

Hon. Mr. Sidey.

LAW PRACTITIONERS AMENDMENT (SOLICITORS' FIDELITY GUARANTEE FUND).

ANALYSIS.

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A BILL INTITULED

AN ACT to make Provision for the Establishment and Administration of a Solicitors' Fidelity Guarantee Fund, and for Matters incidental thereto. Title.

5 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the Law Practitioners Amendment (Solicitors' Fidelity Guarantee Fund) Act, 1929, and shall be read together with and deemed part of the Law Practitioners Act, 1908 (hereinafter referred to as the principal Act). Short Title and commencement.

(2) This Act shall come into force on the first day of January, nineteen hundred and thirty.

2. In this Act, unless the context otherwise requires,— Interpretation.
15 "Committee" or "committee of management" means the committee to which the powers of the Council in relation to the fund may be delegated pursuant to section ten of this Act:

2 *Law Practitioners Amendment (Solicitors' Fidelity Guarantee Fund).*

"Council" means the Council of the New Zealand Law Society:

"Fund" means the Solicitors' Fidelity Guarantee Fund established under this Act:

"Prescribed" means prescribed by this Act or by rules made under the authority of this Act. 5

Application of Act.

3. This Act shall apply with respect to every solicitor who is for the time being engaged in the practice of the profession of law either on his own account or in partnership with any other person or persons, but shall not apply to any solicitor who is not so engaged.

Solicitors' Fidelity Guarantee Fund. 10

Establishment of Solicitors' Fidelity Guarantee Fund.

4. (1) There is hereby established a fund to be known as "The Solicitors' Fidelity Guarantee Fund" (hereinafter referred to as "the fund").

(2) The fund shall be the property of the New Zealand Law Society, and shall be held in trust for the purposes hereinafter appearing. 15

Fund to be kept in separate bank account.

5. All moneys belonging to the fund shall, pending the investment or application thereof in accordance with this Act, be paid into a bank for the time being carrying on business in New Zealand, to the credit of a separate account to be called the Solicitors' Fidelity Guarantee Fund Account. 20

Moneys payable into fund.

6. The fund shall consist of—

(a) All sums paid to or on account of the fund by solicitors, either as annual contributions or as levies, in accordance with the provisions of this Act in that behalf:

(b) The interest from time to time accruing from the investment of the fund, as hereinafter provided: 25

(c) All moneys recovered by or on behalf of the New Zealand Law Society in the exercise of any right of action conferred by this Act:

(d) Any other moneys that may be lawfully paid into the fund. 30

Expenditure from fund.

7. There shall from time to time be paid out of the fund, as required,—

(a) The amount of all claims, including costs, allowed or established against the fund as hereinafter provided:

(b) All legal expenses incurred in defending claims made against the fund, or otherwise incurred in relation to the fund: 35

(c) All refunds made to solicitors or to their personal representatives pursuant to section *twenty-two* hereof:

(d) The expenses involved in the administration of the fund, including allowances to members of the Council or the committee of management in respect of their services and their reasonable travelling-expenses incurred in connection with the management of the fund: 40

(e) Any other moneys payable out of the fund in accordance with this Act or with rules made under the authority of this Act. 45

Audit of accounts.

8. (1) The accounts of the fund shall be audited annually by a registered accountant appointed for the purpose by the Council. No person shall be so appointed to audit the fund unless he is authorized to audit solicitors' trust accounts in accordance with the regulations for the time being in force relating to the audit of such accounts. 50

(2) Every person acting as auditor under this section shall in respect of the fund have the same powers and duties and be subject

to the same responsibilities and obligations, with such modifications as may be necessary, as he would have in respect of the audit of solicitors' trust accounts.

9. Subject to the provisions of the *next succeeding* section, the fund shall be administered by the Council on behalf of the New Zealand Law Society. Council to administer fund.

10. The Council may by resolution delegate its powers in relation to the fund or any of such powers to a committee of management, consisting of not less than *three* nor more than *five* persons being members of the New Zealand Law Society. Any member of that Society may be appointed a member of the committee of management, notwithstanding that he may not be a member of the Council. Any resolution as aforesaid may be at any time in like manner rescinded or varied. Council may delegate its powers in relation to the fund to a committee of management.

11. (1) Except as provided in the *next succeeding* section, every solicitor with respect to whom this Act applies, on making application in any year for a certificate under section forty-five of the principal Act, shall, in addition to all other fees then payable by him, pay such fee as may from time to time be prescribed for the purposes of this Act, being not less than *five* pounds or more than *ten* pounds in any year, and no such certificate shall be issued unless and until the prescribed fee is paid. Solicitors in practice to pay prescribed fees into fund.

(2) If any solicitor with respect to whom this Act is not applicable at the time of his application for a certificate under section forty-five of the principal Act thereafter in the year for which such certificate is issued commences to practise as a solicitor on his own account or in partnership with any other person or persons, he shall thereupon become liable to pay to the fund the amount of the prescribed fee for that year.

(3) All fees payable under this section shall be paid in the same manner as fees payable under section forty-five of the principal Act are paid, and the person receiving such fees shall forthwith pay them into the fund.

12. No further contributions in accordance with the *last preceding* section shall be made to the fund established under this Act at any time while the amount of the fund, including any investments thereof, and after deducting the amount of all unpaid claims and other liabilities outstanding against the fund, is not less than *one hundred* thousand pounds. Accumulated fund not to exceed £100,000.

13. (1) If at any time the fund is not sufficient to satisfy the liabilities of the New Zealand Law Society in relation thereto the Council may by resolution impose on every solicitor in respect of whom this Act applies, for payment into the fund, a levy of such amount as it thinks fit, not exceeding *ten* pounds. In addition to annual contributions, solicitors may be required to pay levy for benefit of fund.

(2) The amount of such levy shall become payable on a date and in a manner to be fixed by the Council, and if not theretofore paid shall be paid together with the next annual fee payable to the fund pursuant to the provisions of section *eleven* hereof.

(3) No solicitor shall be required to pay by way of levy under this section more than *ten* pounds in any one year or more than *fifty* pounds during the whole period of his practice as a solicitor.

14. (1) Any moneys in the fund that are not immediately required for the purposes thereof may be invested in any manner in which trustees are for the time being authorized to invest trust funds, or otherwise as the Council thinks fit. Investment of fund.

(2) The income derived from the investment of the fund at any time while the fund amounts to or exceeds *one hundred* thousand pounds may be paid into and form part of the general account of the New Zealand Law Society, and shall then be available for any of the purposes of the society.

Application of fund.

15. (1) Subject to the provisions of this Act, the fund shall be held and applied for the purpose of reimbursing persons who may suffer pecuniary loss by reason of the theft by a solicitor with respect to whom this Act applies, or by his servant or agent, of any money or other valuable property entrusted to him, or to his servant or agent, in the course of his practice as a solicitor, including any money or other valuable property as aforesaid entrusted to him as a solicitor-trustee.

(2) No person shall have any claim against the fund in respect of any theft committed before the commencement of this Act, and, in respect of any theft that may be committed after the commencement of this Act, no person shall have a claim against the fund unless notice of such claim is given in writing to the Council or committee of management within *twelve* months after the claimant has become aware of the theft.

Council may settle claims without action.

16. (1) The Council may receive and settle any claim against the fund at any time after the commission of the theft in respect of which such claim arose, but no person shall be entitled, without leave of the Council, to commence any action in relation to the fund unless and until the claimant has exhausted all relevant rights of action and other legal remedies available against the defaulting solicitor or any other person in respect of the loss suffered by him.

Limitations of right of action to recover moneys from fund.

(2) No person shall be entitled to recover from the fund by action as aforesaid an amount greater than the balance of the loss suffered by him after deducting from the total amount of such loss the amount or value of all moneys or other benefits received or receivable by him from any source other than the fund in reduction of such loss.

(3) No right of action shall lie in relation to the fund in respect of any loss suffered by any person by reason of any theft that may be committed by a solicitor at any time after the claimant or his privies have received a notification from the Council or committee of management warning him or them against the employment or continued employment of such solicitor.

Defences to claims against fund.

(4) No action for damages shall lie against the New Zealand Law Society or any member or servant of the Council or committee of management for any notification given in good faith and without malice for the purposes of the *last preceding* subsection.

17. In any action brought against the New Zealand Law Society in relation to the fund, all defences which would have been available to the defaulting solicitor shall be available to the Society.

Subrogation of rights of action against defaulting solicitor.

18. On payment out of the fund of any moneys in settlement in whole or in part of any claim under this Act the New Zealand Law Society shall be subrogated, to the extent of such payment, to all the rights and remedies of the claimant against the solicitor in relation to whom the claim arose, or, in the event of his death or insolvency or other disability, against his personal representatives or other persons having authority to administer his estate.

19. No moneys or other property belonging to the New Zealand Law Society other than the fund shall be available for the satisfaction of any judgment obtained against the society in relation to the fund, or for the payment of any claim allowed by the Council; but if at any time the fund is not sufficient to provide for the satisfaction of all such judgments and claims they shall, to the extent to which they are not so satisfied, be charged against future accumulations of the fund.

If fund insufficient to satisfy claims, such claims to be charged on future accumulations.

20. (1) Notwithstanding anything to the contrary in the foregoing provisions the Council may in its discretion enter into any contract or contracts of insurance with any person or company carrying on fidelity insurance business in New Zealand, whereby the New Zealand Law Society will be indemnified to the extent and in the manner provided by such contract or contracts against liability to pay claims under this Act.

Council may enter into contracts of insurance for purposes of Act.

(2) Any such contract of insurance may be entered into in relation to solicitors generally or in relation to any solicitor or solicitors named therein.

(3) No action shall lie against the New Zealand Law Society, or against any member or servant of the Council, or against any member of the committee of management, for injury alleged to have been suffered by any solicitor by reason of the publication in accordance with fact of a statement that any contract of insurance entered into under this section does or does not apply with respect to such solicitor:

Provided that in the event of any contract of insurance being entered into in respect of any specified solicitor or solicitors, the Council shall on the application of any other solicitor enter into a like contract of insurance in respect of such last-mentioned solicitor if the insurer signifies his or its willingness to enter into such contract on like terms and conditions.

21. No claimant against the fund shall have any right of action against any insurance company or other person with whom a contract of insurance is made under this Act in respect of such contract, or have any right to claim any moneys paid by the insurer in accordance with any such contract of insurance; but all such moneys shall be paid into the fund and shall be applied in or towards the settlement of relevant claims.

Application of insurance moneys.

22. In the event of the death or on the retirement from the practice of his profession of any solicitor in respect of whom no claim has been made under this Act or, if any such claim has been made, in respect of whom such claim has not been sustained, the Council may in its discretion pay to him, or to his personal representatives, as the case may be, a sum not exceeding the aggregate amount of his contributions to the fund.

Council may refund contributions in certain cases.

Supplementary Provisions.

23. (1) For the purpose of safeguarding the fund established under this Act the Council of the New Zealand Law Society or of any District Law Society may at any time appoint a registered accountant for the time being qualified to conduct the audit of solicitors' trust accounts to examine the accounts of any specified solicitor or firm of solicitors, whether a member or members of any District Law Society or

Council of New Zealand Law Society or of any District Law Society may appoint registered accountant to investigate affairs of solicitor.

not, and to furnish to it a confidential report as to any irregularity in the accounts of such solicitor or solicitors that may be disclosed by such examination, or as to any other matter that in the opinion of such accountant should, in the interests of the fund, be further investigated.

(2) Every appointment made under this section shall be in writing 5 and shall be signed on behalf of the Council by the President or two members thereof.

(3) Upon production by such accountant of the instrument of his appointment as aforesaid he may require the solicitor or solicitors in respect of whom the appointment has been made, or any servant 10 or agent of such solicitor or solicitors, to produce to him all books, papers, accounts, securities, or other documents relating to the business or accounts of such solicitor or solicitors, and to give all information in relation thereto that may be reasonably required of him or them, and if any such person, without lawful justification or excuse, the proof whereof 15 shall lie on him, refuses or fails so to do, or otherwise hinders, obstructs, or delays the accountant in the performance of his duties or the exercise of his powers under this section, he shall be guilty of an offence and shall be liable accordingly.

(4) No accountant appointed to make any examination of accounts 20 for the purposes of this section shall communicate any matter which may come to his knowledge in the course of such examination to any person except in the course of his report to the Council that appointed him.

(5) The Council receiving such report shall consider the same in committee and not otherwise, and it shall not be lawful for any member 25 of that Council or of any of its officers to publish to any person any information disclosed in such report except in the performance of his duty.

(6) Every person who commits a breach of any of the provisions of this section shall be liable on summary conviction to a fine of *ten* 30 pounds.

24. (1) For the purposes of this Act the Council may make rules for all or any of the following purposes:—

- (a) Prescribing the amount of the annual contributions to the fund to be paid by solicitors with respect to whom this Act applies: 35
- (b) Providing for the investment of so much of the fund as is not immediately required for the purposes thereof:
- (c) Prescribing forms of notice to be given to the Council in relation to claims against the fund, and the conditions subject to which and the extent to which the Council may settle any 40 such claims without recourse being had to legal proceedings:
- (d) Prescribing the duties of accountants appointed to conduct an examination of any accounts pursuant to section *twenty-three* hereof; and prescribing also the duties of the solicitor or solicitors concerned in relation thereto, and the circumstances 45 in which such solicitor or solicitors may be required to pay the cost of such examination:
- (e) Generally, for such other matters as may be considered necessary for the purpose of giving full effect to the intent of this Act.

(2) The rules made under the authority of this section shall not 50 come into force unless they are approved by the Governor-General in Council.

Council of New Zealand Law Society may make rules for purposes of this Act.

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