of a suspension by or under subsection (2) or (4) does not preclude the making of another order under this section for the suspension of the membership of the same member in respect of the same conduct.

Representation  
by counsel

**61** The Society and the member whose conduct is the subject of proceedings under this Division before the Appeal Committee, before the Conduct Review Committee or any of its

	subcommittees, before a Hearing Committee or before the Benchers may be represented by counsel at those proceedings.
Amendment of notice	<p><b>62</b> Subject to the rules, a Hearing Committee may at any time during a hearing before it</p> <p>(a) amend any notice given to the member under section 56(1)(a), or</p> <p>(b) deal with any other conduct of the member that arises in the course of the hearing,</p> <p>but in either event the Committee shall declare its intention to amend the notice or deal with the other conduct and shall permit the member sufficient opportunity to prepare his answer respecting the amendment or the other conduct.</p>
Membership in Committee continues	<p><b>63(1)</b> Subject to subsection (2), a member of a Hearing Committee who at any time after the commencement of a hearing of the Committee</p> <p>(a) ceases to be a Bencher, or</p> <p>(b) becomes the President</p> <p>may continue to act as a member of the Hearing Committee in all subsequent proceedings of the Hearing Committee.</p> <p>(2) A person ceases to be a member of a Hearing Committee if</p> <p>(a) that person ceases to hold office as a Bencher because of section 17, or</p> <p>(b) that person's appointment as a member of the Hearing Committee is revoked by the Conduct Committee because that person is under a disability or is otherwise unable to continue to act as a member of the Hearing Committee.</p> <p>(3) If after the commencement of a hearing the membership of a Hearing Committee is reduced, the remaining members of the Hearing Committee may continue to act as the Hearing Committee if at least 2 members of the Committee remain.</p>
Burden of proof	<b>64</b> When it is established or admitted in any proceedings under this Division that a member has received any money or other property in trust, the burden of proof that the money or other property has been properly dealt with lies on the member.
Evidence	<b>65(1)</b> In proceedings under this Division, a Hearing Committee, the Conduct Review Committee or the Appeal Committee

**Witness**

(a) may hear, receive and examine evidence in any manner it considers proper, and

(b) is not bound by any rules of law concerning evidence in judicial proceedings.

(2) A Benchers who is a member of a Committee referred to in subsection (1) may administer an oath to a witness who is to give evidence before that Committee.

**66(1)** A member whose conduct is the subject of a hearing before a Hearing Committee is a compellable witness in proceedings before that Committee.

(2) A witness in proceedings before a Hearing Committee may be examined on oath on all matters relevant to the hearing and shall not be excused from answering any question on the ground that the answer

(a) might tend to incriminate the witness,

(b) might subject the witness to punishment under this Part, or

(c) might tend to establish the witness's liability

(i) to a civil proceeding at the instance of the Crown or of any other person, or

(ii) to prosecution under any Act,

but the answer so given, if it tends to incriminate the witness, subject him to punishment or tend to establish his liability, shall not be used or received against the witness in any other proceedings under this or any other Act except as provided under subsection (3).

(3) An answer referred to in subsection (2) may be used or received against the witness who gave it in

(a) other proceedings against the witness under this Division,

(b) proceedings under section 86 in respect of a claim against the Assurance Fund, or

(c) an action against the witness under section 88 or 94(2).

(4) For the purpose of obtaining the testimony in proceedings before a Hearing Committee of a witness who is out of Alberta, the Court of Queen's Bench on an ex parte application by the Society may direct the issuing of a commission for the obtaining

of the evidence of the witness, and the commission shall be issued and the evidence taken pursuant to the Alberta Rules of Court.

(5) The Secretary, the Society's counsel, the member whose conduct is the subject of a hearing before a Hearing Committee or the member's counsel may issue a notice to a person requiring that person to attend as a witness before the Hearing Committee at the time and place stated in the notice and stating the records, if any, that the person is required to produce at that hearing.

(6) A witness, other than the member whose conduct is the subject of a hearing before a Hearing Committee, who has been served with a notice to attend or a notice for the production of records under subsection (5) is entitled to be paid the same fees as are payable to witnesses in an action in the Court of Queen's Bench.

**Attendance of  
witnesses**

**67(1)** If a person has been served with a notice referred to in section 66(5) and

- (a) fails to attend as a witness before the Hearing Committee in compliance with the notice,
- (b) fails to produce any records before the Hearing Committee in compliance with the notice,
- (c) refuses to be sworn as a witness before the Hearing Committee, or
- (d) refuses to answer any question put to him in a hearing before the Hearing Committee after the chairman of the Committee has directed him to do so,

the Court of Queen's Bench, on application, may make an order requiring that person to do what that person has failed or refused to do.

(2) The Hearing Committee, on proof of service of a notice referred to in section 66(5) on the member whose conduct is the subject of the hearing, may

- (a) proceed with the hearing in the absence of the member, and
- (b) act and report on the member's conduct in the same way as if the member were in attendance.

**Finding by  
Hearing  
Committee**

**68(1)** On completing its hearing, a Hearing Committee shall, in respect of each act or matter regarding the member's conduct that was the subject of the hearing, make a finding as to whether the

member is or is not guilty of conduct deserving of sanction in respect of that act or matter.

(2) If the Hearing Committee makes a finding under subsection (1) that the member is not guilty of conduct deserving of sanction, no further proceedings shall be taken under this Part in respect of the act or matter to which the finding relates.

(3) If the Hearing Committee makes a finding under subsection (1) that the member is guilty of conduct deserving of sanction, the Committee,

(a) on application by the counsel for the Society, shall receive the report of the Secretary showing the record, if any, of the member relating to previous proceedings against the member under this Part or the predecessors of this Part, and

(b) if the Committee is requested to do so by a member of the Committee, by the member or the member's counsel or by the counsel for the Society, shall hear representations as to whether or not the member's conduct arose from incompetence.

(4) If the Hearing Committee hears representations under subsection (3)(b), the Committee may make a determination that the member's conduct arose from incompetence.

(5) On receiving a report and on hearing the representations, if any, under subsection (3) and on making a determination, if any, under subsection (4), the Hearing Committee shall hear the representations, if any, by or on behalf of the member and by the counsel for the Society regarding the order to be made by the Committee under section 69 and, where applicable, the order to be made by the Committee under section 70.

Order of the  
Hearing  
Committee

69(1) If a Hearing Committee finds that a member is guilty of conduct deserving of sanction, the Committee shall either

(a) order that the member be disbarred,

(b) order that the membership of the member be suspended during the period prescribed by the order, or

(c) order that the member be reprimanded.

(2) In addition to an order under subsection (1), the Hearing Committee may make either or both of the following orders:

(a) an order requiring the payment to the Society, for each act or matter regarding the member's conduct in respect of which the Committee has made a finding of guilt, of a penalty of not more than \$10 000, within the time prescribed by the order;

(b) an order requiring the payment to the Society of all or part of the costs of the proceedings within the time prescribed by the order.

(3) A suspension order made under subsection (1)(b) may be terminated by the Benchers on their own motion or, subject to the rules, on application.

(4) If the Hearing Committee makes an order of suspension or reprimand under subsection (1), it may also make an order directing that the member is not ineligible for nomination or election as a Benchers by reason of the finding of guilt on which the order is based.

(5) The Society may, by an action in debt, recover any penalties or costs payable under an order made pursuant to subsection (2) from the person required to pay them.

**70(1)** If the Hearing Committee determines that the conduct of the member arose from incompetence and makes an order of reprimand under section 69(1)(c) in respect of that conduct, the Hearing Committee, in addition to making the order of reprimand and any other order under section 69(2), may make one or more of the following orders:

(a) an order suspending the membership of the member or imposing conditions respecting the member's practice as a barrister and solicitor until

(i) the member has completed, to the satisfaction of the Conduct Review Committee, a course or courses of study specified by that Committee, or

(ii) the member has appeared before a Board of Examiners and has satisfied the Board that he is competent to engage in practice as a barrister and solicitor generally or in any specified field or fields of law,

or both;

(b) an order requiring the member

(i) to complete successfully a course or courses of study specified by the Conduct Review Committee within the period of time prescribed by that Committee, or

(ii) to appear before a Board of Examiners within the period prescribed by the Hearing Committee and satisfy the Board that the member is competent to engage in practice as a barrister and solicitor generally or in any specified field or fields of law,

or both;

(c) an order suspending the membership of the member until the member has appeared before a Board of Examiners and has satisfied the Board that the member's competence to practise as a barrister and solicitor is not adversely affected by any physical or mental disability or addiction to alcohol or drugs;

(d) an order requiring the member to appear before a Board of Examiners within the period of time prescribed by the order and to satisfy the Board that the member's competence to practise as a barrister and solicitor is not adversely affected by any physical or mental disability or addiction to alcohol or drugs;

(e) an order suspending the membership of the member or imposing conditions respecting the member's practice as a barrister and solicitor until the member has given the Secretary an undertaking in writing, in a form approved by the Conduct Review Committee, that the member's practice as a barrister and solicitor will be carried on subject to the conditions imposed by that Committee.

(2) The conditions that may be imposed in an order under subsection (1)(a) or (e) or in an undertaking given under subsection (1)(e) may, without limitation, consist of or include any of the following:

(a) a condition that the member's practice be restricted to any specified field or fields of law;

(b) a condition that the member be prohibited from practising in any specified field or fields of law;

(c) a condition that the member's practice be carried on under the direct supervision of one or more of the active members named in the order or undertaking.

(3) Subsections (1) and (2) do not apply to a student-at-law.

(4) If the Hearing Committee determines that the conduct of a student-at-law arose from incompetence and makes an order of reprimand under section 69(1)(c) in respect of that conduct, the Hearing Committee, in addition to the order of reprimand and any other order under section 69(2), may make one or more of the following orders against the student-at-law:

(a) an order requiring the student-at-law

(i) to complete successfully a course or courses of study designated by the Conduct Review Committee within the period of time prescribed by that Committee, or



(ii) to appear before a Board of Examiners and satisfy the Board that he is competent to continue his articles;

(b) an order suspending the registration of the student-at-law until

(i) the student-at-law has completed, to the satisfaction of the Conduct Review Committee, a course or courses of study specified by the Conduct Review Committee, or

(ii) the student-at-law has appeared before a Board of Examiners and has satisfied the Board that he is competent to resume his articles,

or both;

(c) an order suspending the registration of the student-at-law until the student-at-law has appeared before a Board of Examiners 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.

(5) A Board of Examiners shall be appointed by the chairman of the Hearing Committee, the chairman of the panel of Benchers or the Court of Appeal, as the case requires.

Written report  
by Hearing  
Committee

71(1) On making its order under section 69 and its order, if any, under section 70, a Hearing Committee shall

(a) prepare a written report respecting

(i) its finding under section 68(1),

(ii) its determination, if any, under section 68(4), and

(iii) its order under section 69 and its order, if any, under section 70,

and containing the reasons for its decisions in respect of the finding, determination and order, and

(b) give a copy of the report to the chairman of the Conduct Committee and to the Secretary.

(2) If a Hearing Committee has found the member guilty of conduct deserving of sanction but any of its decisions in respect of its finding, determination or order is not unanimous, the dissenting member or members of the Committee shall

(a) prepare a written report respecting the dissent and containing the reasons for the dissent, and

(b) give a copy of the report to the chairman of the Conduct Committee and to the Secretary.

(3) The Secretary, on receipt of a report under subsection (1) or (2), shall within a reasonable time

(a) give a copy of the report to the member or the member's counsel, and

(b) send to the complainant a copy of a summary of the report.

(4) If an appeal is taken by the member to the Benchers under this Part, the Secretary shall, at the expense of the member, arrange for the preparation of the hearing record of the hearing.

(5) Notwithstanding subsection (4), the Benchers may

(a) waive the payment of all or part of the cost of the preparation of the hearing record, or

(b) in the event that the appeal is wholly or partly successful, direct that all or part of the cost of preparation of the hearing record be repaid to the member or be applied to reduce the amount of any penalties or costs otherwise payable by the member.

**Appeal to  
Benchers**

**72(1)** If the Hearing Committee makes

(a) an order of disbarment under section 69(1)(a), or

(b) an order under section 69(1)(b) that the membership of a member be suspended during a prescribed period,

the member may appeal to the Benchers in accordance with this section.

(2) An appeal to the Benchers under this section may relate to all or any of the following:

(a) any finding of guilt by the Hearing Committee under section 68(1) on which the order under section 69(1)(a) or (b) was based;

(b) a determination by the Hearing Committee under section 68(4) that the member's conduct arose from incompetence;

(c) all or any part of an order made by the Hearing Committee against the member pursuant to section 69.

(3) An appeal under this section shall be commenced by filing a notice of appeal with the Secretary within the 30-day period after

the date on which a copy of the hearing report was given to the member or the member's counsel.

(4) If an appeal is taken to the Benchers under this section, the Secretary shall

(a) serve a notice on the member or the member's counsel showing the time and place at which the hearing report and the hearing record are to be considered by the Benchers and stating that the member may appear before the Benchers at that time and place in person or by the member's counsel,

(b) serve on the member concerned or the member's counsel a copy of the hearing report and the hearing record, and

(c) give copies of the hearing report and the hearing record to those Benchers who, to the Secretary's knowledge, are expected to form the panel of Benchers who will hear the matter or who may be included in that panel.

(5) If it is not reasonably practical for the Secretary to serve or give a copy of an exhibit or a recording forming part of the hearing record, the Secretary shall

(a) with the authorization of the President, make the original exhibit available for examination and inspection, or the recording for listening, by the member or the member's counsel prior to the hearing of the appeal, and

(b) make the original exhibit available for examination and inspection, or the recording for listening, by the Benchers at the hearing of the appeal.

(6) After commencing the appeal under this section and on notice to the Secretary, the member may apply to the Hearing Committee for a stay of the operation of the Hearing Committee's order under section 69(1)(a) or (b) or (2), as the case may be, pending the conclusion of the appeal to the Benchers.

(7) The Hearing Committee may make an order applied for under subsection (6) with or without imposing conditions on the member, but the Committee shall refuse to make the order if it is satisfied that the conduct of the member involves the conversion or misappropriation of property or that, having regard to the nature of the member's conduct, it is proper to refuse to make the order.

Hearing by  
Benchers

**73(1)** If an appeal is taken to the Benchers under section 72, the Benchers shall, as soon as practicable and subject to compliance with section 72, hold a hearing to

(a) consider the hearing report and the hearing record, and

- (b) hear any representations of the member or the member's counsel respecting the appeal.
- (2) A Benchers is qualified to participate in or vote at proceedings before the Benchers under this section unless that Benchers
  - (a) was a member of the Hearing Committee from which the appeal is taken,
  - (b) participated as a member of the Conduct Committee, the Conduct Review Committee or the Appeal Committee in proceedings of that Committee relating to the same matter that was the subject of the hearing by the Hearing Committee from which the appeal is taken,
  - (c) did not receive a copy of the hearing report and the hearing record before the hearing commenced, or
  - (d) is otherwise disqualified.
- (3) A member of a panel of Benchers hearing an appeal under this section may continue to act until the appeal is concluded notwithstanding that the member ceases to be a Benchers after the commencement of the hearing unless the member ceases to hold office as a Benchers because of section 17.
- (4) If after the commencement of a hearing of an appeal under this section the membership of the panel of Benchers is reduced, the remaining members of the panel may continue to act as the panel for the purposes of concluding the appeal if at least 5 members of the panel remain.
- (5) The commencement of a hearing under this section may be adjourned from time to time
  - (a) by the Benchers, or
  - (b) by a committee of the Benchers pursuant to the rules.
- (6) The panel of Benchers holding a hearing under this section may, on application for leave to receive fresh evidence, enquire into the nature of that evidence and, on granting leave, may
  - (a) direct that all or part of the fresh evidence will be received by the panel,
  - (b) direct the Hearing Committee from which the appeal was taken to hold a further hearing to hear the fresh evidence, or
  - (c) quash a finding of guilt made by the Hearing Committee and direct that the conduct that was the subject of the finding

be dealt with at a new hearing by a different Hearing Committee.

(7) If the panel of Benchers receives fresh evidence pursuant to subsection (6)(a), sections 65 to 67 apply with respect to the proceedings of the panel at which the fresh evidence is received, and for that purpose a reference in those sections to a Hearing Committee shall be read as a reference to the panel.

(8) If the panel of Benchers directs a further hearing before the Hearing Committee pursuant to subsection (6)(b),

(a) the Hearing Committee shall receive evidence at the further hearing in accordance with the instructions and conditions given or imposed by the panel;

(b) the Hearing Committee may revoke any finding of guilt or any determination respecting incompetence previously made by it or amend or replace any order made by it under section 69 or 70;

(c) section 71 applies with respect to the further hearing and the hearing record of the further hearing;

(d) section 72(4)(b) and (c) and (5) apply with respect to the hearing report and hearing record of the further hearing;

(e) a panel of the Benchers shall reconvene the hearing of the appeal and shall dispose of the appeal having regard also to the hearing report and hearing record of the further hearing.

(9) If the panel of Benchers directs a new hearing before a different Hearing Committee pursuant to subsection (6)(c),

(a) section 56 applies to the new hearing as if that section referred to the Benchers rather than to the Conduct Committee, and

(b) each member of the panel is disqualified from being a member of the new Hearing Committee but is not disqualified merely because of his membership on the panel from being a member of the panel of Benchers that hears any appeal from the new Hearing Committee.

(10) If a meeting of the panel of Benchers is held after the conclusion of a hearing under this section to consider its decision on the appeal, the only persons who may be present at the meeting are

(a) the members of the panel, and

(b) the Secretary, or some other person designated by the panel, only for the purpose of recording minutes of the meeting.

(11) The Benchers may make an order dismissing the appeal, with or without a further order requiring the member to pay to the Society all or part of the costs of the proceedings relating to the appeal, if

(a) neither the member nor the member's counsel appears before the Benchers at the time and place at which the hearing is to be held and the Benchers determine that the Secretary has complied with section 72(4)(a) and (b),

(b) the member or the member's counsel appears before the Benchers for the purpose of applying for an adjournment of the hearing and the Benchers consider the adjournment unjustified in the circumstances, or

(c) the Benchers are satisfied that the member has otherwise abandoned the appeal.

Order by  
Benchers

**74(1)** Within a reasonable time after the conclusion of their appeal hearing under section 73, the Benchers may, in respect of any conduct that resulted in the order of the Hearing Committee under section 69(1)(a) or (b), make one or more of the following orders:

(a) an order

(i) confirming the Hearing Committee's finding of guilt in respect of the member's conduct, or

(ii) quashing the finding of guilt, with or without a further order under subsection (3);

(b) an order confirming or quashing a determination by the Hearing Committee that the member's conduct arose from incompetence;

(c) where the Benchers confirm the Hearing Committee's finding of guilt, an order confirming or varying the Committee's order under section 69 or replacing it with any other order that the Committee could have made under that section;

(d) where the Benchers replace the Hearing Committee's order under section 69(1)(a) or (b) with an order of reprimand under section 69(1)(c),

(i) an order confirming the Committee's determination, or making their own determination, that the member's conduct arose from incompetence, and

(ii) any order under section 70 against the member that the Hearing Committee could have made;

(e) if the appeal does not result in the confirmation or making of an order of disbarment, an order

(i) confirming the Committee's order under section 69(4),  
or

(ii) directing that the member is not ineligible for nomination or election as a Benchers because of the finding of guilt on which the order under section 69 is based.

(2) Notwithstanding section 20(1)(a), if the Benchers vote on a motion to make an order under subsection (1) either to confirm or to quash a finding, determination or order of a Hearing Committee and there is an equality of votes on the motion, the Benchers are deemed to have voted in favour of confirming the finding, determination or order.

(3) If the Benchers under subsection (1)(a) quash a finding of guilt,

(a) the Benchers may also make an order directing that the member's conduct that was the subject of the finding be dealt with at a new hearing by a different Hearing Committee, and

(b) section 56 applies to the matter as though that section referred to the Benchers rather than to the Conduct Committee.

(4) An order for the suspension of the membership of a member that is confirmed or made by the Benchers under subsection (1) may, at any time after the Benchers' order, be terminated by the Benchers on their own motion or, subject to the rules, on application.

(5) After the Benchers have made an order under section 73(11) or this section, the Secretary shall

(a) prepare a summary of the order,

(b) give a copy of the summary to the member or the member's counsel, and

(c) send a copy of the summary to the complainant, if any.

Public or  
private  
proceedings

**75(1)** The public may attend and observe a hearing before a Hearing Committee or before the Benchers under section 73 except to the extent that the hearing is directed to be held in private under subsection (2).

(2) The Hearing Committee or the Benchers, as the case may be, on their own motion or on the application of the member concerned, the complainant, any person expected to be a witness at the hearing or any other interested party at any time before or during the proceedings, may, subject to the rules, direct that all or part of the hearing is to be held in private.

(3) Proceedings under this Division, other than hearings referred to in subsection (1) and hearings before the Court of Appeal, shall be held in private.

(4) Notwithstanding subsections (1) to (3), if, following their respective hearings under this Division, the Hearing Committee or the panel of Benchers is of the opinion that there are reasonable and probable grounds to believe that the member has committed a criminal offence, the Hearing Committee or the panel, as the case may be, shall direct the Secretary to send a copy of the hearing record to the Attorney General.

Suspension for  
non-payment

**76(1)** Unless the Conduct Committee otherwise directs before the expiration of the period prescribed by the order, the membership of a member is automatically suspended until payment is made in full if

(a) an order is made against the member by a Hearing Committee or the Benchers for the payment of a penalty or of all or part of the costs of any proceedings under this Division, and

(b) payment in full is not received by the Society within the period prescribed by the order.

(2) Subsection (1) does not affect the operation of any other order under this Part for the suspension of the membership of a member.

Appeal to Court  
of Appeal

**77(1)** A person found guilty of conduct deserving of sanction may appeal to the Court of Appeal any or all of the following:

(a) a finding, determination or order made by a Hearing Committee that may not be appealed to the Benchers under section 72;

(b) an order of the Benchers under section 73(11);

(c) all or part of an order made against the member by the Benchers under section 74(1).

(2) The appeal shall be commenced not more than 30 days after the date on which the finding, determination or order appealed from was made by



- (a) filing a notice of appeal with the Registrar of the Court at Edmonton or Calgary, and
  - (b) serving a copy of the notice of appeal on the Secretary.
- (3) A judge of the Court of Appeal, within the 30-day period referred to in subsection (2), may extend the time for filing or service under subsection (2).
- (4) The Society shall be named as the sole respondent in an appeal under this section.
- (5) The Secretary, at the expense of an appellant under this section, shall arrange for the preparation of the hearing record of the hearing before the Hearing Committee.
- (6) Notwithstanding subsection (5), the Benchers may waive the payment of all or part of the cost of the preparation of the hearing record.
- (7) The appellant, after commencing the appeal and on notice to the Secretary, may apply to the Court of Queen's Bench for a stay, pending the conclusion of the appeal under this section, of the operation of any order appealed from that is
- (a) an order of the Benchers
    - (i) disbarring the appellant or confirming the Hearing Committee's disbarment order, or
    - (ii) suspending the membership of the appellant during the period prescribed in the order or confirming the Hearing Committee's order suspending the membership of the appellant during the period prescribed in the Committee's order,
- or
- (b) an order under section 69(2) or 70.
- (8) The Court of Queen's Bench may make an order applied for under subsection (7) with or without imposing conditions on the appellant but shall refuse to make the order if the Court is satisfied that the conduct of the appellant involves the conversion or misappropriation of property or that, having regard to the nature of the conduct of the appellant, it is proper to refuse to make the order.

Procedure  
on appeal

**78(1)** An appeal to the Court of Appeal shall be founded on copies certified by the Secretary of the following:

(a) in the case of an appeal from a decision of a Hearing Committee, the hearing report and the hearing record;

(b) in the case of an appeal taken from the Benchers pursuant to section 77(1)(b) or (c),

(i) the hearing report, the hearing record and the Secretary's summary prepared pursuant to section 74(5), and

(ii) if the Benchers received fresh evidence under section 73(6), a transcription of the proceedings at which the fresh evidence was received, a transcription of any recording entered as an exhibit at those proceedings and any exhibit entered in evidence at those proceedings.

(2) The Secretary, on being paid the fees prescribed by the rules and any disbursements and expenses in connection with those fees, shall, on request, give the appellant or the appellant's counsel not more than 9 copies of the documents mentioned in subsection (1) in accordance with the request.

(3) The Alberta Rules of Court for appeals from a judgment or order of the Court of Queen's Bench to the Court of Appeal apply to an appeal to the Court of Appeal under section 77.

Powers of  
Court of Appeal

**79(1)** The Court of Appeal on hearing the appeal may

(a) in the case of an appeal taken under section 77(1)(a),

(i) confirm or quash any finding or determination of the Hearing Committee,

(ii) confirm, quash or vary any order of the Hearing Committee under section 69 or replace it with any other order the Committee could have made under that section, or

(iii) confirm, quash or vary any order of the Hearing Committee under section 70, replace it with any other order the Committee could have made under that section or direct the Benchers to make a replacement order under section 70 in accordance with the instructions of the Court;

(b) in the case of an appeal taken under section 77(1)(b), confirm the order of the Benchers under section 73(11) or quash it and direct the Benchers to proceed with the appeal that was dismissed by that order;

(c) in a case of an appeal taken pursuant to section 77(1)(c), confirm, quash or vary the order of the Benchers or replace it with any other order the Benchers could have made under section 74(1);

(d) where the Court quashes a finding of guilt, direct the Benchers to make an order under section 74(3) to have the matter regarding the member's conduct that was the subject of the finding dealt with at a new hearing by a different Hearing Committee;

(e) in the event the appeal is wholly or partly successful, direct that all or part of the cost of preparation of the documents referred to in section 78(1) be repaid by the Society to the member or be applied to reduce the amount of penalties or costs otherwise payable to the Society by the member.

(2) In making an order under subsection (1), the Court may give the Benchers any directions the Court considers just in the circumstances as a consequence of its decision or considers necessary to carry out its decision.

## **Division 2**

### **General**

Indictable  
offence

**80**(1) In this section,

(a) "appeal", with reference to a conviction for an indictable offence, means an appeal from the conviction or proceedings to have the conviction quashed;

(b) "appeal period", with reference to a conviction for an indictable offence, means the period limited by law for the commencement of an appeal from the conviction.

(2) If a member is convicted of an indictable offence, the Benchers, without any other proceedings under this Part and before the expiration of the appeal period relating to the conviction, may order the suspension of the membership of the member whether or not an appeal is commenced.

(3) A suspension ordered under subsection (2) may be terminated by the Benchers at any time without affecting the power of the Benchers to subsequently make an order under subsection (4) or another suspension order under subsection (2).

(4) If a member is convicted of an indictable offence, the Benchers, whether a suspension is ordered under subsection (2) or not, may order

(a) that the membership of the member be suspended for the period prescribed by the order, or

(b) that the member be disbarred

at any time after

(c) the expiration of the appeal period, if an appeal from the conviction is not commenced within the appeal period, or

(d) the conclusion or abandonment of the appeal taken from the conviction.

(5) The Benchers shall not make any order under subsection (4) until the member has been given

(a) notice in accordance with the rules of the intention of the Benchers to consider making an order under that subsection, and

(b) a reasonable opportunity to make oral or written representations to the Benchers in that regard.

(6) The public may attend and observe proceedings under subsection (5) at which the member is present unless the Benchers, on their own motion or on the application of the member or any other interested party at any time before or during the proceedings, direct that the proceedings are to be held in private.

Extra-provincial  
disciplinary acts

**81(1)** In this section,

(a) “Alberta member” means a member of the Society who is also a member of an extra-provincial law society or who ceased to be a member of that society by reason of an order referred to in subsection (3)(a);

(b) “disciplinary body”, in relation to an extra-provincial law society, means the governing body of that society or any person or group of persons having powers to impose disciplinary sanctions on the members of that society by way of suspension or termination of membership in that society;

(c) “extra-provincial law society” means a law society or other body in a jurisdiction other than Alberta, membership in which is, under the laws of that jurisdiction, a requirement for practising law in that jurisdiction.

(2) If the disciplinary body of an extra-provincial law society orders the suspension of the membership of an Alberta member in that society pending an investigation relating to the Alberta member or pending the outcome of any disciplinary proceedings against the Alberta member, the Benchers, without any other proceedings under this Part, may order the suspension of the Alberta member’s membership in the Society for a period co-

extensive with the remainder of the period of suspension ordered by the disciplinary body.

(3) The Benchers, whether or not a suspension is ordered under subsection (2), may make an order against an Alberta member if

(a) a disciplinary body of an extra-provincial law society, in disciplinary proceedings against the Alberta member, makes

(i) an order for the suspension of the Alberta member's membership in that extra-provincial law society for a fixed period, or

(ii) an order having the effect of terminating the Alberta member's membership in that society,

or

(b) the Alberta member resigns as a member of that extra-provincial society in lieu of having disciplinary proceedings by a disciplinary body of that society continue against him.

(4) An order made against an Alberta member under subsection (3) shall be either

(a) an order for the suspension of the Alberta member's membership in the Society for the period prescribed by the order, or

(b) an order disbarring the Alberta member.

(5) The Benchers shall not make any order under subsection (3) until the Alberta member concerned has been given

(a) notice in accordance with the rules of the intention of the Benchers to consider making an order under that subsection, and

(b) a reasonable opportunity to make oral or written representations to the Benchers in that regard.

(6) If the Benchers make an order under subsection (3) for the suspension of the membership of an Alberta member who is a Bencher at the time the order is made, the Benchers may also make an order directing that the member is not ineligible for nomination or election as a Bencher by reason of the suspension order.

(7) The public may attend and observe proceedings under subsection (5) at which the member is present unless the Benchers, on their own motion or on the application of the member or any

Notice of suspension or termination	<p>other interested party at any time before or during the proceedings, direct that the proceedings are to be held in private.</p> <p><b>82(1)</b> When a member is disbarred or the membership of a member is suspended, the Secretary shall send a notice stating that fact to the judges and clerks of the Court of Appeal, the Court of Queen's Bench and the Provincial Court, to the Masters in Chambers, to the active members and students-at-law and to the secretaries of other law societies in Canada.</p> <p>(2) A notice under subsection (1) may, subject to the rules, contain information pertaining to any findings, determinations and orders made in respect of the member.</p> <p>(3) If an order is made against a member under section 69, 74, 79, 80 or 81 or if the Benchers approve the resignation of a member under section 58, the Hearing Committee or the Benchers may give directions to the Secretary in accordance with the rules respecting</p> <ul style="list-style-type: none"> <li>(a) the publication of the name of the member and of information pertaining to any findings, determinations and orders made in respect of the member or to his resignation, as the case may be, and</li> <li>(b) if the member has been disbarred or the membership of the member has been suspended, the posting of notice in the office or other place or places of business of the member relating to the disbarment or suspension.</li> </ul>
Reinstatement	<p><b>83(1)</b> If a person is disbarred,</p> <ul style="list-style-type: none"> <li>(a) that person shall not be reinstated as a member pursuant to the rules except by an order of the Benchers, and</li> <li>(b) no order for that person's reinstatement as a member shall be made within one year after <ul style="list-style-type: none"> <li>(i) the date on which the person was disbarred,</li> <li>(ii) if the operation of an order of a Hearing Committee to disbar the person was stayed under section 72(7) and the order was confirmed by the Benchers on appeal, the date of the Benchers' confirmation order, or</li> <li>(iii) if the operation of the Benchers' confirmation order referred to in subclause (ii) was stayed under section 77(8) and the Hearing Committee's order was confirmed by the Court of Appeal, the date on which the Court of Appeal made its confirmation order.</li> </ul> </li> </ul>

(2) A Benchers who is a member of a committee of inquiry appointed pursuant to the rules to consider an application for reinstatement to which subsection (1) applies may participate in or vote at any proceedings of the Benchers pertaining to the application.

#### **PART 4**

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

#### **Division 1 The Assurance Fund**

Finance  
Committee

**84**(1) There is hereby established a committee called the "Finance Committee".

(2) The members of the Finance Committee shall be appointed by the Benchers and shall consist of

(a) Benchers only, or

(b) a majority of Benchers and a minority of members of the Society who are not Benchers.

(3) Notwithstanding subsection (2), at least one member of the Finance Committee shall be a lay Benchers.

Proceedings

**85**(1) Subject to subsection (2), sections 65 to 67 apply to proceedings under this Part before the Finance Committee, an appeal panel of Benchers or the Benchers.

(2) Without restricting the generality of subsection (1), in applying sections 65 to 67 to proceedings under this Part,

(a) references in those sections to a Hearing Committee shall be construed as references to the Finance Committee, the appeal panel of Benchers or the Benchers, whichever body is conducting the proceedings under this Part,

(b) references in those sections to a witness include the member whose conduct gave rise to a claim against the Assurance Fund, and

(c) references in those sections to the member whose conduct is the subject of proceedings under Part 3 shall be construed as references to the member whose conduct gave rise to a claim against the Assurance Fund.

Assurance Fund **86(1)** The Society shall hold and maintain a fund called the "Assurance Fund".

(2) If a member misappropriates or wrongfully converts money or other property entrusted to or received by a member in the member's capacity as a barrister and solicitor and in the course of the member's practice as a barrister and solicitor in Alberta, a person entitled to the money or other property may submit a claim to the Society for compensation from the Assurance Fund in respect of

(a) the money, or

(b) in the case of property other than money, the value of the property.

(3) The Finance Committee, an appeal panel of Benchers or the Benchers, whichever hears a claim under this section, may

(a) approve, with or without conditions, the payment from the Assurance Fund of all or any part of the amount of compensation that may be claimed under subsection (2), or

(b) refuse to approve the payment of compensation where it considers a refusal to be appropriate in the circumstances.

(4) The Benchers may make rules

(a) respecting the administration of the Assurance Fund;

(b) providing for the levying on the active members of an annual assessment of an amount fixed by the Benchers from time to time for the purpose of maintaining and augmenting the Assurance Fund;

(c) 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;

(d) respecting the expenditures of the Society that are chargeable to the Assurance Fund;

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

(f) respecting claims under this section;



(g) respecting the imposition of conditions to be met before any amount of compensation is paid from the Assurance Fund pursuant to subsection (3);

(h) respecting the powers and duties of the Finance Committee, of an appeal panel of Benchers and of the Benchers in relation to the adjudication of all or any class of claims against the Assurance Fund;

(i) respecting appeals from the Finance Committee to a panel of Benchers appointed in accordance with the rules in respect of all or any class of claims adjudicated by the Finance Committee, and respecting the powers and duties of an appeal panel so appointed;

(j) respecting the exercise of the powers of the Finance Committee, an appeal panel of Benchers or the Benchers under subsection (3);

(k) respecting proceedings under this Part of the Finance Committee, an appeal panel of Benchers or the Benchers.

(5) The Society may, in a manner and on terms and conditions the Benchers consider advisable, enter into contracts with insurers or other persons whereby the Assurance Fund may be protected in whole or in part against any claim or loss to the Fund.

(6) The Society has, and is deemed to have had at all times, an insurable interest in the Assurance Fund and in the protection of it against loss notwithstanding that any loss is the result of the exercise of any powers of the Finance Committee, an appeal panel of Benchers or the Benchers under subsection (3).

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

(a) shall be invested as the Benchers may from time to time determine,

(b) shall be administered by the Benchers in a manner they consider proper,

(c) is not subject to any trust, and

(d) is not subject to seizure or attachment by any creditor of the Society.

Report re  
Assurance Fund

**87** Not later than March 31 in each year, the Benchers shall cause a report to be prepared on the Assurance Fund and all dispositions made from it and not later than that date shall cause a copy of it to be delivered to the Attorney General of Alberta.

Subrogation of rights

**88(1)** When any payment has been made from the Assurance Fund, the Society is subrogated to the rights, remedies and securities to which the person receiving the payment was entitled as against the member or former member whose conduct gave rise to the payment, and those rights, remedies and securities may be enforced or realized, as the case may be, in the name of the Society to the extent of the amount paid from the Assurance Fund.

(2) The Society may by an action in debt recover from the member or former member whose conduct gave rise to a payment from the Assurance Fund the amounts of any costs and expenses incurred by the Society in connection with audits, reviews, examinations, investigations and hearings relating to claims against the Assurance Fund arising from the conduct of the member or former member.

## **Division 2 Seizure and Custody of Property in Member's Possession**

Definitions

**89** In this Division,

(a) "depository" means any bank, trust company, treasury branch, credit union or other person holding by way of deposit or otherwise any property of a member;

(b) "member" includes a former member of the Society;

(c) "property" or "property of a member" means anything wherever situated kept by, acquired by or given to a member by or for a client or any other person and without restricting the generality of the foregoing includes records, securities, shares, trust money in cash or on deposit, negotiable instruments, corporate seals and chattels or any of them if they in any way relate to his practice or former practice as a barrister and solicitor or the business or affairs of his clients or former clients or any of them and whether they were acquired before or after he ceased to practise as a barrister and solicitor.

Accounting for property

**90(1)** The chairman or a vice-chairman of the Conduct Committee may at any time, if he is of the opinion that a member has failed to account to a client or to deliver to a client any property,

(a) instruct the Secretary to direct the member to give to the client or to the Secretary, or both, an accounting of the property, or

	<p>(b) instruct the Secretary to direct the member to pay the property into or deposit the property with the Court of Queen's Bench,</p> <p>and may fix a time within which the member is to comply with the direction.</p> <p>(2) Property paid or deposited under subsection (1) may, on a summary order of the Court of Queen's Bench, be paid out or delivered to the person or persons named in the order as being entitled thereto.</p> <p>(3) If a member fails to comply with a direction given under subsection (1), the Court of Queen's Bench, on application, may make an order requiring that the person comply with the direction.</p>
Seizure of property	<p><b>91(1)</b> On a summary application made ex parte by the Society, the Court of Queen's Bench may order the sheriff of a judicial district</p> <p>(a) to enter on any premises where any property that relates to a transaction between the member and any of the member's clients is or may be kept, and</p> <p>(b) to seize and remove the property and place it in the custody of the Secretary or any other person named in the order.</p> <p>(2) A sheriff executing an order under subsection (1) has all the powers of a person lawfully charged with the execution of a writ of execution or a distress warrant under section 25 of the <i>Seizures Act</i>.</p> <p>(3) The Secretary shall have any property placed in custody under subsection (1) examined by a person designated by the chairman or vice-chairman of the Conduct Committee or by the chairman of a Hearing Committee and after the examination shall return the property to the member or otherwise deal with it as the Court of Queen's Bench may direct on notice being given to the member.</p> <p>(4) An order under this section may be varied or set aside on 2 days' notice.</p>
Custodian	<p><b>92(1)</b> In any of the following cases:</p> <p>(a) when the name of a member has been struck off the roll;</p> <p>(b) when the membership of a member has been suspended;</p> <p>(c) when a member's conduct is the subject of any proceedings under Part 3 and there is reason to believe that the conduct</p>

involves the misappropriation or wrongful conversion of property;

(d) when a member has died or become mentally incapacitated;

(e) when by reason of illness or for any other reason a member is unable to practise as a barrister and solicitor;

(f) when a member has absconded or is otherwise improperly absent from his place of business or has neglected his practice for an unduly extended period;

(g) when there is reason to believe that the trust money held by a member is not sufficient to meet his trust liabilities;

(h) when other sufficient grounds exist,

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

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

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

(4) On the receipt by any person of notice that an order has been made pursuant to this section, he shall retain and shall not dispose of any property of a member until directed by the custodian or by order of the Court as to the disposition of it.

(5) The Court of Queen's Bench may in an order under subsection (1) or may at any time and from time to time by a subsequent order made ex parte or on such notice as the Court may require,

(a) direct a depository of any property of a member

(i) to deal with, hold or dispose of the property in accordance with the order, or

(ii) to pay over or deliver the property to the custodian in accordance with the order,

(b) remove any custodian appointed by the order and appoint another custodian,

(c) give directions and advice to the custodian as to the disposition of the property in his hands or any part or parts of it, or

(d) give any directions or make any other order that the nature of the situation requires.

Examination  
and disposal of  
property

**93(1)** When property of a member has been placed in the custody of a custodian under section 92, the Secretary or counsel for the Society and any other counsel or other persons, if any, that the chairman or vice-chairman of the Conduct Committee designates shall examine the property, and the custodian shall, by notice as he thinks proper, including publication in a newspaper if he thinks fit, inform clients of the member or other persons as he considers necessary

(a) that the property of the member is in the custody of the custodian and that an examination of it indicates that the client or other person appears to have an interest in it, and

(b) that the client or other person may apply to the custodian in person or by solicitor or agent for the delivery to him of the property in which he appears to have an interest or for leave to make copies of any documents or papers among the property, in respect of any transactions or dealings he had with the member that he thinks necessary to copy, subject to any solicitor's lien of the member on or with respect to that property.

(2) When the custodian is satisfied

(a) that a person is entitled to any property in his custody, and

(b) that no solicitor's lien is claimed on it or appears to exist or that any solicitor's lien on it is satisfied,

the custodian may deliver the property to the person claiming it.

(3) When a member whose property has been placed in the custody of a custodian under section 92 claims to be entitled to a solicitor's lien on or in respect of any part or parts of it,

(a) the member shall, within 30 days from the service of the order on him, file with the custodian notice of his claim for lien with particulars of it, and

(b) the custodian shall immediately give notice of the claim for lien to the apparent owner of the property against which the lien

is claimed, and after the giving of the notice the rights of the parties shall be determined according to law.

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

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

### **General**

Extension of  
time, etc.

**94(1)** Notwithstanding anything in this Division, the Court of Queen's Bench may at any time enlarge or shorten the time within which anything is required to be done under this Division or dispense with any of those requirements.

(2) The Society may by an action in debt recover from a member costs and expenses incurred by the Society

(a) in proceedings under this Division against the member, and

(b) as remuneration paid to a custodian appointed to have custody of the property of the member and as reimbursement to the custodian for costs and expenses incurred by him in connection with proceedings under this Division.

### **PART 5**

#### **PROFESSIONAL LIABILITY CLAIMS**

Definitions

**95** In this Part,

(a) "indemnity program" means the program referred to in section 96(1);

(b) "claim" means a claim made under the indemnity program;

(c) "subsidiary corporation" means a subsidiary corporation referred to in section 96(2)(b).

Payment of  
claims

**96(1)** The Society shall, subject to and in accordance with this Part and the rules, establish and maintain a program respecting the payment of claims arising out of the performance of services by

(a) a member in his capacity as a barrister and solicitor, or

(b) any other person for whose actions a member or former member is legally liable in his capacity as a barrister and solicitor.

(2) The Benchers may

(a) authorize the Society to enter into any contract or arrangement or do anything else related to the establishment, maintenance or administration of the indemnity program;

(b) authorize the incorporation or acquisition of a subsidiary corporation of the Society for any purpose related to the indemnity program.

(3) Notwithstanding the *Insurance Act*, neither the Society nor a subsidiary corporation shall be held to be an insurer undertaking insurance or to be carrying on the business of an insurer by reason of doing anything related to the establishment, maintenance or administration of the indemnity program.

Funds for  
indemnity  
program

**97**(1) All amounts consisting of assessments collected under this Part, of revenues received in the course of administering the indemnity program or of income received from the investment of those amounts shall be kept in one or more funds separate and apart from, and shall be accounted for separately from, other funds of the Society.

(2) Except as otherwise provided by the rules or a resolution of the Benchers, all expenditures related to the establishment, maintenance and administration of the indemnity program shall be paid from the funds referred to in subsection (1).

(3) The funds referred to in subsection (1)

(a) may be invested in accordance with the directions of the Benchers,

(b) shall be administered by the Benchers in a manner they consider proper,

(c) are not subject to any trust, and

(d) are not subject to seizure or attachment by any creditor of the Society.

Rules re  
assessment

**98** The Benchers may make rules

(a) respecting the levying on members of assessments, whether at a uniform rate for all members or at differing rates for different classes of members;

- (b) respecting the exemption of any class of members from the payment of assessments levied pursuant to clause (a) and the conditions on which any exemptions apply or on which they may be granted;
- (c) respecting the establishment, maintenance or administration of the indemnity program, including
  - (i) the provision of coverage or exclusion from coverage under the indemnity program for members or former members or any class of member or former member,
  - (ii) limits on the payment of indemnification in respect of claims or any class of claim, and
  - (iii) amounts to be deducted from payments of indemnification in respect of claims or any class of claim;
- (d) respecting the filing, settling, administration or payment of claims under the indemnity program;
- (e) respecting the administration of the funds referred to in section 97(1) and of expenditures of those funds;
- (f) respecting the payment on behalf of a member or former member of the whole or part of deductible amounts under the indemnity program and recovery of the amounts paid from the member or former member, as the case may be;
- (g) respecting the imposition of penalties or other sanctions against members who fail to pay in accordance with the rules
  - (i) any assessment levied under this Part, or
  - (ii) any deductible amounts under the indemnity program;
- (h) respecting the rights and duties of members or former members in connection with claims or potential claims under the indemnity program;
- (i) respecting the powers, rights and duties of a subsidiary corporation under the indemnity program;
- (j) respecting the delegation to a subsidiary corporation of any powers, rights or duties of the Society or the Benchers under this Part or under the rules under this Part, other than the power to make rules;
- (k) directing that all or any part of the amount of any assessment levied pursuant to clause (a) be paid directly to a subsidiary corporation instead of to the Society and respecting



the subsidiary corporation's rights in respect of the amount transferred;

(1) respecting transfers of assets from the funds held by the Society under section 97 to a subsidiary corporation or from a subsidiary corporation to the funds held by the Society under section 97.

## **PART 6**

### **GENERAL**

<b>Designation as barristers and solicitors</b>	<p><b>99(1)</b> Members of the Society shall be known and designated as barristers and solicitors.</p> <p>(2) Active members are officers of the Court of Queen's Bench and all other courts of record in Alberta and have a right of audience in those courts.</p>
<b>Exemption from municipal business licence</b>	<p><b>100</b> No municipality has the power to require</p> <p>(a) any active member to obtain a licence from the municipality to practise law or to carry on the practice or profession of a barrister and solicitor, or</p> <p>(b) any student-at-law to obtain a licence from the municipality for or in connection with the performance of any acts or services authorized by this Act to be performed by a student-at-law.</p>
<b>Recovery of fees</b>	<p><b>101</b> A person may sue for fees for services performed by him in his capacity as an active member at any time after the services are performed.</p>
<b>Student-at-law as counsel</b>	<p><b>102</b> A student-at-law whose registration is not under suspension may act as counsel in proceedings before the Court of Appeal, the Court of Queen's Bench, the Surrogate Court of Alberta or the Provincial Court, or before a judge of any of those courts, in the circumstances provided for in the rules and subject to any conditions prescribed by the rules.</p>
<b>Practice of law</b>	<p><b>103(1)</b> No person shall, unless he is an active member of the Society,</p> <p>(a) practise as a barrister or as a solicitor,</p> <p>(b) act as a barrister or as a solicitor in any court of civil or criminal jurisdiction,</p>

(c) commence, carry on or defend any action or proceeding before a court or judge on behalf of any other person, or

(d) settle or negotiate in any way for the settlement of any claim for loss or damage founded in tort.

(2) Subsection (1) does not apply to the following:

(a) a student-at-law in respect of anything permitted to be done by him in the course of his service under articles or under the rules made pursuant to section 102;

(b) a person who holds an authorization granted under section 46 in respect of services provided within the scope of the authorization and in accordance with the rules under section 46, or a person who is deemed by the rules to hold an authorization under section 46 in respect of services provided in accordance with the rules;

(c) a professional corporation in respect of services performed while it holds a permit under Part 8 that is not under suspension;

(d) a person employed by an active member or professional corporation pursuant to a resolution of the Benchers under section 105 in respect of services provided by that person within the scope of his employment and in accordance with the resolution;

(e) a university law student in respect of services permitted to be provided by that student by the rules that are provided in accordance with the conditions prescribed by the rules;

(f) a notary public in respect of services provided by him in the exercise of powers conferred on him by law;

(g) a public officer in respect of any acts performed by him within the scope of his authority as a public officer;

(h) a person who acts on his own behalf in an action, matter or proceeding to which he is a party;

(i) a person in respect of the preparation by him of a document for his own use or to which he is a party;

(j) an officer or employee of a corporation, partnership or unincorporated body in respect of the preparation of a document for the use of the corporation, partnership or unincorporated body or to which it is a party;

(k) a person licensed as an insurance adjuster under the *Insurance Act* in respect of services provided by him as an insurance adjuster;

(l) a person permitted by statute to appear as the agent of another person before a justice of the peace, the Provincial Court or a provincial judge in respect of services provided by that person as an agent.

Misrepresentation as to professional status

**104(1)** No person shall, unless he is an active member of the Society, hold himself out as or represent himself to be an active member of the Society, or a person lawfully entitled to practise law or to carry on the practice or profession of a barrister or solicitor.

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

(3) Subsections (1) and (2) do not apply to a professional corporation.

(4) A member whose membership is under suspension shall not hold himself out as or represent himself to be a member in good standing or a member not under suspension.

(5) No person shall, unless he is registered under this Act as a student-at-law, hold himself out as or represent himself to be a student-at-law or an articulated law student or clerk.

(6) A student-at-law whose registration is under suspension shall not hold himself out as or represent himself to be a student-at-law in good standing or a student-at-law not under suspension.

Employment of suspended member

**105(1)** No active member or professional corporation shall, except under the authority of a resolution of the Benchers, employ in connection with the member's or corporation's practice as a barrister and solicitor

(a) a former member,

(b) a member whose membership is under suspension,

(c) a student-at-law whose registration is under suspension, or

(d) a person who was entitled to practise as a member of the legal profession in a jurisdiction outside Alberta but whose right to do so has ceased or is under suspension.

	<p>(2) A resolution under subsection (1) may be made subject to any conditions prescribed in it with respect to the nature of the employment or any other matter pertaining to the employment.</p>
Penalties	<p><b>106(1)</b> Every person and every officer, employee or agent of a corporation or firm who contravenes this Part is guilty of an offence and liable</p> <p>(a) for a first offence, to a fine of not more than \$4000,</p> <p>(b) for a 2nd offence, to a fine of not more than \$8000, and</p> <p>(c) for the 3rd and every subsequent offence, to a fine of not more than \$12 000 or to a term of imprisonment of not more than 6 months or to both a fine and imprisonment.</p> <p>(2) A prosecution under this section may be commenced within 2 years after the commission of the offence, but not afterwards.</p>
Proof of offence	<p><b>107</b> In a prosecution under this Part it is sufficient proof of an offence if it is proved that the accused committed a single act prohibited by this Part.</p>
Injunction	<p><b>108</b> If a person has contravened or is contravening any provision of this Part, the Court of Queen's Bench, on application by the Society by way of originating notice, may make an order restraining that person from contravening or continuing to contravene that provision, whether or not a conviction has been adjudged in respect of the contravention.</p>
Solicitor and client privilege	<p><b>109(1)</b> A member may not in any proceedings under Part 3 or 4 refuse to give evidence, answer inquiries or produce or make available any records or other property on the ground of solicitor and client privilege if the evidence, inquiry, records or other property is material to the proceedings.</p> <p>(2) If a member is required under subsection (1) to give evidence, answer inquiries or produce or make available any records or other property pursuant to subsection (1) and the member may claim solicitor and client privilege in respect of the evidence, answers, records or other property, the member or any other person who may claim the solicitor and client privilege may require that</p> <p>(a) all or part of any proceedings under Part 3 or 4 in which the evidence, answers, records or other property is dealt with be held in private, and</p> <p>(b) the public be refused access to the records and other property and to any other document containing the evidence or answers.</p>

(3) If the Court of Queen's Bench or the Court of Appeal on an application or appeal under Part 3 or 4 considers it necessary to prevent the disclosure of evidence, answers, records or other property in respect of which solicitor and client privilege may be claimed, the court shall order that

(a) all or any part of the proceedings before the court in which the evidence, answers, records or other property is dealt with be held in private, and

(b) the public be refused access to the records or other property and to any other document containing the evidence or answers.

Secretary's  
certificate as  
evidence

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

(a) a member, an active member, an inactive member or a member whose membership was suspended,

(b) a student-at-law or a student-at-law whose registration was under suspension,

(c) the holder of an authorization granted under section 46, or

(d) a Benchers or an officer or employee of the Society,

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

Service of  
documents

**111** If any provision of this Act or the rules requires or authorizes the serving, giving or furnishing of a notice or other document on or to any person, the notice or other document is sufficiently served, given or furnished

(a) if it is served personally on that person,

(b) if it is delivered in accordance with the rules at

(i) the official address for service of that person according to the records of the Society, in the case of a member or student-at-law, or

(ii) the last known address of that person according to the records of the Society, in any other case, or

(c) if it is served, given or furnished by any method provided for in the rules, where the service, giving or furnishing of it cannot be effected by a method described in clause (a) or (b).

Protection from  
liability

**112(1)** No action lies against

- (a) the Society or a person who is or was an officer, employee or agent of the Society,
- (b) a person who conducted an investigation under Part 3,
- (c) a person who is or was a Benchers or a member of a committee established by or under this Act,
- (d) a person who is or was a custodian appointed under Part 4,
- (e) a subsidiary corporation of the Society referred to in section 96(2)(b) or a person who is or was a director, officer or employee of that corporation, or
- (f) a person who acted on the instructions of, or under the supervision of, a person referred to in clauses (a) to (e),

in respect of anything done by any of them in good faith pursuant to this Act, the rules or any direction of the Benchers.

(2) No action for defamation may be founded on a communication regarding the conduct of a member or student-at-law if the communication is published to or by a person within any of the classes of person enumerated in subsection (1), in good faith and in the course of any proceedings under this Act or the rules relating to that conduct.

(3) Subsections (1) and (2) do not operate to restrict or abrogate any immunity or protection that is otherwise provided by law to a person within any of the classes of person enumerated in subsection (1) or to any other person.

(4) Notwithstanding any other Act or law, no person who is or was within any of the classes of person enumerated in subsection (1) shall be required in any proceedings, other than proceedings under this Act or the rules or a prosecution under this Part, to give evidence relating to any matter that arose in any proceedings under this Act or the rules, or to produce any record or thing adduced in evidence in proceedings under this Act or the rules or forming part of the records of the Society that relate to the conduct of a member or student-at-law.

Fees, etc.,  
belong to  
Society

**113** All fees, assessments, penalties, costs or other amounts payable under this Act or the rules, except fines payable under section 106 or 133, are the property of the Society.

Unattributed  
trust money

**114(1)** If money has been held by a member in his capacity as a barrister and solicitor in a trust account or separate account referred to in section 122 for a period of not less than 2 years and either

(a) the member has been unable during that period to locate the person entitled to the money after reasonable efforts to do so, or

(b) in the case of trust money in his trust account, the member is unable to attribute the money to any particular client or other person,

the member may apply to the Secretary for permission to pay the money to the Society.

(2) On an application under subsection (1), the Secretary shall have regard to

(a) the nature of the trust and the circumstances in which it arose, and

(b) in the case of an application based on circumstances described in subsection (1)(a), whether or not the member has made reasonable efforts to locate the person entitled to the money and whether or not there is any reasonable prospect that the person can be located.

(3) If permission is given under subsection (1) and the money is paid by the member to the Society, the trust liability of the member with respect to that money is extinguished.

(4) Money received by the Society under this section

(a) shall be kept and accounted for in a fund separate from other funds of the Society,

(b) may be invested in accordance with the directions of the Benchers,

(c) shall be administered by the Benchers in accordance with this section and the rules, and

(d) is not subject to seizure or attachment by any creditor of the Society other than a person to whom the Society is liable under subsection (5).

(5) A person or his legal representative who but for subsections (1) to (4) could have claimed the money from a member may, in accordance with the rules, claim the money from the Society, and if the claim is approved pursuant to the rules, the Society shall pay the money to the claimant.

(6) A claimant is not entitled to interest on money while it is held by the Society under this section unless the committee adjudicating the claim directs otherwise and then only to the extent approved by the committee.

(7) If the Society pays money to a claimant under subsection (5), the Society is entitled to transfer to its general revenue account for its own use the amount by which the estimated income of the fund under this section that is attributable to the principal amount paid to the claimant exceeds the amount of any interest that is paid to the claimant under subsection (6).

(8) If a claim against the Society under this section is refused in whole or in part, the claimant may in accordance with the rules appeal the refusal to the Court of Queen's Bench, and the Court may, where it allows an appeal, direct the Society to pay the claimant all or part of the money claimed.

(9) A claim against the Society under this section is not enforceable 5 years after the money was received by the Society unless the claimant makes the claim within the 5-year period.

(10) Following the 5-year period referred to in subsection (9), the Society shall pay to the Alberta Law Foundation the aggregate of

(a) the principal amount of the money held by it under this section during that period, and

(b) the amount by which the estimated income of the fund attributable to the principal amount exceeds the administration fee determined in accordance with the rules.

(11) The Society may transfer the administration fee referred to in subsection (10) to its general revenue account for its own use.

(12) The Benchers may make rules respecting

(a) applications to the Secretary under subsection (1);

(b) the investigation of claims under this section;

(c) the adjudication of claims under this section by a committee established by or under this Act;

(d) appeals under subsection (8);



(e) the determination of administration fees for the purpose of subsection (10).

(13) The Benchers shall, not later than March 31 in each year,

(a) cause a report to be prepared with respect to the administration of the fund under this section during the preceding year, the administration fees referred to in subsection (10), the claims and the disposition of claims during the preceding year and the payments to the Alberta Law Foundation during the preceding year, and

(b) cause a copy of the report to be delivered to the Attorney General of Alberta and to the Alberta Law Foundation.

## **PART 7**

### **ALBERTA LAW FOUNDATION**

**Alberta Law Foundation**      **115** There is hereby established a corporation with the name “Alberta Law Foundation”, in this Part called the “Foundation”, consisting of the members of its board of directors.

**Objects**      **116** The objects of the Foundation are

- (a) to receive money and property and to maintain and manage a fund, the interest and capital of which is to be used from time to time as the board of directors of the Foundation sees fit for
  - (i) conducting research into and recommending reform of law and the administration of justice;
  - (ii) establishing, maintaining and operating law libraries;
  - (iii) contributing to the legal education and knowledge of the people of Alberta and providing programs and facilities for those purposes;
  - (iv) providing assistance to native people’s legal programs, student legal aid programs and programs of like nature;
- (b) to do all other things that are, in the opinion of the directors, incidental or conducive to the attainment of the objects enumerated in clause (a).

**Board of directors**      **117(1)** The affairs of the Foundation shall be conducted by a board of directors composed of

- (a) the Attorney General of Alberta or a person designated by him to act in his absence;

(b) 2 persons appointed by the Attorney General who are not members of the Society;

(c) 2 persons appointed by the Benchers of whom

(i) one shall be a Bencher, and

(ii) one shall be a member of the Society who is not a Bencher;

(d) 2 persons, one of whom is a member of the Society and one of whom is not a member of the Society, appointed by the other directors of the Foundation.

(2) The terms of office of the directors of the Foundation shall be as follows:

(a) a member of the Society appointed as a director holds office as a director until the first meeting of the Benchers in the year following the next regular election of Benchers held after his appointment;

(b) any other person appointed as a director holds office as a director for 2 years from the date of his appointment.

(3) The Attorney General shall, by order, designate one director as chairman.

(4) A quorum of the board consists of 4 directors.

(5) The continuing directors may act notwithstanding any vacancy in the board.

(6) No act done by the authority of the board is invalid in consequence of any defect that is afterwards discovered in the appointment of the directors.

(7) An appointed director may resign from office on giving one month's notice in writing to the board of his intention to do so, and his resignation takes effect on the expiration of the notice or on its earlier acceptance by the board.

(8) The office of a director shall be vacated if he ceases to hold the qualifications necessary for his appointment.

**By-laws**

**118(1)** The board may make by-laws respecting calling of meetings of the board and the conduct of business at them, the duties and conduct of the directors and generally as to the conduct of the business and affairs of the Foundation.

(2) Without limiting the generality of subsection (1), the board may make by-laws regarding

- (a) the number and designation of officers of the Foundation;
- (b) the appointment of and terms of office of officers of the Foundation and all matters relating to their offices;
- (c) the resignation or removal from office of officers of the Foundation;
- (d) the number and designations of employees of the Foundation other than officers, and their terms and conditions of employment;
- (e) the remuneration, if any, of officers and employees of the Foundation;
- (f) the operation of the Law Foundation Account.

Application of  
funds

**119(1)** The board shall apply and cause to be applied the funds of the Foundation in any manner the board may decide in carrying out the objects of the Foundation.

(2) The funds of the Foundation shall consist of all sums paid to the Foundation pursuant to section 122, interest accruing from investment of the funds of the Foundation and any other money received by the Foundation.

(3) There shall be paid out of the funds of the Foundation the costs, charges and expenses involved in the administration of the Foundation and the costs, charges and expenses incurred by the board in carrying out the objects of the Foundation.

(4) The directors may be paid remuneration for their services from money voted by the Legislature for the purpose at a rate prescribed by the Attorney General, and in addition the directors are entitled to be paid out of the funds of the Foundation their reasonable travelling and living expenses while away from their ordinary places of residence in the course of their duties as directors.

(5) No part of the income of the Foundation shall be payable to or otherwise available for the personal benefit of any director or the Society, but the Foundation may employ and remunerate members of the Society in order to attain the objects of the Foundation.

(6) All money of the Foundation shall, pending investment or application in accordance with this section, be paid into a bank, credit union, trust company or treasury branch in Alberta to the

credit of a separate account to be called the "Law Foundation Account", and that account shall be used for the objects of the Foundation.

(7) Any money that is not immediately required for the purposes of the Foundation may be invested in the name of the Foundation by the directors in securities of the kind, but not limited to the proportions, in which insurance companies incorporated in Alberta are permitted to invest under section 94 of the *Insurance Act*.

(8) The accounts of the Foundation shall be audited annually by a qualified accountant or firm of qualified accountants appointed for the purpose by the board.

**Annual report**

**120(1)** After the end of each year, the Foundation shall prepare and submit to the Attorney General a report consisting of

(a) a general summary of its transactions and affairs during that year, its revenues and the application of its expenditures during that year,

(b) an audited balance sheet of its accounts and financial transactions during that year, and

(c) any other information the Attorney General may require.

(2) On receiving a report under subsection (1), the Attorney General shall lay a copy of 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.

**Borrowing**

**121** The Foundation may borrow or raise or secure the payment of money on the credit of the Foundation from time to time as the board of directors thinks fit to fulfil the objects of the Foundation and may for that purpose issue notes, bonds, debentures, debenture stock or other evidences of indebtedness.

**Trust accounts**

**122(1)** Subject to the rules, every active member shall maintain an interest-bearing trust account in a bank, credit union, trust company or treasury branch into which he shall deposit money entrusted to or received or held by the member for or on account of the member's clients or other persons in the member's capacity as a barrister and solicitor, and the member shall instruct the bank, credit union, trust company or treasury branch to remit the interest earned on the account to the Foundation semi-annually in each year, and that interest becomes the property of the Foundation.

(2) A member is not liable by virtue of the relation between the member and his client to account to any client for interest earned

on money deposited in a bank, credit union, trust company or treasury branch pursuant to subsection (1).

(3) Nothing in this Part affects any arrangement made between a member and his client to deposit money received from or on behalf of the client or to which the client is entitled in a separate interest-bearing account for the client, the interest on which shall be the property of the client.

(4) Subsections (1) to (3) apply to professional corporations and to law firms.

Dissolution of  
Foundation

**123** On the dissolution of the Foundation, the net assets of the Foundation then remaining shall be paid to the Government to be used for whatever charitable purposes the Government determines.

Protection from  
liability

**124** No action lies against the Foundation or any person who is or was a director or officer of the Foundation in respect of anything done by any of them in good faith pursuant to this or any other Act.

## **PART 8**

### **PROFESSIONAL CORPORATIONS**

Definitions

**125** In this Part,

- (a) “permit” means a permit issued pursuant to section 127(3);
- (b) “voting shareholder” means a person holding one or more voting shares of a professional corporation.

Rules by  
Benchers

**126** The Benchers may make rules

- (a) prescribing the manner of proof as to matters required to be proven by applicants for permits;
- (b) fixing the fees payable to the Society for the issuance of permits and the fees payable annually by professional corporations;
- (c) respecting
  - (i) the imposition of a pecuniary penalty on a professional corporation,
  - (ii) the suspension of the permit of a professional corporation, without notice or investigation, or

(iii) the suspension of membership of a member who is the sole voting shareholder of a professional corporation, without notice or investigation,

if a professional corporation has contravened a rule requiring the corporation to pay a fee or assessment, file a document or do any other act by a specified or ascertainable time;

(d) respecting the reinstatement or reissuance of a permit that has been revoked, and respecting the conditions on which the reinstatement or reissuance may be granted;

(e) respecting the termination of the suspension of a permit or of the suspension of the membership of a member pursuant to rules under clause (c), and respecting the conditions on which any termination may be granted;

(f) providing for the creation and maintenance of a register of professional corporations and requiring the filing of periodic returns by those corporations;

(g) providing for the annual renewal of permits and prescribing the terms and conditions on which renewals may be granted;

(h) prescribing the types of name by which

(i) a professional corporation,

(ii) a partnership of 2 or more professional corporations, or

(iii) a partnership of one or more professional corporations and one or more individual barristers and solicitors,

may be known.

**Permit**

**127(1)** Subject to this Act, a professional corporation may carry on the practice of a barrister and solicitor in its own name.

(2) Notwithstanding subsection (1), no corporation shall be enrolled as a member of the Society.

(3) The Secretary shall issue a permit to any corporation that fulfils the following conditions:

(a) files an application in the form prescribed by the Benchers;

(b) pays the fees prescribed by the rules;

(c) satisfies the Secretary that it is a corporation incorporated or continued under the *Business Corporations Act* and in good standing with the Registrar of Corporations under that Act;

- (d) satisfies the Secretary that the name of the corporation is in accordance with the rules of the Society and contains the words "Professional Corporation";
  - (e) satisfies the Secretary that the legal and beneficial ownership of all issued voting shares of the corporation is vested in one or more active members of the Society and that all of the directors of the corporation are active members of the Society;
  - (f) satisfies the Secretary that the legal and beneficial ownership of all issued non-voting shares of the corporation is vested in
    - (i) one or more active members who are also voting shareholders, or
    - (ii) one or more individuals who are within any of the following classes of relationship to an active member who is also a voting shareholder:
      - (A) the spouse of that member,
      - (B) a man or woman who, although not married to that member, lives together with that member as husband and wife and has done so for at least 2 years,
      - (C) a child of that member, or
      - (D) any other relative of that member who resides with that member,
  - or
  - (iii) a trustee holding the shares in trust for the benefit of individuals within any of the classes described in subclause (i) or (ii);
  - (g) satisfies the Secretary that the persons who will carry on the practice of a barrister and solicitor on behalf of the corporation are active members of the Society.
- (4) A permit issued under subsection (3) expires on December 31 of the year for which it was issued.
- (5) A permit issued under subsection (3) may be revoked or its renewal may be withheld by the Secretary if any of the conditions specified in subsection (3) no longer continue to exist.
- (6) For the purpose of subsection (3)(g), the practice of a barrister and solicitor is not deemed to be carried on by clerks, secretaries,

bookkeepers and other assistants employed by the corporation to perform services that are not usually and ordinarily considered by law, custom and practice to be services that may be performed only by an active member of the Society, nor is the practice of a barrister and solicitor deemed to be carried on by students-at-law employed by the corporation to do anything in the course of their duties as students-at-law if it is done under the direction or supervision of an active member of the Society.

Termination of permit

**128** If a professional corporation ceases to fulfil any condition specified in section 127(3) by reason only of the death or loss of active membership in the Society of a voting shareholder of the corporation, the professional corporation has a period of 90 days from the date of the death or loss of active membership, as the case may be, in which to fulfil the condition, failing which the permit is automatically terminated effective on the expiration of the 90-day period without the necessity of an order of the Benchers.

Liability of shareholders and employees

**129(1)** Notwithstanding anything to the contrary in the *Business Corporations Act*, every person who is a voting shareholder of a corporation during the time that it is the holder of a permit or of a corporation during the time that it acts in contravention of section 103(1) is liable to the same extent and in the same manner as if the voting shareholders of the corporation were during that time carrying on the business of the corporation as a partnership or, if there is only one voting shareholder, as an individual practising as a barrister and solicitor.

(2) The liability of any person in carrying on the practice of a barrister and solicitor is not affected by the fact that the practice of a barrister and solicitor is carried on by that person as an employee and on behalf of a professional corporation.

Voting agreements with non-members prohibited

**130** No shareholder of a professional corporation shall enter into a voting trust agreement, proxy or any other type of agreement vesting in another person who is not an active member of the Society the authority to exercise the voting rights attached to any or all of his shares.

Application of Act and rules

**131** The relationship of a member of the Society or of a student-at-law to a professional corporation, whether as shareholder, director, officer or employee, does not affect, modify or diminish the application to him of the provisions of this Act and the rules.

Preservation of solicitor-client relationships

**132(1)** Nothing in section 127 affects, modifies or limits any law applicable to the fiduciary, confidential or ethical relationships between a barrister and solicitor and a person receiving the professional services of a barrister and solicitor.



(2) The relationship between a professional corporation carrying on the practice of a barrister and solicitor and a person receiving the professional services of the corporation is subject to all applicable law relating to the fiduciary, confidential and ethical relationships between a barrister and solicitor and his client.

(3) All rights and obligations pertaining to communications made to or information received by a barrister and solicitor, or his advice thereon, apply to the shareholders, directors, officers and employees of a professional corporation.

Use of title

**133(1)** No person shall engage in practice as a barrister and solicitor under any name containing "Professional Corporation" or the abbreviation "P.C." unless that person is incorporated or continued as a corporation under the *Business Corporations Act* and the corporation is the holder of a permit not under suspension.

(2) A person who contravenes subsection (1) is guilty of an offence and liable to a fine not exceeding \$1000 for every day on which the prohibited name or abbreviation is used.

Effect of discipline

**134(1)** If a member is disbarred and the member is the sole voting shareholder of a professional corporation, the permit of the professional corporation is thereby revoked.

(2) If the membership of a member is suspended and the member is the sole voting shareholder of a professional corporation, the permit of the professional corporation is suspended for the same period for which the membership is suspended.

Assurance Fund and custodian provisions

**135(1)** Section 86 applies to claims related to misappropriation or wrongful conversion by a member of the Society of money or other property entrusted to or received by any professional corporation of which that member is a shareholder, director, officer or employee in its capacity as a barrister and solicitor in Alberta in the course of its practice in Alberta.

(2) An order that may be made by the Court of Queen's Bench in the case of a member under section 92(1) may, in the case of a professional corporation, be made in any of the following cases:

(a) when the permit of the corporation has been revoked or suspended under section 134;

(b) when the conduct of a voting shareholder is the subject of proceedings under Part 3 and there is reason to believe that the conduct involves the misappropriation or wrongful conversion of money or other property entrusted to or received by the professional corporation;

- (c) when a voting shareholder of the corporation has died or become mentally incapacitated;
- (d) when for any reason the corporation is unable to practise as a barrister and solicitor;
- (e) when a voting shareholder of the corporation has absconded or is otherwise improperly absent from the corporation's place of business, or the corporation has neglected its practice for an unduly extended period;
- (f) when there is reason to believe that the trust money held by the corporation is not sufficient to meet its trust liabilities;
- (g) when other sufficient grounds exist.

(3) Subject to subsection (2), Division 2 of Part 4 except section 92(1) applies to a professional corporation or former professional corporation and for that purpose references to a member in Division 2 of Part 4, except section 92(1), shall be read as references to a professional corporation.

**Exemption from  
municipal  
business licence**

**136** No municipality has the power to require any professional corporation to obtain a licence from the municipality to practise law or to carry on the practice or profession of a barrister and solicitor.

**Right to sue**

**137** A corporation may sue to recover fees for the provision of any services provided by it in the course of carrying on the practice of a barrister and solicitor if those services were performed during a period when the corporation was the holder of a permit that was not under suspension.

**Evidence**

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

(a) a professional corporation, or

(b) a professional corporation whose permit was under suspension,

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

**Interpretation**

**139** In any provision of an Act of the Legislature or any regulation, rule, order or by-law made under an Act of the Legislature enacted or made before, at or after the commencement of this section, a reference to a person authorized to carry on the

practice of law, whether referred to as a member of The Law Society of Alberta, a barrister and solicitor or otherwise, shall be read as including a professional corporation unless otherwise expressly provided.

## PART 9

### TRANSITIONAL, CONSEQUENTIAL AND COMING INTO FORCE

#### Transitional

**140(1)** *A person who is admitted to The Law Society of Alberta as a student-at-law and who is serving under articles of clerkship immediately before this section comes into force is deemed to be registered with The Law Society of Alberta as a student-at-law under this Act.*

*(2) A person who, immediately before the coming into force of section 46, was enrolled as a member pursuant to the predecessor of section 46, ceases to be a member*

*(a) at the expiration of the 1-year period following the date on which this section comes into force, or*

*(b) at the conclusion of all matters on which he was acting in Alberta in his capacity as a member,*

*whichever event occurs first, unless that person, before that event occurs, satisfies the Education Committee that he has met the requirements for enrolment under another provision of Part 2.*

*(3) Proceedings commenced under Part 3 of the Legal Profession Act, RSA 1980 cL-9, before the coming into force of this Act shall be continued under that Part as though this Act had not been enacted.*

*(4) For the purposes of subsection (3), proceedings regarding a member's conduct are deemed to have been commenced under Part 3 of the Legal Profession Act, RSA 1980 cL-9, before the coming into force of this Act if the matter regarding the member's conduct had been brought to the attention of the chairman or a member of the Discipline Committee or the Competence Committee before the coming into force of this Act.*

*(5) If a person was found guilty of conduct deserving of sanction or of conduct unbecoming a barrister or solicitor under a predecessor of this Act, the person is deemed to have been found guilty of conduct deserving of sanction under this Act.*

*(6) On the coming into force of section 97,*

*(a) the assets of the Professional Liability Claims Fund become funds of The Law Society of Alberta under section 97, and*

*(b) the liabilities of the Professional Liability Claims Fund are chargeable against the funds of The Law Society of Alberta under section 97.*

**Consequential**

**141(1)** *The Commissioners for Oaths Act is amended in section 2 by striking out “and always has been, from the date of his admission” and substituting “, while he is registered”.*

*(2) The Notaries Public Act is amended by repealing section 2(2) and substituting the following:*

*(2) A person who is registered as a student-at-law under the Legal Profession Act is a notary public for Alberta while he is so registered.*

*(3) The Trust Companies Act is amended in section 1(1)(c) by striking out “, as defined in section 112 of” and substituting “that holds a permit under”.*

**Repeals RSA  
1980 cL-9**

**142** *The Legal Profession Act, RSA 1980 cL-9, is repealed on Proclamation.*

**Coming into  
force**

**143** *This Act comes into force on Proclamation.*