

CHAPTER L-10.1

An Act respecting the Legal Profession,
the Law Foundation and the Law Society of Saskatchewan

(Assented to June 22, 1990)

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

PART I

Short Title and Interpretation

- Short title 1 This Act may be cited as The Legal Profession Act, 1990.
- Interpretation
“bencher” 2(1) In this Act:
“certificate” (a) “bencher” means a bencher of the society who is elected, constituted or appointed in accordance with this Act;
“complainant” (b) “certificate” means, except in sections 73 and 83, a certificate issued to a member by the society entitling the member to practise law in Saskatchewan;
“conduct unbecoming” (c) “complainant” means a person who makes a complaint to the society about the conduct of a member;
(d) “conduct unbecoming” means any act or conduct, whether or not disgraceful or dishonourable, that:
(i) is inimical to the best interests of the public or the members; or
(ii) tends to harm the standing of the legal profession generally;
and includes the practice of law in an incompetent manner where it is within the scope of subclause (i) or (ii);
“court” (e) “court” means Her Majesty's Court of Queen's Bench for Saskatchewan, unless the context requires otherwise;
“financial institution” (f) “financial institution” means a chartered bank, a credit union incorporated or continued pursuant to The Credit Union Act, 1985 or a trust corporation that holds a valid and subsisting licence issued pursuant to The Trust and Loan Corporations Act;

- (g) "foundation" means the Law Foundation continued pursuant to section 74;
- (h) "member" means, subject to subsection (2) and section 60 and except where the context requires otherwise, a member of the society admitted pursuant to subsection 4(1) or declared to be a member pursuant to subsection 4(2);
- (i) "minister" means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (j) "prescribed" means prescribed by the benchers;
- (k) "rules" means:
 - (i) in Part VI other than in section 78, the rules made by the foundation pursuant to this Act; and
 - (ii) in any other Part and in section 78, the rules made by the benchers pursuant to this Act;
- (l) "secretary-treasurer" means the secretary-treasurer of the society or, if there is no secretary-treasurer, the secretary or treasurer as the context requires;
- (m) "society" means the Law Society of Saskatchewan continued pursuant to section 3.

(2) References to members in:

- (a) sections 6, 12, 15 to 20, 25, 26 and 74;
- (b) Part V, other than in section 63; and
- (c) rules made with respect to any matter mentioned in the provisions set out in clauses (a) and (b);

do not include students-at-law.

(3) Words that:

- (a) direct or empower the secretary-treasurer or a chairperson of a committee established pursuant to this Act to do any act or thing; or
- (b) otherwise apply to the secretary-treasurer or a chairperson by name of office;

include the deputy secretary-treasurer and any vice-chairperson, respectively.

PART II Law Society

- 3(1) The Law Society of Saskatchewan is continued as a corporation.

(2) The society may acquire, hold, lease, sell or dispose of real and personal property for its corporate purposes.

(3) All:

(a) fees payable and assessments levied; and

(b) fines and penalties imposed;

pursuant to this Act are the property of the society.

(4) The society may borrow moneys for its purposes, and may mortgage or charge any of its property or its sources of funds as security for moneys borrowed.

(5) The society may invest its funds in investments in which trustees are authorized to invest pursuant to The Trustee Act and may sell or otherwise dispose of those investments and may reinvest the proceeds in similar investments.

Membership

4(1) The society may admit lawyers and students-at-law to be members.

(2) All persons who are members of the society pursuant to The Legal Profession Act on the day before this section comes into force are members pursuant to this Act.

Officers

5(1) The officers of the society may consist of a president, vice-president, secretary-treasurer or secretary and treasurer, deputy secretary-treasurer and any other officers that the society considers necessary.

(2) The benchers may appoint a person other than a bencher to fill any office of the society, other than the offices of president and vice-president.

Benchers

6(1) The benchers constitute the governing body of the society and:

(a) are responsible for the governance of the society and the legal profession;

(b) shall manage and conduct the business and affairs of the society; and

(c) shall perform the duties imposed, and exercise the powers conferred, on the society or the benchers pursuant to this Act or otherwise.

(2) The benchers consist of:

(a) the Dean of the College of Law of the University of Saskatchewan;

- (b) not less than 17 benchers elected pursuant to section 15, of whom:
 - (i) not less than 50% are to be elected from members:
 - (A) who are eligible pursuant to section 17; and
 - (B) whose only or principal place of practice is in the Regina City electoral division or the Saskatoon City electoral division; and
 - (ii) not less than 40% are to be elected from members:
 - (A) who are eligible pursuant to section 17; and
 - (B) whose only or principal place of practice is in an electoral division other than Regina City or Saskatoon City;
 - (c) two benchers who are not members, appointed by the Lieutenant Governor in Council after consultation with the society; and
 - (d) the Attorney General of Canada and the Attorney General for Saskatchewan, who are ex officio benchers.
- (3) Of the persons first appointed pursuant to clause (2)(c):
 - (a) one is to be appointed at pleasure for a term not exceeding two years; and
 - (b) one is to be appointed at pleasure for a term not exceeding three years;and all subsequent appointments are to be at pleasure for a term not exceeding three years.
- (4) Of the persons appointed pursuant to clause (2)(c):
 - (a) one is to be a resident of Regina or Saskatoon; and
 - (b) one is to be resident outside of Regina and Saskatoon.
- (5) A bencher appointed pursuant to clause (2)(c) holds office:
 - (a) while resident in Saskatchewan; and
 - (b) until a successor is appointed;and may be reappointed for not more than one additional consecutive term.
- (6) The society shall pay remuneration and reimbursement for expenses at the rate determined by the Lieutenant Governor in Council to benchers appointed pursuant to clause (2)(c).
- (7) A bencher appointed pursuant to clause (2)(c) may exercise rights and serve as a member of committees to the same extent as other benchers.

Ex officio benchers

7 Ex officio benchers have no right to vote at a meeting of the benchers in convocation.

Absence from convocation

8 Where an elected bencher has been absent from two consecutive, regularly scheduled meetings of the benchers in convocation, the benchers in convocation may, by resolution, remove that bencher from office.

Effect of disbarment, suspension

- 9(1) If a member who is serving as a bencher is disbarred, the member ceases to be a bencher on the day that the member is disbarred.
- (2) If a member who is serving as a bencher is suspended from practice, the member's powers and duties as a bencher are suspended for the same period.

Rules

- 10 The benchers may make rules:
- (a) establishing committees, determining the duties of committees and conferring on committees the power to act for the benchers in and in relation to any matters that the benchers direct, other than the power to make rules;
 - (b) subject to subsection 6(6), prescribing remuneration and reimbursement for expenses payable to benchers in carrying out their duties pursuant to this Act;
 - (c) prescribing a code of professional conduct for members;
 - (d) prescribing the qualifications, courses and manner of study and examinations of students-at-law and the requirements preliminary to their admission as lawyers;
 - (e) prescribing the evidence and information to be submitted by persons applying to be admitted as students-at-law or lawyers;
 - (f) regulating the admission of lawyers as members;
 - (g) regulating the practice of law by members in association or otherwise in conjunction with persons who are resident or incorporated outside Saskatchewan;
 - (h) fixing fees payable to the society:
 - (i) for the bar admission course;
 - (ii) for the admission of students-at-law and lawyers; and
 - (iii) from time to time, by members or categories of members;

- (i) providing for lawyers who are not members to practise law in specified situations, fixing fees payable by those lawyers and prescribing any terms and conditions or imposing any requirements on those lawyers that the benchers consider appropriate;
- (j) providing for the issuance of certificates to members and persons authorized to practise law in accordance with rules made pursuant to clause (i) and requiring those certificates to be displayed as prescribed;
- (k) requiring law firms or categories of law firms to apply to the society for and hold a permit, categorizing law firms, fixing fees payable for permits, imposing terms or conditions on the issuance of permits, providing for the revocation of permits and the effect of the revocation and otherwise regulating the issuance of permits;
- (l) prescribing standards of competency that the benchers consider necessary or advisable to ensure that members bring adequate skill and knowledge to the practice of law;
- (m) establishing procedures relating to the methods of assessment and review of competency, and generally providing for carrying out the powers of the competency and standards committee pursuant to section 41;
- (n) providing for the making, investigating, hearing and determining of complaints against members and for any other matters necessary to carry out the discipline provisions of this Act;
- (o) establishing criteria and procedures for taking disciplinary action against members for contraventions of rules;
- (p) providing for the manner and extent to which members may hold themselves out as engaging in the practice of law other than in the general practice of law;
- (q) providing for:
 - (i) the suspension from practice of members for contraventions of rules respecting the payment of fees or assessments levied or the filing of materials; and
 - (ii) the reinstatement, on any terms that the benchers consider appropriate, of members who have been suspended in accordance with rules made pursuant to subclause (i);
- (r) providing for the reinstatement of:
 - (i) persons who have been disbarred;

- (ii) former students-at-law whose articles have been terminated;
 - (iii) persons who have resigned from the society; or
 - (iv) inactive members as active members;
- and providing for terms and conditions respecting their reinstatement;
- (s) requiring members to keep and maintain books, records and accounts in the prescribed form and manner with respect to all moneys, other negotiable property and other consideration received or disbursed in connection with the member's practice, and establishing criteria with respect to the furnishing of evidence that those books, records and accounts are being kept and maintained in accordance with the rules;
 - (t) providing for:
 - (i) the investigation or inspection of books, records and accounts of members by:
 - (A) the officers, auditors or agents of the society; or
 - (B) any other person designated by the benchers or appointed by the chairperson of the discipline committee; and
 - (ii) the method of assessment against a member of the expenses of investigations pursuant to subclause (i) where it is determined that the member has not complied with rules respecting the keeping of books, records and accounts;
 - (u) regulating the content, form and manner of advertising by members;
 - (v) regulating the provision of mediation services by members;
 - (w) respecting the establishment and maintenance of a system of continuing legal education and the monitoring of legal education provided otherwise;
 - (x) providing for the giving of notice with respect to annual and special meetings of the society, specifying the effects of that notice, and establishing procedures for those meetings;
 - (y) specifying the form and content of written requests for special meetings of the society and the time within which the meetings are to be held;
 - (z) prescribing the content of bills for fees and disbursements charged to clients by members;
 - (aa) providing that the society may provide funds and other assistance to establish or maintain law libraries;

- (bb) providing for the disbursement and appropriation of funds of the society;
- (cc) respecting any matter that is necessarily incidental to the matters set out in this section relating to the governance of the society and the legal profession.

Insurance

- 11(1) The benchers shall require as a condition of membership in the society that members maintain insurance that provides indemnity against professional liability claims in an amount determined by the benchers.
- (2) The society may enter into a contract of insurance pursuant to which any member or category of members is insured with respect to professional liability claims.
- (3) The benchers may:
- (a) establish, administer, maintain and operate a professional liability insurance scheme;
 - (b) fix the assessments levied on members or categories of members with respect to the insurance scheme mentioned in clause (a);
 - (c) establish categories of membership for the purposes of this section; and
 - (d) exempt any member or category of members from the requirement to:
 - (i) maintain professional liability insurance; or
 - (ii) pay an assessment.
- (4) For the purposes of this section, the society may:
- (a) establish a subsidiary corporation;
 - (b) in its own right or through a subsidiary corporation, enter into a reciprocal insurance exchange agreement; and
 - (c) levy assessments and impose retroactive assessments on members.
- (5) The society is deemed to be the agent of the member:
- (a) in entering into a contract of insurance pursuant to subsection (2); and
 - (b) in carrying out the activities described in subsection (4).

Special fund

- 12(1) In this section, "fund" means the special fund created pursuant to clause (2)(a).

- (2) The benchers may:
 - (a) create a special fund by the levy of an assessment on members for the purpose of reimbursing persons who suffer pecuniary loss as a result of a member's misappropriation or conversion of moneys or other property entrusted to or received by the member in the member's professional capacity; and
 - (b) in cases where they are of the opinion that reimbursement should be made, reimburse a person described in clause (a), in whole or in part, out of the fund.
- (3) For the purposes of this section, the benchers may make rules:
 - (a) respecting the administration and investment of the fund;
 - (b) prescribing limitations on amounts that may be paid out of the fund;
 - (c) providing for charging to the fund:
 - (i) expenses incurred in connection with audits, investigations and hearings pertaining to members' accounts; and
 - (ii) fees and expenses of trustees appointed pursuant to section 61; and
 - (d) fixing assessments payable by members or categories of members.
- (4) The fund:
 - (a) is the property of the society; and
 - (b) is not subject to any trust.
- (5) The society shall deposit the fund in an account in a financial institution, separate and apart from all other funds of the society.
- (6) The benchers shall, not later than April 1 in each year:
 - (a) prepare a report with respect to the fund and all payments out of the fund during the last preceding year; and
 - (b) deliver a copy of the report to the minister.

Society subrogated

13(1) Where a payment is made to a person pursuant to subsection 12(2), the society is subrogated in the amount of the payment to any rights or remedies of that person against the member or another person regarding the loss with respect to which the payment was made.

(2) In the event of the death, insolvency or other disability of the member or other person mentioned in subsection (1), the society may proceed against the personal representative or the person administering the estate, as the case may be, of the member or other person.

- Society trust account
- 14(1) A member may pay moneys from the member's trust account to the society where:
- (a) the moneys have been held in the member's trust account for more than three years; and
 - (b) the society is satisfied that the member is unable to pay the moneys to the person who is entitled to them.
- (2) The society shall:
- (a) maintain a trust account consisting of moneys paid to the society from members' trust accounts pursuant to subsection (1); and
 - (b) pay to the foundation the interest accruing on moneys held in the account mentioned in clause (a).
- (3) Where a person establishes to the satisfaction of the society that the person is entitled to moneys held pursuant to this section, the society shall pay the moneys to the person.
- (4) A dispute between the society and a person with respect to the person's entitlement to moneys held pursuant to this section may be determined on application to the court.
- (5) The society is not liable to account to any person other than the foundation for interest on moneys held pursuant to this section.
- Elections
- 15(1) An election of benchers shall be held in 1991 and at intervals of three years after 1991.
- (2) An elected bencher takes office on January 1 following the election and holds office for a term of three years.
- Eligibility to vote
- 16 All members, except members under suspension, are eligible to vote at an election of benchers.
- Eligibility as candidate
- 17(1) All members, except members under suspension, are eligible as candidates in an election of benchers.
- (2) A person who has served as a bencher is eligible as a candidate for re-election as a bencher, but no person is eligible to be elected for more than two consecutive terms.

- (3) Service as a bencher by virtue of an appointment pursuant to section 20 is not to be considered for the purposes of determining two consecutive terms pursuant to subsection (2).
- (4) No person who is an ex officio bencher pursuant to clause 6(2)(d) is eligible as a candidate at an election of benchers.

Procedure re elections

- 18(1) The benchers shall make rules governing elections of benchers, including:
- (a) the procedure for nominating candidates;
 - (b) the division of Saskatchewan into electoral divisions and, subject to clause 6(2)(b), the number of benchers to be elected from each electoral division;
 - (c) provision for appointing or designating presiding officers for the election;
 - (d) the forms to be used;
 - (e) the procedure for conducting the elections and for determining the benchers elected;
 - (f) the procedure for disputing an election pursuant to section 19.
- (2) An election of benchers is to be by secret ballot.

Disputed elections

- 19 A member may dispute the validity of an election of benchers or the election of any bencher in accordance with the rules.

Vacancies

- 20 Where:
- (a) there is a failure to elect the required number of benchers; or
 - (b) an elected bencher vacates office for any reason;
- the remaining benchers may appoint a member who is eligible pursuant to section 17 to fill the vacancy for the remainder of the period for which the other benchers have been elected.

Annual meeting

- 21(1) The society shall hold an annual meeting of members at the place and time designated by the benchers.
- (2) The benchers shall give at least 21 days' notice of an annual meeting to each member in accordance with the rules.

Special meeting

- 22(1) The benchers:
- (a) may convene a special meeting of members at any time;

- (b) shall convene a special meeting of members on the written request of at least 50 members.
- (2) The request for and the calling, holding and procedure at a special meeting shall be in accordance with the rules.
- (3) The benchers shall give at least 21 days' notice of a special meeting to each member in accordance with the rules.

PART III

The Legal Profession and the Practice of Law

Eligibility as student-at-law

- 23(1) A person who is a permanent resident of Canada or a Canadian citizen may apply to the society to be admitted as a student-at-law.
- (2) The society may admit as a member a person described in subsection (1) where that person produces the prescribed evidence and information and otherwise complies with the rules.
- (3) Where a person is refused admission as a student-at-law, the society shall inform the person in writing of the reasons for the refusal.
- (4) A person whose application to be admitted as a student-at-law is refused:
 - (a) may request the benchers to review the application; and
 - (b) has the right to appear before the benchers in support of the application.
- (5) The benchers shall make rules with respect to the review pursuant to subsection (4) of applications.

Eligibility as lawyer

- 24(1) A person who is a permanent resident of Canada or a Canadian citizen may apply to the society to be admitted as a lawyer, and the society may admit that person as a member where that person:
 - (a) produces evidence satisfactory to the benchers of service as a student-at-law or practice as a lawyer;
 - (b) produces testimonials satisfactory to the benchers of good character and of good standing in the law society of any jurisdiction in which the person is a lawyer or student-at-law;
 - (c) produces evidence that the person possesses academic qualifications at least equal to those required for registration in and graduation from the College of Law of the University of Saskatchewan;

(d) complies with the rules; and

(e) fulfils any other requirements that the benchers may prescribe.

(2) Where a person is refused admission as a member, the society shall inform the person in writing of the reasons for the refusal.

(3) A person whose application for admission pursuant to this section as a member is refused:

(a) may request the benchers to review the application; and

(b) has the right to appear before the benchers in support of the application.

(4) The benchers shall make rules with respect to the review of applications pursuant to subsection (3).

(5) The benchers may make rules:

(a) establishing categories of membership on the basis of the frequency or extent of members' practice of law in Saskatchewan;

(b) prescribing the conditions on and requirements of each category of member;

(c) exempting a member or category of members from any provision of this Act or the rules.

Oath or affirmation

25 A person, before being admitted as a member, shall take and subscribe the prescribed oath or affirmation.

Duty to keep roll

26 The secretary-treasurer shall continue to keep a roll and enter on the roll the names of all persons who are admitted as members.

Resignation

27(1) A member who wishes to resign from the society shall apply to the benchers and, on receipt of the application, the benchers may:

(a) approve the application;

(b) approve the application with conditions; or

(c) reject the application.

(2) All of a member's rights and privileges as a member cease on the approval of the member's application to resign.

(3) Resignation of a member does not preclude the person from applying to the society at a later date for admission as a member.

Effect of disbarment, suspension

- 28(1) The rights and privileges of a member who is disbarred pursuant to this Act or by any competent authority are removed on disbarment, and the person ceases to be a member of the society.
- (2) The rights and privileges of a member who is suspended from practice pursuant to this Act or by any competent authority are removed for the period of the suspension.
- (3) The secretary-treasurer shall:
- (a) give notice immediately to the judges of the Court of Appeal, the court and the Provincial Court of Saskatchewan of the name of a member who is disbarred or suspended from practice; and
 - (b) where directed to do so by the chairperson of the discipline committee, cause a notice of the disbarment or suspension to be:
 - (i) published in any manner specified by the chairperson of the discipline committee; and
 - (ii) posted in or at the office and all other places of practice of the member who has been disbarred or suspended from practice.

Reinstatement

- 29(1) A person who has been disbarred may apply to the benchers for reinstatement in accordance with the rules, and the benchers may reinstate that person.
- (2) A person whose application for reinstatement is refused may, within 30 days after the day of the refusal, appeal from the decision of the benchers to the Court of Appeal, and the Court of Appeal may allow or disallow the appeal.
- (3) On an appeal pursuant to subsection (2), the Court of Appeal shall consider:
- (a) the proceedings before the benchers on the application for reinstatement;
 - (b) the past record of the appellant as shown by the books and records of the society;
 - (c) the evidence taken before the benchers and any committee of benchers to which the application was referred and the report of that committee; and
 - (d) the decision that is the subject of the appeal.
- (4) The procedure on an appeal pursuant to section 56 applies, with any necessary modification, to an appeal pursuant to this section.

(5) The society shall give notice of the reinstatement of a member to all judges mentioned in subsection 28(3).

Unauthorized practice

- 30(1) No person, other than a member who holds a subsisting certificate, shall:
- (a) practise at the bar of any court of civil or criminal jurisdiction in Saskatchewan;
 - (b) advise, do or perform any work or service for fee or reward, either directly or indirectly, in matters pertaining to the law of Saskatchewan or of any jurisdiction outside Saskatchewan;
 - (c) sue out any writ or process; or
 - (d) commence, carry on or defend any action or proceeding in any court.
- (2) A person, other than a member who holds a subsisting certificate, who commences, prosecutes or defends an action or proceeding in a court of civil or criminal jurisdiction or acts as counsel or lawyer in an action or proceeding is:
- (a) incapable of recovering any fee, reward or disbursement on that account; and
 - (b) deemed to be guilty of a contempt of the court in which the proceeding has been commenced, carried on, defended or prosecuted, and may be proceeded against for contempt before the Court of Appeal or a judge of the court sitting in chambers.

Exceptions re unauthorized practice

- 31 Section 30 does not apply to:
- (a) an articled student-at-law or any other person required to serve under articles who, while serving under articles:
 - (i) appears as counsel in proceedings before a judge of the Provincial Court of Saskatchewan, justice of the peace or a judge of the court sitting in chambers;
 - (ii) acts as counsel in proceedings in which a student-at-law is authorized by The Queen's Bench Rules to act; or
 - (iii) performs under the supervision of a member any acts, not related to court appearances, that are prescribed in the rules;
 - (b) a person authorized to practise in accordance with the rules made pursuant to clause 10(i) while the person is acting within the scope of that authorization;

- (c) a member of a police force appearing for the Crown before a judge of the Provincial Court of Saskatchewan or justice of the peace;
- (d) an employee of the Government of Saskatchewan or the Government of Canada prosecuting summary conviction cases for the contravention of an Act or an Act of the Parliament of Canada, or a regulation made pursuant to an Act or an Act of the Parliament of Canada;
- (e) a sheriff with respect to proceedings taken for:
 - (i) relief pursuant to provisions relating to interpleader;
 - (ii) payment out of court of funds belonging to an execution debtor; or
 - (iii) directions of a court with respect to a seizure made or requested to be made by the sheriff; or
- (f) a person who is a plaintiff or defendant in proceedings and who commences, prosecutes or defends in the person's own name an action or proceeding in a court of civil or criminal jurisdiction.

False pretences

- 32(1) No person, other than a member who holds a subsisting certificate or a person who is authorized to practise in accordance with rules made pursuant to clause 10(i), shall:
- (a) pretend or hold himself or herself out to be a lawyer or a barrister and solicitor; or
 - (b) take, assume or use any name, title, addition or description other than one that the person actually possesses and is legally entitled to or that implies or is calculated to lead people to infer that the person is a lawyer or member or is recognized by law as a lawyer qualified and entitled to practise law or do business as a lawyer in Saskatchewan, or in any way publish or advertise himself or herself as such.
- (2) No person who is not a member in good standing shall use the designations "barrister", "solicitor", "barrister and solicitor", "lawyer" or "attorney".

Court form

33 No person shall use in any manner a document or writing that simulates or is intended or is likely to lead any person to the belief that it is a court process or form, if it is not.

Officers of court

34 All members are officers of all duly constituted provincial and superior courts of civil and criminal jurisdiction in Saskatchewan.

PART IV
Competency and Discipline

Competency and standards committee

35(1) The benchers shall designate certain of their number to constitute a competency and standards committee and:

- (a) shall appoint a chairperson; and
- (b) may appoint one or more vice-chairpersons;

of that committee.

(2) Subject to this Act and the rules, the competency and standards committee shall:

- (a) determine all matters necessary to the convening, holding and adjournment of its meetings; and
- (b) determine generally the transaction and management of its business.

Discipline committee

36(1) The discipline committee is continued and comprises all benchers.

(2) The benchers:

- (a) shall appoint a chairperson and may appoint one or more vice-chairpersons of the discipline committee from among their number; and
- (b) shall determine the manner in which another member of the discipline committee may be appointed to act where the chairperson or a vice-chairperson is unable to act.

(3) Subject to this Act and the rules, the discipline committee shall:

- (a) determine all matters necessary to the convening, holding and adjournment of its meetings;
- (b) determine its procedure;
- (c) establish a method by which the discipline committee and hearing committees shall decide questions; and
- (d) determine generally the transaction and management of its business.

Assistance employed by committees

37 In the execution of its duties pursuant to this Act, an investigation committee, a hearing committee, the discipline committee or the competency and standards committee may employ, at the expense of the society, any legal or other assistance that it considers necessary.

Right of members to counsel

38 A member whose conduct is the subject of proceedings conducted pursuant to this Part is entitled to be represented by counsel, at the member's expense, throughout the proceedings and to examine, cross-examine and re-examine all witnesses and to present evidence in defence and reply.

Subpoena

39(1) On application by:

- (a) a member whose conduct is under investigation;
- (b) counsel for the society; or
- (c) the chairperson of:
 - (i) an investigation committee;
 - (ii) a hearing committee;
 - (iii) the discipline committee;
 - (iv) the competency and standards committee; or
 - (v) a committee appointed pursuant to subsection 41(1);

the local registrar of the court at any judicial centre, on payment of the appropriate fees, shall issue writs of subpoena ad testificandum or subpoena duces tecum.

(2) Where a writ issued pursuant to subsection (1) is disobeyed, the proceedings and penalties are those applicable in civil cases in the court.

Preliminary review

40(1) Where the society:

- (a) receives a complaint with respect to a member, alleging conduct unbecoming;
- (b) otherwise becomes aware of conduct by a member that is or may be conduct unbecoming;
- (c) receives a complaint questioning the competency of a member but not alleging conduct unbecoming; or
- (d) otherwise becomes aware of conduct by a member that may display incompetence, but that does not constitute conduct unbecoming;

a person designated by the benchers shall review the conduct of the member.

(2) If, on completion of a review pursuant to subsection (1), the person designated by the benchers is of the opinion that:

- (a) the matter raises an issue of competence, the person shall refer the matter to the chairperson of the competency and standards committee;

- (b) the matter raises an issue of discipline, the person shall refer the matter to the chairperson of the discipline committee; or
 - (c) the matter does not raise an issue of competence or discipline, the person shall direct that no further action be taken.
- (3) The person designated pursuant to subsection (1) shall notify the complainant, if any, of the decision taken on review pursuant to this section.
- (4) If the chairperson of the committee to which a matter is referred pursuant to subsection (2) is of the opinion that the matter is more appropriately dealt with by the other committee, the chairperson may refer the matter to the chairperson of the other committee.
- (5) Notwithstanding subsection (4), where the conduct of a member raises an issue of competence, it may nevertheless be referred by the person designated pursuant to subsection (1) or the chairperson of the competency and standards committee to the chairperson of the discipline committee to be dealt with through the discipline process.

Investigation by competency and standards committee

- 41(1) Where a matter is submitted to the chairperson of the competency and standards committee pursuant to clause 40(2)(a) or subsection 40(4), the chairperson may:
- (a) appoint a committee consisting of any number of benchers to conduct an investigation on behalf of the competency and standards committee to review whether, in their opinion, the member is practising law in a competent manner; and
 - (b) appoint a chairperson of the committee described in clause (a) from among its members.
- (2) The committee appointed pursuant to subsection (1) may, for the purposes of the investigation, require the member who is being investigated to:
- (a) answer any inquiries; and
 - (b) provide the committee with any information, files or records within the member's possession or power.
- (3) On completion of an investigation pursuant to subsection (1), the competency and standards committee may request the member who is being investigated to comply with:
- (a) any restrictions or conditions that the committee may impose on the member's practice of law for any period of time that the committee considers advisable; or

- (b) any other requirements that the committee considers appropriate to increase the member's knowledge or skill in the practice of law.
- (4) On completion of an investigation pursuant to subsection (1), the competency and standards committee may make a report to the chairperson of the discipline committee.

Duty of chairperson re complaints

- 42(1) The chairperson of the discipline committee shall review each matter submitted to him or her pursuant to section 40 or 41 and, notwithstanding section 40, may investigate any conduct of a member that may constitute conduct unbecoming.
- (2) On completion of a review pursuant to subsection (1), the chairperson of the discipline committee shall:
 - (a) if the chairperson is of the opinion that the matter does not constitute conduct unbecoming, direct that no further action be taken; or
 - (b) in any other case, appoint an investigation committee pursuant to subsection 44(1) to inquire into the matter or any aspect of the matter.
- (3) Notwithstanding subsection (2), where the chairperson of the discipline committee is of the opinion that the member's conduct may constitute conduct unbecoming, the chairperson of the discipline committee may invite the member to appear before a committee designated by the chairperson to enable the committee to make an informal investigation of the matter and counsel the member.
- (4) The chairperson of the discipline committee shall notify the complainant, if any, of the decision made on a review pursuant to this section.

Review re complaints not proceeded with

- 43(1) A complainant may request the benchers to review the decision:
 - (a) pursuant to clause 40(2)(c) of a person designated pursuant to subsection 40(1); or
 - (b) pursuant to clause 42(2)(a) of the chairperson of the discipline committee; with respect to the determination of the complaint.
- (2) The benchers shall make rules respecting a procedure for reviews requested pursuant to subsection (1).
- (3) The president of the society shall, in writing, advise the complainant who requests a review pursuant to subsection (1) of the benchers' decision on the review.

- (4) Where, on a review pursuant to subsection (1), the benchers consider it appropriate, the benchers shall direct the chairperson of the discipline committee to proceed in accordance with clause 42(2)(b) or subsection 42(3).

Appointment of investigation committee

- 44(1) The chairperson of the discipline committee may:
- (a) appoint an investigation committee consisting of any number of benchers that the chairperson considers advisable; and
 - (b) designate one of those benchers to be chairperson of the committee.
- (2) An investigation committee:
- (a) shall inquire into a matter referred to it pursuant to clause 42(2)(b); and
 - (b) may investigate any other matter that comes to the attention of the committee during the course of an investigation that appears to constitute conduct unbecoming.

Suspension of member by investigation committee

- 45(1) Subject to the approval of the chairperson of the discipline committee, an investigation committee may suspend a member from practice pending:
- (a) the completion of its investigation and report; or
 - (b) the decision of a hearing committee appointed pursuant to section 47 to determine the matter.
- (2) Subject to subsection (4), a suspension imposed pursuant to this section expires:
- (a) if:
 - (i) the investigation committee recommends that no hearing committee be appointed; and
 - (ii) a hearing committee is not appointed pursuant to clause 47(1)(b) on or before the last day of the next convocation of the benchers following the receipt by the chairperson of the discipline committee of its report; on the day mentioned in subclause (ii); or
 - (b) if a hearing committee is appointed pursuant to section 47, on the completion of the hearing, unless the hearing committee continues the suspension beyond that day.
- (3) A member who is suspended from practice pursuant to this section may, at any time during the period of suspension, by notice to the chairperson of the discipline committee, request a review of the suspension.

- (4) On receipt of a request pursuant to subsection (3), the chairperson of the discipline committee shall appoint any number of benchers, who are not members of the investigation committee appointed with respect to the matter, to:
 - (a) review the reasons for the suspension; and
 - (b) determine whether the suspension should continue.
- (5) The benchers conducting a review pursuant to subsection (4) shall:
 - (a) determine whether the suspension should continue; and
 - (b) inform the member of their decision and the reasons for the decision.
- (6) Where a suspension is imposed pursuant to this section, an investigation committee or the chairperson of the discipline committee may direct the society to apply pursuant to section 61 for the appointment of a trustee.

Decision of investigation committee

- 46(1) On the completion of its investigation, an investigation committee shall make a written report to the chairperson of the discipline committee and recommend that:
 - (a) a hearing committee be appointed to hear and determine the formal complaint set out in the written report;
 - (b) the member under investigation be invited to appear before a committee designated by the chairperson of the discipline committee to enable the committee to counsel the member; or
 - (c) no further action be taken with respect to the matter under investigation.
- (2) A report signed by a majority of the members of an investigation committee is the decision of the investigation committee.

Appointment of hearing committee

- 47(1) Where the report of an investigation committee:
 - (a) makes a recommendation pursuant to clause 46(1)(a), the chairperson of the discipline committee shall appoint a hearing committee to hear and determine the formal complaint;
 - (b) makes a recommendation pursuant to clause 46(1)(b) or (c), the chairperson of the discipline committee may appoint a hearing committee to hear and determine a formal complaint that the discipline committee may set out.

- (2) A hearing committee appointed pursuant to this section shall consist of not more than five benchers, none of whom were members of:
- (a) the investigation committee that inquired into the matter that is the subject of the formal complaint; or
 - (b) any committee appointed pursuant to subsection 45(4) with respect to the matter.
- (3) Notice of the hearing shall be given in accordance with the rules to the member whose conduct is the subject of the hearing.

Procedure before hearing committee

- 48(1) A hearing committee shall:
- (a) hear the formal complaint with respect to which it is appointed; and
 - (b) decide whether or not the complaint is well-founded, notwithstanding that the existence, interpretation or construction of a contract or the determination of any other question of fact may be involved;
- and the committee need not refer any matter mentioned in clause (b) to a court for adjudication.
- (2) A hearing committee may accept any evidence that it considers appropriate and is not bound by the rules of law concerning evidence.

Procedure generally

- 49(1) The chairperson of the discipline committee shall:
- (a) direct; or
 - (b) instruct an investigation committee that makes a report pursuant to section 46 to direct;
- the prosecution of the formal complaint set out in the report before the hearing committee, before the discipline committee or on appeal, as the case may be.
- (2) In any proceedings before the benchers or a committee of benchers, the testimony of witnesses is to be under oath or affirmation administered by any bencher.
- (3) Where the member whose conduct is the subject of a hearing fails to attend the hearing, the hearing committee or the discipline committee, as the case may be, on proof of service of a notice pursuant to subsection 47(3) or 55(1), may proceed with the hearing in the member's absence.

- (4) A member who appears in person or by counsel before the hearing committee or the discipline committee is deemed to have received proper notice unless the appearance is for the purpose of challenging the notice.
- (5) A member whose conduct is the subject of a hearing is competent and compellable to give evidence at the hearing.

Complainant

- 50(1) The benchers shall advise the complainant orally or in writing of the time and place of the hearings before the hearing committee, the discipline committee and the benchers pursuant to sections 43, 48, 53 and 55, and the complainant is entitled to attend the hearings.
- (2) Notwithstanding subsection (1), where the hearing committee, the discipline committee or the benchers, as the case may be, are of the opinion that:
 - (a) evidence brought in the presence of the complainant may result in a breach of solicitor and client privilege; or
 - (b) the possible disclosure of intimate financial or personal matters outweighs the desirability of allowing the complainant to be present during part of the hearing;
 the committee or the benchers may exclude the complainant from any part of the hearing.

Powers during hearing

- 51(1) During the course of a hearing, the hearing committee may amend the formal complaint before it if the amendment is, in the committee's opinion, necessary to determine the charge indicated in the formal complaint.
- (2) Subject to subsection (3), a hearing committee may:
 - (a) find that the complaint is well founded on any charge revealed by the facts; and
 - (b) for the purposes of clause (a):
 - (i) substitute the charge mentioned in clause (a) for; or
 - (ii) amend or add to;
 the charge set out in the formal complaint that the committee was appointed to hear.
- (3) Where, during the course of a hearing, the evidence shows that the conduct of the member who is the subject of the hearing may warrant a charge that is different from or in addition to a charge specified in the formal complaint, the hearing committee:
 - (a) shall notify the member of that fact; and

(b) may amend, add to or substitute the charge in the formal complaint.

(4) Where a hearing committee acts pursuant to clause (3)(b), it shall adjourn the hearing for any period that the committee considers sufficient to give the member an opportunity to prepare a defence to the amended, added or substituted charge in the formal complaint, unless the member otherwise consents.

Suspension of member by hearing committee

52(1) A hearing committee may suspend from practice the member whose conduct is the subject of the hearing pending:

(a) its decision; or

(b) the action of the discipline committee resulting from its decision.

(2) A suspension imposed pursuant to subsection (1) expires:

(a) where the hearing committee finds that the complaint is not well founded, on the day of its decision; or

(b) where the committee finds that the complaint is well founded, on the day that a penalty is assessed or a requirement is imposed pursuant to section 53 or 55.

(3) Notwithstanding clause 45(2)(b), the hearing committee may, at any time during the hearing, revoke a suspension imposed pursuant to section 45.

Decision of hearing committee; powers re penalties

53(1) A hearing committee shall provide its decision to the chairperson of the discipline committee in accordance with the rules, not later than 45 days after the hearing.

(2) A decision of a majority of the members of a hearing committee is the decision of the hearing committee.

(3) Where a hearing committee finds that a complaint is well founded, the hearing committee may:

(a) at the request of the member, made at the time of the hearing; and

(b) with the approval of the counsel for the society;

assess any penalty or impose any requirement specified in subclauses 55(2)(a)(iii) to (vi) or clause 55(2)(b).

(4) Where the hearing committee acts pursuant to subsection (3):

(a) the hearing committee shall specify the penalty assessed or requirement imposed in its decision pursuant to subsection (1); and

- (b) on receipt of the decision, the chairperson of the discipline committee:
 - (i) shall send a notice of the penalty assessed or requirement imposed to the member concerned and to the complainant, if any; and
 - (ii) may send notice of the penalty assessed or requirement imposed to any other person that the chairperson considers advisable.
- (5) The chairperson of the hearing committee shall send a copy of the committee's decision to the member whose conduct was the subject of the hearing.

Possible criminal offence

- 54(1) Where:
- (a) an investigation committee suspends a member pursuant to section 45; or
 - (b) a hearing committee, on making its decision pursuant to subsection 53(1), believes that the member who is the subject of the hearing may be guilty of a criminal offence related to the member's practice;
- the chairperson of that committee shall immediately report the matter to the chairperson of the discipline committee.
- (2) On receipt of a report pursuant to subsection (1), the chairperson of the discipline committee shall immediately report the suspension or statement of belief and surrounding circumstances to the Deputy Minister of Justice.

Powers of discipline committee to assess penalties

- 55(1) On receipt of a decision from a hearing committee with a finding that a complaint is well founded and with respect to which no penalty has been assessed or requirement imposed, the chairperson of the discipline committee shall:
- (a) set a day for a meeting of the discipline committee to determine the penalty to be assessed or requirement to be imposed; and
 - (b) give notice to the member concerned of the day and place of the meeting in accordance with the rules.
- (2) At a meeting called pursuant to subsection (1), the discipline committee may make any one or more of the following orders:
- (a) assessing any penalties or imposing any requirements that it considers appropriate, including but not limited to:
 - (i) directing that the member be disbarred;

- (ii) suspending the member from practice for a specified period or until specified requirements are met, including requirements that the member:
 - (A) successfully complete specified classes;
 - (B) obtain medical treatment or treatment for addiction to drugs or alcohol;
 - (iii) specifying conditions under which the member may continue to practise, including conditions that the member:
 - (A) not do specified types of work;
 - (B) successfully complete specified classes;
 - (C) not have exclusive control of the member's trust account;
 - (D) obtain medical treatment or treatment for addiction to drugs or alcohol;
 - (E) practise only as a partner with, or as an associate or employee of, one or more members that the committee may specify;
 - (iv) imposing a fine in any amount that the committee may specify;
 - (v) requiring the member to pay:
 - (A) the costs of the inquiry, including the costs of the investigation committee, hearing committee and discipline committee;
 - (B) the costs of the society for counsel during the inquiry; and
 - (C) all other costs related to the inquiry;
 - (vi) reprimanding the member;
 - (b) where the complaint that has been determined to be well founded relates to the transfer of identified property or funds in an ascertainable amount, requiring the member to transfer the property or the amount to the rightful owner;
 - (c) any other order that the committee considers appropriate.
- (3) In addition to an order made pursuant to subsection (2), the discipline committee may order that, if a member fails to make payment in accordance with an order pursuant to subclause (2)(a)(iv) or (v), the member be suspended from practice.
- (4) The chairperson of the discipline committee:
- (a) shall send notice of the penalties assessed or requirements imposed pursuant to subsections (2) and (3) to the member concerned and to the complainant, if any;
- and

(b) may send notice of the penalties assessed or requirements imposed to any other person that the chairperson considers advisable.

Appeal to Court of Appeal

56(1) Where a complaint against a member is determined by the hearing committee to be well founded, the member may appeal the decision of the hearing committee or a penalty assessed or requirement imposed by the hearing committee or the discipline committee resulting from the decision to the Court of Appeal within 30 days after the day of the decision or the assessment of a penalty or imposition of a requirement, whichever is later, by:

- (a) filing a notice of appeal with the registrar of the Court of Appeal; and
 - (b) serving the secretary-treasurer with a copy of the notice of appeal.
- (2) The Court of Appeal may extend the time for commencing an appeal pursuant to subsection (1) if, in its opinion, exceptional circumstances exist.
- (3) Subject to subsection (4), the commencement of an appeal to the Court of Appeal does not stay the effect of a penalty assessed or requirement imposed by the hearing committee or the discipline committee.
- (4) An appellant, on five days' notice to the secretary-treasurer, may apply to the Court of Appeal for a stay of proceedings pending the disposition of the appeal.
- (5) On hearing an appeal pursuant to this section, the Court of Appeal may make any order that it considers appropriate.

Non-compliance with order

57 Where a member does not comply with a requirement imposed in an order pursuant to clause 55(2)(b) within 15 days after the day on which a notice is sent to the member pursuant to clause 53(4)(b) or subsection 55(4), the rightful owner named in the order may file a certified copy of the order with the court and enforce the order as if it were a judgment of the court.

Dissolution of committees

58(1) An investigation committee and a hearing committee are dissolved when all appeals with respect to the matter for which they were appointed are exhausted or, if no appeal is taken, on the expiration of the time allowed to bring an appeal.

(2) Subject to section 9, where a member of a hearing committee ceases to be a bencher, the member continues as a member of the hearing committee until it is dissolved.

Improper conduct of certain others

59 Sections 34 to 58 apply, with any necessary modification, to a student-at-law, a person required to serve under articles or a person authorized to practise law in accordance with the rules made pursuant to clause 10(i).

PART V

Members' Property and Fees

Interpretation of Part
"member"
"member's records"

60 In this Part:

- (a) "member" includes a former member;
- (b) "member's records" means anything kept or acquired by a member or the partnership in which a member practises or given to a member or the partnership in which a member practises by or for a client or any other person, and, without restricting the generality of the foregoing, includes ledgers, books of account, records, files, documents, papers, securities, shares, trust money in cash or on deposit and negotiable instruments:
 - (i) if they relate in any way to the member's practice or former practice as a lawyer or to the business or affairs of the member's clients or former clients; and
 - (ii) whether they were acquired before or after the member ceased to practise as a lawyer.

Appointment of trustee

61(1) The society may apply to a judge of the court, either ex parte or on any notice that the judge may direct, for an order pursuant to subsection (2) where:

- (a) a member has been disbarred;
- (b) a member is suspended from practice;
- (c) a member dies;
- (d) a member is for any reason unable to practise as a lawyer;
- (e) a member has absconded or is otherwise improperly absent from the member's place of practice or has neglected the member's practice for an unduly extended period;
- (f) there is reason to believe that the trust moneys held by a member are not sufficient to meet the member's liabilities for those moneys; or
- (g) there are reasonable grounds to believe that circumstances warrant the appointment of a trustee.

- (2) On an application pursuant to subsection (1), a judge may, by order:
 - (a) appoint a person with or without bond to be trustee:
 - (i) to take possession of all of the member's records and other property pertaining to:
 - (A) the practice of the member concerned; and
 - (B) any trust with respect to which the member is or was the sole trustee; and
 - (ii) to do anything that the member was capable of doing in connection with the member's practice;
for the purpose of managing or winding up the practice of the member;
 - (b) make an order described in subsection (9);
 - (c) direct any financial institution or other depository of the member's records and other property to deal with, hold, pay over or deliver any of that property to the trustee, or otherwise deal with the property;
 - (d) give directions and advice to a trustee appointed pursuant to this section relating to the disposition of the member's records or other property;
 - (e) give any directions or make any further order that the situation requires.
- (3) On an application, a judge of the court may:
 - (a) amend an order made pursuant to subsection (2);
 - (b) remove a trustee appointed by an order made pursuant to subsection (2) and appoint another trustee;
 - (c) make any other order that the judge considers appropriate.
- (4) Where a member with respect to whom an order is sought pursuant to this section has a partner who is a member in good standing in the society, the society shall give notice to the partner of the application unless the judge dispenses with service on the partner.
- (5) A trustee who is appointed with respect to the trust property of a deceased or incapacitated member shall, from the day of the appointment, be substituted as trustee of that property in the place of the personal representative or property guardian of that member.
- (6) In every order made pursuant to this section, the judge shall give directions to the society with respect to the method and time for service of the order.

(7) A person who receives notice that an order has been made pursuant to this section shall retain and shall not dispose of any of the member's records or other property until directed to do so by the trustee or by order of a judge of the court.

(8) Where a judge of the court is satisfied by the oath of a person designated by the benchers that the person believes, on reasonable and probable grounds, that:

(a) any of the circumstances set out in clauses (1)(a) to (g) exists with respect to a member; and

(b) any of the member's records or property of the member pertaining to the member's practice is or is likely to be found in a specified place;

the judge may make an order described in subsection (9).

(9) An order pursuant to subsection (8) authorizes the person named in the order, together with any peace officer that the person may call on for assistance, at any reasonable time, to enter by force if necessary the place named in the order and every part of the place named in the order and of the premises connected with that place to:

(a) examine the place and connected premises;

(b) search for and seize and take possession of anything that there are reasonable and probable grounds to believe constitute:

(i) the member's records; or

(ii) property of the member that pertains to the member's practice; and

(c) place in the custody of the trustee any records or other property seized pursuant to clause (b).

Property in custody

62(1) Where a member's records or other property have been placed in the custody of a trustee pursuant to section 61, the chairperson of the discipline committee or a person designated by the chairperson for the purpose may examine the property.

(2) The trustee shall, on any notice and in any form that the trustee considers appropriate, inform the member's clients and any other person that the trustee considers necessary that:

(a) the member's records and other property are in the custody of the trustee;

(b) an examination of the records and other property indicates that the client or other person appears to have an interest in it; and

- (c) the client or other person may apply to the trustee in person or by counsel or agent, subject to any solicitor's lien of the member that the trustee may exercise on or with respect to the member's records or other property:
 - (i) for the delivery of those records and that other property; or
 - (ii) for leave to make copies of any documents and papers among the records and other property that the client or other person considers necessary to copy with respect to any dealings the client or other person had with the member.

Investigation of records, etc.

63(1) Every member and every person who keeps any of a member's records or other property shall comply with a demand of a person designated by the benchers to produce any of the member's records or other property that the person designated by the benchers reasonably believes are required for the purposes of an investigation pursuant to this Act.

(2) Where, on an *ex parte* application by the society, a judge of the court is satisfied by the oath of a person designated by the benchers that the person believes, on reasonable and probable grounds, that:

(a) a member whose records or other property have been demanded pursuant to subsection (1), or a person who keeps records or other property of that member, has:

(i) refused to comply with a demand pursuant to subsection (1); or

(ii) failed to comply with a demand pursuant to subsection (1) within a reasonable time of the demand; and

(b) records or other property that are the subject of a demand pursuant to subsection (1):

(i) are required for the purposes of an investigation pursuant to this Act; and

(ii) are or are likely to be found in a specified place;

the judge may make an order described in subsection (3).

(3) An order pursuant to subsection (2) authorizes the person named in the order, together with any peace officer that the person may call on for assistance, at any reasonable time, to enter by force if necessary the place named in the order and every part of the place named in the order and of the premises connected with that place to:

(a) examine the place and connected premises; and

- (b) search for and seize and take possession of the member's records and other property demanded pursuant to subsection (1).
- (4) Where any member's records or other property are produced pursuant to subsection (1) or seized pursuant to an order described in subsection (3) or 61(9), the person designated by the benchers to whom the records or other property were produced or who seized the records or other property, a member of the committee conducting the investigation for which the records or other property were demanded or the trustee may:
 - (a) make or cause to be made one or more copies of the records or other property produced or seized and return the originals to the person who produced them or from whom they were seized; or
 - (b) retain any of the member's records or other property and dispose of them in accordance with the directions of the chairperson of the discipline committee.
- (5) Every entry and search pursuant to this section or subsection 61(9) is to be made during normal business hours unless the judge who issues the order authorizing the entry and search authorizes entry and search at another time.
- (6) A copy or extract of a member's records or other property certified by a person mentioned in subsection (4) who made the copy or extract is admissible in evidence in any action, proceeding or prosecution as prima facie proof of the original record or property and its contents without proof of the signature or capacity of the person.

Contracts for remuneration

- 64(1) Notwithstanding any law or usage to the contrary, a member may contract in writing with a person with respect to the remuneration of the member, on a basis other than fee for service, for services rendered or to be rendered to the person.
- (2) The benchers may make rules:
 - (a) respecting the form, content and scope of fee agreements;
 - (b) prescribing the subject matter of provisions that shall or shall not be included in fee agreements.
- (3) A member or a person who has entered into a fee agreement with a member pursuant to subsection (1) may apply to a judge of the court for a determination as to whether or not the agreement is fair and reasonable.

(4) Where, on an application pursuant to subsection (3), a judge determines that a fee agreement is fair and reasonable, the agreement is deemed for all purposes to be fair and reasonable.

Courts' powers not limited

65 Nothing in this Act limits the powers of the courts with respect to the revision or taxation of a bill of costs.

Solicitor's lien

66(1) A member who is employed to prosecute or defend a proceeding in a court or tribunal may apply to the court for an order granting the member a lien or charge against any personal property not in the member's possession that is recovered or preserved as a result of the member's services for the proper fees and expenses of or in relation to the proceedings, including counsel fees.

(2) On an application pursuant to subsection (1) or for the enforcement of an order made pursuant to subsection (1), a judge may make any order that the judge considers appropriate for payment of the lien or charge out of the property recovered or preserved.

(3) A member has a lien or charge for the member's proper fees and expenses in relation to all legal services performed by the member for a client against any property owned by the client that is in the member's possession.

(4) Nothing in subsection (3) overrides the exceptions to a solicitor's lien at common law.

(5) On application by a client, the court may, on any terms and conditions that the court considers appropriate, order the delivery of any of the client's property in a member's possession that is held pursuant to subsection (3).

Application for taxation

67(1) A bill of fees or disbursements with respect to services performed by a member may be taxed:

(a) on application to the court:

(i) by the person charged with the bill, within 30 days after the day on which the person received the bill;

(ii) by the member, if no application is made pursuant to subclause (i); or

(iii) by the person charged with the bill, after the expiration of the time set out in subclause (i), if the person can prove to the satisfaction of the court that special circumstances exist; or

(b) on application to the local registrar described in subsection (2), at the request of both the member and the person charged with the bill, at any time.

(2) An application pursuant to clause (1)(a) shall be referred by the court to the local registrar of the court at the judicial centre nearest to which the member who performed the services carries on the member's practice.

(3) The court may restrain the bringing of an action with respect to that bill pending a reference pursuant to subsection (2).

(4) On taxation of a bill pursuant to this Act, the local registrar may order any further particulars or details of the services for which the bill was ordered.

Ex parte taxation

68 If either party to a reference pursuant to section 67, having received notice, fails to attend the taxation, the local registrar may proceed to tax the bill in the person's absence.

Costs

69 Every order for a reference pursuant to clause 67(1)(a) shall direct, and every reference pursuant to clause 67(1)(b) shall request, the local registrar to:

(a) tax the costs; and

(b) certify the amount that the local registrar may determine to be due to or from each party with respect to the bill and the costs of the taxation.

Rights of persons other than principal

70(1) Subject to subsections (2) and (3), the provisions of this Act with respect to an application for taxation by a person charged with a bill apply, with any necessary modification, to a person who, although not charged with the bill, is liable to pay or has paid a bill to the member or to the person charged with the bill.

(2) Where an application is made pursuant to subclause 67(1)(a)(iii) by a person who is not charged with the bill, the court may take into consideration any special circumstances raised by the applicant even if those circumstances would not have been considered if the person charged with the bill were the applicant.

(3) Where an application for taxation is brought by a person who is not charged with the bill, the court may order the member who charged the bill to deliver a copy of the bill to the applicant, and the applicant is responsible for the costs of the copy.

Taxation after payment

- 71(1) Payment of a bill does not preclude the court from referring the bill for taxation where:
- (a) an application for taxation is made within 30 days after the day on which the bill was paid; or
 - (b) if the court is of the opinion that special circumstances exist to justify the taxation after the expiration of the time specified in clause (a), an application for taxation is made within six years after the day on which the bill was paid.
- (2) A reference pursuant to this section is subject to any terms and directions that the court considers proper in the circumstances.

Appeal of taxation

- 72 A party to a reference may appeal the decision of the local registrar to the court.

Status of taxed bill

- 73(1) Subject to an appeal pursuant to section 72, the certificate of the local registrar given on taxation is final and conclusive as to the amount specified.
- (2) Payment of the amount certified by the local registrar to be due and directed to be paid may be enforced in the same manner as a judgment of the court.

PART VI
Law Foundation

Foundation continued

- 74(1) The Law Foundation is continued as a corporation consisting of:
- (a) the minister or the minister's designate;
 - (b) two persons appointed by the minister, of whom at least one is not a member of the society; and
 - (c) four persons who are members of the society and are appointed by the benchers.
- (2) A member of the foundation, other than the minister or the minister's designate, holds office for a term of two years and until a successor is appointed.
- (3) The benchers shall appoint one of the members of the foundation mentioned in clause (1)(c) to be chairperson of the foundation.
- (4) Where a vacancy occurs in the office of a member of the foundation, the person or body by whom the member was appointed may appoint to the vacant office any person eligible to be appointed to that office.

- (5) A person appointed pursuant to subsection (4) holds office for the remainder of the term of the member of the foundation being replaced and until a successor is appointed.
- (6) The members of the foundation may act notwithstanding a vacancy in the membership of the foundation.
- (7) No act done by the authority of the foundation is invalid in consequence of any defect that is discovered in the appointment of the members of the foundation.
- (8) An appointed member of the foundation may resign by giving 30 days' notice in writing to the foundation of the intention to do so, and the resignation takes effect on the earlier of:
 - (a) the expiration of the notice; or
 - (b) the acceptance of the resignation by the foundation.
- (9) Membership in the foundation terminates when:
 - (a) a member of the foundation ceases to possess the qualifications necessary for appointment; or
 - (b) the member's appointment is terminated for cause by the minister or the benchers, as the case may be.

Powers of foundation

75 The foundation may acquire, hold, mortgage, dispose of and otherwise deal with real and personal property for the purposes of the foundation.

Fund of foundation

76(1) The purpose of the foundation is to establish and maintain a fund to be used for the purposes of legal education, legal research, legal aid, law libraries and law reform.

(2) The foundation shall apply the funds of the foundation in any manner that it may decide for its purposes.

(3) The funds of the foundation shall consist of all moneys paid to the foundation by members pursuant to section 78, interest accruing from the investment of the funds of the foundation and any other moneys received by the foundation.

(4) The costs, charges and expenses:

- (a) of the administration of the foundation; and
- (b) incurred by the foundation in carrying out its purposes;

 shall be paid out of the funds of the foundation.

(5) The foundation shall pay all moneys of the foundation into an account in a financial institution to be called the "Law Foundation Account" pending investment or application in accordance with this section, and that account is to be used for the purposes of the foundation.

(6) The foundation:

- (a) may invest at interest, in the name of the foundation, any funds of the foundation that are not required for the purposes of the foundation; and
- (b) for the purposes of that investment and any subsequent variation or transposition of it, has all the powers of investment and all the other powers of a trustee pursuant to The Trustee Act.

(7) The accounts of the foundation are to be audited annually by a chartered accountant appointed for the purpose by the benchers.

Power to make rules

- 77(1) The foundation may make rules for purposes relating to the affairs, business, property and objects of the foundation and, without limiting the generality of the foregoing, may make rules respecting:
- (a) the number and designation of its officers;
 - (b) subject to subsection 74(3), the appointment and terms of office of its officers and all matters relating to its officers;
 - (c) the resignation or removal of its officers;
 - (d) the number and designations of its employees, other than officers, and the terms and conditions of their employment;
 - (e) the remuneration, if any, of its officers and employees; and
 - (f) the operation of the Law Foundation Account.
- (2) Sections 88 to 92 apply, with any necessary modification, to rules of the foundation.

Payment of interest to foundation

- 78(1) A member who receives or holds moneys in trust for or on account of clients generally shall deposit the moneys in an interest bearing account.
- (2) A member who is credited with interest on moneys received or held in trust for or on account of clients generally:
- (a) is deemed to hold the interest in trust for the foundation; and

- (b) shall remit the interest to the foundation in accordance with the rules.
- (3) The benchers shall make rules to ensure that all interest described in subsection (2) is paid to the foundation.
- (4) No member is liable, by virtue of the relation between lawyer and client or by virtue of the relation between the member as trustee and a cestui que trust, to account to any person other than the foundation for interest described in subsection (2).
- (5) Subject to subsection (6), nothing in this section or in the rules made pursuant to this section affects an arrangement in writing between the member and the member's client as to the application of the client's moneys or interest on the moneys.
- (6) No arrangement described in subsection (5) applies to any interest on moneys of the client that has been credited to the member prior to their entering into the arrangement.
- (7) Notwithstanding anything in this section or in rules made pursuant to this section, interest earned on moneys deposited in a separate account for a client is and remains the property of the client.

Annual report

- 79(1) The foundation shall:
- (a) annually prepare and submit to the minister and the society a report respecting the work performed by the foundation in the immediately preceding fiscal year in carrying out its purposes;
- (b) submit to the minister and the society the report of the auditor who has audited the accounts of the foundation for its immediately preceding fiscal year.
- (2) The reports submitted pursuant to subsection (1) shall be laid before the Legislative Assembly by the minister in accordance with The Tabling of Documents Act.

PART VII

General

Offence and penalty

- 80 Every person who contravenes section 30, 32 or 33 is guilty of an offence and liable on summary conviction:
- (a) in the case of a first offence, to a fine of not more than \$2,000; and
- (b) in the case of a second or subsequent offence, to a fine of not more than \$5,000.

Power of benchers to institute proceedings

- 81(1) Subject to subsection (2), the benchers may:
- (a) institute or authorize the institution of proceedings for any alleged contravention of this Act or The Legal Profession Act; and
 - (b) make rules with respect to the institution of proceedings pursuant to this Act or The Legal Profession Act.
- (2) No prosecution with respect to an alleged offence pursuant to section 30, 32 or 33 of this Act or section 5, 36 or 76 of The Legal Profession Act shall be commenced or authorized to be commenced pursuant to subsection (1) after one year from the day of commission of the alleged offence.

Injunction

- 82(1) Where it appears that a person is acting or is likely to act in contravention of this Act or the rules, the society may apply to the court for an injunction enjoining any person from doing any act or thing that contravenes this Act or the rules, notwithstanding any penalty that may be provided by this Act with respect to that contravention.
- (2) On an application pursuant to subsection (1), the court may grant an injunction, interim injunction or any other relief that it considers just.

Secretary-treasurer's certificate as evidence

- 83 A certificate purporting to be signed by the secretary-treasurer 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 suspended member, according to the roll;
 - (b) an articulated student-at-law, according to the records of the society; or
 - (c) an officer of the society or a bencher, according to the records of the society;
- is admissible in evidence as prima facie proof of the facts stated in it without proof of the secretary-treasurer's appointment or signature.

Certain conduct protected

- 84(1) No person who submits documents or discloses information before any proceeding conducted pursuant to this Act is liable at law or liable to any penal proceeding pursuant to any Act for so doing.
- (2) No committee appointed pursuant to this Act that discloses a report or part of a report of the committee to the public or any person is liable at law or liable to any penal proceeding.

(3) Subsection (2) applies, with any necessary modification, to a member of a committee who, with the consent of the committee, discloses a report or part of a report of the committee.

Service of documents

85(1) A notice or document required by Part IV or V to be given or served shall, unless otherwise provided for, be served in any manner set out in The Queen's Bench Rules other than by ordinary mail.

(2) A document served by registered mail is deemed to have been received on the seventh day following the day of its mailing, unless the person to whom it was mailed establishes that, through no fault of that person, the person did not receive the document or received it at a later day.

Limitation on liability

86 No action lies or shall be instituted against the society, a benchler, a committee or member of a committee continued or established by or pursuant to this Act or the rules, the secretary-treasurer or any other officer, employee or agent of the society or of a committee for anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by any of them pursuant to or in the exercise of or supposed exercise of any power conferred by this Act or the rules or in the carrying out or supposed carrying out of any duty imposed or order made by or pursuant to this Act or the rules.

Reference to barrister, solicitor

87 A reference in any other Act to a barrister, solicitor, barrister and solicitor or lawyer is deemed to be a reference to a lawyer:

- (a) who is duly admitted as a member; and
- (b) whose right to practise is not suspended;

pursuant to this Act.

Rules to be filed

88(1) The society shall file in the Department of Consumer and Commercial Affairs two copies, certified by the secretary-treasurer to be true copies, of:

- (a) all rules and all amendments to those rules made pursuant to this Act; and
- (b) all amendments to rules or bylaws made pursuant to The Legal Profession Act prior to the day on which this Act comes into force;

within 30 days after the day on which they are made.

- (2) Where the society adopts a code of professional conduct governing its members, and subscription to or observance of the code is a condition of membership, the code of professional conduct is, for the purpose of this section and sections 89 to 92, deemed to be a rule.
- (3) Where a rule or bylaw is amended, the society shall file two copies of the rule or bylaw with the amendment.
- Effective date 89 Rules and amendments to the rules take effect on the day on which they are made or on the day specified in the rule or amendment.
- Effect of failure to file 90 Failure to file a rule or amendment as required by section 88 renders it ineffective as from the expiration of the time allowed for filing, and the rule or amendment is deemed to have been revoked.
- Review by Legislative Assembly
- 91(1) One copy of all rules and amendments filed pursuant to subsection 88(1) is to be laid before the Legislative Assembly by the Minister of Consumer and Commercial Affairs in accordance with The Tabling of Documents Act.
- (2) Where a rule or amendment laid before the Legislative Assembly is found by the Assembly to be beyond the powers delegated by the Legislature or in any way prejudicial to the public interest, the rule or amendment ceases to have effect and is deemed to have been revoked.
- Record of revocation and notification
- 92(1) Where it appears from any Votes and Proceedings of the Legislative Assembly that a rule or amendment has ceased to have effect, the Clerk of the Assembly shall forward two copies of the Votes and Proceedings to the Deputy Minister of Consumer and Commercial Affairs and at the same time advise that deputy minister that the copies are forwarded pursuant to this subsection.
- (2) On receipt of the copies mentioned in subsection (1), the Deputy Minister of Consumer and Commercial Affairs shall:
- (a) file one of the copies with the rule or amendment to which it relates; and
 - (b) forward the other copy to the society, and at the same time advise the society that the copy is forwarded pursuant to this subsection.

PART VIII

Transitional, Repeal, Consequential and Coming into Force

Transitional

93(1) Subject to section 9 of this Act, a person who is a benchner of the society pursuant to section 9 of The Legal Profession Act on the day before the day on which section 6 of this Act comes into force continues as a benchner until:

- (a) benchners are elected or appointed pursuant to section 6 of this Act; or
- (b) that benchner resigns, dies or is removed in accordance with this Act.

(2) A person who is a member of the foundation pursuant to section 45 of The Legal Profession Act on the day before the day on which section 74 of this Act comes into force continues as a member of the foundation until:

- (a) members of the foundation are appointed pursuant to section 74 of this Act; or
- (b) that member of the foundation resigns, dies or is removed in accordance with this Act.

(3) Rules and bylaws that:

- (a) were made pursuant to The Legal Profession Act, as that Act existed on the day before the coming into force of this Act; and
- (b) are subsisting on the day before the coming into force of this Act;

continue in force as rules until amended or repealed pursuant to this Act.

(4) Any proceedings arising from circumstances described in section 54 or 55 of The Legal Profession Act are continued pursuant to this Act, and the provisions of this Act apply, with any necessary modification, to those proceedings.

(5) A prosecution that was commenced or authorized to be commenced pursuant to The Legal Profession Act, as that Act existed on the day before the coming into force of this Act, is deemed to be commenced or authorized pursuant to this Act.

R.S.S. 1978, c.L-10 repealed

94 The Legal Profession Act is repealed.

S.S. 1986, c.A-18.1, section 27 amended

95 Clause 27(1)(d) of The Ambulance Act is amended by striking out "The Legal Profession Act" and substituting "The Legal Profession Act, 1990".

R.S.S. 1978, c.C-16 amended

- 96(1) The Commissioners for Oaths Act is amended in the manner set forth in this section.
- (2) Subsection 4(1) is amended by striking out "The Legal Profession Act" and substituting "The Legal Profession Act, 1990".
- (3) Subsection 4(2) is amended by striking out "The Legal Profession Act, a solicitor is struck off the roll of barristers and solicitors" and substituting "The Legal Profession Act, 1990, a solicitor is disbarred".
- (4) Subsection 4(3) is amended by striking out "The Legal Profession Act" and substituting "The Legal Profession Act, 1990".

R.S.S. 1978, c.L-5, section 63.2 amended

- 97 Subsection 63.2(1) of The Land Titles Act is amended by striking out "The Legal Profession Act" and substituting "The Legal Profession Act, 1990".

S.S. 1983, c.L-9.1 amended

- 98(1) The Legal Aid Act is amended in the manner set forth in this section.
- (2) Subsection 19(1) is amended by striking out "The Legal Profession Act" and substituting "The Legal Profession Act, 1990".
- (3) Section 32 is amended by striking out "The Legal Profession Act" and substituting "The Legal Profession Act, 1990".

R.S.S. 1978, c.N-8 amended

- 99(1) The Notaries Public Act is amended in the manner set forth in this section.
- (2) Section 2.2 is amended by striking out "The Legal Profession Act" and substituting "The Legal Profession Act, 1990".
- (3) Section 7 is amended by striking out "The Legal Profession Act, a solicitor is struck off the roll of barristers and solicitors" and substituting "The Legal Profession Act, 1990, a solicitor is disbarred".

R.S.S. 1978, c.Q-2, section 8 amended

- 100 Section 8 of The Queen's Counsel Act is amended by striking out "struck off the roll of barristers and solicitors, pursuant to The Legal Profession Act" and substituting "disbarred pursuant to The Legal Profession Act, 1990".

LEGAL PROFESSION

1990

S.S. 1988-89, c.S-50.1, section 2 amended

101 Clause 2(g) of The Small Claims Act is amended by striking out "The Legal Profession Act" and substituting "The Legal Profession Act, 1990".

Coming into force

102 This Act or any provision of this Act comes into force on a day or days to be fixed by proclamation of the Lieutenant Governor.