

BILL

No. 32 of 1928.

An Act to amend The Legal Profession Act.

(Assented to _____, 1928).

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

1. This Act may be cited as "*The Legal Profession Act Amendment Act, 1928.*"

2. *The Legal Profession Act*, being chapter 206 of the Revised Statutes of Alberta, 1922; is amended by striking out section 16 thereof, and substituting therefor the following:

"16. Every nomination for election as a benchers shall be in writing, signed by at least five members of the society in good standing, and with the written consent of the person nominated, shall be filed with the secretary not later than the first Tuesday in October preceding the day of election."

3. Section 31 of the said Act is amended—

(a) by striking out paragraph (a) thereof, and substituting therefor the following:

"(a) The government of the said society and other purposes connected therewith, including the determination of or adjudication upon any matter or thing which it is the duty of the benchers or, any committee thereof to adjudicate upon or determine;" and

(b) by striking out paragraphs (c) and (d) thereof, and substituting therefor the following:

"(c) The fees payable to the society for the admission of students-at-law, and any enrolment of barristers and solicitors, and the fees payable annually by each member of the society, and other fees incidental to the conduct of the society."

4. Sections 32, 33, 33(a), 33(b), and 33(c), are struck out and the following sections are substituted therefor:

"32.—(1) Any three benchers thereunto authorized in accordance with the rules and regulations of the society shall constitute an investigating committee and such committee may investigate whether any member of the society has been guilty of conduct unbecoming a barrister or solicitor and

the said committee may also investigate any other matter or thing that might form the subject matter of a charge or complaint against the member of the Law Society whose conduct is being investigated that shall arise in the course of the said investigation, and may report thereon to the benchers, as hereinafter provided.

“(2) Any member of an investigating committee may continue to act as such notwithstanding that he may no longer be a bencher of the society for the purpose of completing and reporting upon any matter begun while he was a bencher of the society.

“(3) Conduct unbecoming a barrister or solicitor within the meaning of this section shall be a question of fact for the sole and final determination of the benchers or any such investigating committee as in this section mentioned, and any matter, conduct or thing that in the judgment of the benchers or of any such committee is such as to be inimical to the best interests of the public or the profession, or tends to harm the standing of the profession, shall be conduct unbecoming a barrister and solicitor within the meaning of this section.

“(4) At least ten days' notice in writing shall be given, by the secretary of the society, to the member whose conduct is being investigated, of the intention to make such investigation as aforesaid, and such notice shall specify in general terms the matter to be investigated and the time and place at which such investigation will be held; and shall be served upon such member either personally or by being enclosed in a sealed, prepaid registered envelope addressed and mailed to such member at his last post office address on the books of the society.

“(5) Evidence may be adduced before such investigating committee either by affidavit or *viva voce*, or both, as the said committee may determine.

“(6) Every bencher is hereby authorized and empowered to administer an oath for the purpose of any investigation.

“(7) The attendance of witnesses before an investigating committee and the production of books, papers, and other documents, may be enforced by a notice requiring the witness to attend, issued under the hand of the secretary and the seal of the society, and stating the time and place at which the witness is to attend and the documents, if any, he is required to produce. The secretary shall without charge issue and deliver to the member whose conduct is being investigated, such notices as he may require for the attendance of witnesses or production of documents upon the written request of such member, his solicitor or agent.

“(8) Any witness other than a member whose conduct is being investigated, served with a notice to attend or for the production of documents as aforesaid, shall be entitled to demand and to be paid the usual fees payable to witnesses in an action in the Trial Division of the Supreme Court.

“(9) Any witness failing to attend before an investigating committee in obedience to such notice, or to produce any books, papers, or other documents, or in any way to comply with such notice, or refusing to be sworn or to answer any question allowed by an investigating committee shall be liable to attachment upon application to a judge of the Supreme Court and may be punished as for contempt of Court, and where such witness is the member whose conduct is being investigated, such failure or refusal shall be conduct unbecoming a barrister or solicitor within the meaning of this section.

“(10) An investigating committee shall not be bound by the rules of evidence obtaining in actions and proceedings in the courts of justice; but on the contrary, may proceed to ascertain the facts in such manner as it shall deem proper.

“(11) In the event of non-attendance of the member whose conduct is being investigated, the investigating committee may upon proof of service of the notice of such investigation as hereinbefore provided, in addition to all other powers herein contained, proceed with the investigation in the absence of such member and may act and report upon the matter being investigated in the same way as though the said member were in attendance.

“(12) The investigating committee may suspend the member whose conduct is the subject of investigation until the next meeting of the benchers. The investigating committee shall report in writing to the benchers whether or not in its opinion the member has been guilty of conduct unbecoming a barrister or solicitor and shall, after such investigation, forward such report with a copy of the evidence and a record of the proceedings before the committee to the secretary of the society.

“(13) The benchers shall at their then next meeting consider such report and may declare whether the member whose conduct has been investigated has or has not been guilty of conduct unbecoming a barrister or solicitor, or order that the matter be referred back to the same or any other investigating committee or adjourned for consideration. In the event of such member being declared to have been guilty of conduct unbecoming a barrister or solicitor the benchers may order that the name of the member whose conduct has been investigated be struck off the roll of the society, or may order that such member be suspended from practising for such period as may be considered proper, or may reprimand such member, and in addition to or in lieu of any such order or reprimand, may order that such member shall pay a sum not less than fifty dollars, nor more than four hundred dollars, to the funds of the society within a time to be fixed by such order, and may further order that in default of payment of any such sum so ordered to be paid within the time fixed for payment thereof, such member shall be suspended from practising until such sum shall have been paid.

“(14) Any investigating committee, as well as the benchers, may, for the purpose of the execution of its respective duties under this Act employ, at the expense of the society, legal or other assistance and the member whose conduct is being investigated shall have the right to appear in person or by counsel or agent before such committee and before the benchers.

“(15) Any person whose name has been ordered to be struck off the roll, or who has been suspended by order of the benchers under the powers conferred by this section may appeal from the order of the benchers to the Appellate Division of the Supreme Court at any time within thirty days after the date of the order being appealed against and the Court may upon hearing the said appeal make an order either confirming or reversing the order appealed against, as to the said Court may seem meet. Provided that there shall be no appeal from an order unanimously made by the benchers present and voting thereon.

“(16) Notice of any such appeal shall be served by the person appealing upon the secretary of the society within the time limited for appeal, as in the next preceding paragraph hereof provided. The appeal shall be founded upon a copy of the evidence and the record of the proceedings before the investigating committee, the report of such committee and the order of the benchers, certified by the secretary of the society, who shall furnish a copy of the same to the person appealing or to his solicitor or agent on request, on being paid the costs of preparation thereof.

“(17) The benchers may without notice suspend from practising or strike off the roll any member of the society who has been convicted of an offence punishable under *The Criminal Code of Canada* upon proof of such conviction.

“(18) If at any time any member of the society has made an admission, direct or implied, oral or written, or it is shown by affidavit or sworn testimony that any moneys, securities or other property have been received by him for or from or on account of a client or other person, the benchers or any committee thereof duly authorized by the rules and regulations of the society may at any time, if in their uncontrolled discretion they are of opinion that he has improperly failed to hand over such property or otherwise properly account for the same, or that he has improperly obtained the same, direct him to give an accounting of all such moneys, securities or other property and may direct that he shall forthwith pay into or deposit in the Supreme Court of Alberta all moneys, securities or other properties held by him or received by him and improperly retained or disposed of by him, and may fix a time within which he shall comply with any such direction, and failure to comply with any such direction shall subject the said member to attachment. The moneys, securities or other property paid into or deposited in Court may be paid out or made over to the

person or persons entitled thereto upon summary application to the Court.

“(19) Failure to comply with any direction given under the immediately preceding paragraph shall be conduct unbecoming a barrister or solicitor within the meaning of this section.

“(20) When, in any proceedings before an investigating committee or before the benchers, it is established or admitted that a barrister or solicitor has received any moneys upon trust, the burden of proof that such moneys have been properly dealt with shall be upon such barrister or solicitor.

“(21) Notwithstanding anything in this Act contained, the benchers may in their uncontrolled discretion—

“(a) refuse enrolment as a member of the society;

“(b) suspend any member of the society pending the investigation of whether such member has been guilty of conduct unbecoming a barrister or solicitor.

“(22) For the purposes of this Act the word ‘witness’ shall be taken to include any member of the society whose conduct is being investigated; and any such member may be examined on oath on all matters relevant to the investigation, and shall not be excused from answering any question on the ground that the answer may tend to criminate him or may subject him to punishment under the disciplinary provisions of this Act, or may tend to establish his liability to a civil proceeding at the instance of the Crown, or of any person, or to prosecution under any statute, but the answer so given, if it be such as tends to criminate him, shall not be used or received against him in any civil proceedings or in any proceeding under any other Act of Alberta.

“(23) In determining the propriety of any costs or charges demanded or exacted by any member of the society for the purpose of deciding whether such member has been guilty of conduct unbecoming a barrister or solicitor, the benchers or any investigating committee shall not be bound by the taxation thereof under the rules of Court or under this Act.

“33. The Appellate Division shall not award costs either in favor of or against the society or in favor of or against a barrister or solicitor whose conduct has been investigated under the provisions of this Act.”

5. Section 37 of the said Act is amended as to subsection (3) thereof by striking out the word “the” where it occurs before the words “Clerk of the Supreme Court” and substituting therefor the word “a.”

6. Section 40 of the said Act is struck out and the following substituted therefor:

“40. The funds of the society shall be deposited by the treasurer to the credit of the society in a chartered bank

and shall be withdrawn only by cheque signed and countersigned in accordance with the rules and regulations of the society."

7. Section 46 of the said Act is amended by striking out subsection (2) thereof.

8. Sections 51 to 58 inclusive of the said Act are struck out and the following sections substituted therefor:

"51. All barristers and solicitors shall be officers of the Supreme Court of Alberta; and as such shall, subject to the provisions of sections 32, 33 and 53 hereof, be subject to the same liabilities with regard to their undertakings, loss or costs incurred through their default, the payment over of their clients' money and the delivery of their papers, and to attachment for misconduct or disobedience to the orders of the Court and to all such punishment for contempt as solicitors of the Supreme Court of England.

"GENERAL PROVISIONS REGARDING DISCIPLINE.

"52. Upon a barrister and solicitor being struck off the roll, all his rights and privileges as a barrister or solicitor shall cease and determine, or in case he is suspended he shall during the period of his suspension possess no rights or privileges as a barrister or solicitor, and notice of his being struck off the roll or suspended shall forthwith be given by the secretary to the judges of the Supreme and District Courts of Alberta and to the clerks of the said Courts.

"53. When the name of any member of the society has been ordered to be struck off the roll, the name of such member shall not again be entered upon the roll of the society except by order of the benchers, who may in their uncontrolled discretion refuse or grant any such order, and from such grant or refusal there shall be no appeal.

"54. Whenever any student-at-law of the society has been found by the benchers, after due inquiry, to have been guilty of professional misconduct, or conduct which in the opinion of the benchers is unbecoming a student-at-law, or of having contravened any of the provisions of this Act, or of any of the rules or regulations of the society, the benchers may strike the name of such student from the books of the society.

"55. The benchers may institute or authorize the institution of any proceedings under this Act for any breach of its provisions."

No. 32.

SECOND SESSION
SIXTH LEGISLATURE
18 GEORGE V
1928

B I L L

An Act to amend The Legal Profes-
sion Act.

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. LYMBURN.

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W. D. McLEAN, ACTING KING'S PRINTER
A.D. 1928