

## BARRISTERS AND SOLICITORS ACT

### CHAPTER 26

#### Interpretation

##### 1. In this Act

- “British subject” means a person who by virtue of the *Citizenship Act* (Canada) has in Canada the status of a British subject;
- “Canadian citizen” means a person who is a Canadian citizen as defined in the *Citizenship Act* (Canada);
- “conduct unbecoming a member of the society” includes any matter, conduct or thing that is deemed in the judgment of the benchers to be contrary to the best interest of the public or of the legal profession, or that tends to harm the standing of the legal profession;
- “country of the British Commonwealth” means country of the British Commonwealth as defined by the *Citizenship Act* (Canada);
- “disbarment” means cessation of membership in the society, and in the case of a barrister means the striking of his name from the barristers’ roll, and in the case of a solicitor means the striking of his name from the solicitors’ roll; and “disbar” has a corresponding meaning;
- “fiscal year” means the period January 1 to December 31 in any one year, or such other period as the benchers may prescribe;
- “practice of law” includes
- (a) appearing as counsel or advocate;
  - (b) drawing, revising or settling
    - (i) any petition, memorandum of association, articles of association, application, statement, affidavit, minute, resolution, bylaw or other document relating to the incorporation, registration, organization, reorganization, dissolution or winding up of a corporate body;
    - (ii) any document for use in a proceeding, judicial or extra-judicial;
    - (iii) a will, deed of settlement, trust deed, power of attorney or a document relating to any probate or letters of administration or the estate of a deceased person;
    - (iv) a document relating in any way to proceedings under a statute of Canada or the Province;
    - (v) an instrument relating to real or personal estate which is intended, permitted or required to be registered, recorded or filed in a registry or other public office;
  - (c) doing any act or deed or negotiating in any way for the settlement of, or settling a claim or demand for damages founded in tort;
  - (d) agreeing to place at the disposal of another person the services of a barrister or solicitor;
  - (e) giving legal advice;
- but it does not include any such act if not done for or in expectation of a fee, gain or reward, direct or indirect, from another person and does not include the

- drawing or preparing of an instrument by a public officer in the course of his duty, or the lawful practice of a notary public;
- “practice year” means the period January 1 to December 31 in any one year;
- “respondent” means a person whose conduct is being inquired into under this Act;
- “retired member” means a person whom the benchers designate as a retired member;
- “secretary” means the secretary, acting secretary, and those deputy secretaries of the society appointed by the benchers;
- “serve”, when used with respect to a notice or other document to be served on a member or former member or articulated student, includes the mailing of it by registered mail directed to him at the last address known to the secretary, or service in the manner the Supreme Court may order and, in the case of mailing by registered mail, the notice or other document shall be deemed to have been served on the juridical day following the mailing;
- “suspension” means temporary disqualification from the practice of law.
- RS1960-214-1; 1969-15-21; 1971-31-32; 1974-49-7; 1975-35-1; 1976-28-1.

### **Incorporation**

- 2.** (1) The Law Society of British Columbia (the “society”) is continued as a corporation.
- (2) The membership of the society includes all persons
- (a) called to the Bar of the Province; and
  - (b) admitted as solicitors of the Supreme Court
- who hold a practising certificate for the current year; and
- (c) retired members.
- (3) Every member of the society admitted as a solicitor of the Supreme Court is an officer of all the courts of the Province.
- RS1960-214-2; 1969-15-1; 1974-49-1.

### **Property**

- 3.** The society may acquire, except by expropriation, and dispose of property.
- 1975-35-2.

### **Service on society**

- 4.** A document to be served on the society or on the benchers is sufficiently served if
- (a) left at or mailed by registered mail to the principal offices of the society; or
  - (b) served on an officer of the society personally.
- 1977-31-9.

### **Benchers**

- 5.** The society shall, subject to section 8, be governed by 24 members of the degree of barristers, who shall be called benchers, and the benchers holding office under section 6.
- RS1960-214-4; 1962-32-2; 1975-35-3; 1979-2-46.

### **Additional benchers**

- 6.** (1) The Attorney General of the Province is a bencher.

(2) Any barrister who has served as a benchers for 12 years or 6 complete terms, whether consecutively or not, or who has served as treasurer of the society, is a benchers so long as he is a member of the society.

(3) Benchers holding office under this section shall be in addition to the elected benchers.

RS1960-214-5; 1969-32-3; 1969-15-2; 1971-31-1; 1975-35-4.

### **Election of treasurer**

7. (1) At each annual general meeting of the society, the members shall elect one of the benchers to be treasurer and head of the society to assume office on January 1 of the year following his election for a term of one year.

(2) Where the office of treasurer becomes vacant or the elected treasurer is unable to assume office, the benchers shall elect another benchers to be treasurer to hold office until he or a replacement for him is elected by the members of the society at an annual general meeting.

(3) Where the members elect a treasurer under the circumstances referred to in subsection (2), the treasurer so elected shall assume office at the time provided in subsection (1) or at an earlier time fixed by resolution of the members.

1976-28-2.

### **Regional representation**

8. (1) For the purposes of this Act, the Province shall be divided into 8 districts, namely:

The County of Vancouver, being District No. 1, from which there shall be elected 13 benchers:

The County of Victoria, being District No. 2, from which there shall be elected 2 benchers:

The County of Nanaimo, being District No. 3, from which there shall be elected one benchers:

The County of Westminster, being District No. 4, from which there shall be elected 3 benchers:

The County of Kootenay, being District No. 5, from which there shall be elected one benchers:

The County of Yale, being District No. 6, from which there shall be elected 2 benchers:

The County of Cariboo, being District No. 7, from which there shall be elected one benchers:

The County of Prince Rupert, being District No. 8, from which there shall be elected one benchers:

but the total number of benchers, the number and boundaries of the districts, and the number of benchers to be nominated and elected from each district may be changed from time to time by a rule made by the benchers pursuant to a resolution of the society passed by not less than 2/3 of the members present at a general meeting of which written notice embodying the proposed change has been given to the members.

(2) Where, as the result of a rule made under subsection (1), an additional benchers is to be nominated and elected from a district, the benchers may appoint a member of the society eligible to be a candidate for election as benchers from the district

in accordance with section 10 (a) and (b) to be the additional benchers and the person appointed shall hold office until the next election for the office of benchers.

RS1960-214-7, 1962-32-4, 1975-35-5, 1979-2-47

### **Election of benchers**

**9.** Elections for the office of benchers shall be held on November 15 in every odd numbered year and those persons elected shall assume office on January 1 of the year following their election for a term of 2 years.

1976-28-3

### **Qualifications**

**10.** No person is eligible to be a candidate for election as benchers from a district unless

- (a) he has been a member in good standing of the society of the degree of barrister for at least 7 years;
- (b) his chief place of practice is in that district or, if he is retired from practice, his residence is in that district;
- (c) his nomination in writing proposed by 2 members of the society having their chief places of practice in that district and his written consent to the nomination have been duly filed with the secretary by October 15 in the year in which the election is to be made.

RS1960-214-9, 1962-32-6, 1976-28-4

### **Acclamation**

**11.** If in a district the number of candidates nominated does not exceed the number to be elected from that district, the secretary shall declare that those nominated are elected as benchers from that district.

RS1960-214-10

### **Election of retiring benchers**

**12.** At all elections retiring benchers are, if otherwise qualified, eligible for re-election.

RS1960-214-11

### **Voter list**

**13.** On October 10 preceding an election the secretary shall prepare an alphabetical list of members of the society who are entitled to vote (the "list"), namely, those in good standing who have paid all their fees to the society. A member of the society may examine the list at any reasonable time.

RS1960-214-12, 1962-32-7, 1969-15-3, 1976-28-5

### **Error in list**

**14.** If a member of the society complains to the secretary of the improper omission or insertion of a name in the list, the secretary shall without delay consider the complaint and rectify the error if one exists. An appeal lies from the decision of the secretary to the Supreme Court in a summary way, and the court may confirm or correct the list. If no correction is ordered before October 25, the list shall be deemed to be confirmed.

RS1960-214-13, 1962-32-8, 1976-28-6

**Voting**

**15.** (1) The members whose names appear on the list as confirmed or corrected, but no others, are entitled to vote at an election for benchers.

(2) Notwithstanding that each bencher is to be nominated and elected from a district, each member whose name appears on such list is entitled to vote for the requisite number of candidates to be elected from each district.

RS1960-214-14.

**Voting procedure**

**16.** (1) On or before November 1 preceding an election, the secretary shall mail to each member of the society whose name is on the list

- (a) a voting paper in Form A in the Schedule containing on it in alphabetical order the names of all members duly nominated from each district, and stating the number of benchers to be elected from each district;
- (b) a plain envelope;
- (c) an envelope having printed on it the declaration in Form B in the Schedule (the "declaration envelope");
- (d) an envelope marked "voting paper" and addressed to the secretary of the society at its office.

(2) For the purpose of voting, a member shall

- (a) for each district mark "X" opposite the name of each candidate on the voting paper for whom he desires to vote;
- (b) not vote for more candidates from a district than the number to be elected from it;
- (c) place the marked voting paper in the plain envelope and seal the envelope and place the plain envelope in the declaration envelope;
- (d) complete and sign the declaration on the declaration envelope;
- (e) place the declaration envelope in the addressed envelope marked "voting paper", seal it and mail or deliver it to the secretary.

(3) If an addressed envelope is received by the secretary on or after the day of election, the voting paper contained in it shall not be counted.

(4) A voting paper that is not marked in accordance with this section shall not be counted.

(5) Inadvertent omission to mail a ballot to a member of the society does not invalidate an election.

RS1960-214-15; 1962-32-9; 1969-15-4; 1976-28-7.

**Scrutineers**

**17.** The benchers shall, prior to the day of election in each year in which an election under this Act is to be held, appoint 2 members who, with the secretary, shall act as scrutineers at the election. In case any scrutineer is absent during the scrutiny, the others may nevertheless proceed.

RS1960-214-16.

**Vote counting**

**18.** (1) The secretary shall safely keep, unopened, all envelopes marked "voting paper" that are received by him before the day of election, and on the day of

election they shall be opened by him in the presence of the other scrutineers and the declaration envelopes removed but not opened.

(2) The scrutineers shall examine and satisfy themselves in respect of the declarations.

(3) The secretary, in the presence of the other scrutineers, shall remove the plain envelopes from the declaration envelopes and place them together unopened, and he shall then mix them so that they cannot be identified.

(4) The scrutineers shall then open the plain envelopes and scrutinize and count the votes, and keep a record of them in a book to be provided by the society.

RS1960-214-17.

### **Candidate may be present**

**19.** A candidate or his agent is entitled to be present at the opening and scrutinizing of the voting papers.

RS1960-214-18.

### **Equality of votes**

**20.** Of the candidates nominated from a district, those, to the number to be elected from that district, receiving the greatest number of votes shall be declared by the secretary to be elected as benchers from that district. In case the election of one or more candidates from a district is undecided by reason of an equality of votes, the scrutineers shall immediately put into a ballot box one paper for each candidate whose election is undecided with the name of that candidate written on it, and the secretary of the society shall draw by chance from the ballot box, in the presence of the other scrutineers, one or more of the papers sufficient to make up the required number of benchers from that district, and the secretary shall declare the candidate whose name is on the paper so drawn to be elected as bencher from that district.

RS1960-214-19.

### **Election confirmation**

**21.** Within 10 days after the secretary has declared the election of a bencher, any member of the society may file a petition in the Supreme Court to unseat that bencher on the ground of illegality. The court shall proceed in a summary way and may confirm the election or order that some other candidate should have been declared elected and may direct that he be seated accordingly, or may order a new election and give directions for it. The decision of the court is final, and the costs of the petition shall be in the court's discretion.

RS1960-214-20.

### **Secretary's declaration**

**22.** A candidate declared by the secretary to be elected shall be deemed to have been duly elected unless a petition is filed with respect to him under section 21 of this Act.

RS1960-214-21.

### **Publication**

**23.** The secretary shall cause the names of the benchers elected from each district to be published in one issue of the Gazette.

RS1960-214-22.

**Retention of documents**

**24.** The voting papers and other documents of an election shall be kept by the secretary for 4 weeks or, if a petition to unseat a bencher is filed, until after the petition is heard and determined.

RS1960-214-23.

**Failure to elect**

**25.** In case of failure at an election to elect the requisite number of benchers from a district, the elected benchers may appoint to the vacant place a member of the society qualified to be elected as bencher from that district, and the member appointed shall hold office as if he had been duly elected at such election.

RS1960-214-24.

**Vacated seat**

**26.** In case a bencher dies, resigns or otherwise vacates his seat before the completion of his term, the remaining benchers may appoint in his place a member qualified to be a bencher from the same district, and the member appointed shall hold office as a bencher for the remainder of the term of the bencher replaced.

RS1960-214-25.

**Disbarment or suspension**

**27.** If a bencher is disbarred or suspended as the result of an inquiry, his seat shall be deemed to be vacated.

RS1960-214-26.

**Annual general meeting**

**28.** (1) An annual general meeting of the members of the society shall be held each year at a place and time, prior to August 1, designated by the benchers.

(2) The benchers shall, at the annual general meeting, present a report of their proceedings since the preceding annual general meeting.

1975-35-6.

**Notices**

**29.** At least 10 days before an annual general meeting the secretary shall mail to each member of the society a notice of the meeting and a statement of the finances of the society during the last fiscal year.

RS1960-214-28.

**Quorum**

**30.** Fifty members in good standing constitute a quorum at a general meeting.

RS1960-214-29.

**Auditors**

**31.** At each annual general meeting, auditors for the society shall be appointed.

RS1960-214-30.

**Special general meeting**

**32.** The benchers may, whenever they think fit, convene a special general meeting of the members of the society, and they shall convene a special general meeting of the members on the written request of 25 members of the society delivered

to the secretary, to be held within one calendar month of the receipt of the request. A special general meeting shall be held at such time and place as the benchers may determine. At least 10 days before a special general meeting the secretary shall cause to be mailed to each member of the society a notice of the meeting.

RS1960-214-31

### **Benchers' meetings**

**33.** The meetings of the benchers shall be held at the places and times determined by the benchers.

RS1960-214-32

### **Special meetings**

**34.** The treasurer or any 2 benchers may call a special meeting of the benchers.

RS1960-214-33

### **Quorum**

**35.** At a meeting of the benchers, 7 shall constitute a quorum.

RS1960-214-34

### **Expenses**

**36.** A reasonable allowance to defray the expenses of a bencher, and of any member of a committee appointed by the benchers, incurred in attending meetings and on authorized business may be made and paid out of the funds of the society.

RS1960-214-35

### **Powers of benchers**

**37.** The benchers shall, subject to this Act, govern and administer the affairs of the society and, without limiting the generality of the foregoing, may

- (a) appoint and assign duties to a secretary and other officers and employees necessary for the conduct and management of the business of the society;
- (b) establish and maintain libraries at places the benchers think necessary, and make rules relating to their use;
- (c) provide for the reporting, printing and distributing of legal decisions;
- (d) appoint, where they consider it to be in the interests of the society, one or more representatives to attend any meeting or conference, and defray from the funds of the society the expenses of the attendance;
- (e) pay to the Canadian Bar Association the annual fees for membership in it of members of the society;
- (f) appoint and remunerate readers, lecturers and examiners;
- (g) appoint committees in addition to the discipline committee, credentials committee, and the executive committee considered necessary, and prescribe the duties and powers of those committees;
- (h) order and provide for the audit of the books and accounts of any or all the members, require any member to pay the cost of the audit, require any or all the members to furnish annually or from time to time at his or their expense affidavits or auditor's certificates relating to them, and employ persons to audit the books and accounts of any or all the members;
- (i) appoint an executive committee consisting of the treasurer and not less than 6 other benchers, with a quorum of 4, and delegate, with limitations



or conditions considered necessary, to the executive committee any of the administrative powers and duties of the benchers, except those relating to

- (i) fees payable by members;
- (ii) matters of legal education;
- (iii) attendance and service of articulated students;
- (iv) calls to the Bar or admission as solicitors and examinations leading thereto;
- (v) matters allocated to the discipline committee;
- (j) take action and incur expense they consider necessary for the promotion, protection, interest or welfare of the society;
- (k) provide out of the funds of the society for a pension allowance, and for the creation and continuing contribution to a pension fund for employees of the society under a pension scheme as to them may seem proper;
- (l) establish and maintain a system of legal education, including the power to establish and maintain a school of law or adopt or approve of any established faculty of law or school of law.

RS1960-214-36; 1962-32-11; 1969-15-5; 1972-32-1; 1975-35-7.

#### **Group indemnity contracts**

##### **38. (1) The benchers**

- (a) shall continue the insurance fund in existence on April 2, 1971 for the purpose of the reimbursement in whole or in part of insurers of group insurance contracts on the terms as may be agreed on; and
- (b) may, by resolution, enter into group insurance contracts with an insurer for the indemnification, in whole or in part, of the members for professional liability claims against them, on such terms as may be agreed.

(2) The society may enter into group insurance contracts either alone or jointly with one or more law societies or governing bodies of the legal professions in the provinces of Canada or in the United States of America.

##### **(3) The benchers may make rules respecting**

- (a) a levy on members of an annual assessment of an amount as may be fixed by the benchers;
- (b) the exemption of members from the payment of the annual assessments referred to in paragraph (a) and the conditions of the exemptions;
- (c) the exclusion of members from the benefits of group insurance contracts and the conditions of the exclusions;
- (d) the inclusion of members who have been exempted or excluded; and
- (e) any matter or procedure in connection with the filing, settling, administration and payment of claims made under group insurance contracts and not otherwise provided for in the contracts.

(4) The money paid to the society as a result of the annual assessment shall be used for

- (a) the payment of the premiums payable under the group contracts;
- (b) payment to the insurance fund referred to in subsection (1);
- (c) defraying the expenses of the establishment, administration, maintenance and operation of the insurance fund referred to in subsection (1), and of group insurance contracts;

- (d) investigation of claims against the insurance fund; and
- (e) such other purposes incidental to the insurance fund, or to group insurance contracts as the benchers may decide;

and for no other purposes whatsoever.

(5) No member exempted by the benchers from the payment of the annual assessments or excluded by the benchers from the benefits of the group contracts is entitled to be indemnified under the group contracts, or to receive any benefits from them.

(6) The insurance fund is the property of the society and shall be kept apart from the other funds of the society.

(7) The benchers may invest, reinvest, or cause to be invested, or reinvested, the insurance fund and the income from it in those securities and in the manner they consider advisable.

1970-21-1; 1971-31-2,3,4,5.

### Rules

**39.** (1) The benchers may make rules not inconsistent with this Act

- (a) for the carrying out of its provisions and for the administration of the affairs of the society, for the maintenance of its standards and honour and for the protection and well being of those engaged in the practice of law in the Province;
- (b) for implementing the powers of the benchers and of the discipline committee for inquiries into the conduct of members;
- (c) for implementing the powers of the credentials committee concerning the enrolment of articulated students on the books of the society, the call of any person to the Bar of the Province, and the admission of any person as a solicitor of the Supreme Court;
- (d) for the conduct of meetings of the benchers and any committee appointed by them;
- (e) for providing for precautions to be taken by members for the care of clients' funds or other trust funds or property;
- (f) for ascertaining whether or not a person is a member in good standing of the society;
- (g) subject to section 63, for prescribing the fees to be paid to the society for calls to the Bar or admission as solicitors, and for prescribing any other fees incidental to the purposes of the society;
- (h) for giving effect to section 67 in respect of the special fund;
- (i) for giving effect to and implementing the powers of the benchers set forth in section 37 or otherwise in this Act;
- (j) for conditions to be met by members making contracts under section 99; and
- (k) requiring that, for the purposes of section 76 (2), a member, or a class of members, receiving and holding money in trust for or on account of clients generally shall deposit the money, or a designated part of it, in an interest bearing account.

(2) The benchers may make rules not inconsistent with this Act for the establishment and maintenance of a roll to be called the nonpractising roll, setting forth the names of former members of the society who wish their names to be placed on it and for defining the privileges of, and prescribing fees payable by, them.

- (3) The benchers may make rules not inconsistent with this Act
- (a) for the establishment and maintenance of a roll to be called the retired members roll, setting forth the names of those former members of the society whom the benchers designate as retired members; and
  - (b) for defining the privileges of, and prescribing fees payable by, retired members.

RS1960-214-37; 1962-32-12; 1969-15-6; 1972-32-2; 1973-84-10; 1974-49-2; 1975-35-7.

### **Protection against actions**

**40.** No action lies against a bencher, or a member of the discipline or other committee appointed by the benchers, or the secretary or an official or servant of the society, for anything done by him in good faith acting or purporting to act under this Act.

RS1960-214-38.

### **Articles**

- 41.** The benchers may make rules not inconsistent with this Act for
- (a) the enrolment on the books of the society of articulated students, and for fixing the conditions of their enrolment and the fees to be paid by them; but no person shall be enrolled unless he has satisfied the benchers that he is of good character and apparently fit to become a barrister and solicitor of the Supreme Court;
  - (b) requiring articulated students to attend lectures or classes and pass examinations on such subjects as the benchers may prescribe;
  - (c) requiring articulated students to attend at the office of a practising barrister or serve a practising solicitor as prescribed by the rules for the term and under the conditions that the benchers may require;
  - (d) prescribing the legal and other educational qualifications to be possessed by articulated students on enrolment as conditional to call to the Bar of the Province and admission as a solicitor of the Supreme Court;
  - (e) prescribing the forms and other documents concerning articulated students and their attendance or service;
  - (f) limiting the number of articulated students who may be articulated to one barrister or solicitor.

RS1960-214-39; 1971-31-6; 1975-35-8.

### **Call and admission**

**42.** The benchers may call to the Bar of the Province and admit as solicitor of the Supreme Court

- (a) a Canadian citizen with respect to whom they are satisfied that he
  - (i) is a person of good character and repute and fit to become a barrister and solicitor of the Supreme Court;
  - (ii) has been enrolled on the books of the society as an articulated student;
  - (iii) has complied with the rules made by the benchers under section 41;
  - (iv) has, in accordance with the rules, been in actual attendance and served as an articulated student of a practising barrister or solicitor for the term that the benchers may by rule prescribe; and

- (v) has paid the fee fixed by the rules to be paid on call to the Bar of the Province, and admission as a solicitor of the Supreme Court;
- (b) a barrister or solicitor of another province with respect to whom the benchers are satisfied that he
  - (i) is a Canadian citizen;
  - (ii) is a person of good character and repute;
  - (iii) has, in the cases the benchers by rule or otherwise require and in accordance with the rules, enrolled in the Province as an articulated student and attended and served a practising barrister or solicitor;
  - (iv) has passed the examinations that the benchers may by rule prescribe;
  - (v) has furnished the documents and given the information prescribed or required by the benchers; and
  - (vi) has paid the fee fixed by the rules to be paid on the call to the Bar and admission as a solicitor of the Supreme Court of a barrister or solicitor from another province;
- (c) a person, whether styled as a barrister or solicitor or not, with respect to whom the benchers are satisfied that he has, in a country of the British Commonwealth other than Canada, a similar status and similar rights of practice as those of a barrister or solicitor in the Province, and that he is in good standing, and with respect to whom the benchers are also satisfied that he
  - (i) is a Canadian citizen;
  - (ii) is a person of good character and repute and fit to become a barrister or solicitor of the Supreme Court;
  - (iii) has, in the cases that the benchers by rule or otherwise require and in accordance with the rules, enrolled in the Province as an articulated student and attended and served a practising barrister or solicitor;
  - (iv) has passed the examinations that the benchers may by rule prescribe;
  - (v) has furnished the documents and given the information prescribed or required by the benchers; and
  - (vi) has paid the fee fixed by the rules to be paid on the call to the Bar of the Province and admission as a solicitor of the Supreme Court;

and a person who is not a Canadian citizen, but is a British subject, may be called to the Bar if he is enrolled as a student at law or articulated clerk before July 1, 1971, but, in this case, the person shall cease to be a member of the society if he fails to file with the secretary proof of his having become a Canadian citizen within 7 years of his call to the Bar and admission as a solicitor of the Supreme Court, unless the benchers otherwise direct; and
- (d) a member of the society who is a barrister or solicitor of the Province with respect to whom the benchers are satisfied that he
  - (i) has been in actual practice in the Province as a solicitor or as a barrister for one year prior to his application;
  - (ii) is a person of good character and repute;

- (iii) has passed such examinations as the benchers may by rule prescribe; and
- (iv) has paid the fee fixed by the rules to be paid on the call to the Bar or on admission as a solicitor of the Supreme Court.

1975-35-10.

### Resignation

**43.** No member shall resign from the society without the consent of the benchers, who may attach conditions to the granting of their consent.

1976-28-10.

### Credentials committee

**44.** (1) The benchers shall appoint from among their members a credentials committee composed of a chairman, vice chairman and all other benchers.

(2) Three members of the credentials committee constitute a quorum.

(3) The credentials committee may inquire into

(a) applications for enrolment of articulated students on the books of the society;

(b) the call of a person to the Bar of the Province and admission as a solicitor of the Supreme Court; and

(c) the restoration of a person to membership in the society under section 58 and, for those purposes,

(d) has the powers, protection and privileges of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*; and

(e) may request the secretary of the society or a member of the credentials committee to make a preliminary investigation.

(4) Where an inquiry is held, the credentials committee shall submit a written summary of its findings of fact and its recommendations to the benchers, who shall immediately

(a) accept the recommendations in whole or in part;

(b) conduct a further inquiry concerning the whole or any part not accepted by it and for these purposes shall have the powers, protection and privileges of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*; or

(c) refer all or any part of the findings or recommendations back to the credentials committee for further consideration.

(5) If a member of the credentials committee ceases to be a bencher, he may, with the consent of the treasurer, continue to be a member of the credentials committee for the purpose of completing any inquiries in which he has been involved.

(6) Sections 46, 48 and 49 apply to an inquiry under this section, substituting “notice” for “citation”, “matter” for “conduct or competence or both”, and “respondent” for “member”. “Credentials committee” is substituted for “discipline committee”.

(7) Section 53 (1) applies to the matters referred to in subsection (3) (a) and (b).

1972-32-3; 1975-35-11; 1976-28-11; 1979-2-48,49.

**Discipline committee**

**45.** (1) The benchers shall appoint from among their numbers a discipline committee composed of a chairman, vice chairman, and all other benchers.

(2) Three members of the discipline committee constitute a quorum.

(3) The benchers or the discipline committee may inquire into the conduct or competence, or both, of a

(a) member or former member;

(b) articulated student; or

(c) applicant for enrolment as an articulated student, in relation to his application,

and, for that purpose, the benchers and members of the discipline committee each have the powers, protection and privileges of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

(4) The benchers or the discipline committee may make or cause to be made a preliminary investigation into the conduct or competence, or both, of any of the persons referred to in subsection (3).

(5) If a member of the discipline committee ceases to be a bencher, he may, with the consent of the treasurer, continue to be a member of the discipline committee for the purpose of completing any hearings in which he has been involved.

1971-31-16; 1975-35-12; 1976-28-12.

**Inquiry**

**46.** (1) An inquiry pursuant to section 45 shall be by a hearing commenced by a citation issued at the direction of any 3 benchers or the chairman of the discipline committee.

(2) A citation served by registered mail shall be served at least 14 days before the hearing.

(3) A citation served personally shall be served at least 10 days before the hearing.

(4) The citation shall state the nature of the conduct or competence, or both, to be inquired into.

1971-31-17; 1972-32-4; 1976-28-13.

**Suspension pending hearing**

**47.** Any 3 benchers may, at any time after a direction to cite a member has been given, suspend the member pending the conclusion of the hearing and, if a member has been found guilty of an offence set out in section 50 (b), pending any action taken by the discipline committee or the benchers pursuant to section 50 or 51. Notice of the suspension shall immediately be served on the member.

1971-31-18; 1972-32-5.

**Hearing**

**48.** (1) A member may appear personally or with counsel at the hearing before the discipline committee and before the benchers.

(2) The discipline committee or the benchers may employ legal or other assistance they may consider necessary for the purpose of a citation or hearing.

1971-31-19.

**Failure to attend**

**49.** If the respondent fails to attend at the hearing, the benchers or the discipline committee may, on proof of service of the citation, proceed with the hearing and, without further notice to the person cited, make a report of its findings or take other action as it is authorized to take under this Act.

1971-31-20.

**Action after hearing**

**50.** The benchers, or the discipline committee if authorized by the rules, may, as the result of a hearing pursuant to section 46,

- (a) dismiss the citation;
- (b) determine whether a member or former member has been guilty of
  - (i) misappropriation or wrongful conversion by him of money or other property entrusted to or received by him in his capacity as a member of the society;
  - (ii) other professional misconduct;
  - (iii) other conduct unbecoming a member of the society; or
  - (iv) a breach of this Act or the rules made under it;
- (c) determine whether a member has incompetently carried out duties undertaken by him in his capacity as a member of the society;
- (d) determine whether an articulated student or applicant for enrolment as an articulated student, in relation to his application, has conducted himself in a manner which would be unbecoming to a member of the society or has been guilty of a breach of this Act or the rules made under it; or
- (e) make such other disposition of the citation as they consider proper.

1971-31-21; 1975-35-13; 1976-28-14.

**Action by benchers**

**51.** (1) Where an adverse determination respecting a member is made under section 50 (b), the benchers may, by a resolution passed by the votes of at least 2/3 of the benchers present at a duly constituted meeting of the benchers,

- (a) fine the member an amount not exceeding \$1,000;
- (b) reprimand and, in addition, fine the member an amount not exceeding \$1,000;
- (c) suspend and, in addition, fine the member an amount not exceeding \$1,000; or
- (d) order the disbarment of the member;

and may in each case impose costs and conditions of practice on the member and may make such other order either on terms or otherwise as may be just.

(2) Where an adverse determination respecting the competence of a member is made under section 50 (c) the benchers may, by a resolution passed by at least 2/3 of the benchers present at a duly constituted meeting of the benchers,

- (a) suspend the member from engaging in the practice of law or in a field of law;
- (b) suspend the member from engaging in the practice of law or in a field of law until the member has completed, to the satisfaction of the benchers, a course of study designated by the benchers;
- (c) suspend the member from engaging in the practice of law or in a field of law until the member has appeared before a board of examiners

- appointed by the benchers and has satisfied the board that he is competent to engage in the practice of law or in a field of law in respect of which a determination was made under section 50 (c);
- (d) suspend the member from engaging in the practice of law or in a field of law until the member has undertaken in writing in a form specified by the benchers that he will restrict his practice in a manner designated by the benchers;
  - (e) require that the member complete successfully a course of study designated by the benchers, within a period of time designated by the benchers, and, on his failure to complete the prescribed course to the satisfaction of the benchers, suspend the member from engaging in the practice of law or in a field of law in respect of which a determination was made under section 50 (c);
  - (f) require the member to appear before a board of examiners, appointed by the benchers, within a period of time designated by the benchers, and satisfy the board that he is competent to engage in the practice of law or in a field of law in respect of which a determination was made under section 50 (c), and, on his failure to satisfy the board, suspend the member from engaging in the practice of law or in a field of law in respect of which a determination was made under section 50 (c);
  - (g) suspend the member from engaging in the practice of law until the member has appeared before a board of examiners appointed by the benchers and has satisfied the board that his competence to practise is not adversely affected by a physical or mental disability, or addiction to alcohol or drugs;
  - (h) require the member to appear before a board of examiners, appointed by the benchers, within a period of time designated by the benchers, and satisfy the board that his competence to practice is not adversely affected by a physical or mental disability, or addiction to alcohol or drugs; or
  - (i) impose other conditions of practice the benchers consider advisable, and may in each case impose costs on the member.
- (3) Where an adverse determination about a former member has been made under section 50 (b), the benchers shall record their findings in writing.
- (4) Where an adverse determination about an articling student is made under section 50 (d), the benchers may
- (a) fine the articulated student an amount not exceeding \$1,000;
  - (b) reprimand and, in addition, fine the articulated student an amount not exceeding \$1,000;
  - (c) extend the period which the articulated student shall serve under articles and, in addition, fine the articulated student an amount not exceeding \$1,000;
  - (d) set aside the enrolment of the articulated student; or
  - (e) make such other order either on terms or otherwise as may be just.

1971-31-22; 1975-35-14; 1976-28-15.

#### Action by secretary

**52.** (1) In every case of disbarment, suspension, limitation of practice or cessation of membership for any other cause the secretary shall, unless he is otherwise directed by the benchers,



- (a) notify the district registrars of the Supreme Court and the registrars of the County Courts;
- (b) notify the Provincial Secretary;
- (c) cause a notice to be published in the Gazette and in a newspaper circulating in the district in which the member resides or practises;
- (d) give effect in the case of disbarment to the order in the barristers' roll if the member is a barrister, and in the solicitors' roll if he is a solicitor;
- (e) notify the members of the society.

(2) The benchers may cause additional publicity that they consider necessary for the protection of the public and the members to be given to a decision or order made under section 51.

1971-31-23; 1976-28-16.

### Rules

**53.** (1) The benchers may make rules not inconsistent with the provisions of this Act for the discipline of members and articulated students and the commencement and conduct of hearings and all other related matters.

(2) The rules shall contain provisions for a written report by the discipline committee of the facts as found by the discipline committee and a written report to the benchers of the result of a hearing by the discipline committee.

(3) The rules may provide that, if the members of the discipline committee holding the hearing pursuant to section 46 are unanimous in their decision under section 50 and the nature of the disciplinary action to be imposed under section 51, they may exercise the disciplinary powers of the benchers, but the disciplinary powers of suspension or disbarment shall not be exercised without the consent of the respondent.

1971-31-24; 1972-32-6.

### Committee member may sit as benchers

**54.** The fact that a benchers is a member of the discipline committee shall not prevent his sitting as a benchers on the consideration of the committee's report.

RS1960-214-53.

### Conviction

**55.** On proof that a member of the society has been convicted of an indictable offence, the benchers may, without following the procedure hereinbefore provided, summarily order the suspension or disbarment of that member.

RS1960-214-56.

### Change in nationality

**56.** If a member ceases to be a Canadian citizen or a British subject as required by this Act as a condition of retaining his membership, he ceases to be a member of the society.

RS1960-214-57; 1969-15-11.

### Suspension

**57.** (1) Subject to subsection (2), a member of the society, while under suspension, shall be deemed not to be in good standing.

(2) A member of the society while under suspension pursuant to an inquiry with respect to his competency, or as a result of an adverse determination by the benchers

respecting his competency, shall be deemed to be in good standing unless otherwise determined by the benchers.

1976-28-17.

### **Reinstatement**

**58.** (1) On the application of a person who has ceased to be a member, the benchers may by resolution passed by the vote of

- (a) a majority of the benchers voting on the resolution in the case of a person who ceased to be a member solely for failure to pay the annual fee; or
- (b) a 2/3 majority of the benchers voting on the resolution in any other case, restore the person to membership in the society on the conditions that the benchers see fit to impose by the resolution.

(2) Unless the benchers, with the consent of the applicant, otherwise direct, the secretary shall give notice of every reinstatement to the district registrars of the Supreme Court, the registrars of the County Courts, the Provincial Secretary and the members of the society.

1974-49-3.

### **Application for reinstatement**

**59.** Notice in writing of an application for reinstatement shall be given by the applicant to such persons as the benchers or the secretary may direct, and the persons notified may appear before the benchers in person or by counsel and be heard on the application.

RS1960-214-61.

### **Appeal**

**60.** If it is alleged that the benchers have erred in refusing to call an applicant to the Bar or to admit an applicant as a solicitor, or that the discipline committee or the benchers have erred in the disciplinary action taken against a person, or that the benchers have erred in a determination respecting the competence of a member to practise, an appeal lies to the Court of Appeal, and the Court of Appeal may make an order as to it seems just in the premises, either reversing, confirming or varying the refusal or disciplinary action or determination respecting competency to practise, or referring the matter for further inquiry by the benchers.

RS1960-214-62; 1976-28-18; 1977-31-9.

### **Procedure**

**61.** (1) An appeal may be taken against the society, and notice of appeal shall be filed and served on the secretary within 45 days of the decision appealed from and may be given for a sitting of the Court of Appeal to be held within the period or for the next sitting of the Court of Appeal to be held after the expiration of the period.

(2) The *Court of Appeal Act* and rules apply, with the necessary changes and so far as are applicable, under this section.

(3) An appeal may be taken by

- (a) a person who alleges that the benchers have erred in refusing to call the person to the Bar or admit the person as a solicitor; or
- (b) by a person who alleges that the benchers or the discipline committee have erred in a decision made against that person under section 50 or 51.

(4) The secretary, on request of any person intending to appeal, shall furnish to him a copy of the citation, transcript of the proceedings, the committee report and the order appealed against on payment for the copy at the same rate as would be charged for the service by the official stenographer to the Supreme Court.

(5) The person appealing shall give security for costs as the Supreme Court shall on application direct. Neither the giving of notice of appeal nor of security shall operate as a stay on the decision of the benchers.

(6) The person appealing shall deposit with the registrar of the Court of Appeal the required number of appeal books for the court, containing copies of all material, and shall deliver 2 of the appeal books to the secretary not less than 2 days prior to the opening of the sitting of the court at which the appeal is to be heard.

RS1960-214-63; 1971-31-27,28,29; 1977-31-9.

### **Effect of decision**

**62.** If the Court of Appeal reverses or varies a decision of the benchers or the discipline committee, the secretary shall give effect to the reversal or variation in the barristers' and solicitors' rolls and by other means that the benchers think proper, or as the court may direct.

RS1960-214-64; 1971-31-30.

### **Fee and certificate**

**63.** (1) Every member of the society who is not a retired member shall in each year, on or before December 31, pay to the secretary an annual fee, being

- (a) a sum as may be fixed by the members at a meeting of the society, together with
- (b) a sum payable by him to be placed in the special fund pursuant to section 67;
- (c) the assessment as may be levied by the benchers under section 38 unless exempted by the benchers from its provisions or excluded by the benchers from the benefits of group insurance contracts;

but the benchers may waive payment of the annual fee by a member whom they wish to honour. On payment of the annual fee if the member is otherwise in good standing and has complied with any orders and the rules relating to the audit of the member's books and accounts and the furnishing of an affidavit or auditor's certificate with respect to them, the secretary shall issue to the member a practising certificate in Form C in the Schedule.

(2) On or before December 31 each year, a retired member shall

- (a) file with the secretary in a form satisfactory to the benchers, an affidavit that he has not engaged in the practice of law in the Province at any time during the practice year; and
- (b) pay the annual fee prescribed by the benchers.

(3) The benchers shall issue a membership certificate in a form prescribed by them to every retired member who complies with the requirements of subsection (2).

RS1960-214-65; 1962-32-14; 1970-21-2; 1971-31-31; 1974-49-4; 1976-28-19; 1979-2-50.

**Special certificate**

**64.** Following his call or admission, a new member of the society is entitled, without payment of the annual fee, to a similar certificate expiring on December 31 of the year of his call or admission.

RS1960-214-66; 1976-28-20.

**Failure to pay fee**

**65.** (1) Where a member fails to pay the annual fee required under section 63

- (a) by January 31, the secretary shall not issue a practising certificate to the member unless he pays an additional \$50 as penalty for late payment; or
- (b) by the last day of February, he shall cease to be a member after that date unless the benchers otherwise direct.

(2) The failure of a member to obtain a practising certificate by December 31 as required by section 63 does not invalidate an act done by him before he ceases to be a member.

1974-49-5; 1976-28-21.

**Reinstatement**

**66.** Notwithstanding section 58, the benchers may at any time reinstate a person suspended or ceasing to be a member for failure to obtain a practising certificate on

- (a) his paying all arrears, together with the annual fee for the practice year in which reinstatement takes place; and
- (b) his compliance with whatever conditions the benchers may impose.

RS1960-214-69; 1962-32-16.

**Special fund**

**67.** (1) The benchers shall continue the special fund already created, for the purpose of the reimbursement, in the cases and subject to subsection (4), to the extent in each case, as they think advisable, of pecuniary losses sustained by a person by reason of the misappropriation or wrongful conversion by a member of the society, since the creation of the fund, of money or other property entrusted to or received by him in his capacity as such. For the purposes of this section, money or property entrusted to or received by a member of the society as trustee, where the member has no responsibility as a barrister or solicitor in connection with the trust, shall be deemed not to be entrusted to or received by him in his capacity as a member of the society.

(2) Every member shall pay to the society a sum that may be fixed by the benchers as payment to the special fund.

(3) The special fund is the property of the society, and shall be kept in a special bank account apart from the other funds of the society. The benchers may invest, or cause to be invested, the special fund and the proceeds of it in the securities and in the manner they think fit. The special fund shall not be subject to a trust in favour of a person sustaining losses in the manner described in subsection (4).

(4) On complaint in writing made to the society, alleging that a person has suffered pecuniary loss by reason of misappropriation or wrongful conversion of money or other property by a member of the society, the benchers may, if in their opinion it is warranted, cause an inquiry to be made into the complaint.

(5) If, as a result of the inquiry, which shall be made with due dispatch, the benchers are satisfied that the person in respect of whom the complaint was made has, by reason of the misappropriation or wrongful conversion by a member of the society

of money or other property entrusted to or received by that member in his capacity as such, sustained such pecuniary loss, they may, in their discretion, and on terms they think fit, pay out of the special fund to the person entitled the whole or part of the loss, or in their discretion decide that in the circumstances no payment shall be made.

(6) Nothing in this section affects or impairs the powers of the benchers or a committee of it under the disciplinary provisions of this Act.

(7) The benchers may authorize the payment out of the special fund of expenses incurred

- (a) in the administration of the special fund;
- (b) in the investigation of purported misappropriation or wrongful conversion of money or other property by a member of the society; and
- (c) for any other matter relating to the protection and maintenance of the special fund and for the improvement of members' records and accounting procedures.

RS1960-214-71; 1962-32-17; 1969-15-14; 1970-21-3; 1972-32-7.

### Interpretation

**68.** In sections 69, 70 and 71

“depository” means a bank, trust company or person holding by way of deposit or otherwise money, trust funds or assets of any kind relating to the business of a member as a barrister or solicitor;

“member” includes a former member of the society;

“property” or “property of a member” means anything, wherever situated, kept by, acquired by or given to a member by or for a client or other person where such thing in any way relates to his practice or former practice as a barrister or solicitor or the business or affairs of his clients or former clients, and whether or not such thing was acquired before or after he ceased to practise as a barrister or solicitor 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, negotiable instruments, corporate seals and chattels.

1969-15-15.

### Custodianship of member's property

**69.** (1) In any of the following cases, when

- (a) a member has been disbarred or has otherwise ceased to be a member of the society;
- (b) a member has been suspended;
- (c) a member has died;
- (d) by reason of physical or mental illness or for any other reason, a member is unable to practise as a barrister or solicitor;
- (e) a member has absconded or is otherwise improperly absent from his place of business, or when his practice has been neglected for an unduly extended period;
- (f) there is reason to believe that trust money held by a member is not sufficient to meet his trust liabilities; or
- (g) sufficient grounds otherwise exist,

the Supreme Court, on application by the society either ex parte or on notice the court may require, may by order appoint a person as custodian to have custody of the

property of the member and to manage, arrange for the conduct of or wind up the legal business of the member.

(2) An order under subsection (1) may direct the sheriff of a county in the Province to seize and remove and place in the custody of the custodian all property of the member, and to that end the order may authorize the sheriff to enter on a premises or open a safety deposit box or other receptacle when there are grounds for believing that property of the member may be found there.

(3) Unless otherwise directed by the court, the order shall be served on the member.

(4) Subject to subsection (2), on the receipt by a person of notice that an order has been made under this section, he shall retain and shall not dispose of property of a member until directed to do so by the custodian or by order of the court.

(5) The Supreme Court may, in an order under subsection (1) or at any time by subsequent order made *ex parte* or on the notice that the court requires,

- (a) direct a depository of property of a member to deal with, hold, pay over or dispose of the property to the custodian, or in such other manner as the judge may direct;
- (b) remove any custodian appointed by the order and appoint another custodian;
- (c) give directions and advice to the custodian as to the disposition of the property in his hands or any part of it; and
- (d) give directions or make orders that the nature of the situation requires.

1969-15-15.

### Notice and liens

**70.** (1) Where property of a member has been placed in the custody of a custodian, the secretary, or other persons designated by the discipline committee, shall examine the property after which the custodian shall, by notice he thinks proper, including publication in a newspaper if he thinks fit, inform clients of the member and other persons he considers necessary

- (a) that the property of the member is in the custody of the custodian and that an examination of it indicates that the client or other person appears to have an interest in it; and
- (b) that the client or other person may apply, subject to any solicitor's lien of the member on the property, to the custodian for the delivery to him of the property in which he appears to have an interest, or for leave to make copies of documents and papers among the property that he may require, in respect of transactions or dealings he had with the member.

(2) Where the custodian is satisfied that a person is entitled to property in his custody and that no solicitor's lien is claimed on it or appears to exist, or if the lien is satisfied, he may deliver the property to the person claiming it.

(3) Where a member whose property has been placed in the custody of a custodian under section 69 claims to be entitled to a solicitor's lien on the property or any part of it,

- (a) he may, within 30 days from the service of the order on him, file notice of his claim for lien with the custodian, giving full particulars of the claim; and
- (b) the custodian shall immediately give notice of the claim for lien to the apparent owner of the property on which a lien is claimed, and the rights of the parties shall then be determined according to law.

(4) Where a member fails to file a claim for lien under this section, a lien that he might otherwise be entitled to is extinguished, and the custodian is entitled to deliver the property to the claimant if otherwise satisfied that it is proper to do so.

(5) Notwithstanding this section, the Supreme Court may summarily determine the validity of a claim to a solicitor's lien.

1969-15-15.

### **Dispensation and protection**

**71.** (1) Notwithstanding anything in section 69 or 70, the Supreme Court may at any time enlarge or abridge the time within which anything is required to be done, or dispense with any of the requirements.

(2) The provisions of section 40 apply for the protection of the custodian, the society and of a person designated by the benchers or by the discipline committee, or acting for any of them, in respect of a proceeding taken under section 69 or 70.

(3) The court may fix and award the costs and fees to be taxed, allowed and paid by the member or other person in respect of proceedings under this section or section 69 or 70, including the costs and fees payable to a custodian, but no costs shall be awarded against the society, its officers, the benchers or anyone designated by the benchers in respect of proceedings under this section and taken in good faith.

(4) Proceedings under this section or section 69 or 70 shall be commenced by notice of motion.

(5) A sheriff and any of his officers executing an order under section 69 shall have the same powers as in the execution of a writ under the *Sheriff Act*.

1969-15-15.

### **Law foundation**

**72.** On their appointment as provided in section 73, the members are constituted a corporation with the name "Law Foundation" (the "foundation") and the foundation may acquire and dispose of and otherwise deal with property for the purposes of the foundation.

1969-15-16.

### **Board of governors**

**73.** (1) The foundation shall be administered by a board of governors (the "board") comprising 18 members of which 8 constitute a quorum and of whom

(a) one shall be the Attorney General, or his appointee;

(b) 3 shall be persons, not members of the society, appointed to the board by the Attorney General;

(c) 12 shall be members of the society appointed by the benchers and of whom at least one shall be from each of the districts defined in section 8; and

(d) 2 shall be members of the society appointed by the Provincial council of the British Columbia branch of the Canadian Bar Association.

(2) Members of the board other than the Attorney General shall hold office for a term of 3 calendar years or until their successors are appointed and may be reappointed, but no member of the board shall hold office for a period of more than 2 successive complete terms.

(3) The members of the board shall elect one of their members to be chairman of the board.

(4) Where a vacancy occurs in the office of a member, the person or body by whom he was appointed may appoint to the vacant office a person eligible to be appointed to that office by that person or body under subsection (1), and the person appointed shall hold office for the residue of the term for which he is appointed, or until his successor is appointed.

(5) The continuing members of the board may act notwithstanding a vacancy in the board.

(6) No act done by the authority of the board shall be invalid in consequence of a defect that is afterwards discovered in the appointment of the members.

(7) An appointed member of the board may resign from office on giving one month's notice in writing to the board of his intention to do so, and his resignation shall take effect on the expiration of the notice, or on its earlier acceptance by the board.

- (8) The office of an appointed member of the board shall be vacated if he
- (a) ceases to hold the qualifications necessary for his appointment;
  - (b) becomes a mentally disordered person;
  - (c) becomes bankrupt; or
  - (d) has contravened a provision of this Act or the rules made under this Act and a majority of the other members of the board consider that the contravention is sufficiently serious to justify the member's removal from the board.

1969-15-16; 1972-32-8; 1975-35-15.

### **Application of fund**

**74.** (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 reform and the establishment, operation and maintenance of law libraries.

(2) The board shall apply, and cause to be applied, the funds of the foundation, in the manner that the board may decide, for the purposes of the foundation and may, for those purposes, grant loans of the funds on terms and conditions the board determines.

(3) No part of the income of the foundation shall be payable to or otherwise available for the personal benefit of a member of the board of the foundation or a member of the society, but the foundation may employ members of the society in order to advance the purposes of the foundation.

(4) The funds of the foundation shall consist of all money paid to the foundation by solicitors as provided in section 76, interest accruing from investment of the funds of the foundation and other money received by the foundation.

(5) There shall be paid out of the funds of the foundation the costs, charges and expenses involved in the administration of the foundation, and the costs, charges and expenses incurred by the board in carrying out the purposes of the foundation.

(6) All money of the foundation shall, pending investment or application in accordance with this section, be paid into a bank in the Province to the credit of a separate account to be called the law foundation account, and that account shall be used for the purposes of the foundation.

(7) Any money that is not immediately required for the purposes of the foundation may be invested in the name of the foundation by the board in any manner in which trustees are authorized to invest trust funds, if the investments are in all other respects reasonable and proper.



(8) The accounts of the foundation shall be audited annually by a chartered accountant appointed for the purpose by the benchers.

1969-15-16; 1972-32-9; 1979-2-51.

### **Bylaws**

**75.** The board may, subject to this Act, make bylaws for purposes relating to the affairs, business, property and objects of the foundation, and, without limiting the generality of the foregoing, may make bylaws regarding the

- (a) number and designation of officers of the foundation;
- (b) appointment of and terms of office of officers of the foundation and all matters relating to their offices;
- (c) resignation or removal from office of officers of the foundation;
- (d) number and designations of employees of the foundation other than officers, and their conditions of employment;
- (e) remuneration, if any, of officers and employees of the foundation; and
- (f) operation of the law foundation account.

1969-15-16.

### **Interest on trust accounts**

**76.** (1) A solicitor shall not be liable, by virtue of the relation between solicitor and client or by virtue of the relation between the solicitor as trustee and beneficiary, to account to a client for interest received by the solicitor on money deposited in a bank or trust company, or in a credit union approved for the purposes of this section by the credit union reserve board, being money received or held for or on account of his clients generally.

(2) A solicitor who is credited by a savings institution with interest on money received or held for or on account of clients generally shall be deemed to hold the interest in trust for the foundation, and shall remit the interest to the foundation, in accordance with the rules of the society, and the society shall make rules to ensure that all interest so credited to the solicitor be paid to the foundation.

(3) Nothing in this section or in the rules made under this section shall

- (a) affect any arrangement in writing, whenever made, between a solicitor and his client as to the application of the client's money or interest on it; or
- (b) apply to money deposited in a separate account for a client at interest that shall be and remain the property of the client.

1969-15-16; 1977-31-9.

### **Authority to practise law**

**77.** No corporation and no person other than a member of the society in good standing shall, subject to the *Court Agent Act*, engage in the practice of law, except that

- (a) a person may act on his own behalf in a proceeding to which he is a party;
- (b) as permitted by the *Court Agent Act*;
- (c) enrolled articulated students may appear in Chambers or in court or before a master, referee or examiner to the extent permitted by the rules of the society;

- (d) on the terms as the benchers may prescribe, a barrister of another province, which affords a similar privilege to barristers of the Province, may, in special circumstances and for a particular cause or matter, be permitted to appear as counsel in the courts of the Province, notwithstanding that he is not a member of and has not paid a fee to the society.

RS1960-214-72; 1969-15-17; 1974-49-5A; 1975-35-16.

### **Prohibitions for members**

**78.** No member of the society shall

- (a) knowingly act as the agent of a person who is not a member of the society in good standing so as to enable that person to engage in the practice of law;
- (b) permit his name to be used or held out as such an agent;
- (c) send a process to that person or do any other act to enable that person to engage in the practice of law;
- (d) open or maintain a branch office for the practice of law unless the office is under the personal and actual control and management of a member of the society; or
- (e) engage in the practice of law, either directly or indirectly, while he is a Registrar or District Registrar of the Supreme Court, Registrar of a County Court, Registrar of Titles, Registrar of Companies or the deputy of those officials.

RS1960-214-74.

### **Contempt of court**

**79.** When a person not himself a party to an action or proceeding commences, prosecutes or defends in his own name or in that of any other person an action or proceedings without being a member of the society, he shall, except in cases provided for by the *Court Agent Act*, be deemed guilty of a contempt of the court in which the action or proceeding has been commenced, carried on or defended and shall, on the application of a person complaining, be punishable accordingly.

RS1960-214-75.

### **Practising law defined**

**80.** Except as otherwise provided, a person shall be deemed to engage in the practice of law who

- (a) does an act included in the definition of the “practice of law” in section 1;
- (b) holds himself out in any way as being entitled or qualified to do, or who offers to do, such act.

RS1960-214-76; 1976-28-22.

### **Penalty**

**81.** (1) A person who contravenes this Act commits an offence and is liable, on conviction, to a fine not exceeding \$500 or to imprisonment not exceeding 6 months for each offence.

(2) No proceeding under this section precludes the taking of disciplinary action under previous sections of this Act.

RS1960-214-77.

**Injunction**

**82.** On being satisfied that there is reason to believe that there is or will be a contravention of this Act, the society is entitled to an injunction restraining a person from committing it, and pending disposition of the action seeking the injunction, the court shall grant an interim injunction.

1977-31-9.

**Proceedings by benchers**

**83.** The benchers may, at any time within one year after the alleged breach, institute or authorize the institution of proceedings under this Act for a breach of its provisions.

RS1960-214-78.

**Laying of information**

**84.** A person alleged to have offended against this Act may be charged on information laid in the name of the society on oath of the secretary, or of a person authorized by the benchers, that he is informed and believes that the person charged has committed the act alleged.

RS1960-214-79.

**Offence by corporation**

**85.** Where an offence under this Act is committed by a corporation, every director, manager, secretary or other officer of that corporation who has assented to the commission of the offence is a party to and deemed to be guilty of that offence.

RS1960-214-80.

**Offence Act**

**86.** All pecuniary penalties under this Act are recoverable under the provisions of the *Offence Act*.

RS1960-214-81.

**The rolls**

**87.** (1) The secretary shall keep and maintain 2 rolls, one to be called the barristers' roll and the other the solicitors' roll.

(2) The secretary shall cause to be entered on the barristers' roll the full names and addresses of all persons called to the Bar of the Province, with the date of the call.

(3) The secretary shall cause to be entered on the solicitors' roll the full names and the addresses of all persons admitted as solicitors of the Supreme Court, with the date of the admission.

RS1960-214-82

**Requirements before practise**

**88.** Every barrister who is called, and every solicitor who is admitted, under this Act, shall, before he begins the practice of law, sign the barristers' roll or solicitors' roll, as the case may be, and take in open court, before one or more of the judges of the Supreme Court, an oath in a form prescribed by the benchers.

RS1960-214-83; 1974-49-6.

**Secretary's certificate**

**89.** A certificate purporting to be signed by the secretary as to whether or not a person is, or was at the time specified, a member of the society in good standing shall in all courts be proof, in the absence of evidence to the contrary, of that fact.

RS1960-214-84.

**Solicitors' bills**

**90.** (1) No action shall be brought for the recovery of fees, charges or disbursements for or in connection with services of a member or former member of the society until the expiration of 30 days after a bill has been delivered to the person charged personally or sent by post to or left at the person's last known place of business or residence.

(2) The bill shall be signed, or accompanied by a letter referring to the bill and signed, by the member or former member, his agent, executor or assignee or, in the case of a partnership, by a partner or partner's agent, either with his own name or the name of the partnership.

(3) A bill under subsection (1) is sufficient in form if it contains a reasonably descriptive statement of the services with a lump sum charge, and a detailed statement of disbursements.

1969-15-19.

**Early action on bill**

**91.** Where the Supreme Court finds that

(a) there is probable cause for believing that the person charged with a bill for fees, charges or disbursements of a member or former member

(i) is about to leave the Province other than temporarily; or

(ii) has committed or is committing an act which would be ground for issuing a writ of *habeas corpus* or attachment in a civil action before any court; and

(b) the bill has been delivered or sent as provided in section 90, it may order that leave be granted for the commencement of an action for the recovery of the amounts set out in the bill before the expiration of 30 days from the delivery or sending of the bill.

1969-15-19.

**Taxation**

**92.** (1) Where a bill for fees, charges or disbursements has been delivered or sent as provided in section 90, the member of the society, his agent, executor or assignee, or, in the case of a partnership, one of the partners or his agent, may,

(a) on the expiration of 30 days after the bill has been delivered or sent; and

(b) on serving the person charged with the bill with not less than 5 days' notice in writing of an appointment,

apply to have the bill taxed before a taxing officer of the Supreme Court.

(2) The person charged with the bill or by whom payment is to be made may apply to the district registrar or other taxing officer of the Supreme Court for an appointment to tax the bill, and he shall deliver a copy of the appointment to the solicitor at the address shown on the bill.

(3) Where

(a) judgment for the amount of the bill has been given in an action; or

(b) 12 months have expired since the bill was delivered or sent,

the bill shall not be taxed unless the Supreme Court finds that circumstances justify a taxation of the bill, and in that case he may order the bill to be taxed before a taxing officer.

(4) Where an action has been commenced for the recovery of the amount of the bill for which an appointment for taxation under this section has been made, the action shall not proceed until the taxation has been completed.

(5) On a taxation of a bill under this section, the taxing officer may order further particulars or details of the services for which the bill was rendered.

(6) If a person who has applied for taxation of a bill under this section; or a person who is entitled to attend on the taxation and who has received notice in accordance with this section, fails to attend on the taxation, the taxing officer may tax the bill *ex parte*.

(7) The rules and regulations in force governing the taxation of costs in the Supreme Court shall apply, with the necessary changes to the taxation of bills under this section.

(8) Where a dispute arises respecting a retainer, or any other matter in the taxation of a bill, the taxing officer may refer the matter to the Supreme Court for directions.

(9) Unless the taxing officer, due to special circumstances, otherwise orders,

(a) a member of the society whose bill is taxed shall pay the costs of the taxation if  $\frac{1}{6}$  or more of the total amount of the bill is taxed off; and

(b) the person charged with the bill taxed under this section shall pay the costs of the taxation if less than  $\frac{1}{6}$  of the total amount of the bill is taxed off.

1969-15-19.

### Review

**93.** A party to the taxation of a bill may, within 14 days from the date of the certificate of the taxing officer, or within the period the Supreme Court may allow, or the taxing officer specifies at the time of signing the certificate, apply to the Supreme Court to review the taxation, and the Supreme Court may review the taxation and make the order it thinks just. If the terms of the order require, the taxing officer shall amend his certificate.

1969-15-19.

### Taxed bill as judgment

**94.** Where a bill has been taxed under section 92, the certificate of the taxing officer or district registrar may be filed in a registry of the Supreme Court and, on expiry of the time specified or allowed under section 93, the certificate is enforceable as a judgment of the Supreme Court.

1969-15-19.

### Failure to bill or tax

**95.** Where no bill for services of a member of the society has been delivered or sent, and the bill, if it had been delivered or sent, could have been the subject of an application for taxation under section 92, the Supreme Court may order delivery of the bill to the person to be charged, and may also order the delivery of all deeds or papers

in the possession, custody or control of a member or former member of the society, his assignee or personal representative, on terms it deems proper.

1969-15-19.

### **Order to deliver**

**96.** (1) A client or his agent may apply to court for an order that the client's solicitor or former solicitor deliver to the court, client or agent a cash account, payment of money or securities or a list of any of them that the solicitor has under his control on behalf of the client.

(2) Where an order under this section is made, the court may also order the taxation of the solicitor's claim for costs and require the client to pay or secure the claim before delivery is made.

1976-28-23.

### **Interim certificate**

**97.** Where, during the taxation of a bill of costs or the taking of an account between solicitor and client, it appears to the taxing officer that there must in any event be money due from the solicitor to the client, the taxing officer may make an interim certificate as to the amount payable by the solicitor, and on the filing of the certificate the court may order the money certified to be immediately paid to the client or brought into court.

1976-28-23.

### **Change of solicitor**

**98.** In case a change of solicitors takes place, the Supreme Court may, on application by summons on behalf of the client, order the solicitor having the custody of deeds, documents or papers of the client to deliver them to the new solicitor nominated by the client, on payment into court of the amount due to the former solicitor, or on proper security being given at the discretion and to the satisfaction of the court.

RS1960-214-107.

### **Contracts for remuneration**

**99.** (1) Notwithstanding any law or usage to the contrary, a member of the society may contract, in writing, with a person as to the remuneration to be paid him for services rendered or to be rendered to the person in lieu of or in addition to the costs which are allowed to the member.

(2) The person who has so contracted with a member of the society, or the representative of the person, may apply by motion or petition to the Supreme Court. If the court does not consider the contract fair and reasonable, it may either modify the contract or order the contract to be cancelled, and the costs, fees, charges and disbursements for the business done to be taxed in the same manner as if no contract had been made.

(3) A provision in the contract that the member of the society shall not be liable for negligence, or that he shall be relieved from responsibility to which he would otherwise be subject as a member, is null and void.

(4) No application under subsection (2) shall be brought after 12 months from the date on which a bill for services rendered under the contract is delivered or sent to the applicant, and no action shall be brought if judgment has been pronounced for the recovery of the amount or any part of it.

(5) Champertous contracts are prohibited, but the taking of a fee based on a proportion of the amount recovered is not, in itself, champertous within the meaning of this subsection.

(6) Unless a member informs his client, and has the approval of his client, an arrangement by a member to split the fees for his services with another member, or with any other person, is an offence.

RS1960-214-108; 1969-15-20.

### **Solicitor's right to costs out of property recovered**

**100.** Where a solicitor is employed to prosecute or defend a proceeding in a court of justice, the solicitor shall be deemed to have a charge on and against and a right to payment out of the property which is recovered or preserved through his services for the proper costs, charges and expenses of or in reference to the proceeding, including counsel fees, whether the solicitor also acted as counsel or not. It is lawful for the court before which the proceeding has been heard or is pending to make orders for the taxation of and for the raising and payment of the costs, charges and expenses out of the property as to the court may appear just and proper. All acts done and conveyances made to defeat, or which operate or tend to defeat, the charge or right shall, unless made to a bona fide purchaser for value without notice, be deemed to be null and void against the charge or right, but no proceeding for the purpose of realizing or enforcing a charge or right arising under this section shall be had or taken until after application has been made to a court for directions for the realization.

RS1960-214-109.

### **Interpretation**

**101.** In sections 102 and 103 "mortgage" includes any charge on property for securing money or money's worth.

RS1960-248-2.

### **Fee for investigating title and completing mortgage of land**

**102.** A solicitor to whom, either alone or jointly with another person, a mortgage is made, or the firm of which that solicitor is a member, is entitled to receive for all business transacted and acts done by the solicitor or firm in negotiating the loan, deducing and investigating the title to the land, and comparing and completing the mortgage, all usual professional charges and remuneration as he or they would have been entitled to receive if the mortgage had been made to a person not a solicitor, and the person had retained and employed the solicitor or firm to transact the business and do the acts, and the charges and remuneration are accordingly recoverable from the mortgagor.

RS1960-248-3.

### **Fee for subsequent work**

**103.** A solicitor to or in whom, either alone or jointly with another person, a mortgage is made or is vested by transfer or transmission, or the firm of which the solicitor is a member, is entitled to receive and recover from the person on whose behalf it is done or to charge against the security for all business transacted and acts done by the solicitor or firm subsequent and in relation to the mortgage, or to the security created by it or the land comprised in it, all usual professional charges and remuneration as he or they would have been entitled to receive if the mortgage had been

made to and had remained vested in a person not a solicitor, and the person had retained and employed the solicitor or firm to transact the business and do the acts, and accordingly such a mortgage shall not be redeemed except on payment of the charges and remuneration.

RS1960-248-4.

### Notary public

**104.** Notwithstanding any other Act or law, every person while a member of the society and not disqualified from the practice of law shall be entitled to use the style and title of “Notary Public in and for the Province of British Columbia”, and has and may exercise all the powers, rights, duties, privileges and profits at any time pertaining to the office of notary public.

RS1960-214-110.

## SCHEDULE

### FORM A

#### VOTING PAPER

#### ELECTION OF BENCHERS OF THE LAW SOCIETY

(Section 15 (2) of the *Barristers and Solicitors Act* reads as follows:  
“Notwithstanding that each bencher is to be nominated and elected from a district, each member whose name appears on such list shall be entitled to vote for the requisite number of candidates to be elected from each district”.)

District No. 1 (County of Vancouver)—13 to be elected:

A.B., of	.	<input type="checkbox"/>
C.D., of	.	<input type="checkbox"/>
E.F., of	.	<input type="checkbox"/>
G.H., of	.	<input type="checkbox"/>
I.J., of	.	<input type="checkbox"/>
K.L., of	.	<input type="checkbox"/>
M.N., of	.	<input type="checkbox"/>
O.P., of	.	<input type="checkbox"/>
Q.R., of	.	<input type="checkbox"/>
S.T., of	.	<input type="checkbox"/>
U.V., of	.	<input type="checkbox"/>
W.X., of	.	<input type="checkbox"/>
Y.Z., of	.	<input type="checkbox"/>
A.C., of	.	<input type="checkbox"/>

District No. 2 (County of Victoria)—2 to be elected:

A.D., of	.	<input type="checkbox"/>
A.E., of	.	<input type="checkbox"/>
A.F., of	.	<input type="checkbox"/>
A.G., of	.	<input type="checkbox"/>

District No. 3 (County of Nanaimo)—1 to be elected:

A.H., of	.	<input type="checkbox"/>
A.J., of	.	<input type="checkbox"/>

District No. 4 (County of Westminster)—3 to be elected:

A.K., of	.	<input type="checkbox"/>
A.L., of	.	<input type="checkbox"/>
L.M., of	.	<input type="checkbox"/>



District No 5 (County of Kootenay)—1 to be elected

*A M*, of ☐  
*L N*, of ☐

District No 6 (County of Yale)—2 to be elected

*N O*, of ☐  
*P G*, of ☐

District No 7 (County of Cariboo)—1 to be elected

*A T*, of ☐  
*A V*, of ☐

District No 8 (County of Prince Rupert)—1 to be elected

*A W*, of ☐  
*A X*, of ☐

### FORM B

#### VOTING PAPER

#### ELECTION OF BENCHERS OF THE LAW SOCIETY

I, \_\_\_\_\_, of \_\_\_\_\_, British Columbia, a member of the Law Society of British Columbia, do hereby declare

- 1 The signature hereto is my proper handwriting
- 2 Enclosed herein is voting paper for the election of benchers of the Law Society marked by me
- 3 I vote for the persons as benchers opposite whose name I have placed an "X"
- 4 I have not marked and submitted any other voting paper for the election of benchers this year
- 5 The voting paper is made and submitted as of this date

Witness my hand [month, day], 19

(Signature)

### FORM C

#### BARRISTERS AND SOLICITORS ACT

#### PRACTISING CERTIFICATE

I hereby certify that \_\_\_\_\_, Barrister and Solicitor, has paid to the Law Society of British Columbia his annual fee as a member of the Society up to December 31, 19

Dated [month, day], 19

*Secretary of the Law Society of British Columbia*

Amount paid, \$

RS1960-214 Sch, 1974-49 8, 1975-35 17, 1976-28 24