



1937

c 223 Solicitors Act

Ontario

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CHAPTER 223.

The Solicitors Act.

1. In this Act,—

Interpretation.

(a) "Rules of the Society" shall mean rules, regulations and by-laws made by the benchers of the Society under *The Law Society Act*;

"Rules of the Society."
Rev. Stat. c. 221.

(b) "The Society" shall mean The Law Society of Upper Canada. R.S.O. 1927, c. 194, s. 1.

"Society."

2. Every solicitor shall be an officer of the Supreme Court, and that Court or any judge thereof, may exercise the same jurisdiction in respect of solicitors as a superior court or a judge thereof before the 22nd day of August, 1881, might have exercised in respect of any solicitor or attorney admitted to practise therein. R.S.O. 1927, c. 194, s. 2.

Subject to control of Court.

3. The benchers of the Society may make such rules, regulations or by-laws as shall to them seem necessary and proper touching the admission of any persons, being British subjects who may be admitted and enrolled as solicitors, and such persons and no others shall be entitled to practise as solicitors in Ontario. R.S.O. 1927, c. 194, s. 3; 1934, c. 54, s. 19.

Benchers may make rules as to admission, etc., of solicitors.

4.—(1) Any person who has been duly called to the Bar of Ontario, and who has practised as a barrister in Ontario for the periods respectively hereinafter mentioned, may be admitted and enrolled as a solicitor on the terms and conditions hereinafter mentioned.

Admission of certain practising barristers as solicitors.

(2) Where, previous to the time of filing his application for a certificate of fitness, he has been in actual practice for ten years or more he shall be entitled to such certificate without any examination.

Of ten years' standing.

(3) Where, previous to the time of filing his application for certificate of fitness, he has been in actual practice for five years or more, but of less than ten years, he shall be entitled to the certificate on passing such examination as may be prescribed by the Society for such cases.

Of five years' standing.

Notice of application for certificate of fitness.

(4) Notice of the intention of the candidate to apply for a certificate of fitness under the provisions of this section shall be in writing signed by the applicant, and shall be given by him to the secretary of the Society at least fourteen days before the next meeting of convocation at which such candidate seeks admission, and the application for the certificate shall be signed by a barrister practising in the county or district in which such candidate resides, who shall certify that the candidate is, in his opinion, a fit and proper person to be admitted and enrolled as a solicitor.

Fees.

(5) Every such barrister, before obtaining the certificate, shall pay such fees only as are payable by a student-at-law in ordinary cases of being admitted as a solicitor. R.S.O. 1927, c. 194, s. 4.

Barristers of Quebec who have been called to the Bar of Ontario.

5. A person who has been called to the Bar of Ontario under any provision heretofore or hereafter made for the admission of practitioners in law, or students, from the Province of Quebec shall be entitled to be admitted as a solicitor upon payment of the usual fees. R.S.O. 1927, c. 194, s. 5.

PROHIBITION AGAINST PRACTISING WHEN UNQUALIFIED.

Solicitors must be admitted and enrolled.

6. Unless admitted and enrolled and duly qualified to act as a solicitor, no person shall act as a solicitor in any court of civil or criminal jurisdiction or before any justice of the peace, or shall as such sue out any writ or process, or commence, carry on or defend any action, or proceeding in the name of any other person, or in his own name, or hold himself out as or represent himself to be a solicitor. R.S.O. 1927, c. 194, s. 6.

Penalty on persons practising without being admitted as solicitors.

7. If any person, unless himself a party to the proceeding, commences, prosecutes or defends in his own name, or that of any other person, any action or proceeding without having been admitted and enrolled as hereinafter provided, he shall be incapable of recovering any fee, reward or disbursements on account thereof, and shall be guilty of a contempt of the court in which such proceeding was commenced, carried on or defended, and punishable accordingly. R.S.O. 1927, c. 194, s. 7.

(NOTE. —As to practising in division courts see *The Division Courts Act, Rev. Stat. c. 107, s. 102*, and as to proceedings to enforce claims of lienholders for sums not exceeding \$100 under *The Mechanics' Lien Act, see Rev. Stat. c. 200, s. 35 (8)*.)

SERVICE OF STUDENTS-AT-LAW.

8. Subject to the rules of the Society under *The Law Society Act*, the following enactments are made with respect to the service of students-at-law:

Articled clerks.
Rev. Stat. c. 221.

- (a) The contract of service of a student-at-law and any assignment thereof, together with the affidavit of execution of such contract or assignment, which shall state the date of such execution, shall be filed within three months after the execution thereof respectively, in the Central Office of the Supreme Court and the proper officer shall endorse upon each document and sign a memorandum of the date of filing thereof;
- (b) If the contract or assignment with the affidavit of execution is not filed within three months after the date of the contract or assignment the same may nevertheless be filed, but the service of the clerk shall be reckoned only from the date of the filing, unless the benchers in their discretion for special reasons in any particular case, shall otherwise order;
- (c) A solicitor may have under contract in writing four students at one time and no more, and no solicitor shall have any student so bound after he has discontinued practice as a solicitor, nor while the solicitor is employed as a writer or clerk by any other solicitor, and the service by an articled clerk to a solicitor under any such circumstances shall not be deemed good service under the articles;
- (d) If a solicitor, before the determination of the contract of service, becomes bankrupt or takes the benefit of any Act for the relief of insolvent debtors, or has been imprisoned for twenty-one days, the Supreme Court, upon the application of the student, may order that the contract be discharged or be assigned to such person, upon such terms, and in such manner as the Court may deem proper;
- (e) If a solicitor, to whom a student has been so bound, dies before the expiration of the term for which the clerk became bound, or if he discontinues practice as a solicitor, or if the contract is by the consent of the parties cancelled, or if the student is legally discharged before the expiration of the

Contracts of service to be filed.

Provision in case contract not filed in three months.

Practising solicitor may have four articled clerks and no more.

Court may order articles to be discharged or assigned in certain cases.

Case of death, etc., of solicitor to whom clerk articulated.

term by an order of the Court, the student may be bound by another contract in writing to serve as student to any other practising solicitor during the residue of the term, and if an affidavit of the execution of such last mentioned contract is duly made and filed within the time and in the manner hereinbefore prescribed, and subject to the like regulations as in the case of the original contract and the affidavit of its execution, due service under such subsequent contract shall be sufficient. R.S.O. 1927, c. 194, s. 8.

CONDITIONS OF ADMISSION AS SOLICITORS.

Provisions to be complied with before admission.

9.—(1) Subject to the rules of the Society no student shall be admitted and enrolled as a solicitor unless,—

- (a) during the time specified in his contract of service he has duly served thereunder, and, except while attending the courses of lectures at the Law School and undergoing examinations as prescribed by the rules of the Society, he has been during the whole of such term of service actually employed in the proper practice of a solicitor by the solicitor to whom he has been bound at the place where such solicitor has continued to reside, during such term or with his consent by the professional agent of the solicitor in Toronto; and
- (b) he has been examined and sworn in the manner hereinafter directed; and
- (c) at least fourteen days next before the first day of the term in which he seeks admission, he has left with the secretary of the Society his contract of service, and any assignment thereof and the affidavits of the execution of the same with his affidavit of due service thereunder, and a certificate of the solicitor to whom he was bound, or his Toronto agent of such due service, and in the case of a person who has been called to the Bar or taken a degree as hereinbefore mentioned, a certificate of his having been so called or taken such degree or a duly certified copy of such certificate.

Affidavits to be delivered to the Society.

(2) The affidavits shall be in the form prescribed by the Society and shall be delivered by the applicant to the Society upon his application to be examined.

Provision in case the contract, etc., cannot be produced.

(3) If the contract of service, assignment, if any, affidavits and certificate of due service, or any of them, cannot be

produced the Society, on application by a petition verified by affidavit to be left with the secretary at least fourteen days before the first day of the term on which the applicant seeks admission, and on being satisfied of such fact may, in its discretion, dispense with the production of such contract, assignment, affidavits and certificate of due service, or any of them, and may, notwithstanding such non-production, grant the certificate of fitness.

(4) The benchers may allow a student, as part of his term of service, any time during which such student may have been employed on active military service. R.S.O. 1927, c. 194, s. 9. Time of clerk on military service may be allowed.

ADMISSION AND ENROLMENT.

10. Subject to the rules of the Society,—

Requirements.

(a) where the benchers require that students shall pass a preliminary examination the term of service under articles to entitle a student to be admitted as a solicitor shall date only from the passing of such examination or his admission into the Society as a student-at-law; Preliminary examination.

(b) no candidate for admission being a student-at-law or articled clerk who has served under articles for the prescribed period shall be admitted or enrolled as a solicitor unless he has complied with the regulations of the Society as to the attendance at lectures and the passing of examinations. R.S.O. 1927, c. 194, s. 10. Attendance at lectures, examinations.

11.—(1) Subject to the rules of the Society no candidate for admission not being a student-at-law or articled clerk who has served under articles for the prescribed period shall be admitted unless,— Provisions respecting special cases.

(a) he publishes in the *Ontario Gazette* for at least two months previously to the first day of the term in which he seeks admission notice of his intention to apply for admission;

(b) nor, except in the case of a person who has been called to the Bar of Ontario, unless he, at least fourteen days after the meeting of convocation, leaves with the secretary of the Society;

(i) in the case of a barrister, sufficient evidence to the satisfaction of the benchers of his call to the Bar and an affidavit to their satisfaction stating whether any application is made or

is pending to disbar him, disqualify him for misconduct, or otherwise from practising at the Bar;

- (ii) in the case of an attorney, solicitor or writer to the signet, sufficient evidence to the satisfaction of the benchers of his admission and an affidavit of the candidate to their satisfaction stating whether any application has been made or is pending to strike him off the roll or disqualify him for misconduct or otherwise from practising as a solicitor;
- (iii) in every case testimonials of good character and conduct to the satisfaction of the benchers.

Date of affidavit.

(2) The affidavit shall be made within three months of the meeting of convocation during which the application is made. R.S.O. 1927, c. 194, s. 11.

The Society to examine into the fitness and capacity of candidates for admission as solicitors.

12. The benchers, upon proof to their satisfaction of the requirements of this Act having been complied with, shall examine and inquire by such ways and means as they think proper touching the fitness and capacity of any candidate for admission as a solicitor, and if satisfied by such examination or by the certificate of the examiners mentioned in section 39 of *The Law Society Act*, that the candidate is duly qualified, fit and competent to act as a solicitor the Society shall give a certificate under its corporate seal of his due service, and of his fitness and capacity, and of his having duly complied with the requirements of this Act, and that he is in all respects qualified to be admitted as a solicitor. R.S.O. 1927, c. 194, s. 12.

Rev. Stat. c. 221.

Certificate of fitness.

Admission and enrolment.

13.—(1) Upon production to the Supreme Court of such certificate of fitness the presiding judge shall endorse his fiat of admission upon it, and thereupon the oath of allegiance and the oath of office having been administered in open Court to the person named in the certificate the Court may cause him to be admitted and his name to be enrolled as a solicitor.

Certificate of admission.

(2) A certificate of admission shall be signed by one of the registrars of the Supreme Court, and the certificate of fitness shall be filed in the proper office of the Supreme Court.

Oath of office.

(3) The oath of office shall be as follows:—

"I, A.B., do swear (or solemnly affirm as the case may be) that I will truly and honestly demean myself in the practice of a Solicitor according to the best of my knowledge and ability; So help me God."

R.S.O. 1927, c. 194, s. 13.

FEES.

14. The following fees, and no other, shall be payable to the Crown under this Act:—

- | | |
|---|--------|
| 1. On filing articles of assignments (if any) with affidavit of execution, and making the endorsements required by this Act | \$.50 |
| 2. For fiat, admission, oath and certificate..... | 5.50 |

Fees payable under this Act.

R.S.O. 1927, c. 194, s. 14.

ANNUAL CERTIFICATES.

15. The officer of the Supreme Court who has the custody of the roll of solicitors shall, on the first day of every month, deliver to the secretary of the Society at its office in Osgoode Hall, certified under his hand and the seal of the Supreme Court, a copy of so much of the roll as contains the names of solicitors admitted to practise during the preceding month.

Names of those admitted to be delivered to Society monthly.

R.S.O. 1927, c. 194, s. 15.

16. The secretary shall enter all such certified copies in a book to be kept in his office for that purpose, affixing to each name a number following in consecutive order the numbers affixed to the names previously entered.

Secretary to enter certified copies of roll in a book.

R.S.O. 1927, c. 194, s. 16.

17. The secretary shall, in another book to be kept in his office for that purpose, enter all the names contained in the copies so transmitted to him, alphabetically arranged, with a reference to the number of each name on the roll, and shall, annually on or before the 1st day of February, furnish to the senior registrar of the Supreme Court an alphabetical list certified by him, under his hand, of all solicitors who have taken out their certificates for the current year, and shall from time to time add to such list the name of each solicitor who takes out a certificate at a subsequent period of the year, noting thereon the time when the certificate was taken out.

Secretary to annually post an alphabetical list of solicitors in his office and in Central Office.

R.S.O. 1927, c. 194, s. 17.

18. Every practising solicitor whose name appears on the roll of solicitors shall obtain from the secretary, annually during the two weeks next preceding the last day of November, a certificate under the seal of the Society stating that he is a practising solicitor of the Supreme Court.

Annual certificate to be obtained by solicitors.

R.S.O. 1927, c. 194, s. 18.

19. A certificate shall not be issued to a solicitor who is indebted to the Society for any fee payable to the Society,

Fees to be paid before certificate granted.

nor until the annual fee for each certificate prescribed by the rules of the Society is paid. R.S.O. 1927, c. 194, s. 19.

Certificate not required until November after admission.

20. A solicitor admitted in or after November shall not be required to take out his annual certificate before November in the year next following the year of his admission. R.S.O. 1927, c. 194, s. 20.

Fine for neglect to take out certificate.

21. If a solicitor omits to take out his annual certificate within the prescribed period he shall not be entitled thereto until he pays to the Society not only the prescribed certificate fee, together with any other fees which he owes to the Society, but also an additional sum by way of penalty, as follows:

Amount of fine.

If such certificate is not taken out before the first Monday in February, the sum of \$6; if not before the third Monday in May, the sum of \$9, and if not before the second Monday in September, \$12. R.S.O. 1927, c. 194, s. 21.

Solicitors, etc., practising without certificate to forfeit \$40.

22. If a solicitor, or any member of a firm of solicitors, either in his own name or in the name of any member of his firm, practises in the Supreme Court, or in a county, or district court, or in a surrogate court without such certificate being taken out by him, and by each member of his firm, he shall forfeit the sum of \$40, which shall be paid to the Society, and may be recovered in the Supreme Court. R.S.O. 1927, c. 194, s. 22.

Further penalty for practising without a certificate.

23. If a solicitor practises in any such court without having taken out such certificate in each and every year of his practice he shall be liable to be suspended from practice by order of the Supreme Court for a period of not less than three nor more than six months, and shall continue so suspended until his certificate fee for the year in which he so practised, together with a penalty of \$40, is paid to the Society. R.S.O. 1927, c. 194, s. 23.

List by officers of court of solicitors practising during the preceding year.

24. The officer having the control and superintendence of the Central Office, and every local registrar, and deputy registrar, and every clerk of a county or district court, and every registrar of the surrogate court, when the said offices are not held by the same person, shall, during the month of January in each year make out a list of the names of solicitors who, by the papers or proceedings filed or had in his office, appear to have practised at any time during the year ending with the 31st day of December next preceding, and shall, on or before the 1st day of February in the year next after that

Transmission to Society.

for which the list is made up, transmit such list certified under his hand and the seal of the court to the secretary of the Society. R.S.O. 1927, c. 194, s. 24.

25.—(1) A solicitor who is a prisoner in any gaol or prison shall not during his confinement therein, nor shall any solicitor who has been suspended from practising during the period of his suspension, commence, prosecute or defend as such solicitor any action in any court nor act in any matter in bankruptcy or insolvency. Disability of solicitors in prison or suspended.

(2) A solicitor so practising, and any solicitor permitting or empowering him so to practise in his name, shall be guilty of a contempt of the court in which any such proceedings are taken, and shall be punishable by such court accordingly. Practitioner guilty of contempt.

(3) A solicitor shall be incapable of maintaining any action for the recovery of any fee, reward or disbursement for or in respect of any matter or thing done by him in his own name or in the name of any other solicitor while so imprisoned or suspended. R.S.O. 1927, c. 194, s. 25. Not to recover fees.

26.—(1) A solicitor shall not knowingly act as the professional agent of any person not duly qualified to act as a solicitor, or suffer his name to be used in any such agency on account of or for the profit of an unqualified person, or send any process to such person, or do any other act to enable him to practise in any respect as a solicitor, knowing him not to be duly qualified. Solicitors not to act as agents of unqualified persons.

(2) If complaint is made in a summary way of a contravention of this section a judge of the Supreme Court, upon proof thereof, may order that the solicitor so offending shall be struck off the roll and disqualified from practising as a solicitor. Punishment by striking off the roll.

(3) The Court may also commit such unqualified person having so practised to the common gaol for any term not exceeding one year. R.S.O. 1927, c. 194, s. 26. Committal of unqualified person.

27. The Supreme Court may strike the name of any solicitor off the roll of solicitors for default by him in payment of money received by him as a solicitor. R.S.O. 1927, c. 194, s. 27. Court may strike solicitors off the roll.

28.—(1) A solicitor shall not practise in any court in Ontario either in his own name or by his partner, deputy or agent, or in the name of any other person, or otherwise directly or indirectly, while he holds or conducts any office of the Supreme Court, or of a county or district court, a surrogate Practice prohibited while holding certain offices.

court or a division court to which he is appointed by the Crown; but nothing herein contained shall extend to a local master or deputy registrar of the Supreme Court who is not a deputy clerk of the Crown and pleas, or to the Official Guardian, or to an official referee, a drainage referee or an official arbitrator.

Penalty.

(2) Every person who contravenes the provisions of this section shall incur a penalty of \$2,000. R.S.O. 1927, c. 194, s. 28.

Practice prohibited while engaged as a merchant.

29. A solicitor shall not practise in any court in Ontario while he is engaged in the business of a merchant, or connected by partnership in purchasing or vending merchandise in the way of trade as a merchant, nor until twelve months after he has ceased to be such merchant or to be so engaged or connected. R.S.O. 1927, c. 194, s. 29.

(NOTE.—*For punishment for tampering with jurors, see The Jurors Act, Rev. Stat. c. 108.*)

STRIKING A SOLICITOR OFF THE ROLL FOR DEFECT IN ARTICLES.

Limitation of time for striking off roll for defect in articles.

30. Except in case of fraud no person admitted and enrolled shall be struck off the roll on account of any defect in the articles of clerkship or in the filing thereof, or in his service thereunder or in his admission and enrolment, unless application for striking him off the roll is made within twelve months next after his admission and enrolment. R.S.O. 1927, c. 194, s. 30.

PROCEEDINGS IF STRUCK OFF THE ROLL.

Notification of the Society when solicitor struck off roll.

Duty of secretary.

31. Where a solicitor is struck off the roll the registrar shall certify the same under his hand and the seal of the Supreme Court to the secretary of the Society, stating whether such solicitor was struck off at his own request or otherwise, and the secretary shall attach the certificate to the certified copy of the roll on which the name of such person stands, and shall, in the book kept by him, make a note opposite the name of such person of his having been struck off the roll. R.S.O. 1927, c. 194, s. 31.

SOLICITORS' COSTS.

Solicitors to deliver their bill one month before bringing action for costs.

32.—(1) No action shall be brought for the recovery of fees, charges or disbursements for business done by a solicitor as such until one month after a bill thereof, subscribed with the proper hand of such solicitor, his executor, administrator or assignee or, in the case of a partnership, by one of the

partners, either with his own name, or with the name of such partnership, has been delivered to the person to be charged therewith, or sent by the post to, or left for him at his counting-house, office of business, dwelling-house or last known place of abode, or has been enclosed in or accompanied by a letter subscribed in like manner, referring to such bill.

(2) In proving a compliance with this Act it shall not be necessary in the first instance to prove the contents of the bill delivered, sent or left, but it shall be sufficient to prove that a bill of fees, charges or disbursements subscribed as required by subsection 1, or enclosed in or accompanied by such letter, was so delivered, sent or left; but the other party may show that the bill so delivered, sent or left, was not such a bill as constituted a compliance with this Act.

Not necessary in first instance in action on bill to prove contents of bill delivered.

(3) A solicitor's bill of fees, charges or disbursements shall be sufficient in form if it contains a reasonable statement or description of the services rendered, with a lump sum charge or charges therefor, together with a detailed statement of disbursements, and in any action upon or taxation of such a bill if it is deemed proper further details of the services rendered may be ordered. R.S.O. 1927, c. 194, s. 32.

Charges in lump sum.

33. Where the retainer of the solicitor is not disputed, and there are no special circumstances, an order may be obtained on *praecipe* from the proper officer in the county in which the solicitor resides,

Order for taxation on praecipe.

- (a) by the client, for the delivery and taxation of the solicitor's bill;
- (b) by the client, for the taxation of a bill already delivered, within one month from its delivery;
- (c) by the solicitor, for the taxation of a bill already delivered, at any time after the expiration of one month from its delivery, provided no order for its taxation has been previously made. R.S.O. 1927, c. 194, s. 33.

34.—(1) No such reference shall be directed upon an application made by the party chargeable with such bill after a verdict or judgment has been obtained, or after twelve months from the time such bill was delivered, sent or left as aforesaid, except under special circumstances to be proved to the satisfaction of the court or judge to whom the application for the reference is made.

No reference on application of party chargeable after verdict or after 12 months from delivery.

(2) Where the reference is made under subsection 1, the court or judge, in making the same, may give any special

Directions as to costs.

directions relative to the costs of the reference. R.S.O. 1927, c. 194, s. 34. •

When officer
may tax bill
ex parte.

35. In case either party to a reference, having due notice, refuses or neglects to attend the taxation, the officer to whom the reference is made may tax the bill *ex parte*. R.S.O. 1927, c. 194, s. 35.

Delivery of
bill and
reference to
taxation.

36.—(1) When a client or other person obtains an order for the delivery and taxation of a solicitor's bill of fees, charges and disbursements, or a copy thereof, the bill shall be delivered within fourteen days from the service of the order.

- (a) The bill delivered shall stand referred to the proper officer for taxation, and on the reference the solicitor shall give credit for, and an account shall be taken of all sums of money by him received from or on account of the client, and the solicitor shall refund what, if anything, he may on such taxation appear to have been overpaid.
- (b) The costs of the reference shall, unless otherwise directed, be in the discretion of the officer, subject to appeal, and shall be taxed by him when and as allowed.
- (c) The solicitor shall not commence or prosecute any action in respect to the matters referred pending the reference without leave of the court or a judge.
- (d) The amount certified to be due shall be paid forthwith after confirmation of the certificate by filing, as in the case of a master's report, by the party liable to pay the same.
- (e) Upon payment by the client or other person of what, if anything, may appear to be due to the solicitor, or if nothing is found to be due to the solicitor, the solicitor, if required, shall deliver to the client or other person, or as he may direct, all deeds, books, papers and writings in the solicitor's possession, custody or power belonging to the client.
- (f) The order shall be read as if it contained the above particulars, and shall not set forth the same, but may contain any variation therefrom and any other directions which the court or judge shall see fit to make.

(2) An order for reference of a solicitor's bill for taxation shall be presumed to contain the clauses *a* to *e* of subsection 1, whether obtained on *praecipe* or otherwise, and by the solicitor, client or other person liable to pay the bill.

Order presumed to contain clauses *a* to *e*.

(3) The reference for taxation shall, unless otherwise ordered, be to the proper taxing officer for the county in which the solicitor resides. R.S.O. 1927, c. 194, s. 36.

Reference to be to local taxing officer.

37. A judge of the Supreme Court or of a county or district court, on proof to his satisfaction that there is probable cause for believing that the party chargeable is about to depart from Ontario, may authorize a solicitor to commence an action for the recovery of his fees, charges or disbursements against the party chargeable therewith, although one month has not expired since the delivery of the bill. R.S.O. 1927, c. 194, s. 37.

When actions for costs within the month may be allowed.

38.—(1) Where any person, not being chargeable as the principal party, is liable to pay or has paid any bill either to the solicitor, his assignee, or personal representative, or to the principal party entitled thereto, the person so liable to pay or paying, his assignee or personal representative, may apply to the court for an order referring to taxation as the party chargeable therewith might himself have done, and the same proceedings shall be had thereupon as if the application had been made by the party so chargeable.

Taxation where a party not being the principal, pays a bill of costs.

(2) If such application is made where, under the provisions hereinbefore contained, a reference is not authorized to be made except under special circumstances, the court may take into consideration any additional special circumstances applicable to the person making it, although such circumstances might not be applicable to the party chargeable with the bill if he was the party making the application.

What special circumstances may be considered in such case.

(3) For the purpose of such reference the court may order the solicitor, his assignee or representative, to deliver to the party making the application a copy of the bill upon payment of the costs of the copy.

Order for delivery of a copy of the bill.

(4) When a person, other than the client, applies for taxation of a bill delivered or for the delivery of a copy thereof for the purpose of taxation, and it appears that by reason of the conduct of the client the applicant is precluded from taxing the same, but is nevertheless entitled to an account from the client, it shall not be necessary for the applicant to bring an action for an account, but the court may, in a summary manner, refer a bill already delivered or order delivery of a copy of the bill, and refer the same for taxation, as between

Taxation at instance of third person.

the applicant and the client, and may add such parties not already notified as may be necessary.

Application of s. 36.

(5) The provisions of section 36, so far as they are applicable, shall apply to such taxation. R.S.O. 1927, c. 194, s. 38.

When a bill may be re-taxed.

39. No bill previously taxed shall be again referred unless, under the special circumstances of the case, the court thinks fit to direct a re-taxation thereof. R.S.O. 1927, c. 194, s. 39.

Payment not to preclude taxation if applied for within a year.

40. The payment of any bill shall not preclude the court from referring it for taxation, if the application is made within twelve months after payment, and if the special circumstances of the case, in the opinion of the court, appear to require the taxation. R.S.O. 1927, c. 194, s. 40.

Taxation of costs.

41. The bill of a solicitor for any fees, charges or disbursements in respect of business transacted in a surrogate court, may be directed to be taxed by the proper officer of such court. R.S.O. 1927, c. 194, s. 41.

A taxing officer may require the assistance of the officer of any other court.

42. Where a bill is referred for taxation, the officer to whom the reference is made may request the proper officer of any other court to assist him in taxing any part of such bill, and the officer so requested shall thereupon tax the same, and shall have the same powers and may receive the same fees in respect thereof as upon a reference to him by the court of which he is an officer, and he shall return the bill, with his opinion thereon, to the officer who so requests him to tax the same. R.S.O. 1927, c. 194, s. 42.

How applications against solicitors to be intitled.

43. Every application to refer a bill for taxation, or for the delivery of a bill, or for the delivering up of deeds, documents and papers, shall be made *In the matter of (the solicitor)*, and upon the taxation of any such bill the certificate of the officer by whom the bill is taxed, unless set aside or varied, shall be final and conclusive as to the amount thereof, and payment of the amount certified to be due and directed to be paid may be enforced according to the practice of the court in which the reference was made. R.S.O. 1927, c. 194, s. 43.

JUDGES MAY MAKE RULES.

Judges of Supreme Court to make rules, etc.

44. The judges of the Supreme Court may make general rules or regulations, other than rules relating to the admission and enrolment of solicitors, for carrying out the provisions of this Act. R.S.O. 1927, c. 194, s. 44.

45. Such rules may include rules respecting business by solicitors connected with sales, purchases, leases, mortgages, settlements and other matters of conveyancing, and may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or percentage, varying or not in different classes of business, or by a gross sum or by a fixed sum for each document prepared or perused without regard to length, or in any other mode or partly in one mode and partly in another or others, and may, as regards the amount of the remuneration, regulate the same with reference to all or any of the following among other considerations,—

Principles of remuneration in conveyancing matters. Imp. Act. 44-45 V. c. 44, s. 4.

- (a) the position of the party for whom the solicitor is concerned in any business, that is whether as vendor or as purchaser, lessor or lessee, mortgagor or mortgagee, and the like;
- (b) the place, district and circumstances at or in which the business or part thereof is transacted;
- (c) the amount of the capital money or of the rent to which the business relates;
- (d) the skill, labour and responsibility involved therein on the part of the solicitor; and
- (e) the number and importance of the documents prepared or perused, without regard to length. R.S.O. 1927, c. 194, s. 45.

46. In the absence of any general rule, and so far as any such general rules do not apply, the taxing officer, in taxing a bill for preparing and executing any instrument, shall consider not the length but the skill and labour employed and responsibility incurred in the preparation thereof. R.S.O. 1927, c. 194, s. 46.

What to be considered in taxation of costs.

AGREEMENTS BETWEEN SOLICITORS AND CLIENTS.

47. In this section and sections 48 to 65,—

Interpretation.

- (a) "Client" shall include a person who, as a principal or on behalf of another person, retains or employs or is about to retain or employ a solicitor, and a person who is or may be liable to pay the bill of a solicitor for any services, fees, costs, charges or disbursements; "Client."
- (b) "Services" shall include fees, costs, charges and disbursements. R.S.O. 1927, c. 194, s. 47. "Services."

Agreements between solicitors and clients as to compensation.

48.—(1) Subject to the provisions of sections 49 to 65 a solicitor may make an agreement in writing with his client respecting the amount and manner of payment for the whole or a part of any past or future services in respect of business done or to be done by such solicitor, either by a gross sum or by commission or percentage, or by salary or otherwise, and either at the same rate or at a greater or less rate than that at which he would otherwise be entitled to be remunerated.

"Commission".
"Percentage".

(2) In this section the expressions "commission" and "percentage" shall apply only to non-contentious business and to conveyancing.

Application of section.

(3) This section shall apply to and include any business to which section 45 relates, whether or not any general rule under section 44 is in operation. R.S.O. 1927, c. 194, s. 48.

Approval of agreement by taxing officer.

49. Where the agreement is made in respect of business done or to be done in any court, except a division court, the amount payable under the agreement shall not be received by the solicitor until the agreement has been examined and allowed by a taxing officer of a court having power to enforce the agreement. R.S.O. 1927, c. 194, s. 49.

Opinion of court on agreement.

50. Where it appears to the taxing officer that the agreement is not fair and reasonable he may require the opinion of a court to be taken thereon. R.S.O. 1927, c. 194, s. 50.

Rejection of agreement by court.

51. The court may either reduce the amount payable under the agreement or order it to be cancelled and the costs, fees, charges and disbursements in respect of the business done to be taxed in the same manner as if the agreement had not been made. R.S.O. 1927, c. 194, s. 51.

Agreement not to affect costs as between party and party.

52. Such an agreement shall not affect the amount, or any right or remedy for the recovery, of any costs recoverable from the client by any other person, or payable to the client by any other person, and any such other person may require any costs payable or recoverable by him to or from the client to be taxed in the ordinary manner, unless such person has otherwise agreed; but the client who has entered into the agreement shall not be entitled to recover from any other person under any order for the payment of any costs, which are the subject of the agreement, more than the amount payable by the client to his own solicitor under the agreement. R.S.O. 1927, c. 194, s. 52.

Claims for additional remuneration excluded.

53. Such an agreement shall exclude any further claim of the solicitor beyond the terms of the agreement in respect of services in relation to the conduct and completion of the

business in respect of which it is made, except such as are expressly excepted by the agreement. R.S.O. 1927, c. 194, s. 53.

54. A provision in any such agreement that the solicitor shall not be liable for negligence or that he shall be relieved from any responsibility to which he would otherwise be subject as such solicitor shall be wholly void. R.S.O. 1927, c. 194, s. 54.

Agreements relieving solicitor from liability for negligence void.

55. No action shall be brought upon any such agreement, but every question respecting the validity or effect of it may be examined and determined, and it may be enforced or set aside without action on the application of any person who is a party to the agreement or who is or is alleged to be liable to pay or who is or claims to be entitled to be paid the costs, fees, charges or disbursements, in respect of which the agreement is made, by the court, not being a division court, in which the business or any part of it was done or a judge thereof, or, if the business was not done in any court, by the Supreme Court. R.S.O. 1927, c. 194, s. 55.

Determination of disputes under the agreement.

56. Upon any such application, if it shall appear to the court that the agreement is in all respects fair and reasonable between the parties, it may be enforced by such court by order in such manner and subject to such conditions as to the costs of the application as such court may think fit, but if the terms of the agreement shall not be deemed by the court to be fair and reasonable the agreement may be declared void, and the court may order it to be cancelled and may direct the costs, fees, charges and disbursements incurred or chargeable in respect of the matters included therein to be taxed in the ordinary manner. R.S.O. 1927, c. 194, s. 56.

Enforcement of agreement.

57. Where the amount agreed for under any such agreement has been paid by, or on behalf of the client or by any person chargeable with or entitled to pay the same, the Supreme Court may, upon the application of the person who has paid such amount, within twelve months after the payment thereof, if it appears to such Court that the special circumstances of the case require the agreement to be re-opened, re-open the same and order the costs, fees, charges and disbursements to be taxed, and may also order the whole or any part of the amount received by the solicitor to be repaid by him on such terms and conditions as to the Court may seem just. R.S.O. 1927, c. 194, s. 57.

Order of Court for reopening of agreement.

58. Where any such agreement is made by the client in the capacity of guardian or of trustee under a deed or will, or of committee of any person whose estate or property will

Agreements made by client in fiduciary capacity to be approved by taxing officer.

be chargeable with the amount or any part of the amount payable under the agreement, the agreement shall, before payment, be laid before the senior taxing officer at Toronto who shall examine it and may disallow any part of it or may require the direction of the court to be made thereon. R.S.O. 1927, c. 194, s. 58.

Client paying without approval to be liable to estate.

59. If the client pays the whole or any part of such amount without the previous allowance of such officer or the direction of the court he shall be liable to account to the person whose estate or property is charged with the amount paid or any part of it for the amount so charged, and the solicitor who accepts such payment may be ordered by the court to refund the amount received by him. R.S.O. 1927, c. 194, s. 59.

Solicitors not to purchase any interest in litigation or to make payment dependent upon success.

60. Nothing in sections 48 to 65 shall give validity to a purchase by a solicitor of the interest or any part of the interest of his client in any action or other contentious proceeding to be brought or maintained, or give validity to an agreement by which a solicitor retained or employed to prosecute any action or proceeding stipulates for payment only in the event of success in such action or proceeding, or where the amount to be paid to him is a percentage of the amount or value of the property recovered or preserved or otherwise determinable by such amount or value or dependent upon the result of the action or proceeding. R.S.O. 1927, c. 194, s. 60.

Where solicitor dies or becomes incapable of acting after agreement.

61. Where a solicitor has made such an agreement and anything has been done by him under it and before the agreement has been completely performed by him, such solicitor dies or becomes incapable to act, an application may be made to any court which would have jurisdiction to examine and enforce the agreement by any person who is a party thereto, and such court may thereupon enforce or set aside the agreement so far as the same may have been acted upon as if such death or incapacity had not happened, and if it deems the agreement to be in all respects fair and reasonable may order the amount in respect of the past performance of it to be ascertained by taxation, and the taxing officer, in ascertaining such amount, shall have regard, so far as may be, to the terms of the agreement, and payment of the amount found to be due may be ordered in the same manner as if the agreement had been completely performed by the solicitor. R.S.O. 1927, c. 194, s. 61.

Changing solicitor after making agreement.

62. If, after any such agreement has been made, the client shall change his solicitor before the conclusion of the business to which the agreement relates, which he shall be at liberty

to do notwithstanding the agreement, the solicitor, party to the agreement, shall be deemed to have become incapable to act under it within the meaning of section 61, and upon any order being made for taxation of the amount due him in respect to the past performance of the agreement the court shall direct the taxing officer to have regard to the circumstances under which such change of solicitor took place, and upon the taxation the solicitor shall not be deemed to be entitled to the full amount of the remuneration agreed to be paid to him, unless it shall appear that there has been no default, negligence, improper delay or other conduct on his part affording reasonable ground to the client for such change of solicitor. R.S.O. 1927, c. 194, s. 62.

63. Except as otherwise provided in sections 48 to 62 and sections 64 and 65 a bill of a solicitor for the amount due under any such agreement shall not be subject to any taxation or to any provision of law respecting the signing and delivery of a bill of a solicitor. R.S.O. 1927, c. 194, s. 63.

Bills under agreement not to be liable to taxation.

64. A solicitor may accept from his client, and a client may give to his solicitor, security for the amount to become due to the solicitor for business to be transacted by him and for interest thereon, but so that the interest is not to commence until the amount due is ascertained by agreement or by taxation. R.S.O. 1927, c. 194, s. 64.

Security may be given to solicitor for costs.

65. A solicitor may charge interest at the rate of five per centum per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from demand from the client, and where the same are payable by an infant or out of a fund presently available the demand may be made on the parent or guardian or the trustee or other person liable. R.S.O. 1927, c. 194, s. 65.

Interest on disbursements and costs.

SOLICITORS AS MORTGAGEES, TRUSTEES, ETC.

66. In sections 67 to 69 the expression "mortgage" includes any charge on any property for securing money or money's worth. R.S.O. 1927, c. 194, s. 66.

Definition of mortgage.

67. Any solicitor to whom, either alone or jointly with any other person, a mortgage is made, or the firm of which such solicitor is a member, shall be entitled to receive for all business transacted and acts done by such solicitor or firm in negotiating the loan, deducing and investigating the title to the property and preparing and completing the mortgage, all such usual professional charges and remuneration as he

Charges, etc., where mortgage is made with solicitor.

or they would have been entitled to receive if such mortgage had been made to a person not a solicitor, and such person had retained and employed such solicitor or firm to transact such business and do such acts, and such charges and remuneration shall accordingly be recoverable from the mortgagor. R.S.O. 1927, c. 194, s. 67.

Imp. Act,
58-59 V.
c. 25.

Right of
solicitor with
whom mort-
gage is made
to recover
costs, etc.

68. Any solicitor to or in whom, either alone or jointly with any other person, any mortgage is made or is vested by transfer or transmission, or the firm of which such solicitor is a member, shall be entitled to receive and recover from the person on whose behalf the same is done or to charge against the security for all business transacted and acts done by such solicitor or firm subsequent and in relation to such mortgage or to the security thereby created or the property therein comprised, all such usual professional charges and remuneration as he or they would have been entitled to receive if such mortgage had been made to and had remained vested in a person not a solicitor, and such person had retained and employed such solicitor or firm to transact such business and do such acts, and accordingly no such mortgage shall be redeemed except upon payment of such charges and remuneration. R.S.O. 1927, c. 194, s. 68.

Imp. Act,
58-59 V.
c. 25.

Solicitor-
director,
right to
charge for
services to
trust estate.

69. A solicitor, who is a director of a trust company or of any other company, or the firm of which such solicitor is a member, shall be entitled to receive for all business transacted or acts done by such solicitor or firm for such company in relation to or in connection with any matter in which the company acts as trustee, guardian, personal representative or agent, all such usual professional fees and remuneration as he or they would be entitled to receive if such solicitor had not been a director of such company, and such company had retained and employed such solicitor or firm to transact such business and do such acts, and such charges and remuneration shall accordingly be recoverable from such company, and may be charged by them as a disbursement in the matter of such trusteeship, guardianship, administration or agency. R.S.O. 1927, c. 194, s. 69.

RIGHT TO TAX COSTS OF SALARIED SOLICITOR.

Collection of
costs where
corporation
solicitor or
counsel
receives
salary.

70. Where the remuneration of a solicitor or counsel employed by a corporation is wholly or partly paid by salary the corporation employing such solicitor or counsel shall notwithstanding have the right to recover and collect lawful costs in all actions and proceedings in the same manner as if the solicitor or counsel were not receiving a salary where

the costs are by the terms of his employment payable to the solicitor or counsel as part of his remuneration in addition to his salary. R.S.O. 1927, c. 194, s. 70.

SOLICITORS AS OFFICERS OF COURT.

71. Nothing in this Act shall interfere with the jurisdiction ^{Saving} over solicitors as officers of court. R.S.O. 1927, c. 194, s. 71. _{jurisdiction}
_{of court.}
