



ANNO TRICESIMO

ELIZABETHAE II REGINAE

A.D. 1981

No. 59 of 1981

An Act to regulate the practice of law; to repeal the Legal Practitioners Act, 1936-1979; and for other purposes.

[Assented to 25th June, 1981]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

1. This Act may be cited as the "Legal Practitioners Act, 1981".

Short title.

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

Commencement.

(2) The Governor may, by the proclamation made for the purposes of subsection (1), suspend the operation of specified provisions of this Act until a later day fixed by the proclamation, or until a day to be fixed by subsequent proclamation.

3. This Act is arranged as follows:

Arrangement of Act.

PART I—PRELIMINARY

PART II—THE LAW SOCIETY OF SOUTH AUSTRALIA

PART III—THE PRACTICE OF THE LAW

DIVISION I—ADMISSION AND ENROLMENT OF LEGAL PRACTITIONERS

DIVISION II—PRACTISING CERTIFICATES

DIVISION III—ENTITLEMENT TO PRACTISE, ETC.

DIVISION IV—PROVISIONS REGULATING LEGAL PRACTICE BY COMPANIES

DIVISION V—TRUST ACCOUNTS AND AUDIT

DIVISION VI—DELIVERY UP OF LEGAL PAPERS

PART I

DIVISION VII—AUTHORITY OF A LEGAL PRACTITIONER TO ACT ON BEHALF OF A PERSON OF UNSOUND MIND

DIVISION VIII—RECOVERY OF LEGAL COSTS

DIVISION IX—APPOINTMENT OF SUPERVISORS AND MANAGERS

DIVISION X—RESTRICTION ON PRACTICE BY BANKRUPTS, ETC.

DIVISION XI—RIGHT OF PERSONAL REPRESENTATIVE, ETC., TO CARRY ON LEGAL PRACTICE

DIVISION XII—RIGHT OF AUDIENCE

DIVISION XIII—PROFESSIONAL INDEMNITY INSURANCE SCHEME

PART IV—THE COMBINED TRUST ACCOUNT AND OTHER RELATED ACCOUNTS

DIVISION I—THE COMBINED TRUST ACCOUNT

DIVISION II—THE STATUTORY INTEREST ACCOUNT

DIVISION III—THE LEGAL PRACTITIONERS GUARANTEE FUND

DIVISION IV—MISCELLANEOUS

PART V—CLAIMS AGAINST GUARANTEE FUND

PART VI—INVESTIGATIONS, INQUIRIES AND DISCIPLINARY PROCEEDINGS

DIVISION I—THE LEGAL PRACTITIONERS COMPLAINTS COMMITTEE

DIVISION II—FUNCTIONS OF THE COMMITTEE

DIVISION III—THE LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL

DIVISION IV—PROCEEDINGS BEFORE THE TRIBUNAL

DIVISION V—DISCIPLINARY PROCEEDINGS BEFORE THE SUPREME COURT

DIVISION VI—LAY OBSERVERS

PART VII—PUBLIC NOTARIES

PART VIII—MISCELLANEOUS

Repeal and transitional provision.

4. (1) The Legal Practitioners Act, 1936-1979, is repealed.
- (2) Notwithstanding the repeal effected by subsection (1)—
- (a) a person admitted as a legal practitioner pursuant to rules of the Supreme Court, and enrolled as such immediately before the commencement of this Act, shall, subject to this Act, continue as a legal practitioner;
 - (b) a practising certificate issued pursuant to the provisions of the repealed Act and in force immediately before the commencement of this Act shall be deemed to be a practising certificate under this Act and shall, subject to this Act, remain in force until the first day of January, 1982, or such later day as may be fixed by regulation;
 - (c) all persons who were, immediately before the commencement of this Act, members of the Society shall, subject to this Act, continue to be members of the Society and a person who, immediately before the commencement of this Act, held any office or position in the

Society shall, subject to this Act, continue in that office or position as if this Act had been in force when he was appointed or elected to that office or position;

- (d) any proceedings commenced before the Statutory Committee of the Council of the Law Society under the repealed Act, and not finally disposed of at the commencement of this Act, may be continued and completed under the repealed Act as if this Act had not been enacted;

and

- (e) a person admitted as a public notary under the repealed Act, and enrolled as such immediately before the commencement of this Act, shall, subject to this Act, continue as a public notary.

(3) The Acts Interpretation Act, 1915-1978, shall, except to the extent of any inconsistency with the provisions of this section, apply to the repeal effected by this section.

5. In this Act, unless the contrary intention appears—

Interpretation.

“approved auditor” means an auditor approved by the Supreme Court:

“bank” means a body corporate authorized under the law of the Commonwealth to carry on the business of banking and includes the State Bank of South Australia and the Savings Bank of South Australia:

“banking account” means an account maintained at a bank:

“the combined trust account” means the banking account or accounts established under the title of the “Legal Practitioners Combined Trust Account” pursuant to the repealed Act and maintained by the Society under Part IV:

“the Committee” means the Legal Practitioners Complaints Committee established under this Act:

“company” means a company incorporated under the law of this State:

“the Council” means the council of the Law Society:

“director” of a company includes any person occupying or acting in the position of director of the company whether validly appointed to occupy or duly authorized to act in that position or not, and includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act:

“elective officer” of the Society means an officer of the Society elected by the members of the Society in accordance with its rules:

“the Executive Director” of the Society means the principal executive officer employed by the Society and includes any person who is, for the time being, discharging the duties of that officer:

“fiduciary or professional default” in relation to a legal practitioner means—

- (a) any defalcation, misappropriation or misapplication of trust moneys in the charge of the legal practitioner or of a firm of which the legal practitioner is a member;

or

PART I

(b) any wrongful or negligent act or omission occurring in the course of the practice of the legal practitioner, or a firm of which the legal practitioner is a member,

whether committed by the legal practitioner himself, an employee of the legal practitioner or any other person:

“the guarantee fund” means the fund established under the title of the “Legal Practitioners’ Guarantee Fund” pursuant to the repealed Act and maintained by the Society under Part IV:

“the Law Society” or “the Society” means The Law Society of South Australia:

“legal costs” includes disbursements:

“legal practitioner” or “practitioner” means—

(a) a person duly admitted and enrolled as a barrister and solicitor of the Supreme Court;

or

(b) a company that holds a practising certificate:

“Master” means a master of the Supreme Court:

“moneys” includes any instrument for the payment of money that may be negotiated by a bank:

“practising certificate” means a practising certificate issued under Part III:

“the repealed Act” means the Legal Practitioners Act, 1936-1979, repealed by this Act:

“the Secretary” means the person for the time being holding, or acting in, the office of Secretary to the Committee:

“solicitor” includes attorney and proctor:

“the statutory interest account” means the banking account established under the title of the “Statutory Interest Account” pursuant to the repealed Act and maintained by the Society under Part IV:

“the Tribunal” means the Legal Practitioners’ Disciplinary Tribunal established under Part VI:

“trust account” means a banking account that is maintained by a legal practitioner under Part III:

“trust moneys” means moneys received by a legal practitioner to which the legal practitioner is not wholly entitled both at law and in equity:

“unprofessional conduct” in relation to a legal practitioner includes—

(a) an illegal act of any kind committed in the course of his practice by the legal practitioner;

and

(b) any offence of a dishonest or infamous nature committed by the legal practitioner in respect of which punishment by imprisonment is prescribed or authorized by law:

“unqualified person” means a person (including a body corporate) who is not entitled to practise the profession of the law.

6. (1) The Supreme Court may, on the application of the Society, divide legal practitioners into two classes, one class consisting of barristers and the other class consisting of solicitors.

Separation
of legal
profession.

(2) The Judges of the Supreme Court, or any three or more of them, may make such rules as they consider necessary to give effect to a division of the legal profession made under subsection (1).

PART II**PART II****THE LAW SOCIETY OF SOUTH AUSTRALIA**

**Incorporation
of powers
of Society.**

7. (1) The Society formerly known as the "Law Society of South Australia Incorporated" shall continue in existence as a body corporate under the name "The Law Society of South Australia".

(2) The Society—

(a) shall have perpetual succession and a common seal;

(b) shall be capable of—

(i) acquiring, mortgaging or otherwise dealing with, and disposing of real and personal property;

**(ii) borrowing, investing and otherwise dealing with, moneys;
and**

(iii) acquiring or incurring any other rights or liabilities that may properly attach to a body corporate;

(c) shall be capable of suing and being sued;

and

(d) shall have the powers, functions and duties prescribed or imposed upon it by or under this Act.

(3) The membership of the Society shall consist of all persons who have been admitted to membership of the Society, and who, for the time being, continue to be members of the Society, in accordance with the rules of the Society.

**Officers and
employees of
the Society.**

8. (1) The following officers of the Society shall be elected in accordance with the rules of the Society:

(a) the President;

(b) the Vice-Presidents (the number of whom shall be determined by the rules);

and

(c) such other elective officers as may be stipulated by the rules.

(2) There shall be an Executive Director of the Society.

(3) The Executive Director and any other employees of the Society shall be appointed and hold office upon such terms and conditions as the Society may determine.

**Council of the
Society.**

9. (1) There shall be a council of the Society.

(2) The Council shall consist of—

(a) the Attorney-General;

(b) the President of the Society;

(c) the Vice-Presidents of the Society;

(d) the other elective officers of the Society;

(e) any persons who are, in accordance with the rules of the Society, members of the Council *ex officio*;

(f) any persons who are co-opted in accordance with the rules of the Society to membership of the Council;

and

(g) such other persons as are elected, in accordance with the rules of the Society, to be members of the Council.

10. No act or proceeding of the Council is invalid by virtue of any vacancy in its membership or any defect in the appointment or election of any member of the Council.

Validation of acts of the Council.

11. (1) Subject to this Act, and to the rules of the Society, the Council shall have the management of all the affairs of the Society, and may exercise all the powers of the Society.

Management of Society's affairs.

(2) Subject to this Act, the Council may delegate any of its powers to—

(a) a committee consisting of such persons as the Council thinks fit;

or

(b) any officer or employee of the Society.

(3) A delegation under this section is revocable at will and does not derogate from the power of the Council to act itself in any matter.

12. (1) The Society shall cause minutes of the proceedings of—

(a) all general meetings of the members of the Society;

and

(b) all meetings of the Council,

to be entered in a book or books kept for the purpose.

Minutes of proceedings.

(2) An apparently genuine document purporting to be verified by the Executive Director and—

(a) purporting to be—

(i) minutes entered in pursuance of this section;

or

(ii) an extract from any such minutes;

or

(b) purporting to be—

(i) minutes of the proceedings of any committee established by the Council;

or

(ii) an extract from any such minutes,

shall be accepted in any legal proceedings as evidence of the proceedings to which the document relates.

(3) Subject to subsection (4), the Society shall at the request of any member of the Society produce for his inspection the minutes of—

(a) any general meeting of the Society;

(b) any meeting of the Council;

and

(c) any meeting of any committee established by the Council.

(4) The Society is not required to produce minutes for inspection under subsection (3) if the minutes are of a confidential nature and have been entered in a minute book kept specifically for the purpose of recording minutes of such a nature.

(5) In any legal proceedings it shall be presumed in the absence of proof to the contrary that any meeting of—

(a) the members of the Society;

(b) the Council;

or

(c) any committee established by the Council,

was duly convened and constituted, and that the proceedings of any such meeting were regularly conducted.

(6) An apparently genuine document purporting to be under the hand of the President, a Vice-President, or the Executive Director, of the Society and to certify that a person named in the document has been duly elected or appointed to a specified office in the Society, or in the employment of the Society, shall be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the matter so certified.

**Society's right
of audience.**

13. (1) The Society may appoint a legal practitioner to appear before any court, commission or tribunal in any matter affecting the interests of the Society or the members of the Society, or in which the Society is directly or indirectly concerned or interested.

(2) Without limiting the generality of subsection (1), a practitioner so appointed shall be entitled to appear—

(a) in any proceedings instituted by the Society;

(b) in any proceedings in which a person seeks admission as a legal practitioner;

(c) in any proceedings in which it is alleged that a practitioner is guilty of unprofessional conduct;

or

(d) in any proceedings under this Act.

**Rules of the
Society.**

14. (1) The Society, in general meeting, may make rules:

(a) to define the objects of the Society;

(b) to provide for the election of a President, Vice-Presidents and other elective officers of the Society and to define the conditions upon which they shall hold office;

(c) to provide for the election of members of the Council, and to define the conditions upon which they shall hold office;

(d) to provide for the filling of casual vacancies occurring in elective offices of the Society and in the membership of the Council;

- (e) to regulate the meetings and proceedings of, and the conduct of business by, the Council, or any committee to which it has delegated any of its powers;
- (f) to provide for the execution of documents by or on behalf of the Society;
- (g) to define the terms and conditions upon which a person may be admitted to membership of the Society and to provide for the resignation, expulsion and re-admission of members of the Society;
- (h) to prescribe, and provide for the payment of, subscriptions by members of the Society;
- (i) to provide for the administration of any fund or banking account under the control of the Society;

or

- (j) to make any other provision relating to the administration of the Society.

(2) A member of the Society, or a practitioner, shall be entitled, upon payment of such fee as may be prescribed by rules under this section, to receive a printed copy of the rules in force for the time being under this section.

(3) The Attorney-General may, by instrument in writing, certify that a rule made by the Society under this section relates only to the internal administration of the Society and where such a certificate has been given under this section, section 10 of the Subordinate Legislation Act, 1978, shall not apply in respect of the rule.

PART III

PART III

THE PRACTICE OF THE LAW

DIVISION I

DIVISION I—ADMISSION AND ENROLMENT OF LEGAL PRACTITIONERS

Entitlement
to admission.

15. A person who satisfies the Supreme Court—

- (a) that he is of good character;
- (b) that he is resident in Australia;
- and
- (c) that—

- (i) he has complied with the rules of the Supreme Court relating to the admission of barristers and solicitors of the Supreme Court;

or

- (ii) insofar as he has not complied with those rules, he should be exempted from such compliance,

shall be entitled to be admitted and enrolled as a barrister and solicitor of the Supreme Court.

DIVISION II

DIVISION II—PRACTISING CERTIFICATES

Issue of
practising
certificate.

16. (1) Where a legal practitioner (not being a legal practitioner who has been suspended from practice) applies to the Supreme Court for a practising certificate, the Court shall, subject to this Act, issue a practising certificate in his name.

(2) Where a company applies to the Supreme Court for a practising certificate, and satisfies the Court—

- (a) that the memorandum and articles of association of the company contain stipulations to the following effect:
 - (i) the sole object of the company must be to practise the profession of the law;
 - (ii) the directors of the company must be natural persons who are legal practitioners holding current practising certificates (but where there are only two directors they may consist of a legal practitioner holding a current practising certificate and a prescribed relative of that legal practitioner);
 - (iii) no share issued by the company, and no right to participate in the distribution of the profits of the company, is to be owned beneficially otherwise than by a legal practitioner who is a director or employee of the company, or a prescribed relative of such a legal practitioner;
 - (iv) the total voting rights exercisable at a meeting of the members of the company must be held by legal practitioners who are directors or employees of the company;
 - (v) no director of the company may, without the approval of the Supreme Court, be a director of any other company that holds a practising certificate;

(vi) the shares of a legal practitioner and of his prescribed relatives shall, upon the legal practitioner ceasing to be a director or employee of the company, be redeemed by the company, distributed amongst the remaining members of the company, or transferred to a legal practitioner who is to become a director or employee of the company, in accordance with the memorandum and articles of association of the company;

and

(vii) the shares of a person who is a shareholder by virtue of being the spouse of a legal practitioner shall—

(A) upon dissolution or annulment of his marriage with a legal practitioner;

or

(B) in the case of a putative spouse, upon cessation of cohabitation with the legal practitioner,

be redeemed by the company, or distributed amongst the remaining members of the company, in accordance with the memorandum and articles of association of the company;

and

(b) that the memorandum and articles of association are otherwise appropriate to a company formed for the purpose of practising the profession of the law,

the Court may issue a practising certificate in the name of the company.

(3) Where a company holds a practising certificate and the stipulations contained in the memorandum and articles of association are, in any respect, not complied with, the company shall, within fourteen days, report the non-compliance to the Supreme Court, and the Court may give such directions (if any) as may be necessary to secure compliance with those stipulations.

(4) If a direction of the Supreme Court under subsection (3) is not complied with within the time allowed by the Court, the practising certificate of the company shall, by virtue of this subsection, be suspended during the period of non-compliance.

(5) An application for a practising certificate must be accompanied by the prescribed fee.

(6) In this section—

“prescribed relative” in relation to a legal practitioner means a parent, spouse, child or grandchild of the legal practitioner:

“putative spouse” in relation to a legal practitioner means a person who is cohabiting with the legal practitioner as the husband or wife *de facto* of the legal practitioner and—

(a) who has so cohabited continuously over the last preceding period of five years, or for periods aggregating five years over the last preceding period of six years;

or

(b) who has had sexual relations with the legal practitioner resulting in the birth of a child:

“spouse” includes a putative spouse.

PART III
DIVISION II
Restriction upon issue of practising certificates in certain cases.

17. (1) If, for a period exceeding one month, a legal practitioner has not held a practising certificate, the Supreme Court may, upon his application for a practising certificate, require him to furnish evidence satisfying it that—

(a) he has not practised the profession of the law without holding a practising certificate;

or

(b) he has not committed any other act that might constitute a proper ground for disciplinary action.

(2) Where an applicant for a practising certificate has, without lawful excuse, practised the profession of the law while not holding a practising certificate, the Supreme Court may require him to pay a prescribed fine before it issues a practising certificate to him.

(3) The Supreme Court may, in any case that it considers appropriate, issue a practising certificate that has effect from a date prior to the date of issue of the certificate.

Term of practising certificates.

18. (1) Subject to this Act, a practising certificate shall remain in force until the first day of January next ensuing after the day on which it was issued.

(2) Subject to this Act, the Supreme Court shall, upon receipt of due application for the renewal of a practising certificate made before the date of expiration of the practising certificate, renew the practising certificate and the practising certificate shall then, subject to this Act, remain in force for a further period of twelve months.

Evidence of insurance to be produced to the court.

19. (1) Where regulations are in force requiring legal practitioners to be insured against liabilities that may arise in the course of, or in relation to, legal practice, the Supreme Court shall not issue or renew a practising certificate unless the applicant produces evidence to the satisfaction of the Court that throughout the term for which the certificate is to be issued or renewed the legal practitioner will be insured to the extent required by the regulations against such liabilities.

(2) This section does not apply in relation to a legal practitioner of a class excluded by regulation from the provisions of this section.

Register of practising certificates.

20. (1) The Supreme Court shall cause a register of practising certificates to be kept.

(2) A member of the public may inspect the register of practising certificates kept under this section.

DIVISION III

DIVISION III—ENTITLEMENT TO PRACTISE, ETC.

Entitlement to practise.

21. (1) No person shall practise the profession of the law, or hold himself out, or permit another to hold him out, as being entitled to practise the profession of the law unless—

(a) in the case of a natural person, he—

(i) is enrolled as a barrister and solicitor of the Supreme Court;

and

(ii) holds a practising certificate issued and in force under this Act;

or

- (b) in the case of a company, it holds a practising certificate issued and in force under this Act.

Penalty: Five thousand dollars.

(2) Without limiting the generality of the foregoing provisions of this section, but subject to subsection (3), a person practises the profession of the law, if acting for fee or reward on behalf of some other person he—

- (a) prepares any will or other testamentary instrument;
- (b) prepares an instrument creating, transferring, assigning, modifying or extinguishing any estate or interest in real or personal property;
- (c) prepares any instrument relating to the formation of a body corporate, any amendment to the memorandum or articles of association, rules or regulations of a body corporate, any prospectus or take-over scheme relating to a body corporate, or any instrument affecting the rights of shareholders or debenture holders in a body corporate or any scheme of arrangement in respect of a body corporate;
- (d) prepares any other instrument creating, transferring, assigning, modifying or extinguishing any right, power or liability at law or in equity;

or

- (e) represents any party to proceedings in a court or tribunal.

(3) This section shall not prevent—

- (a) an employee whose employer is a party to an instrument or otherwise entitled to prepare an instrument and who is acting in the ordinary course of his employment from preparing the instrument provided that no separate charge is made by the employer or the employee for the preparation of the instrument;
- (b) an unqualified person from charging a fee for the preparation of a bill of sale, stock mortgage or lien over wool or fruit to which he is himself the party in whose favour the security is given or an instrument varying or discharging a bill of sale, stock mortgage or lien over wool or fruit to which he is such a party;
- (c) an unqualified person from charging a fee for the preparation of a mortgage over land to which he is himself the party in whose favour the security is given, or an instrument varying or discharging a mortgage over land to which he is such a party, provided that the mortgage or other instrument is prepared by a legal practitioner or licensed land broker;
- (d) an unqualified person from charging a fee for the preparation of an instrument provided that—
 - (i) the instrument is prepared by a legal practitioner in the employment of that unqualified person;and
 - (ii) the legal practitioner has been in the employment of that unqualified person continuously since the first day of July, 1980;

PART III
DIVISION III

- (e) an agent who has been commissioned to sell goods or let them out on hire, or to contract for the performance of services from preparing a contract for the sale or hire of goods or the provision of services provided that he is remunerated only by salary or commission and no separate charge is made by the agent or the principal for the preparation of the contract;
- (f) an unqualified person from engrossing an instrument for fee or reward;
- (g) an unqualified person from representing a party to proceedings in a court or tribunal for fee or reward, if he is authorized by or under the Act by which the court or tribunal is constituted, or any other Act, to do so;
- (h) a person licensed under the Land Valuers Licensing Act, 1969-1974, or licensed or registered under the Land and Business Agents Act, 1973-1979, from representing, for fee or reward, a party to proceedings before an assessment revision committee constituted under the Local Government Act, 1934-1981;
- (i) an unqualified person who is an employee or officer of an association of employers or employees from representing the association or any of its members in proceedings brought pursuant to an Act relating to industrial conciliation or arbitration provided that the unqualified person (as distinct from the association of which he is an employee or officer) makes no charge for providing the representation;
- (j) an unqualified person who is an employee of a body corporate that is a party to proceedings brought pursuant to an Act relating to industrial conciliation or arbitration from representing the body corporate in the proceedings;
- (k) an unqualified person who was on the second day of March, 1981, carrying on the business of representing parties to proceedings brought pursuant to an Act relating to industrial conciliation and arbitration from continuing to carry on that business;
- (l) an unqualified person from preparing, for fee or reward, any instrument relating to the transfer of shares or securities issued, or made available, by a body corporate;
- (m) an agent licensed under the Land and Business Agents Act, 1973-1979, from preparing an instrument (other than an instrument registrable under the Real Property Act, 1886-1980) relating to the sale and purchase of any land or business that he has been commissioned to sell or buy, provided that the instrument is prepared by the agent personally or by a registered manager or registered salesman in his employment and no charge (apart from the commission payable to the agent in respect of the transaction) is made for the preparation of the instrument;
- (n) an agent licensed under the Land and Business Agents Act, 1973-1979, from preparing for fee or reward—
 - (i) a tenancy agreement—
 - (A) relating to residential premises;
 - and

(B) under which a rental not exceeding a maximum prescribed for the purposes of this subparagraph is payable;

or

(ii) a tenancy agreement—

(A) arising from a transaction in respect of which he has acted as agent;

(B) relating to non-residential premises;

and

(C) under which a rental not exceeding a maximum prescribed for the purposes of this subparagraph is payable;

provided that the instrument is prepared by the agent personally or by a registered manager or registered salesman in his employment;

- (o) a licensed land broker from preparing for fee or reward an instrument registrable under the Real Property Act, 1886-1980, the Bills of Sale Act, 1886-1972, the Stock Mortgages and Wool Liens Act, 1924-1975, or the Liens on Fruit Act, 1923-1975;
- (p) a licensed land broker from preparing for fee or reward—
- (i) a contract for the sale and purchase of land or a business;
 - (ii) a tenancy agreement;
 - (iii) an assignment of the benefit of a contract for the sale and purchase of land or a business or of a tenancy agreement;
 - (iv) an instrument that arises from, and is incidental to, a contract, agreement or assignment of the kind mentioned in subparagraph (i), (ii) or (iii);
- (q) an agent licensed under the Land and Business Agents Act, 1973-1979, being the employer of a legal practitioner or licensed land broker from charging a fee for the preparation of an instrument of a kind mentioned in paragraph (o) or (p) where—
- (i) the instrument is prepared by the legal practitioner or licensed land broker;
- and
- (ii) the agent is authorized by the Land and Business Agents Act, 1973-1979, to charge a fee for the preparation by the legal practitioner or licensed land broker of instruments registrable under the Real Property Act, 1886-1980;
- (r) a public notary acting in the ordinary course of his business as such from preparing an instrument for fee or reward;
- (s) a body corporate authorized by a special Act of Parliament of this State to administer the estates of deceased persons from preparing a will or other testamentary instrument where the body corporate is named as the executor, or one of the executors, of the will or other testamentary instrument and the body corporate does not seek to recover any fee or reward in respect of the preparation of the will or testamentary instrument beyond the commission or other remuneration allowed under the special Act;

PART III
DIVISION III

- (t) a body corporate authorized by a special Act or Parliament of this State to administer the estates of deceased persons from preparing a will or other testamentary instrument for fee or reward where the will or other testamentary instrument is prepared by a legal practitioner employed by the body corporate;
 - (u) an unqualified person from serving any process for fee or reward where he is authorized or permitted by statute to do so;
 - (v) a clerk employed by a legal practitioner from serving any process for fee or reward;
 - (w) the preparation for fee or reward of an opinion on a question of law by a member of the faculty of law of a university provided that the opinion is prepared at the request of a legal practitioner or of the Attorney-General or Crown Solicitor of the State or the Commonwealth;
- or
- (x) the preparation for fee or reward of any prescribed instrument or the performance for fee or reward of any prescribed service.
- (4) For the purposes of this section—
- (a) a person practises the profession of the law, or holds himself out as entitled to practise the profession of the law, if he does so personally, or through the agency or instrumentality of some other person;
 - (b) a person acts for fee or reward if he acts for, or in expectation of, a pecuniary benefit or material advantage;
 - (c) a person represents a party to proceedings before a court or tribunal if he—
 - (i) prepares, on behalf of that party, any legal process relating to the proceedings;
 - (ii) gives advice to that party in relation to the conduct of the proceedings;
- or
- (iii) takes, on behalf of that party, any other step in the proceedings.
- (5) In this section—
- “business” means a business as defined by the Land and Business Agents Act, 1973-1979:
- “member” in relation to an association whose members include another association includes a member of that other association:
- “tribunal” includes a Royal Commission and an arbitrator who is a judge, special magistrate or legal practitioner.

Practising
while under
disqualification,
etc.

22. If a legal practitioner—

- (a) practises the profession of the law while his right to do so is under suspension;

or

- (b) contravenes an order of the Tribunal or the Supreme Court under which he is prohibited from practising the profession of the law otherwise than in accordance with conditions stipulated in the order,

he shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

23. (1) If any person (whether or not he is a legal practitioner) with a view to attracting business, falsely pretends to be the holder of any degree, diploma or certificate in law or adopts any style that leads reasonably to the false inference that he holds any degree, diploma or certificate in law, he shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

Unlawful
representation.

(2) If a person (whether or not he is a legal practitioner) holds out an unqualified person as being entitled to practise the profession of the law, he shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

(3) If a legal practitioner—

- (a) permits or aids an unqualified person to practise the profession of the law, or acts in collusion with an unqualified person so as to enable him to practise the profession of the law;

or

- (b) enters into an agreement or an arrangement with an unqualified person under which the unqualified person is entitled to share in the profits arising from the practice of the law (otherwise than as permitted by this Act, or as may be authorized by the Society),

he shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

DIVISION IV—PROVISIONS REGULATING LEGAL PRACTICE BY COMPANIES

DIVISION IV

24. (1) Every company that is a legal practitioner shall—

Returns by
companies.

- (a) within one month after any person becomes or ceases to be a director or member of the company lodge with the Supreme Court a notice stating the full name and usual residential address of that person and the fact that he has become or ceased to be such a director or member;

and

- (b) in the month of July in each year lodge with the Supreme Court a return in the prescribed form.

Penalty: Two thousand dollars.

(2) The annual return shall state—

- (a) the full name and usual residential address of every person who on the thirtieth day of June preceding the lodging of the return was a director or member of the company;
- (b) the number of shares in the company held by each such person and the number of votes that he is entitled to cast at a meeting of members of the company;

PART III
DIVISION IV

(c) in relation to each member, the qualification by virtue of which he is entitled to be a member of the company;

and

(d) any other prescribed matters.

Companies not to practise in partnership.

25. A company that is a legal practitioner shall not practise as a legal practitioner in partnership with any other person unless it has been authorized to do so by the Supreme Court.

Penalty: One thousand dollars.

Employment of legal practitioners by company.

26. (1) A company that is a legal practitioner shall not, for the purpose of its legal practice, employ a number of legal practitioners greater than twice the number of directors of the company.

Penalty: One thousand dollars.

(2) In determining the number of legal practitioners in the employment of a company for the purposes of subsection (1), any legal practitioners who are both employees and directors of the company shall be disregarded.

Criminal liability of directors.

27. Where a company that is a legal practitioner commits an offence against this Act, or any other Act, each person who was a director of the company at the time of commission of the offence by the company shall be guilty of an offence and liable to the same penalty as that prescribed for the principal offence, unless he proves that he could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the company.

Joint and several liability.

28. Any civil liability incurred by a company that is a legal practitioner shall be enforceable jointly and severally against the company and the persons who were directors of the company at the time the liability was incurred.

Alteration to memorandum or articles of association.

29. No alteration to the memorandum or articles of association of a company that is a legal practitioner shall be made unless the proposed alteration has been submitted to, and approved by, the Supreme Court.

Exemption from certain provisions of Companies Act.

30. The provisions of Division III of Part VI and of Part IX of the Companies Act, 1962-1980, do not apply in respect of a company that is a legal practitioner:

DIVISION V

DIVISION V—TRUST ACCOUNTS AND AUDIT

Disposition of trust moneys.

31. (1) Subject to subsection (2), a legal practitioner shall, as soon as practicable after his receipt of any trust moneys in the course of his practice, deposit those moneys in a trust account and shall not withdraw or permit them to be withdrawn except as authorized by this Part.

(2) Where at or before the time that a legal practitioner receives trust moneys he is given a written direction by the person entitled to those moneys to dispose of them in a manner specified in the direction, it shall be lawful for the legal practitioner to act in accordance with that direction.

- (3) A legal practitioner may withdraw trust moneys from a trust account—
- (a) for payment to the person entitled to the moneys or in accordance with the direction of that person;
 - (b) for satisfaction of a claim that he has against the person on behalf of whom the moneys are held for legal costs;
 - (c) to satisfy the order of a court of competent jurisdiction against the person on behalf of whom he is holding the moneys;
 - (d) if the moneys are subject to an instrument of trust, for making a payment in compliance with the terms of that instrument;
 - (e) for dealing with any unclaimed moneys in accordance with the Unclaimed Moneys Act, 1891-1975;
 - (f) for making payments to the Society under Part IV for the credit of the combined trust account;

and

- (g) for making any other payment authorized by law.

(4) The legal practitioner shall keep detailed accounts of all trust moneys received by him, and of any disbursement or other dealing with those moneys in a manner—

- (a) that accurately discloses the state of any trust accounts maintained by the legal practitioner;

and

- (b) that enables the receipt and disposition of trust moneys to be conveniently and properly audited.

(5) The legal practitioner shall keep detailed records of any trust moneys received by him that are, by virtue of a direction to which subsection (2) relates, not paid into his trust account, and of any disbursement, or dealing, affecting those moneys.

(6) Unless the Supreme Court otherwise approves—

- (a) a legal practitioner shall not permit trust moneys to be intermixed with other moneys;

and

- (b) a trust account of a legal practitioner must be kept at a bank, or a branch of a bank, within the State.

(7) An approval under subsection (6) may be given upon such conditions as the Supreme Court thinks fit.

(8) A person who contravenes this section or a condition imposed by the Supreme Court under this section, shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

32. (1) Subject to subsection (2), a bank shall be deemed not to be affected with notice of any specific trust to which moneys deposited in a trust account are subject, and shall not be bound to satisfy itself of the due application of those moneys.

Protection to
banks.

(2) This section does not relieve a bank of any liability for negligence.

PART III
DIVISION V
Audit of
trust accounts,
etc.

33. A legal practitioner who maintains a trust account shall in each year—

(a) have the accounts and records kept by the legal practitioner under this Division (made up to the thirtieth day of June in that year) audited by an approved auditor;

and

(b) submit a copy of the auditor's report to the Supreme Court on or before the thirty-first day of October in that year or such later date as the Supreme Court may allow.

Penalty: Five thousand dollars.

Appointment
of inspector.

34. (1) The Attorney-General or the Society may at any time appoint a competent inspector—

(a) to examine, either generally or in a particular case, the accounts kept pursuant to this Division by a legal practitioner or firm of legal practitioners;

(b) to examine, either generally or in a particular case, the audit programme, working papers and other documents used or prepared by any auditor in the course of auditing the trust accounts of a legal practitioner or firm of legal practitioners;

and

(c) to confer with any such auditor in relation to audits of the trust accounts of a legal practitioner or firm of legal practitioners.

(2) An inspector may if he thinks fit, and shall if required by the Attorney-General or the Society to do so, furnish the Attorney-General or the Society with a confidential report as to the state of any accounts or documents he is appointed to examine.

(3) The Attorney-General or the Society shall, as soon as practicable, cause a copy of any report furnished by an inspector as to the state of the accounts examined by the inspector to be given or sent by post to the relevant legal practitioner or firm of legal practitioners.

(4) In this section—

“legal practitioner” includes a former legal practitioner.

Obtaining
information
for purposes
of audit or
examination.

35. (1) An approved auditor employed by a legal practitioner or firm of legal practitioners to make an audit of the trust accounts of a legal practitioner or firm of legal practitioners, or an inspector appointed under this Division, may require the legal practitioner or firm of legal practitioners or any of his or their clerks, servants or agents to produce to him all the accounts (including accounts other than trust accounts) relating to the practice of the legal practitioner or firm of legal practitioners and all books, papers, securities and other documents, relating to those accounts and to give all relevant information and to furnish all authorities and orders to bankers and others that may be reasonably required of him or them.

(2) An inspector appointed under this Division may require an approved auditor employed by a legal practitioner or firm of legal practitioners as an auditor of the trust account of the legal practitioner or firm of legal practitioners to produce to the inspector all books, papers and other documents that are in the possession or control of the auditor and that relate to that trust account or an audit of that trust account (but the auditor shall not be required to produce his own working papers).

(3) The manager or other principal officer of any bank with which a legal practitioner or firm of legal practitioners has deposited any moneys, whether in his or their own account or in any general or separate trust account, shall, upon being required to do so by an approved auditor or inspector employed or appointed to make an audit or examination under this Division, disclose every such account (including all deposit slips, cancelled cheques or other documents relating to the operation of such account) to the auditor or inspector and shall permit him to make a copy of, or extract from, any such account, deposit slip, cancelled cheque or other document.

(4) A person who refuses or fails to comply forthwith with a requirement made under this section shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

(5) In this section—

“account” includes any record required to be kept under this Division in relation to the receipt and disposition of trust moneys:

“legal practitioner” includes a former legal practitioner.

36. A bank with which a trust account has been established by a legal practitioner or firm of legal practitioners shall report any deficiency in that account to the Attorney-General and the Society.

Banks to report deficiencies in trust accounts.

Penalty: Five hundred dollars.

37. (1) No approved auditor or inspector employed or appointed to make any audit or examination of any accounts of a legal practitioner or firm of legal practitioners for the purposes of this Division shall (otherwise than is permitted or required by or under this Act) communicate any matter of which he is informed or which comes to his knowledge in the course of the audit or examination to any person except in the course of his report; and if he contravenes this provision he shall (in addition to the penalty provided by this section and in addition to any liability he may incur to the legal practitioner or firm of legal practitioners) be subject to the same liabilities to a client or *cestui que trust* of the legal practitioner or firm of legal practitioners as those to which the legal practitioner or firm of legal practitioners would be subject if he or they divulged such matters.

Confidentiality.

(2) Neither the Society, nor any officer or employee of the Society, shall divulge any information disclosed in a report furnished to the Society under this Division except—

(a) for the purpose of confidential consideration of the report by the Council;

or

(b) in the performance of a duty.

(3) A person who contravenes or fails to comply with a provision of this section shall in addition to any other penalty or punishment to which he may be liable, be guilty of an offence and liable to a penalty of not more than five thousand dollars.

38. The Governor may make regulations for the purposes of this Division—

Regulations.

(a) prescribing and providing for the payment of fees for an audit or examination under this Division;

PART III
DIVISION V

- (b) generally ensuring that trust accounts are properly kept and audited and that persons beneficially entitled to moneys and securities held by legal practitioners upon trust are properly informed of the investment and disposition of the moneys and securities;
- (c) exempting legal practitioners from this Division, or specified provisions of this Division, in respect of transactions of a specified class;
- and
- (d) prescribing penalties (not exceeding five thousand dollars) for breach of, or non-compliance with any regulation under this Division.

DIVISION VI

DIVISION VI—DELIVERY UP OF LEGAL PAPERS

Delivery up of legal papers.

39. (1) The Supreme Court may, upon the application of any person, order a legal practitioner or former legal practitioner to deliver up papers—
- (a) held by the legal practitioner or former legal practitioner on behalf of the applicant;
- or
- (b) relating to proceedings taken or work done by the legal practitioner or former legal practitioner on behalf of the applicant.
- (2) The powers conferred by subsection (1) may be exercised notwithstanding the existence of a lien on the papers.
- (3) An order may be made under this section upon such terms and conditions as the Supreme Court thinks fit and, in particular, upon conditions protecting the rights of the legal practitioner or former legal practitioner to costs for legal work done by him on behalf of the applicant.

DIVISION VII

DIVISION VII—AUTHORITY OF A LEGAL PRACTITIONER TO ACT ON BEHALF OF A PERSON OF UNSOUND MIND

Authority of a legal practitioner to act on behalf of persons of unsound mind.

40. (1) The authority of a legal practitioner to act on behalf of a person is not abrogated by reason only of the fact that that person becomes of unsound mind.
- (2) When the mental unsoundness of a person on behalf of whom a legal practitioner is acting comes to the knowledge of the legal practitioner, his authority to act on behalf of that person shall, subject to subsection (3), cease and determine.
- (3) Where it is necessary for the purpose of protecting the interests of a person of unsound mind in any legal proceedings or other business, the authority of a legal practitioner shall, notwithstanding that he knows of the mental unsoundness of the person on behalf of whom he is acting, continue for the purpose of completing those proceedings or that business.

DIVISION VIII

DIVISION VIII—RECOVERY OF LEGAL COSTS

Bill of costs to be delivered.

41. (1) No person shall bring an action for the recovery of legal costs or appropriate moneys in or towards satisfaction of a claim for legal costs unless a bill specifying the total amount of those costs, and describing the legal work to which the costs relate, has been delivered to the person liable to the costs either personally, or by post addressed to him at his last known place of business, or his last known place of residence.

(2) The person liable to legal costs may at any time within six months after delivery of a bill of costs under subsection (1) request the person claiming to be entitled to the costs to provide him with a statement showing in detail how the amount of the costs to which the bill relates is made up.

(3) A person of whom a request is made under subsection (2) shall comply with the request.

Penalty: Five hundred dollars.

(4) Where the defendant to an action for the recovery of legal costs has made a request of the plaintiff under subsection (2), and the plaintiff has not complied with the request, the court shall, at the request of the defendant, stay the action until the plaintiff has complied with the request.

42. (1) Upon the application—

(a) of a person claiming to be entitled to legal costs;

or

(b) of a person who is liable to pay, or who has paid, any legal costs, the Supreme Court may tax and settle the bill for those costs.

(2) Where an application has been made under subsection (1), the Supreme Court may—

(a) restrain a person claiming to be entitled to the costs from commencing an action for recovery of the costs;

or

(b) stay any proceedings for recovery of the costs.

(3) The Court may, upon taxation of a bill of costs under this section—

(a) order the refund of any amount overpaid;

or

(b) where the proceedings have been instituted by the person seeking recovery of the costs—order payment of legal costs in accordance with the taxed bill.

(4) The Commissioner for Prices and Consumer Affairs may institute proceedings for the taxation of legal costs under this section on behalf of any person who is liable for the legal costs.

(5) Any court in which proceedings for the recovery of legal costs have been instituted may order the plaintiff to apply to have the legal costs taxed in accordance with this section, and may adjourn the proceedings until the taxation has been completed.

(6) Notwithstanding the foregoing provisions of this section, a legal practitioner may make an agreement in writing with a client for the payment of a specified amount by way of legal costs, or of legal costs in accordance with a specified scale.

(7) The Supreme Court may, in proceedings under this section, rescind or vary an agreement under subsection (6) if it considers that any term of the agreement is not fair and reasonable.

43. This Division applies to costs for any business done by a legal practitioner in his professional character whether the business is of a litigious nature or not.

Taxation of
legal costs.

Application of
this Division.

PART III
DIVISION IX

Control over
trust accounts
of legal
practitioners.

DIVISION IX—APPOINTMENT OF SUPERVISORS AND MANAGERS

- 44. (1)** If the Society knows, or suspects upon reasonable grounds, that—
- (a) a legal practitioner has died (or in the case of a company, has been dissolved or is being wound up);
 - (b) a legal practitioner is for any reason not attending properly, or unable to attend properly, to the affairs of his practice;
 - (c) a legal practitioner has committed a serious irregularity in the course of his practice, or a serious irregularity has occurred in the course of his practice;
 - (d) a person has ceased to be a legal practitioner without making proper provision for winding up the affairs of his practice;
- or
- (e) any other proper cause exists for the appointment of a supervisor under this section,

the Society may, by resolution of the Council, appoint a supervisor to exercise the powers conferred by this section.

(2) A person appointed under subsection (1) shall have power to dispose of trust moneys to persons entitled to those moneys and may execute any cheque or other instrument for that purpose.

(3) As soon as practicable after any such resolution has been passed, the Society shall cause a written copy of the resolution to be served on—

- (a) the legal practitioner, former legal practitioner or his personal representative;
 - (b) any other person authorized to operate on the trust account of the legal practitioner;
 - (c) the auditor (if any) of the trust account of the legal practitioner;
- and
- (d) the manager or other principal officer of the office or branch of the bank at which the trust account is maintained.

(4) After service of the notice on the bank, and until the resolution ceases to be effective—

- (a) no payment shall be made by the bank of any cheque or other instrument drawn on the trust account to which the resolution relates unless it bears the signature of the person appointed pursuant to this section;

and

- (b) if it bears the signature of the person so appointed (whether or not it bears the signature of any other person) it shall be lawful for the bank to make a payment in accordance with the cheque or other instrument.

(5) No person upon whom a copy of the resolution has been served shall sign any cheque or other instrument drawn on the trust account to which the resolution relates unless that cheque or instrument is signed by the person appointed pursuant to this section.

(6) Any person who contravenes this section shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(7) A resolution under this section shall be effective for a term of twelve months or such lesser term as may be fixed by the Society but the Society may, from time to time, renew the resolution for a term not exceeding twelve months.

(8) The Society may, at any time, revoke an appointment under this section.

(9) A notice under this section may be served personally or by post addressed to the last known place of business or residence of the person to whom it relates.

(10) In this section—

“bank” includes any institution in which trust moneys have been deposited.

45. (1) If the Society knows or suspects on reasonable grounds that— Appointment
of manager.

(a) a legal practitioner has died (or in the case of a company, has been dissolved or is being wound up);

(b) a legal practitioner is for any reason not attending properly, or unable to attend properly, to the affairs of his practice;

(c) a legal practitioner has committed a serious irregularity in the course of his practice, or a serious irregularity has occurred in the course of his practice;

(d) a person has ceased to be a legal practitioner without making proper provision for winding up the affairs of his practice;

or

(e) any other proper cause exists for the appointment of a manager under this section,

the Society may, by resolution of the Council, appoint a legal practitioner as a manager in respect of the practice of the legal practitioner or former legal practitioner.

(2) As soon as practicable after any such resolution has been passed, the Society shall cause notice of the resolution to be served on—

(a) the legal practitioner or former legal practitioner or the personal representative of the legal practitioner or former legal practitioner;

(b) any partner of the legal practitioner or former legal practitioner;

and

(c) the auditor (if any) of the trust account of the legal practitioner.

(3) A manager appointed under this section shall have full power—

(a) to transact any urgent business of the legal practitioner or former legal practitioner;

(b) with the approval of clients of the legal practitioner, or former legal practitioner, to transact any other business on their behalf;

and

(c) to perform any other act relating to the practice of the legal practitioner or former legal practitioner that he may be authorized to perform by the Society.

PART III
DIVISION IX

(4) A manager may take possession of any books, papers and documents relating to the practice and for that purpose may enter any place or premises where he reasonably suspects any such books, papers or documents to be, using such force as may be necessary to enter that place or those premises.

Appeal against appointment of supervisor or manager.

46. (1) A legal practitioner or former legal practitioner may, within twenty-eight days after the appointment of a supervisor or manager, appeal to the Supreme Court against the appointment.

(2) Upon an appeal under this section the Supreme Court may confirm or annul the appointment.

Application for directions.

47. (1) A supervisor or manager appointed under this Division may apply to the Supreme Court for directions in relation to any matter affecting his duties or functions under this Division.

(2) The costs of any application under subsection (1) shall be payable out of the guarantee fund.

Remuneration, etc., of persons appointed to exercise powers conferred by this Division.

48. (1) A supervisor or manager appointed under this Division shall, subject to subsection (3), be entitled to such remuneration, allowances and expenses as may be determined by the Society.

(2) Any such remuneration, allowances and expenses shall be paid out of the guarantee fund.

(3) The account of a supervisor or manager for remuneration, allowances and expenses may, on the application of the Attorney-General or the Society, be taxed and settled by the Supreme Court.

(4) The Society may recover, as a debt due to it, the costs, charges and disbursements appropriate to legal work performed by a manager appointed under this Division.

(5) The Society may recover as a debt from a legal practitioner or former legal practitioner any expenditure (other than expenditure recouped under subsection (4)) from the guarantee fund in consequence of the appointment of a supervisor or manager for the practice of that legal practitioner or former legal practitioner.

(6) Any amount recovered by the Society under subsection (4) or (5) shall be paid into the guarantee fund.

(7) A supervisor or manager incurs no liability by reason of an act or omission in good faith and in the exercise of his powers or functions under this Division.

DIVISION X

DIVISION X—RESTRICTION ON PRACTICE BY BANKRUPTS, ETC.

Supreme Court may grant authority permitting insolvent persons to practise.

49. (1) A legal practitioner who becomes bankrupt or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors shall not, without the authority of the Supreme Court, practise the profession of the law. Penalty: Five thousand dollars.

(2) The Supreme Court may grant an authority under this section upon such conditions as it thinks fit.

(3) A legal practitioner shall not contravene or fail to comply with any condition of an authority granted by the Supreme Court under this section. Penalty: Five thousand dollars.

DIVISION XI—RIGHT OF PERSONAL REPRESENTATIVE, ETC. TO CARRY ON LEGAL PRACTICE

50. (1) The personal representative of a deceased legal practitioner may, with the authority of the Supreme Court, carry on the practice of the deceased legal practitioner for a period not exceeding twelve months (or such longer period as the Supreme Court may allow) from the date of his death.

Supreme Court may authorize personal representative, etc., to carry on legal practice.

(2) The trustee in bankruptcy of a legal practitioner may, with the authority of the Supreme Court, carry on the practice of the legal practitioner for a period not exceeding twelve months, or such longer period as the Supreme Court may allow.

(3) A receiver or liquidator appointed in respect of a company that is a legal practitioner may, with the authority of the Supreme Court, carry on the practice of the company for a period not exceeding twelve months, or such longer period as the Supreme Court may allow.

(4) An authority under this section shall be subject to such conditions as the Supreme Court considers appropriate.

(5) A person to whom an authority has been granted under this section shall not contravene, or fail to comply with, any condition of the authority.

Penalty: Five thousand dollars.

DIVISION XII—RIGHT OF AUDIENCE

DIVISION XII

51. (1) Subject to this Act and any other Act, the following persons shall be entitled to practise before any court or tribunal established under the law of the State:

Right of audience.

- (a) the Attorney-General, the Solicitor General, and the Crown Solicitor of the State or of the Commonwealth;
- (b) a legal practitioner acting on the instructions of the Attorney-General or the Crown Solicitor of the State or of the Commonwealth;
- (c) a legal practitioner employed in the Department for Corporate Affairs and acting in the course of that employment;
- (d) a legal practitioner employed by the Legal Services Commission and acting in the course of that employment;
- (e) a legal practitioner who is practising the profession of law as a principal or a legal practitioner who is acting in the course of his employment by such a legal practitioner;

and

- (f) a legal practitioner employed by the Society.

(2) A legal practitioner who is an employee of another legal practitioner who is practising the profession of law as a principal is not entitled to appear on instructions from his principal before a court or tribunal as counsel or solicitor for any other person by whom he is employed or for any client of that other person.

(3) Where a legal practitioner who is an employee appears as counsel or solicitor before a court or tribunal, any undertaking given by the legal practitioner in the course of the proceedings shall be binding on the employer.

PART III
DIVISION XIII

**Professional
Indemnity
Insurance
Scheme.**

DIVISION XIII—PROFESSIONAL INDEMNITY INSURANCE SCHEME

52. (1) The Society and authorized insurers may enter into an arrangement for or with respect to the provision by authorized insurers to legal practitioners or former legal practitioners who are members of a class prescribed for the purposes of this section of professional indemnity insurance, and the Society and authorized insurers may do anything necessary or expedient for giving effect to an arrangement entered into under this subsection.

(2) An arrangement under subsection (1) may include provision with respect to any one or more of the following matters:

- (a) the terms and conditions to which the provision of professional indemnity insurance is to be subject;
 - (b) the amount or amounts of insurance cover to be provided;
 - (c) the amount or amounts payable by way of premiums;
 - (d) the circumstances in which insurance cover is to be limited or denied;
 - (e) the period during which professional indemnity insurance is to be provided;
 - (f) the issue of certificates to persons covered by professional indemnity insurance and the form of those certificates;
 - (g) the payment by or on behalf of the insurers to the Society of any sum by way of brokerage or reimbursement for expenses incurred in connection with any arrangement entered into under this section;
- and
- (h) any other matters in connection with professional indemnity insurance agreed between the Society and authorized insurers.

(3) The Society and authorized insurers may by a subsequent arrangement rescind or vary an arrangement under subsection (1).

(4) The Governor may on the recommendation of the Society make regulations for or with respect to—

- (a) requiring legal practitioners and former legal practitioners or specified classes of legal practitioners and former legal practitioners to take out and maintain with authorized insurers professional indemnity insurance on the terms and conditions specified in and in accordance with an arrangement under subsection (1);
 - (b) the issue of certificates in relation to professional indemnity insurance and the form of those certificates;
 - (c) empowering the Society—
 - (i) to exempt from compliance with any of the regulations legal practitioners or former legal practitioners or specified classes of legal practitioners or former legal practitioners;
 - (ii) to grant any such exemption indefinitely or for a specified period or subject to any other conditions determined by the Society;
- and
- (iii) to revoke any exemption granted by it;

- (d) making any provision that may be necessary in consequence of a substantial change in the nature of the practice of a legal practitioner;
- (e) providing for the making of such declarations by legal practitioners as may be necessary to determine premiums in relation to professional indemnity insurance and for the interrogation of a legal practitioner if any such declaration is suspected by the Society of being false or inaccurate;
- (f) exempting arbitration agreements that are related to the arbitration of disputes between legal practitioners and insurers in relation to professional indemnity insurance from any statutory provision that would, apart from the exemption, have the effect of invalidating such an agreement or any provision of such an agreement;
- (g) prescribing penalties (not exceeding five thousand dollars) for breach of, or non-compliance with, a regulation under this Division;
- (h) generally prescribing anything necessary or expedient for the purpose of giving effect to an arrangement under subsection (1).
- (5) In this section—
- “authorized insurer” means any person or body of persons, whether corporate or unincorporate, that carries on insurance business and is for the time being approved by the Society for the purposes of this section:
- “legal practitioner” includes a member of the faculty of law of a university:
- “professional indemnity insurance” means insurance against loss arising from claims in respect of any description of civil liability (other than the prescribed descriptions of civil liability) incurred by a legal practitioner or former legal practitioner in connection with his practice or with the practice of a firm of legal practitioners of which he is or formerly was a member or with any trust of which he is or formerly was a trustee or by an employee or former employee of a legal practitioner or former legal practitioner in connection with that legal practitioner’s practice or with the practice of a firm of legal practitioners of which that legal practitioner is or formerly was a member or with any trust of which that legal practitioner or that employee is or formerly was a trustee.
- (6) This section does not derogate from the provisions of Part V.
-

PART IV

PART IV

THE COMBINED TRUST ACCOUNT AND OTHER RELATED ACCOUNTS

DIVISION I

DIVISION I—THE COMBINED TRUST ACCOUNT

Duty to deposit trust moneys with the Society.

53. (1) A legal practitioner shall, on or before the first day of January and the first day of July in each year, out of trust moneys held in his trust account, deposit with the Society such amount (if any) as may be necessary in order that the amount held on his behalf by the Society may not be less than two-thirds (or such lesser proportion as may be prescribed) of—

(a) where no moneys are held by the Society on his behalf in consequence of previous deposits under this section or the repealed Act—the lowest balance of his trust account during the period of six months immediately preceding that day (which balance is to be determined by reference to a bank statement);

or

(b) where moneys are held by the Society on his behalf in consequence of previous deposits under this section or the repealed Act—the lowest aggregate of—

(i) the balance of his trust account (which balance is to be determined by reference to a bank statement);

and

(ii) the moneys held by the Society on his behalf,

during the period of six months immediately preceding that day.

(2) The Society shall pay the moneys deposited with it pursuant to subsection (1) into the combined trust account.

(3) Where a legal practitioner maintains two or more trust accounts, those accounts shall, for the purposes of this section, be deemed to be a single trust account the balance of which is the aggregate of the respective balances of each of those trust accounts but where a legal practitioner maintains, on the instructions of a client, a separate trust account for the exclusive benefit of that client, the balance of that account shall, for the purposes of this section, be disregarded.

(4) Subject to subsection (12), if at any time during the period of six months ending on the day on which deposits are required under this section the balance of the trust account of a legal practitioner and the amount (if any) deposited by him, and then remaining on deposit, with the Society, amount in aggregate to less than three hundred dollars (or such other sum as is prescribed), the legal practitioner is not obliged to make a deposit with the Society on or before that day.

(5) If a trust account is maintained by a firm of legal practitioners, the trust account shall, for the purposes of this section, be deemed to be the trust account of each member of the firm, and the members of the firm shall each be liable to perform the obligations imposed by this section but the discharge by one member of the firm of his obligations under this section in relation to the trust account shall be taken as a discharge by all the members of the firm of their obligations in relation to that trust account.

(6) If the Council has reasonable cause to suspect that a legal practitioner has not complied with the obligations of this section, it may, by notice in writing served personally or by post upon the legal practitioner, require him to attend before it and to produce evidence of the trust moneys received by him, the amount from time to time standing to the credit of his trust account, and such other relevant matters as may be specified in the notice.

(7) The moneys deposited with the Society shall be repaid by the Society upon the demand of the legal practitioner by whom they were paid but a legal practitioner shall not demand the repayment of the moneys so deposited except where—

(a) he requires the moneys for the purpose of meeting an existing claim upon his trust account;

or

(b) he reasonably requires the moneys for the purpose of establishing a balance in his trust account sufficient to meet claims upon that account occurring in the ordinary course of legal practice.

(8) Where moneys are repaid to a legal practitioner by the Society, the legal practitioner shall pay them forthwith into his trust account.

(9) If a legal practitioner fails to pay moneys to the Society as and when required by this section, he shall be personally liable to pay to the Society interest at the prescribed rate upon the outstanding moneys for the period for which he was in default.

(10) The Society may, for proper cause, excuse a legal practitioner from a liability arising under subsection (9).

(11) Any interest received by the Society under subsection (9) shall be paid into the statutory interest account.

(12) Where a legal practitioner establishes a trust account and has, at the time of establishing the account, no other trust account, the balance of moneys in the trust account during the first month after its establishment shall, for the purposes of this section, be ignored.

54. (1) The Society shall invest moneys deposited with it by a legal practitioner pursuant to this Division—

Investment by Society.

(a) with an approved bank specified by the legal practitioner;

or

(b) if the legal practitioner fails to specify an approved bank at the time of deposit, or within such period as the Society may allow, with a bank decided upon by the Society, until the legal practitioner does specify such a bank.

(2) In this section—

“an approved bank” means a bank that is prepared to pay interest on moneys invested with it by the Society at a rate of interest determined by the Society.

55. (1) No action at law or in equity shall lie against the Society or a legal practitioner for any action done in compliance with this Division.

Immunity from liability.

(2) This Division does not affect the interest or claim of any person beneficially entitled to trust moneys and any such interest or claim may be asserted and enforced as effectually as if this Division had not been enacted.

DIVISION II—THE STATUTORY INTEREST ACCOUNT

DIVISION II

56. (1) The Society shall continue to maintain the statutory interest account.

The statutory interest account.

PART IV
DIVISION II

(2) The Society shall pay into the statutory interest account all income and accretions realized from the investment of moneys from the combined trust account.

(3) The Society may invest any moneys contained in the statutory interest account in any manner in which trustees are authorized by statute to invest trust funds and shall pay the income derived from any such investment into the statutory interest account.

(4) The amount held in the statutory interest account may be applied to defraying any management fee or other expenditure relating to the management or administration of the combined trust account and the statutory interest account.

(5) After making such provision for defraying expenditure under subsection (4) as the Society thinks fit, the Society shall pay the balance of the moneys comprised in the statutory interest account (excepting moneys advanced to the statutory interest account for the purpose of investment), as to five-eighths to the Legal Services Commission, and, subject to subsection (6), as to three-eighths, to the guarantee fund.

(6) If at any time the amount of the guarantee fund (including the value of any investments in which any of its moneys have been invested) exceeds an amount calculated by multiplying five thousand dollars by the number of legal practitioners who held practising certificates on the last preceding thirtieth day of June, the Society shall hold the excess in the statutory interest account, to be paid or applied by the Society to the Legal Services Commission, or for any purpose approved by the Attorney-General and the Society.

DIVISION III

The guarantee fund.

DIVISION III—THE LEGAL PRACTITIONERS GUARANTEE FUND

57. (1) The Society shall continue to maintain the guarantee fund.

(2) The Society may from time to time invest any of the moneys constituting, or forming part of, the guarantee fund in any manner in which trustees are authorized by statute to invest trust funds, and may advance, upon such terms and conditions as the Society thinks fit, moneys from the guarantee fund to the statutory interest account.

(3) The guarantee fund shall consist of—

- (a) the moneys paid into it from the statutory interest account;
- (b) all moneys recovered by the Society under Part VI;
- (c) a prescribed proportion of the fees paid in respect of the issue or renewal of practising certificates;
- (d) costs recovered by the Attorney-General, the Committee or the Society in disciplinary proceedings against legal practitioners or former legal practitioners;
- (e) any moneys that the Society thinks fit to include in the guarantee fund;

and

- (f) the income and accretions arising from the investment of the moneys constituting the guarantee fund.

(4) Subject to subsection (5), moneys in the guarantee fund may be applied for any of the following purposes—

- (a) the costs of investigating complaints against legal practitioners or former legal practitioners and of disciplinary proceedings against legal practitioners or former legal practitioners;
- (b) the costs of prosecutions for offences against this Act;
- (c) costs consequent upon the appointment of a supervisor or manager under this Act;
- (d) the costs of an examination conducted at the direction of the Attorney-General or the Society under Division V of Part III;
- (e) the payment of honoraria, approved by the Attorney-General, to members of the Committee and the Tribunal;
- (f) the payment of moneys towards the costs of an arrangement under Division XIII of Part III to the extent that those costs are, in accordance with the terms of the scheme and with the approval of the Attorney-General, to be paid from the guarantee fund;
- (g) the costs of processing claims under Part V and of paying out those claims to the extent authorized by that Part;

and

- (h) defraying any management fee or other expenditure relating to the management or administration of the guarantee fund.

(5) No payment shall be made from the guarantee fund except upon the authorization of the Attorney-General.

DIVISION IV—MISCELLANEOUS

DIVISION IV

58. (1) The Society shall keep proper accounts of all moneys received, disbursed, invested and otherwise dealt with under this Part. Accounts and audit.

(2) The Society shall cause the combined trust account, the statutory interest account, and the guarantee fund to be audited at least once in every calendar year by a public accountant approved by the Attorney-General and shall send copies of the duly audited accounts to the Attorney-General.

59. The Society may borrow moneys for the purposes of any account or fund maintained under this Part and may defray the interest and other expenditure resulting from the borrowing from the appropriate account or fund. Power to borrow for purposes of this Part.

PART V

PART V

CLAIMS AGAINST GUARANTEE FUND

Claims.

60. (1) Subject to this Part, where—

(a) a person suffers loss as a result of a fiduciary or professional default;
and

(b) there is no reasonable prospect of recovering the full amount of that loss (otherwise than under this Part),

he may, by instrument in writing served personally or by post upon the Society, claim compensation under this Part.

(2) The amount of a claim shall not exceed—

(a) the actual pecuniary loss suffered by the claimant in consequence of the fiduciary or professional default;

less

(b) any amount that the claimant has received, or may reasonably be expected to recover (otherwise than under this Part) in reduction of that loss.

(3) If a valid claim has not been satisfied as provided by this Part at the expiration of twelve months from the day on which it was lodged with the Society it shall then, to the extent to which it has not been satisfied, be increased by interest at a prescribed rate calculated from the expiration of that period.

(4) No claim shall be made under this Part—

(a) in respect of a fiduciary or professional default occurring before the first day of January, 1975;

or

(b) in respect of a liability for which indemnity is provided under a scheme of professional indemnity insurance under Division XIII of Part III.

Limitation of claims.

61. (1) The Society may, by notice published in a newspaper circulating generally throughout the State, fix a day, not earlier than three months after the publication of the notice, on or before which claims in respect of a fiduciary or professional default, or a series of professional or fiduciary defaults, referred to in the notice, must be made.

(2) Where a notice is published under subsection (1), a claim that is not made within the time prescribed by the notice shall be barred unless the Society otherwise determines.

(3) No action in defamation shall lie in respect of the publication, in good faith, of a notice under this section.

Power to require evidence.

62. (1) The Society may, in considering any claim made under this Part, by notice in writing served personally or by post upon any person, require that person, within the time specified in the notice, to deliver up any document in his possession or power relevant to the determination of the claim.

(2) A person shall not fail duly to comply with a notice served on him pursuant to subsection (1).

Penalty: One thousand dollars.

63. (1) Where a claim is made under this Part, the Society shall determine—

Establishment
of validity of
claims.

(a) whether the claim is a valid claim;

and

(b) the amount payable under this Part in, or towards, satisfaction of the claim.

(2) The Society shall, by notice in writing, inform the claimant of any determination made by it under subsection (1).

(3) A notice under subsection (2) must be served—

(a) personally or by post upon the claimant or his personal representative;

or

(b) where the claimant is dead and has not left a personal representative known to the Society, or where the whereabouts of the claimant is unknown—by publication in the *Gazette*.

(4) A claimant who is aggrieved by a determination of the Society under this section may appeal to the Supreme Court against the determination.

(5) Upon an appeal under subsection (4), the Supreme Court may reverse or vary the determination of the Society and may make such further orders as it considers just in the circumstances.

(6) An appeal against a determination of the Society under this section must be instituted within three months after the day on which notice of the determination is served under this section but the Court may, if satisfied that proper cause to do so exists, dispense with the requirement that the appeal be so instituted.

(7) In any proceedings under this section, evidence of an admission or confession shall be admissible to prove a fiduciary or professional default, notwithstanding that the person by whom the admission or confession was made is not a party to the proceedings.

(8) If in any proceedings under this section the Society is satisfied, on the balance of probabilities, that a fiduciary or professional default has been committed, it may determine the claim accordingly notwithstanding that the fiduciary or professional default constitutes a criminal offence and the evidence would not be sufficient to establish the guilt of a person charged with that offence.

64. (1) The Society shall satisfy any valid claim under this Part, to the extent determined by the Society or the Supreme Court, out of the guarantee fund.

Satisfaction of
claims.

(2) Where the Society has published a notice under this Part in respect of a specified fiduciary or professional default, or a specified series of fiduciary or professional defaults, the maximum amount that may be applied towards satisfaction of all claims to which the notice relates shall be the prescribed percentage of the balance of the guarantee fund (calculated to the nearest one thousand dollars) as disclosed in the accounts of the guarantee fund last audited before the proposed application of moneys towards satisfaction of the claims.

(3) Where the maximum amount that may be applied to satisfy claims made in respect of a fiduciary or professional default, or a series of fiduciary or

professional defaults, does not permit the full satisfaction of the claims, the Society shall apportion that amount between the various claims in such manner as it thinks just.

(4) The Society, in apportioning payments under this section, shall take into account the relative degrees of hardship suffered or likely to be suffered by the various claimants as a result of non-payment of the full amount of the claim for compensation.

(5) Where the Society apportions payments under this section, the claims in respect of which the payments are made shall be discharged notwithstanding that they may not have been satisfied in full.

(6) The Society may, with the approval of the Attorney-General, make further payments to any person—

(a) whose claim has not been satisfied in full by reason of the operation of subsection (2), or for any other reason;

or

(b) whose claim is barred,

but any payment so made does not revive or reinstate a claim.

Rights of the Society.

65. (1) Subject to this section, where the Society has made any payment to a claimant under this Part, the Society shall, to the extent of the payment, be subrogated to the rights of the claimant against any person liable at law or in equity for the fiduciary or professional default in respect of which the payment was made.

(2) This section does not confer upon the Society any right to recover moneys from a person whose liability in respect of a fiduciary or professional default does not arise from a wrongful or negligent act or omission on his part.

Claims by legal practitioners.

66. Where all legal or equitable claims in respect of a fiduciary or professional default committed by a partner, clerk or employee of a legal practitioner have been fully satisfied and—

(a) the legal practitioner has paid compensation to any person for pecuniary loss suffered by him in consequence of the fiduciary or professional default;

and

(b) the Society is satisfied that the legal practitioner has acted honestly and reasonably in all the circumstances of the case,

the Society may, if it is satisfied that it is just and reasonable so to do, accept a claim under this Part from the legal practitioner in respect of that payment.

Insurance in respect of claims against guarantee fund.

67. (1) The Society may, with the approval of the Attorney-General, insure the guarantee fund to such extent as the Society thinks fit against claims under this Part.

(2) The premium upon a policy of insurance entered into under this section shall be paid out of the guarantee fund.

PART VI

PART VI

INVESTIGATIONS, INQUIRIES AND DISCIPLINARY PROCEEDINGS

DIVISION I—THE LEGAL PRACTITIONERS COMPLAINTS COMMITTEE

DIVISION I

68. (1) There shall be a committee entitled the "Legal Practitioners Complaints Committee".

Establishment
of the Legal
Practitioners
Complaints
Committee.

(2) The Committee shall consist of seven members appointed by the Governor of whom—

(a) three shall be persons nominated by the Attorney-General of whom one shall be a legal practitioner and two shall be persons who are not legal practitioners;

and

(b) four shall be persons nominated by the Society (at least one of whom shall, at the time of his nomination, be a practitioner of not more than seven years standing and at least one shall be a person who is not a legal practitioner).

(3) A member of the Committee, nominated by the Attorney-General after consultation with the President of the Society, shall be appointed by the Governor to be Chairman of the Committee for such term and upon such conditions as may be fixed in the instrument of appointment.

(4) A legal practitioner is not eligible to be appointed as a member of the Committee unless he holds a current practising certificate.

(5) A member is not eligible for appointment as Chairman of the Committee unless he is a legal practitioner.

69. (1) Subject to this Act a member of the Committee shall be appointed—

Conditions
upon which
members of the
Committee
hold office.

(a) if he is one of the first appointees to the Committee—for a term of office not exceeding three years specified in the instrument of his appointment;

or

(b) in any other case—for a term of office of three years,

and, upon the expiration of his term of office, shall be eligible for re-appointment.

(2) The Governor may remove a member of the Committee from office for—

(a) mental or physical incapacity to carry out satisfactorily the duties of his office;

(b) neglect of duty;

or

(c) dishonourable conduct.

(3) The office of a member of the Committee shall become vacant if—

(a) he dies;

(b) his term of office expires;

(c) he resigns by written notice addressed to the Attorney-General;

PART VI
DIVISION I

(d) in the case of a member who is a legal practitioner—he ceases to hold a current practising certificate;

or

(e) he is removed from office by the Governor pursuant to subsection (2).

(4) Upon the office of a member of the Committee becoming vacant, a person shall be appointed in accordance with this Act to the vacant office but where the office of a member of the Committee becomes vacant before the expiration of the term for which he was appointed, the person appointed in his place shall be appointed for the balance only of the term of his predecessor.

Quorum, etc.

70. (1) Four members of the Committee (of whom not less than two are legal practitioners) shall constitute a quorum of the Committee, and no business shall be transacted at a meeting of the Committee unless a quorum is present.

(2) A decision carried by a majority of the votes cast by the members present at a meeting of the Committee shall be a decision of the Committee.

(3) Each member of the Committee shall be entitled to one vote on any matter arising from the decision of the Committee and, in the event of an equality of votes, the person presiding at the meeting shall be entitled to a second or casting vote.

(4) The Chairman shall preside at any meeting of the Committee at which he is present, and, in the absence of the Chairman, the members present shall decide who is to preside at that meeting.

(5) Subject to this Act, the business of the Committee shall be conducted in such a manner as the Committee determines.

(6) The Committee shall not meet to transact business on premises of the Society.

Validity of acts of the Committee and immunity of its members.

71. (1) An act or proceeding of the Committee shall not be invalid by reason only of a vacancy in its membership, and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding shall be as valid and effectual as if the member had been duly nominated or appointed.

(2) No liability shall attach to a member of the Committee for any act or omission by him, or by the Committee, in good faith and in the exercise or purported exercise of his or its powers or functions, or in the discharge or purported discharge of his or its duties under this Act.

Secretary of the Committee.

72. (1) There shall be a Secretary to the Committee.

(2) The Secretary shall be appointed by the Society with the approval of the Attorney-General.

Confidentiality.

73. A member of the Committee or a person employed or engaged on work related to the affairs of the Committee shall not divulge information that comes to his knowledge by virtue of his office or position except—

(a) in the course of carrying out the duties of his office or position;

or

(b) as may be authorized by or under this Act.

Penalty: Five thousand dollars.

DIVISION II—FUNCTIONS OF THE COMMITTEE

PART VI
DIVISION IIFunctions
of the
Committee.

74. (1) The functions of the Committee are as follows:

- (a) to receive, consider and investigate complaints of unprofessional conduct against legal practitioners;
- (b) where the subject matter of a complaint is, in the opinion of the Committee, capable of resolution by conciliation—to attempt to resolve the matter by conciliation;
- (c) where, in the opinion of the Committee, a complaint has substance but may be adequately dealt with by admonishing the legal practitioner against whom the complaint was made—to admonish the legal practitioner accordingly;
- (d) to lay charges of unprofessional conduct before the Tribunal.

(2) The Committee may engage such persons as it thinks fit to assist it in carrying out its functions.

75. (1) Subject to subsection (2), the Committee may delegate any of its powers or functions under this Act to any person. Power of delegation.

(2) The power to admonish and lay charges before the Tribunal shall not be delegated.

(3) A delegation under this section is revocable at will and does not derogate from the power of the Committee to act itself in any matter.

76. (1) The Committee may of its own motion, and shall at the direction of the Attorney-General or the Society, make an investigation into the conduct of a legal practitioner. Investigations by Secretary.

(2) No direction shall be given to the Committee under this section unless the Attorney-General or the Society (as the case may require) has reasonable cause to suspect that the legal practitioner to whom the proposed investigation relates has been guilty of unprofessional conduct.

(3) For the purposes of an investigation, a person authorized by the Committee to exercise the powers conferred by this subsection, may at any time during ordinary business hours—

- (a) inspect any books, accounts, documents or writings in the custody or control of the legal practitioner or of any person employed by the legal practitioner;

and

- (b) make notes or copies of any such book, account, document or writing, or take extracts from them.

(4) A person who—

- (a) wilfully delays or obstructs an authorized person in the exercise of powers conferred by subsection (3);

or

- (b) being a legal practitioner, or a person employed by him, refuses without reasonable excuse to produce any book, account, document or writing when required to do so by the authorized person,

shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars or imprisonment for twelve months.

PART VI
DIVISION II
Report upon
investigations.

77. (1) Subject to subsection (2), where, after a complaint has been investigated, the Committee is satisfied that evidence of unprofessional conduct on the part of a legal practitioner exists, it shall make a report upon the matter to the Attorney-General and the Society.

(2) A report need not be made under subsection (1) where the subject matter of the complaint has been successfully resolved by conciliation.

(3) Where the Committee has attempted to resolve the subject matter of a complaint by conciliation, but the attempt has proved unsuccessful, the Committee shall make a report upon the matter to the Attorney-General and the Society.

DIVISION III

DIVISION III—THE LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL

Establishment
of the Tribunal.

78. (1) There shall be a tribunal entitled the "Legal Practitioners Disciplinary Tribunal".

(2) There shall be twelve members of the Tribunal (each of whom shall be a legal practitioner) appointed by the Governor on the nomination of the Chief Justice.

(3) A legal practitioner is not eligible for appointment as a member of the Tribunal unless he holds a current practising certificate.

(4) One member of the Tribunal shall be appointed, on the nomination of the Chief Justice, to be the Chairman of the Tribunal, and another member shall be appointed by the Governor, on the nomination of the Chief Justice, to be Deputy Chairman of the Tribunal.

(5) The Deputy Chairman may, in the absence of the Chairman, exercise any powers conferred by this Act on the Chairman.

Conditions of
Membership.

79. (1) Subject to this Act, a member of the Tribunal shall be appointed—

(a) if he is one of the first appointees to the Tribunal—for a term of office, not exceeding three years, specified in the instrument of his appointment;

or

(b) in any other case—for a term of office of three years,

and, upon the expiration of his term of office, shall be eligible for re-appointment.

(2) No person shall be appointed as a member of the Tribunal for a term expiring after the day on which he attains the age of seventy years.

(3) The Governor may remove a member of the Tribunal from office for—

(a) mental or physical incapacity to carry out satisfactorily the duties of his office;

(b) neglect of duty;

or

(c) dishonourable conduct.

(4) The office of a member of the Tribunal shall become vacant if—

(a) he dies;

(b) his term of office expires;

(c) he resigns by written notice addressed to the Attorney-General;

(d) he ceases to hold a current practising certificate;

or

(e) he is removed from office by the Governor pursuant to subsection (3).

(5) Upon the office of a member of the Tribunal becoming vacant a person shall be appointed, in accordance with this Act, to the vacant office, but where the office of a member of the Tribunal becomes vacant before the expiration of the term for which he was appointed, the person appointed in his place shall be appointed only for the balance of the term of his predecessor.

80. (1) In relation to any proceedings instituted before the Tribunal, the Tribunal shall consist of a panel of three of its members chosen by the Chairman to constitute the Tribunal for the purposes of those proceedings (one of whom may be the Chairman himself).

Constitution
and
proceedings of
the Tribunal.

(2) Where the Chairman is a member of a panel chosen under subsection (1), he shall preside at the proceedings, and in any other case a member of the panel nominated by the Chairman shall preside.

(3) The Tribunal separately constituted under this section in respect of separate proceedings may sit contemporaneously to hear and determine those separate proceedings.

(4) A decision in which any of the two of the three members constituting the Tribunal concur shall be a decision of the Tribunal.

(5) Subject to this Act, the proceedings of the Tribunal shall be conducted in such manner as the Tribunal determines.

81. (1) An act or proceeding of the Tribunal shall not be invalid by reason only of a vacancy in its membership, and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding shall be as valid and effectual as if the member had been duly nominated or appointed.

Validity of acts
of Tribunal and
immunity of its
members.

(2) No liability shall attach to a member of the Tribunal for any act or omission by him, or by the Tribunal, in good faith and in the exercise or purported exercise of his or its functions, or in the discharge or purported discharge of his or its duties under this Act.

PART VI
DIVISION IV

DIVISION IV—PROCEEDINGS BEFORE THE TRIBUNAL

Inquiries.

82. (1) A charge may be laid under this section alleging unprofessional conduct—

(a) on the part of any legal practitioner;

or

(b) on the part of any former legal practitioner who was at the time of the alleged unprofessional conduct a legal practitioner.

(2) A charge may be laid under this section by—

(a) the Attorney-General;

(b) the Committee;

(c) the Society;

or

(d) a person claiming to be aggrieved by reason of the alleged unprofessional conduct.

(3) A charge laid under this section must be in the form prescribed by rules under this Division.

(4) Where a charge has been laid under this section, the Tribunal shall, subject to subsection (5), inquire into the conduct of the legal practitioner or former legal practitioner to whom the charge relates.

(5) The Tribunal may summarily dismiss any charge that it considers frivolous or vexatious.

(6) If after conducting an inquiry under this section the Tribunal is satisfied—

(a) that a legal practitioner is guilty of unprofessional conduct it may exercise any one or more of the following powers:

(i) it may reprimand the legal practitioner;

(ii) it may order the legal practitioner to pay a fine not exceeding five thousand dollars;

(iii) it may, by order, suspend the right of the legal practitioner to practise the profession of the law for a period not exceeding three months;

(iv) it may order that the legal practitioner shall not, during a period stipulated in the order (but not exceeding six months) practise the profession of the law otherwise than in accordance with conditions stipulated in the order;

(v) it may recommend that disciplinary proceedings be commenced against the legal practitioner in the Supreme Court;

or

(b) that a former legal practitioner was, while he remained a legal practitioner, guilty of unprofessional conduct, it may order the former legal practitioner to pay a fine not exceeding five thousand dollars.

(7) After completing an inquiry under this section, the Tribunal shall transmit the evidence taken by the Tribunal upon the inquiry together with a memorandum of its findings to the Attorney-General, the Society and, where the charge was laid by the Committee, to the Committee.

83. (1) The Tribunal shall give to a legal practitioner or former legal practitioner whose conduct is subject to inquiry under this Part, and to any person upon whose application an inquiry is to be held, not less than seven days' written notice of the time and place at which it intends to conduct the inquiry, and shall afford any such person a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Tribunal. Notice of inquiry.

(2) If a person to whom notice has been given pursuant to subsection (1) does not attend at the time and place fixed by the notice, the Tribunal may proceed with the inquiry in his absence.

(3) A person whose conduct is subject to an inquiry under this Part shall be entitled to be represented at the inquiry by counsel.

84. (1) For the purposes of an inquiry under this Part, the Tribunal may— Powers of Tribunal.

- (a) by summons signed on behalf of the Tribunal by a member of the Tribunal, require the attendance before the Tribunal of any person (including a party to the proceedings) whom the Tribunal thinks fit to call before it;
- (b) by summons signed on behalf of the Tribunal by a member of the Tribunal, require the production of books, papers or documents;
- (c) inspect any books, papers or documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents;
- (d) require any person to make an oath or affirmation that he will truly answer all questions put to him by the Tribunal, or by any person appearing before the Tribunal, relevant to any matter being inquired into by the Tribunal (which oath or affirmation may be administered by any member of the Tribunal);

or

- (e) require any person appearing before the Tribunal (whether he has been summoned to appear or not) to answer any relevant question put to him by any member of the Tribunal, or by any other person appearing before the Tribunal.

(2) A summons may be issued under subsection (1) on the application of a party to proceedings before the Tribunal, notwithstanding that the Tribunal has not met to authorize the issue of the summons.

(3) If any person—

- (a) who has been served with a summons to attend before the Tribunal, neglects or fails without reasonable excuse to attend in obedience to the summons;
- (b) who has been served with a summons to produce any books, papers or documents neglects or fails without reasonable excuse to comply with the summons;

(c) misbehaves himself before the Tribunal, wilfully insults the Tribunal or any member of the Tribunal, or interrupts the proceedings of the Tribunal;

or

(d) refuses to be sworn or to affirm or to answer any relevant question when required to do so by the Tribunal,

he shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

(4) If a person summoned as mentioned in subsection (1) refuses or fails to attend before the Tribunal as required by the summons, or having attended refuses to be sworn or to affirm, or to answer any relevant question when required to do so by the Tribunal, a certificate of the refusal or failure, signed by a member of the Tribunal, may be filed in the Supreme Court.

(5) Where a certificate has been filed under subsection (4), a party requiring the attendance of the person may apply (either *ex parte* or on notice) to the Supreme Court for an order directing that person to attend, or to be sworn or to affirm, or to answer questions (as the case may require), and on that application the Court may make such orders as it thinks fit (including orders for costs).

(6) A person may be required to answer a question by the Tribunal notwithstanding that the answer to that question might tend to incriminate him, or to produce any books, papers or documents notwithstanding that their contents might tend to incriminate him, but if that person objects to answering any question a note of that objection shall be taken down in the minutes of the proceedings, and the answer shall not be admissible against him in any criminal proceedings (except in proceedings for perjury).

(7) In the course of an inquiry, the Tribunal may—

(a) receive in evidence a transcript of evidence taken in proceedings before a court of any State or Territory of the Commonwealth, and draw any conclusions of fact from the evidence that it considers proper;

(b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court that may be relevant to the proceedings.

Costs.

85. (1) The Tribunal may make such orders as to costs against any person upon whose application an inquiry has been held, or against any legal practitioner or former legal practitioner whose conduct has been subject to inquiry, as the Tribunal considers just and reasonable.

(2) Costs of proceedings before the Tribunal may be taxed in the Supreme Court.

(3) Where the Tribunal has ordered payment of a fine or costs, a certificate of the fine or costs shall be filed in the Supreme Court.

(4) Where a certificate has been filed under subsection (3), proceedings may be taken for the recovery of the fine or costs as if the certificate were a judgment of the Supreme Court.

86. (1) Subject to subsection (2), a right of appeal to the Supreme Court shall lie against any reprimand or order of the Tribunal administered or made in the exercise or purported exercise of any of its powers or functions under this Act.

(2) An appeal must be instituted within one month of the date of the reprimand or order appealed against, but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be so instituted.

(3) The Supreme Court may, on the hearing of an appeal exercise any one or more of the following powers, as the case requires:

- (a) affirm, vary or quash the reprimand or order appealed against, or substitute, or make any finding, reprimand or order that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the Tribunal for further hearing or consideration or for re-hearing;
- (c) make any further or other order as to costs or any other matter that the case requires.

87. (1) Where an order has been made by the Tribunal, and the Tribunal or the Supreme Court is satisfied that an appeal against the order has been instituted, or is intended, it may suspend the operation of the order, until the determination of the appeal.

Operation of order may be suspended.

(2) Where the Tribunal has suspended the operation of an order under subsection (1), the Tribunal may terminate the suspension, and where the Supreme Court has done so, the Supreme Court may terminate the suspension.

88. Any three or more Judges of the Supreme Court may make rules for any of the following purposes:

Rules of the Tribunal.

- (a) regulating the practice and procedure of the Tribunal;
- (b) conferring on the Tribunal any additional powers necessary or expedient for carrying out its functions;
- (c) making any other provision that is necessary or expedient for carrying into effect the provisions of this Part relating to the Tribunal.

DIVISION V—DISCIPLINARY PROCEEDINGS BEFORE THE SUPREME COURT

DIVISION V

89. (1) Where the Tribunal after conducting an inquiry into the conduct of a legal practitioner recommends that disciplinary proceedings be commenced against the legal practitioner in the Supreme Court, the Attorney-General or the Society may institute disciplinary proceedings in the Supreme Court against the legal practitioner.

Proceedings before Supreme Court.

(2) In any disciplinary proceedings against a legal practitioner (whether instituted under this section or not) the Supreme Court may exercise any one or more of the following powers:

- (a) it may reprimand the legal practitioner;
- (b) it may suspend the right of the legal practitioner to practise the profession of the law for a specified period, or until further order of the Supreme Court;

PART VI
DIVISION V

- (c) it may order that the legal practitioner shall not practise the profession of the law otherwise than in accordance with conditions stipulated in the order;
- (d) it may order that the name of the legal practitioner be struck off the roll of legal practitioners;
- (e) it may make any other order (including an order as to the costs of proceedings before the Court and the Tribunal) that it considers just.

(3) This Part does not derogate from the inherent jurisdiction of the Supreme Court to discipline legal practitioners.

(4) In any disciplinary proceedings the Supreme Court may refer any matter to a Judge or Master, or to the Tribunal for investigation and report.

(5) In any disciplinary proceedings—

- (a) the Supreme Court may, without further inquiry, accept and act upon any findings of the Tribunal or of a Judge or Master to whom a matter has been referred for investigation and report under subsection (4);

and

(b) the Supreme Court may—

- (i) receive in evidence a transcript of evidence taken in any proceedings before a court of any State or Territory of the Commonwealth and draw any conclusions of fact from the evidence that it considers proper;
- (ii) adopt, as in its discretion it considers proper, any findings, decision, judgment or reasons for judgment of any such court that may be relevant to the proceedings.

(6) Where the Supreme Court is satisfied, upon the application of the Attorney-General or the Society, that a legal practitioner is disqualified or suspended from practice under the law of any other State or Territory of the Commonwealth, it may, without further inquiry, impose a corresponding disqualification or suspension under the provisions of this section.

(7) Where the Supreme Court is satisfied that a legal practitioner has been convicted of an offence of sufficient gravity to justify invoking the provisions of this subsection, the Supreme Court may, of its own motion, or on the application of the Attorney-General or the Society, suspend the legal practitioner from practice pending the investigation and determination of disciplinary proceedings or until further order.

DIVISION VI

Lay Observers.

DIVISION VI—LAY OBSERVERS

90. (1) The Attorney-General may appoint suitable persons (not being legal practitioners) to be lay observers for the purposes of this Part.

(2) A lay observer shall not, as such, be subject to the Public Service Act, 1967-1978, but shall hold office on terms and conditions determined by the Attorney-General.

(3) A lay observer shall be entitled to be present at any proceedings of the Committee or the Tribunal and may report to the Attorney-General on any aspect of the proceedings of the Committee or the Tribunal.

(4) A complainant in proceedings before the Committee or Tribunal who is dissatisfied with the proceedings or the decision of the Committee or Tribunal shall be entitled to make representations directly to the lay observer.

PART VII

PART VII

PUBLIC NOTARIES

91. (1) A person who desires to be admitted as a public notary may apply to the Supreme Court for an order admitting him as such. Appointment of notaries.

(2) The Court shall have power to admit the applicant as a notary or to dismiss the application as, in its discretion, it thinks fit.

(3) A person admitted as a public notary under this Part shall make an oath in the prescribed form before the Registrar of the Supreme Court or a Commissioner authorized to take affidavits in the Supreme Court.

(4) A person admitted as a notary under this Part shall have all the powers and authorities (including the power to take affidavits) exercisable by law or custom by public notaries.

92. (1) The Registrar of the Supreme Court shall cause a roll to be kept of all notaries admitted in pursuance of this Part. Roll of notaries.

(2) On the application of any person whose name appears on the roll, the Registrar shall grant a certificate in the prescribed form certifying that that person is a public notary duly authorized and admitted to practise as such in this State.

(3) An apparently genuine document purporting to be a certificate under this section shall in the absence of proof to the contrary be accepted in any legal proceedings that the person named in the certificate is a public notary.

93. (1) Where the Supreme Court is satisfied that the name of a public notary should be struck from the roll of public notaries, the Court may, of its own motion, or upon the application of the Attorney-General or the Society, strike the name of the public notary from the roll of public notaries. Power of court to strike off name of any notary.

(2) Any person whose name is struck off the roll of public notaries shall cease to be a public notary, but the Court may at any time, if it thinks fit, order the name of that person to be reinstated on the roll.

(3) Where a legal practitioner is admitted as a public notary, and the name of that legal practitioner is struck from the roll of legal practitioners, his name shall also be struck from the roll of public notaries.

94. If any person in his own name, or in the name of any other person, acts as a public notary without being admitted under this Part, he shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars. Persons acting as notaries contrary to this Part.

PART VIII

PART VIII

MISCELLANEOUS

Payment of
moneys to
Society.

95. (1) The Treasurer shall in each year pay to the Society—

(a) a prescribed proportion of the moneys paid by way of practising certificate fees for the purpose of maintaining and improving the library of the Society;

and

(b) a prescribed proportion of the moneys paid by way of practising certificate fees to be credited by the Society to the guarantee fund.

(2) The Treasurer may, upon the recommendation of the Attorney-General, make payments towards defraying the costs of administering Part VI.

(3) This section is, without further appropriation, sufficient authority for the payment of the moneys to which it relates from the General Revenue of the State.

Proceedings.

96. (1) Proceedings for an offence against this Act shall be disposed of summarily.

(2) Proceedings for an offence against this Act shall not be brought unless the Attorney-General has, by instrument in writing, authorized the institution of the proceedings.

(3) An apparently genuine document purporting to be an authorization under this section shall, in the absence of proof to the contrary, be accepted as such in any legal proceedings.

Regulations.

97. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of the foregoing, those regulations may—

(a) prescribe and provide for the recovery of, any fee for the purposes of this Act;

(b) prescribe any form for the purposes of this Act;

(c) prescribe requirements to be observed by companies holding practising certificates under this Act;

and

(d) prescribe penalties, not exceeding five thousand dollars, for breach of, or non-compliance with, any regulation.

(3) Regulations may, with the concurrence of the Society, be made under this section—

(a) declaring that in circumstances specified in the regulations the business of a company is to be regarded as being conducted in association with a legal practice;

(b) making special provision with respect to the keeping and auditing of the accounts of any such company;

and

(c) regulating the conduct of business by any such company and restricting the classes of transaction into which any such company may enter.

(4) This section is in addition to, and does not derogate from, any other provision of this Act providing for the making of regulations.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor