

LEGAL PRACTITIONERS

NOTE.—THIS ORDINANCE WAS DISALLOWED IN PART BY THE SENATE AND SUBSEQUENTLY REPEALED (see footnotes below).

No. 28 of 1970

An Ordinance relating to Legal Practitioners.

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Legal Practitioners Ordinance* 1970.* 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 1-6).
 - Part II.—The Law Society (Section 7).
 - Part III.—The Admission Board (Sections 8-10).
 - Part IV.—Admission to Practise (Sections 11-20).
 - Part V.—Practising Certificates (Sections 21-33).
 - Part VI.—Articles of Clerkship (Sections 34-42).
 - Part VII.—Discipline.
 - Division 1.—The Disciplinary Board (Sections 43-45).
 - Division 2.—Inquiries by the Disciplinary Board (Sections 46-59).
 - Division 3.—Proceedings before the Court (Sections 60-64).
 - Division 4.—Professional Misconduct before commencement of this Ordinance (Section 65).
 - Part VIII.—Trust Moneys and Trust Accounts.
 - Division 1.—Preliminary (Sections 66-67).
 - Division 2.—Trust Moneys (Section 68).
 - Division 3.—Trust Bank Accounts (Sections 69-76).
 - Division 4.—Solicitors' Records (Sections 77-79).
 - Division 5.—Audit (Sections 80-87).
 - Division 6.—Examination of Solicitors' Records (Sections 88-90).
 - Division 7.—Deposits with the Law Society (Sections 91-96).
 - Part IX.—The Fidelity Fund (Sections 97-114).
 - Part X.—Appointment of Receivers (Sections 115-131).

* Made on 8 August 1970; notified in the *Commonwealth Gazette* on 13 August 1970; disallowed in part (viz., sections 16 (3.), 17, 20, 46, 48 (2.), 49 (1.), 54 (3.), 54 (4.), 54 (7.), 55, 58 (2.), 61 (2.), 62 (3.), 63, 64 (2.) and 64 (3.)) by the Senate on 29 October 1970; repealed by the *Legal Practitioners Ordinance* (No. 2) 1970 (No. 43 of 1970).

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

Part XI.—Costs (Sections 132-144).

Part XII.—Offences by Unqualified Persons (Sections 145-148).

Part XIII.—Transitional Provisions (Sections 149-150).

Part XIV.—Miscellaneous (Sections 151-157).

Legal Practitioners Act to cease to be in force.

5. The *Legal Practitioners Act*, 1898 of the State of New South Wales shall cease to be in force in the Territory.

Definitions.

6. In this Ordinance, unless the contrary intention appears—

“barrister and solicitor” means a person whose name is on the Roll of Barristers and Solicitors kept in pursuance of this Ordinance;

“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 Barristers and Solicitors Admission Board of the Australian Capital Territory;

“the Bar Association” means the Australian Capital Territory Bar Association;

“the Court” means the Supreme Court;

“the Disciplinary Board” means the Barristers and Solicitors Disciplinary Board of the Australian Capital Territory;

“the Fidelity Fund” means the Solicitors Fidelity Fund established by section 98 of this Ordinance;

“the Judge” means the Judge appointed under sub-section (1.) of section 7 of the *Australian Capital Territory Supreme Court Act 1933-1969*;

“the Law Society” means The Law Society of the Australian Capital Territory as constituted by section 7 of this Ordinance;

“the Registrar” means the Registrar of the Supreme Court;

“trust moneys” means moneys that are, by virtue of section 68 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.

Incorporation of Law Society.

7.—(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”.

(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 takes 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 the amendment—on the day so specified; and
- (b) in any other case—on the day on which the Governor-General approves the amendment.

(8.) Any property held, immediately before the commencement of this Ordinance, 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 thirtieth day of June, 1971, unless his name is on the Roll of Barristers and Solicitors.

(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, while he holds a practising certificate, liable to pay to the Society any annual subscription to the Society's funds.

PART III.—THE ADMISSION BOARD.

8.—(1.) There shall be a Barristers and Solicitors Admission Board of the Australian Capital Territory consisting of the Judge and four members, being barristers and solicitors, appointed by the Judge.

Barristers and
Solicitors
Admission
Board.

(2.) Subject to this section and the next succeeding section, a member of the Admission Board other than the Judge—

- (a) holds office 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.

(3.) 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-one.

(4.) In the event of a member of the Admission Board ceasing to hold office before the expiration of his term of office, the Judge may appoint a barrister and solicitor to hold the vacant office for the balance of that term.

(5.) The Attorney-General may appoint a person to be the Secretary to the Admission Board.

Vacation of
office of
members of
Admission
Board.

9.—(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;
- (b) ceases to be a barrister and solicitor; or
- (c) 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.

10.—(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 preside at that meeting.

(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.

Admission of
existing
Territory
practitioners.

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

- (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* 1903-1969; 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 has not been cancelled,

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

12.—(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 1903-1969*; 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 of 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 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 in another Territory is not suspended or has not been cancelled,

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

13.—(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 has not been cancelled; and
- (b) is a British subject,

Admission of
overseas
practitioners.

is entitled to apply to the Court to be admitted to practise as a barrister and 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 has not been cancelled,

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

Admission as
a barrister and
solicitor.

14.—(1.) For the purposes of this section, a person has the educational qualifications prescribed for admission as a barrister and solicitor if—

- (a) he has been admitted to the degree of Bachelor of Laws at an Australian university;
- (b) he has received from the Barristers Admission Board of New South Wales, the Solicitors Admission Board of New South Wales, the Council of Legal Education of Victoria, the Barristers Admission Board of Queensland, the Solicitors Admission Board of Queensland or the Board of Examiners constituted by the *Legal Practitioners Act 1959* of the State of Tasmania a certificate issued by that Board that he has successfully completed the course of study conducted by that Board; or
- (c) he has been awarded the Final Certificate of Law by the University of Adelaide.

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

- (a) he has the educational qualifications prescribed for admission as a barrister and solicitor;
- (b) he has—
 - (i) rendered satisfactory service under articles of clerkship entered into by him in accordance with this Ordinance for the period that those articles require him to render service; or
 - (ii) completed, after obtaining the prescribed educational qualifications for admission as a barrister and solicitor, a course of legal education of not less than six months duration prescribed for the purposes of this sub-paragraph; and
- (c) he is a British subject.

(3.) A person shall be deemed not to have completed a course of legal education referred to in sub-paragraph (ii) of paragraph (b) of 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.

(4.) If, on an application under sub-section (2.) 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 of the Court.

(5.) 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 sub-paragraph (i) or (ii) of paragraph (b) of sub-section (2.) of this section, the Court may, if it is of the opinion that, notwithstanding the failure of the applicant to satisfy that requirement, special circumstances exist that justify the making of an order 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 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 might 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 Barristers and Solicitors.

Roll of Barristers and Solicitors.

(2.) The Roll of Barristers and Solicitors shall, in respect of each person whose name is on the Roll, contain the following particulars:—

- (a) the date on which the person was admitted to practise as a barrister and solicitor of the Court;
- (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 admitted to practise as a barrister and solicitor of the Court.

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

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

Law Society may object to admission.

18. A person shall, upon being admitted to practise as a barrister and solicitor of the Court, 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 form in the Schedule to this Ordinance.

Oaths or affirmations to be made before admission.

19. A person who has been admitted to practise shall not commence to practise until he has signed the Roll of Barristers and Solicitors.

Signature on Roll.

20. Subject to this Ordinance, a person whose name is on the Roll of Barristers and Solicitors—

Right to practise.

(a) is entitled to practise in the Territory—

- (i) as a barrister and solicitor;
- (ii) as a barrister; or
- (iii) as a solicitor; and

(b) has the right of audience in any court of the Territory.

PART V.—PRACTISING CERTIFICATES.

Certain practitioners to hold practising certificates.

21.—(1.) A barrister and solicitor shall not practise in the Territory as a solicitor on his own account or in partnership with another barrister and solicitor unless he holds, or is, in pursuance of section 28 of this Ordinance, to be deemed to hold a current unrestricted practising certificate.

Penalty: Five 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 barrister and solicitor shall not be employed in the Territory by another barrister and solicitor unless the first-mentioned barrister and solicitor holds a current practising certificate.

(4.) Where a person is employed in contravention of the last preceding sub-section, the employer and the employee are each guilty of an offence against this sub-section.

(5.) The penalty for an offence against the last preceding sub-section is a fine not exceeding Five hundred dollars.

(6.) A barrister and solicitor is not entitled to recover any costs or disbursements in respect of any act of a professional nature done by him at a time at which he was not the holder of a current unrestricted practising certificate.

Issue of practising certificates.

22.—(1.) An application for the issue of a practising certificate may be made only by a person whose name is on the Roll of Barristers and Solicitors, 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 practices, 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 fee and the contribution and levy (if any) referred to in section 32 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.

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

Limitations on issue of unrestricted practising certificates.

- (a) he 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 sub-paragraph (ii) of paragraph (b) of sub-section (2.) of section 14 of this Ordinance or for the purposes of this paragraph, he 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 barrister and solicitor if it is satisfied—

- (a) that he 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; or
 - (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; and
- (b) that he 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 1903-1969*; 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.

Practising certificates not to be issued unless certain examinations taken.

24. An unrestricted practising certificate shall not be issued to a barrister and solicitor (not being a person referred to in sub-section (3.) of the last preceding section) unless he has satisfied the Law Society by passing examinations or otherwise that he has an adequate knowledge of accounts and legal ethics.

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

25.—(1.) The Council of the Law Society shall not issue an unrestricted practising certificate to a person, and shall cancel an unrestricted practising certificate issued to a person, if—

- (a) the person is undergoing imprisonment;
- (b) the person fails to comply with sub-section (4.) of section 83 of this Ordinance or, if section 85 is applicable to him, with that section;
- (c) if a report of an audit under Division 5 of Part VIII. or an examination under Division 6 of that Part discloses a deficiency in the trust moneys held by the solicitor, except where the deficiency was excusable and was made good before the date of the report; or
- (d) the person fails to pay a fine imposed on him, or any costs, fees and expenses ordered to be paid by him, under section 54 or 64 of this Ordinance.

(2.) The Council of the Law Society shall not issue a restricted practising certificate to a person, and shall cancel a restricted practising certificate issued to a person, if—

- (a) that person is undergoing imprisonment; or
- (b) that person fails to pay a fine imposed on him, or any costs, fees or expenses ordered to be paid by him, under section 54 or 64 of this Ordinance.

(3.) 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.

26.—(1.) Where a barrister and solicitor who holds an unrestricted practising certificate becomes bankrupt, the practising certificate held by that barrister and solicitor 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 bankrupt.

27.—(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.

Court may direct issue of certificate or revoke cancellation.

(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 has, in an order under the last preceding sub-section, specified terms and conditions to which the revocation is subject, the person to whose practising certificate the order relates is guilty of professional misconduct if he fails to comply with those terms and conditions.

(7.) 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.

28. 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.

29.—(1.) A practising certificate takes effect on 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 person is removed from the Roll of Barristers and Solicitors, a practising certificate held by that person is, by force of this section, cancelled.

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

Fees for practising certificates.

30.—(1.) The fee payable on an application for the issue of an unrestricted practising certificate or a restricted practising certificate is that fixed by the Council of the Law Society as the fee payable for that type of practising certificate.

(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 payment of the fee may be 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.

Register of holders of practising certificates.

31. The Law Society shall keep a register of the names of all persons holding current unrestricted practising certificates and a register of the names of all persons holding current restricted practising certificates.

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

32. Subject to sub-section (2.) of section 30 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—

- (a) the fee payable in respect of the application;
- (b) any contribution 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 113 of this Ordinance.

Cancelled certificate to be delivered to Law Society.

33.—(1.) Subject to the next succeeding sub-section, a barrister and solicitor who is given notice of the cancellation of his practising certificate shall forthwith deliver the certificate to the Law Society.

Penalty: Five hundred dollars.

(2.) Where—

- (a) a practising certificate has been cancelled;
- (b) an order has been made under section 28 of this Ordinance; and
- (c) on an application under section 27 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: Five hundred dollars.

(3.) Where the cancellation of a practising certificate is revoked before the expiry of the certificate under sub-section (2.) of section 29 of this Ordinance, the Council of the Law Society shall forthwith cause the certificate to be returned to the barrister and solicitor concerned.

PART VI.—ARTICLES OF CLERKSHIP.

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

Entry into articles of clerkship.

- (a) a barrister and solicitor who holds an unrestricted practising certificate; 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 person with whom the applicant proposes to enter into articles of clerkship is a person referred to in sub-section (1.) of this section.

(4.) The approval of the Admission Board under this section shall not be given unless—

- (a) the applicant has the educational qualifications specified in sub-section (1.) of section 14 of this ordinance for admission as a barrister and solicitor or has become eligible for admission to the degree of Bachelor of Laws at an Australian university; or
- (b) the applicant is undertaking the course of study conducted by the Barristers Admission Board of New South Wales or the Solicitors Admission Board of New South Wales.

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

Documents to accompany application for approval.

- (a) a certificate or other document showing that the applicant satisfies the requirements of sub-section (4.) of the last preceding section; and
- (b) certificates with respect to the fame and character of the applicant given by not less than two persons.

(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.

36. The Admission Board may, in any case in which it considers the circumstances so warrant, require a further certificate as to the fame and character of an applicant for the Board's approval under section 34 of this Ordinance.

Period for which articles are to be entered into.

37.—(1.) Articles of clerkship shall, in a case where the person entering into the articles is a person referred to in paragraph (a) of sub-section (4.) of section 34 of this Ordinance, contain a provision requiring the person to undertake to render service in accordance with those articles for a period of twelve months.

(2.) Articles of clerkship shall, in a case where the person entering into the articles is a person referred to in paragraph (b) of sub-section (4.) of section 34 of this Ordinance, contain a provision requiring the person to undertake to render service in accordance with those articles for a period of three years.

(3.) Where—

- (a) a person has entered into articles of clerkship containing a provision requiring him to render service in accordance with those articles for a period of three years;
- (b) the person has, more than twelve months before the expiration of that period of three years, obtained the educational qualifications specified in sub-section (1.) of section 14 of this Ordinance for admission as a barrister and solicitor; and
- (c) the person has rendered service under those articles for the period of twelve months commencing on the day on which he obtained those educational qualifications,

the provision requiring that person to render service in accordance with those articles shall be read as if it were a provision requiring him to render service for the period ending on the date on which that last-mentioned period of twelve months ends.

Copy of articles to be lodged with Admission Board.

38. 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.

39.—(1.) Articles of clerkship may, by consent of the parties and with the approval of the Admission Board, be assigned to a person referred to in sub-section (1.) of section 34 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.

40.—(1.) Where—

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

New articles where legal practitioner dies, &c.

the person formerly articed may, with the approval of the Admission Board, enter into articles of clerkship with another person referred to in sub-section (1.) of section 34 of this Ordinance.

(2.) Articles of clerkship entered into in pursuance of the last preceding sub-section shall contain a provision requiring the person to undertake to render service in accordance with those articles for a period equal to the unexpired period for which he was required to serve under the original articles.

(3.) A person who enters into articles of clerkship in pursuance of sub-section (1.) of this 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.

41. A barrister and solicitor, not being the Crown Solicitor for the Commonwealth or the Deputy Crown Solicitor for the Australian Capital Territory, shall not have more than two persons article to him as clerks at the same time.

Solicitor not to have more than two articed clerks.

42.—(1.) A person to whom a person has been articed as a clerk shall, at his request, give to him a certificate stating whether, in the opinion of the person giving the certificate, the service of the person as an articed 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 person 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, he shall state in the certificate the reasons why the service has not been satisfactory throughout the whole of that period.

PART VII.—DISCIPLINE.

Division 1.—The Disciplinary Board.

43.—(1.) There shall be a body to be known as the Barristers and Solicitors Disciplinary Board of the Australian Capital Territory.

Disciplinary Board.

(2.) The Disciplinary Board shall consist of seven members appointed by the Judge.

(3.) A person is not eligible for appointment as a member of the Disciplinary Board in pursuance of the last preceding sub-section or of sub-section (6.) of this section unless—

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

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

(5.) The first members of the Disciplinary Board 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-two.

(6.) In the event of a member of the Disciplinary Board 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 of the Disciplinary Board shall elect one of their members to be Chairman of the Board.

(8.) The Attorney-General may appoint a person to be the Secretary to the Disciplinary Board.

Vacation of
office of
member of
Disciplinary
Board.

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

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

(a) becomes bankrupt;

(b) ceases to be a barrister and solicitor; or

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

the Court may remove him from office.

Meetings of
the Disciplinary
Board.

45.—(1.) At a meeting of the Disciplinary Board, five members constitute a quorum.

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

(3.) In the absence of the Chairman from a meeting of the Disciplinary Board, 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 read as a reference to the person so elected.

Division 2.—Inquiries by the Disciplinary Board.

Complaints
concerning
the conduct of
certain legal
practitioners.

46.—(1.) The Council of the Law Society or the Council of the Bar Association may make a complaint in writing to the Disciplinary Board regarding the professional conduct of a barrister and solicitor.

(2.) Where the Council of the Law Society or the Council of the Bar Association makes a complaint to the Disciplinary Board, it shall forward to the Board—

(a) any documents that it has relating to the complaint; and

(b) particulars of any statement relating to the complaint made to it by the barrister and solicitor concerned.

47.—(1.) Where a complaint has been made to the Disciplinary Board under the last preceding section, the Board may, by resolution passed at a meeting of the Board, determine that the powers, duties and functions of the Board under this Division in relation to that complaint be exercised by a committee of the Board constituted by three members of the Board whose names are specified in the resolution.

Disciplinary Board may appoint committee to act on its behalf.

(2.) If the Chairman of the Disciplinary Board is appointed to be a member of such a committee, he shall be the chairman of the committee, and, if the Chairman of the Board is not appointed to be a member of the committee, the Board shall, by the resolution referred to in the last preceding sub-section, appoint one of the members to be the chairman of the committee.

(3.) Where the Disciplinary Board has determined that a complaint made to it be dealt with by a committee of the Board—

- (a) the committee so appointed has and may exercise, in relation to that complaint, all the powers, duties and functions of the Disciplinary Board under this Division;
- (b) the chairman of the committee has and may exercise, in relation to that complaint, all the powers, duties and functions under this Division of the Chairman of the Disciplinary Board;
- (c) the exercise of a power or the performance of a duty or function by the committee so appointed shall, for the purposes of this Division and of the next succeeding Division, be deemed to be the exercise of the power or the performance of the function or duty by the Disciplinary Board; and
- (d) the exercise of a power or the performance of a duty or function by the chairman of the committee so appointed shall, for the purposes of this Division, be deemed to be the exercise of the power or the performance of the function or duty by the Chairman of the Disciplinary Board.

48.—(1.) The Disciplinary Board shall inquire into a complaint made to it under section 46 of this Ordinance.

Inquiry by the Disciplinary Board.

(2.) At an inquiry under this Division, the barrister and solicitor to whose conduct the inquiry relates and, if the complaint in relation to the barrister and solicitor was made by the Law Society, the Law Society or, if the complaint was made by the Bar Association, the Bar Association are each entitled to be heard and may examine witnesses and address the Disciplinary Board.

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

(4.) The regulations may make provision for or in relation to the procedure at inquiries under this Division but, except as provided by the regulations, the procedure at an inquiry under this Division is within the discretion of the Disciplinary Board.

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

49.—(1.) Where a complaint is made to the Disciplinary Board, the Disciplinary Board shall fix a time and place for the commencements of its inquiry and shall give notice of the time and place so fixed to—

- (a) the Law Society or the Bar Association, as the case requires; and
- (b) the barrister and solicitor to whose behaviour the inquiry relates.

(2.) An inquiry under this Division shall not be open to the public.

Disciplinary Board may summon witnesses, &c.

50.—(1.) The Chairman of the Disciplinary Board 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.

(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.

51.—(1.) The Chairman of the Disciplinary Board 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.

Record of proceedings at inquiry.

52.—(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;
- (b) if the Disciplinary Board so directs, by means of shorthand or any similar means; or
- (c) if the Disciplinary Board so directs, partly by means of sound-recording apparatus and partly by means of shorthand or any similar means.

(2.) Where the Disciplinary Board 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 Board.

(3.) The Secretary to the Disciplinary Board shall have the custody of any record of evidence made in accordance with either of the last two preceding sub-sections.

(4.) The Secretary to the Disciplinary Board 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 Board 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 Board 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 Board 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 Board; and
- (b) the sound-recording contains a record of comments that purport—
 - (i) to have been made during the course of 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, a voice 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 voice 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 Board 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, furnished to that person a copy of a transcript of that record.

(12.) Where a person makes application to the Secretary to the Disciplinary Board 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 Board 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 Board that he has good reason for so applying.

(14.) The fees payable on applications under this section are as prescribed.

(15.) Fees paid to the Secretary to the Disciplinary Board under this section shall be paid by him to the Commonwealth.

53.—(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 Board or by, or on behalf of, a person entitled to be represented at the inquiry.

Penalty: Fifty dollars.

Refusal to
be sworn or
to give
evidence.

(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.

54.—(1.) Where, after an inquiry under this Division, the Disciplinary Board finds that a barrister and solicitor has been guilty of professional misconduct, it may, by order—

Powers of
Disciplinary
Board.

- (a) reprimand the barrister and solicitor; or
- (b) impose on the barrister and solicitor a fine not exceeding Five hundred dollars.

(2.) Where the Disciplinary Board makes an order referred to in the last preceding sub-section, it shall order the barrister and solicitor to pay to the Commonwealth any fees and expenses paid or payable by the Commonwealth in pursuance of sub-section (2.) of section 58 of this Ordinance.

(3.) Where the Disciplinary Board makes an order referred to in sub-section (1.) of this section, the Board may also order that the costs, or a portion of the costs, of the Law Society or of the Bar Association be paid by the barrister and solicitor.

(4.) For the purposes of the last preceding sub-section, costs—

- (a) shall include fees and expenses payable by the Law Society or the Bar Association in accordance with sub-section (2.) of section 58 of this Ordinance; and
- (b) shall be as assessed by the Disciplinary Board or, if the Disciplinary Board directs that the costs be taxed by the Registrar, as assessed by the Registrar on the taxation.

(5.) An order under this section shall be in writing under the hand of the Chairman of the Disciplinary Board.

(6.) Where an order is made under paragraph (b) of sub-section (1.) of this section, the amount of the fine and the amount of any fees and expenses ordered to be paid to the Commonwealth are payable to the Registrar and are recoverable as a debt due by the barrister and solicitor to the Commonwealth.

(7.) An amount payable in pursuance of sub-section (3.) of this section by a barrister and solicitor to the Law Society or the Bar Association is recoverable as a debt due by the barrister and solicitor to the Law Society or the Bar Association, respectively.

(8.) A document certified by the Chairman of the Disciplinary Board by writing under his hand to be a true copy of an order under this section is evidence of the order.

(9.) For the purpose of the last preceding sub-section, a document purporting to be a document referred to in that sub-section shall, in the absence of evidence to the contrary, be deemed to be such a document.

Disciplinary Board to prepare report.

55. After the completion of the hearing of an inquiry under this Division, the Board shall—

- (a) prepare a report setting out its decision and the reasons for its decision; and
- (b) when it announces its decision, furnish a copy of its report to the Law Society, to the Bar Association and to the barrister and solicitor concerned.

In serious cases, Disciplinary Board may refer matter to the Court.

56.—(1.) If, at any time during an inquiry under this Division, the Disciplinary Board is of the opinion that the evidence given before the Board discloses reasonable grounds for believing that the barrister and solicitor 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 Board 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 Board provides reasonable grounds for believing that the barrister and solicitor to whom the inquiry relates has been guilty of that misconduct.

(2.) Where the Disciplinary Board 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 Board and such of the books and documents produced to the Board as are relevant to the misconduct; and
- (b) deliver a copy of its report to the barrister and solicitor to whom the report relates, to the Law Society and to the Bar Association.

Protection of members of Disciplinary Board and of persons and witnesses appearing before it.

57.—(1.) An action or proceeding, civil or criminal, does not lie against a member of the Disciplinary Board 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 unless it is shown that the member of the Disciplinary Board by whom the act or thing was done was actuated by ill-will to the person affected or by any other improper motive.

(3.) A barrister and solicitor 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 barrister and solicitor has in appearing for a party in proceedings in the Supreme Court.

(4.) 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.

58.—(1.) A person who is summoned to attend for the purpose of giving evidence at an inquiry under this Division or gives evidence at an

inquiry is entitled to receive such fees and travelling expenses in accordance with the scale in the Second Schedule to the Public Works Committee Regulations as in force for the time being under the *Public Works Committee Act 1969* as the Chairman of the Disciplinary Board directs.

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

- (a) by the Law Society if the person attended and gave evidence by reason of its request;
- (b) by the Bar Association if the person attended and gave evidence by reason of its request;
- (c) by the barrister and solicitor to whom the inquiry relates if the person attended and gave evidence by reason of his request; or
- (d) by the Commonwealth if the person attended and gave evidence at the inquiry at the instance of the Disciplinary Board.

59. The Disciplinary Board 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.

Disciplinary Board may inspect books, &c.

Division 3.—Proceedings before the Court.

60.—(1.) Where the Disciplinary Board has made an order under sub-section (1.) of section 54 of this Ordinance, the barrister and solicitor found guilty of professional misconduct may, within twenty-one days after the date on which the order was made, appeal to the Court from the decision of the Board on the ground that he was not guilty of professional misconduct or, on the ground that the fine imposed on him was too severe or on both those grounds.

Appeal against decision of Disciplinary Board

(2.) An appeal under this section shall be by way of re-hearing.

(3.) On the hearing of an appeal, the Court shall, if satisfied that the barrister and solicitor has been guilty of professional misconduct, affirm the finding of the Board that the barrister and solicitor has been guilty of professional misconduct but, if not so satisfied, shall set aside the decision of the Disciplinary Board.

61.—(1.) The Court may, of its own motion or on application under this section, by order summon a barrister and solicitor 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.

Summons to show cause.

(2.) The Attorney-General, the Law Society or the Bar Association may make application to the Court for an order under this section directed to a barrister and solicitor.

(3.) An order under this section shall specify the grounds upon which it is alleged that the barrister and solicitor is guilty of professional misconduct.

Proceedings
before Court
after report
by Disciplinary
Board.

62.—(1.) Where the Disciplinary Board delivers a report to the Registrar in accordance with sub-section (2.) of section 56 of this Ordinance, the Court may by order summon the barrister and solicitor 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.

(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 Board in accordance with sub-section (1.) of section 56 of this Ordinance.

(3.) Where the Court makes an order under sub-section (1.) of this section, the Court may direct that the Law Society or the Bar Association be a party to the proceedings before the Court and those proceedings shall be conducted as if the order made under that sub-section had been made on the application of the Law Society or the Bar Association, as the case requires.

Evidence
before
Disciplinary
Board may be
read before
Court.

63. On an appeal under section 60 of this Ordinance or in proceedings under the last preceding section, evidence given before the Disciplinary Board may, if the Law Society or the Bar Association, as the case may be, and the barrister and solicitor consent or the Court so directs, be read as evidence on the appeal or in the proceedings before the Court.

Powers of the
Court.

64.—(1.) Where, on an appeal under section 60, or in proceedings under sections 61 or 62, of this Ordinance, the Court is satisfied that a barrister and solicitor has been guilty of professional misconduct, the Court may—

- (a) reprimand the barrister and solicitor;
- (b) impose on the barrister and solicitor a fine not exceeding One thousand dollars; †
- (c) suspend the right of the barrister and solicitor to practise in the Territory for such period as the Court thinks proper; or
- (d) order that the name of the barrister and solicitor be removed from the Roll of Barristers and Solicitors.

(2.) Where the Court, on an appeal under section 60, or in proceedings under section 61 or 62, of this Ordinance, the Court is satisfied that a barrister and solicitor has been guilty of professional misconduct, the Court may order the barrister and solicitor to pay the costs incurred by the Attorney-General, the Law Society or the Bar Association in connexion with the appeal or those proceedings, and may, in the case of an appeal or in a case of proceedings under section 62 of this Ordinance, make such order as the Court thinks fit in relation to any order for the payment of costs (including fees and expenses) made by the Disciplinary Board under section 54 of this Ordinance.

(3.) Costs ordered to be paid under the last preceding sub-section are recoverable as a debt due by the barrister and solicitor—

- (a) to the Commonwealth if the costs were costs incurred by the Attorney-General;

- (b) to the Law Society if the costs were costs incurred by it; or
- (c) to the Bar Association if the costs were incurred by it.

(4.) A fine imposed on a barrister and solicitor under this section by the Court is payable to the Registrar and, if not paid, is recoverable as a debt due by the barrister and solicitor to the Commonwealth.

(5.) Where the Court—

- (a) imposes a fine on a barrister and solicitor; or
- (b) makes an order for the payment by a barrister and solicitor of costs,

the Court may, if it thinks fit, suspend the right of the barrister and solicitor to practise in the Territory while the fine or costs remain unpaid.

Division 4.—Professional Misconduct before commencement of this Ordinance.

65. This Part applies to and in relation to professional misconduct by a person admitted to practise as a barrister and solicitor under this Ordinance notwithstanding that the misconduct occurred before the commencement of this Ordinance if the misconduct was conduct of a kind in respect of which the Court, if this Ordinance had not been made, would have been empowered to make an order under sub-section (3.) of section 55D of the *Judiciary Act 1903-1969*.

Misconduct before the commencement of the Ordinance.

PART VIII.—TRUST MONEYS AND TRUST ACCOUNTS.

Division 1.—Preliminary.

66. In this Part, unless the contrary intention appears—

- “solicitor” means a barrister and solicitor who practices, either on his own account or as a member of a partnership, as a solicitor or as both a barrister and solicitor;
- “trust bank account” means a general trust bank account and includes a special trust bank account;
- “year” means a period of twelve months commencing on the first day of April.

Definitions.

67.—(1.) A solicitor who, without reasonable cause, contravenes, fails to comply with, or fails to carry out any obligation imposed on him by, a provision of this Part is guilty of professional misconduct.

Non-compliance with this Part to constitute professional misconduct.

(2.) A provision of Division 4, Division 5 or Division 7 of this Part that requires a solicitor to do, or requires a solicitor to refrain from doing, an act or to carry out an obligation 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 requirement to do, or as requiring each of those solicitors to refrain from doing, the act or to carry out the obligation, as the case may be, and, if there is a contravention of or a failure to comply with such a provision or to carry out the obligation by the members of the partnership or by one of those members, each of the members of the partnership is guilty of professional misconduct unless he proves that the contravention of, or

the failure to comply with, the provision or to carry out the obligation took place without his knowledge and that he took reasonable steps to prevent the contravention of, or the failure to comply with, the provision or to carry out the obligation.

Division 2.—Trust Moneys.

Moneys received by solicitor to be held in trust.

68.—(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.

(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 become due.

(3.) Sub-section (1.) of this section does not apply to or in relation to a cheque, bank cheque, bank draft or money order made payable to or to the order of a specified person, or to a specified person or bearer, (not being a cheque, bank cheque, bank draft or money order in which the payee is the solicitor, a partner of the solicitor or his firm) received from or on behalf of a client with instructions, express or implied, that the cheque is to be delivered to the person to whom it is payable.

(4.) 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.

General trust accounts.

69. A solicitor shall, for the purposes of his practice, open and maintain a trust bank account at a bank in the Territory under a title which includes the name or style under which the solicitor practices and words that indicate that it is the general trust bank account of the solicitor.

Payment into trust bank account.

70. Subject to the next succeeding section, a solicitor shall cause all trust moneys 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 the general trust bank account maintained by him or, if the solicitor maintains two or more general trust bank accounts, into one of those accounts, not later than the next day on which the bank at which the account is maintained is open for business after the day on which the moneys is received by the solicitor.

Special trust accounts.

71.—(1.) If a client of a solicitor has given instructions to the solicitor that all trust moneys or specified trust moneys received or to be received by the solicitor in connexion with his practice in the Territory from, or on behalf of, the client are to be paid into a special trust bank account maintained or to be maintained by the solicitor for the client, the solicitor—

(a) if such an account is already maintained by him for the client, shall pay trust moneys to which the instructions relate into that account; or

- (b) if such an account is not already maintained by him for the client, shall open such an account and shall pay trust moneys to which the instructions relate into the account so opened,

not later than the next day on which the bank at which the account is maintained or has been opened is open for business after the day on which the trust moneys are received by the solicitor.

(2.) The title under which a trust bank account referred to in the last preceding section is maintained shall, after the expiry of one month after the commencement of this Ordinance, include the name or style under which the solicitor practices, the words "trust account" and the name of the client for whom the account is maintained.

72. Where—

- (a) a solicitor receives from, or on behalf of, a client trust moneys that exceed One thousand dollars or that, together with other trust moneys held by him for or on behalf of that client, exceed One thousand dollars;
- (b) at the time when those trust moneys are received, the solicitor has reason to believe that, having regard to the disbursements likely to be made in accordance with the directions of the client out of those trust moneys in the period of three months next ensuing, the amount of the trust moneys held on behalf of the client by the solicitor at the end of that period will be not less than One thousand dollars,

Duties of solicitor in relation to amounts of trust moneys exceeding \$1,000 likely to be held for more than three months.

the solicitor shall request the client to furnish him with instructions whether the client desires that those trust moneys or any part of those trust moneys be paid by the solicitor into a special trust bank account maintained or to be maintained by the solicitor for the client or be otherwise invested.

73.—(1.) A solicitor shall not pay money out of a trust bank account maintained by him for the purposes of his practice except by means of a cheque that is payable to, or to the order of, a specified person, or to a specified person or bearer, and is crossed and marked "Not Negotiable".

Payments out of trust bank accounts.

(2.) Subject to the next succeeding sub-section and to Division 7 of this Part, a solicitor shall not withdraw any money from a trust bank account except for the purposes of payment to, or disbursement according to the direction of, the person for whom the money is, by virtue of section 68 of this Ordinance, to be deemed to be held in trust.

(3.) The last preceding sub-section does not prevent a solicitor enforcing any lien held by him in respect of, or any other lawful claim that the solicitor has against, moneys standing to the credit of a trust bank account maintained by the solicitor for the purposes of this Part.

74.—(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 in writing of the names and addresses of the banks at which trust bank accounts are maintained

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

by the solicitor in connexion with his practice in the Territory and of the titles under which those accounts are maintained.

(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 in writing of the name and address of the bank at which the account is maintained and of the title under which the account is maintained.

(3.) If a change is made 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 maintained shall, within seven days after the change, inform the Law Society in writing of the title as so changed.

Protection of
trust moneys.

75. Moneys standing to the credit of a trust bank account maintained by a solicitor are not available for the payment of debts of the solicitor by whom it is maintained and the moneys are not liable to be attached or taken in execution for the purpose of satisfying a judgment against the solicitor.

Provision
applicable to
banks.

76.—(1.) A bank at which a trust bank account is maintained 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 paid out of the account.

(2.) A bank at which a trust bank account is maintained 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.

Accounting
records.

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

(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 a period of seven years.

(3.) It is 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 of those moneys.

78.—(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.

Receipts for trust moneys.

(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.

79.—(1.) Within fourteen days after the end of the period of three months ending on the last day of June, September or 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—

Quarterly statements of trust moneys.

- (a) the names of each person 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 and not paid into a general trust bank account maintained by the solicitor in accordance with section 70 of this Ordinance; and
- (d) the amount standing to the credit of each 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.

Division 5.—Audit.

80. 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 held in that year.

Audit of trust accounts.

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

Qualifications of auditors.

- (a) he is not a registered company auditor within the meaning of the *Companies Ordinance 1962-1969*;
- (b) he is an employee of the solicitor by whom the records are kept;
- (c) he is the spouse of the solicitor by whom the records are kept; or
- (d) he is an employee of another solicitor.

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

82.—(1.) An auditor may, for the purposes of an audit under this Division, require a solicitor—

- (a) to produce forthwith to the auditor the books, papers, accounts, registers of receipts, securities and documents in his possession that relate to trust moneys received or paid by the solicitor during the period to which the audit relates; and
- (b) to furnish to the auditor such information as the auditor requires and to answer all questions put to him by the auditor, in relation to—
 - (i) books and other documents referred to in the last preceding paragraph; and
 - (ii) all transactions by the solicitor in the course of his practice in the period to which the audit relates; and
- (c) to give to the auditor such authorities as are necessary to enable the auditor to inspect and make copies of documents or records kept at the bank at which the solicitor maintains a trust bank account in accordance with this Part and relating to that trust bank account.

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

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

Auditor to
report.

83.—(1.) For the purposes of this Division, an auditor is only required to examine such of the accounting and other records of the solicitor relating to trust moneys as he considers necessary for the purpose of ascertaining whether the preceding Divisions of this Part have been complied with.

(2.) The auditor shall prepare a report in writing of the audit and shall state in the report—

- (a) whether, in his opinion, the solicitor has kept accounting and other records of the kind that he is required by this Part to keep;
- (b) whether the solicitor has complied, within a reasonable time, with all requirements made by the auditor, being requirements that the auditor is authorized by this Part to make; 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.

(3.) The auditor shall, as soon as practicable after the preparation of the report deliver the report in duplicate to the solicitor to whose records the report relates.

(4.) A solicitor shall, within seven days after a report is delivered to him in accordance with the last preceding sub-section, send the duplicate of the report to the Law Society.

84. If the auditor engaged by a solicitor to examine and report on the accounting and other records of the solicitor relating to trust moneys considers that the records of the solicitor have not been kept in such a manner as to enable him to audit them conveniently and properly or the auditor has reason to believe—

Interim
report by
auditor.

- (a) that there is any loss or deficiency of trust moneys;
- (b) that there has been any failure to pay or account for trust moneys; or
- (c) that there has been a failure to comply with any provision of this Part,

the auditor shall, as soon as practicable, report in writing accordingly to the solicitor and shall, immediately after furnishing the report to the solicitor, forward a copy of the report to the Law Society.

Penalty: Two hundred and fifty dollars.

85. Where—

- (a) a solicitor applies for an unrestricted practising certificate;
- (b) the provisions of this Division apply to that solicitor in respect of the period of twelve months that ended on the thirty-first day of March immediately preceding the date of the application; and
- (c) a report under section 83 of this Ordinance has not been delivered to the solicitor,

Provisions
applicable
in case of
default by
auditor.

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 a report under the last preceding section has not been delivered to him.

86. 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.

Statutory
declaration
that no trust
moneys held.

87.—(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 Board, communicate to any person any matter which comes to his knowledge in the course of the audit.

Secrecy.

(2.) Except in connexion with an inquiry by the Disciplinary Board under this Ordinance or proceedings before a court, a member of the Council of the Law Society shall not communicate to any person,

not being a member of the Council, any matter contained in a report referred to in section 83 or 85 of this Ordinance.

Penalty: Two hundred and fifty dollars.

Division 6.—Examination of Solicitors' Records.

Appointment
of examiner.

88.—(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 by two or more solicitors practising in partnership in respect of a period specified by the Council.

(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* 1962-1969.

(3.) A person who makes 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 or not, in his opinion, the records of the solicitor have been kept in such a manner as to enable him to examine them conveniently and properly;
- (b) whether or not, in his opinion, there is any loss or deficiency of trust moneys;
- (c) whether or not, in his opinion, there has been any failure to pay or account for trust moneys;
- (d) whether or not, in his opinion, there has been any failure to comply with any provision of this Part.

(4.) The costs of an examination under this section shall be paid by the Law Society out of the Fidelity Fund.

(5.) 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 Board in relation to 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 and any amount so recovered shall be paid into the Fidelity Fund.

Production of
books, &c.

89.—(1.) For the purposes of this Division, section 82 of this Ordinance applies as if—

- (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.

90.—(1.) A person who conducts an examination under section 88 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 Board, communicate to any person any matter which comes to his knowledge in the course of the examination. Secrecy.

(2.) Except in connexion with an inquiry by the Disciplinary Board under this Ordinance or proceedings before a court, a member of the Council of the Law Society shall not communicate to any person, not being a member of the Council, any matter contained in a report referred to in section 88 of this Ordinance.

Penalty: Two hundred and fifty dollars.

Division 7.—Deposits with the Law Society.

91.—(1.) In this Division, a reference to the notional amount standing to the credit of the general 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. Interpretation.

(2.) In this Division, a reference to the notional amount standing to the credit of the general 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 general trust bank account in accordance with this Part, a reference in this Division to a general trust bank account maintained by the solicitor shall be read as a reference to the general trust bank accounts maintained by the solicitor.

(6.) Where a solicitor has—

- (a) in the period of six months immediately before the commencement of this Ordinance; or
- (b) in any year,

maintained two or more general trust bank accounts, the solicitor shall, for the purposes of this Division, be deemed to have maintained, during the period for which he maintained those general trust bank accounts, only one general trust bank account and the amount that stood, on any day during that period, to the credit of the general trust bank account that the solicitor is to be so deemed to have maintained shall be deemed, for the purposes of this Division, to be the total of the amounts that stood to the credit of the bank accounts that were in fact maintained by him on that day.

(7.) For the purposes of this Division, in ascertaining the amount standing to the credit of a general 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.

(8.) For the purposes of this Division, the amount of any trust moneys paid into the general trust bank account maintained by a solicitor and subsequently paid by the solicitor into a special trust bank account in accordance with the instructions of the client from, or on whose behalf, those moneys were received shall not be taken into account in ascertaining the lowest amount that stood to the credit of that general trust account on any day.

Solicitor to
deposit portion
of trust moneys
with Law
Society.

92.—(1.) Subject to this Division, where the notional amount standing to the credit of the general 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 general 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 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 on that day to the credit of the general trust bank account kept by that solicitor,

the solicitor is under an obligation to deposit with the Law Society, within three months after that 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.

93.—(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 necessary payments to be made out of his general trust bank account; and
- (b) the solicitor has reasonable grounds for believing that the payment is 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 on that day to the credit of the general trust bank account kept by that solicitor,

the solicitor is entitled to be repaid an amount equal to 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 general 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 amount that he has on deposit.

94.—(1.) Where—

- (a) a solicitor has not, before the expiration of a period within which he is required to discharge an obligation imposed on him by this Division, discharged that obligation; and
- (b) on the last day of that period, the moneys standing to the credit of his general trust bank account are not sufficient for the discharge of the obligation,

Obligation to deposit subject to availability of trust funds.

the period within which the solicitor is required to discharge the obligation is extended until there is standing to the credit of his general trust bank account on a subsequent quarter day occurring in the year in which the end of that period occurs an amount sufficient for the discharge of the obligation.

(2.) In the last preceding sub-section, “quarter day” means the thirtieth day of September, the thirty-first day of December or the thirty-first day of March.

95.—(1.) Where the Council of the Law Society is during a year satisfied, on an application made to it by a solicitor who is under an obligation to deposit, or has on deposit, with the Law Society moneys Variation of notional amount by the Law Society.

in accordance with this Division, that, having regard to the amount of trust moneys standing, on the date of the application, to the credit of the general trust bank account of the solicitor, it is appropriate that the notional amount standing to the credit of the general trust bank account of the solicitor on the last day of the year preceding that year should be reduced, the Council of the Law Society may determine that that notional amount be reduced to such amount as is specified by it in the determination.

(2.) Where the Law Society has made a determination referred to in the last preceding sub-section in relation to a solicitor—

- (a) this Division, in its application to and in relation to the obligations imposed on the solicitor, shall apply, during the remainder of the year in which the determination is made, as if the amount specified in the determination had been the notional amount standing to the credit of the general trust bank account of the solicitor on the last day of the preceding year; and
- (b) if, on the date on which the determination is made, the solicitor has on deposit with the Law Society moneys exceeding the amount that he would have been required to have on deposit with the Law Society if the amount specified in the determination had been the notional amount standing to the credit of the general trust bank account of the solicitor on the last day of the preceding year, the solicitor is entitled to be re-paid an amount equal to the amount of the excess.

Investment
of deposits
and Statutory
Interest
Account.

96.—(1.) 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 in the Territory.

(2.) The Law Society shall open, and shall maintain, an account or accounts at a bank in the Territory the title or each of the titles of which includes the words “ Statutory Interest Account ”.

(3.) The interest received in respect of moneys invested in accordance with sub-section (1.) of this section shall be paid into the account maintained in accordance with the last preceding sub-section.

(4.) 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 (2.) 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 that account.

(5.) The Law Society shall cause records to be kept showing particulars of all moneys deposited with it in accordance with this Division, of all interest received by it from the investment of those moneys and of all payments made by it out of those moneys, and shall cause those records to be audited annually by an auditor who is a registered company auditor within the meaning of the *Companies Ordinance 1962-1969*.

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

PART IX.—THE FIDELITY FUND.

97.—(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.

98.—(1.) A Fund is hereby established to be known as the Solicitors’ Fidelity Fund of the Australian Capital Territory. Fidelity Fund.

(2.) The Fund shall consist of—

- (a) contributions and levies paid under this Part;
- (b) income derived from the investment of moneys of the Fund;
- (c) moneys paid into the Fund out of the account maintained in accordance with sub-section (2.) of section 96 of this Ordinance;
- (d) moneys recovered by the Law Society under this Part; and
- (e) such other moneys as may lawfully be paid into the Fund.

(3.) The Law Society shall pay all moneys constituting the Fund into a bank account maintained by it at a bank in the Territory under the title of the “Solicitors’ Fidelity Fund of the Australian Capital Territory”.

(4.) The Law Society shall keep separate accounts in relation to the moneys constituting the Fund.

(5.) 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.

(6.) 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.

99. The moneys of the Fidelity Fund shall, so far as is practicable, 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*. Investment of the Fund.

100.—(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 1962-1969*. 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.

101.—(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 sections 104 and 105, sub-sections (2.), (3.) and (4.) of section 106, section 107, sub-sections (3.) and (4.) of section 109, sub-section (3.) of section 111, and section 112, of this Ordinance shall be exercised and performed by the Committee of Management.

Annual contributions to Fund.

102.—(1.) A solicitor shall, not later than each thirtieth day of June, 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 of the Law Society.

Persons who may apply for compensation.

103.—(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 less any amount which the applicant has recovered in respect of the loss.

Law Society may call for claims.

104.—(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.

105.—(1.) Subject to the next succeeding sub-section, an application for compensation under this Part shall not be accepted unless it is made within a period of six months after the applicant becomes aware

of the defalcation or within such further time as the Law Society, 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 Law Society, in its discretion and either before or after the expiration of that period, allows.

106.—(1.) An application for compensation under this Part shall be made by the delivery to the Law Society of full particulars of the claim supported by a statutory declaration.

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 Law Society 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 fact of the defalcation and the amount of 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.

107.—(1.) Subject to sub-section (4.) of the last preceding section, the Law Society shall consider each 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 so paid.

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

- (a) that the solicitor specified in the application or an employee of the solicitor has been convicted of an offence; or
- (b) that there is evidence upon which the solicitor or an employee of 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 the applicant to institute against the solicitor to whose defalcation the claim relates or any other person considered to be liable in respect of the loss arising out of the defalcation, or both, 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 so paid.

(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.

108.—(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.

109.—(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 in proportion 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 in proportion to those amounts.

110. 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.

111.—(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,

Solicitors may claim in certain cases.

a solicitor who was, at the time at which any of those defalcations was committed, a partner of the first-mentioned solicitor and 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.

(2.) Section 105 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.

112.—(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, 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 107 of this Ordinance to pay to the person.

113.—(1.) If, at any 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 sub-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.

114.—(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 the contract.

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

PART X.—APPOINTMENT OF RECEIVERS.

115.—(1.) In this Part—

“solicitor” has the same meaning as in Part VIII.;

“trust bank account” has the same meaning as in Part VIII.

(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.

Interpretation.

(3.) Without limiting its generality, the term "personal property" includes, for the purposes of this Part—

- (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.

116.—(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 committed or that an offence involving fraud or dishonesty has 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 64 of this Ordinance that the name of a solicitor be removed from the Roll of Barristers and Solicitors 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.

117.—(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 other documents relating to trust moneys 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 other 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 who 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 other 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.

118.—(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 VIII. notice of his appointment; and
- (b) forbid, except by the receiver or on the authority of the receiver, any withdrawal of moneys from the trust bank 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 VIII., 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) forbid, except by the receiver or on the authority of the receiver, any withdrawal of moneys from the trust bank account.

(3.) 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.

(4.) 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 trust bank account opened for the purpose and may operate on and otherwise deal with the account in accordance with directions given under section 125 of this Ordinance.

119.—(1.) The Court may, on application by a receiver of the trust property of a solicitor, by order direct that the solicitor, or a person to whom a requirement under paragraph (c) of sub-section (1.) of section 117 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 barrister and solicitor.

(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.

120.—(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 a 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 117 of this Ordinance, the Court may by order direct that person to deliver the trust property to the receiver.

Power of Court to order delivery of trust property to 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.

121.—(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

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

- (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 of which he has taken possession under this Part.

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

122.—(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 may, 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, order the receiver to return the property to the person making the application or to such other person as the Court directs.

Lien for costs on property held by receiver.

123.—(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,

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, by 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 or within such further time as the receiver or the Court on an application made for the purpose allows, 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.) The receiver of the trust property of a solicitor or solicitors practising in partnership shall, if requested so to do, give to the solicitor or those solicitors or a person authorized for the purpose by the solicitor or those solicitors such access to all documents and books as is reasonably necessary to enable a bill of costs referred to in sub-section (1.) 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.

124.—(1.) 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 on the appropriate date;
- (b) the amount of moneys on deposit with the Law Society by the solicitor or solicitors on the appropriate date;
- (c) the amounts of money paid to the receiver which, if paid to the solicitor or solicitors, would have been trust moneys;
- (d) the liabilities of the solicitor or solicitors in respect of trust moneys on the appropriate date and in respect of moneys referred to in the last preceding paragraph;
- (e) if moneys are held by the receiver, the manner in which the receiver recommends that those moneys be dealt with; and
- (f) particulars of all trust property held by the receiver.

(2.) In this section, “the appropriate date” means the date of the appointment of the receiver or, in a case where a solicitor has died, the date of death of the solicitor.

125. 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

Power of Court to give directions.

- (b) that report discloses that moneys or trust property is held by the receiver,

the Court may, from time to time, give to the receiver directions as to the manner in which those moneys or that trust property are to be dealt with.

Unclaimed
moneys.

126.—(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 VIII.

(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 VIII.

(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.

127.—(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 may, before making an order under the last preceding sub-section, 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 respect of whose trust property the receiver was appointed and to the Law Society.

(5.) Where the Court makes an order under sub-section (3.) of this section, the Court may give directions with respect to the disposal by the receiver of any books, accounts or other documents that have come into his possession in the course of the receivership.

128.—(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.

129. 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.

130. A person shall not destroy or conceal any book, account or other document relating to trust property received or held by a solicitor or solicitors with the intention of preventing the book, account or other document coming into the possession of a receiver appointed under section 116 of this Ordinance.

Destroying or concealing records.

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

131. The Law Society may pay to a receiver appointed under this Part out of the Fidelity Fund an amount equal to the amount of any liability incurred by the receiver for costs, charges, expenses or damages for any act or omission done or made in good faith by the receiver, his servants or agents and in the execution or purported execution of powers conferred, or duties imposed, on the receiver by or under this Part.

Reimbursement of receiver.

PART XI.—COSTS.

132. In this Part, “solicitor” has the same meaning as in Part VIII.

Definition.

133.—(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 disbursement for, or in respect of, 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.

No action by solicitor for costs until detailed statement delivered.

(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.

134.—(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.

135.—(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 a 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.

Taxation in absence of party.

136.—(1.) Where a person gives notice under sub-section (1.) of section 134 of this Ordinance and he fails to appear 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.

(2.) Where a person gives notice under sub-section (1.) of section 134 of this Ordinance that he wishes to have a statement taxed and the solicitor who delivered the statement does not appear 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.

Matters to be considered on taxation.

137.—(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 by or under a law in force in the Territory, allow such sum as is fair and reasonable having regard to all the circumstances of the case.

(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 disbursement is unreasonable.

138.—(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 is liable to 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 is liable to 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.

139.—(1.) On the taxation of a statement delivered under this Part, the Registrar shall certify in writing the amount (if any) that, having regard to the result of the taxation and the amount payable under the last preceding section is, in his opinion, due to the solicitor who delivered the statement or, if the solicitor has received payment of the amount specified in the statement, the amount due by the solicitor. 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.) In an action by a solicitor for the recovery of any amount as costs, a certificate by the Registrar given under sub-section (1.) of this section is conclusive with respect to the amount due to the solicitor.

(4.) A reference in either of the last two preceding sub-sections 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.

140.—(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. Review of taxation.

(2.) On an application under this section, the Court may 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.

141. Where notice is given under sub-section (1.) of section 134 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 139 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.

142. Where a certificate of the Registrar under section 139 of this Ordinance, or such a certificate as amended under sub-section (3.) of section 140 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.

143.—(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 (excluding 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.) An agreement referred to in the last preceding sub-section is not enforceable unless a note or memorandum containing the terms of an agreement is 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, or ascertainable in accordance with, the agreement.

Powers of Court where contract not fair and reasonable.

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

- (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 XII.—OFFENCES BY UNQUALIFIED PERSONS.

145.—(1.) A person other than a person whose name is on the Roll of Barristers and Solicitors 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 any of the functions of, a barrister and solicitor; or

(b) permit his name to be so used as to suggest that he is, or is qualified to perform any of the functions of, a barrister and 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.

146.—(1.) Subject to the next succeeding sub-section, a person other than a person whose name is on the Roll of Barristers and Solicitors shall not, for reward—

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

(a) draw or cause to be drawn by an employee a will or other testamentary instrument; or

(b) draw or cause to be drawn by an employee 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.) It is not an offence against the last preceding sub-section—

(a) for a public officer to draw an instrument in the course of his employment;

- (b) for a person to engross an instrument in the course of his employment;
- (c) for a person who is employed to draw an instrument of a kind referred to in the last preceding sub-section as part of his ordinary duties to draw such an instrument if the employer of the person is a person whose name is on the Roll of Barristers and Solicitors and the person drawing the instrument does not receive, in respect of the drawing of the instrument, any fee or reward other than his salary; or
- (d) if the drawing of the instrument is involved in the performance of prescribed work, or of work included in a prescribed class of work.

(3.) In this section—

“draw” includes prepare and fill in and “drawn” has a corresponding meaning;

“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.

147.—(1.) A person other than a person whose name is on the Roll of Barristers and Solicitors 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 holding office under the *Administration and Probate Ordinance 1929-1970* 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 acting in the course of his employment.

Offences by corporations.

148.—(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.

(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 and that he took reasonable steps to prevent the commission of the offence by the body corporate.

PART XIII.—TRANSITIONAL PROVISIONS.

149.—(1.) Section 21 and Part XII. 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 11 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 21 and Part XII. 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 21 and Part XII. 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.

150. 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 or within such further period as the Admission Board allows,

Application of Ordinance to articles of clerkship executed before commencement of 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 XIV.—MISCELLANEOUS.

151.—(1.) Subject to this section, a barrister and solicitor shall not share the receipts from his practice with a person other than a barrister and solicitor.

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

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

(3.) Sub-section (1.) of this section does not apply to a barrister and solicitor to the extent that he 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;
- (c) a person with whom he carries on practice in partnership both in the Territory and in a State or another Territory;
- (d) a person who carries on practice in a State or another Territory and, in the course of his practice, performs work of a professional nature as the agent of the barrister and solicitor; or
- (e) a person who carries on practice in a State or another Territory and for whom the barrister and solicitor, in the course of his practice, performs work of a professional nature as the agent of that person.

Employment of persons who have been struck off a Roll.

152.—(1.) Except with the permission of the Council of the Law Society, a barrister and solicitor 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 Barristers and Solicitors;
- (b) the roll of barristers and solicitors of the High Court kept in pursuance of rules in force under the *Judiciary Act* 1903-1969; 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 barrister and solicitor who contravenes the last preceding sub-section is guilty of professional misconduct.

Absence, &c., of Judge.

153.—(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.

(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.

Unclaimed trust moneys.

154.—(1.) Where any trust moneys held by a barrister and solicitor who practises as a solicitor have become unclaimed moneys, the barrister and solicitor shall, within one month after those moneys become unclaimed moneys, pay those moneys to the Commonwealth by payment to the Secretary to the Attorney-General's Department.

(2.) Trust moneys held by a barrister and solicitor who practises as a solicitor are unclaimed moneys for the purposes of this section if—

- (a) the trust moneys have been held by the solicitor for a period of not less than six years, and during that period, the barrister and solicitor has had no knowledge of the existence or the address of the person on whose behalf those trust moneys are held; or

(b) the person has refused to accept payment of those moneys when tender of payment has been made.

(3.) A person who claims to be entitled to any moneys that have been paid into the Consolidated Revenue Fund in pursuance of the last preceding sub-section may apply to the Court for an order under this sub-section declaring him to be so entitled and, if the Court is satisfied that the applicant is entitled to those moneys or a part of those moneys, it may make an order accordingly.

(4.) Upon receipt by the Attorney-General of an office copy of an order under the last preceding sub-section, the Commonwealth shall pay to the person in whose favour the order was made an amount equal to the amount specified in the order.

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

156. Subject to the rights of precedence of the Attorney-General and of the Solicitor-General— Precedence.

- (a) barristers and solicitors who are Queen's Counsel—
 - (i) have precedence over other barristers and solicitors; and
 - (ii) have precedence among themselves according to the respective dates of their first appointment as Queen's Counsel in Australia; and
- (b) barristers and solicitors who are not Queen's Counsel have precedence among themselves according to the respective dates of their first admission to practice in Australia.

157. 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.

THE SCHEDULE
OATH

Section 18.

I, A.B., do swear that I will well and honestly conduct myself in the practice of a barrister and solicitor of this Court according to the best of my knowledge and ability.

SO HELP ME GOD!

AFFIRMATION

I, A.B., do solemnly and sincerely affirm and declare that I will well and honestly conduct myself in the practice of a barrister and solicitor of this Court according to the best of my knowledge and ability.