

LEGAL PRACTITIONERS (AMENDMENT) ACT.

Act No. 12, 1935.

An Act to amend the law relating to legal practitioners; to make provision with respect to the keeping and examination of accounts of solicitors and conveyancers; to make better provision for the investigation of charges of professional misconduct; to provide for the establishment and administration of a solicitors' fidelity guarantee fund; to provide for the issue of annual practising certificates; to provide for admission of conveyancers as solicitors and to discontinue the grant of certificates to persons to practise as conveyancers; and for

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for these and other purposes to amend the Legal Practitioners Act, 1898, and certain other Acts; and for purposes connected therewith. [Assented to, 11th March, 1935.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title,
citation and
commencement.**

1. (1) This Act may be cited as the "Legal Practitioners (Amendment) Act, 1935."

(2) The Legal Practitioners Act, 1898, is referred to in this Act as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Legal Practitioners Act, 1898-1935.

(4) This Act shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

**Amendment of
Act No. 22,
1898.**

**See. 3.
(Interpreta-
tion.)**

2. The Principal Act is amended—

(a) by inserting in section three next after the definition of "Barrister" the following definitions:—

"Chief Justice" means the Chief Justice of the Court and includes an Acting Chief Justice, and in the absence from duty of the Chief Justice and Acting Chief Justice means the senior puisne judge of the Court.

"Conveyancer" means a certificated conveyancer to whom a certificate has been granted under this Act.

"Council" means the council of the Institute.

(b) by inserting in the same section after the definition of "Court" the following definition:—

"Institute" means the Incorporated Law Institute of New South Wales.

(c)

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[(c) by inserting in the same section after the definition of "Judge" the following definitions:—

"Moneys" includes an instrument for the payment of money in any case where the instrument may be paid into a bank.

"Moneys received for or on behalf of any person" includes moneys held for or on behalf of any person whether originally received for or on his behalf or not.

"Part" means Part of this Act.

(d) by omitting from the same section the definition of "Prescribed" and by inserting the following definitions:—

"Prescribed" means prescribed by this Act and in Parts I to VI, both inclusive, and Parts X and XI by rules of Court and in Parts VII, VIII and IX by regulations made pursuant to this Act."

"Secretary" means the secretary for the time being of the Institute and includes any deputy or person temporarily fulfilling the duties of his office.

(e) by inserting in the same section at the end of the definition of "Solicitor" the words "and in Parts VII, VIII, IX, X, and XI of this Act includes a conveyancer";

(f) by inserting in the same section next after the definition of "Solicitor" the following new definition:—

"The Fund" means the Solicitors' Fidelity Guarantee Fund established pursuant to this Act.

3. The Principal Act is further amended by inserting next after Part VI the following new Part:—

Further amendment of Act
No. 22, 1898.
New Part VII.

PART VII.

Trust accounts.

41. (1) All moneys received for or on behalf of any person by any solicitor shall be held by him exclusively for such person, to be paid to such person, or to be disbursed as he directs, and until so paid or disbursed the moneys shall be paid into a bank in New South Wales to a trust account, whether general or separate. (2)

Payment into bank.
1931, No. 46
(N.Z.), s. 46.

No. 12. 1835.

(2) The moneys shall not be available for the payment of the debts of the solicitor to any other creditor of the solicitor, or be liable to be attached or taken in execution under the order or process of any Court at the instance of any such other creditor.

(3) Nothing in this section shall be construed to take away or affect any just claim or lien which any solicitor may have against or upon any of the moneys, and nothing in this section shall apply to moneys receivable by a solicitor for or on account of legal costs, whether already due or to accrue due.

Keeping of accounts.

42. Every solicitor shall keep accounts of all moneys so received by him in such a manner as to disclose the true position in regard thereto, and to enable the account to be conveniently and properly audited.

Professional misconduct.

43. Wilful failure by any solicitor to comply with any provision of section forty-one or section forty-two of this Act shall be professional misconduct.

Relief to bankers.
23 & 24 Geo.
V. ch. 24,
s. 8.

44. (1) Subject to the provisions of this section no bank shall, in connection with any transaction on any account of any solicitor kept with it or with any other bank, incur any liability or be under any obligation to make any enquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it:

Provided that nothing in this subsection shall relieve a bank from any liability or obligation under which it would be apart from this Act.

(2) Notwithstanding anything in subsection one of this section a bank at which a solicitor keeps an account for clients' money shall not, in respect of any liability of the solicitor to the bank, not being a liability in connection with that account, have or obtain any recourse or right whether by way of set-off, counter-claim, charge or otherwise, against moneys standing to the credit of that account:

Provided

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Provided that nothing in this subsection shall deprive a bank of any right existing at the time of the commencement of the Legal Practitioners (Amendment) Act, 1935.

4. The Principal Act is further amended by inserting after Part VII, as inserted in the Principal Act by this Act, the following new Part:—

Further amendment of Act No. 22, 1898.
New Part VIII.

PART VIII.

The Solicitors' Fidelity Guarantee Fund.

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

46. (1) There shall be a fund to be called the Solicitors' Fidelity Guarantee Fund.

The fund.
Ibid. s. 73.

(2) The fund shall be the property of the Institute and shall be applied for the purposes set out in this Part.

47. All moneys belonging to the fund shall, pending the investment or application thereof in accordance with this Part, be paid into a bank in New South Wales to the credit of a separate account, to be called the Solicitors' Fidelity Guarantee Fund Account, and such account shall be operated upon in such manner as the council shall from time to time determine.

Separate bank account.
Ibid. s. 74.

48. The fund shall consist of—

Moneys of the fund.
Ibid. s. 75.

- (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 Part;
- (b) the interest from time to time accruing from the investment of the fund;
- (c) any other moneys that may be lawfully paid into the fund.

No. 12, 1935.**Expenditure
1931, No. 46
(N.Z.),
s. 76.**

49. There shall from time to time be paid out of the fund as required, and in such order as the Council deems proper—

- (a) all legal expenses incurred in investigating or defending claims made against the fund or the Institute in respect of the fund or otherwise incurred in relation to the fund;
- (b) the amount of all claims, including costs, allowed or established against the Institute in respect of the fund as provided in this Part;
- (c) all refunds made to solicitors or to their personal representatives pursuant to section sixty-four of this Act;
- (d) the expenses involved in the administration of the fund, including allowances to members of the council or the committee of management or the Statutory Committee in respect of their services and their reasonable travelling expenses incurred in connection with the management of the fund;
- (e) the expenses incurred or involved in the administration by the council of or in the exercise by the council of the powers and authorities conferred on the council by this Part or Part X;
- (f) any other moneys payable out of the fund in accordance with this Part or with any rules or regulations made under the authority of this Act.

Audit.*Ibid. s. 77.*

50. The accounts of the fund shall be audited annually by an accountant approved of by the Prothonotary and appointed for the purpose by the council.

Administration.*Ibid. ss.
78, 79.*

51. The fund shall be administered by the council on behalf of the Institute.

The

The council may from time to time 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 Institute.

A majority of the members of such committee of management shall be members of the council for the time being.

Any such resolution may be at any time in like manner rescinded or varied.

52. (1) Except as provided in subsection three of this section, every solicitor with respect to whom this Part applies shall during the month of July in each year pay to such person as may from time to time be authorised by the council to receive the same such annual contribution as may from time to time be prescribed by regulations made under the authority of this Part, being not less than three pounds nor more than ten pounds in any year.

(2) If any solicitor who is not during the month of July in any year engaged in the practice of his profession either on his own account or in partnership with any other person commences after the said month of July in any year to practise as a solicitor on his own account or in partnership with any other person, he shall thereupon become liable to pay, and shall pay to the person authorised to receive the same under subsection one of this section, the amount of the annual contribution for that year prescribed by the regulations:

Provided that if the date of such commencement is after the thirty-first day of December in any year, the solicitor so commencing to practise shall only be liable to pay one-half of the annual contribution for that year prescribed by the regulations.

(3) If on the first day of July in any year the amount of the fund, including investments thereof, and after making such provision as the council may consider adequate for all unpaid claims and other liabilities outstanding against the fund, shall be

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Levies.
 1931, No. 46
 (N.Z.),
 s. 82.

**Failure to
 pay contribu-
 tion or
 levy.**

**Investment
 of fund.**
Ibid. s. 83.

be not less than one hundred thousand pounds, no contributions in accordance with this section shall be payable to the fund for that year.

(4) For the purpose of this and section fifty-three of this Act, the year shall be deemed to commence upon the first day of July, and to expire upon the thirtieth day of June next following.

53. (1) If at any time or times the fund is in the opinion of the council not sufficient to satisfy the liabilities of the Institute in relation thereto, the council may, subject as hereinafter provided, by resolution impose on every solicitor with respect to whom this Part applies, for payment into the fund, a levy of such amount as the council thinks fit not exceeding ten pounds.

(2) The amount of the levy shall become payable on a date and in a manner to be fixed by the council. The council may in any special case allow time for the payment of any levy or part thereof.

(3) A solicitor shall not be required to pay by way of levy under this section more than ten pounds in any one year nor more than fifty pounds during the whole period of his practice as a solicitor.

54. If any solicitor with respect to whom this Part applies does not after the prescribed notice pay any contribution or levy as required by this Part, the council shall report to the Prothonotary that the solicitor has not paid the contribution or levy, as the case may be.

The Prothonotary shall make due record of the fact, and so long as the contribution or levy remains unpaid the solicitor shall be deemed to be an unqualified person within the meaning of Part VI.

55. 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 authorised to invest trust funds, or on deposit, for such period as the council deems proper, with the Colonial Treasurer or with any bank or corporation prescribed by rules of court as a bank or corporation to which trust moneys may be paid under section fifteen of the Trustee Act, 1925.

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

No. 12, 1935.
Application
of fund.
cf. 1931,
No. 46
(N.Z.),
s. 84.

(2) (a) No person shall have any claim against the fund in respect of any theft or fraudulent misapplication committed before the commencement of the Legal Practitioners (Amendment) Act, 1935.

(b) In respect of any theft or fraudulent misapplication that may be committed after such commencement, no person shall have a claim against the fund unless notice of such theft or fraudulent misapplication is given in writing to the council as soon as reasonably practicable after the claimant has become aware of the theft or fraudulent misapplication, but in any event within three months after having become so aware unless the Court or a judge thereof grants further time.

(3) No person shall be entitled to claim against the fund in respect of any loss through such theft or fraudulent misapplication unless and until there shall have been a conviction of such solicitor for such theft or fraudulent misapplication, unless the Court or a Judge thereof for reasons which to the Court or such Judge shall seem good and sufficient, shall have by an order certified that the person claiming to have suffered loss should be permitted to claim against the fund notwithstanding that such solicitor has not been convicted in respect of such theft or fraudulent misapplication.

57. (1) The council may receive and settle any claim against the fund at any time after the commission of the theft or fraudulent misapplication in respect of which such claim arose, but no person shall be

Claims
against the
fund.
cf. *Ibid.*
s. 85.

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be entitled, without leave of the council, to commence any action in relation to the fund unless the council shall have disallowed his claim, and 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.

(2) No person shall be entitled to recover from the Institute out of 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 recovered or which in the opinion of the council might but for his neglect or default have been received or recovered by him from any source other than the fund in reduction of such loss.

(3) The total amount which any person shall be entitled to recover from the fund shall not in any case or in any event exceed two thousand pounds.

cf. 21 Geo. V
No. 46 (Q.),
s. 16 (1).

(4) The aggregate sum which may be applied in the reimbursement of all persons who suffer loss through theft or fraudulent misapplication by the same solicitor or firm of solicitors shall not in any case or in any event exceed the sum of ten thousand pounds:

Provided that where the first judgment or claim in respect of any such theft or fraudulent misapplication is obtained or allowed on or before the thirtieth day of June, one thousand nine hundred and forty-five, such aggregate sum shall not exceed the sum of five thousand pounds.

(5) No amount shall be paid or payable out of the fund as interest on the amount of any judgment obtained or of any claim allowed against the fund.

Advertise-
ment.

58. The council may cause to be published a notice in or to the effect of the prescribed form in a newspaper published and circulating in the district in which the defaulting solicitor is or was practising or carrying

carrying on business and also in a daily newspaper published and circulating in Sydney, and such notice shall fix a date not being earlier than three months after the publication or the first publication, as the case may be, within which claims must be made.

Any claim not made in writing on or before the date so fixed shall be barred unless the council otherwise determines.

59. After the date so fixed the council shall be at liberty to distribute the sum from time to time available to be applied in reimbursement under section fifty-seven of this Act, having regard only to judgments obtained and claims allowed against the fund. Council may distribute.

60. Any proceedings brought against the Institute in relation to any claim upon the fund shall be by action at law as for a debt due by the Institute, and in any such action all defences which would have been available to the solicitor in relation to whom the claim arose shall be available to the Institute, and in any such action all questions of costs shall be in the discretion of the Court or the presiding Judge. Defences. 1931, No. 46 (N.Z.), s. 86.

61. On payment out of the fund of any moneys in settlement in whole or in part of any claim under this Part, the Institute 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 any other person. Subrogation. *Ibid.* s. 87.

62. The council or the committee of management may at any time and from time to time require production and delivery up of securities and documents necessary to support any claim made, or available for that purpose, or for the purpose of exercising its rights against any defaulting solicitor, and may in default of delivery up of any such securities or documents reject any claim. Council may require production, etc., of documents.

63. (1) No moneys or other property belonging to the Institute, other than the fund, shall be available for the satisfaction of any judgment obtained against the Institute in relation to the fund, or for the payment of any claim allowed by the council; and if at any time the fund is not sufficient to provide for the satisfaction Insufficiency of the fund. Cf. *Ibid.* s. 88.

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satisfaction of all such judgments and claims, they shall (subject to the limitations fixed by this Act) to the extent to which they are not so satisfied, be satisfied out of future accumulations of the fund.

(2) No proceedings based upon or for the enforcement of any such judgment shall be taken without leave of the Court.

(3) Where the total amount of the judgments obtained and claims allowed exceeds the aggregate sum which may be applied in reimbursement under section fifty-seven of this Act, the council may in its uncontrolled discretion determine the division and allocation amongst the claimants respectively or any one or more of them exclusively of the other or others of them, of the moneys for the time being payable out of the fund.

Refund to
representa-
tives of
deceased
solicitor or
to retiring
solicitor.

1931, No. 46
(N.Z.),
s. 91.

64. 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.

Examination
of account.
Ibid. s. 92.

65. (1) For the purpose of safeguarding the fund, the council may at any time and from time to time appoint an accountant to examine the trust accounts of any solicitor or firm of solicitors specified in the appointment, whether a member or members of the Institute or not, and to furnish to the council a confidential report as to any irregularity or alleged or suspected 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 interest of the fund, be further investigated.

A copy of the report shall forthwith be sent by post by the accountant to the solicitor or firm concerned.

(2)

(2) Every appointment made under this section shall be subject to the approval of the Prothonotary and shall be in writing signed by the president or two members of the council.

(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 in the absence of such solicitor or solicitors any servant or agent of such solicitor or solicitors having the apparent charge or control for the time being of the office or business of such solicitor or solicitors, to produce to the accountant and any assistant of the accountant all books, papers, accounts, securities or other documents relating to the business or accounts of such solicitor or solicitors, so far as the same relate to the trust accounts and trust funds of such solicitor or solicitors, and to give all information in relation thereto, and to furnish all authorities and orders to bankers and others that may be reasonably required of him or them, and if any such person without lawful justification or excuse, the proof whereof 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 to the penalty provided under subsection six of this section.

Any such offence shall also be professional misconduct.

(4) No accountant appointed to make any examination of accounts for the purposes of this section shall communicate that fact or 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.

No assistant of any such accountant shall communicate the fact of the appointment of such accountant or any matter which may come to his knowledge in

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in the course of the examination to any person except to the accountant appointed to make the examination, or, if so required, to the council.

(5) It shall not be lawful for any member of the council or any of its officers to publish, except to the Court or to the council, or to the Statutory Committee, any information disclosed in such report.

(6) Every person who commits a breach of any of the provisions of this section shall, in addition to any other proceeding, penalty or punishment to which he may be liable, be liable on summary conviction to a penalty not exceeding two hundred pounds.

Further amendment of Act No. 22, 1898.
New Part IX.

5. The Principal Act is further amended by inserting after Part VIII, as inserted in the Principal Act by this Act, the following new Part:—

PART IX.

Annual practising certificates.

Roll of solicitors.
21 Geo. V No. 46 (Q.), s. 25.

Solicitor's practising certificate.
Ibid. s. 26 (1).

Persons practising without certificates.
Ibid. s. 27.

66. It shall be the duty of the council to keep a roll of practising solicitors and to issue certificates to persons who are entitled to take out certificates authorising them to practise, and for the purposes of this Part any reference to a solicitor or practising solicitor shall include a solicitor employed as a clerk by another solicitor.

67. No solicitor shall on or after the first day of July, one thousand nine hundred and thirty-five, act or practise as a solicitor unless he has then in force a certificate in the prescribed form that he is entitled to practise as a solicitor.

68. Every person who after the thirtieth day of June, one thousand nine hundred and thirty-five, directly or indirectly acts or practises as a solicitor without having at the time a certificate then in force issued by the council shall be guilty of an offence, and shall, in addition to any other proceedings, penalty or punishment to which he may be liable, be liable on summary conviction to a penalty not exceeding fifty pounds.

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Fee.

69. The annual practising fee, which shall be paid to the Institute, shall be—

- (a) for every solicitor who for the time being is engaged in the practice of his profession either on his own account or in partnership with any other solicitor, the sum of two guineas; and
- (b) for any solicitor who is not so engaged, the sum of one guinea;

and every solicitor who holds a practising certificate shall, while such practising certificate remains in force, be entitled to be a member of the Institute without payment of any further fee or subscription.

70. Subject to this Act, on payment by the applicant of the prescribed practising fee and on being satisfied that the prescribed contribution to the fund and any levy then payable under this Act by him has been paid, the council shall—

**Application
for and
issue of
certificate.**
21 Geo. V
No. 46 (Q.),
s. 28.

- (a) on application by a duly enrolled practising solicitor issue to him a certificate in the prescribed form which shall be in force from the first day of July next after the date of such certificate until the thirtieth day of June following;
- (b) on application by a duly enrolled solicitor who shall not have practised as a solicitor prior to the date of such application, accompanied by a declaration by the applicant in the prescribed form, issue to him a certificate in the prescribed form which shall be in force from the date of such certificate until the thirtieth day of June next following such date;
- (c) on application by a duly enrolled solicitor who shall have been, but at the date of such application is not, in practice as a solicitor, accompanied by a declaration by the applicant in the prescribed form, issue to him a certificate in the prescribed form which shall be in force from the date of such certificate until the thirtieth day of June next following such date.

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Grounds for
refusing
certificate.
21 Geo. V
No. 46 (Q.),
s. 29.

71. The council may refuse to issue a certificate and may cancel a certificate when issued under the foregoing provisions of this Part if the applicant for or holder of such certificate, as the case may be, shall—

- (a) be in prison;
- (b) have failed to comply with any statute, regulation or order relating to his trust funds or the trust funds of any partnership of which he was a member at the time, and such failure still continues;
- (c) have when called upon by the council so to do failed to give a satisfactory explanation touching any matter relating to his conduct as a solicitor, and such failure still continues;
- (d) be in any way in default under any of the provisions contained in this Act;
- (e) be sharing in contravention of section 40F of this Act with an unqualified person receipts from a business of a nature usually performed by a practising solicitor.

If the council shall refuse to issue or shall cancel such certificate it shall, if so required by the applicant or holder, as the case may be, within fourteen days from the date of such refusal or cancellation, state in writing the grounds for such refusal or cancellation.

Appeal.
Ibid. s. 31.

72. In case the council shall refuse any application for a certificate, or shall cancel any such certificate, the applicant or the holder, as the case may be, may appeal to the Court or to a judge in chambers, who may make such order in the matter as to the Court or judge may seem fit.

In the case of an appeal against a refusal the appellant shall, pending the disposal of the appeal, be deemed to hold a practising certificate. In the case of an appeal against a cancellation the cancellation shall be suspended pending the disposal of the appeal.

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Solicitor
may not act
or recover
costs while
uncertifi-
cated.21 Geo. V
No. 46 (Q.),
s. 32.

73. No solicitor acting for a client shall on or after the first day of July, one thousand nine hundred and thirty-five, commence, prosecute, defend, or carry on any action or suit or any proceedings in any court without having previously obtained a practising certificate which shall be then in force, or shall be capable of maintaining any action or suit for the recovery of any fee, reward or disbursement for or in respect of any business, matter or thing done by him as a solicitor whilst he shall have been without such practising certificate.

74. No person acting as a solicitor for a client on or after the first day of July, one thousand nine hundred and thirty-five, without having previously obtained a practising certificate which shall be then in force, shall be capable of maintaining any action or suit for the recovery of any fee, reward or disbursement for or in respect of instructions for, or drawing, preparing, engrossing, stamping, registering, or recording any deed, document, or instrument, whilst he shall have been without such practising certificate.

6. The Principal Act is further amended by inserting after Part IX, as inserted in the Principal Act by this Act, the following new Part:—

Further amend-
ment of Act
No. 22, 1898.
New Part X.

PART X.

The Solicitors' Statutory Committee.

75. (1) There shall be a committee of the council to be called "The Statutory Committee of the Incorporated Law Institute of New South Wales" (hereinafter referred to as the "Statutory Committee") for the purpose of hearing charges of professional misconduct upon the part of solicitors, whether such solicitors are members of the Institute or not.

Statutory
Committee.
cf. 18
Geo. V No.
14 (Q.), s. 5.

(2) The Statutory Committee shall consist of not less than three and not more than five members who at the time of their appointment shall be members of the Institute and shall be practising solicitors of not less than seven years' standing.

(3)

(3) The members shall be appointed by the Chief Justice and shall hold office for a term of three years.

Any member shall be eligible for reappointment.

(4) Any casual vacancy in the Statutory Committee shall be filled by the appointment thereto by the Chief Justice of some eligible person and such person shall hold office for the remainder of the term of office of the member whose seat has become vacant.

(5) The Statutory Committee shall appoint one of its members to be the chairman thereof for such period as it thinks fit.

(6) A quorum of the Statutory Committee shall consist of three members thereof.

(7) The continuing members of the Statutory Committee may (provided there is a quorum) act notwithstanding any vacancy in their body.

No act done by or by the authority of the Statutory Committee shall be invalid in consequence of any defect that is afterwards discovered in the appointment or qualification of the members or any of them.

(8) A member of the Statutory Committee may retire from his office upon giving one month's notice in writing to the secretary of his intention so to do, and such resignation shall take effect upon the expiration of such notice or its earlier acceptance by the council.

(9) The office of a member of the Statutory Committee shall ipso facto be vacated—

(a) if he dies; or

(b) if he becomes of unsound mind; or

(c) if he ceases to be a member of the Institute; or

(d) if he becomes bankrupt or makes any arrangement or composition with his creditors; or

(e)

- (e) if he is convicted of an offence under this Act; or
- (f) if by resolution of the council he is required to resign:

Provided that if any such vacancy shall occur during the hearing of any charge, question or matter such hearing may be continued and an order made thereon by not less than three of the remaining members of the Statutory Committee before whom such hearing was commenced and continued prior to such vacancy.

(10) When any charge, question or matter is heard by and before three or more members of the Statutory Committee, and such members are divided in opinion as to the decision to be given on any point arising during the hearing or as to the order to be made on such charge, question or matter, such point or order shall be decided or made according to the opinion of the majority of such members, if there be a majority, but if such members are equally divided in opinion, then the opinion of the chairman of the Statutory Committee if he is one of such members, or if he is not, the opinion of the member appointed by the members taking part in such hearing to act as chairman on such hearing, shall prevail.

76. (1) The Court, or a judge, or the council of its own motion may refer to the Statutory Committee for enquiry any question as to the professional misconduct of any solicitor which appears to the Court, judge or council to require investigation.

(2) (a) Any person feeling aggrieved by reason of the alleged professional misconduct of any solicitor may, whether the matter charged was committed or suffered before or after the commencement of the Legal Practitioners (Amendment) Act, 1935, by himself or his agent make a charge thereof in writing to the council.

(b) The council may require—

- (i) further particulars of any charge;
- (ii) any charge to be verified by statutory declaration.

The

The council may refer any such charge to the Statutory Committee for enquiry.

(3) The council may either at the request of the Statutory Committee or of its own motion employ counsel and solicitors to assist the Statutory Committee in the investigation of any matter referred to the Statutory Committee.

(4) The Statutory Committee may by writing under the hand of the chairman summon before it any solicitor in respect of whose conduct any matter has been referred to it or a charge has been made, and may enquire into such matter or charge.

(5) The Statutory Committee may in like manner summon to appear before it the complainant and any person who may in its opinion be able to give evidence or produce documents touching the matter in question, or whom the complainant or the solicitor may desire to call as a witness.

(6) The provisions of sections seven, eight, nine, ten, eleven and twelve and of Part III of the Royal Commissions Act, 1923-1934, shall apply mutatis mutandis to and with respect to the inquiry, and every member of the Statutory Committee shall as such have the same protection as a commissioner appointed under that Act.

(7) A solicitor summoned before the Statutory Committee or a complainant may be represented by counsel or solicitor.

77. (1) Subject to the following provisions of this Part, every charge or question as to the professional misconduct of any solicitor referred to the Statutory Committee shall be heard by the Statutory Committee in accordance with the rules to be made under the authority of this Part, and the Statutory Committee shall, subject to such rules, upon every such hearing have power after hearing the case to make any such order as to striking off the roll or suspending from practice either conditionally or otherwise the solicitor to whom such hearing relates, or the imposing on him of a fine not exceeding two hundred pounds, or as to the payment by any party of costs or otherwise

in

Jurisdiction
of Statutory
Committee.

of. 18 Geo. V
No. 14 (Q.),
s. 5 (3) (a),
(b) (c) (d).

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in relation to the case as before the commencement of the Legal Practitioners (Amendment) Act, 1935, the Court would have had power to make in accordance with the authority and practice of the Court.

(2) Every order made by the Statutory Committee shall be signed by the chairman or by the member acting as chairman and shall be prefaced by a statement of the findings of the Statutory Committee in relation to the facts of the case and shall be filed with the Prothonotary.

(3) Every order made by the Statutory Committee shall as soon as the same shall have been filed, be acted upon by the Prothonotary and be enforceable in the same manner as a judgment or order of the Court to the like effect.

(4) The file of orders made under this Act shall, during office hours, be open for the inspection of any person on payment of such fee, if any, as may be prescribed by rules of court.

78. An appeal to the Court from any order of the Statutory Committee made under the powers of this Act shall lie at the instance either of the complainant or of the solicitor or of the council.

Every such appeal shall be in the nature of a rehearing and shall be made within such time and in such form and shall be heard in such manner as shall be prescribed by rules of court in that behalf to be made under the authority of this Act.

The court or a judge may order that any order made by the Statutory Committee shall be stayed pending the disposal of an appeal therefrom upon such terms as shall seem just.

79. Nothing in this Act contained shall prejudice, diminish, or affect the jurisdiction, powers and authorities which are exercisable by the Court over solicitors.

80. Every court of law shall take judicial notice of the appointment of the Statutory Committee and of the chairman and of each member thereof and of the signature of the chairman and of any member acting as chairman thereof.

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Rules of
court.
cf. 18 G.
V No. 14
(Q.), s. 5
(8). ;

81. The Judges of the Supreme Court, or any three of them, may from time to time on the recommendation of the council make rules of court—

- (a) for regulating the practice and proceedings of the Statutory Committee, including the awarding of costs by such Committee, the taxation thereof by the taxing officer of the Court, and the recovery of same by execution or otherwise;
- (b) for conferring upon the Statutory Committee any further powers necessary or convenient for the due fulfilment of its functions;
- (c) for carrying into effect the provisions of this Act relating to the Statutory Committee and its functions;

and may in like manner amend or rescind such rules.

All such rules shall be promulgated in like manner and thereupon have the like force and effect and be subject to the like disallowance upon being laid before both Houses of Parliament as rules of court made under and in pursuance of the Supreme Court Procedure Act, 1900.

Further amend-
ment of
Act No. 22,
1898.
New Part XI.

7. The Principal Act is further amended by inserting after Part X, as inserted in the Principal Act by this Act, the following new Part:—

PART XI.

Miscellaneous.

Additional
powers of
Institute.
cf. 1931, No.
46 (N.Z.),
s. 63 (2).

82. (1) The Institute shall, in addition to its existing powers and functions, have the following powers and functions, that is to say:—

- (a) to take such steps as in the opinion of the council may be necessary or proper for or with respect to the investigation in accordance with this Act of any charge or question as to the professional misconduct of any solicitor;
- (b)

- (b) to institute prosecutions and other proceedings for the breach of any of the provisions of this Act or of any rule or regulation made thereunder;
- (c) to oppose any application for admission as a solicitor or for restoration to the roll of solicitors or any application by a solicitor for leave to employ any person;
- (d) to employ any barrister or solicitor to appear before any court in any of the matters referred to in this section.

(2) Any prosecution or proceeding referred to in paragraph (b) of subsection one of this section may be instituted in the name of the Institute by the President or any Vice-president or by any other person duly authorised by the council in that behalf.

Every such prosecution or proceeding shall, unless it is proved to the contrary, be deemed to be instituted by and on behalf of the Institute.

83. The council may employ any barrister or solicitor to appear before any court in any matter affecting the Institute or the members thereof, or in which the Institute is directly or indirectly concerned or interested, and any barrister or solicitor so employed shall have audience in any court in any such matter.

84. (1) Any sum of money whatever payable to the Institute under this Act may be recovered as a debt due to the Institute.

(2) All moneys, including penalties recovered or received by the Institute pursuant to the provisions of this Act other than contributions to and levies made in respect of the Solicitors' Fidelity Guarantee Fund, shall be paid to the Institute and become part of the general funds of the Institute.

85. Any minutes of any proceedings at any meeting of the Institute or of the council or of any committee of the council or of the Statutory Committee signed by any person purporting to be the chairman of the meeting and purporting to be so signed either

Meetings and minutes.
cf. *Ibid. s. 26 (2).*

at

No. 12, 1935.

at the meeting at which such proceedings took place or at the next ensuing meeting, and any document purporting to be a copy thereof or an extract therefrom and purporting to be signed by the President or a Vice-president of the Institute in the case of minutes other than those of the proceedings of the Statutory Committee or by the chairman of the Statutory Committee or by the member acting as chairman of the Statutory Committee in the case of minutes of the proceedings thereof shall, without further proof, be admissible in evidence in all proceedings before any court or any person acting judicially within the meaning of the Evidence Act, 1898; and until evidence is given to the contrary every meeting in respect of the proceedings of which the minutes have been so made shall be deemed to have been duly convened and held and all the members thereof to have been duly qualified, and when such proceedings are proceedings of any committee of the council or of the Statutory Committee, until the contrary is proved any such committee of the council or the Statutory Committee (as the case may be) shall be deemed to have been duly and regularly constituted and to have had power to deal with the matters referred to in such proceedings.

Council
may make
regulations.
cf. 21 Geo.
V No. 46
(Q.), s. 34.
cf. 23 & 24
Geo. V,
c. 24, s. 1.

86. (1) For the purposes of this Act the council may make regulations for all or any of the following purposes:—

- (a) (i) as to the opening and keeping by solicitors of accounts at banks for clients' moneys;
- (ii) as to the keeping by solicitors of accounts containing particulars and information as to moneys received, held or paid by them, for or on account of their clients;
- (iii) empowering the council to take such action as may be necessary to enable them to ascertain whether or not the regulations made under subparagraphs (i) and (ii) of this paragraph are being complied with;

(iv)

(iv) regulating in respect of any other matter the professional practice, conduct and discipline of solicitors:

Provided that regulations made under subparagraphs (i) and (ii) of this paragraph shall apply only to a practising solicitor in the course of his practice as such;

(b) (i) prescribing the amount of the annual contributions to the fund to be paid by solicitors with respect to whom this Act applies;

(ii) providing for the method of payment and recovery of any fee, contribution or levy;

(iii) prescribing forms of notice to be given by and to the council in respect of claims against the fund;

(iv) prescribing the duties and fees of accountants appointed to conduct an examination of any accounts pursuant to section sixty-five of this Act, and prescribing also the duties of the solicitor concerned in relation thereto and the circumstances in which such solicitor may be required to pay the cost of such examination;

(v) prescribing forms of certificates to be issued to persons practising or entitled to practise as solicitors and of declarations, applications, notices and documents to be used in relation to any application or refusal of any application under this Act;

(vi) prescribing the evidence to be furnished that a person has been admitted to practise or is still practising or has ceased practising or has continued or discontinued practising as a solicitor, or as to the reason of any person discontinuing practice, and generally for the

the obtaining of information which may be considered necessary or reasonable for the purposes of determining the merits of applications for certificates or matters in relation thereto;

- (vii) all matters or things required or permitted by Parts VII, VIII and IX of this Act to be prescribed;
- (viii) generally, for such other matters as may be considered necessary for the purpose of giving full effect to the intent of Parts VII, VIII and IX of this Act;
- (ix) imposing penalties not exceeding fifty pounds for any contravention of the regulations made under this section.

(2) The Council may amend or rescind any regulation made under this section.

(3) The regulations and any amendment or rescission thereof made under the authority of this section shall—

- (a) be submitted to the Governor for his approval;
- (b) when approved by the Governor be published in the Gazette;
- (c) take effect from the date of publication or from a later date to be specified in the regulations;
- (d) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

(4) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after any regulation has been laid before such House disallowing any regulation or part thereof, the regulation or part shall thereupon cease to have effect.

(5) Any penalty imposed by the regulations may be recovered in a summary manner before a stipendiary or police magistrate or before two justices.

8. The Principal Act is further amended—

Further amend.
ment of Act
No. 22, 1898.

(a) by inserting next after section thirteen the New s. 13A. following new section:—

13A. (1) A conveyancer who is desirous of being admitted as a solicitor shall not be required to pass any examination before entering into articles of clerkship, or to serve under such articles for more than four years.

(2) A conveyancer who has attained the age of thirty years and is desirous of being admitted as a solicitor and who—

(a) has for at least five years since he became entitled to practise as a conveyancer been a managing clerk in the office of a solicitor practising in New South Wales; or

(b) has for at least five years practised as a conveyancer in New South Wales; or

(c) has for at least ten years since he became entitled to practise as a conveyancer been employed in New South Wales, whether in the Public Service or otherwise, in work relating to conveyancing or to documents of title,

shall not be required to enter into or serve under any articles of clerkship.

(3) Subject to the provisions of this section a conveyancer who is desirous of being admitted as a solicitor and who has passed the final law examination prescribed for the admission of solicitors or some examination prescribed as equivalent thereto, in all subjects prescribed for that examination except the subjects which

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at the commencement of the Legal Practitioners (Amendment) Act, 1935, are comprised within the section of such examination dealing with the Law of Property and the principles of Conveyancing and who has otherwise complied with such conditions as are prescribed, and who satisfies the Court that he is a fit and proper person to be admitted to practise as a solicitor, shall, upon having his name on his own application removed from the roll of conveyancers, be entitled to be admitted as a solicitor.

(4) This section shall apply to conveyancers to whom a certificate has been granted either before or after the commencement of the Legal Practitioners (Amendment) Act, 1935.

See. 15.
(Right of
audience.)

- (b) by inserting in section fifteen after the words "matters and proceedings in which he" the words "or his partner";
- (c) by inserting next after section twenty the following new sections:—

Discontinu-
ance of
grant of
certificates.

20A. (1) A certificate to practise as a conveyancer shall not be granted after the commencement of the Legal Practitioners (Amendment) Act, 1935, except in the case of an applicant who has made an application under section seventeen of this Act before such commencement or within six months thereafter, and who has passed the examination prescribed by such section within twelve months after such commencement.

(2) Subsection one of this section shall not extend to the case of a person whose name is restored to the roll of conveyancers.

Summary
jurisdiction
over con-
veyaneers.

20B. (1) The court shall have and shall be deemed always to have had the like summary jurisdiction over a conveyancer as it has over a solicitor, including power to remove his name from the roll of conveyancers and to cancel his certificate to practise as a conveyancer, or to suspend him from practice for any period.

(2)

(2) The court may if it thinks fit restore to the roll of conveyancers the name of any person whose name has been removed therefrom either before or after the commencement of this Act.

(d) by inserting next after section thirty-nine the ^{News. 39A.} following new section:—

39A. (1) Any court in which a solicitor has ^{Charging orders.} been employed to prosecute or defend any action, ^{22 & 23} suit, matter or proceeding, may at any time ^{Geo. V,} by order declare the solicitor entitled to a charge ^{ch. 37, s. 69.} on the property recovered or preserved through his instrumentality for his taxed costs in reference to that action, suit, matter or proceeding, and may make such orders for the taxation of the said costs and for raising money to pay, or for paying, the said costs out of the said property as to such Court seems fit.

(2) Subject to this section, all conveyances, assurances and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance or assurance to a bona fide purchaser for value without notice, be void as against the solicitor.

(3) No order shall be made if the right to recover the cost is barred by any statute of limitations.

(4) Where land is affected by the order the provisions of subsection two of this section shall not apply until the order is registered in cases where the land affected is not under the provisions of the Real Property Act, 1900, in the Register of Causes, Writs and Orders affecting land kept in the office of the Registrar-General pursuant to Part XXIII of the Conveyancing Act, 1919-1932, and the provisions of Division 1 of that Part shall apply to and in relation to such order, and where the land is

under

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under the provisions of the Real Property Act, 1900, the order may be registered under that Act in the manner prescribed by regulations under the Conveyancing Act, 1919-1932.

(5) This section shall extend to cases in which the employment of the solicitor was before the commencement of the Legal Practitioners (Amendment) Act, 1935, and the costs or any part thereof were earned prior to such commencement, as well as to cases in which the employment of the solicitor was and the costs were earned after such commencement.

Further amendment of Act No. 22, 1898.

9. The Principal Act is further amended by omitting Part VI and by inserting in lieu thereof the following new Part:—

Substituted Part VI.

Qualifications for practising as solicitor.

PART VI.

Unqualified practitioners.

40. No person shall be qualified to act as a solicitor unless—

- (a) his name is on the roll of solicitors; and
- (b) after the thirtieth day of June, one thousand nine hundred and thirty-five, he has in force a practising certificate.

A person who is not so qualified is in this Part referred to as an unqualified person.

Unqualified person not to act as solicitor.

22 & 23 Geo. V, ch. 37, s. 45.

40A. (1) No unqualified person shall act as a solicitor, or as such issue out any writ or process, or commence, carry on or defend any action, suit or other proceeding, in the name of any other person or in his own name, in any court of civil or criminal jurisdiction, or act as a solicitor in any cause or matter, civil or criminal to be heard or determined before any such court in New South Wales.

(2) If any person contravenes the provisions of this section, he shall be guilty of an offence and of contempt of the court in which the action, suit, cause, matter or proceeding in relation to which he so acts is brought or taken and may be punished accordingly,

accordingly, and shall be incapable of maintaining any action for any costs in respect of anything done by him in the course of so acting, and shall, in addition to any other penalty or forfeiture and any disability to which he may be subject, be liable for each such offence to a penalty of fifty pounds to be recovered, with full costs of action, by action brought in the Supreme Court or in any district court, by the Institute.

40B. (1) Any unqualified person who—

(a) pretends to be, or takes or uses any name, title, addition or description implying that he is qualified or recognised by law as qualified to act as a solicitor; or

(b) holds himself out to be or advertises or represents himself as qualified to act as a solicitor,

shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding fifty pounds for each such offence.

(2) Any person, not being a barrister, or a person qualified to act as a solicitor, who holds himself out or advertises or in any way represents himself as competent or qualified to act in or in connection with the carrying out of the functions of a legal adviser or practitioner, or who permits or suffers his name to be in any such way used by any other person, shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding fifty pounds for each such offence.

40C. (1) Any person not being a barrister, or a person qualified to act as a solicitor, who for or in expectation of any fee, gain or reward, either directly or indirectly draws, fills up, or prepares any will or other testamentary instrument, or any instrument creating or regulating rights between parties, or relating to real or personal property, or any legal proceeding, shall be guilty of an offence, and shall be liable on summary conviction to a penalty not exceeding fifty pounds for each such offence.

(2)

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(2) This section shall not extend to—

- (a) any public officer drawing or preparing instruments in the course of his duty; or
- (b) any person employed merely to engross any such instrument or proceeding; or
- (c) any land agent in respect of any instrument which he is entitled to draw, fill up, or prepare and charge for, under the Land Agents Act, 1927; or
- (d) any conveyancer in respect of any instrument which he is authorised to draw, fill up, or prepare, by law or by virtue of the certificate granted to him under section nineteen of this Act.

Penalty on
unqualified
person
acting in
preparation
of papers for
probate, etc.
22 & 23
Geo. V,
ch. 37, s. 49.

40D. Any person, not being a barrister, or a person qualified to act as a solicitor, who, for or in expectation of any fee, gain or reward, either directly or as an agent of any other person, whether a person qualified as abovementioned or not, takes instructions for, or draws or prepares any papers on which to found or oppose the grant of probate or letters of administration shall, without prejudice to any liability or disability to which he may be subject under any other section of this Act, or under any other Act, be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding fifty pounds for each such offence.

Body cor-
porate and
officers.

40E. If any act is done by a body corporate or by any director, officer or servant thereof of such a nature or in such a manner as to be calculated to imply that the body corporate is qualified or recognized by law as qualified to act as a solicitor, the body corporate shall be liable on summary conviction to a fine not exceeding one hundred pounds for each such offence, and in the case of an act done by a director, officer or servant of the corporation he also shall be liable on summary conviction to a penalty not exceeding fifty pounds for each such offence.

Prohibition
against soli-
citor sharing
costs with un-
qualified
person.
cf. 21 Geo. V
No. 46 (Q.),
s. 29 (f).

40F. Save in the cases and subject to the conditions prescribed no solicitor shall share receipts from a business of a nature usually performed by a practising solicitor with an unqualified person.

(2)

(2) Where it appears to the Court or to the Statutory Committee, as the case may be, that a solicitor has acted in contravention of this section his name may be struck off the roll of solicitors.

(3) This section shall not apply to or affect any lawful arrangement existing on the twenty-fourth day of January, one thousand nine hundred and thirty-five, between a solicitor and his managing clerk with regard to the emolument of such clerk where such arrangement does not constitute a partnership, and where the fact of such arrangement is notified to the Institute within three months after the commencement of this Act.

Any such arrangement shall be notified to the Institute in the prescribed manner.

40c. (1) No solicitor shall, in connection with his practice as a solicitor, without the written permission of the Institute, which may be given for such period and subject to such conditions as the Institute thinks fit, employ or remunerate any person who to his knowledge has been struck off the roll of any Court within the British Empire or who is disqualified from practising as a solicitor by reason of the fact that his name has been struck off the roll, otherwise than at his own request, or is suspended from practising as a solicitor.

Employment
by solicitor
of persons
struck off
the roll or
suspended.
22 & 23
Geo. V,
ch. 37, s. 52.

(2) A solicitor aggrieved by the refusal of the Institute to grant any such permission as aforesaid, or by any conditions attached by the Institute to the grant thereof, may appeal to the Court which may confirm the refusal or the conditions, as the case may be, or may grant such permission for such period and subject to such conditions as the Court thinks fit.

(3) If any solicitor acts in contravention of the provisions of this section or of the conditions subject to which any permission has been given thereunder, his name may be struck off the roll of solicitors or he may be suspended from practice for such period as the Statutory Committee or the Court, as the case may be, think fit.

(4)

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(4) Nothing in this section shall apply to the case of a solicitor who prior to the commencement of the Legal Practitioners (Amendment) Act, 1935, has obtained the permission of the Court to his employing a person disqualified as aforesaid.

Penalty on failure to disclose fact of having been struck off, etc.
22 & 23 Geo. V, ch. 37, s. 55.

40H. Any person who has been struck off the roll of any Court within the British Empire or who whilst he is disqualified from practising as a solicitor by reason of the fact that he has been struck off the roll otherwise than at his own request, or is suspended from practising as a solicitor, seeks or accepts employment by a solicitor in connection with that solicitor's practice, without previously informing him that he has been so struck off or that he is so disqualified as aforesaid, shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding ten pounds for each such offence.

Bodies corporate

40I. For the removal of doubt it is hereby declared that in sections 40A, 40B, 40C, and 40D of this Act reference to an unqualified person or to a person includes a reference to a body corporate.

10. The Principal Act is further amended—

- (a) by omitting from section one the words and figures "Part IV—Conveyancers—ss. 16-20" and by inserting in lieu thereof the words and figures "Part IV—Conveyancers—ss. 16-20B";
- (b) by omitting from the same section the words and figures "Part VI—Unqualified Practitioners—s. 40" and by inserting in lieu thereof the words and figures "Part VI—Unqualified Practitioners—ss. 40-40I";
- (c) by inserting at the end of the same section the following headings and subsection:—

PART VII—Trust accounts—ss. 41-44.

PART VIII—The Solicitors' Fidelity Guarantee Fund—ss. 45-65.

PART IX—Annual practising certificates—ss. 66-74.

PART

Further amendment of Act No. 22, 1898.

Sec. 1.
(Division into Parts.)

PART X—*The Solicitors' Statutory Committee*—ss. 75–81. No. 12, 1935.

PART XI—*Miscellaneous*—ss. 82–86.

(2) This Act shall be read and construed so as not to exceed the legislative power of this State to the intent that where any provision of this Act or the application thereof to any person or circumstances is held invalid the remainder of this Act and the application thereof to other persons or circumstances shall not be affected.
