

2010

CHAPTER 17

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

(Assented to May 20, 2010)

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, 2010*.

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) The following clause is added after clause 2(1)(b):

“(b.1) ‘**competence**’ means, except in subsection 49(3), bringing adequate skill and knowledge to the practice of law including the management of a practice”.

(2) Clause 2(2.1)(a) is repealed and the following substituted:

“(a) sections 38, 39, 40.1, 42, 43, 46 to 49, 54, 56, 57 and 84.1, subsections 40(1), (3) and (5) and 53(1), (2), (5) and (8) and clauses 40(2)(b) and (c)”.

New section 3.1

4 The following section is added after section 3:

“Duty of society

3.1 In the exercise of its powers and the discharge of its responsibilities, it is the duty of the society, at all times:

- (a) to act in the public interest;
- (b) to regulate the profession and to govern the members in accordance with this Act and the rules; and
- (c) to protect the public by assuring the integrity, knowledge, skill, proficiency and competence of members”.

New section 7.1

5 The following section is added after section 7:

“Appointment of representatives

7.1(1) Subject to subsection (2), the chairperson of any committee established, continued or appointed pursuant to this Act or the rules, other than a hearing committee, may appoint any person to carry out any responsibility imposed on the chairperson pursuant to this Act or the rules or to exercise any of the powers conferred on the chairperson or a committee pursuant to this Act or the rules that the chairperson believes may be more conveniently carried out or exercised by that person.

- (2) The chairperson of any committee who makes an appointment pursuant to subsection (1) shall not appoint any person to exercise any power set out in clause 41(1.1)(a), subsection 41(3) or (4), clause 42(2)(a), subclause 42(2)(b)(ii), subsections 42(3), 45(1) or 46(1), clause 56(1)(b) or subsection 56(1.1).
- (3) The chairperson may impose any limitations or terms and conditions that the chairperson considers appropriate on an appointment pursuant to subsection (1).
- (4) The exercise of any of the chairperson's or committee's powers or the carrying out of any of the chairperson's or committee's responsibilities by a person who is appointed pursuant to subsection (1) is deemed to be the exercise or the carrying out by the chairperson or the committee".

Section 10 amended

6 Section 10 is amended:

- (a) by adding the following clause after clause (a.1):**
 "(a.11) respecting the appointment of persons pursuant to section 7.1";
- (b) by adding the following clause after clause (f):**
 "(f.1) respecting the resignation of members";
- (c) by repealing clause (l) and substituting the following:**
 "(l) prescribing standards of competence";
- (d) in clause (m) by striking out "competency" and substituting "competence";**
- (e) by repealing clause (o.1);**
- (f) by adding the following clause before clause (p):**
 "(o.2) providing for the method of sending a copy of the formal complaint for the purposes of subsection 46(2) and of serving notice of a hearing on a member for the purposes of subsection 48(1)";
- (g) in paragraph (t)(i)(B) by striking out "chairperson of the discipline committee" and substituting "conduct investigation committee"; and**
- (h) by adding the following clause after clause (t):**
 "(t.01) for the purposes of section 14, prescribing the period that must elapse and the circumstances that must exist before a member may pay moneys from the member's trust account to the society or to the member's general account, and prescribing an amount for the purposes of clauses 14(1)(b) and 14(9)(b)".

Section 14 amended**7(1) Subsection 14(1) is repealed and the following substituted:**

“(1) A member may pay moneys from the member’s trust account to the society if:

- (a) the moneys have been held in the member’s trust account for the period prescribed in the rules;
- (b) the moneys exceed the amount prescribed in the rules;
- (c) the circumstances prescribed in the rules have been met; and
- (d) the society is satisfied that the member is unable to pay the moneys to the person who is entitled to them”.

(2) Subsection 14(3) is amended by striking out “this section” and substituting “subsection (2)”.

(3) Subsection 14(4) is amended by striking out “this section” and substituting “subsection (2)”.

(4) Subsection 14(5) is amended by striking out “this section” and substituting “subsection (2)”.

(5) Subsection 14(6) is amended by striking out “this section” and substituting “subsection (2)”.

(6) The following subsection is added after subsection 14(8):

“(9) Notwithstanding subsections (1) to (8), a member may transfer moneys from the member’s trust account to the member’s general account if:

- (a) the moneys have been held in the member’s trust account for the period prescribed in the rules;
- (b) the moneys do not exceed the amount prescribed in the rules;
- (c) the circumstances prescribed in the rules have been met; and
- (d) the society is satisfied that the member is unable to pay the moneys to the person who is entitled to them”.

Section 27 amended

8(1) Subsection 27(1) is repealed and the following substituted:

“(1) A member may resign from the society in accordance with the rules”.

(2) Subsection 27(2) is amended by striking out “approval of the member’s application to resign” and substituting “member’s resignation”.

Section 28 amended**9 Subsection 28(3) is repealed and the following substituted:**

“(3) If a member is disbarred or suspended from practice, the executive director 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 the member; and

(b) cause a notice of the disbarment or suspension to be published and posted in any manner that the executive director considers appropriate”.

Section 29 amended

10(1) Subsection 29(1) is amended by striking out “hearing committee or discipline committee has expired” and substituting “order disbaring the member”.

(2) Subsection 29(5) is amended by striking out “subsection 28(3)” and substituting “clause 28(3)(a)”.

Section 30 amended

11(1) Subsection 30(1) is amended in the portion preceding clause (a) by striking out “subsisting”.

(2) Subsection 30(2) is amended in the portion preceding clause (a) by striking out “subsisting”.

Section 32 amended

12 Subsection 32(1) is amended in the portion preceding clause (a) by striking out “subsisting”.

Section 34.3 amended

13 Subsection 34.3(1) is amended by adding “benchers and” before “members”.

Section 35 amended

14 Subsection 35(2) is amended by adding “benchers and” before “members”.

New section 35.1

15 The following section is added after section 35:

“Conduct investigation committee

35.1(1) The conduct investigation committee is established consisting of a minimum of six persons appointed by the president of the society.

(2) The conduct investigation committee appointed pursuant to subsection (1) shall consist of benchers, members or former benchers, but a majority of members of the committee must be benchers.

(3) The president shall appoint a bencher as chairperson of the conduct investigation committee and may appoint one or more benchers as vice-chairpersons.

(4) For the purposes of subsection 36(1.1), a member of the conduct investigation committee whose appointment pursuant to subsection (1) has ended, and who is investigating or has investigated the conduct of a member pursuant to subclause 42(2)(b)(i), continues as a member of the conduct investigation committee for all purposes relating to that investigation, but is eligible to be a member of the discipline committee for all other purposes.

(5) Subject to this Act and the rules, the conduct investigation 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 it shall decide questions; and
- (d) determine generally the transaction and management of its business”.

Section 36 amended

16 Subsection 36(1) is repealed and the following substituted:

“(1) Subject to subsection (1.1), the discipline committee is continued and is comprised of:

- (a) all benchers; and
- (b) any members and former benchers appointed by the president.

“(1.1) Subject to subsection 35.1(4), no member of the conduct investigation committee is eligible to be a member of the discipline committee”.

Section 37 amended

17 Section 37 is amended by striking out “an investigation” and substituting “the conduct investigation”.

Section 39 amended

18 Clause 39(1)(c) is repealed and the following substituted:

- “(c) the chairperson of:
- (i) the conduct investigation committee;
 - (ii) a hearing committee; or
 - (iii) the professional standards committee”.

Section 40 amended

19(1) Clause 40(1)(c) is amended by striking out “competency” and substituting “competence”.

(2) Clause 40(2)(b) is amended by striking out “chairperson of the discipline committee” and substituting “conduct investigation committee”.

(3) Subsection 40(5) is amended by striking out “chairperson of the discipline committee” and substituting “conduct investigation committee”.

Section 40.1 amended

20(1) Subsection 40.1(1) is amended by striking out “or 42” and substituting “, 42 or 46”.

(2) Clause 40.1(3)(b) is amended by striking out “chairperson of the discipline committee” and substituting “conduct investigation committee”.

Section 41 amended

21(1) Subsection 41(1) is amended by striking out “or 40.1” and substituting “, 40.1, 42 or 46”.

(2) Clause 41(1.1)(b) is repealed and the following substituted:

“(b) in any other case, conduct an investigation to review whether, in his or her opinion, the member is practising law in a competent manner”.

(3) Subsection 41(1.2) is repealed.

(4) 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 refer the matter to the conduct investigation committee or the ethics committee”.

(5) Subsection 41(5) is amended by striking out “The report of” and substituting “Any report to”.

New section 42

22 Section 42 is repealed and the following substituted:

“Duty of conduct investigation committee

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

(2) On completion of a review pursuant to subsection (1):

(a) if the conduct investigation committee is of the opinion that the matter does not constitute conduct unbecoming, the conduct investigation committee may direct that no further action be taken; or

(b) if the conduct investigation committee is of the opinion that the member’s conduct may constitute conduct unbecoming, the conduct investigation committee may:

(i) investigate any conduct of a member that may constitute conduct unbecoming, including any matter that comes to the attention of the committee during the course of an investigation that appears to constitute conduct unbecoming; or

(ii) invite the member to appear before the committee, and the committee may make an informal investigation of the matter and counsel the member.

(3) In addition to any action taken pursuant to subsection (2), the conduct investigation committee may refer the matter to the ethics committee or the professional standards committee.

(4) The chairperson of the conduct investigation committee shall notify the complainant, if any, of the decision made on a review pursuant to this section”.

Section 43 amended

23(1) Clause 43(1)(b) is amended by striking out “chairperson of the discipline committee” and substituting “conduct investigation committee”.

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

“(3) A complainant who applies for a review pursuant to subsection (1):

(a) shall be advised orally or in writing of the date, time and place of the hearing, if any;

(b) subject to subsection 49(6) is entitled to attend the hearing, if any; and

(c) shall be advised in writing of the decision on the review”.

Section 44 repealed

24 Section 44 is repealed.

Section 45 amended

25(1) Subsection 45(1) is amended in the portion preceding clause (a) by striking out “Subject to the approval of the chairperson of the discipline committee, an investigation committee” and substituting “The conduct investigation committee”.

(2) Subsection 45(2) is repealed and the following substituted:

“(2) Subject to subsection (4), a suspension imposed pursuant to this section expires:

(a) if the conduct investigation committee directs that no hearing committee be appointed, on the day on which the conduct investigation committee makes that direction; or

(b) if a hearing committee is appointed pursuant to subsection 47(1), on the completion of the hearing, unless the hearing committee continues the suspension beyond that day”.

(3) Subsection 45(4) is amended in the portion preceding clause (a) by striking out “investigation committee appointed with respect to the matter” and substituting “conduct investigation committee”.

(4) Subsection 45(6) is amended by striking out “an investigation committee” and substituting “the conduct investigation committee”.

New sections 46 to 49

26 Sections 46 to 51 are repealed and the following substituted:

“Decision of conduct investigation committee

46(1) On the completion of its investigation, the conduct investigation committee shall make a written report to the chairperson of the discipline committee and may:

- (a) direct the chairperson of the discipline committee to appoint a hearing committee to hear and determine the formal complaint set out in the written report;
- (b) invite the member under investigation to appear before the conduct investigation committee to enable the committee to counsel the member;
- (c) refer the matter to the ethics committee or the professional standards committee; or
- (d) direct that no further action be taken with respect to the matter under investigation.

(2) If the conduct investigation committee directs the chairperson of the discipline committee to appoint a hearing committee to hear and determine the formal complaint set out in the written report mentioned in subsection (1), the conduct investigation committee shall, in accordance with the rules, send a copy of the formal complaint to the member whose conduct is the subject of the hearing.

“Hearing committee

47(1) If the written report of the conduct investigation committee includes a direction pursuant to clause 46(1)(a), the chairperson of the discipline committee shall appoint a hearing committee to hear and determine the formal complaint.

(2) A hearing committee appointed pursuant to subsection (1) consists of not more than five members of the discipline committee, none of whom were members of any committee appointed pursuant to subsection 45(4) with respect to the matter.

“Powers and duties of hearing committee

48(1) If a hearing committee is appointed pursuant to subsection 47(1) to hear and determine the formal complaint set out in the written report mentioned in subsection 46(1), the hearing committee shall, in accordance with the rules, serve notice on the member whose conduct is the subject of the hearing of the date, time and place of the hearing.

- (2) 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.

- (3) The hearing committee need not refer any matter mentioned in clause (2)(b) to a court for adjudication.
- (4) 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.
- (5) Subject to subsection (6), a hearing committee may:
- (a) find that the complaint is well founded on any charge revealed by the facts; and
 - (b) if the circumstances warrant for the purposes of clause (a), substitute the charge mentioned in clause (a) for, or amend or add to, the charge set out in the formal complaint that the committee was appointed to hear.
- (6) If, 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.
- (7) If a hearing committee acts pursuant to clause (6)(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.
- (8) The chairperson of the hearing committee shall advise any person who made a complaint pursuant to subsection 40(1) orally or in writing of the date, time and place of the hearing and, subject to subsection 49(6), the complainant is entitled to attend the hearing.
- (9) Subject to subsection 49(6), the hearing committee shall conduct all hearings in public.
- (10) A hearing committee may accept any evidence that it considers appropriate and is not bound by the rules of law concerning evidence.
- (11) A certificate purporting to be signed by the executive director 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 executive director or other officer.

“Procedure re hearing committee

49(1) The conduct investigation committee shall direct the prosecution of the formal complaint, but its members shall not participate in any other manner in the hearing of the formal complaint except as witnesses when required.

(2) The testimony of witnesses is to be under oath or affirmation administered by the chairperson of the hearing committee.

(3) A member whose conduct is the subject of a hearing is competent and compellable to give evidence at the hearing.

(4) If the member whose conduct is the subject of the hearing fails to attend the hearing, the hearing committee, on proof of service of the notice mentioned in subsection 48(1), may proceed with the hearing in the member's absence.

(5) A member who appears in person or by counsel before the hearing committee is deemed to have received proper notice unless the appearance is for the purpose of challenging the notice.

(6) The hearing committee may exclude the complainant or the public from any part of the hearing if the hearing committee is 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.

(7) The hearing committee may act pursuant to subsection (6) whether or not a member or any other person who may claim solicitor and client privilege has acted pursuant to subsection 84.1(3)”.

Section 52 amended**27(1) Subsection 52(1) is repealed and the following substituted:**

“(1) A hearing committee may suspend from practice the member whose conduct is the subject of the hearing pending its decision”.

(2) Clause 52(2)(b) is repealed and the following substituted:

“(b) if the hearing committee finds that the formal complaint is well founded, on the day that it assesses a penalty or imposes a requirement”.

Section 53 amended

28(1) Subsections 53(3) to (5) are repealed and the following substituted:

“(3) If a hearing committee finds that a formal complaint is well founded, the hearing committee may, by order, do one or more of the following:

(a) assess any penalties or impose any requirements that it considers appropriate, including but not limited to:

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

(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 conduct investigation committee and hearing 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;

(vii) permitting the member to resign from the society;

(b) if the formal complaint that has been determined to be well founded relates to the transfer of identified property or funds in an ascertainable amount, require the member to transfer the property or the amount to the rightful owner;

(c) make any direction or set any requirement that the committee considers appropriate.

“(4) In addition to an order made pursuant to subsection (3), the hearing committee may order that, if a member fails to make payment in accordance with an order pursuant to subclause (3)(a)(iv) or (v), the member be suspended from practice.

“(5) When the hearing committee makes an order pursuant to this section, the hearing committee:

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

(b) shall send the following to the member whose conduct was the subject of the hearing:

(i) a copy of the committee’s decision; and

(ii) a notice of the penalty assessed or requirement imposed; and

(c) shall send a notice of the penalty assessed or requirement imposed to the complainant, if any, and may send a notice of the penalty assessed or requirement imposed to any other person that the hearing committee considers advisable”.

(2) Subsection 53(6) is amended:

(a) in the portion preceding clause (a) by striking out “shall do any of the following that it considers appropriate” and substituting “may, by order, do one or more of the following”; and

(b) in subclause (b)(i) by adding “conduct” before “investigation committee”.

(3) The following subsection is added after subsection 53(7):

“(8) The hearing committee may order the society to pay the costs of the hearing to the member whose conduct was the subject of the hearing if:

(a) the hearing committee finds that the formal complaint is not well founded; and

(b) it is established, to the satisfaction of the hearing committee, that the formal complaint was made without reasonable grounds”.

New section 54**29 Section 54 is repealed and the following substituted:****“Possible criminal offence**

54(1) If the conduct investigation committee suspends a member pursuant to section 45, the chairperson of that committee shall immediately report the suspension to the Deputy Minister of Justice.

(2) If 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 belief and surrounding circumstances to the Deputy Minister of Justice”.

Section 55 repealed**30 Section 55 is repealed.****Section 56 amended****31(1) Subsection 56(1) is repealed and the following substituted:**

“(1) If a formal complaint against a member is determined by the hearing committee to be well founded:

(a) the member may appeal the decision of the hearing committee or a penalty assessed or requirement imposed by the hearing 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:

- (i) filing a notice of appeal with the registrar of the Court of Appeal; and
- (ii) serving a copy of the notice of appeal on the executive director; and

(b) the society, at the direction of the conduct investigation committee, may appeal a penalty assessed or requirement imposed by the hearing committee resulting from the decision to the Court of Appeal within 30 days after the day of the assessment of a penalty or imposition of a requirement by:

- (i) filing a notice of appeal with the registrar of the Court of Appeal; and
- (ii) serving a copy of the notice of appeal on the member whose conduct was the subject of the hearing.

“(1.1) If a formal complaint against a member is determined by the hearing committee not to be well founded, the society, at the direction of the conduct investigation committee, may appeal the decision of the hearing committee to the Court of Appeal within 30 days after the day of the decision, by:

- (a) filing a notice of appeal with the registrar of the Court of Appeal; and
- (b) serving a copy of the notice of appeal on the member whose conduct was the subject of the hearing”.

(2) **Subsection 56(2) is amended by adding “or (1.1)” after “subsection (1)”.**

(3) **Subsection 56(3) is amended by striking out “or the discipline committee”.**

New section 57

32 Section 57 is repealed and the following substituted:

“Non-compliance with order

57(1) If a member does not comply with a requirement imposed in an order pursuant to clause 53(3)(b) within 15 days after the day on which a notice is sent to the member pursuant to clause 53(5)(b), 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.

(2) If a member does not comply with a requirement imposed in an order pursuant to subclause 53(3)(a)(iv) or (v) within 15 days after the day on which a notice is sent to the member pursuant to clause 53(5)(b) or any other time specified in the order, 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”.

New section 58

33 Section 58 is repealed and the following substituted:

“Dissolution of hearing committees

58(1) A hearing committee is dissolved when all appeals with respect to the matter for which it was appointed are exhausted or, if no appeal is taken, on the expiration of the time allowed to bring an appeal.

(2) Subject to subsection (3), if a member of any committee appointed pursuant to this Part ceases to be a bencher, 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 professional standards committee.

(3) If a member appointed as a member of any committee pursuant to this Part is suspended or disbarred, he or she is removed as a member of that committee as of the date that he or she was suspended or disbarred”.

Section 60 amended

34 The following clause is added after clause 60(b):

“(c) **‘records’** includes electronic records”.

Section 74 amended

35 Subsection 74(1) is amended:

(a) **in clause (b) by striking out “two” and substituting “three”; and**

(b) **in clause (c) by striking out “four” and substituting “five”.**

New section 81**36 Section 81 is repealed and the following substituted:****“Power of benchers to commence proceedings**

81(1) Subject to subsection (2), the benchers may:

- (a) commence or authorize the commencement of proceedings for any alleged contravention of this Act; and
- (b) make rules with respect to the commencement of proceedings pursuant to this Act.

(2) No prosecution with respect to an alleged offence pursuant to section 30, 32 or 33 of this Act shall be commenced or authorized to be commenced pursuant to subsection (1) after two years from the day of commission of the alleged offence”.

Section 84.1 amended**37 The following clause is added after clause 84.1(1)(b):**

“(c) ‘records’ includes electronic records”.

Transitional

38(1) In this section, “**former discipline process**” means the discipline process set out in Part IV of *The Legal Profession Act, 1990* as that Part existed on the day before the coming into force of sections 13 to 33 of this Act.

(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.

(3) Subject to subsection (4), every proceeding commenced before the coming into force of sections 13 to 33 of this Act is continued pursuant to the former discipline process and is to be dealt with in accordance with the former discipline process and for that purpose Part IV of *The Legal Profession Act, 1990* as it existed on the day before the coming into force of sections 13 to 33 of this Act, continues to apply.

(4) Subsection (3) does not prevent:

- (a) any chairperson of a committee from appointing a person pursuant to section 7.1; or
- (b) a person appointed pursuant to section 7.1 from acting with respect to a matter mentioned in subsection (3).

Coming into force

39 This Act comes into force on proclamation.

