

2005

CHAPTER 38

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

(Assented to December 2, 2005)

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, 2005*.

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(1) Subsection 2(1) is amended:

(a) in clause (b) by adding “48,” after “sections”;

(b) by adding the following clause after clause (g):

“(g.1) ‘**hearing committee**’ means a hearing committee appointed pursuant to section 47”; **and**

(c) by repealing clause (l).

(2) Subsection 2(2) is amended:

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

“(a) sections 6, 12, 13.1, 16, 17, 20, 25, 26, and 74”; **and**

(b) in subclause (c)(ii) by striking out “section 18” and substituting “section 10”.

(3) Clause 2(2.1)(a) is repealed and the following substituted:

“(a) sections 38, 39, 40.1, 42 to 44, 46 to 51, 54, 56 and 57, subsections 40(1), (3) and (5) and 53(1), (2), (4) and (5) and clauses 40(2)(b) and (c)”.

(4) Subsection 2(3) is repealed and the following substituted:

“(3) Words that direct or empower a chairperson of a committee established pursuant to this Act to do any act or thing, or words that otherwise apply to a chairperson by name of office, include any vice-chairperson.

“(4) Words that direct or empower the executive director to do any act or thing, or words that otherwise apply to the executive director by name of office, include the deputy executive director”.

Section 5 amended

4 Subsection 5(1) is amended by striking out “secretary-treasurer or secretary and treasurer, deputy secretary-treasurer” and substituting “executive director, deputy executive director”.

Section 6 amended

5 Subsection 6(2) is amended:

- (a) in clause (b) in the portion preceding subclause (i) by striking out “section 15” and substituting “the rules”;**
- (b) in paragraph (b)(i)(A) by adding “and the rules” after “section 17”; and**
- (c) in paragraph (b)(ii)(A) by adding “and the rules” after “section 17”.**

Section 8 repealed

6 Section 8 is repealed.

Section 10 amended

7 Section 10 is amended:

(a) by adding the following clauses after clause (a.1):

“(a.2) regulating the election of benchers, including prescribing the following:

- (i) when elections of benchers shall be held;
- (ii) subject to section 16, who is eligible to vote in an election of benchers;
- (iii) subject to section 17, who is eligible to be a candidate in an election of benchers, including prescribing the number of consecutive terms that a member may serve as a bencher;
- (iv) the number and terms of office of elected benchers, including providing for benchers who are officers of the society to continue to hold office as a bencher until the term of office as an officer of the society expires;
- (v) the procedures governing an election 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;

“(a.3) governing procedures for the appointment or election of officers of the society”;

(b) in clause (b) by striking out “subsection 6(6)” and substituting “subsection 6(5)”;

(c) in clause (m) by striking out “competency and standards” and substituting “professional standards”;

(d) by adding the following clause after clause (o):

“(o.1) conferring on a hearing committee the power to assess any of the following penalties or impose any of the following requirements in addition to those mentioned in subsection 53(3):

(i) direct that a member be disbarred and set the period, not exceeding five years, during which the person is not eligible to apply for reinstatement;

(ii) permit a member to resign from the society;

(iii) suspend a 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”; **and**

(e) by adding the following clause after clause (v):

“(v.1) regulating the provision of alternative dispute resolution services by members”.

New sections 13.1 and 13.2

8 The following sections are added after section 13:

“National special fund

13.1(1) In this section, ‘**national special fund**’ means the national special fund established in accordance with an agreement mentioned in subsection (2).

(2) The benchers may enter into an agreement with the law societies in other provinces and territories of Canada to establish a national special fund for the purpose of reimbursing a person in cases where:

(a) money or other property was entrusted to, or received by, a lawyer in the lawyer’s professional capacity;

(b) the lawyer is entitled to practise law in jurisdictions in Canada where the lawyer is not a member of the law society in those jurisdictions;

(c) the lawyer misappropriated or wrongfully converted the money or property; and

(d) the person suffered a pecuniary loss as a result of the misappropriation or wrongful conversion.

(3) An agreement mentioned in subsection (2) may include provisions respecting:

- (a) the administration of the national special fund;
- (b) the circumstances in which payments may be made out of the national special fund; and
- (c) any other matters that the benchers consider appropriate or necessary for the purposes of this section and the national special fund.

(4) For the purposes of the national special fund, the benchers may:

- (a) levy an assessment on members in addition to the assessment mentioned in section 12; and
- (b) cause the assessments to be deposited in the national special fund.

(5) Subsections 12(2.1) to (6) and section 13 apply, with any necessary modification, to the national special fund.

“Insurance program established

13.2 The society may establish, administer, maintain and operate an insurance program to carry out the purposes of sections 12 and 13.1”.

Section 15 repealed

9 Section 15 is repealed.

New section 17

10 Section 17 is repealed and the following substituted:

“Eligibility as candidate

17 All members, except members under suspension, are eligible as candidates in an election of benchers”.

Sections 18 and 19 repealed

11 Sections 18 and 19 are repealed.

Section 20 amended

12 Section 20 is amended by adding “and the rules” after “section 17”.

Section 26 amended

13 Section 26 is amended by striking out “secretary-treasurer” and substituting “executive director”.

Section 28 amended

14 Subsection 28(3) is amended in the portion preceding clause (a) by striking out “secretary-treasurer” and substituting “executive director”.

Section 29 amended

15 Subsection 29(1) is repealed and the following substituted:

“(1) A person who has been disbarred may apply for reinstatement in accordance with the rules after any period fixed by the hearing committee or discipline committee has expired”.

New section 34.3

16 The following section is added before section 35:**“Ethics committee**

34.3(1) The ethics committee is established and consists of those members appointed by the president of the society.

(2) The president shall appoint a chairperson of the ethics committee and may appoint one or more vice-chairpersons.

(3) Subject to this Act and the rules, the ethics 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”.

New section 35

17 Section 35 is repealed and the following substituted:**“Professional standards committee**

35(1) The competency and standards committee is continued as the professional standards committee.

(2) The professional standards committee consists of those members appointed by the president of the society.

(3) The president shall appoint a chairperson of the professional standards committee and may appoint one or more vice-chairpersons.

(4) Subject to this Act and the rules, the professional 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”.

Section 36 amended

18 Subsection 36(2) is repealed and the following substituted:

“(2) The president shall appoint a benchner as chairperson of the discipline committee and may appoint one or more benchers as vice-chairpersons”.

Section 37 amended

19 Section 37 is amended by striking out “competency and” and substituting “professional”.

Section 39 amended

20 Clause 39(1)(c) is amended:

(a) in subclause (iv) by striking out “competency and” and substituting “professional”; and

(b) in subclause (v) by striking out “subsection 41(1)” and substituting “clause 41(1.1)(b)”.

Section 40 amended

21(1) Subsection 40(2) is repealed and the following substituted:

“(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 professional 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 may:
 - (i) refer the matter to the ethics committee; or
 - (ii) direct that no further action be taken”.

(2) Subsection 40(4) is amended by striking out “the other committee, the chairperson may refer the matter to the chairperson of the other committee” and substituting “another committee mentioned in subsection (2), the chairperson may refer the matter to the chairperson of that other committee”.

(3) Subsection 40(5) is amended by striking out “competency and” and substituting “professional”.

New section 40.1

22 The following section is added after section 40:**“Duty of ethics committee**

40.1(1) The ethics committee shall review each matter referred to it pursuant to section 40, 41 or 42.

(2) The ethics committee may, for the purposes of conducting a review, request the member whose conduct is the subject of the complaint 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 the review pursuant to this section, the ethics committee may:

- (a) provide guidance to the member whose conduct is the subject of the complaint respecting the ethical practice of law; or
- (b) refer the matter to the chairperson of the discipline committee or the chairperson of the professional standards committee”.

Section 41 amended

23(1) Subsection 41(1) is repealed and the following substituted:

“(1) The chairperson of the professional standards committee shall review each matter referred to him or her pursuant to section 40 or 40.1”.

(2) Subsection 41(1.1) is amended:

- (a) in the portion preceding clause (a) by striking out “competency and” and substituting “professional”; and**
- (b) in clause (b) by striking out “competency and” and substituting “professional”.**

(3) Subsection 41(1.2) is amended:

- (a) in the portion preceding clause (a) by striking out “competency and” and substituting “professional”;**
- (b) in clause (a) by striking out “competency and” and substituting “professional”; and**
- (c) in clause (b) by striking out “competency and” and substituting “professional”.**

(4) Subsection 41(3) is amended in the portion preceding clause (a) by striking out “competency and” and substituting “professional”.

(5) Subsection 41(4) is repealed and the following substituted:

“(4) On completion of an investigation pursuant to subsection (1.1), the professional standards committee may:

- (a) make a report to the chairperson of the discipline committee; or
- (b) refer the matter to the ethics committee”.

(6) Subsection 41(5) is amended by striking out “competency and” and substituting “professional”.

Section 42 amended

24(1) Subsection 42(1) is repealed and the following substituted:

“(1) The chairperson of the discipline committee shall review each matter submitted to him or her pursuant to section 40, 40.1 or 41 and, notwithstanding section 40, may investigate any conduct of a member that may constitute conduct unbecoming”.

(2) The following subsection is added after subsection 42(3):

“(3.1) In addition to any action taken pursuant to subsection (2), the chairperson of the discipline committee may refer the matter to the ethics committee”.

Section 43 amended

25(1) Subsection 43(1) is amended:

- (a) in the portion preceding clause (a) by striking out “request the benchers to review the decision” and substituting “apply to the society for a review of a decision”;**
- (b) in clause (a) by striking out “clause 40(2)(c)” and substituting “subclause 40(2)(c)(ii)”;** and
- (c) in clause (a.1) by striking out “competency and” and substituting “professional”.**

(2) Subsection 43(2) is amended by striking out “requested pursuant to” and substituting “mentioned in”.

(3) Subsection 43(3) is repealed and the following substituted:

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

(4) Subsection 43(4) is repealed.

Section 48 amended

26 Subsection 48(3) is amended by striking out “secretary-treasurer” wherever it appears and in each case substituting “executive director”.

Section 53 amended

27 Subsection 53(3) is amended in the portion following clause (b) by striking out “subclauses 55(2)(a)(iii) to (vi) or clause 55(2)(b)” and substituting “subclauses 55(2)(a)(iii) to (vi), clause 55(2)(b) or in a rule made pursuant to clause 10(o.1)”.

Section 55 amended

28 Subclause 55(2)(a)(i) is amended by adding “and setting the period, not exceeding five years, during which the person is not eligible to apply for reinstatement” after “disbarred”.

Section 56 amended

29(1) Clause 56(1)(b) is amended by striking out “secretary-treasurer” and substituting “executive director”.

(2) Subsection 56(4) is amended by striking out “secretary-treasurer” and substituting “executive director”.

Section 58 amended

30 Subsection 58(2) is amended by striking out “competency and” and substituting “professional”.

Section 61 amended

31 The following clause is added after clause 61(2)(d):

“(d.1) direct that the costs of the trustee appointed pursuant to this section be paid by the member or the member’s estate, as the case may be”.

Section 65 amended

32 Section 65 is amended by striking out “taxation” and substituting “assessment”.

Section 67 amended

33(1) Subsection 67(1) is amended:

(a) in the portion preceding clause (a) by striking out “taxed” and substituting “assessed”; and

(b) in subclause (a)(iii) by striking out “person can prove to the satisfaction of the court that special circumstances exist” and substituting “court is satisfied that it is in the interests of justice to do so”.

(2) Subsection 67(4) is amended by striking out “taxation” and substituting “an assessment”.

New section 68**34 Section 68 is repealed and the following substituted:*****“Ex parte assessment***

68 If either party to a reference pursuant to section 67, having received notice, fails to attend the assessment, the local registrar may proceed to assess the bill in the person’s absence”.

Section 69 amended**35 Section 69 is amended:**

- (a) in clause (a) by striking out “tax” and substituting “assess”; and**
- (b) in clause (b) by striking out “taxation” and substituting “assessment”.**

Section 70 amended

36(1) Subsection 70(1) is amended by striking out “taxation” and substituting “assessment”.

(2) Subsection 70(2) is amended by striking out “special”.

(3) Subsection 70(3) is amended by striking out “Where an application for taxation” and substituting “If an application for assessment”.

Section 71 amended**37 Subsection 71(1) is repealed and the following substituted:**

“(1) Payment of a bill does not preclude the court from referring the bill for assessment if:

- (a) an application for assessment is made within 30 days after the day on which the bill was paid; or**
- (b) an application for assessment is made within six years after the day on which the bill was paid and the court is satisfied that it is in the interests of justice to allow the assessment after the expiration of the time specified in clause (a)”.**

Section 73 amended

38 Subsection 73(1) is amended by striking out “taxation” and substituting “assessment”.

New section 83**39 Section 83 is repealed and the following substituted:*****“Executive director’s certificate as evidence***

83 A certificate of the executive director certifying all or any of the following facts is admissible in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the certificate without proof of the signature or official position of the person purporting to have signed the certificate:

- (a) that a named person was or was not, on a specified day or during a specified period a member, an active member, an inactive member or a suspended member, according to the roll;**

(b) that a named person was or was not, on a specified day or during a specified period, an articulated student-at-law, according to the records of the society; or

(c) that a named person was or was not, on a specified day or during a specified period an officer of the society or a bencher, according to the records of the society”.

Section 86 amended

40 Section 86 is amended by striking out “secretary-treasurer” and substituting “executive director”.

Section 88 amended

41 Subsection 88(1) is amended in the portion preceding clause (a) by striking out “Consumer and Commercial Affairs two copies, certified by the secretary-treasurer” and substituting “Justice two copies, certified by the executive director”.

Section 91 amended

42 Subsection 91(1) is amended by striking out “Consumer and Commercial Affairs” and substituting “Justice”.

Section 92 amended

43(1) Subsection 92(1) is amended by striking out “Consumer and Commercial Affairs” and substituting “Justice”.

(2) Subsection 92(2) is amended in the portion preceding clause (a) by striking out “Consumer and Commercial Affairs” and substituting “Justice”.

Coming into force

44 This Act comes into force on proclamation.