

**LEGAL PROFESSION ACT
(CHAPTER 132)
LEGAL PROFESSION (LAW SOCIETY OF BRUNEI
DARUSSALAM) ORDER**

S 42/03

Amended by

S 56/03

S 20/06

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SUBSIDIARY LEGISLATION
LEGAL PROFESSION (LAW SOCIETY OF BRUNEI DARUSSALAM)
ORDER

ARRANGEMENT OF PARAGRAPHS

Paragraph

1. Citation.
2. *(Omitted)*.

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**LEGAL PROFESSION (LAW SOCIETY OF BRUNEI DARUSSALAM)
ORDER**

*Commencement: 1st August 2003
[S 40/03]*

Citation.

1. This Order may be cited as the Legal Profession (Law Society of Brunei Darussalam) Order.
2. *(Omitted).*

PART I

LAW SOCIETY OF BRUNEI DARUSSALAM

Establishment, purposes and powers of Society

Establishment of Society.

3. There is hereby established the Law Society of Brunei Darussalam.

Purposes and powers of Society.

4. (1) The purposes of the Society shall be —
 - (a) to maintain and improve the standards of conduct and learning of the legal profession in Brunei Darussalam;
 - (b) to facilitate the acquisition of legal knowledge by members of the legal profession and others;
 - (c) to assist the Government and the Courts in all matters affecting legislation submitted to it, and the administration and practice of law in Brunei Darussalam;
 - (d) to represent, protect and assist members of the legal profession in Brunei Darussalam and to promote in any manner the Society thinks fit the interests of the legal profession in Brunei Darussalam;
 - (e) to establish a library and to acquire or rent premises to house the library, the offices of the Society and other amenities for the use of members;

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(f) to protect and assist the public in Brunei Darussalam in all matters touching or ancillary or incidental to the law;

(g) to make provision for or assist in the promotion of a scheme whereby impecunious person on non-capital charges are represented by an advocate and solicitor;

(h) to grant prizes and scholarships and to establish and subsidise lectureships in educational institutions in subjects of study relating to law;

(i) to grant pecuniary or other assistance to any association, institute, board or society in Brunei Darussalam in the interests of the profession of law or of students for that profession;

(j) to afford pecuniary and other assistance to members or former members and to the wives, widows, children and other dependants, whether of members, former members or deceased members, who are in need of such assistance;

(k) to promote good relations and social intercourse among members and between members and other persons concerned in the administration of law and justice in Brunei Darussalam; and

(l) to establish and maintain good relations with professional bodies of the legal profession in other countries and to participate in the activities of any international association and become member thereof.

(2) In addition to the powers conferred by the other provisions of this Order or of any other written law, the Society may —

(a) purchase or lease any land or building required for any of the purposes of the Society;

(b) sell, surrender, lease, exchange or mortgage any land or building as may be found most convenient or advantageous;

(c) borrow money, whether by way of bank overdraft or otherwise, for such of the purposes of the Society as it may consider desirable; and

(d) do all such other things as are incidental or conducive to the achievement or betterment of the purposes of the Society.

(3) In addition to rules that may be made by the Society, with the approval of the Chief Justice, under the other provisions of this Order, the Society may, subject to the provisions of this Order and with the approval of the Chief Justice, make rules for giving effect to this Part.

Members of Society and subscriptions**Membership.**

5. The membership of the Society shall consist of—
- (a) all advocates and solicitors who are members of the Society by reason of paragraph 6;
 - (b) all persons admitted to membership of the Society under paragraph 7; and
 - (c) all persons elected as honorary members under paragraph 8.

Practising advocates and solicitors to be members.

6. (1) Every advocate and solicitor who has in force a practising certificate shall without election, admission or appointment become a member of the Society and remain a member as long as he has in force a practising certificate.

(2) Every advocate and solicitor who is a member of the Society under sub-paragraph (1) shall be referred to in this Order as a practitioner member.

Non-practitioner members.

7. (1) Any of the following persons who applies for membership of the Society in the prescribed manner shall be admitted as a member of the Society —

- (a) any advocate and solicitor who does not have in force a practising certificate; and
- (b) any qualified person ordinarily resident in Brunei Darussalam.

(2) Every person who is a member of the Society under sub-paragraph (1) shall be referred to in this Order as a non-practitioner member.

Honorary members.

8. The Council may elect as honorary members of the Society such persons as it may think fit, either for life or for such period as the Council may in any case consider appropriate.

Privileges of membership.

9. (1) Subject to this paragraph and to paragraphs 10 and 11, all members shall have the same rights and privileges.

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(2) Only practitioner members shall be eligible to attend and vote at any general meeting of the Society but only those practitioner members who are citizens of Brunei Darussalam or permanent residents shall be eligible to be elected to the Council.

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(3) Practitioner members may by resolution exclude all other members from a general meeting of the Society or any part thereof.

Expulsion and suspension of rights and privileges.

10. (1) Subject to sub-paragraph (2), any member of the Society, other than an honorary member, may in the prescribed manner, and upon such grounds, after being given a reasonable opportunity to answer all the allegations made against him —

(a) be expelled from membership; or

(b) be deprived of any one or more rights and privileges of membership.

(2) A practitioner member shall not be expelled from membership so long as he has in force a practising certificate.

Termination of membership.

11. Any member of the Society, other than an honorary member, who ceases to be qualified for membership shall thereupon cease to be a member.

Annual subscription.

12. (1) The amount of the annual subscription payable by members of the Society shall, subject to sub-paragraph (4), be fixed by the Council and shall be payable to the Society by every advocate and solicitor in each year prior to his application for a practising certificate.

(2) In fixing the amount of the subscription, the Council may divide members into classes and provide that different amounts shall be paid by different classes and for different periods, and generally regulate and vary the subscriptions payable by members or by different classes of members, as it may think fit.

(3) The subscriptions payable by members admitted to membership under paragraph 7 shall at no time exceed the lowest subscription payable by practitioner members for the corresponding period.

(4) The Council may fix levies payable by practitioner members for any of the purposes of the Society.

(5) The total of the subscriptions payable under sub-paragraph (1), the levies payable under sub-paragraph (4) and the annual contributions payable under paragraph 40 shall not in any calendar year exceed \$1,000 per practitioner member without the approval of a general meeting of the Society.

Council.

13. (1) For the proper management of the affairs of the Society and for the proper performance of its purposes and powers under this Order, there shall be a Council.

(2) The Council shall consist of statutory members and elected members as provided in paragraphs 14 and 15.

Statutory members.

14. (1) The following persons shall be statutory members of the Council each time it is constituted —

- (a) the Immediate Past President of the Society;
- (b) an advocate and solicitor nominated by the Attorney General; and
- (c) an advocate and solicitor appointed by the Council as soon as practicable after it is constituted.

(2) The members of the Council nominated by the Attorney General under sub-paragraph 1(b) and appointed by the Council under sub-paragraph 1(c) shall hold office for a term of 2 years and may be re-appointed.

Elected members.

15. (1) There shall be 10 elected members of the Council consisting of —

(a) 4 practitioner members, each of whom shall be an advocate and solicitor of not less than 10 years' standing on the day of his nomination for election to the Council;

(b) 3 practitioner members, each of whom shall be an advocate and solicitor of under 10 years' but not less than 5 years' standing on the day of his nomination for election to the Council; and

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(c) 3 practitioner members, each of whom shall be an advocate and solicitor of under 5 years' standing on the day of his nomination for election to the Council.

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(2) Subject to the provisions of this order, every elected member of the council shall hold office as a member for 2 years.

(3) Subject to sub-paragraph (4), a practitioner member who has been convicted of an offence involving fraud or dishonesty or who has been struck off the roll or suspended from practising as an advocate and solicitor for a period of 6 months or more shall not be eligible for election or appointment as a member of the Council.

(4) A practitioner member may, after a period of 5 years following the date of his conviction or the date when he was restored to the roll or the expiry of his suspension,

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whichever is the latter, with the leave of a Court of 3 Judges of the Supreme Court, one of whom shall be the Chief Justice, be eligible for election or appointment as a member of the Council.

(5) Where an application for leave under sub-paragraph (4) has been refused, the applicant shall not be entitled to make another application under that sub-paragraph within a period of 5 years from the date when the first-mentioned application was refused.

(6) An application for leave under sub-paragraph (4) shall be made by motion.

(7) The Court of 3 Judges shall not give leave under sub-paragraph (4) unless —

(a) notice of intention to apply therefor and all documents in support thereof have been served at least 14 days before the date of the hearing on the Attorney General and on the Society, either or both of whom may be represented at the hearing of, and may oppose, the application;

(b) the applicant satisfies the Court that his conduct since his conviction, striking off or suspension do not made him unfit to be a member of the Council; and

(c) the applicant exhibits affidavits of at least 2 practitioner members who are and have each been in active practice in Brunei Darussalam for a total of not less than 5 out of the 7 years immediate preceding the date of application attesting to the applicant's good behaviour from the date of his conviction, striking off or suspension and stating whether in their respective opinion he is a fit and proper person to be a member of the Council.

(8) A practitioner member shall, before his nomination or election as a member of the Council, file a declaration with the Society stating that he is not disqualified from holding office as a member of the Council by virtue of sub-paragraph (3) or, if he is so disqualified, stating that he has obtained the leave of the Court under sub-paragraph (4) for such nomination or appointment as a member of the Council.

(9) Any person who contravenes sub-paragraph (8) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000.

(10) *Repealed.*

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(11) Every elected member of the Council shall be eligible for re-election if he is qualified to be a candidate.

Election of Members of Council

Compulsory voting.

16. (1) Every advocate and solicitor who has in force a practising certificate on the date of nomination as provided in paragraph 17 shall vote for the election of the members of the Council as follows —

(a) if he is an advocate and solicitor of not less than 10 years' standing, he shall vote for the election of the members of the Council under paragraph 15(1)(a);

(b) if he is an advocate and solicitor of under 10 years' but not less than 5 years' standing, he shall vote for the election of the members of the Council under paragraph 15(1)(b); and

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(c) if he is an advocate and solicitor or of under 5 years' standing, he shall vote for election of the members of the Council under paragraph 15(1)(c).

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(2) Every advocate and solicitor who is required to vote for the election of the members of the Council in accordance with sub-paragraph (1) and who fails to do so shall not be entitled to apply for a practising certificate unless he —

(a) satisfies the Chief Registrar that he was not in Brunei Darussalam at the time of the election or had a good and sufficient reason for not so voting; or

(b) pays a penalty of \$500 which shall be credited to the Compensation Fund established by paragraph 40.

Elections.

17. (1) The Council shall, in the month of September in every second year fix and publish before the end of that month —

(a) the date of nomination which shall be in the second week of the month of October in that year;

(b) the date of election which shall be in the last week of the month of October in that year;

(c) the place where the ballot shall take place; and

(d) the names of 3 scrutineers.

(2) The election of the members of the Council shall take place within 21 days after the annual general meeting and shall, subject to paragraph 19, be conducted in such manner as may be prescribed by rules made under paragraph 25 with the approval of the Chief Justice on the date and at the place fixed by the Council in accordance with sub-paragraph (1).

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(3) If for any reason it is necessary to elect all the elected members of the Council otherwise than pursuant to sub-paragraph (1), the Council shall fix and publish —

(a) the date of nomination, which shall be not less than 7 days nor more than 15 days from the date of the notice notifying members of the election;

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(b) the date of the election, which shall be not less than 10 days nor more than 15 days from the date of nomination;

(c) the place where the ballot shall take place; and

(d) the names of 3 scrutineers.

(4) The election under sub-paragraph (3) shall, subject to paragraph 19, be conducted in such manner as may be prescribed by rules made under paragraph 25 with the approval of the Chief Justice on the date and at the place fixed by the Council in accordance with that sub-paragraph.

(5) Any accidental failure on the part of the Council to comply with this paragraph or any rules made with respect to elections to the Council shall not invalidate any election.

Nominations.

18. Every nomination of a candidate for election —

(a) shall be of a person qualified to be a candidate under paragraph 15;

(b) shall be in writing signed by not less than 2 persons qualified in like manner under paragraph 15 as the candidate nominated; and

(c) shall name only one candidate and his consent shall be endorsed thereon.

Insufficient nominations.

19. (1) If only so many candidates are nominated for election to the Council as are required to be elected, those candidates shall be deemed to have been elected; if fewer, the candidates nominated shall be deemed to have been elected and they, together with the statutory members of the Council and the continuing elected members of the Council, if any, shall appoint further members to complete the required number to satisfy the requirements of paragraph 15(1).

(2) If, at any election to be held under paragraph 17(3), no nominations are made for the election of members of the Council, the Chief Justice shall, after consulting the statutory members of the Council, if any, appoint to be members of the Council a sufficient number of persons who satisfy the requirements as to standing set out in paragraph 15(1).

(3) Members of the Council appointed under sub-paragraphs (1) and (2) shall for all purposes of this Order be deemed to be elected members.

Council's term of office.

20. (1) Every Council of the Society constituted after an election shall take office on the 1st day of January after that election and shall hold office until the 31st day of December in the following year or, if such is the case, until a Council takes office under sub-paragraph (2).

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(2) Every Council constituted after an election under paragraph 17(3) or after appointments made under paragraph 19(2) shall take office from the day on which the members of that Council were elected or appointed, as the case may be, and shall hold office until the 31st day of December in the following year.

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Casual vacancies.

21. (1) Any casual vacancy arising among the elected members of the Council shall be filled as soon as practicable by the Council by the appointment of a person qualified under paragraph 15, and any such person shall hold office for so long as the member in whose place he is appointed would have held office.

(2) The continuing members of the Council may act provided there is a quorum, notwithstanding the vacancy in the Council.

(3) No act done by or by the authority of the Council shall be invalid in consequence of any defect that is afterwards discovered in the election or qualification of the members or any of them.

Officers of Council

President, Vice-President, secretary and treasurer.

22. (1) There shall be a President, a Vice-President, a secretary and a treasurer of the Society (all of whom shall be citizens of Brunei Darussalam) who shall be elected by —

(a) members and members-elect of the Council taking office in either case on the 1st day of January after an election under paragraph 20(1) from amongst those members at a meeting of the Council before that date; or

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(b) members of the Council taking office under paragraph 20(2) from amongst those members at the first meeting of the Council.

(2) If any casual vacancy arises in respect of the office of the President, Vice-President, secretary or treasurer of the Society, the Council shall, at its next meeting or as soon as possible thereafter, elect one of its members to fill the vacancy.

(3) The President of the Society or, in his absence, the Vice-President shall be the chairman of the Council and shall preside at all meetings of the Council and of the Society.

(4) In the absence of the President and the Vice-President, the Council or the Society, as the case may be, shall elect a chairman from among its respective members.

Vacation of office of member of Council.

23. (1) A statutory member of the Council shall vacate his office if —

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(a) he has been struck off the roll or suspended from practising as an advocate and solicitor or has been convicted of an offence involving fraud or dishonesty;

(b) he becomes of unsound mind:

(c) he has entered into a composition with his creditors or into a deed of arrangement for the benefit of his creditors; or

(d) he has one or more outstanding judgments against him amounting in the aggregate to \$10,000 or more which he has not satisfied within 6 months from the date of the earliest judgment.

(2) An elected member shall vacate his office in any of the circumstances mentioned in sub-paragraph (1) and shall also vacate his office if —

(a) having been elected under paragraph 15(1), he ceases to have in force a practising certificate;

(b) he resigns his seat on the Council; or

(c) he is absent from 3 consecutive meetings of the Council without its consent.

(3) For the purposes of sub-paragraph (2), a person appointed under paragraph 19(1), 19(2) or 21(1) shall be deemed to have been elected under paragraph 15(1).

(4) Sub-paragraphs (1) and (2) do not apply to a member of the Council who has obtained the leave of the Court under paragraph 15(4) prior to his election or appointment as a member of the Council.

Powers of Council

General powers of Council.

24. (1) The management of the Society and of its funds shall be vested in the Council.

(2) All such powers, acts or things as are not by this Order expressly authorised, directed or required to be exercised or done by the Society in general meeting may, subject to the provisions of the Act or of this Order or of any resolution passed by the Society in general meeting, be exercised or done by the Council.

(3) No resolution of the Society passed under sub-paragraph (2) shall invalidate the previous exercise of any power or the previous doing of any act or thing by the Council which would have been valid if the resolution had not been passed.

Specific powers of Council.

25. Without prejudice to the general powers conferred by paragraph 24 or the specific powers to make rules conferred by any other provision of this Order, the Council shall have power —

(a) subject to the provisions of this Order and with the approval of the Chief Justice, to make rules to provide for all matters not expressly reserved to the Society in general meeting, whether they are expressed amongst its powers or not;

(b) to answer questions affecting the practice and etiquette of the profession and the conduct of members thereof;

(c) to take cognizance of anything affecting the Society or the professional conduct of its members and to bring before any general meeting of the Society any matter which it considers material to the Society or to the interests of the profession and make any recommendations and take such action as it thinks fit in relation thereto;

(d) to examine and, if it thinks fit, to report upon current or proposed legislation submitted to it and upon any other legal matters;

(e) to represent members of the Society or any section thereof in any matter which may be necessary or expedient;

(f) to found prizes and scholarships for students of law and to lay down the conditions for their award as it thinks fit;

(g) to appoint in its discretion such officers, clerks, agents and servants for permanent, temporary or special services as it may think fit and to determine their duties and terms of service;

(h) to purchase, rent or otherwise acquire and furnish suitable premises for the use of the Society;

(i) to communicate from time to time with other similar bodies and with members of the profession in other places for the purpose of obtaining and communicating information on all matters likely to prove beneficial or of interest to members;

(j) to institute, conduct, defend, compound or abandon any legal proceedings by and against the Society or any of its officers or otherwise concerning the affairs of the Society and to compound and allow time for payment or satisfaction of any debts due or of any claims or demand made by or against the Society;

(k) to refer any claims or demand by or against the Society to arbitration and to observe and perform every award made as a result of the arbitration and to nominate arbitrators if so requested;

(l) to make and give receipts, releases and other discharges for moneys payable to and for claims and demands of the Society;

(m) to invest and deal with any moneys of the Society in securities authorised for the investment of trust funds by any written law;

(n) to form or participate in the formation of any company for the purpose of carrying out all or any of the functions of the Society;

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(o) to borrow or raise money by bank overdraft or otherwise by the issue of debentures or any other securities founded or based upon all or any of the property and rights of the Society or without any such security and upon such terms as to priority or otherwise as the Council thinks fit;

(p) prescribing all matters which are required to be prescribed by this Order, including the prescription of fees; and

(q) to exercise all such powers, privileges and discretions as are not by this Order expressly and exclusively required to be exercised by the members of the Society in general meeting,

Appointment of committees of Council.

26. (1) The Council may appoint a Rules Committee and one or more other committees for any such general or special purpose as in the opinion of the Council may be better regulated or managed by means of a committee,

(2) The Council may delegate to any committee so appointed, with or without restriction or condition, as it thinks fit, the exercise of any functions exercisable by the Council.

(3) The number and term of office of the members of a committee appointed under this paragraph, and the number of those members necessary to form a quorum, shall be fixed by the Council.

(4) A committee appointed under this paragraph may include persons who are not members of the Council.

(5) If the Council delegates to a committee appointed under this section any of the functions exercisable by the Council, at least one-half the members of that committee (including the chairman) shall be members of the Council.

Power of Council to accept gifts.

27. (1) The Council may, on behalf of the Society, accept by way of grant, gift, testamentary disposition or otherwise property or moneys in aid of the finances or purposes of the Society, on such conditions as it may determine.

(2) Registers shall be kept of all donations to the Society including the names of donors and any special conditions on which any donation may have been given.

(3) All property or moneys donated to the Society for any specific purpose shall, subject to any written law, be applied and administered in accordance with the purposes for which they were donated and shall be separately accounted for.

Representation in Court.

28. The Society may be represented or appear in any Court by any advocate and solicitor, whether he is a member of the Council or not.

Proceedings of Council

Meetings of Council.

29. (1) The Council may meet at such time and place and as often as may be necessary.
- (2) 5 members present at any meeting of the Council shall constitute a quorum for the transaction of any business.
- (3) A decision of the majority of the members of the Council present and voting at any meeting of the Council shall be deemed to be a decision of the Council.
- (4) The chairman or the person acting as chairman at any meeting of the Council shall have an original as well as a casting vote.
- (5) Subject to the provisions of this Order and to any rules of the Society, the Council may regulate its own procedure, and in particular the holding of meetings, the notice to be given of meetings, the proceedings thereat, the keeping of minutes and the custody, production and inspection of those minutes.

Expenses of members.

30. No fees shall be paid to any member of the Council, but a member may be reimbursed from the funds of the Society for reasonable disbursements incurred by him in relation to the affairs of the Society.

Proceedings of Council and Inquiry Committee to be confidential.

31. (1) Except insofar as may be necessary for the purpose of giving effect to any resolution or decision of the Council or of any Inquiry Committee, confidentiality shall be maintained in all proceedings conducted by the Council, its staff and the Inquiry Committee.
- (2) Notwithstanding sub-paragraph (1), the Chief Justice or the Attorney General may each require the Council to disclose to him any matter or information relating to any complaint of misconduct or disciplinary action against any advocate and solicitor.

General Meetings of Society

Annual General Meeting.

32. (1) The Council shall each year convene an annual general meeting which shall be held in the month of October.
- (2) At least 10 days' prior notice of an annual general meeting shall be given to all members of the Society.
- (3) The Council shall cause to be prepared and presented to an annual general meeting —

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(a) a report on the activities of the Society; and

(b) proper accounts, duly audited, of all funds, property and assets of the Society,

for the year ending on the 31st day of December immediately preceding that annual general meeting.

Extraordinary General Meeting.

33. (1) The Council may convene a general meeting of the Society (other than the annual general meeting) at such time as the Council thinks expedient or necessary.

(2) Any 7 members of the Society may at any time requisition a general meeting by written notice signed by them and deposited with the President or Vice-President of the Society, and the Council shall convene a general meeting to be held after 10 days but within 30 days of such deposit.

(3) Such written notice shall specify the object or objects of the proposed meeting.

(4) If the Council fails to convene a general meeting in accordance with the requisition within 14 days after such deposit, to be held within 30 days thereafter, the requisitioning members may convene that general meeting within 2 months after the deposit.

Voting.

34. At every general meeting, every practitioner member present shall have one vote, and the chairman of that meeting shall also have a casting vote.

Convening and procedure.

35. (1) The manner of convening general meetings of the Society and the procedure thereat shall, subject to the provisions of this Order, be regulated by rules made by the Society subject to the provisions of this Order.

(2) The rules made under this paragraph shall provide for a quorum at an annual general meeting of not less than 10 practitioner members who shall be personally present.

(3) The rules made under this paragraph shall provide for a quorum at any other general meeting of not less than 15 practitioner members who shall be personally present.

(4) A decision of the majority of the members of the practitioner members present and voting at any general meeting shall be deemed to be a decision of the Society.

PART II

PROFESSIONAL PRACTICE, ETIQUETTE, CONDUCT AND DISCIPLINE OF
ADVOCATES AND SOLICITORS**Rules as to professional practice, etiquette, conduct and discipline.**

36. (1) Subject to the provisions of this Order and with the approval of the Chief Justice, the Council may make rules regulating the professional practice, etiquette, conduct and discipline of advocates and solicitors.

(2) Disciplinary proceedings may be taken against any advocate and solicitor who contravenes any rules made under this paragraph.

Rules as to keeping of accounts by advocate and solicitors.

37. (1) The Council shall, subject to the provisions of the Order and with the approval of the Chief Justice, make rules —

(a) as to the opening and keeping by advocates and solicitors of accounts at banks for clients' money;

(b) as to the keeping by advocates and solicitors of accounts containing particulars and information as to moneys received, held or paid by them for or on account of their clients;

(c) as to the opening and keeping by every advocate and solicitor who is a sole trustee, or who is co-trustee only with one or more of his partners, clerks or servants, of an account at a bank for moneys of any trust of which he is such a sole trustee or co-trustee;

(d) as to the keeping by every such advocate and solicitor of accounts containing particulars and information as to moneys received, held or paid by him for or on account of any such trust; and

(e) empowering the Council to take such action as may be necessary to enable it to ascertain whether or not the rules are being complied with.

(2) Disciplinary proceedings may be taken against any advocate and solicitor who contravenes any rules made under this paragraph.

Accountant's report.

38. (1) Every advocate and solicitor shall with every application made by him for a practising certificate, unless he satisfies the Council that owing to the circumstances of his case it is unnecessary to do so, deliver to the Chief Registrar a report signed by an accountant (referred to in this paragraph as an accountant's report) and shall deliver a copy of that accountant's report to the Society.

(2) The accountant's report shall —

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(a) state that in compliance with this paragraph and any rules made thereunder, the accountant has examined the books, accounts and documents of the advocate and solicitor or his firm for such accounting period as may be specified in the report;

(b) state whether or not the accountant is satisfied, from his examination of the books, accounts and documents produced to him and from the information and explanations given to him, that during that accounting period the advocate and solicitor or his firm has complied with any rules made under paragraph 37(1);

(c) state, if the accountant is not so satisfied as aforesaid, the matters in respect of which he is not satisfied;

(d) contain such information as may be prescribed by rules made, subject to the provisions of this Order and with the approval of the Chief Justice, by the Council under this paragraph; and

(e) be delivered to the Society not more than 6 months (or such other period as may be prescribed by any rules made under this paragraph) after the end of the accounting period specified in the report.

(3) Subject to any rules made under this paragraph, the accounting period for the purposes of an accountant's report shall —

(a) begin at the expiry of the last preceding accounting period for which an accountant's report has been delivered;

(b) cover not less than 12 months;

(c) end not more than 12 months, or such shorter period as the rules may prescribe, before the date of the delivery of the report to the Society; and

(d) where possible, consistently with sub-paragraphs (a), (b) and (c) of this paragraph, correspond to a period or consecutive periods for which the accounts of the advocate and solicitor or his firm are ordinarily made up.

(4) Subject to the provisions of this Order and with the approval of this Chief Justice, the Council shall make rules to give effect to this paragraph and such rules shall prescribe —

(a) what qualification shall be held by an accountant by whom an accountant's report may be given; and

(b) the nature and extent of the examination to be made by the accountant of the books and accounts of an advocate and solicitor or his firm and of any other relevant documents with a view to the signing of a report to be delivered by the advocate and solicitor under this paragraph.

(5) Such rules may include provision for —

(a) permitting in such special circumstances as may be defined in the rules a different accounting period from that specified in sub-paragraph (3); and

(b) regulating any matters of procedure or matters incidental, ancillary or supplemental to the provisions of this paragraph.

(6) Disciplinary proceedings may be taken against any advocate and solicitor who fails to comply with this paragraph or any rules made thereunder.

Intervention in advocate and solicitor's practice.

39. The powers conferred by Part II of the First Schedule shall be exercisable in the circumstances specified in Part I of that Schedule.

Compensation Fund.

40. (1) There is hereby established a fund to be known as the Compensation Fund (referred to in this paragraph as the Fund) to be maintained, administered and applied by the Society in accordance with this paragraph.

(2) Every advocate and solicitor shall, in each year prior to his application for a practising certificate, pay to the Society a contribution of such sum as the Council may determine and the Society shall pay that contribution to the Fund.

(3) An advocate and a solicitor who applies for a practising certificate between the 1st day of June in any year and the 31st day of December in the same year shall be required to pay only one-half of the contribution so determine if the practising certificate for which he proposes to make application will remain in force for less than 6 months.

(4) The Society may invest any moneys which form part of the Fund and are not immediately required for any other purposes.

(5) For the purposes of this section, the Society shall have all the powers vested in trustees under any written law.

(6) The Society may borrow for the purposes of the Fund from any lender and may charge any investments of the Fund by way of security for such a loan.

(7) The Society may insure with any person authorised by any written law to carry on insurance business within Brunei Darussalam for such purpose and on such terms as the Society may consider expedient in relation to the Fund.

(8) There shall be carried to the credit of the Fund —

(a) all annual contributions paid to the Society in pursuance of sub-paragraph (2);

(b) all interest, dividends and other income or accretions of capital arising from the investments of the Fund;

(c) the proceeds of any realisation of any investments of the Fund;

(d) all moneys borrowed for the purposes of the Fund;

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(e) all sums received by the Society under any insurance effected by the Society under sub-paragraph (7); and

(f) any other moneys which may belong or accrue to the Fund or received by the Council in respect thereof.

(9) All moneys forming part of the Fund and all investments of the Fund shall be applied —

(a) for payment of any costs, charges and expenses of establishing, maintaining, administering and applying the Fund;

(b) for payment of any costs, charges and expenses of the Council in ascertaining whether the rules made under paragraph 37 have been complied with, pursuant to the powers given by those rules;

(c) for payment of any premiums on insurances effected by the Society under sub-paragraph (7);

(d) for repayment of any moneys borrowed by the Society and for payment of interest on any moneys so borrowed;

(e) for payment of any grants which the Society may make under sub-paragraph (11); and

(f) for payment of any other sums properly payable out of the Fund by virtue of this paragraph.

(10) If in any year there has been neither an application for a grant from the Fund nor a grant made from the Fund, the Council may, in its discretion, transfer from the Fund all interest, dividends and other accretions of capital arising from the Fund or any part thereof to a fund of the Society established for the purposes of purchasing or maintaining a library for the use of the members of the Society.

(11) Where it is proved to the satisfaction of the Council that any person has sustained loss in consequence of fraud or dishonesty on the part of any advocate and solicitor or any clerk or servant of his in connection with his practice in Brunei Darussalam as an advocate and solicitor or in connection with any trust in Brunei Darussalam of which that advocate and solicitor is a trustee, then subject to this paragraph, the Society may, if the Council thinks fit, make a grant to that person out of the Fund for the purpose of relieving or mitigating that loss.

(12) A grant may be made under this paragraph whether or not the advocate and solicitor had in force a practising certificate when the act of fraud or dishonesty was committed and notwithstanding that subsequent to the commission of that act the solicitor has died or had his name removed from or struck off the roll or has ceased to practise or been suspended from practice, as the case may be.

(13) On the making by the Society of any grant under this paragraph to any person in respect of any loss —

(a) the Society shall, to the amount of the grant, be subrogated to any rights and remedies in respect of the loss of that person to whom the grant is made or of the advocate and solicitor, clerk or servant; and

(b) the person to whom the grant is made shall have no right under bankruptcy or other legal proceedings or otherwise to receive any sum out of the assets of the advocate and solicitor, clerk or servant in respect of the loss until the Society has been reimbursed the full amount of its grant.

(14) References in sub-paragraphs (13)(a) and (b) to the person to whom the grant is made or to the advocate and solicitor, clerk or servant shall include, in the event of his death, insolvency or other disability, references to his personal representative or any other person having authority to administer his estate.

(15) Subject to the provisions of this Order and with the approval of the Chief Justice, the Council may make rules with respect to the procedure to be followed in giving effect to this paragraph and with respect to any matter incidental, ancillary or supplemental to these provisions or concerning the administration or protection of the Fund.

(16) No grant shall be made under this paragraph in respect of any loss unless notice of the loss is received by the Society in such manner and within such time after the loss first came to the knowledge of the person sustaining it as may be prescribed by the rules.

Professional indemnity.

41. (1) Subject to the provisions of this Order and with the approval of the Chief Justice, the Council may make rules concerning indemnity against loss arising from claims in respect of civil liability incurred —

(a) by an advocate and solicitor or former advocate and solicitor in connection with his practice or with any trust of which he is or formerly was a trustee; and

(b) by an employee or former employee of an advocate and solicitor or former advocate and solicitor in connection with that advocate and solicitor's practice or with any trust of which that advocate and solicitor or the employee is or formerly was a trustee.

(2) For the purposes of providing such indemnity, such rules may —

(a) authorise or require the Society to establish and maintain one or more funds;

(b) authorise or require the Society to take out and maintain insurance with authorised insurers;

(c) require all advocates and solicitors making application for a practising certificate to take out and maintain insurance with authorised insurers.

(3) Without prejudice to the generality of sub-paragraphs (1) and (2), such rules may —

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(a) specify the terms and conditions on which indemnity is to be available, and any circumstances in which the right to it is to be excluded or modified;

(b) provide for the management, administration and protection of any fund maintained by virtue of sub-paragraph (2)(a) and require all advocates and solicitors who have in force practising certificates to make payment to any such fund;

(c) require all advocates and solicitor who have in force practising certificates to make payments by way of premium on any insurance policy maintained by the Society by virtue of sub-paragraph (2)(b);

(d) prescribe the conditions which an insurance policy must satisfy for the purposes of sub-paragraph (2)(c);

(e) authorise the Council to determine the amount of any premiums or payments required by such rules, subject to such limits, or in accordance with such provisions, as may be prescribed by those rules;

(j) specify circumstances in which, where an advocate and solicitor for whom indemnity is provided has contravened such rules or has failed to make payment for such indemnity, the Society or the insurers may take proceedings against him in respect of sums paid by way of indemnity in connection with a matter in relation to which he has contravened;

(g) specify the circumstances in which advocates and solicitors are exempt from such rules; and

(h) empower the Council to take such steps as it considers necessary or expedient to ascertain whether or not the rules are being complied with.

(4) The Society shall have power to carry into effect any arrangements which it considers necessary or expedient for the purpose of providing indemnity under this paragraph.

(5) Nothing in this paragraph shall affect the right of any advocate and solicitor, in addition to the indemnity provided in rules made under this paragraph, to insure himself further against loss arising from such claims as may be instituted against him.

Redress for inadequate professional services.

42. The Second Schedule shall have effect with respect to the provision by advocates and solicitors of services after the commencement of this Order which are not of the quality which it is reasonable to expect of them.

Qualification to practise as sole proprietor or in partnership.

43. (1) No advocate and solicitor, who was admitted as an advocate and solicitor after the commencement of this Order, may practise as an advocate and solicitor on his own account or in partnership unless he —

(a) has, since being admitted as an advocate and solicitor, been employed for not less than 3 continuous years or for 3 years out of a continuous period of 5 years in the practice of an advocate and solicitor in Brunei Darussalam; or

(b) has been employed as a legal officer in the judicial or legal service of Brunei Darussalam for not less than 3 continuous years or for 3 years out of a continuous period of 5 years.

(2) The Council may, with the approval of the Chief Justice, shorten any period referred to in sub-paragraph (1)(a) or (b) if it is satisfied that the advocate and solicitor has gained substantial experience in law in Brunei Darussalam or elsewhere.

(3) Subsection (1) shall not apply to an advocate and solicitor who practises in partnership with any advocate and solicitor who has been in active practice in Brunei Darussalam for not less than 3 continuous years or for 3 years out of a continuous period of 5 years.

(4) An advocate and solicitor who contravenes sub-paragraph (1) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Solicitors' employees.

44. (1) No advocate and solicitor shall in connection with his practice, without the consent of the Chief Justice obtained on an application by originating summons served upon the Attorney General and upon the Society, employ or remunerate any person who to his knowledge has been —

(a) struck off a roll of legal practitioners by whatever name called otherwise than at his own request, in Brunei Darussalam or elsewhere and remains struck off;

(b) suspended from practising as an advocate and solicitor in Brunei Darussalam or elsewhere and remains suspended;

(c) convicted of an offence involving fraud or dishonesty;

(d) a person in respect of whom an order under sub-paragraph (4) has been made.

(2) No advocate and solicitor shall in connection with his practice, without the consent of the Attorney General, employ or remunerate any person who to his knowledge has been employed as a public officer.

(3) Sub-paragraph (2) shall not apply to any public officer who is an advocate and solicitor or a qualified person or in respect of whom the consent of the Chief Justice or the Attorney General had previously been obtained under sub-paragraph (1) or (2), as the case may be.

(4) On application made by or on behalf of the Attorney General or the Society, the Court may make an order directing that, as from a date to be specified in the order, no advocate and solicitor shall, in connection with his practice as such, employ or remunerate any person the subject of the application who —

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(a) has been a party to any act or default of an advocate and solicitor in respect of which a complaint has been or might properly have been made against that advocate and solicitor under the provisions of the Act or of this Order; or

(b) has so conducted himself while employed by an advocate and solicitor that, had he himself been an advocate and solicitor, his conduct might have formed the subject of a complaint under the provisions of the Act or of this Order against him.

(5) Every application under sub-paragraph (4) shall be served upon the person in respect of whom it is made and upon his employer or previous employer, if his employer or previous employer is an advocate and solicitor, not less than 10 days before the application is to be heard.

(6) Every order made under sub-paragraph (4) shall be filed in a file to be kept for this purpose by the Chief Registrar, and the file may be inspected by any advocate and solicitor without fee.

(7) Before an advocate and a solicitor employs or remunerates any person (other than an advocate and solicitor or a qualified person) in connection with his practice, he shall —

(a) require that person to make statutory declaration to show that he does not come within the class of persons mentioned in sub-paragraphs (1)(a) to (d) and had not been employed as a public officer and that he is not a person in respect of whom an order has been made under sub-paragraph (4); and

(b) within 14 days of commencing to employ that person, deliver to the Society a certified copy of the statutory declaration so made.

(8) Disciplinary proceedings may be taken against any advocate and solicitor who acts in contravention of this paragraph.

PART III

DISCIPLINARY PROCEEDINGS

Jurisdiction of Supreme Court over advocates and solicitors and legal officers.

45. (1) Any person duly admitted as an officer of the Supreme Court.

(2) The provisions of any written law which impose on officers of the Supreme Court any restrictions as to practise as advocates or solicitors shall not apply to any advocate and solicitor by virtue only of sub-paragraph (1).

Disciplinary proceedings against legal officers and non-practising advocates and solicitors.

46. (1) This Part, with the exception of this paragraph and paragraphs 45, 54, 55, 63 to 67, 69, 70 and 71, shall not apply to any legal officer or any advocate and solicitor who does not at the time of the misconduct have in force a practising certificate (referred to in this paragraph as a non-practising solicitor).

(2) All legal officers and non-practising solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be punished in accordance with this paragraph.

(3) Such due cause may be shown by proof that a legal officer or a non-practising solicitor, as the case may be —

(a) has been guilty in Brunei Darussalam or elsewhere of misconduct unbefitting a legal officer or an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession; or

(b) has been adjudicated bankrupt and has been guilty of any of the acts or omissions mentioned in paragraph (a), (b), (c), (d), (e), (f), (h), (i), (k), (l), (m), (n), (o) or (p) of subsection (1) of section 129 of the Bankruptcy Act (Chapter 67).

(4) No application for an order to show cause under this paragraph shall be made unless leave has been granted by the Chief Justice for an investigation to be made into the complaint of misconduct against that legal officer or non-practising solicitor.

(5) An application for such leave shall be made by an *ex parte* originating summons and shall be accompanied by an affidavit setting out the allegations of misconduct against the legal officer or non-practising solicitor.

(6) Where the Chief Justice is of the opinion that the applicant has made out a *prima facie* case for an investigation into his complaint, the Chief Justice may grant such leave and appoint a Disciplinary Committee under paragraph 54.

(7) The Disciplinary Committee shall hear and investigate the complaint and report its findings of fact and law to the Chief Justice.

(8) A copy of the report shall be supplied to the legal officer or non-practising solicitor, and to the Attorney General if the report relates to a legal officer.

(9) Where the Disciplinary Committee finds that no cause of sufficient gravity for disciplinary action exists under this paragraph against the legal officer or non-practising solicitor, the Chief Justice shall dismiss the complaint.

(10) Where the Disciplinary Committee finds that a cause of sufficient gravity for disciplinary action exists under this paragraph against the legal officer or non-practising solicitor, the Chief Justice may appoint an advocate and solicitor or a legal officer to apply by motion in the same proceedings for an order that the legal officer or the non-practising solicitor be struck off the roll, prohibited from applying for a practising certificate, censured or otherwise punished.

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(11) Paragraph 68 shall apply, with under sub-paragraph (10).

(12) On completion of the hearing of the application under sub-paragraph (10), the Court may —

(a) censure the legal officer or non-practising solicitor;

(b) prohibit him from applying for a practising certificate for such period not exceeding 5 years as it may specify.

(c) order that his name be struck off the roll;

(d) order him to pay a penalty of not more than \$5,000 which shall be credited to the Compensation Fund; or

(e) make such other order as it thinks fit.

(13) The costs of and incidental to all proceedings under this paragraph shall be in the discretion of the Judge or of the Court before whom the hearing has taken place.

(14) Subject to this paragraph, the Rules Committee appointed by the Council may, with the approval of the Chief Justice, make rules for regulating and prescribing the procedure and practice to be followed in connection with proceedings under this paragraph, and in the absence of any rules dealing with any point of procedure or practice, the Rules of the Supreme Court shall be followed as nearly as the circumstances permit.

(15) For the avoidance of doubt, nothing, in this paragraph shall prevent any legal officer from being subject to disciplinary action by the Public Service Commission for any act or omission which constitutes a disciplinary offence under this paragraph.

Power to strike off roll, suspend or censure.

47. (1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll, suspended from practice for any period not exceeding 5 years or censured.

(2) Such due cause may be shown by proof that an advocate and solicitor —

(a) has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession;

(b) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such a breach of any usage or rule of conduct made by the Council under the provisions of the Act or of this Order as amounts to improper conduct or practice as an advocate and solicitor;

(c) has been adjudicated bankrupt and has been guilty of any of the acts or omissions mentioned in paragraph (a), (b), (c), (d), (e), (f), (h), (i), (k), (l), (m), (n), (o) or (p) of subsection (1) of section 129 of the Bankruptcy Act (Chapter 67);

(d) has tendered given, or consented to the retention of, out of any fee payable to him for his services, any gratification on for having procured the employment in any legal business of himself or any other advocate and solicitor;

(e) has, directly or indirectly, procured or attempted to procure the employment of himself or any advocate and solicitor through or by the instruction of any person to whom any remuneration for obtaining such employment has been given by him or agreed or promised to be so given;

(f) has accepted employment in any legal business through a tout;

(g) allows any employee or other unauthorised person to undertake or carry on legal business in his name, that other person not being under such direct and immediate control of his principal as to ensure that he does not act without proper supervision;

(h) has been guilty in Brunei Darussalam or elsewhere of misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession;

(i) carries on by himself or with any person in his employment, any trade, business or calling that detracts from the profession of law or is in any way incompatible with it, or is employed in any such trade, business or calling;

(j) has contravened any of the provisions of the Act or of this Order or of any rules respectively made thereunder if such contravention warrants disciplinary action; or

(k) has been disbarred, struck off, suspended or censured in his capacity as a legal practitioner by whatever name called in any other country or territory.

(3) Pupils shall, with the necessary modifications, be subject to the same jurisdiction as can be exercised over an advocate and solicitor under this Part; but in lieu of an order striking him off the roll or suspending him, an order may be made prohibiting the pupil from petitioning the Court for admission until after a date specified in the order.

(4) The jurisdiction given by sub-paragraph (3) shall be exercised by a single Judge.

(5) In any proceedings under this Part, the Court may in addition to the facts of the case take into account the past conduct of the person concerned in order to determine what order should be made.

(6) In any proceedings under this Part against an advocate and solicitor consequent upon his conviction for a criminal offence, an Inquiry Committee, a Disciplinary Committee and a Court of 3 Judges of the Supreme Court referred to in paragraph 63 shall accept his conviction as final and conclusive.

Appointment of Inquiry Panel.

48. (1) For the purpose of enabling Inquiry Committees to be constituted in accordance with this Part, the Chief Justice shall appoint a panel (referred to in this Order as the Inquiry

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Panel) consisting of such number of advocates and solicitors (whether in practice or not) and lay persons as the Chief Justice may determine.

(2) An advocate and solicitor shall be eligible to be appointed as a member of the Inquiry Panel if he has not less than 12 years' standing.

(3) The Chief Justice may at any time remove from office any member of the Inquiry Panel or fill any vacancy in its membership.

(4) The Chief Justice shall appoint a member of the Inquiry Panel to be the chairman.

Complaints against advocates and solicitors.

49. (1) Any complaint of the conduct of an advocate and solicitor shall be made to the Society, and the Council shall refer the complaint to the chairman of the Inquiry Panel.

(2) The Council may on its own motion refer any information touching upon the conduct of an advocate and solicitor to the chairman of the Inquiry Panel.

(3) Any Judge of the Supreme Court or the Attorney General may at any time refer to the Society any information touching upon the conduct of any advocate and solicitor, and the Council shall —

(a) refer the matter to the chairman of the Inquiry Panel; or

(b) where the Judge or the Attorney General requests that the matter be referred to a Disciplinary Committee, apply to the Chief Justice to appoint a Disciplinary Committee.

(4) Notwithstanding sub-paragraphs (1), (2) and (3), where 2 or more complaints or information touching upon the conduct of an advocate and solicitor have been received by the Council, including any complaint which had been referred to a Disciplinary Committee under paragraph 53, the Council may with the leave of the Court first refer to the chairman of the Inquiry Panel one or more complaints or information which in its opinion are more serious in nature and defer the referral of the remaining complaints or information.

(5) Where any complaint or information touching upon the conduct of an advocate and solicitor is referred to the chairman of the Inquiry Panel, the Council shall inform the advocate and solicitor concerned that it has done so.

(6) Where any complaint or information touching upon the conduct of an advocate and solicitor is referred to the chairman of the Inquiry Panel under sub-paragraphs (1), (2) and (3), the chairman shall immediately constitute an Inquiry Committee consisting of —

(a) a chairman, being a member of the Inquiry Panel who is an advocate and solicitor;

(b) a member of the Inquiry Panel who is an advocate and solicitor;

(c) a member of the Inquiry Panel who is a lay person; and

(d) a legal officer who has not less than 10 years' experience, to inquire into the complaint or information.

(7) An Inquiry Committee may meet for the purposes of its inquiry, adjourn and otherwise regulate the conduct of its inquiry as the members may think fit.

(8) The chairman of an Inquiry Committee may at any time summon a meeting of the Inquiry Committee.

(9) Any questions arising at a meeting of an Inquiry Committee shall be determined by a majority of votes of the members of the Committee, and in the case of an equality of votes, the chairman of the Inquiry Committee shall have a second or casting vote.

(10) All the members of an Inquiry Committee shall be present to constitute a quorum for a meeting of the Inquiry Committee.

(11) Any resolution or decision in writing signed by all the members of an Inquiry Committee shall be as valid as if it had been made or reached at a meeting of the Inquiry Committee where all its members were present.

(12) Every complaint received by the Society shall be supported by such statutory declarations or affidavits as the chairman of the Inquiry Panel or of any Inquiry Committee may require.

(13) An Inquiry Committee may require any person making a complaint to the Society under this Part to deposit with the Society a reasonable sum not exceeding \$500 to cover necessary costs and expenses.

(14) Where the complaint is found to be frivolous or vexatious, the sum so deposited or such part thereof as the Inquiry Committee may determine shall be applied for the payment of those costs and expenses; otherwise it shall be returned to the person making the deposit.

(15) A member of an Inquiry Committee shall, notwithstanding that he has ceased to be a member of the Inquiry Panel on the expiry of his term of office, be deemed to be a member of the Inquiry Panel until such time as the Council has decided that the Inquiry Committee of which he is a member has completed its work.

(16) Any person who makes a complaint to the Society under this Part which he knows to be false in any material particular is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Inquiry.

50. (1) Subject to sub-paragraphs (2), (3) and (4), an Inquiry Committee shall, within 2 weeks of its appointment, commence its inquiry into any complaint or information touching upon the conduct of an advocate and solicitor and report its findings to the Council —

(a) in any case where the members of the Inquiry Committee have decided not to call upon the advocate and solicitor to offer any explanation or to answer the

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allegations made against him, not later than 2 months after the date of its appointment; and

(b) in any other case, not later than 2 weeks after the last meeting of the Inquiry Committee or 3 months after the date of its appointment, whichever is earlier.

(2) Where an Inquiry Committee is of the opinion that it will not be able to report its findings to the Council within the period specified in sub-paragraph (1)(b) due to the complexity of the matter or serious difficulties encountered by the Inquiry Committee in conducting its inquiry, the Inquiry Committee may apply in writing to the chairman of the Inquiry Panel for an extension of the time to report its findings to the Council.

(3) The chairman of the Inquiry Panel may grant an extension of time to an Inquiry Committee to report its findings to the Council if he is satisfied that the circumstances of the case justify the grant of an extension of time, except that any extension of time granted shall not extend beyond the period of 6 months from the date of the appointment of that Inquiry Committee.

(4) No application for an extension of time may be made to the chairman of the Inquiry Panel under sub-paragraph (2) after the expiry of 2 months from the date of the appointment of the Inquiry Committee.

(5) Where an Inquiry Committee is satisfied that there are no grounds for disciplinary action under this Part, it shall report to the Council accordingly and state the reasons for its decision.

(6) Where an Inquiry Committee is of the opinion that an advocate and solicitor should be called upon to answer any allegation made against him, the Inquiry Committee shall —

(a) post or deliver to the advocate and solicitor —

(i) copies of any complaint or information touching upon his conduct and of any statutory declarations or affidavits that have been made in support of the complaint or information; and

(ii) a notice inviting him to give within such period (not being less than 14 days) as may be specified in the notice to the Inquiry Committee any written explanation he may wish to offer and to advise the Inquiry Committee if he wishes to be heard by the Committee;

(b) allow the time specified in the notice to elapse;

(c) give the advocate and solicitor reasonable opportunity to be heard if he so desires; and

(d) give due consideration to any explanation given by him.

(7) The report of the Inquiry Committee shall, among other things, deal with the question of the necessity or otherwise of a formal investigation by a Disciplinary Committee and, if in the view of the Inquiry Committee no formal investigation by a Disciplinary Committee is required, the Inquiry Committee shall recommend to the Council —

- (a) a penalty sufficient and appropriate to the misconduct committed; or
- (b) that the complaint be dismissed,

(8) Where in the course of its inquiry an Inquiry Committee receives information touching on, or evidence of, the conduct of the advocate and solicitor which may give rise to proceedings under this Part, the Inquiry Committee may, after giving notice to him, decide on its own motion to inquire into that matter and report its findings to the Council.

(9) Where in the course of its inquiry an Inquiry Committee receives information touching on, or evidence of, the conduct of the advocate and solicitor which discloses an offence under any written law, the Inquiry Committee shall record that information in its report to the Council.

(10) Where the complainant withdraws his complaint before the Council has referred the complaint to an Inquiry Committee or before the conclusion of the inquiry by an Inquiry Committee, the Council may, notwithstanding such withdrawal, refer the complaint to or direct an Inquiry Committee to continue the inquiry, as the case may be, and the Inquiry Committee shall comply with the direction and all future proceedings thereon shall be taken as if the complaint had been made by the Society.

(11) Sub-paragraphs (2) to (6) of paragraph 55 shall apply, with the necessary modifications, in relation to an Inquiry Committee as they apply in relation to a Disciplinary Committee, and the references in those sub-paragraphs to a Disciplinary Committee shall be read as references to an Inquiry Committee.

(12) For the purposes of conducting an inquiry, an Inquiry Committee may —

- (a) appoint any person to make or assist in the making of whatever preliminary inquiries it thinks necessary;
- (b) require the production for inspection by the Inquiry Committee or any person appointed by the Committee of any books, documents or papers which may relate to or be connected with the subject-matter of the inquiry and may require any person to give information in relation to such books, documents or papers; and
- (c) require the advocate and solicitor concerned to give all information in relation to any such books, document or papers which may be reasonably required by the Inquiry Committee or by the person so appointed.

(13) Any advocate and solicitor and any other person who refuses or fails, without lawful excuse, to produce to the Inquiry Committee or to any person appointed by the Committee for the purposes of an inquiry any such books, documents or papers required of him or fails to give any such information relating thereto is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Council's consideration of report.

51. (1) The Council shall consider the report of the Inquiry Committee and according to the circumstances of the case shall, within one month of the receipt of the report, determine —

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- (a) that a formal investigation is not necessary;
 - (b) that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty under paragraph 52;
 - (c) that there should be a formal investigation by a Disciplinary Committee; or
 - (d) that the matter be adjourned for consideration or be referred back to the Inquiry Committee for reconsideration or a further report.
- (2) If the Inquiry Committee in its report recommends —
- (a) that there should be a formal investigation, then the Council shall determine accordingly under sub-paragraph (1); or
 - (b) that a formal investigation is not necessary, the Council may, if it disagrees with the recommendation, request Chief Justice to appoint a Disciplinary Committee.
- (3) Where the report of the Inquiry Committee discloses the commission of —
- (a) any other misconduct by the advocate and solicitor which has not been referred to or inquired into by the Inquiry Committee, the Council shall, if it determines that there should be a formal investigation of such misconduct, have power to prefer such charge against the advocate and solicitor as it thinks fit with respect to that misconduct; or
 - (b) any offence involving fraud or dishonesty by the advocate and solicitor, the Council shall immediately refer the matter to the police for investigation.
- (4) The Council shall inform the advocate and solicitor and the person who made the complaint of the manner in which it has determined the complaint, and in the event of the determination being that a formal investigation is not necessary, the Council shall on the request of the person furnish him with its reasons in writing.

Council's power to order penalty.

- 52.** (1) If the Council determines under paragraph 51 that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty, it may order the advocate and solicitor to pay a penalty of not more than \$5,000 which shall be credited to the Compensation Fund.
- (2) Paragraph 60 shall apply to any penalty ordered to be paid under sub-paragraph (1).
- (3) Before the Council makes an order for the payment of a penalty under this paragraph, it shall notify the advocate and solicitor concerned of its intention to do so and give him a reasonable opportunity to be heard by the Council.
- (4) Where —

(a) no application is made to set aside an order for the payment of a penalty under sub-paragraph (1) or if the order is affirmed or varied by the Court under paragraph 60(3)(a); or

(b) an advocate and solicitor has been reprimanded by the Council under paragraph 58(3)(a),

the Council shall, at the expense of the advocate and solicitor, publish in the *Gazette* a notice of the order or of the reprimand, as the case may be.

(5) Any notice under sub-paragraph (4) shall contain the name of the advocate and solicitor, the nature of the misconduct committed by him and the penalty payable by him or the reprimand, as the case may be.

(6) Where an application is made to a Judge by any person under paragraph 61(1), the Council shall not publish the notice under sub-paragraph (4) until the application has been withdrawn or deemed to have been withdrawn or disposed of by the Judge under paragraph 62(3).

Application to appoint Disciplinary Committee.

53. (1) Where the Council determines under paragraph 51 that there should be a formal investigation, the Council shall immediately apply to the Chief Justice to appoint a Disciplinary Committee which shall hear and investigate the matter.

(2) Notwithstanding sub-paragraph (1), where 2 or more matters are pending against an advocate and solicitor, the Council may apply for one or more matters which in its opinion are more serious in nature to be heard and investigated first and defer the hearing and investigation of the other matters.

(3) Where a Disciplinary Committee has been appointed to hear and investigate any matter against an advocate and solicitor under sub-paragraph (1) and before the commencement of the hearing of and investigation into that matter there is any other matter pending against that advocate and solicitor, the Chief Justice may, on the application of the Council, direct that Disciplinary Committee to hear and investigate the other matter.

(4) Where, in the course of its investigation of any matter against an advocate and solicitor referred to it under sub-paragraph (1) or (3), a Disciplinary Committee receives information touching on or evidence of the conduct of the advocate and solicitor which may give rise to proceedings under this Part, the Disciplinary Committee may, on the application of the Council, prefer such additional charge against the advocate and solicitor as it thinks fit with respect to such misconduct and, after giving notice to him, hear and investigate such charge and paragraph 62 shall apply to such charge accordingly.

Appointment of Disciplinary Committee.

54. (1) The Chief Justice may appoint one or more Disciplinary Committees comprising —

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(a) a chairman from a panel appointed by him of persons being retired Judges or persons who have had not less than 12 years' standing as advocates and solicitors;

(b) an advocate and solicitor who has in force a practising certificate;

(c) a legal officer who has at least 10 years' experience; and

(d) a member of the Inquiry Panel who is a lay person.

(2) A Disciplinary Committee shall be appointed in connection with one or more matters or for a fixed period or as the Chief Justice may think fit.

(3) The Chief Justice may at any time revoke the appointment of any Disciplinary Committee or remove any member of a Disciplinary Committee or fill any vacancy in a Disciplinary Committee.

(4) Every Disciplinary Committee shall appoint an advocate and solicitor to be the secretary of that Disciplinary Committee.

(5) The production of any written instrument purporting to be signed by the Chief Justice and making an appointment, revocation or removal referred to in this paragraph shall be evidence that such appointment, revocation or removal has been duly made.

(6) The lay person who is a member of a Disciplinary Committee shall not vote on any question or matter to be decided by the Disciplinary Committee and need not be present at every meeting of the Disciplinary Committee.

(7) Except as provided in sub-paragraph (6), all members of a Disciplinary Committee shall be present to constitute a quorum for the transaction of any business.

(8) Any question arising at a meeting of a Disciplinary Committee shall be determined by a majority of votes of the members of the Committee, and in the case of an equality of votes, the chairman of the Committee shall have a second or casting vote.

(9) A member of a Disciplinary Committee appointed under sub-paragraph (1)(a) who is not a practising advocate and solicitor shall be paid for each case such remuneration as the Chief Justice may determine.

Proceedings and powers of Disciplinary Committee.

55. (1) The Rules Committee appointed by the Council may make rules for regulating the hearing and investigation of matters before or by a Disciplinary Committee.

(2) For the purpose of any complaint or matter heard and investigated by a Disciplinary Committee under this Order —

(a) the Disciplinary Committee may administer oaths; and

(b) the Society or the person making the complaint and the advocate and solicitor to whom the complaint relates and (if so instructed by the Disciplinary

Committee) the secretary of the Disciplinary Committee may issue writs of subpoena *ad testificandum* and of *duces tecum*.

(3) No person shall be compelled under any such writ to produce any document which he could not be compelled to produce at the trial of an action.

(4) The writs referred to in sub-paragraph (2)(b) shall be served and may be enforced as if they were writs issued in connection with a civil action in the High Court.

(5) Any person giving evidence before a Disciplinary Committee shall be legally bound to tell the truth.

(6) No fees or other charges shall be payable for any writ issued by the secretary of the Disciplinary Committee under sub-paragraph (2)(b).

(7) In sections 172, 173, 174, 177, 179, 182 and 228 of the Penal Code (Chapter 22), "public servant" shall be deemed to include member of a Disciplinary Committee taking part in any investigation under this paragraph, and in sections 193 and 228 of the Penal Code (Chapter 22), "judicial proceeding" shall be deemed to include any such investigation.

Complaint made by Judge or Attorney General.

56. Where any Judge of the Supreme Court or the Attorney General has referred to the Society any information touching upon the conduct of an advocate and solicitor, all references in this Part to a person who made the complaint shall be construed to include a reference to the Attorney General.

Findings of Disciplinary Committee.

57. (1) After hearing and investigating any matter referred to it, a Disciplinary Committee shall record its findings in relation to the facts of the case and according to those facts shall determine —

(a) that no cause of sufficient gravity for disciplinary action exists under paragraph 47;

(b) that while no cause of sufficient gravity for disciplinary action exists under that section the advocate and solicitor should be reprimanded or ordered to pay a penalty sufficient and appropriate to the conduct;

(c) that a cause of sufficient gravity for disciplinary action exists under the section.

(2) In the event of the Disciplinary Committee making a determination under sub-paragraph (1)(b) or (c), the Committee may make an order for payment by any party of costs or of such sum as the Committee may consider a reasonable contribution towards costs.

(3) A Disciplinary Committee shall carry out its work expeditiously and the Society may apply to the Chief Justice for directions to be given to the Disciplinary Committee if the

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Disciplinary Committee fails to make any finding and determination within 6 months from the date of its appointment.

(4) The findings and determination on the Disciplinary Committee under this section shall be drawn up in the form of a report of which —

(a) copies shall be submitted to the Chief Justice and to the Society; and

(b) a copy shall on request be supplied to the advocate and solicitor.

(5) The findings and determination of the Disciplinary Committee shall be published by the Council in the *Gazette*, or in such other medium as the Council may determine would adequately inform the public of such findings and determination.

(6) A copy of the entire record of the proceedings of the Disciplinary Committee including its findings and determination shall be made public and copies thereof shall be made available to the members of the public, upon payment of the prescribed fee.

Society to apply to Court if cause of sufficient gravity exists.

58. (1) If the determination of the Disciplinary Committee under paragraph 57 is that a cause of sufficient gravity for disciplinary action exists under paragraph 47, the Society shall without further direction make an application in accordance with paragraph 63.

(2) If the determination of the Disciplinary Committee under paragraph 57 is that no cause of sufficient gravity for disciplinary action exists under paragraph 47, it shall not be necessary for the Society to take any further action in the matter unless so directed by the Court.

(3) If the determination of the Disciplinary Committee under paragraph 57 is that, while no cause of sufficient gravity for disciplinary action exists under paragraph 47, the advocate and solicitor should be reprimanded or ordered to pay a penalty, the Council shall —

(a) if it agrees with the determination, reprimand the advocate and solicitor or order him to pay a penalty of not more than \$10,000 which shall be credited to the Compensation Fund; or

(b) if it disagrees with the determination, without further direction make an application in accordance with paragraph 68.

Society to apply to Court in cases involving fraud or dishonesty.

59. (1) Where an advocate and solicitor has been convicted of an offence involving fraud or dishonesty, whether the offence was disclosed as a result of an investigation under paragraph 56(3)(b) or otherwise, the Society shall, without further direction, proceed to make an application in accordance with paragraph 63.

(2) Where there is an appeal against conviction, the Society shall not make an application under sub-paragraph (1) until the appeal has been withdrawn or deemed to have been withdrawn or disposed of by the appellate Court.

Provisions as to penalties.

60. (1) Within 21 days of being ordered to pay a penalty by the Council, the advocate and solicitor may apply to a Judge to set aside the order.

(2) Such an application shall be made by way of originating summons and shall be served on the Society and shall be heard in chambers unless the Judge of his own motion or on the application of any party orders a hearing in open Court.

(3) Upon the hearing of the application, the Judge may —

- (a) affirm or vary the penalty; or
- (b) set aside the order for a penalty,

and may make an order for payment of costs by or to either the Society or the applicant as may be just.

(4) If no such application is made or if the order for a penalty is affirmed or varied by the Court, the advocate and solicitor shall pay the penalty to the Society.

(5) Any penalty not paid may be recoverable by the Society as a judgment debt.

Procedure for complainant dissatisfied with Council's decision.

61. (1) Where a person has made a complaint to the Society, and the Council has determined —

- (a) that a formal investigation is not necessary; or
- (b) that no sufficient cause for a formal investigation exists but that the advocate and solicitor should be ordered to pay a penalty,

that person may, if he is dissatisfied with that determination, within 14 days of being notified of it, apply to a Judge under this paragraph.

(2) Such an application shall be made by originating summons and shall be accompanied by an affidavit or affidavits of the facts constituting the basis of the complaint and by a copy of the complaint originally made to the Society together with a copy of the Council's reasons in writing supplied to the applicant under paragraph 51(4).

(3) The application accompanied by copy of each of the documents referred to in sub-paragraph (2) shall be served on the Society.

(4) At the hearing of the application, Judge may make an order —

- (a) affirming the determination of the Council; or

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(b) directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee,

and such order for the payment of costs as may be just.

(5) If the Judge makes an order directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee, the applicant shall have the conduct of proceedings before the Disciplinary Committee and any subsequent proceedings before the Court under paragraph 68, and any such proceedings shall be brought in the name of the applicant.

Procedure for complainant dissatisfied with Disciplinary Committee's decision.

62. (1) Where a Disciplinary Committee has determined —

(a) that no cause of sufficient gravity for disciplinary action exists under paragraph 47; or

(b) that while no cause of sufficient gravity for disciplinary action exists under that paragraph, the advocate and solicitor should be reprimanded or ordered to pay a penalty,

and the person who made the complaint, the advocate and solicitor or the Council is dissatisfied with the determination, that person, advocate and solicitor or the Council may, within 14 days of being notified of the Disciplinary Committee's decision, apply to a Judge under this paragraph.

(2) Such an application shall be made by originating summons and shall be served on the Society and the secretary of the Disciplinary Committee who shall thereupon file in Court the record and report of the hearing and investigation by the Disciplinary Committee.

(3) Upon the hearing of the application, the Judge, after hearing the applicant and the Disciplinary Committee and, if it desires to be heard, the Society, may make an order —

(a) confirming the report of the Disciplinary Committee;

(b) directing the applicant or the Council to make an application under; or

(c) directing the advocate and solicitor under paragraph 63(1) to show cause,

and such order for the payment of costs as may be just.

(4) If the Judge makes an order under sub-paragraph (3)(b) or (c) on the application of any person other than the Council or the advocate and solicitor, the applicant shall have the conduct of proceedings under paragraph 63 and any such proceedings shall be brought in the name of the applicant.

Order to show cause.

63. (1) An application that an advocate and a solicitor be struck off the roll, suspended from practice, censured or required to answer allegations contained in an affidavit shall be made *ex parte* by originating summons for an order calling upon the advocate and solicitor to show cause.

(2) An application under sub-paragraph (1) may be made to a Judge and shall include an application for directions as to service if the advocate and solicitor is believed to be outside Brunei Darussalam.

(3) If the advocate and solicitor named in the order is or is believed to be within Brunei Darussalam, the provisions of the Rules of the Supreme Court for service of writs of summons shall apply to the service of the order.

(4) If an order to show cause is made, a copy of the affidavit or affidavits upon which the order was made shall be served with the order upon the advocate and solicitor named in the order.

(5) An application to make absolute an order to show cause must be made by motion in the same proceedings and, unless the Judge otherwise directs, there must be at least 8 days between the service of the notice of the motion and the day named therein for the hearing.

(6) Any order absolute, made in cases where personal service of the order to show cause has not been effected, may be set aside on the application of the advocate and solicitor on good cause being shown.

(7) The application to make absolute and the showing of cause consequent upon any order to show cause made under sub-paragraphs (1) and (2) shall be heard by a Court of 3 Judges of the Supreme Court, and from the decision of that Court there shall be no appeal.

(8) The Judge who made the order to show cause shall not thereby be disqualified from sitting as a member of the Court of 3 Judges under sub-paragraph (7).

(9) The Chief Justice or any other Judge shall not be a member of the Court of 3 Judges when the application under sub-paragraph (7) is in respect of a complaint made or information referred to the Society by him.

(10) Subject to this paragraph, the Rules Committee, with the approval of the Chief Justice, may make rules for regulating and prescribing the procedure and practice to be followed in connection with proceedings under this paragraph and under paragraphs 65 and 67, and in the absence of any rules dealing with any point of procedure or practice, the Rules of the Supreme Court shall be followed as nearly as the circumstances permit.

Drawing up of order.

64. Where an order (whether to show cause or absolute) has been made by the Court upon an application under paragraph 63 and the order has not been drawn up by the applicant within one week after it was made, the Society may cause the order to be drawn up, and all future proceedings thereon shall be taken as if the application had been made by the Society.

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Advocate and solicitor's application to remove own name.

65. (1) Any advocate and solicitor may, subject to this paragraph and to any rules made under this Order, apply to the Court to have his name removed from the roll.

(2) Every such application shall be made by way of originating motion and shall be supported by an affidavit in the prescribed form which shall be served on the Society not less than 2 months before the application is heard.

(3) The Society may for good cause require the applicant to advertise his intention to make the application in such manner as it shall direct.

(4) An application under this paragraph shall be heard by a single Judge sitting in open Court.

(5) No order shall be made on an application under this paragraph if the Judge is satisfied that —

(a) disciplinary action is pending against the applicant; or

(b) the conduct of the applicant is the subject of inquiry or investigation under the provisions of this Part.

(6) At the hearing of any such application, the Judge may make an order —

(a) directing the Chief Registrar to remove the applicant's name from the roll;
or

(b) adjourning the application indefinitely or to such date as he considers appropriate,

and such order for the payment of costs as may be just.

Adverse orders to be noted on roll.

66. (1) The Society shall give the Chief Registrar notice of every order made under this Part that is adverse to an advocate and solicitor and the Chief Registrar shall cause a note of the effect of that order to be entered on the roll against the name of that advocate and solicitor.

(2) An order as to costs only need not be so entered on the roll under sub-paragraph (1).

Replacement on roll of advocate and solicitor who has been struck off.

67. (1) The Court may, if it thinks fit, at any time order the Chief Registrar to replace on the roll the name of an advocate and solicitor whose name has been removed from or struck off the roll.

(2) Any application that the name of an advocate and solicitor be replaced on the roll shall be by originating motion, supported by affidavit, before a Court of 3 Judges of the Supreme Court of whom the Chief Justice shall be one.

(3) Notice of the motion shall be served on the Society which shall —

(a) appear at the hearing of the motion; and

(b) place before the Court a report which shall include —

(i) copies of the record of any proceedings as the result of which the name of the advocate and solicitor was removed from or struck off the roll; and

(ii) a statement of any facts which have occurred since the name of the advocate and solicitor was removed from or struck off the roll and which in the opinion of the Council or any member of the Council are relevant to be considered or to be investigated in connection with the application.

Costs.

68. (1) Where under paragraph 57 a Disciplinary Committee determines that no cause of sufficient gravity for disciplinary action exists and further records the opinion that the complaint was frivolous or vexatious, the Disciplinary Committee may by summons to be heard before a Judge ask that the Court order that the costs of the complaint be paid by the person who made the complaint.

(2) Thereupon and after hearing that person, the Court may order that those costs or any part thereof shall be paid by that person and any such order shall thereupon be enforceable in the same manner as any other order for costs made in proceedings in the Court.

(3) The costs of and incidental to all proceedings under paragraph 63, 65 or 67 shall be in the discretion of the Judge or of the Court before whom the hearing has taken place.

(4) Such costs may include the costs of the Society and the Disciplinary Committee and may be ordered to be paid by the advocate and solicitor by or against whom, or by the person by whom any complaint was made was intended to be made or partly by the advocate and solicitor and partly by that other person.

Absence of person under inquiry.

69. If the person whose conduct is the subject of inquiry fails to attend before the Court, a Disciplinary Committee, the Council or the Inquiry Committee as the case may be, the inquiry or proceedings may be proceeded with without further notice to that person upon proof of service by affidavit or statutory declaration.

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Provisions as to evidence.

70. (1) In any proceedings under this Part, any publication purporting to be printed under the authority of the General Council of the Bar in England or the Law Society in England setting out any rules or decisions made under the respective authority of those bodies relevant to the subject-matter of the proceedings shall, until the contrary is proved, be the evidence thereof.

(2) Where the person whose conduct is the subject of inquiry does not appear before a Disciplinary Committee and the Committee determines under paragraph 69 to proceed in his absence, and in any other case, with the consent in writing of that person, the Disciplinary Committee may, either as to the whole case or as to any particular fact or facts, proceed and act on evidence by affidavit or statutory declaration.

No action in absence of bad faith.

71. No action or proceeding shall lie against the Attorney General, the Society, the Council, a Disciplinary Committee or an Inquiry Committee or any member thereof for any act or thing done under this Order unless it is proved to the Court that the act or thing was done in bad faith or with malice.

FIRST SCHEDULE

(paragraph 39)

INTERVENTION IN ADVOCATE AND SOLICITOR'S PRACTICE**PART I****CIRCUMSTANCES IN WHICH SOCIETY MAY INTERVENE**

1. (1) Subject to sub-paragraph (2), the powers conferred by Part II of this Schedule shall be exercisable where —

(a) the Council has reason to suspect dishonesty on the part of —

- (i) an advocate and solicitor;
- (ii) an employee of an advocate and solicitor; or
- (iii) the personal representative of a deceased advocate and solicitor,

in connection with that advocate and solicitor's practice or in connection with any trust of which that advocate and solicitor is or formerly was a trustee;

(b) the Council considers that there has been undue delay on the part of the personal representatives of a deceased advocate and solicitor who immediately before his death was practising as a sole advocate and solicitor in connection with that advocate and solicitor's practice or in connection with any trust of which that advocate and solicitor was the sole trustee or was co-trustee only with one or more of his partners or employees;

FIRST SCHEDULE — (continued)

(c) the Council is satisfied that an advocate and solicitor has contravened the rules made under paragraph 37 of this Order;

(d) an advocate and solicitor has been adjudicated bankrupt or has made a composition or arrangement with his creditors;

(e) an advocate and solicitor has one or more outstanding judgments against him amounting in the aggregate to \$100,000 which he has been unable to satisfy within 6 months from the date of the earliest judgment;

(f) an advocate and solicitor has been committed to prison in any civil or criminal proceedings;

(g) the Council is satisfied that a sole advocate and solicitor is incapacitated by illness or accident to such an extent as to be unable to attend to his practice;

(h) the name of an advocate and solicitor has been removed from or struck off the roll or an advocate and solicitor has been suspended from practice;

(i) the Council is satisfied that a sole advocate and solicitor has abandoned his practice; or

(j) the Council is satisfied that a person has acted as an advocate and solicitor at a time when he did not have a practising certificate in force.

(2) The powers conferred by Part II of this Schedule shall only be exercisable under sub-paragraph (1)(c) if the Society has given the advocate and solicitor notice in writing that the Council is satisfied that he has contravened the rules specified in the notice and also (at the same or any later time) notice that the power conferred by Part II of this Schedule are accordingly exercisable in his case.

2. On the death of a sole advocate and solicitor, paragraphs 6 and 8 shall apply to the clients accounts of his practice.

3. The power conferred by Part II of this Schedule shall also be exercisable, subject to paragraph 9(4), where —

(a) complaint is made to the Society that there has been undue delay on the part of an advocate and solicitor in connection with any matter in which the advocate and solicitor or his firm was instructed on behalf of a client or with any controlled trust;

(b) the Society by notice in writing invites the advocate and solicitor to give an explanation within a period of not less than 8 days specified in the notice;

(e) the advocate and solicitor fails within that period to give an explanation which the Council regards as satisfactory; and

FIRST SCHEDULE — (continued)

(d) the Society gives notice of the failure to the advocate and solicitor and (at the same or any later time) notice that the powers conferred by Part II of this Schedule are accordingly exercisable.

4. (1) Where the powers conferred by Part II of this Schedule are exercisable in relation to an advocate and solicitor, they shall continue to be exercisable after his death or after his death or after his name has been removed from or struck off the roll.

(2) The references to the advocate and solicitor or his firm in paragraphs 5(1), 6(2) and (3), 7 and 8(1) and (5) includes, in any case where the advocate and solicitor has died, references to his personal representative.

PART II

POWERS EXERCISABLE ON INTERVENTION

Money

5. (1) The High Court may, on the application of the Society, order that no payment shall be made without the leave of the Court by any person (whether or not named in the order) of any money held by him (in whatever manner and whether it was received before or after the making of the order) on behalf of the advocate and solicitor or his firm.

(2) No order under this paragraph shall take effect in relation to any person to whom it applies unless the Society has served a copy of the order on him (whether or not he is named in it) and, in the case of a bank, has indicated at which of its branches the Society believes that the money to which the order relates is held.

(3) A person shall not be treated as having disobeyed an order under this paragraph by making a payment of money if he satisfies the High Court that he exercised due diligence to ascertain whether it was money to which the order related but nevertheless failed to ascertain that the order related to it.

(4) This paragraph shall not apply where the powers conferred by this Part of this Schedule are exercisable by virtue of paragraph 3.

6. (1) Without prejudice to paragraph 5, if the Council passes a resolution to the effect that any sums of money to which this paragraph applies, and the right to recover or receive such sums, shall vest in the Society, all such sums shall vest accordingly (whether they were received by the person holding them before or after the Council's resolution) and shall be held by the Society on trust to exercise in relation to them the powers conferred by this Part of this Schedule and subject thereto upon trust for the persons beneficially entitled to them.

(2) This paragraph shall apply —

(a) where the powers conferred by this paragraph are exercisable, by virtue of paragraph 1, to all sums of money held by or on behalf of the advocate and solicitor

FIRST SCHEDULE — (continued)

or his firm in connection with practice or with any trust of which he is or formerly was a trustee;

(b) where the powers conferred by this paragraph are exercisable by virtue of paragraph 2, to all sums of money in any client account; and

(c) where the powers conferred by this paragraph are exercisable by virtue of paragraph 3, to all sums of money held by or on behalf of the advocate and solicitor or his firm in connection with the trust or other matter to which the complaint relates.

(3) The Society shall serve on the advocate and solicitor or his firm and on any other person having possession of sums of money to which this paragraph applies as certified copy to the Council's resolution and a notice prohibiting the payment out of any such sums of money.

(4) Within 14 days of the service of a notice under sub-paragraph (3), the person on whom it was served may, on giving not less than 48 hours' notice in writing to the Society and (if the notice gives the name of the advocate and solicitor instructed by the Society) to that advocate and solicitor, apply to the High Court for an order directing the Society to withdraw the notice.

(5) If the High Court makes such an order, it shall have power also to make such other with respect to the matter as it may think fit.

(6) If any person on whom a notice has been served under sub-paragraph (3) pays out sums of money at a time when the payment is prohibited by the notice, he is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

7. If the High Court is satisfied, on an application by the Society, that there is reason to suspect that any person holds money on behalf of the advocate and solicitor or his firm, the Court may require that person to give the Society information as to that money and the accounts in which it is held.

Documents

8. (1) The Society may give notice to the advocate and solicitor or his firm requiring the production or delivery to any person appointed by the Society at a time and place to be fixed by the Society —

(a) where the powers conferred by this Part of this Schedule exercisable by virtue of paragraph 1, of all documents in the possession of the advocate and solicitor or his firm in connection with his practice or with any controlled trust; and

(b) where the powers conferred by this Part of this Schedule are exercisable by virtue of paragraph 3, of all documents in the possession of the advocate and solicitor or his firm in connection with the trust or other matters to which the complaint relates (whether or not they relate also to other matters).

FIRST SCHEDULE — (continued)

(2) The person appointed by the Society may take possession of any such documents on behalf of the Society.

(3) Except in a case where an application has been made to the High Court under sub-paragraph (4), any person who, having possession of any such documents, refuses, neglects or otherwise fails to comply with a requirement under sub-paragraph (1), is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

(4) The High Court may, on the application of the Society, order a person required to produce or deliver documents under sub-paragraph (1) to produce or deliver them to any person appointed by the Society at such time and place as may be specified in the order, and authorise him to take possession of them on behalf of the Society.

(5) If, on an application by the Society, the High Court is satisfied that there is reason to suspect that documents in relation to which the powers conferred by sub-paragraph (1) are exercisable have come into the possession of some person other than the advocate and solicitor or his firm, the Court may order that person to produce or deliver the documents to a person appointed by the Society at such time and place as may be specified in the order and authorise him to take possession of them on behalf of the Society.

(6) On making an order under this paragraph, or at any later time, the High Court may, on the application of the Society, authorise a person appointed by the Society to enter any premises (using such force as is reasonably necessary) to search for and take possession of any documents to which the order relates.

(7) The Society may, on taking possession of any documents under this paragraph, serve upon the advocate and solicitor or his personal representative and upon any other person from whom they were received on the Society's behalf or from whose premises they were taken a notice that possession has been taken on the date specified in the notice.

(8) Subject to sub-paragraph (9), a person upon whom a notice under sub-paragraph (7) is served may, on giving not less than 48 hours' notice to the Society and (if the notice give the name of the solicitor instructed by the Society) to that advocate and solicitor, apply to the High Court for an order directing the Society to deliver the documents to such person as the applicant may require.

(9) A notice under sub-paragraph (8) shall be given within 8 days of the service of the Society's notice under sub-paragraph (7).

(10) Without prejudice to the foregoing provisions, the Society may apply to the High Court for an order as to the disposal or destruction of any documents in its possession by virtue of this paragraph.

(11) On an application under sub-paragraph (8) or (10), the High Court may make such order as it thinks fit.

(12) Except so far as its right to do so may be restricted by an order on an application under sub-paragraph (8) or (10), the Society may take copies of or extracts from any documents in its possession by virtue of this paragraph and require any person to whom it is

FIRST SCHEDULE — (continued)

proposed that those documents shall be delivered, as a condition precedent to delivery, to give a reasonable undertaking to supply copies or extracts thereof to the Society.

General

9. The powers in relation to sums of money and documents conferred by this Part of this Schedule shall be exercisable notwithstanding any lien on them or right to their possession.

10. Subject to any order for the payment of costs that may be made on an application to the High Court under this Schedule, any costs incurred by the Society for the purpose of this Schedule, including, without prejudice to the generality of this paragraph, the costs of any person exercising powers under this Part of this Schedule on behalf of the Society shall be paid by the advocate and solicitor or his personal representative and shall be recoverable from him or them as a debt owing to the Society.

11. Any application to the High Court under this Schedule may be disposed of in chambers.

12. The Society may do all things which are reasonably necessary for the purpose of facilitating the exercise of its powers under this Schedule.

SECOND SCHEDULE

(paragraph 42)

INADEQUATE PROFESSIONAL SERVICES

Circumstances in which Council's powers may be exercised.

1. (1) The Council may take any of the direction mentioned in paragraph 2 (referred to in this Schedule as the directions) with respect to an advocate and solicitor where it appears to the Council that the professional services provided by him in connection with any matter in which he or his firm has been instructed by a client have, in any respect, not been of the quality which it is reasonable to expect of him as an advocate and solicitor.

(2) The Council shall not take any of the directions unless it is satisfied that, in all the circumstances of the case, it is appropriate to do so.

(3) In determining in any case whether it is appropriate to take any of the directions, the Council may —

(a) have regard to the existence of any remedy which it is reasonable to expect to be available to the client in civil proceedings; and

(b) where proceedings seeking any such remedy have not been begun by the client, have regard to whether it is reasonable to expect the client to begin such proceedings.

SECOND SCHEDULE — (continued)

Direction which may be given.

2. (1) The direction are —

(a) determining that the costs to which the advocate and solicitor is entitled in respect of his services (referred to in this Schedule as the costs) are to be limited to such amount as may be specified in the determination and directing him to comply, or to secure compliance, with one or more of the permitted requirements as appear to the Council to be necessary in order for effect to be given to the Council's determination;

(b) directing him to secure the rectification at his expense or at that of his firm, of such error, omission or other deficiency arising in connection with the matter in question as the Council may specify;

(c) directing him to pay such compensation to the client as the Council sees fit specify in the direction; and

(d) directing him to take, at his expense or at that of his firm, such other action in the interest of the client as the Council may specify.

(2) The permitted requirements referred to in sub-paragraph (1)(a) are —

(a) that the whole or part of any amount already paid by or on behalf of the client in respect of the costs be refunded;

(b) that the whole or part of the costs be remitted; and

(c) that the right to recover the costs be waived, whether wholly or to any specified extent.

(3) The power of the Council to take any such directions is not confined to cases where the client may have a cause of action against the advocate and solicitor for negligence.

Compensation.

3. (1) The amount specified in a direction by virtue of paragraph 2(1)(c) shall not exceed \$10,000.

(2) The Chief Justice may, by order published in the *Gazette*, amend sub-paragraph (1) by substituting for the sum of \$10,000 such other sum as he considers appropriate.

(3) Before making any such order, the Chief Justice shall consult the Society.

Taxation of costs.

4. (1) Where the Council has given a direction under paragraph 2(1)(a), then —

SECOND SCHEDULE — (continued)

(a) for the purposes of any taxation of a bill covering the costs, the amount charged by the bill in respect of them shall be deemed to be limited to the amount specified in the determination; and

(b) where a bill covering the costs has not been taxed, the client shall, for the purpose of their recovery (by whatever means and notwithstanding any statutory provision or agreement) be deemed to be liable to pay in respect of them only the amount specified in the determination.

(2) Where a bill covering the costs has been taxed, the direction shall, so far as it relates to the costs, cease to have effect.

Failure to comply with direction.

5. (1) If an advocate and solicitor fails to comply with a direction given under this Schedule, any person may make a complaint in respect of that failure to a Judge; but no other proceedings shall be brought in respect of it pursuant to an order made under subparagraph (2).

(2) On the hearing of such a complaint, the Judge may, if he thinks fit, direct that the direction be treated, for the purpose of enforcement, as if it were contained in an order made by the High Court.

Fees.

6. (1) The Council may, by rules made with the approval of the Chief Justice, make provision for payment, by any client with respect to whom the Council is asked to consider whether to take any of the steps, of such fees as may be prescribed.

(2) The rules may provide for the exemption of such classes of client as may be prescribed.

(3) Where a client pays the prescribed fees, it shall be repaid to him if the Council takes any of the steps in the matter with respect to which the fee was paid.

Costs.

7. Where the Council takes any of the steps with respect to an advocate and solicitor, the Council may also direct him to pay to the Council —

(a) the amount of the fee payable by the Council to the client under paragraph 6(3); and

(b) an amount which is calculated by the Council as the cost to it of dealing with the complaint, or which in its opinion represents a reasonable contribution towards that cost.

SECOND SCHEDULE — (continued)

Duty of Judge.

8. Where a Judge —

(a) is considering, or has considered, an application or complaint with respect to an advocate and solicitor under this Schedule; and

(b) is of the opinion that the Council should consider whether to take any of the steps with respect to that advocate and solicitor,

he shall inform the Council.

Powers of Society to examine documents in connection with complaints.

9. (1) Where the Council is satisfied that it is necessary to do so for the purpose of investigating any complaint made to the Society relating to the quality of any professional services provided by an advocate and solicitor, the Society may give notice to the advocate and solicitor or his firm requiring the production or delivery to any person appointed by the Society, at a time and place to be fixed by the Society, of all documents in the possession of the solicitor or his firm in connection with the matters to which the complaint relates (whether or not they relate also to other matters).

(2) Sub-paragraphs (2) to (12) of paragraph 8 and paragraphs 9 to 12 of the First Schedule shall apply in relation to the power conferred by sub-paragraph (1) as they apply in relation to the powers conferred by paragraph 8(1) of that Schedule and accordingly in those provision —

(a) any reference to a person appointed, or to a requirement, under that sub-paragraph shall be construed as including a reference to a person appointed, or to a requirement, under sub-paragraph (1); and

(b) any reference to any such documents as are mentioned in that sub-paragraph shall be construed as including a reference to any such documents as are mentioned in sub-paragraph (1).

Exercise of powers by Council.

10. The powers of the Council under this Schedule are exercisable in relation to a person even though his name has been removed from, or struck off, the roll, and references to an advocate and solicitor in this Schedule, so far as they relate to the exercise of those powers, shall be construed accordingly.

Rules.

11. The Council may, with the approval of the Chief Justice, make rules to give full effect to or to carry out the purpose of the provisions of this Schedule.

