

1996

CHAPTER 7

An Act to amend *The Legal Profession Act, 1990*

(Assented to April 4, 1996)

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

Short title

1 This Act may be cited as *The Legal Profession Amendment Act, 1996*.

S.S. 1990-91, c.L-10.1 amended

2 *The Legal Profession Act, 1990* is amended in the manner set forth in this Act.

Section 2 amended

3 Section 2 is amended:

(a) in clause (1)(h) by striking out "subsection (2) and section 60" and substituting "subsections (2) and (2.1) and sections 34.1 and 60"; and

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

"(2) References to members in any of the following do not include students-at-law:

(a) sections 6, 12, 16, 17, 19, 20, 25, 26, and 74;

(b) Part V, other than section 63;

(c) rules made:

(i) respecting any matter mentioned in the provisions set out in clauses (a) and (b);
or

(ii) pursuant to section 18 respecting the election of benchers.

"(2.1) The following provisions apply to non-members who are authorized to engage in the practice of law in Saskatchewan:

(a) sections 38, 39, 42 to 44, 46 to 51, 54, 56, 57 and 59.1, subsections 40(1), (3) and (5) and 53(1), (2), (4) and (5) and clauses 40(2)(b) and (c);

(b) rules made respecting any matter mentioned in the provisions set out in clause (a)".

Section 3 amended

4 Subsection 3(5) is amended by striking out “in which trustees are authorized to invest pursuant to *The Trustee Act*” **and substituting** “authorized pursuant to section 44 of *The Pension Benefits Act, 1992*”.

Section 6 amended

5 Section 6 is amended:

(a) by repealing clause (2)(c) and substituting the following:

“(c) the benchers appointed pursuant to subsection (3)”; **and**

(b) by repealing subsections (3) to (7) and substituting the following:

“(3) The Lieutenant Governor in Council, after consultation with the society, may appoint as benchers four persons who reside in Saskatchewan but are not members at least one of whom is to reside outside of Regina and Saskatoon.

“(4) A bencher appointed pursuant to subsection (3):

(a) holds office at pleasure for a term not exceeding three years or until a successor is chosen and may be reappointed for not more than one additional consecutive term; and

(b) ceases to hold office if he or she ceases to reside in Saskatchewan.

“(5) The society shall remunerate and reimburse for expenses the benchers appointed pursuant to subsection (3) at the rate determined by the Lieutenant Governor in Council.

“(6) A bencher appointed pursuant to subsection (3) may exercise rights and serve as a member of committees to the same extent as other benchers.

“(7) The absence or inability to act as a member of the discipline committee by a bencher appointed pursuant to subsection (3) or the failure to appoint a bencher pursuant to subsection (3) does not impair the ability of the other members of the discipline committee to act”.

Section 10 amended

6 The following clause is added after clause 10(a):

“(a.1) prescribing the organization, powers and procedures of the benchers and committees and regulating the benchers and committees in the performance of their duties”.

Section 12 amended

7 Section 12 is amended:

(a) in clause (2)(a) by adding “wrongful” after “misappropriation or”; and

(b) by adding the following subsection after subsection (2):

“(2.1) Money or other property entrusted to or received by a member that is to be applied to a financial or commercial undertaking, an investment or a project in which the member has an interest is deemed not to have been entrusted to or received by the member in the member's professional capacity unless the benchers are satisfied that:

(a) the person who suffered the pecuniary loss mentioned in clause (2)(a) was unaware of the member's interest at the time the money or other property was entrusted to or received by the member; or

(b) it would be inequitable to deny payment to the person who suffered the pecuniary loss”.

Section 14 amended

8 The following subsections are added after subsection 14(5):

“(6) Where no application by a person claiming to be entitled to money held by the society pursuant to this section has been made within 10 years after the money is received by the society, the society shall pay the money to the Minister of Finance.

“(7) Where a person establishes to the satisfaction of the Minister of Finance that he or she is entitled to money paid to the Minister of Finance, the minister shall pay an equivalent amount to that person out of the general revenue fund.

“(8) A dispute respecting a person's entitlement to money paid to the Minister of Finance may be determined on application to the court”.

New sections 34.1 and 34.2

9 The following sections are added before section 35:

“Interpretation of Part

34.1 In this Part, ‘member’ includes a former member.

“Proceedings against former members

34.2(1) No proceedings conducted pursuant to this Part shall be commenced against a former member more than two years after the day he or she became a former member.

(2) For the purposes of this section, a proceeding is commenced when the society, pursuant to subsection 40(1):

(a) receives a complaint; or

(b) becomes aware of conduct that is or may be conduct unbecoming or conduct that may display incompetence”.

Section 41 amended**10 Section 41 is amended:****(a) by repealing subsection (1) and substituting the following:**

“(1) The chairperson of the competency and standards committee shall review each matter referred to him or her pursuant to section 40.

“(1.1) Following that review, the chairperson of the competency and standards committee shall:

(a) direct that no further action be taken if he or she is of the opinion that the matter does not raise an issue of competence; or

(b) in any other case, appoint a committee to conduct an investigation, on behalf of the competency and standards committee, to review whether, in its opinion, the member is practising law in a competent manner.

“(1.2) A committee appointed by the chairperson of the competency and standards committee for the purposes of clause (1.1)(b) is to consist of:

(a) any number of benchers or members that the chairperson of the competency and standards committee considers appropriate; and

(b) a chairperson, who is a member or bencher, designated by the chairperson of the competency and standards committee”;

(b) in subsection (2) by striking out “subsection (1)” and substituting “subsection (1.1)”;

(c) in subsection (3) by striking out “subsection (1)” and substituting “subsection (1.1)”;

(d) in subsection (4) by striking out “subsection (1)” and substituting “subsection (1.1)”; and

(e) by adding the following subsection after subsection (4):

“(5) The report of the competency and standards committee is not to be used as evidence in any civil proceeding”.

Section 43 amended**11 Section 43 is amended:**

(a) in subsection (1):

(i) by striking out “or” after clause (a);

(ii) by adding the following after clause (a):

“(a.1) pursuant to clause 41(1.1)(a) of the chairperson of the competency and standards committee; or”; and

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

“(3) A complainant who requests a review pursuant to subsection (1) shall be advised in writing of the benchers' decision on the review”.

Section 44 amended

12 Subsection 44(1) is amended:

- (a) in clause (a) by adding “or members” after “benchers”; and
- (b) in clause (b) by striking out “one of those benchers” and substituting “a member of the committee”.

Section 47 amended

13 Section 47 is amended:

- (a) in clause (1)(b) by striking out “discipline committee may set out” and substituting “chairperson sets out”; and
- (b) in subsection (2) by adding “or members” after “benchers”.

Section 48 amended

14 The following subsection is added after subsection 48(2):

“(3) A certificate purporting to be signed by the secretary-treasurer or an equivalent officer of a law society in another province or territory that states that a person was convicted of a disciplinary offence by the law society in that province or territory and that may contain a summary of the facts surrounding that offence is admissible in evidence as proof, in the absence of evidence to the contrary, of its contents without proof of the appointment or signature of the secretary-treasurer or other officer”.

Section 49 amended

15 Subsection 49(2) is repealed and the following substituted:

“(2) In any proceedings before the benchers or a committee appointed pursuant to this Part, the testimony of a witness is to be under oath or affirmation administered by any bencher or member of a committee”.

Section 50 amended

16 Subsection 50(2) is repealed and the following substituted:

“(2) The hearings are to be conducted in public.

“(3) Notwithstanding subsections (1) and (2), the hearing committee, the discipline committee or the benchers, as the case may be, may exclude the complainant or the public from any part of the hearing where the committee or the benchers are of the opinion that:

(a) evidence brought in the presence of the complainant or the public 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 or the public to be present during part of the hearing”.

Section 53 amended

17 Section 53 is amended:

(a) in subsection (4) in the portion preceding clause (a) by adding “or (6)” after “subsection (3)”; and

(b) by adding the following subsections after subsection (5):

“(6) Where a hearing committee finds that a complaint is well founded against a non-member who is authorized to engage in the practice of law in Saskatchewan, the hearing committee shall do any of the following that it considers appropriate:

(a) reprimand the non-member;

(b) require the non-member to pay:

(i) the costs of the inquiry, including the costs of the investigation committee, hearing committee and discipline committee;

(ii) the costs of the society for counsel during the inquiry; and

(iii) all other costs related to the inquiry;

(c) impose a fine in any amount that the committee may specify;

(d) prohibit the non-member from engaging in the practice of law in Saskatchewan for a specified period;

(e) declare that, had the non-member been a member, he or she would have:

(i) been disbarred or suspended from practice; or

(ii) been permitted to continue to practise only under specified conditions.

“(7) The hearing committee may order that, if a non-member fails to make payment in accordance with an order pursuant to clause (6)(b) or (c), the non-member is prohibited from engaging in the practice of law in Saskatchewan”.

Section 55 amended

18 The following subclause is added after subclause 55(2)(a)(i):

“(i.1) permitting a member to resign from the society”.

Section 57 amended

19 Section 57 is amended:

(a) by renumbering it as subsection 57(1); and

(b) by adding the following subsection after subsection (1):

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

Section 58 amended

20 Subsection 58(2) is repealed and the following substituted:

“(2) Subject to section 9, where a member of any committee appointed pursuant to this Part ceases to be a benchler, he or she is to continue as a member of that committee until it is dissolved unless otherwise directed by the chairperson of the discipline committee or the chairperson of the competency and standards committee”.

New section 73.1

21 The following section is added after section 73:

“Action pursuant to *The Small Claims Act* for fees and disbursements

73.1(1) Where, in an action pursuant to *The Small Claims Act* respecting a bill of fees and disbursements with respect to services performed by a member, an issue arises respecting the amount of the bill and no application has been made pursuant to section 67, the judge, notwithstanding section 67, has jurisdiction to determine the amount of the bill.

(2) Subject to an appeal pursuant to *The Small Claims Act*, a determination by a judge pursuant to subsection (1) is final”.

Coming into force

22 This Act comes into force on assent.