

## LEGAL PRACTITIONERS

NOTE.—THIS ORDINANCE WAS DISALLOWED BY THE SENATE (see footnotes below).

### No. 2 of 1969

An Ordinance relating to Legal Practitioners.

#### PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Legal Practitioners Ordinance* 1969.\* Short title.
2. This Ordinance shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.† Commencement.
3. This Ordinance shall be administered by the Attorney-General. Administration.
4. This Ordinance is divided into Parts, as follows:— Parts.
  - Part I.—Preliminary (Sections 1-5).
  - Part II.—The Law Society (Section 6).
  - Part III.—The Admission Board (Sections 7-9).
  - Part IV.—Admission to Practise (Sections 10-22).
  - Part V.—Practising Certificates (Sections 23-35).
  - Part VI.—Studentship-at-Law (Sections 36-39).
  - Part VII.—Articles of Clerkship (Sections 40-48).
  - Part VIII.—Discipline.
    - Division 1.—The Disciplinary Committee (Sections 49-51).
    - Division 2.—Inquiries by the Disciplinary Committee (Sections 52-64).
    - Division 3.—Proceedings before the Court (Sections 65-70).

\* Made on 27 March 1969; notified in the *Commonwealth Gazette* on 2 April 1969; disallowed by the Senate on 22 May 1969.

† No date was fixed before the disallowance of this Ordinance.

- Part IX.—Trust Moneys and Trust Accounts.  
 Division 1.—Preliminary (Sections 71-72).  
 Division 2.—Trust Moneys (Section 73).  
 Division 3.—Trust Bank Accounts (Sections 74-78).  
 Division 4.—Solicitors' Records (Sections 79-80).  
 Division 5.—Audit (Sections 81-89).  
 Division 6.—Examination of Solicitors' Records (Sections 90-92).  
 Division 7.—Deposits with the Law Society (Sections 93-98).
- Part X.—Fidelity Fund (Sections 99-116).  
 Part XI.—Appointment of Receivers (Sections 117-133).  
 Part XII.—Costs (Sections 134-146).  
 Part XIII.—Offences by Unqualified Persons (Sections 147-150).  
 Part XIV.—Transitional Provisions (Sections 151-153).  
 Part XV.—Miscellaneous (Sections 154-159).

**Definitions.****5. In this Ordinance, unless the contrary intention appears—**

- “restricted practising certificate” means a practising certificate certifying to the entitlement of the holder to perform the functions of a solicitor whilst in the employ of another person;
- “Territory” means a Territory of the Commonwealth;
- “the Admission Board” means the Legal Practitioners Admission Board;
- “the Bar Association” means the Bar Association of the Australian Capital Territory;
- “the Court” means the Supreme Court;
- “the Fidelity Fund” means the Solicitors Fidelity Fund established by section 100 of this Ordinance;
- “the Judge” means the Judge appointed under sub-section (1.) of section 7 of the *Australian Capital Territory Supreme Court Act 1933-1968*;
- “the Law Society” means The Law Society of the Australian Capital Territory as constituted by section 6 of this Ordinance;
- “the Registrar” means the Registrar of the Supreme Court;
- “trust moneys” means moneys that are, by virtue of section 73 of this Ordinance, to be deemed to be held by a solicitor in trust for a client of that solicitor;
- “unrestricted practising certificate” means a practising certificate certifying to the entitlement of the holder to practise as a solicitor on his own account or in partnership with another legal practitioner.

## PART II.—THE LAW SOCIETY.

6.—(1.) The Law Society of the Australian Capital Territory is hereby constituted a body corporate by the name “The Law Society of the Australian Capital Territory”. Incorporation  
of Law Society.

## (2.) The Law Society—

- (a) has perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

(3.) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Law Society affixed to a document and shall presume that it was duly affixed.

(4.) The first members of the Law Society shall be the persons who, immediately before the commencement of this Ordinance, were members of the Law Society of the Australian Capital Territory.

(5.) The Constitution and Rules of the Law Society are, subject to this Ordinance, the Constitution and Rules of the Law Society of the Australian Capital Territory as in force immediately before the commencement of this Ordinance.

(6.) An amendment of the Constitution or Rules of the Law Society shall not take effect unless it is approved by the Governor-General.

(7.) An amendment of the Constitution or Rules of the Law Society that is approved by the Governor-General shall take effect—

- (a) where the amendment specifies a day on which it is to take effect, being a day not earlier than the day on which the Governor-General approves of the amendment—on the day so specified; and
- (b) in any other case—on the day on which the Governor-General approves of the amendment.

(8.) On and from the commencement of this Ordinance, any property held by a person, in trust or otherwise, for or on behalf of the Law Society of the Australian Capital Territory is, subject to any charge or liability affecting the property, vested in the Law Society.

(9.) A person is not entitled to be a member of the Law Society at any time after the first day of January, 1970, unless his name is on the Roll of Legal Practitioners.

(10.) A person who holds a practising certificate is entitled, on application to the Law Society, to be admitted to membership of the Society without paying a fee for his admission.

(11.) A member of the Law Society is not liable to pay to the Society any annual subscription to the Society's funds that would, but for this sub-section, become payable by the member at a time at which that member holds a practising certificate.

## PART III.—THE ADMISSION BOARD.

Legal  
Practitioners  
Admission  
Board.

7.—(1.) There shall be a Legal Practitioners Admission Board consisting of the Judge and four persons whose names are on the Roll of Legal Practitioners.

(2.) Of the members of the Admission Board other than the Judge, three members shall be appointed, as occasion requires, by the Law Society, and one member shall be appointed, as occasion requires, by the Bar Association.

(3.) The Judge shall be the Chairman of the Admission Board.

(4.) A member of the Admission Board other than the Judge—

- (a) holds office, subject to the next succeeding sub-section, for the period of twelve months commencing on the first day of January next following the date of his appointment; and
- (b) is eligible for re-appointment.

(5.) The first members of the Admission Board other than the Judge hold office until the thirty-first day of December, One thousand nine hundred and seventy.

(6.) In the event of a member of the Admission Board other than the Judge ceasing to hold office before the expiration of his term of office, the Law Society or the Bar Association, as the case may be, may appoint a person whose name is on the Roll of Legal Practitioners to hold the vacant office for the balance of that term.

(7.) The Secretary to the Admission Board shall be a person appointed by the Board.

Removal of  
members of  
Admission  
Board.

8.—(1.) The Court may, on the application of the Attorney-General, remove a member of the Admission Board, other than the Judge, from office for misbehaviour or incapacity.

(2.) If a member of the Admission Board, other than the Judge—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or compounds with his creditors; or
- (b) is absent, except on leave granted by the Admission Board, from three consecutive meetings of the Board,

the Court may remove him from office.

Meetings of  
the Admission  
Board.

9.—(1.) At a meeting of the Admission Board, three members constitute a quorum.

(2.) The Judge shall preside at all meetings of the Admission Board at which he is present.

(3.) In the absence of the Judge from a meeting of the Admission Board, the members present at the meeting shall elect one of their number to act as Chairman.

(4.) The Admission Board shall hold meetings at such times and places as the Judge directs or the Board determines.

## PART IV.—ADMISSION TO PRACTISE.

10.—(1.) This section applies to a person if, immediately before the commencement of this Ordinance—

Admission of  
existing  
Territory  
practitioners.

(a) his name was—

- (i) on the roll of barristers and solicitors of the High Court kept in pursuance of rules in force under the *Judiciary Act* 1903-1968; or
- (ii) on the roll of barristers, of solicitors, of barristers and solicitors or of legal practitioners of the Supreme Court of a State or another Territory; and

(b) he resided in the Territory or in the Municipality of Queanbeyan in the State of New South Wales.

(2.) Where, on an application for admission to practise, the Court is satisfied that—

- (a) the applicant is a person to whom this section applies; and
- (b) the applicant's right to practise in federal courts or in a State or another Territory is not suspended or cancelled,

the Court shall admit the applicant to practise as a barrister and solicitor, as a barrister or as a solicitor of the Court.

11.—(1.) A person—

- (a) whose name is on the roll of barristers and solicitors of the High Court kept in pursuance of rules in force under the *Judiciary Act* 1903-1968; or
- (b) whose name is on the roll of barristers and solicitors, of barristers, of solicitors or of legal practitioners of the Supreme Court of a State or another Territory,

Admission of  
State and  
Territory  
practitioners.

is entitled, whether or not he is also entitled to apply under the last preceding section, to apply to the Court to be admitted to practise as a barrister and solicitor, as a barrister or as a solicitor of the Court.

(2.) If, on an application under the last preceding sub-section, the Court is satisfied that—

- (a) the name of the applicant is on a roll referred to in the last preceding sub-section;
- (b) the applicant is of good fame and character; and
- (c) the applicant's right to practise in federal courts or in a State or another Territory is not suspended,

the Court shall, subject to section 18 of this Ordinance, admit the applicant to practise as a barrister and solicitor, as a barrister or as a solicitor, as the case may be, of the Court.

(3.) A person may be admitted to practise under the last preceding sub-section notwithstanding that he resides or practises in a State or in another Territory.

Admission of  
overseas  
practitioners.

12.—(1.) A person who—

- (a) has been admitted to practise as a legal practitioner (however described) in England, Scotland, Northern Ireland or New Zealand and his right so to practise is not suspended or cancelled;
- (b) has resided in Australia for the period of six months immediately preceding the date of his application; and
- (c) is a British subject,

is entitled to apply to the Court to be admitted to practise as a barrister and solicitor, as a barrister or as a solicitor of the Court.

(2.) If, on an application under the last preceding sub-section, the Court is satisfied that—

- (a) the applicant is a person entitled to apply to be admitted to practise under this section;
- (b) the applicant is of good fame and character; and
- (c) the applicant's right to practise as a legal practitioner in a country referred to in paragraph (a) of the last preceding sub-section is not suspended or cancelled,

the Court shall, subject to section 18 of this Ordinance, admit the applicant to practise as a barrister and solicitor, as a barrister or as a solicitor, as the case may be, of the Court.

Admission as  
a barrister.

13.—(1.) A person who—

- (a) has been admitted to the degree of Bachelor of Laws at an Australian university or has—
  - (i) successfully completed the course of study conducted by the Barristers Admission Board of New South Wales, the Council of Legal Education in Victoria or the Barristers Board of Queensland; or
  - (ii) become eligible for the award of the Final Certificate in Law by the University of Adelaide; and
- (b) is a British subject resident in Australia,

is entitled to apply to the Court to be admitted to practise as a barrister of the Court.

(2.) Subject to the next succeeding sub-section, if, on an application under the last preceding sub-section, the Court is satisfied that—

- (a) the applicant is a person entitled to apply to be admitted to practise under this section; and
- (b) the applicant is of good fame and character,

the Court shall, subject to section 18 of this Ordinance, admit the applicant to practise as a barrister of the Court.

(3.) The Court shall not admit a person to practise under this section unless the person has been enrolled as a student-at-law for a period of not less than two years or for such period as, having regard to the circumstances of the case, appears to the Court to be sufficient.

14.—(1.) Subject to this section, a person is entitled to apply to the Court to be admitted to practise as a barrister and solicitor of the Court or as a solicitor of the Court if—

Admission as a barrister and solicitor or as a solicitor.

- (a) he has been admitted to the degree of Bachelor of Laws at an Australian university or has—
  - (i) successfully completed the course of study conducted by the Solicitors Admission Board of New South Wales, the Council of Legal Education in Victoria or the Solicitors Board of Queensland; or
  - (ii) become eligible for the award of the Final Certificate in Law by the University of Adelaide;
- (b) he has, after becoming eligible to be admitted to the degree, or obtaining the other educational qualifications, referred to in the preceding paragraph, rendered satisfactory service under articles of clerkship in accordance with this Ordinance for a period of not less than twelve months or has completed a course of legal education of not less than six months' duration prescribed for the purposes of this paragraph; and
- (c) he is a British subject resident in Australia.

(2.) A person shall be deemed not to have completed a course of legal education referred to in the last preceding sub-section unless the appropriate officer of the university or other institution by which the course was conducted has certified in writing that the person has completed the course.

(3.) If, on an application under sub-section (1.) of this section, the Court is satisfied that the applicant is a person entitled to apply to be admitted to practise under this section and that he is of good fame and character, the Court shall admit the applicant to practise as a barrister and solicitor or as a solicitor, as the case may be, of the Court.

(4.) On an application for an order under this sub-section by a person who satisfies all the requirements of this section except the requirement of paragraph (b) of sub-section (1.) of this section, the Court may, if it is of the opinion that, notwithstanding the failure of the applicant to satisfy that requirement, an order should be made under this sub-section, order that the person be regarded as a person entitled to apply, under this section, to be admitted to practise, and, upon the making of the order, the person shall be deemed to be a person who is entitled so to apply.

15. The Admission Board shall, in respect of each application for admission to practise under section 12, 13 or 14 of this Ordinance make a report in writing to the Court stating whether, in the opinion of the Board, the applicant is entitled to apply to be admitted and whether, in the opinion of the Board, there are any grounds upon which the Court may be satisfied that the applicant is not of good fame and character.

Admission Board to report to Court as to applicants' qualifications.

16.—(1.) The Registrar shall cause to be kept a roll to be known as the Roll of Legal Practitioners.

Roll of Legal Practitioners.

(2.) The Roll of Legal Practitioners shall be divided into parts, namely—

- (a) a part containing the names of persons admitted to practise as barristers and solicitors of the Court;
- (b) a part containing the names of persons admitted to practise as barristers of the Court; and
- (c) a part containing the names of persons admitted to practise as solicitors of the Court.

(3.) Each part of the Roll of Legal Practitioners shall, in respect of each person whose name is contained in that part, contain the following particulars:—

- (a) the date on which the person was admitted to practise in the category in which persons whose names appear in that part of the Roll are entitled to practise;
- (b) the dates (if any) on which the person has been admitted to practise as a legal practitioner elsewhere than in the Territory; and
- (c) the address at which the person resided on the date on which he was most recently admitted to practise by the Court.

(4.) Where a person is admitted to practise as a barrister and solicitor, or as a solicitor, of the Court the Registrar shall notify the Secretary of the Law Society of the admission of the person.

Transfer of name from one part of Roll to another.

17.—(1.) Where the name of a person has been on one part of the Roll of Legal Practitioners for a period of not less than two years, the Court may, on application by that person, order that his name be removed from that part of the Roll and be entered in another part, and may admit him to practise accordingly.

(2.) Where a person has been admitted as a barrister or as solicitor under section 11 of this Ordinance and since his admission under that section has, following the removal of his name from the roll of barristers or the roll of solicitors in a State or another Territory in which he has also been admitted, had his name entered on the roll of solicitors or the roll of barristers, as the case requires, kept in that State or other Territory, the Court may exercise the power conferred by the last preceding sub-section notwithstanding that his name has been on a part of the Roll of Legal Practitioners for less than two years.

(3.) A legal practitioner who intends to apply to the Court for an order under this section shall, not less than fourteen days before notice of his application is filed, give notice to the Law Society and to the Bar Association of his intention to apply for an order under this section.

(4.) Where an order is made under this section, the Registrar shall make such alterations to the entries in the Roll of Legal Practitioners as are necessary to give effect to the order.

Undertakings may be required from persons admitted as barristers.

18. On application for admission as a barrister under section 11, 12 or 13 of this Ordinance or on an application under the last preceding section for an order that the name of a person be entered on the part of the Roll of Legal Practitioners containing the names of



persons admitted to practise as barristers of the Court, the Court may if it considers it necessary so to do, require an applicant to give such undertakings to the Court with regard to reading in chambers and attendances at court as the Court thinks fit, and, unless the undertakings are given, the Court shall not admit the applicant.

19. The Law Society and the Bar Association are each entitled to object to an application for admission under section 11, 12, 13 or 14 of this Ordinance or to an application for an order under section 17 of this Ordinance and to be heard on the hearing of the application.

Law Society and Bar Association may object to admission.

20. A person shall, upon being admitted to practise, take an oath or make an affirmation before the Court in accordance with the form in the Schedule to the Constitution of the Commonwealth and also an oath or affirmation in accordance with the following form:—

Oaths or affirmations to be made before admission.

“I, A.B., do swear [or solemnly and sincerely affirm and declare] that I will well and honestly conduct myself in the practise of a barrister and solicitor [or a barrister or a solicitor] of this Court according to the best of my knowledge and ability.”

21. A person who has been admitted to practise shall not commence to practise until he has signed the appropriate part of the Roll of Legal Practitioners.

Signature of Roll of Legal Practitioners.

22. Subject to this Ordinance, a person whose name is on the Roll of Legal Practitioners is entitled to practise in the Territory in the capacity in which he was most recently admitted to practise by the Court and has the right of audience in any court of the Territory.

Right to practise.

#### PART V.—PRACTISING CERTIFICATES.

23.—(1.) A person whose name is entered in the part of the Roll relating to barristers and solicitors or in the part of the Roll relating to solicitors shall not practise in the Territory as a solicitor on his own account or in partnership with another legal practitioner unless he holds, or is, in pursuance of section 30 of this Ordinance, to be deemed to hold, a current unrestricted practising certificate.

Certain practitioners to hold practising certificates.

Penalty: Four hundred dollars.

(2.) For the purpose of the last preceding sub-section, a person shall not be taken to practise as a solicitor in the Territory by reason only that he is a member of a partnership whose practice in the Territory is conducted by another member or other members of the partnership.

(3.) A person whose name is entered in the part of the Roll relating to barristers and solicitors or in the part of the Roll relating to solicitors shall not be employed in the Territory by a legal practitioner unless he holds a current practising certificate.

(4.) A person who is employed in contravention of the last preceding sub-section is guilty of an offence and is punishable, upon conviction, by a fine not exceeding Four hundred dollars.

(5.) A legal practitioner is not entitled to recover any costs or disbursements in respect of any act done by him in the capacity of a

solicitor at a time at which he was not the holder of a current unrestricted practising certificate.

Issue of  
practising  
certificates.

**24.—(1.)** An application for the issue of a practising certificate may be made only by a person whose name is on the Roll of Legal Practitioners, shall be in writing addressed to the Law Society and shall state—

- (a) in the case of an application for an unrestricted practising certificate—
  - (i) the address at which the person practises or proposes to practise; and
  - (ii) where a person practises, or proposes to practise, in partnership with other persons—the names of those persons and the name under which the partnership is, or will be, carried on; and
- (b) in the case of an application for a restricted practising certificate—the name and address of his employer or proposed employer.

(2.) Subject to the next four succeeding sections, the Council of the Law Society shall, upon payment of the fees, and the contribution and levy (if any) referred to in section 34 of this Ordinance, issue to the applicant a practising certificate of the kind sought by the applicant.

(3.) Where, in pursuance of one of the next three succeeding sections, the Council of the Law Society refuses to issue a practising certificate of the kind sought by the applicant, it shall forthwith give to the applicant notice of the refusal and of the ground on which it has refused to issue the practising certificate.

Limitations on  
issue of  
unrestricted  
practising  
certificates.

**25.—(1.)** An unrestricted practising certificate shall not be issued to a person unless, during the period of five years immediately preceding the date of his application for a practising certificate—

- (a) the person has, for a period of not less than two years or for periods which, in the aggregate, are not less than two years—
  - (i) served in a State or Territory under articles of clerkship;
  - (ii) served as an employee of a solicitor in a State or Territory in the performance of work of a legal nature;
  - (iii) served as an officer or employee of the Attorney-General's Department in the performance of work of a legal nature;
  - (iv) practised in a State or Territory as a solicitor, either on his own account or in partnership with another person; or
  - (v) served or practised, as the case may be, in any two or more of the capacities referred to in the last four preceding sub-paragraphs; or
- (b) in addition to completing a course of legal education, being a course prescribed for the purposes of paragraph (b) of sub-section (1.) of section 14 of this Ordinance or this

sub-section, the person has served or practised for a period of not less than twelve months, or for periods which, in the aggregate, are not less than twelve months, in any one or more of the capacities referred to in the last preceding paragraph.

(2.) Notwithstanding the last preceding sub-section, the Council of the Law Society may issue an unrestricted practising certificate to a person if it is satisfied—

(a) that the person has, during the period of five years immediately preceding the date of his application for a practising certificate—

- (i) practised in a State or Territory as a barrister for a period of not less than two years;
- (ii) practised in a State or Territory as a barrister for a period of not less than one year and served or practised, as the case may be, in any one or more of the capacities referred to in paragraph (a) of the last preceding sub-section for a period of not less than one year or for periods which, in the aggregate, are not less than one year;
- (iii) after completing a course of legal education referred to in paragraph (b) of the last preceding sub-section, practised in a State or Territory as a barrister for a period of not less than one year; or
- (iv) practised as a solicitor in a country referred to in paragraph (a) of sub-section (1.) of section 12 of this Ordinance; and

(b) that the person has gained such experience that an unrestricted practising certificate should be issued to him.

(3.) This section does not apply in relation to a person whose name was, immediately before the commencement of this Ordinance, on—

(a) the roll of barristers and solicitors of the High Court kept in pursuance of rules in force under the *Judiciary Act* 1903-1968; or

(b) the roll of barristers and solicitors, of barristers, of solicitors or of legal practitioners of the Supreme Court of a State or Territory,

and has, since that commencement, remained on such a roll.

26. An unrestricted practising certificate shall not be issued to a person (not being a person to whom sub-section (3.) of the last preceding section applies) unless he has satisfied the Admission Board by passing examinations or otherwise that he has an adequate knowledge of accounts and legal ethics.

Practising certificates not to be issued unless certain examinations taken.

27.—(1.) This section applies to a person if—

- (a) he is undergoing imprisonment;
- (b) being a person to whom sub-section (2.) of section 86 of this Ordinance is applicable, he fails to comply with that sub-section;

Persons to whom practising certificates not to be issued and cancellation of certificates.

- (c) a report of an audit of the trust accounts kept by him discloses a deficiency, except where the deficiency was excusable and was made good prior to the date of the report; or
- (d) he fails to pay a fine imposed on him under section 59 of this Ordinance.

(2.) The Council of the Law Society shall not issue a practising certificate to a person if that person is a person to whom this section applies.

(3.) The Council of the Law Society shall cancel a practising certificate issued to a person who becomes a person to whom this section applies.

(4.) Where the Council of the Law Society cancels a practising certificate held by a person, it shall cause to be given to that person notice in writing of the cancellation and of the ground of the cancellation.

Effect of  
bankruptcy on  
unrestricted  
practising  
certificate.

**28.—**(1.) Where a legal practitioner who holds an unrestricted practising certificate becomes a bankrupt within the meaning of the *Bankruptcy Act 1966-1968*, the practising certificate held by that legal practitioner is, by force of this sub-section, cancelled.

(2.) The Council of the Law Society shall not issue an unrestricted practising certificate to a person who is a bankrupt within the meaning of the *Bankruptcy Act 1966-1968*.

Court may  
direct issue of  
certificate or  
revoke  
cancellation.

**29.—**(1.) Where the Council of the Law Society has refused to issue a practising certificate of the kind sought by a person, that person may, within fourteen days after he is given notice of the refusal, apply to the Court for an order under sub-section (4.) of this section.

(2.) A person whose practising certificate has been cancelled by the Council of the Law Society may apply to the Court for an order under sub-section (5.) of this section.

(3.) The Law Society shall be the respondent to an application under this section.

(4.) On an application under sub-section (1.) of this section, the Court may direct the Council of the Law Society to issue to the applicant a practising certificate of the kind sought by him or, if the applicant sought the issue of an unrestricted practising certificate, the issue to the applicant of a restricted practising certificate.

(5.) Where, on an application under sub-section (2.) of this section, the Court is satisfied that the circumstances are such that the cancellation of the applicant's practising certificate ought to be revoked, the Court may, subject to such terms and conditions (if any) as it thinks fit, by order revoke the cancellation of the applicant's practising certificate.

(6.) Where the Court makes an order under the last preceding sub-section, the revocation of the cancellation of the applicant's practising certificate shall take effect on and from the date of the order or such other date as is specified in the order.

**30.** Where the Council of the Law Society has refused to issue a practising certificate to a person or has cancelled a practising certificate held by a person, and the person has made application to the Court for an order under sub-section (4.) or (5.) of the last preceding section, the Court, on an application made by the person for an order under this section, may, in its discretion, order that that person shall, until the determination of that first-mentioned application, be deemed to be a person who holds a practising certificate of the kind specified in the order.

Persons to be deemed to hold practising certificates.

**31.**—(1.) A practising certificate takes effect on the date specified in the certificate as the date on which the certificate is expressed to take effect.

Expiry, &c., of certificate.

(2.) A practising certificate expires on the thirtieth day of June next following the date on which the certificate takes effect.

(3.) Where the name of a legal practitioner is removed from the Roll of Legal Practitioners, a practising certificate held by the legal practitioner is, by force of this section, cancelled.

(4.) Where the right of a legal practitioner to practise in the Territory is suspended, a practising certificate held by the legal practitioner is, by force of this section, cancelled.

**32.**—(1.) The fees payable in respect of applications for the issue of practising certificates shall be the fees fixed by the Council of the Law Society.

Fees for practising certificates.

(2.) Where the Council of the Law Society issues a practising certificate to a person who has, within the period of twelve months immediately preceding the date of issue of the certificate, had his practising certificate cancelled—

- (a) the fee payable in respect of the application for the issue of the practising certificate may be reduced or waived by the Council; and
- (b) where the person has already paid a contribution to the Fidelity Fund in respect of a period including the period for which the certificate will be in force, the person is not required to pay a contribution to the Fidelity Fund.

**33.** The Law Society shall keep a register of the names of all legal practitioners holding current unrestricted practising certificates and a register of the names of all legal practitioners holding current restricted practising certificates.

Roll of holders of practising certificates.

**34.** Subject to sub-section (2.) of section 32 of this Ordinance, the Council of the Law Society shall not issue a practising certificate unless the applicant for the certificate has paid to the Law Society—

Fidelity Fund contribution, &c., to be paid before issue of practising certificate.

- (a) the fee payable in respect of the application;
- (b) the contribution (if any) payable by him to the Fidelity Fund in respect of the period for which the practising certificate will be in force; and
- (c) any levy payable by him under section 115 of this Ordinance.

Cancelled certificate to be delivered to Law Society.

**35.—**(1.) Subject to the next succeeding sub-section, a legal practitioner who is given notice of the cancellation of his practising certificate shall forthwith deliver the certificate to the Law Society.

Penalty: Four hundred dollars.

(2.) Where—

- (a) a practising certificate has been cancelled;
- (b) an order has been made under section 30 of this Ordinance; and
- (c) on an application under section 29 of this Ordinance, the Court refuses to make an order under sub-section (5.) of that section,

the person who held the practising certificate shall, forthwith after the refusal, deliver the certificate to the Law Society.

Penalty: Four hundred dollars.

(3.) Where the cancellation of a practising certificate is revoked before the expiry of the certificate under sub-section (2.) of section 31 of this Ordinance, the Council of the Law Society shall forthwith cause the certificate to be returned to the legal practitioner concerned.

#### PART VI.—STUDENTSHIP-AT-LAW.

Enrolment as a student-at-law.

**36.—**(1.) An application for enrolment as a student-at-law shall be made to the Admission Board and shall be in writing in accordance with a form made available by the Board.

(2.) Subject to this section, where application is made in accordance with this section, the Admission Board shall enrol the applicant as a student-at-law if the Board is satisfied—

- (a) that the applicant possesses the educational qualifications required by the next succeeding sub-section; and
- (b) that the applicant is of good fame and character.

(3.) A person shall not be enrolled as a student-at-law unless—

- (a) he holds a degree granted by a university in Australia or the United Kingdom or by another university approved by the Board; or
- (b) he is eligible to matriculate within the Australian National University.

Documents to accompany application for enrolment.

**37.—**(1.) An application under the last preceding section shall be accompanied by—

(a) either—

- (i) a certificate or other document issued by a university evidencing that the applicant holds a degree granted by that university; or
- (ii) a certificate of the appropriate officer of the Australian National University stating that the applicant is eligible to matriculate within that University; and
- (b) certificates with respect to the fame and character of the applicant by not less than two persons whose names are on the Roll of Electors printed in pursuance of the Australian Capital Territory Electoral Regulations.

(2.) A certificate referred to in paragraph (b) of the last preceding sub-section shall state—

- (a) the name, address and occupation of the person giving the certificate;
- (b) the period during which, and the circumstances in which, the person giving the certificate has known the applicant; and
- (c) whether, in the opinion of that person, the applicant is a person of good fame and character.

**38.** The Admission Board may, in any case in which it considers the circumstances so warrant, require further evidence relating to the fame and character of an applicant for enrolment as a student-at-law.

Board may require further evidence of good character.

**39.** A student-at-law may enter into, or continue to serve under, articles of clerkship, but such a student-at-law shall not be admitted to practise as a barrister until his service under the articles of clerkship has been completed or determined.

Service under articles of clerkship by student-at-law.

#### PART VII.—ARTICLES OF CLERKSHIP.

**40.—(1.)** Subject to this section, a person may, with the approval of the Admission Board, enter into articles of clerkship with—

Entry into articles of clerkship.

- (a) a legal practitioner practising as a solicitor in the Territory on his own account or in partnership with another legal practitioner; or
- (b) the Crown Solicitor for the Commonwealth or the Deputy Crown Solicitor for the Australian Capital Territory.

(2.) An application for the approval of the Admission Board shall be in writing in accordance with a form made available by the Board.

(3.) Where application is made in accordance with this section, the Admission Board shall give its approval if the Board is satisfied—

- (a) that the applicant satisfies the requirement of the next succeeding sub-section;
- (b) that the applicant is of good fame and character; and
- (c) that the legal practitioner with whom the applicant proposes to enter into articles of clerkship is a legal practitioner referred to in sub-section (1.) of this section.

(4.) The approval of the Admission Board under this section shall not be given unless the applicant has been, or is eligible to be, admitted to the degree of Bachelor of Laws at an Australian university or has—

- (a) successfully completed the course of study conducted by the Solicitors Admission Board of New South Wales, the Council of Legal Education in Victoria or the Solicitors Board of Queensland; or
- (b) become eligible for the award of the Final Certificate in Law by the University of Adelaide.

Documents to accompany application for approval.

41.—(1.) An application under the last preceding sub-section shall be accompanied by—

- (a) a certificate or other document evidencing that the applicant satisfies the requirement in sub-section (4.) of the last preceding section; and
- (b) certificates with respect to the fame and character of the applicant from not less than two persons whose names are on the Roll of Electors printed in pursuance of the Australian Capital Territory Electoral Regulations.

(2.) A certificate referred to in paragraph (b) of the last preceding sub-section shall state—

- (a) the name, address and occupation of the person giving the certificate;
- (b) the period during which, and the circumstances in which, the person giving the certificate has known the applicant; and
- (c) whether, in the opinion of that person, the applicant is a person of good fame and character.

Board may require further evidence of good character.

42. The Admission Board may, in any case in which it considers the circumstances so warrant, require further evidence relating to the fame and character of an applicant for the Board's approval under section 40 of this Ordinance.

Copy of articles to be lodged with Admission Board.

43. A person who enters into articles of clerkship shall, within fourteen days after the execution of the articles or within such further time as the Admission Board allows, lodge the articles with the Secretary to the Admission Board.

Assignment of articles.

44.—(1.) Articles of clerkship may, by consent of the parties and with the approval of the Admission Board, be assigned to a legal practitioner referred to in sub-section (1.) of section 40 of this Ordinance.

(2.) Where articles of clerkship are assigned, the person serving under the articles shall, within fourteen days after the execution of the assignment or within such further time as the Admission Board allows, lodge the assignment with the Secretary to the Admission Board.

New articles where legal practitioner dies, &c.

45.—(1.) Where—

- (a) the legal practitioner to whom a person is articulated as a clerk dies or ceases to practise; or
- (b) articles of clerkship are discharged otherwise than by effluxion of time,

the person formerly articulated may, with the approval of the Admission Board, enter into articles of clerkship with a legal practitioner referred to in sub-section (1.) of section 40 of this Ordinance.

(2.) A person who enters into articles of clerkship in pursuance of the last preceding sub-section shall, within fourteen days after the execution of the articles or within such further time as the Admission Board allows, lodge the articles with the Secretary to the Admission Board.



46. An articled clerk may, during the term of his articles of clerkship, be enrolled or continue to be enrolled as a student-at-law.

Articled clerk may enrol as student-at-law.

47. A legal practitioner other than the Crown Solicitor for the Commonwealth or the Deputy Crown Solicitor for the Australian Capital Territory shall not have more than two persons articled to him as clerks at the same time.

Legal practitioner not to have more than two articled clerks.

48.—(1.) A legal practitioner to whom a person has been articled as a clerk shall, at the request of that person, give to the person a certificate stating whether, in the opinion of the legal practitioner, the service of the person as an articled clerk was satisfactory throughout the period of his service.

Certificate of completion of clerkship.

(2.) Where, in a certificate given under the last preceding sub-section, a legal practitioner states that the service of a person under articles of clerkship has not been satisfactory throughout the whole of the period mentioned in that sub-section, the legal practitioner shall state in the certificate the reasons why the person's service has not been satisfactory throughout the whole of that period.

#### PART VIII.—DISCIPLINE.

##### *Division 1.—The Disciplinary Committee.*

49.—(1.) There shall be a body to be known as the Disciplinary Committee.

Disciplinary Committee.

(2.) The Disciplinary Committee shall consist of five members appointed by the Judge.

(3.) Subject to the next succeeding sub-section, the members of the Disciplinary Committee shall hold office for a period of three years, and are eligible for re-appointment.

(4.) The first members of the Disciplinary Committee shall be appointed within three months after the commencement of this Ordinance and shall hold office until the thirty-first day of December, One thousand nine hundred and seventy-one.

(5.) A person is not eligible for appointment as a member of the Disciplinary Committee in pursuance of sub-section (2.) of this section or the next succeeding sub-section unless—

(a) not less than five years have elapsed since he was first admitted to practise as a legal practitioner in a State or Territory; and

(b) he holds a current unrestricted practising certificate.

(6.) In the event of a member of the Disciplinary Committee ceasing to hold office before the expiration of his term of office, the Judge may appoint a person to hold the vacant office for the balance of that term.

(7.) The members shall, as occasion requires, elect one of their number to be Chairman of the Committee.

(8.) A person elected in pursuance of the last preceding subsection shall be the Chairman of the Committee whilst he remains a member of the Committee or until he sooner resigns the office of Chairman.

(9.) Where the Chairman of the Disciplinary Committee resigns his office of Chairman or ceases, otherwise than by effluxion of time, to be a member of the Committee, the members of the Committee may elect one of their number to be Chairman during the remainder of the period for which he holds office as a member of the Committee.

(10.) The members of the Disciplinary Committee may elect one of their number to act as Chairman during any absence of the Chairman.

(11.) The Secretary to the Disciplinary Committee shall be a person appointed by the Council of the Law Society.

Removal of  
members of  
Disciplinary  
Committee.

**50.**—(1.) The Court may, on the application of the Attorney-General, remove a member of the Disciplinary Committee from office for misbehaviour or incapacity.

(2.) If a member of the Disciplinary Committee—

(a) ceases to hold a current unrestricted practising certificate; or

(b) is absent, except on leave granted by the Disciplinary Committee, from three consecutive meetings of the Committee,

the Court may remove him from office.

Meetings of  
the Disciplinary  
Committee.

**51.**—(1.) At a meeting of the Disciplinary Committee, three members constitute a quorum.

(2.) The Chairman of the Disciplinary Committee shall preside at all meetings of the Committee at which he is present.

(3.) In the absence of the Chairman from a meeting of the Disciplinary Committee, the members present at the meeting shall elect one of their number to preside at the meeting and, in relation to that meeting, a reference in this Ordinance to the Chairman shall be read as a reference to the person so elected.

#### *Division 2.—Inquiries by the Disciplinary Committee.*

Complaints  
concerning  
the conduct of  
certain  
legal  
practitioners.

**52.**—(1.) Where a complaint is made in writing to the Council of the Law Society regarding the professional behaviour of a legal practitioner who holds, or at the relevant time, held, a practising certificate, the Council shall, as soon as practicable, consider the complaint.

(2.) The Council of the Law Society may require that a complaint made to it in pursuance of the last preceding sub-section be verified by statutory declaration.

(3.) The Council of the Law Society may refer to the Disciplinary Committee a complaint made to the Council in accordance with sub-section (1.) of this section.

(4.) The Council of the Law Society may, of its own motion, make a complaint in writing to the Disciplinary Committee regarding the professional behaviour of a legal practitioner who holds, or, at the relevant time, held, a practising certificate.

(5.) Where the Council of the Law Society refers or makes a complaint to the Disciplinary Committee, it shall forward to the Committee—

- (a) any documents received by the Council in relation to the complaint; and
- (b) particulars of any statement relating to the complaint made to the Council by the legal practitioner concerned.

**53.—**(1.) The Disciplinary Committee shall inquire into a complaint or matter referred or made to it under the last preceding section.

Inquiry by the Disciplinary Committee.

(2.) At an inquiry under this Division, the Law Society and the legal practitioner to whose conduct the inquiry relates are each entitled to be heard and may examine witnesses and address the Disciplinary Committee.

(3.) A person who is entitled to be heard at an inquiry under this Division may be represented by a legal practitioner who may examine witnesses and address the Disciplinary Committee on his behalf.

(4.) In conducting an inquiry under this Division, the Disciplinary Committee is not bound by rules of evidence but may inform itself in such manner as it thinks fit.

(5.) Subject to the regulations, the procedure at an inquiry under this Division is within the discretion of the Disciplinary Committee.

**54.** Where a complaint is made or referred to the Disciplinary Committee, the Committee shall fix a time and place for the commencement of its inquiry and shall give notice of the time and place so fixed to—

Disciplinary Committee to fix date for inquiry and give notice to persons concerned.

- (a) the legal practitioner to whose behaviour the inquiry will relate; and
- (b) the Law Society.

**55.—**(1.) The Chairman may, by writing under his hand, summon a person to attend at an inquiry under this Division at a time and place specified in the summons to give evidence and to produce any books or documents in his custody or control which are specified in the summons.

Disciplinary Committee may summon witnesses, &c.

(2.) A person served with a summons under sub-section (1.) of this section shall not fail, without reasonable excuse, to comply with the summons.

Penalty: Fifty dollars.

Power to  
examine on  
oath, &c.

**56.**—(1.) The Chairman of the Disciplinary Committee may administer an oath to a person appearing as a witness at an inquiry under this Division and the witness may be examined on oath.

(2.) Where a person appearing as a witness at an inquiry under this Division objects on conscientious grounds to taking an oath, he may make an affirmation that he will state the truth, the whole truth and nothing but the truth in answering all questions that may be put to him.

(3.) An affirmation made under the last preceding sub-section is of the same force and effect, and entails the same liabilities, as an oath.

Record of  
proceedings  
at inquiry.

**57.**—(1.) Subject to the next succeeding sub-section, a record of the evidence of a witness at an inquiry under this Division shall be made—

(a) by means of sound-recording apparatus; or

(b) if the Disciplinary Committee so directs, by means of shorthand or any similar means.

(2.) Where the Disciplinary Committee so directs, the evidence of a witness at an inquiry under this Division shall not be recorded in accordance with the last preceding sub-section, but shall be taken down in writing, and, after being read over to the witness or given to him to read, shall be signed by the witness and the Chairman of the Disciplinary Committee.

(3.) The Secretary to the Disciplinary Committee shall have the custody of any record of evidence made in accordance with sub-section (1.) of this section.

(4.) The Secretary to the Disciplinary Committee shall give such directions as he considers necessary for ensuring that, in any case where a transcript of the record of any evidence made in accordance with sub-section (1.) of this section is or may be required, a transcript is prepared.

(5.) Where a transcript of a record is prepared in accordance with the directions of the Secretary to the Disciplinary Committee given under the last preceding sub-section, the person who prepared the transcript, or under whose supervision the transcript was prepared, shall certify on the transcript, by writing under his hand, that the transcript is a true transcript of a record produced out of the custody of the Secretary.

(6.) Subject to sub-section (13.) of this section, the Secretary to the Disciplinary Committee shall, upon application made to him by a

person and payment by that person of the fee payable on the application, furnish to that person a copy of any transcript prepared in accordance with the directions of the Secretary of a record made in accordance with sub-section (1.) of this section of any evidence, or, where evidence was taken down in writing in accordance with sub-section (2.) of this section, a copy of the evidence as so taken down, and may, upon payment of such further fee as is payable, certify, by writing under his hand, that the copy is a true copy of the transcript as so taken down.

(7.) Where a record made by means of sound recording apparatus, shorthand or similar means is produced out of the custody of the Secretary to the Disciplinary Committee and the record purports to be a record made in accordance with sub-section (1.) of this section of the evidence of a witness at an inquiry under this Division, the record is evidence that that person gave that evidence at that inquiry.

(8.) Where—

- (a) a sound-recording is produced out of the custody of the Secretary to the Disciplinary Committee; and
- (b) the sound-recording contains a record of comments that purport—
  - (i) to have been made at the same time as a sound-recording made in accordance with sub-section (1.) of this section of the evidence of a witness at an inquiry under this Division; and
  - (ii) to have been made for the purpose of identifying the proceedings, voices recorded on the last-mentioned sound-recording or any other matter or thing so recorded,

the first-mentioned sound-recording is evidence of the identity of the proceedings, of the voices or of that other matter or thing, as the case may be.

(9.) Where—

- (a) a document purports to be a transcript, or a copy of a transcript, of a record made in accordance with sub-section (1.) of this section of evidence given by a witness at an inquiry under this Division; and
- (b) the document bears a certificate that purports to be a certificate given in accordance with sub-section (5.) or (6.) of this section,

the document is evidence that the witness gave the evidence of which the document purports to be a transcript at that inquiry.

(10.) Where a document—

- (a) purports to be the evidence of a witness at an inquiry under this Division as taken down in writing and signed in accordance with sub-section (2.) of this section; or
- (b) purports to be a copy of the evidence of a witness at such an inquiry as so taken down in writing and signed and

bears a certificate that purports to be a certificate given in accordance with sub-section (6.) of this section, the document is evidence that the witness gave the evidence appearing in the document at that inquiry.

(11.) Where a record of any part of the proceedings at an inquiry under this Division, not being a record of the evidence of a witness, has been made by means of sound-recording apparatus or by any other means, the Secretary to the Disciplinary Committee may, upon application made to him by a person and payment by that person of the fee payable on the application, but subject to sub-section (13.) of this section, furnish to that person a copy of a transcript of that record.

(12.) Where a person makes application to the Secretary to the Disciplinary Committee to furnish to him under this section a copy of any transcript and a copy of the transcript is not available, the Secretary may, before causing a copy of the transcript to be prepared, require the applicant to deposit with the Secretary on account of the fee payable on the application, such amount as the Secretary determines, being an amount that does not, in the opinion of the Secretary, exceed the amount of the fee that will become so payable.

(13.) Nothing in sub-section (6.) or (11.) of this section requires the Secretary to the Disciplinary Committee to furnish a copy of a transcript or of any evidence to a person, not being a person who was represented at the inquiry to which the transcript relates or at which the evidence was given, unless the person applying for the copy satisfies the Secretary or the Chairman of the Disciplinary Committee that he has good reason for so applying.

(14.) The fees payable on applications for the issue of transcripts under this section are the fees fixed by the Council of the Law Society.

(15.) Fees paid to the Secretary to the Disciplinary Committee under this section shall be paid by him to the Law Society.

Refusal to be sworn or to give evidence.

**58.—(1.)** A person appearing as a witness at an inquiry under this Division shall not refuse to be sworn or to make an affirmation or to answer a question relevant to the proceedings put to him by a member of the Disciplinary Committee or by, or on behalf of, a person entitled to be represented at the inquiry.

Penalty: Fifty dollars.

(2.) A statement made by a witness at an inquiry under this Division is not, except in proceedings under this Ordinance or in a prosecution for giving false evidence at the inquiry, admissible in evidence against him in criminal proceedings in a court.

Powers of Disciplinary Committee.

**59.—(1.)** Where, after an inquiry under this Division, the Disciplinary Committee finds that a legal practitioner has been guilty of professional misconduct, it may—

(a) reprimand the practitioner; or

(b) impose on the practitioner a fine not exceeding One hundred dollars.

(2.) Where the Disciplinary Committee reprimands, or imposes a fine on, a legal practitioner, the Committee may also direct that the costs, or a portion of the costs, of the Law Society be paid by that legal practitioner.

(3.) For the purpose of the last preceding sub-section, the costs of the Law Society shall—

(a) include witnesses' expenses payable by the Law Society in accordance with section 62 of this Ordinance; and

(b) be assessed by the Committee.

(4.) Where a direction is given under sub-section (2.) of this section, the amount specified in the direction as the amount payable by a legal practitioner is recoverable as a debt due by the legal practitioner to the Society.

(5.) A direction under sub-section (2.) of this section shall be in writing.

(6.) A document certified by the Chairman of the Disciplinary Committee by writing under his hand to be a true copy of a direction given under sub-section (2.) of this section is evidence of the direction.

(7.) For the purpose of the last preceding sub-section, a document purporting to be a document referred to in that sub-section shall, unless the contrary is proved, be deemed to be such a document.

(8.) After an inquiry under this Division, the Committee shall—

(a) prepare a report setting out its findings and the reasons for its findings;

(b) give to the Law Society and the legal practitioner concerned notice of the time and place at which it will announce its findings; and

(c) when it announces its findings, furnish a copy of its report to the Law Society and to the legal practitioner concerned.

(9.) If, at any stage during an inquiry under this Division, the Disciplinary Committee is of the opinion that the evidence given before the Committee discloses reasonable grounds for believing that the legal practitioner to whom the inquiry relates has been guilty of professional misconduct of such a nature that the matter should be dealt with by the Court, the Committee shall not proceed further with the inquiry but shall prepare a report to the Court stating—

(a) particulars of that misconduct; and

(b) in what respects the evidence given before the Committee provides reasonable grounds for believing that the legal practitioner to whom the inquiry relates has been guilty of that misconduct.

(10.) Where the Committee prepares a report under the last preceding sub-section, it shall, as soon as practicable—

- (a) deliver the report to the Registrar, together with a transcript of the evidence given before the Committee; and
- (b) deliver a copy of its report to the legal practitioner to whom the report relates and to the Law Society.

Protection of members of Disciplinary Committee.

**60.**—(1.) An action or proceeding, civil or criminal, does not lie against a member of the Disciplinary Committee for or in respect of an act or thing done in good faith by the member in his capacity as a member.

(2.) An act or thing shall be deemed to have been done in good faith if the member of the Disciplinary Committee by whom the act or thing was done was not actuated by ill-will to the person affected or by any other improper motive.

Protection of legal practitioners, witnesses, &c.

**61.**—(1.) A legal practitioner appearing at an inquiry under this Division for a person entitled to be heard at the inquiry has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court.

(2.) A witness who gives evidence at an inquiry under this Division has the same protection as a witness in proceedings in the Supreme Court.

Fees and allowances to witnesses.

**62.**—(1.) A person who attends for the purpose of giving evidence at an inquiry under this Division is entitled to receive such fees and allowances as the Chairman thinks fit to allow in accordance with the scale of fees and allowances prescribed from time to time, for the purposes of section 27 of the *Public Works Committee Act 1913-1966*, by the Public Works Committee Regulations.

(2.) Fees and allowances payable to a person in accordance with the last preceding sub-section are payable—

- (a) if the person attended at the inquiry, whether on summons or not, by reason of a request by a person other than the Chairman or a member of the Committee—by the person at whose request the first-mentioned person attended; or
- (b) in any other case—by the Law Society.

Disciplinary Committee may inspect books, &c.

**63.** The Disciplinary Committee may inspect books or documents produced at an inquiry under this Division, and may retain them for such reasonable period as it thinks fit and may make copies of such portions of them as are relevant to the subject-matter of the inquiry.

Inquiry not to be open to public.

**64.** An inquiry under this Division shall not be open to the public.



*Division 3.—Proceedings before the Court.*

**65.—(1.)** Where, under sub-section (1.) of section 59 of this Ordinance, the Disciplinary Committee has reprimanded, or imposed a fine on, a legal practitioner, the legal practitioner may appeal to the Court against the decision of the Committee within twenty-one days after the date on which the reprimand was administered or the fine imposed.

Appeal against decision of Disciplinary Committee.

(2.) An appeal under this section shall be in the nature of a re-hearing.

(3.) On the hearing of such an appeal, the Court may affirm, set aside or vary the decision of the Disciplinary Committee and, where the Court varies the decision of the Committee, it may impose on the legal practitioner concerned such punishment, being punishment that might be imposed by the Court under section 69 of this Ordinance, as, in the opinion of the Court, justice requires.

**66.—(1.)** The Court may, of its own motion or on application under this section, by order summon a person whose name is on the Roll of Legal Practitioners to appear before the Court on a day specified in the order to show cause why he should not be adjudged guilty of professional misconduct.

Court may summon legal practitioner to show cause.

(2.) The Attorney-General may make application to the Court for an order under this section directed to a person whose name is on the Roll of Legal Practitioners.

(3.) The Law Society may make application to the Court for an order under this section directed to a person who, at the time of the alleged professional misconduct, was a barrister and solicitor, or a solicitor, of the Court.

(4.) The Bar Association may make application to the Court for an order under this section directed to a person who, at the time of the alleged professional misconduct, was a barrister of the Court.

(5.) An order under this section shall specify the grounds upon which it was made.

**67.—(1.)** Where the Disciplinary Committee delivers a report to the Registrar in accordance with sub-section (10.) of section 59 of this Ordinance, the Court may by order summon the legal practitioner to whom the report relates to appear before the Court on a day specified in the order to show cause why he should not be adjudged guilty of the professional misconduct particulars of which are stated in the order.

Proceedings before Court after report by Disciplinary Committee.

(2.) The particulars of misconduct to be stated in an order under the last preceding sub-section are the particulars stated in the report of the Disciplinary Committee in accordance with sub-section (9.) of section 59 of this Ordinance.

(3.) Where the Court has made an order under sub-section (1.) of this section, the Law Society shall be a party to the proceedings before the Court and those proceedings shall be conducted as if the order had been made on the application of the Law Society.

Evidence before Disciplinary Committee may be read before Court.

**68.**—(1.) Where an order is made under the last preceding section, evidence given before the Disciplinary Committee may, if the Law Society and the legal practitioner to whom the order was directed consent or the Court so directs, be read as evidence in the proceedings before the Court.

(2.) A direction under the last preceding sub-section may be given subject to such terms and conditions (if any) as the Court thinks proper.

Striking-off, suspension, &c.

**69.**—(1.) Where the Court is satisfied that a legal practitioner has been guilty of professional misconduct, the Court may—

- (a) reprimand the practitioner;
- (b) impose on the practitioner a fine not exceeding One thousand dollars;
- (c) suspend the right of the practitioner to practise in the Territory for such period as the Court thinks proper; or
- (d) order that the name of the practitioner be removed from the Roll of Legal Practitioners kept in pursuance of this Ordinance.

(2.) Where the Disciplinary Committee delivers a report to the Registrar under section 59 of this Ordinance and the Court adjudges the legal practitioner to whom the report relates guilty of professional misconduct, the Court may, by order, direct that the costs, or a portion of the costs, of the Law Society in connexion with the inquiry by the Disciplinary Committee be paid by that legal practitioner.

(3.) For the purpose of the last preceding sub-section, the costs of the Law Society in connexion with an inquiry by the Disciplinary Committee shall—

- (a) include witnesses' expenses payable by the Law Society in accordance with section 62 of this Ordinance; and
- (b) be assessed by the Court.

(4.) Where the Court makes an order under sub-section (2.) of this section, the order may be enforced as if it were a judgment of the Court for the payment by the legal practitioner to the Law Society of the amount specified in the order.

Power of Court to suspend until fine, &c., paid.

**70.** Where the Court—

- (a) imposes a fine on a legal practitioner;
  - (b) gives a direction under sub-section (2.) of section 69 of this Ordinance; or
  - (c) makes an order for the payment by a legal practitioner of the costs of proceedings before the Court under this Part,
- the Court may, if it thinks fit, suspend the right of the practitioner to

practise in the Territory whilst the fine remains unpaid or until he complies with the direction or order, as the case may be.

**PART IX.—TRUST MONEYS AND TRUST ACCOUNTS.**

*Division 1.—Preliminary.*

**71.** In this Part, unless the contrary intention appears—

**Definitions.**

“solicitor” means a person who—

(a) is a barrister and solicitor, or a solicitor, of the Court; and

(b) is practising as a solicitor, either on his own account or as a member of a partnership;

“year” means the period of twelve months commencing on the first day of April.

**72.—(1.)** Where there is a contravention of, or a failure to comply with, a provision of this Part by a solicitor practising on his own account, the solicitor is guilty of professional misconduct.

**Non-compliance with this Part to constitute professional misconduct.**

(2.) Where two or more persons carry on practice in partnership as solicitors, both within and outside the Territory, and only one member of the partnership holds a practising certificate issued by the Law Society, that member shall, for the purposes of Divisions 1 to 6 (inclusive) of this Part, be deemed to be a solicitor practising on his own account.

(3.) A provision of Division 4 or Division 5 of this Part that imposes an obligation on a solicitor to do, or requires a solicitor to refrain from doing, any act shall, in a case where two or more solicitors practise in partnership in the Territory, be read as imposing jointly and severally on those solicitors a like obligation to do, or as requiring each of those solicitors to refrain from doing, the act, as the case may be, and, if there is a contravention of or a failure to comply with such a provision by the members of the partnership or by one of those members, each of the members of the partnership who holds an unrestricted practising certificate is guilty of professional misconduct.

*Division 2.—Trust Moneys.*

**73.—(1.)** All moneys received by a solicitor, in connexion with his practice in the Territory, from, or on behalf of, a client of the solicitor shall, for all purposes, be deemed to be held in trust for that client to be disbursed, or otherwise dealt with, by the solicitor in accordance with the instructions of the client.

**Moneys received by solicitor to be held in trust.**

(2.) The last preceding sub-section does not apply to moneys received by a solicitor for or on account of legal costs, whether already due or to accrue due.

(3.) Nothing in this Part affects a lien that a solicitor would, apart from the provisions of this Part, have over moneys held by him.

*Division 3.—Trust Bank Accounts.*

Payment into  
and from trust  
bank accounts.

74.—(1.) A solicitor shall cause all trust moneys (including cheques) received by him, in connexion with his practice in the Territory, from, or on behalf of, a client of the solicitor to be paid into a trust bank account kept in accordance with this Division before the close of business on the next day on which the bank at which the account is kept is open for business after the day on which the money is received by the solicitor.

(2.) A solicitor shall not pay money out of a trust bank account kept in accordance with this Division except by means of a cheque made payable to, or to the order of, a specified person, being a cheque that is crossed and marked "Not Negotiable".

(3.) Subject to Division 7 of this Part, a solicitor shall not withdraw any money from a trust bank account kept in accordance with this Division except for the purpose of payment to, or disbursement according to the directions of, the person for whom the money is, by virtue of section 73 of this Ordinance, to be deemed to be held in trust.

How trust  
accounts to be  
kept.

75.—(1.) A trust bank account that is kept by a solicitor in relation only to moneys received by the solicitor from, or on behalf of, a particular client of the solicitor is kept in accordance with this Division if—

- (a) the account is kept at a bank in the Territory; and
- (b) the title under which the account is kept includes the name or style under which the solicitor practises, the name of the client and the words "Trust Account".

(2.) A trust bank account other than an account referred to in the last preceding sub-section is kept in accordance with this Division if—

- (a) the account is kept at a bank in the Territory; and
- (b) the title under which the account is kept includes the name or style under which the solicitor keeping the account practises and the words "Trust Account".

(3.) Except with the approval of the Council of the Law Society, not more than one trust bank account of a kind referred to in the last preceding sub-section shall be kept by a solicitor in connexion with his practice.

(4.) The last preceding sub-section does not apply in relation to a person who is practising as a solicitor in the Territory on the date of commencement of this Ordinance until the expiration of a period of one month after that date.

Solicitor to  
notify Law  
Society of  
situation and  
title of trust  
account.

76.—(1.) A person who is practising as a solicitor in the Territory on the date of commencement of this Ordinance shall, within fourteen days after that date, inform the Law Society of the names and addresses of the banks at which trust bank accounts are kept by the solicitor in connexion with his practice in the Territory and of the titles under which those accounts are kept.

(2.) A solicitor who opens a trust bank account in connexion with his practice in the Territory shall, within seven days after the account is opened, inform the Law Society of the name and address of the bank at which the account is kept and of the title under which the account is kept.

(3.) Where a change occurs in the title under which a trust bank account referred to in either of the last two preceding sub-sections is kept the solicitor by whom the account is kept shall, within seven days after the change, inform the Law Society of the title as so changed.

**77.** Moneys standing to the credit of a trust account kept in accordance with this Division are not available for the payment of debts of the solicitor or solicitors by whom it was opened and the moneys are not liable to be attached or taken in execution for the purpose of satisfying a judgment against the solicitor or those solicitors.

Production of trust moneys.

**78.—(1.)** A bank at which a trust bank account is kept in accordance with this Division is not under any obligation to control or supervise transactions in relation to the trust bank account or to see to the application of money drawn out of the account.

Provision applicable to banks.

(2.) A bank at which a trust bank account is kept in accordance with this Division does not have, in respect of any liability of the solicitor to the bank, any recourse or right, whether by way of set-off, counter claim, charge or otherwise against money standing to the credit of the account.

(3.) Nothing in this section relieves a bank from any liability to which it is subject apart from this Ordinance.

#### *Division 4.—Solicitors' Records.*

**79.—(1.)** A solicitor shall keep such accounting and other records as disclose particulars of all trust moneys received or paid by him from day to day.

Accounting records.

(2.) A solicitor shall—

(a) keep those records—

- (i) at the place at which he carries on business in the Territory;
- (ii) if he carries on business at more than one place of business in the Territory, at his principal place of business; or
- (iii) with the approval of the Law Society, at another place in the Territory;

(b) cause those records to be kept in such a manner that they can be conveniently and properly audited; and

(c) preserve those records for the period of seven years that commences on the thirtieth day of September next following the date of the last entry in the records.

(3.) It shall be sufficient compliance with sub-section (1.) of this section if a solicitor, within seven days after the day on which any trust moneys are received or paid by him, enters in the records referred to in that sub-section the particulars referred to in that sub-section.

Receipts for trust moneys.

**80.**—(1.) A solicitor shall give to a person from whom he receives trust money a receipt for the money specifying briefly the subject matter or purpose in respect of which the money was received.

(2.) A solicitor shall in the records referred to in the last preceding section keep particulars of each receipt issued by him.

(3.) A solicitor shall keep a register of receipts.

#### *Division 5.—Audit.*

Audit of trust accounts.

**81.** A solicitor shall, not later than seven days after the end of each year, engage an auditor to audit his records in respect of trust moneys for that year.

Quarterly statements of trusts moneys.

**82.**—(1.) Within fourteen days after the end of each of the periods of three months ending on the last day of June, September and March in each year, and within one month after the end of the period of three months ending on the last day of December in each year, a solicitor shall prepare a statement setting out, as at the close of business on the last day of the period—

- (a) the names of persons on behalf of whom the solicitor held trust moneys;
- (b) the amount shown in the records kept by the solicitor in accordance with this Division as the amount of trust money held by the solicitor on behalf of each of those persons;
- (c) the amount of trust money held by the solicitor in the form of cash; and
- (d) the amount standing to the credit of the trust bank account kept by the solicitor in accordance with this Part.

(2.) For the purpose of the last preceding sub-section, in ascertaining the amount standing to the credit of a trust bank account, cheques drawn on the account but not presented for payment shall be regarded as having been paid.

(3.) A solicitor shall produce to an auditor who conducts an audit of the records kept by the solicitor under this Division each of the statements prepared by him in respect of trust moneys held by him during the year to which the audit relates.

Qualifications of auditors.

**83.** A person shall not be engaged to conduct an audit under this Division if—

- (a) he is not a registered company auditor within the meaning of the *Companies Ordinance 1962-1968*;

- (b) he is employed by the solicitor or solicitors by whom the records are kept;
- (c) he is the spouse of the solicitor, or of one of the solicitors, by whom the account is kept; or
- (d) he is employed by another solicitor otherwise than in his capacity as an auditor.

**84.—(1.)** An auditor may, for the purposes of an audit under this Division, require a solicitor to produce forthwith to the auditor all books, papers, accounts, registers of receipts, securities and documents in his possession or in the possession of the solicitor and other solicitors practising in partnership with him and relating to trust moneys received or paid by the solicitor or solicitors during the period to which the audit relates.

Solicitor to furnish documents, &c., to auditor.

(2.) An auditor may, for the purposes of an audit under this Division, require a solicitor to furnish to the auditor such information as the auditor requires, and answer all questions put to him by the auditor, in relation to books, papers, accounts, receipt books, securities and documents which he is required to produce under the last preceding subsection and in relation to all transactions by the solicitor in the course of his practice.

(3.) A solicitor shall comply with a requirement under this section.

(4.) For the purposes of an audit under this Division, other than the first audit after the commencement of this Ordinance, a copy of the auditor's report in respect of the last preceding audit shall be produced to the auditor.

**85.—(1.)** As soon as reasonably practicable after the completion of an audit, the auditor shall prepare a report of the result of the audit and shall deliver the report in duplicate to the solicitor to whose records the audit relates.

Auditor's report.

(2.) The auditor shall state in his report—

- (a) whether, in his opinion, the solicitor has kept, in accordance with this Ordinance, accounting and other records relating to all trust moneys received and paid by him;
- (b) whether the solicitor has complied with the auditor's requirements and has so complied within a reasonable time; and
- (c) any matter or thing in relation to those records of which the solicitor, or the Law Society, should, in the opinion of the auditor be informed.

**86.—(1.)** A solicitor shall, within seven days after a report is delivered to him in accordance with the last preceding section, send a copy of the report to the Law Society.

Copy of auditor's report to be sent to Law Society.

(2.) Where—

- (a) a solicitor applies for a practising certificate;
- (b) the provisions of this Division apply to that solicitor in respect of the period of twelve months that ended on the last preceding thirty-first day of March; and
- (c) a report under the last preceding section has not been delivered to the solicitor,

he shall send to the Law Society with his application for a practising certificate a statutory declaration by him stating—

- (d) the name and address of the auditor whom he has engaged to audit his records of trust moneys in respect of the period referred to in paragraph (b) of this sub-section;
- (e) the date on which the auditor was so engaged; and
- (f) that no report under the last preceding section has been delivered to him.

Report by  
auditor to  
Law Society.

**87.** If, in the course of an audit under this Division, an auditor considers—

- (a) that records have been so kept that he is not able to audit them properly;
- (b) that there is any loss or deficiency of trust moneys or there has been any failure to pay or account for trust moneys; or
- (c) that there has been any failure to comply with a provision of this Ordinance,

he shall report accordingly in sufficient detail to the solicitor and shall, within seven days after signing the report, forward a copy of the report to the Council of the Law Society.

Penalty: Two hundred and fifty dollars.

Statutory  
declaration  
that no trust  
moneys held.

**88.** The provisions of this Division do not apply to a solicitor in respect of a year if he did not, at any time during the year, receive or hold any trust moneys and the solicitor, within fourteen days after the end of that year, makes and delivers to the Law Society a statutory declaration to that effect.

Secrecy.

**89.—(1.)** A person who conducts an audit under this Part shall not, except in accordance with this Ordinance or in, or for the purpose of, any proceedings in a court or at an inquiry before the Disciplinary Committee communicate to any person any matter which comes to his knowledge in the course of the audit.

Penalty: Two hundred and fifty dollars.

(2.) Except in connexion with an inquiry by the Disciplinary Committee or proceedings before the Court under this Ordinance, a member of the Council shall not communicate to any person, not being a member of the Council, any matter contained in a report referred to in section 87 of this Ordinance.

Penalty: Two hundred and fifty dollars.



*Division 6.—Examination of Solicitors' Records.*

**90.—(1.)** The Council of the Law Society may, at any time, appoint a person to examine the records of trust moneys kept by a solicitor or of two or more solicitors practising in partnership in respect of any period specified by the Council. Appointment of examiner.

(2.) A person shall not be appointed under the last preceding subsection unless he is a registered company auditor within the meaning of the *Companies Ordinance 1962-1968*.

(3.) A person who conducts an examination under this section shall furnish to the Council a report of the examination and, in particular, shall state in the report—

- (a) whether, in his opinion, the examination has disclosed any failure on the part of the solicitor or solicitors by whom the records are kept to comply with the requirements of this Ordinance relating to the handling of trust moneys and the keeping of records; and
- (b) particulars of any such failure.

(4.) Where, as a result of an examination of records under this section, a solicitor is—

- (a) convicted of an offence against this Ordinance or any other law in force in the Territory; or
- (b) adjudged guilty of professional misconduct by the Court or the Disciplinary Committee in relation to the handling of trust moneys or the keeping of records,

the Law Society may recover the costs of the examination from that solicitor as a debt due to the Society.

**91.—(1.)** For the purposes of this Division, section 84 of this Ordinance applies as if— Production of books, &c.

- (a) a reference in that section to an auditor were a reference to a person appointed under sub-section (1.) of the last preceding section; and
- (b) a reference to an audit were a reference to an examination under the last preceding section.

(2.) The President of the Law Society may, by demand in writing delivered personally to the manager, or other person in charge, of a bank, require the manager or that other person to permit a person specified in the demand, being a person appointed under sub-section (1.) of the last preceding section, to inspect and make copies of the documents or records of the bank relating to a trust bank account kept in accordance with this Part by the solicitor or solicitors specified in the demand.

(3.) The manager, or other person in charge, of a bank shall comply with a requirement made in accordance with the last preceding sub-section.

**Penalty:** Two hundred and fifty dollars.

Secrecy.

**92.—(1.)** A person who conducts an examination under section 90 of this Ordinance shall not, except in accordance with this Ordinance or in, or for the purposes of, any proceedings in a court or at an inquiry before the Disciplinary Committee, communicate to any person any matter which comes to his knowledge in the course of the examination.

Penalty: Two hundred and fifty dollars.

**(2.)** A member of the Council shall not communicate to any person, not being a member of the Council, any matter contained in a report referred to in section 90 of this Ordinance.

Penalty: Two hundred and fifty dollars.

*Division 7.—Deposits with the Law Society.*

Interpretation.

**93.—(1.)** In this Division, a reference to a trust bank account does not include a reference to a trust bank account referred to in sub-section (1.) of section 75 of this Ordinance.

**(2.)** In this Division, a reference to the notional amount standing to the credit of the trust bank account of a solicitor on the day immediately preceding the commencement of this Ordinance shall be read as a reference to the lowest amount that stood to the credit of that account on any day during the period of six months immediately preceding the commencement of this Ordinance.

**(2.)** In this Division, a reference to the notional amount standing to the credit of the trust bank account of a solicitor on the last day of a year shall be read as a reference to the lowest amount that stood to the credit of that account on any day during that year.

**(3.)** In relation to the period commencing on the date of commencement of this Ordinance and ending on the next succeeding thirty-first day of March, the provisions of this Division apply as if that period were a year.

**(4.)** In the application of this Division to two or more solicitors carrying on practice in partnership with one another, a reference to a solicitor shall be read as a reference to those solicitors.

**(5.)** Where a solicitor maintains more than one trust bank account in accordance with this Part, a reference to a trust bank account kept by the solicitor shall be read as a reference to the trust bank accounts kept by the solicitor.

Solicitor to deposit portion of trust moneys with Law Society.

**94.—(1.)** Subject to this Division, where the notional amount standing to the credit of the trust bank account kept by a solicitor on the day immediately preceding the commencement of this Ordinance is not less than Three thousand dollars, the solicitor is under an obligation to deposit with the Law Society within one month after the date of commencement of this Ordinance, an amount which is equal to one-half of that notional amount.

**(2.)** Subject to this Division, where, on the last day of a year—

**(a)** the notional amount standing to the credit of the trust bank account kept by a solicitor is not less than Three thousand dollars; and

- (b) no trust moneys of the solicitor are on deposit with the Law Society,

the solicitor is under an obligation to deposit with the Law Society, within three months after that last day, an amount which is equal to one-half of the notional amount referred to in paragraph (a) of this sub-section.

- (3.) Subject to this Division, where, on the last day of a year—

- (a) trust moneys of a solicitor are on deposit with the Law Society; and

- (b) the amount of those moneys is less than one-half of the aggregate of the amount of those moneys and the notional amount standing to the credit of the trust bank account kept by that solicitor on that day,

the solicitor is under an obligation to deposit with the Law Society, within three months after that last day, such an amount as will bring the amount of the moneys on deposit with the Law Society to an amount equal to one-half of the aggregate referred to in paragraph (b) of this sub-section.

**95.—(1.)** Subject to the next succeeding sub-section, moneys on deposit with the Law Society in accordance with this Division are repayable on demand to the solicitor by whom they were deposited. Repayment of deposits.

(2.) A solicitor shall not make a demand for the repayment of moneys under the last preceding sub-section unless—

- (a) the repayment of the moneys is required to enable a payment of trust moneys to be made; and

- (b) the solicitor has reasonable grounds for believing that the payment will be required to be made within seven days after the day on which the demand is made.

- (3.) Where, on the last day of a year—

- (a) trust moneys of a solicitor are on deposit with the Law Society; and

- (b) the amount of those moneys exceeds one-half of the aggregate of the amount of those moneys and the notional amount standing to the credit of the trust bank account kept by that solicitor on that day,

the solicitor is entitled to be repaid the amount of the excess.

- (4.) Where, on the last day of a year—

- (a) trust moneys of a solicitor are on deposit with the Law Society; and

- (b) the aggregate of the amount of those moneys and the notional amount standing to the credit of the trust bank account kept by that solicitor on that day is less than Three thousand dollars,

the solicitor is entitled to have repaid to him the moneys referred to in paragraph (a) of this sub-section.

Obligation to deposit subject to availability of trust funds.

**96.—(1.)** An obligation imposed by this Division on a solicitor is dependent upon there being moneys sufficient for the discharge of the obligation standing to the credit of the trust bank account kept by the solicitor on the date on which the obligation accrues.

(2.) Where, on the date on which an obligation (other than an obligation imposed by the next succeeding sub-section) would, but for the last preceding sub-section, be imposed on a solicitor, the moneys standing to the credit of the trust bank account kept by that solicitor are not sufficient for the discharge of the obligation, the obligation shall be deemed to accrue on the first day during the same year on which the moneys standing to the credit of the account are sufficient for the discharge of the obligation.

(3.) Where, during a year, moneys deposited by a solicitor with the Law Society are repaid to the solicitor in pursuance of sub-section (1.) of the last preceding section, the solicitor is under an obligation to repay those moneys to the Law Society on the first day during the same year on which the amount standing to the credit of his trust bank account is greater than the amount repaid to him.

(4.) For the purposes of this section, in ascertaining the amount standing to the credit of a trust bank account on any day, cheques drawn on the account and not presented to the bank for payment shall be regarded as having been paid.

Investment of deposits.

**97.** Moneys deposited with the Law Society by a solicitor in accordance with this Division shall be invested by the Law Society on interest bearing deposit with a bank.

Statutory Interest Account.

**98.—(1.)** The Law Society shall open, and shall maintain, an account at a bank in the Territory under a title that includes the words "Statutory Interest Account".

(2.) The interest accruing in respect of moneys invested in accordance with the last preceding section shall be paid into the account maintained in accordance with the last preceding sub-section.

(3.) The Law Society may, with the consent in writing of the Attorney-General given either generally or in a particular case, use moneys standing to the credit of the account maintained in accordance with sub-section (1.) of this section—

- (a) if the Fidelity Fund is insufficient for any purpose for which the moneys in the Fund may be used—to supplement the Fund;
- (b) to assist in the conduct of a scheme for the provision of legal aid;

- (c) to assist and promote post-graduate education and legal research; and
- (d) to meet the costs of administering the Statutory Interest Account.

PART X.—FIDELITY FUND.

**99.**—(1.) In this Part, “solicitor” has the same meaning as in the last preceding Part. Interpretation.

(2.) In this Part, a reference to a defalcation committed by a solicitor includes a reference to a defalcation committed by an employee of the solicitor or, in the case of solicitors practising in partnership, of those solicitors.

**100.**—(1.) There shall be a Solicitors Fidelity Fund which shall consist of— Fidelity Fund.

- (a) contributions and levies paid under this Part;
- (b) income derived from the investment of moneys of the Fund;
- (c) moneys recovered by the Law Society under this Part;
- (d) fines paid to the Law Society under this Part;
- (e) moneys paid into the fund out of the Statutory Interest Account; and
- (f) such other moneys as may lawfully be paid into the Fund.

(2.) The Fidelity Fund shall be vested in the Law Society.

(3.) The costs of discharging the functions, and exercising the powers, of the Law Society under this Part and the costs of enforcing the rights conferred upon the Law Society by this Part shall be paid out of the Fidelity Fund.

(4.) The assets of the Fidelity Fund, and the accounts in connexion therewith, shall be kept separate from other assets and accounts of the Law Society.

**101.**—(1.) The moneys of the Fidelity Fund shall, so far as is practicable, be invested by the Law Society. Investment of the Fund.

(2.) The moneys of the Fidelity Fund may be invested by the Law Society in any manner in which trust funds may for the time being be invested under the *Trustee Ordinance* 1957-1968.

**102.**—(1.) The Law Society shall cause the accounts of the Fidelity Fund to be audited annually by an auditor who is a registered company auditor within the meaning of the *Companies Ordinance* 1962-1968. Audit.

(2.) The Law Society shall forward a copy of the report of each audit under this section to the Attorney-General.

Committee of Management.

**103.—(1.)** The Council of the Law Society shall appoint a Committee of Management consisting of not less than three nor more than five persons of whom a majority are members for the time being of the Council.

(2.) A person shall not be appointed, or remain, a member of the Committee of Management unless he is the holder of an unrestricted practising certificate.

(3.) The powers and functions of the Law Society under this Part shall be exercised by the Committee of Management.

Annual contributions to Fund.

**104.—(1.)** A solicitor shall, not later than the thirtieth day of June in each year, pay to the Law Society such contribution to the Fidelity Fund as is fixed by the Council of the Law Society in respect of the period of twelve months commencing on the following first day of July.

(2.) A solicitor who applies for a practising certificate for a period of less than twelve months shall, in respect of that period, pay to the Law Society such contribution to the Fidelity Fund as is fixed by the Council.

Persons who may apply for compensation.

**105.—(1.)** Subject to this Part, a person who suffers pecuniary loss arising out of a defalcation of trust moneys committed by a solicitor after the date fixed for the purposes of this section by the Attorney-General by notice published in the *Gazette* may apply to the Law Society for compensation under this Part in respect of that loss.

(2.) For the purposes of this Part, the pecuniary loss in respect of which compensation may be paid to an applicant under this Part is the amount of the pecuniary loss suffered by the applicant reduced by the amount which the applicant has recovered in respect of the loss.

Law Society may call for claims.

**106.—(1.)** The Law Society may cause to be published in a daily newspaper published in the Territory a notice requiring persons entitled to apply for compensation under this Part in respect of losses arising out of a defalcation committed by a solicitor named in the notice to make their applications within the period specified in the notice.

(2.) The period to be specified in a notice published under this section shall be not less than three months commencing on the date of publication of the notice.

(3.) No action for damages lies against the Law Society or a member of the Committee of Management in respect of the publication in good faith of a notice under this section.

Time for making applications.

**107.—(1.)** Subject to the next succeeding sub-section, an application for compensation under this Part shall be made within a period of six months after the applicant becomes aware of the defalcation or within such further time as the Council, in its discretion and either before or after the expiration of that period, allows.

(2.) Where a notice is published under the last preceding section, an application for compensation under this Part in respect of a defalcation committed before the publication of the notice by the solicitor

named in the notice shall be made before the expiration of the period specified in the notice or within such further time as the Council, in its discretion and either before or after the expiration of that period, allows.

**108.**—(1.) An application for compensation under this Part shall be made by the delivery to the Law Society of a statutory declaration by the applicant giving full particulars of the claim. Manner of making claims.

(2.) The Law Society may, by notice in writing delivered to an applicant for compensation under this Part, require the applicant—

- (a) to give to the Council information in the possession of the applicant with regard to any matter relating to the application; and
- (b) to deliver to the Law Society any documents in the possession of the applicant which tend to establish the defalcation and the loss to which the application relates.

(3.) The Law Society may retain a document delivered to the Society in accordance with a requirement under the last preceding sub-section for as long as is necessary for the purposes of this Part, but the person by whom the document was produced is entitled to be supplied, as soon as practicable, with a copy certified by the Secretary of the Law Society to be a true copy, and such a certified copy shall be received in all courts as evidence as if it were the original.

(4.) Where the Law Society makes a requirement under sub-section (2.) of this section, it is not required to take any further steps in relation to the application until the requirement is satisfied.

**109.**—(1.) Subject to sub-section (4.) of the last preceding section, the Law Society shall consider every application made in accordance with this Part and shall determine— Law Society to consider applications.

- (a) the amount of the pecuniary loss in respect of which compensation may be paid to the applicant under this Part; or
- (b) that there is no pecuniary loss in respect of which compensation may be paid to the applicant under this Part.

(2.) The last preceding sub-section does not require the Law Society to be satisfied—

- (a) that the solicitor specified in an application has been convicted of an offence; or
- (b) that there is evidence upon which the solicitor might be convicted of an offence.

(3.) Before making a determination under sub-section (1.) of this section the Law Society may, if it is of the opinion that the circumstances so warrant, require an applicant for compensation under this Part to institute against the solicitor to whose defalcation the claim

relates or any other person liable in respect of the loss arising out of the defalcation proceedings for the recovery of the money the subject of the defalcation, including proceedings to follow assets and any property into which the money may have been converted.

(4.) The Law Society shall give to an applicant for compensation under this Part notice in writing stating—

- (a) the amount that the Society has determined is the pecuniary loss in respect of which compensation may be paid to the applicant under this Part; or
- (b) that the Society has determined that there is no pecuniary loss in respect of which compensation may be paid to the applicant under this Part.

(5.) In a notice given under this section, the Law Society shall state the grounds on which it has made the determination referred to in the notice.

Review of Law  
Society's  
determination.

**110.—**(1.) An applicant for compensation under this Part to whom the Law Society gives notice under sub-section (4.) of the last preceding section may, within twenty-one days after the date on which notice is so given, make application to the Court for an order under this section.

(2.) The Court, on application under this section, may, if it thinks fit, by order vary a determination of the Law Society under sub-section (1.) of the last preceding section.

Payment of  
compensation.

**111.—**(1.) Subject to this section, where an amount has been determined under this Part as the amount of pecuniary loss in respect of which compensation may be paid to an applicant under this Part, the Law Society shall pay to the applicant an amount equal to the amount so determined.

(2.) The amounts paid under the last preceding sub-section to applicants for compensation in respect of defalcations by the same solicitor shall not exceed, in the aggregate, Fifty thousand dollars.

(3.) Where the aggregate of the amounts that the Law Society would, but for this sub-section, be required by sub-section (1.) of this section to pay to applicants for compensation in respect of defalcations by the same solicitor exceeds the amount available under the last preceding sub-section, the Law Society shall divide the amount available under that sub-section amongst those applicants proportionately according to the amounts payable to those applicants.

(4.) Where, at any time, the amount of the Fidelity Fund is insufficient for the payment of all amounts that the Law Society would, but for this sub-section, be required by this section to pay, the Law Society shall divide the amount in the Fidelity Fund amongst the persons to whom it would be required to pay those amounts proportionately according to those amounts.



**112.** Where the Law Society has paid compensation to a person under this Part, the Society is, to the extent of the payment, subrogated to the rights of that person against the solicitor in respect of whose defalcation the compensation was paid.

Subrogation.

**113.—(1.)** Where—

(a) the Law Society has paid all the amounts of compensation that it is required to pay in respect of defalcations committed by a solicitor; and

(b) the sum of those amounts is less than Fifty thousand dollars, a solicitor who was, at the time at which any of those defalcations was committed, a partner of the first-mentioned solicitor and who has made a payment to a person in respect of pecuniary loss suffered by that person as a result of any of those defalcations may apply to the Law Society for compensation under this Part in respect of that payment.

Solicitors may claim in certain cases.

(2.) Section 107 of this Ordinance does not apply in relation to an application made under this section.

(3.) Where—

(a) an application is made under this section; and

(b) the Law Society is satisfied that—

(i) the solicitor by whom the application is made is entitled to make an application under this section; and

(ii) in relation to the defalcation to which the claim relates, the solicitor acted in good faith,

the Law Society may pay compensation out of the Fidelity Fund to that solicitor.

(4.) The amount to be paid under the last preceding sub-section is such an amount, not exceeding the difference between the amount of Fifty thousand dollars and the sum of the amounts referred to in paragraph (a) of sub-section (1.) of this section, as the Law Society thinks proper.

**114.—(1.)** Where, in relation to an application made under this Part (other than an application under the last preceding section), the Law Society has determined the amount of pecuniary loss in respect of which compensation may be paid to the applicant under this Part, the Law Society may, if it thinks fit, make an interim payment of compensation to the applicant.

Interim payments of compensation.

(2.) An amount paid to a person under this section shall be set off against the compensation that the Law Society is required by section 111 of this Ordinance to pay to the person.

**115.—(1.)** If, from time to time, the Council of the Law Society considers that the Fund is not sufficient to satisfy the liabilities of the Law Society in relation to the Fund, the Council may impose a levy of such amount not exceeding Twenty dollars as it thinks fit for payment into the Fund.

Levies to supplement Fund.

## (2.) Subject to this section—

- (a) a levy imposed under the last preceding sub-section is payable on the date fixed by the Council; and
- (b) a levy imposed under the last preceding section is payable by each solicitor who, on that date, holds an unrestricted practising certificate.

(3.) The Council may, if it thinks the circumstances so warrant, extend the time for the payment of a levy by a solicitor, and, in such a case, the levy is payable on the date fixed by the Council under this sub-section.

(4.) A solicitor who has paid by way of levies under this section One hundred dollars in the aggregate during the whole period of his practice is not required to pay any further levies under this section.

Law Society  
may insure  
against liability  
to pay  
compensation.

116.—(1.) The Law Society may enter into a contract with any person carrying on insurance business whereby the Law Society is insured against diminution of the amount of the Fidelity Fund by reason of the payment of compensation under this Part.

(2.) A contract referred to in the last preceding sub-section may be entered into in relation to solicitors generally, in relation to any class or group of solicitors or in relation to a particular solicitor.

(3.) No action lies against the Law Society in respect of the publication in good faith of a statement that a contract entered into under this section does or does not apply in relation to a particular solicitor or a class or group of solicitors.

(4.) A person who has suffered pecuniary loss arising out of a defalcation of trust moneys committed by a solicitor does not have a right of action against a person with whom the Law Society has entered into a contract under this section or any claim to the moneys, or part of the moneys, paid to the Law Society in accordance with such a contract.

(5.) Moneys paid to the Law Society in accordance with a contract entered into under this section shall be paid into and form part of the Fidelity Fund.

## PART XI.—APPOINTMENT OF RECEIVERS.

Interpretation.

117.—(1.) In this Part, “solicitor” has the same meaning as in Part IX.

(2.) In this Part, a reference to trust property of a solicitor or of solicitors practising in partnership shall be read as a reference to personal property which has been entrusted to, or received on behalf of any other person by, the solicitor or those solicitors in the course of, or in connexion with, the practice of the solicitor or those solicitors other than personal property that has been delivered by the solicitor or solicitors in accordance with directions of the person entitled to give directions with respect to the delivery of the property.

(3.) Without limiting its generality, the term "personal property" shall, for the purposes of this Part, be deemed to include—

- (a) trust moneys;
- (b) documents evidencing the title to land; and
- (c) all other documents, instruments, securities and writings.

(4.) For the purposes of this Part, a reference to a solicitor shall, in the case where a person has ceased to be a solicitor, be read as including a reference to such a person.

**118.—(1.)** Where the Court is satisfied—

Appointment  
of receiver.

- (a) that there are reasonable grounds for believing that a defalcation of trust moneys of a solicitor or of solicitors practising in partnership has been, or may have been, committed or that an offence involving fraud or dishonesty has been, or may have been, committed in relation to trust moneys; or
- (b) through—
  - (i) the mental or physical infirmity of a solicitor;
  - (ii) the death of a solicitor;
  - (iii) the cancellation of an unrestricted practising certificate issued to a solicitor; or
  - (iv) a solicitor ceasing, for any other reason, to practise as a solicitor,

a person to whom trust moneys of the solicitor or of the partnership of which the solicitor is or was a member are payable is unable to obtain payment of the trust moneys or a person entitled to delivery of trust property of the solicitor or of the partnership of which the solicitor is or was a member is unable to obtain delivery of the trust property,

the Court may by order appoint a person specified in the order to be receiver of the trust property of the solicitor or of the partnership.

(2.) Where the Court makes an order under section 69 of this Ordinance that the name of a solicitor be removed from the Roll of Legal Practitioners kept in pursuance of this Ordinance, the Court may, if it thinks the circumstances so warrant, by order appoint a person specified in the order to be receiver of the trust property of the solicitor or, if the solicitor carried on practice in partnership with other solicitors, of the partnership.

(3.) An application for an order under either of the last two preceding sub-sections shall not be made except by the Law Society.

(4.) The Court may give such directions as it thinks fit with respect to the person or persons on whom, and the manner in which, an application for an order under sub-section (1.) of this section and a copy of an order made under sub-section (1.) or sub-section (2.) of this section are to be served.

Powers of receiver in relation to trust moneys and trust property.

**119.—(1.) A receiver of the trust property of a solicitor or of solicitors practising in partnership may—**

- (a) take possession of all books, accounts and documents relating to trust money of the solicitor or partnership together with all cash representing trust money held by the solicitor or partnership;
- (b) take possession of all trust property of the solicitor or partnership;
- (c) require a person who has in his possession any trust property of the solicitor or partnership or books, accounts or documents relating to the trust property or trust money of the solicitor or partnership to deliver that property or those books, accounts or documents to the receiver; and
- (d) require the solicitor or a member of the partnership, or any person whom the receiver believes may be in a position to do so, to give to the receiver information in respect of the trust moneys or trust property of the solicitor or partnership or in respect of the books, accounts or documents relating to those moneys or that property.

(2.) A requirement under this section shall be in writing and shall be delivered to the solicitor or other person to whom it is directed.

(3.) A solicitor or other person to whom a requirement under this section is delivered shall not, without lawful excuse, fail to comply with the requirement.

Penalty: Five hundred dollars.

Notice to bank.

**120.—(1.) A receiver of the trust property of a solicitor or of solicitors practising in partnership may, by instrument in writing—**

- (a) give to the manager, or other person in charge, of the bank at which the solicitor or partnership maintains a trust bank account in accordance with Division 3 of Part IX. notice of his appointment; and
- (b) withdraw the authority of the solicitor or of the members of the partnership, and of other persons authorized by the solicitor or partnership, to sign cheques for the payment of money out of the account.

(2.) Where, a receiver of the trust property of a solicitor or of a partnership has reasonable grounds for believing that there is, in a bank account maintained by the solicitor or a member of the partnership, whether in his own name or any other name, a credit arising from the payment into that account of moneys received for or on behalf of any person by a solicitor or arising from the payment into that bank account of moneys paid out, otherwise than in accordance with the directions of the person or persons on whose behalf the moneys were held, from

a trust bank account maintained by the solicitor in accordance with Division 3 of Part IX., the receiver may, by instrument in writing—

- (a) give to the manager, or other person in charge, of the bank at which the account is maintained notice of his appointment; and
- (b) withdraw the authority of the person or persons authorized to withdraw moneys from that account.

(3.) Where, a notice is given under either of the last two preceding sub-sections—

- (a) the receiver and any person authorized by him by notice in writing delivered to the bank are authorized to sign cheques for the payment of money out of the account or to withdraw money from the account; and
- (b) no other person is so authorized except with the permission of the receiver or in accordance with the directions of the Court.

(4.) A copy of an instrument given by a receiver under this section shall, except where the receiver has been appointed after the death of a solicitor, be delivered to the solicitor.

(5.) The receiver may withdraw all the moneys in an account referred to in this section, or from time to time withdraw any of such moneys and pay them into a special account in his own name and may operate on and otherwise deal with the special account in accordance with directions given under section 127 of this Ordinance.

**121.—(1.)** The Court may, on application by a receiver of the trust property of a solicitor, by order direct that the solicitor, or any person to whom a requirement under paragraph (c) of sub-section (1.) of section 119 of this Ordinance has been delivered, appear before the Court for examination in relation to the trust moneys and trust property of the solicitor.

Examination of solicitor and other persons as to trust moneys and trust property.

(2.) On an examination under this section the receiver and the solicitor or other person are each entitled to be represented by a legal practitioner.

(3.) The examination of a solicitor or other person under this section shall be conducted on oath.

(4.) On an examination under this section, the solicitor or other person shall answer all questions that the Court allows to be put to him.

(5.) On an examination under this section, a solicitor or other person is not excused from answering a question on the ground that the answer might tend to incriminate him, but his answer is not admissible against him in any criminal proceedings other than—

- (a) proceedings for an offence arising out of the falsity of the answer; or
- (b) proceedings under this Ordinance.

Power of Court to order delivery of trust property to receiver.

**122.—(1.)** Where the Court is satisfied, on application made by the receiver of the trust property of a solicitor or a partnership of solicitors, that any person who has in his custody or under his control trust property of the solicitor or of the solicitors practising in the partnership has failed to deliver the trust property to the receiver in accordance with a requirement under sub-section (1.) of section 119 of this Ordinance, the Court may by order direct that person to deliver the trust property to the receiver.

(2.) A failure by a person to comply with an order made by the Court under the last preceding sub-section is punishable as a contempt of the Court.

Power of receiver to order delivery of property receivable by solicitor after appointment of receiver.

**123.—(1.)** Where—

- (a) a receiver of the trust property of a solicitor or of solicitors practising in partnership has been appointed under this Part; and
- (b) the receiver has reason to believe that another person is under an obligation, or will, at some future date, be under an obligation to deliver to the solicitor or to the partnership personal property to be received by the solicitor or the partnership on behalf of some other person,

the receiver may, by notice in writing given to the first-mentioned person, require that person to deliver the personal property to the receiver.

(2.) Where—

- (a) a person has knowledge of the appointment of a receiver of the trust property of a solicitor or of solicitors practising in partnership; and
- (b) that person is under an obligation to deliver personal property to the solicitor or to the partnership to be received by the solicitor or the partnership on behalf of some other person,

that first-mentioned person may deliver the personal property to the receiver.

(3.) A document signed by the receiver of the trust property of a solicitor or solicitors practising in partnership acknowledging the receipt of personal property delivered to him in accordance with either of the last two preceding sub-sections is as valid and effectual as if it had been given by the solicitor or the solicitors practising in partnership.

(4.) Personal property delivered to a receiver in accordance with this section shall be dealt with and disposed of by the receiver as if it were trust property taken possession of by him under this Part.

Right of solicitor, partnership or person to apply to Court for an order in respect of property.

**124.—(1.)** Where—

- (a) a receiver of the trust property of a solicitor or of solicitors practising in partnership has been appointed; and
- (b) the receiver has taken into his possession property which he claims to be trust property,

the solicitor, any member of the partnership, the personal representative, in the case where a solicitor has died, of a deceased solicitor or any

other person who has delivered the property to the receiver may apply to the Court for an order under this section.

(2.) The Court, if it is satisfied that the property referred to in the application is not trust property of the solicitor or of the solicitors practising in partnership, may order the receiver to return the property to the person making the application or to such other person as the Court directs.

**125.—(1.) Where—**

- (a) a receiver of trust property of a solicitor or solicitors practising in partnership has been appointed under this Part; and
- (b) the solicitor or the partnership claims a lien for costs on personal property held by the receiver,

Liens for costs  
property  
held by  
receiver.

the receiver may, by notice in writing, require the solicitor or the partnership to give to the receiver within a period specified in the notice (being a period of not less than thirty days after the date upon which the notice is given) particulars of the property on which a lien is claimed together with a detailed bill of costs in respect of each lien claimed.

(2.) The receiver may, in the same or a subsequent notice in writing, require the solicitor or the partnership claiming the lien to lodge, within a time specified in the notice, such a bill for taxation.

(3.) If the solicitor or the partnership fails to comply with a requirement contained in a notice given under either of the last two preceding sub-sections, the lien is discharged.

(4.) If a solicitor or partnership so request in writing, the receiver shall give to the solicitor or partnership or a person authorized for the purpose by the solicitor or partnership such access to all documents and books as is reasonably necessary to enable a bill of costs referred to in sub-section (2.) of this section to be prepared and, where such a request is made, time does not, for the purposes of this section, run in the period commencing on the day on which access is requested and ending on the day on which access as requested is given.

**126.** A receiver of the trust property of a solicitor or of solicitors practising in partnership shall, as soon as is practicable, make a report to the Court setting out—

Receiver to  
report to Court.

- (a) the amount of trust moneys held by the solicitor or solicitors at the time of the appointment of the receiver or, in a case where a solicitor has died, the date of death of the solicitor, as the case may be;
- (b) the amounts of money paid to the receiver which, if paid to the solicitor or solicitors, would have been trust moneys;
- (c) the liabilities of the solicitor or solicitors in respect of trust moneys at the time of the appointment of the receiver or the death of the solicitor, as the case may be;

- (d) if moneys are held by the receiver, the manner in which the receiver recommends that those moneys be dealt with; and
- (e) particulars of all trust property held by the receiver.

Power of Court to give directions.

**127.** Subject to the next succeeding section, where—

- (a) a receiver has made a report to the Court in accordance with the last preceding section; and
- (b) that report discloses that moneys or trust property are held by the receiver,

the Court may, from time to time, give to the receiver such directions as it thinks proper as to the manner in which those moneys are to be dealt with.

Unclaimed moneys.

**128.—(1.)** Where it appears to the Court that—

- (a) a person is entitled to moneys or trust property held by a receiver; and
- (b) that person cannot be found,

the Court shall direct the receiver to pay those moneys to the Law Society or to deliver that property to the Law Society.

(2.) Moneys paid to the Law Society in pursuance of a direction under the last preceding sub-section shall be held by the Society as if they were moneys deposited with the Society under Division 7 of Part IX.

(3.) Where trust property is delivered to the Law Society in accordance with this section, the Law Society shall deal with the property in such manner as the Court, on the application of the Society directs, and, if, in accordance with the directions of the Court, the property is sold, the proceeds shall be held by the Society as if they were moneys deposited with the Society under Division 7 of Part IX.

(4.) Where the Court is satisfied that a person is entitled to moneys paid, or property delivered, to the Law Society in accordance with a direction given under sub-section (1.) of this section, it shall, on application by that person, by order direct the Law Society to repay the moneys, or to deliver the property to that person.

Termination of receivership.

**129.—(1.)** Where, for any reason, a receiver appointed under this Part is unable to continue to perform his functions as receiver, the Court may by order terminate his appointment and appoint another person to be receiver in his place.

(2.) The Court, before making an order under the last preceding sub-section may, if it thinks fit, require the receiver to submit a full report of his conduct of the receivership.

(3.) Where a receiver appointed under this Part has—

- (a) complied with the directions of the Court;
- (b) filed with the Registrar accounts of all moneys received or paid by him in his capacity as receiver; and



- (c) filed with the Registrar a report showing the manner in which trust property (other than money) received by him has been disposed of,

the Court may, by order, terminate the appointment of the receiver.

(4.) The Registrar shall cause a copy of an order made under the last preceding sub-section together with copies of the accounts and reports filed by a receiver to be delivered to the solicitor or the solicitors practising in partnership in relation to whose trust property the receiver was appointed and to the Law Society.

**130.**—(1.) A receiver appointed under this Part shall be paid by the Law Society such fees as are agreed or, in default of agreement, as the Court, on the application of the Law Society, determines. Remuneration of receiver.

(2.) The fees payable to the receiver and his disbursements are payable out of the Fidelity Fund.

(3.) The amount of the fees and disbursements paid by the Law Society in pursuance of this section are recoverable as a debt due to the Law Society from the solicitor, or from the solicitors, in respect of whose trust property the receiver was appointed.

(4.) Where an amount is recoverable under the last preceding sub-section from two or more persons, the liability of those persons is joint and several.

(5.) An amount recovered under sub-section (3.) of this section shall be paid into the Fidelity Fund.

**131.** Moneys paid, or trust property delivered, by a receiver in accordance with a direction of the Court shall, for all purposes, be deemed to have been paid, or delivered, by the solicitor or solicitors in respect of whose trust property the receiver was appointed. Payments by receiver to be deemed to be made by solicitor.

**132.** A person shall not destroy or conceal any book, paper, account, receipt book, security or document relating to trust property received or held by a solicitor or solicitors with the intention of preventing the book, paper, account, receipt book, security or document coming into the possession of a receiver appointed under section 118 of this Ordinance. Destroying or concealing records.

Penalty: Five hundred dollars or imprisonment for six months, or both.

**133.** Where the Court makes an order under sub-section (3.) of section 129 of this Ordinance, the Court may give such directions as it thinks fit with respect to the disposal by the receiver of any books, accounts, or documents in his possession. Return of books, &c., produced to receiver.

## PART XII.—COSTS.

## Definition.

**134.** In this Part, “solicitor” has the same meaning as in Part IX.

No action by solicitor for costs until detailed statement delivered.

**135.**—(1.) Subject to the next succeeding sub-section, a solicitor is not entitled to institute proceedings in a court for the recovery of costs or disbursements for work of a professional nature until the expiration of a period of one month after he delivers to the person from whom he claims the costs or disbursements an itemised statement of those costs or disbursements.

(2.) Where the Supreme Court is satisfied that there are reasonable grounds for believing that a person to whom a statement has been delivered in accordance with the last preceding sub-section is about to leave Australia, the Court may grant leave to the solicitor by whom the statement was delivered to institute proceedings for the recovery of the costs or disbursements to which the statement relates, and those proceedings may be instituted notwithstanding that a period of one month has not elapsed since the delivery of the statement.

Application for taxation of statement of costs, &c.

**136.**—(1.) A person to whom a statement is delivered under this Part may—

- (a) within one month after the delivery of the statement; or
- (b) within such further time as the Registrar allows,

give notice to the Registrar and to the solicitor by whom the statement was delivered that he wishes to have the amount payable by him determined by taxation.

(2.) Notwithstanding the last preceding sub-section, a person is not entitled to give notice under that sub-section after judgment has been entered in proceedings for the recovery of the costs or disbursements, or any part of the costs or disbursements, specified in a statement delivered under this Part.

(3.) Sub-section (1.) of this section applies whether or not the costs or disbursements to which a statement relates have been paid.

(4.) The Registrar shall not allow further time for the giving of notice under sub-section (1.) of this section unless he is satisfied that it was not practicable for notice to be given within one month after the delivery of the statement.

Form of notice, &c.

**137.**—(1.) A notice under sub-section (1.) of the last preceding section shall be in writing and shall be accompanied by the statement to be taxed and a copy of the statement.

(2.) Where notice is given to the Registrar under sub-section (1.) of the last preceding section, he shall fix a time and place for the taxation and shall give notice of the time and place so fixed to the person requesting the taxation and to the solicitor concerned.

**138.**—(1.) Where a person gives notice under sub-section (1.) of section 136 of this Ordinance and he fails to appear, either personally or by his agent, at the time and place fixed by the Registrar in pursuance of sub-section (2.) of the last preceding section, the notice shall be deemed to have been withdrawn.

Taxation in absence of party.

(2.) Where a person gives notice under sub-section (1.) of section 136 of this Ordinance that he wishes to have a statement taxed and the solicitor who delivered the statement does not appear either personally or by his agent, at the time and place fixed by the Registrar under sub-section (2.) of the last preceding section, the Registrar shall, subject to the last preceding sub-section, proceed with the taxation.

**139.**—(1.) The Registrar shall, in assessing the proper sum to be charged for doing any act in respect of which no charge is provided for in a scale of costs prescribed under a law in force in the Territory, take into account the skill and labour necessarily employed by the solicitor concerned.

Matters to be considered on taxation.

(2.) The Registrar shall not reduce the amount specified in a statement delivered in accordance with this Part in respect of a disbursement unless he is satisfied that the amount of the expense incurred is unreasonable.

**140.**—(1.) Where the amount claimed in a statement delivered under this Part is reduced on taxation by a sixth part or more, the solicitor who delivered the statement shall pay to the person to whom the statement was delivered his costs of the taxation.

Costs of taxation.

(2.) Where the amount claimed in a statement delivered under this Part is not reduced on taxation or is reduced by less than a sixth part, the person to whom the statement was delivered shall pay to the solicitor who delivered the statement his costs of the taxation.

(3.) The amount to be paid under either of the last two preceding sub-sections shall be assessed by the Registrar forthwith after the completion of the taxation.

**141.**—(1.) On the taxation of a statement delivered under this Part, the Registrar shall certify in writing the amount that, having regard to the result of the taxation and the amount payable under the last preceding section, is, in his opinion, due to or by the solicitor who delivered the statement.

Certificate of taxation.

(2.) The Registrar shall deliver a copy of his certificate under the last preceding sub-section to each of the persons who appeared, or was represented, on the taxation.

(3.) Subject to the next succeeding sub-section, where the Registrar has given a certificate under sub-section (1.) of this section in respect of a statement delivered under this Part, judgment shall not be given in an action by the solicitor who delivered the statement against the person to whom the statement was delivered for an amount exceeding the amount specified in the certificate.

(4.) A reference in the last preceding sub-section to a certificate given under sub-section (1.) of this section includes a reference to such a certificate as amended under sub-section (3.) of the next succeeding section.

Review of  
taxation.

**142.**—(1.) A person aggrieved by the decision of the Registrar as to any item in a statement delivered under this Part may, within fourteen days after the date on which a copy of the Registrar's certificate under the last preceding section is delivered to him or within such further time as the Court allows, make application to the Court for a review of the decision of the Registrar.

(2.) On an application under this section, the Court may, if it thinks fit, affirm or vary the decision of the Registrar and may give such directions as it thinks necessary in respect of the amendment of the certificate given by the Registrar under the last preceding section.

(3.) The Registrar shall comply with any directions given by the Court under the last preceding sub-section and shall deliver a copy of the amended certificate to each of the persons to whom the certificate was delivered in accordance with sub-section (2.) of the last preceding section.

Stay of  
proceedings.

**143.** Where notice is given under sub-section (1.) of section 136 of this Ordinance in respect of a statement delivered under this Part, any proceedings commenced by the solicitor in relation to costs or disbursements claimed in the statement are, by force of this section, stayed until the expiration of fourteen days after the date of the certificate of the Registrar under section 141 of this Ordinance or, where application is made under the last preceding section, until the determination of the application.

Amount due  
by legal  
practitioner  
recoverable  
as a debt.

**144.** Where a certificate of the Registrar under section 141 of this Ordinance, or such a certificate as amended under sub-section (3.) of section 142 of this Ordinance, specifies an amount as the amount that is, in the opinion of the Registrar, due to a person to whom a statement has been delivered under this Part, the amount so specified is recoverable by that person as a debt due to him by the solicitor by whom the statement was delivered.

Agreements  
as to costs.

**145.**—(1.) The preceding provisions of this Part do not apply in respect of the costs to be paid to a solicitor for work to which an agreement under this section relates.

(2.) A solicitor may make an agreement with a person that the amount of the costs (including disbursements) payable, or to be payable, by the person to the solicitor for work of a professional nature already undertaken, or to be undertaken, for the person by the solicitor shall be the amount specified in, or ascertainable in accordance with, the agreement.

(3.) A note or memorandum containing the terms of an agreement made under the last preceding sub-section shall be signed by the person liable to pay the costs to which the agreement relates.

(4.) A note or memorandum of an agreement signed in accordance with the last preceding sub-section is evidence of the terms of the agreement.

(5.) A solicitor who is a party to an agreement under this section is not entitled, in respect of work to which the agreement relates, to receive an amount for his costs (including disbursements) greater than the amount specified in the agreement.

**146.—(1.)** Where, on an application by a person who has made an agreement with a solicitor under this section, the Court is satisfied that the agreement is not fair and reasonable, the Court may, by order—

Powers of Court where contract not fair and reasonable.

- (a) direct that the amount payable under the agreement be reduced to an amount specified in the order; or
- (b) declare that the agreement is not binding on the parties to the agreement.

(2.) Where, under the last preceding sub-section, the Court directs that the amount payable under an agreement be reduced, the agreement is enforceable as if the amount specified in the order of the Court were specified in the agreement as the amount payable under the agreement.

(3.) Where, under sub-section (1.) of this section, the Court declares that an agreement is not binding on the parties to the agreement—

- (a) the Court may make such further orders as it thinks necessary to restore the parties to the agreement to the position in which they would have been if the agreement had not been made; and
- (b) the provisions of this Part (other than the last preceding section) apply as if the agreement had not been made.

(4.) Except by leave of the Court, a person is not entitled to make an application under this section in respect of an agreement after the institution of proceedings for the recovery from that person of the amount payable under the agreement.

#### PART XIII.—OFFENCES BY UNQUALIFIED PERSONS.

**147.—(1.)** A person other than a person whose name is on the Roll of Legal Practitioners shall not—

Persons not on Roll holding themselves out to be legal practitioners.

- (a) hold himself out to be, or to be qualified to perform the functions of, a barrister and solicitor, a barrister or a solicitor; or
- (b) permit his name to be so used as to suggest that he is, or is qualified to perform the functions of, a barrister and solicitor, a barrister or a solicitor.

**Penalty:** Five hundred dollars.

- (2.) A person who—
- (a) resides outside the Territory; and
  - (b) is a member of a partnership which carries on the practice of a solicitor both within and outside the Territory,
- does not commit an offence against the last preceding sub-section by reason only that the partnership carries on practice in the Territory.

Preparation of certain documents by persons who are not legal practitioners.

**148.**—(1.) A person other than a person whose name is on the Roll of Legal Practitioners shall not, for reward—

- (a) draw a will or other testamentary instrument; or
- (b) draw an instrument creating or regulating rights between persons or relating to real or personal property or to a legal proceeding.

Penalty: Five hundred dollars.

- (2.) The last preceding sub-section does not apply where—
- (a) a public officer draws an instrument in the course of his duty;
  - (b) a person engrosses an instrument in the course of his duty;
  - (c) a person is employed to draw instruments of a kind referred to in the last preceding sub-section as part of his ordinary duties as such an employee and does not receive, in respect of the drawing of those instruments, any fee or reward other than his salary; or
  - (d) the drawing of the instrument is involved in the performance of prescribed work, or work included in a prescribed class of work.
- (3.) In this section, “ public officer ” means—
- (a) a person employed under an Act or Ordinance; and
  - (b) a member of the Defence Force.

Preparation of papers relating to application for probate.

**149.**—(1.) A person other than a person whose name is on the Roll of Legal Practitioners shall not, for reward—

- (a) take instructions, either on his own behalf or as agent for another person, for the preparation of papers to be used in support of, or in opposition to, an application for the grant of probate or letters of administration; or
- (b) draw or prepare such papers.

Penalty: Five hundred dollars.

- (2.) The last preceding sub-section does not apply to—
- (a) the Curator of Estates of Deceased Persons appointed under the *Administration and Probate Ordinance 1929-1967* or a person performing the duties of the Curator;

- (b) a person employed in the office of the Curator of Estates of Deceased Persons; or
- (c) a corporation that is a trustee company within the meaning of the *Trustee Companies Ordinance* 1947-1968 or a person employed by such a corporation.

**150.**—(1.) Where a body corporate does an act which, if done by a natural person, would be an offence against one of the last three preceding sections, the body corporate is guilty of an offence and punishable, upon conviction, by a fine not exceeding Five hundred dollars.

Offences by corporations.

(2.) Where, by virtue of the last preceding sub-section, a body corporate is guilty of an offence, every person who, at the time of the commission of the offence, was a director or officer of the body corporate is also guilty of the offence and punishable as if the offence had been committed by him unless he proves that the offence was committed without his knowledge or that he took all reasonable steps to prevent the commission of the offence by the body corporate.

#### PART XIV.—TRANSITIONAL PROVISIONS.

**151.**—(1.) Section 23 and Part XIII. of this Ordinance do not apply to, or in relation to, a person who is a person referred to in sub-section (1.) of section 10 of this Ordinance until the expiration of a period of three months after the date of commencement of this Ordinance.

Application of Ordinance to existing practitioners.

(2.) If, within a period of three months after the date of commencement of this Ordinance, a person referred to in the last preceding sub-section makes an application to the Court for admission to practise under this Ordinance, section 23 and Part XIII. of this Ordinance do not apply to, or in relation to, that person until the Court has determined the application.

(3.) The provisions of this Ordinance other than section 23 and Part XIII. apply to, and in relation to, a person referred to in sub-section (1.) of this section in the same manner as they would have applied if that person had been admitted to practise under this Ordinance on the date of commencement of this Ordinance.

#### **152.** Where—

- (a) before the commencement of this Ordinance, a person had been enrolled as a student-at-law under the law of the State of New South Wales; and
- (b) within one month after the commencement of this Ordinance, that person is enrolled as a student-at-law under this Ordinance,

Application of Ordinance where person already enrolled as student-at-law in New South Wales.

this Ordinance applies to, and in relation to, that person as if—

- (c) this Ordinance had been in force on the date on which that person was enrolled as a student-at-law under the law of that State; and
- (d) that person had, on that date, been enrolled as a student-at-law under this Ordinance.

Application of Ordinance to articles of clerkship executed before commencement of Ordinance.

**153. Where—**

- (a) immediately before the commencement of this Ordinance, a person was serving under articles of clerkship with a legal practitioner practising in the Territory or with the Crown Solicitor for the Commonwealth or the Deputy Crown Solicitor for the Australian Capital Territory;
- (b) the period of clerkship provided for by those articles is not less than twelve months; and
- (c) a copy of the articles is lodged with the Secretary to the Admission Board within one month after the commencement of this Ordinance,

this Ordinance applies to and in relation to that person and to the articles of clerkship as if this Ordinance had been in force on the date on which the articles were executed and as if the person had entered into those articles under this Ordinance.

**PART XV.—MISCELLANEOUS.**

Solicitor not to share receipts with persons not practising as solicitors.

**154.—(1.)** Subject to this section, a person who practises as a solicitor in the Territory shall not share the receipts from his practice with a person other than a person who practises as a solicitor in the Territory.

(2.) A person who contravenes the last preceding sub-section is guilty of professional misconduct.

(3.) Sub-section (1.) of this section does not apply to a person practising as a solicitor in the Territory who shares the receipts from his practice with—

- (a) a person with whom he formerly carried on practice in partnership;
- (b) a dependant or legal personal representative of a person referred to in the last preceding paragraph; or
- (c) a person with whom he carries on the practice of a solicitor in partnership both in the Territory and in a State or another Territory.

Employment of persons who have been struck off a Roll.

**155.—(1.)** Except with the permission of the Council of the Law Society, a person who practises as a solicitor in the Territory shall not employ a person in connexion with his practice as a solicitor if he knows that the name of that person has been removed, otherwise than at his own request, from—

- (a) the Roll of Legal Practitioners;



- (b) the roll of barristers and solicitors of the High Court kept in pursuance of rules in force under the *Judiciary Act 1903-1968*; or
- (c) the roll of barristers and solicitors, of barristers, of solicitors or of legal practitioners of the Supreme Court of a State or another Territory.

(2.) A person who contravenes the last preceding sub-section is guilty of professional misconduct.

**156.**—(1.) Where, by reason of absence or for any other reason, the Judge is unable to perform the functions vested in him by this Ordinance, those functions shall be performed by an additional Judge of the Supreme Court nominated by the Attorney-General for the purposes of this section.

Absence, &c.,  
of Judge.

(2.) An additional Judge of the Supreme Court who, in accordance with the last preceding sub-section, performs the functions vested by this Ordinance in the Judge may exercise the powers conferred, and shall perform the duties imposed, upon the Judge by this Ordinance.

**157.**—(1.) For the purposes of this Ordinance, a document may be given or delivered to the Law Society or the Bar Association by delivering the document personally, or sending it by post, to the Secretary of the Law Society or the Secretary of the Bar Association, as the case may be.

Service of  
documents.

(2.) For the purposes of this Ordinance, a document may be given or delivered to a person by—

- (a) delivering the document to the person personally;
- (b) in the case of the Secretary to the Admission Board—leaving the document with a person in attendance at the office of the Secretary; or
- (c) sending the document to the person by post.

**158.**—(1.) A fine imposed upon a person by the Disciplinary Committee or by the Court under Part VIII. of this Ordinance shall be paid to the Law Society.

Fines to be paid  
into Fidelity  
Fund.

(2.) A fine paid to the Law Society in accordance with the last preceding sub-section shall be paid by the Law Society into the Fidelity Fund.

**159.** The Attorney-General may make regulations not inconsistent with this Ordinance, prescribing all matters that by this Ordinance are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

Regulations.