

No. 66 of 1986.

***Lawyers Act 1986.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 66 of 1986.

*Lawyers Act 1986.*

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

*Lawyers Act 1986,*

Being an Act relating to lawyers,

MADE by the National Parliament, to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**PART I. – PRELIMINARY.**

**1. INTERPRETATION.**

In this Act, unless the contrary intention appears–

“**admission**” means admission to practice as a lawyer;

<sup>1</sup>“**Admission Council**” means the Admission Council established by Section 25A;

<sup>2</sup>“**Attorney-General**” means the Attorney-General in accordance with the *Attorney-General Act 1989*;

“**Committee**” means the Lawyers Statutory Committee established by Section 48;

<sup>3</sup>“**Contribution Fund**” means the Trust Accounts Contribution Fund established by Section 80;

“**costs**” includes fees, charges, disbursements, expenses and remuneration;

“**Council**” means the Council of the Law Society established by Section 11;

“**Councillor**” means a Councillor of the Society appointed under Section 11;

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<sup>1</sup> Section 1 (definition of “Admission Council”) added by the *Lawyers (Amendment) Act 1989* (No. 30 of 1989), s1(a).

<sup>2</sup> Section 1 (definition of “Attorney-General”) added by the *Lawyers (Amendment) Act 1989* (No. 30 of 1989), s1(a).

<sup>3</sup> Section 1 (definition of “Contribution Fund”) added by the *Lawyers (Amendment) Act 1989* (No. 30 of 1989), s1(b).

<sup>4</sup>**“country”**, in the case of a foreign country with a federal system of government, includes States within that country;

**“Court”** means the National Court;

**“Fund”** means the General Fund established by Section 85;

**“lawyer”** means a person who has been admitted to practice as a lawyer under this Act;

**“levy”** means a levy under Section 90;

**“practising certificate”** means a practising certificate issued under Section 39;

**“President”** means the President of the Society;

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

**“repealed Act”** means the *Lawyers Act* (Chapter 91) repealed by Section 110;

**“resident”** means, for the purpose of the issue of a practising certificate—

(a) a lawyer who is a citizen; or

(b) a person who declares on oath in writing that he intends to reside in Papua New Guinea for a period of not less than 12 months from the date of his application for a practising certificate;

**“restricted practising certificate”** means a restricted practising certificate issued under Section 40;

**“Roll”** means the Roll of Lawyers kept under Section 30;

**“Rules”** means the Rules of the Society made by the Council under Section 21;

**“Rules of Court”** means the Rules of Court of the National Court;

**“Secretary”** means the Secretary of the Society appointed under Section 22;

**“Society”** means the Papua New Guinea Law Society established under Section 2;

**“this Act”** includes the Regulations;

<sup>5</sup>**“trust account”**, in relation to Section 82, means a current or deposit account in the name of the lawyer at a bank in the title of which account the word “Trust” appears, or where no such word appears, an account which contains money held or received by the lawyer on account of a person for whom the lawyer is acting in relation to the holding or receipt of such money as a lawyer, or in connection with his practice as a lawyer;

**“unrestricted practising certificate”** means an unrestricted practising certificate issued under Section 41.

<sup>4</sup> country added by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s1(c).

<sup>5</sup> Section 1 (definition of “trust account”) added by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s1(d).



**PART II. – PAPUA NEW GUINEA LAW SOCIETY.**

***Division 1.***

***The Society.***

**2. ESTABLISHMENT OF THE PAPUA NEW GUINEA LAW SOCIETY.**

The Papua New Guinea Law Society is hereby established.

**3. INCORPORATION OF THE SOCIETY.**

(1) The Society–

- (a) is a body corporate with perpetual succession; and
- (b) shall have a seal; and
- (c) may acquire, hold and dispose of property; and
- (d) may sue and be sued in its corporate name.

(2) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Society affixed to a document and shall presume that it was duly affixed.

**4. CUSTODY AND AFFIXING OF SEAL.**

The seal of the Society–

- (a) shall be kept in the custody of the Secretary or such other officer of the Society as the Council may approve; and
- (b) may be affixed to an instrument pursuant to a resolution of the Council by the Secretary in the presence of the President and one Councillor or, where the President is not available, in the presence of three Councillors.

**5. AUTHENTICATION OF DOCUMENTS, ETC.**

The seal of the Society shall be authenticated by the signature of the President and by one Councillor or, where the President is not available, by the signature of three Councillors.

**6. SERVICE OF DOCUMENTS.**

Service upon the Society of any order, notice or other document shall be executed by delivering the same or by sending the same by registered post to the Secretary at the office of the Society.

**7. FUNCTIONS OF THE SOCIETY.**

The functions of the Society are–

- (a) to promote the interest of the public and the interest of lawyers in relation to legal matters and generally to promote and uphold justice and the rule of law; and
- (b) to promote and encourage proper conduct by lawyers; and
- (c) to suppress illegal, dishonourable and improper and unprofessional practices and conduct by lawyers; and
- (d) to preserve and maintain the integrity and status of lawyers; and
- (e) to promote opportunities for the acquisition and diffusion of knowledge of the law; and
- (f) to assist in the promotion, development and reform of the law and generally to advance and develop the underlying law and jurisprudence; and
- (g) to provide a means for the amicable settlement of professional differences between lawyers; and
- (h) such other functions as are conferred by this Act or any other law.

#### **8. POWERS OF THE SOCIETY.**

<sup>6</sup>In addition to any other powers conferred by this Act or any other law on the Society, on the Lawyers Statutory Committee of the Society or on the Professional Conduct Committee of the Society, the Society has the following powers:—

- (a) to provide or arrange for the provision of educational and training programmes for lawyers, including all necessary services and facilities for that purpose;
- (b) to publish or arrange for the publication of such written material as it considers of benefit to the public or to lawyers;
- (c) to oppose an application for admission as a lawyer of a person who, in the opinion of the Society, ought not to be admitted as a lawyer;
- (d) to institute prosecutions against a lawyer or any other person for breach of any Act, law or Rule relating to the practice of the law;
- (e) to appoint lawyers to perform services for the Society or to appear before a court, tribunal or other body in any of the foregoing matters or in any other matter in which the Society has an interest;
- (f) to establish or participate in the establishment of a body, whether incorporated or not, whether situated in Papua New Guinea or elsewhere, for the purpose of exercising any of the Society's functions or powers;
- (g) subject to the approval of the Minister, to borrow money on terms and conditions approved by the Minister.

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<sup>6</sup> Section 8 amended by the *Lawyers (Amendment) Act 1997* (No. 15 of 1997), s1.

*Division 2.*

*Membership of the Society.*

**9. MEMBERSHIP OF THE SOCIETY.**

(1) A lawyer admitted under this Act shall, within seven days of the date of his admission, apply for membership of the Society.

(2) A person who—

(a) immediately before the coming into operation of this Act was a lawyer admitted under the repealed Act; and

(b) proposes to practise as a lawyer,

shall apply for membership of the Society—

(c) within 60 days of the coming into operation of this Act; or

(d) where the period of 60 days referred to in Paragraph (c) has expired, before he further practises as a lawyer.

(3) An application for membership of the Society under this section shall—

(a) be in the form; and

(b) contain the particulars; and

(c) be accompanied by the fee; and

(d) be made in the manner,

prescribed in the Rules.

(4) Membership of the Society shall be open to all persons required to apply for membership under this section.

**10. LOSS OF MEMBERSHIP.**

A person whose name is not on the Roll ceases to be a member of the Society.

*Division 3.*

*The Council.*

**11. ESTABLISHMENT OF COUNCIL.**

(1) There is established a Council of the Society which shall comprise—

(a) the President of the Society; and

(b) eight Councillors.

(2) The President and Councillors shall—

(a) be elected from the members of the Society by the members of the Society by majority vote by secret ballot; and

- (b) subject to this Act, hold office for a period of two years from the date of election; and
- (c) be eligible for re-election.

**12. VACATION OF OFFICE.**

A—

- (a) President; or
- (b) Councillor,

who—

- (c) ceases to be a member of the Society; or
- (d) is convicted of an offence against this Act or is found to have committed improper conduct under this Act; or
- (e) becomes permanently incapable of performing his functions and duties; or
- (f) resigns his office by writing under his hand addressed to the Secretary; or
- (g) is absent from three consecutive meetings of the Council except on leave granted—
  - (i) in the case of a President—by the Chief Justice; and
  - (ii) in the case of a Councillor—by the President,

ceases to hold office as President, or as a Councillor, as the case may be.

**13. BY-ELECTIONS.**

- (1) Where the President or a Councillor—
  - (a) dies; or
  - (b) vacates office under Section 12,

a by-election shall be held.

(2) A person elected in a by-election under Subsection (1) shall hold office for the balance of the period of office of the person whose death or vacation of office gave rise to the by-election.

**14. MEETINGS OF THE COUNCIL.**

(1) The Council shall meet at such times as, in the opinion of the President, are necessary for the efficient conduct of its business, and such meetings shall be held at such places and times and on such days as the President determines.

(2) At a meeting of the Council—

- (a) not less than one half of the Councillors shall constitute a quorum; and

- (b) the President, or in his absence a Councillor elected by the Councillors present, shall preside; and
  - (c) all matters shall be decided by a majority of the votes of the Councillors present and voting; and
  - (d) the Councillor presiding has a deliberative and, in the event of an equality of votes on a matter, also a casting vote.
- (3) Minutes of each meeting shall be—
- (a) kept by the Secretary; and
  - (b) confirmed by the Council at the next meeting of the Council; and
  - (c) signed by the President or other Councillor presiding.
- (4) Subject to this Act, the Council may determine its own procedures.

#### **15. PROTECTION OF THE COUNCIL.**

No act done or proceeding taken under this Act shall be questioned on the ground—

- (a) of the existence of any vacancy in the membership, or any defect in the constitution, of the Council; or
- (b) of any omission, defect or irregularity not affecting the merits of the case.

#### **16. PROTECTION OF COUNCILLORS.**

No action, suit, prosecution or other proceeding shall be brought or instituted personally against any Councillor in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.

#### **17. DISCLOSURE OF INTEREST.**

(1) A Councillor who is directly or indirectly interested in a matter being considered by the Council, otherwise than as a member and in common with the other members of an incorporated company consisting of not less than 25 persons, shall, as soon as practicable after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Council.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the Council.

- (3) The Councillor making the disclosure under Subsection (1)—
- (a) shall not, after the disclosure, take part in any deliberation or decision of the Council with respect to that matter; and
  - (b) shall be disregarded for the purpose of constituting a quorum of the Council for any such deliberation or decision.

**18. FUNCTIONS OF THE COUNCIL.**

The functions of the Council are to manage the Society and its assets, income and property for the benefit of the Society and such other functions as are provided by this Act.

**19. POWERS OF THE COUNCIL.**

Subject to this Act, the Council has such powers as are conferred by this Act and such other powers as are necessary or convenient to enable the Council to carry out its functions and the functions of the Society.

**20. COMMITTEES.**

(1) The Council may establish such committees as it considers necessary for such purposes as it considers necessary.

(2) A committee under Subsection (1) may comprise Councillors, members of the Society and lay persons.

(3) The chairmanship, functions, powers and procedures of a committee under Subsection (1) shall be as determined by the Council.

**21. RULES.**

(1) The Council may make Rules providing for—

- (a) the regulation of the Society and its affairs; and
- (b) the holding of meetings of the Council; and
- (c) all matters pertaining to election to the Council and election of the President; and
- (d) general, special and emergency meetings of the Society; and
- (e) the imposition of an annual levy on members of the Society of an amount reasonably necessary to provide for the objects of the Society and to enable it to carry out its functions; and
- (f) the financial procedures to be followed by the Society; and
- (g) such other matters for which, by this Act, Rules are to be made.

(2) Notice of Rules made under Subsection (1) shall be given in the National Gazette by the Minister and the Rules shall come into operation on the gazettal of such notice, or on such other date as is specified in the notice.

(3)<sup>7</sup> <sup>8</sup>Until such time as the Council has made Rules for the purposes of Subsection (1), the Minister may determine the Rules.

<sup>7</sup> Section 21(3) added by the *Lawyers (Amendment) Act 1987* (No. 7 of 1987).

<sup>8</sup> Section 21(3) added by the *Lawyers (Amendment) Act 1987* (No. 7 of 1987).

(4)<sup>9</sup> <sup>10</sup>The Rules determined under Subsection (3) shall, on the making of the Rules under Subsection (1), be deemed to have been repealed.

***Division 4.***  
***Service of the Society.***

**22. SECRETARY.**

(1) There shall be a Secretary of the Society who shall be appointed by the Council.

(2) Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the terms and conditions of appointment of the Secretary are as determined by the Council.

*Note* The *Salaries and Conditions Monitoring Committee Act* (Chapter 384) was repealed and replaced by the *Salaries and Conditions Monitoring Committee Act 1988* (No. 10 of 1988).

(3) The Secretary—

- (a) is the Chief Executive Officer of the Society; and
- (b) is the head of the service of the Society; and
- (c) shall, subject to the directions of the Council, administer the affairs of the Society.

**23. APPOINTMENT OF OFFICERS OF THE SOCIETY.**

(1) The Council may appoint to be officers of the Society such persons as it considers necessary for the purpose of giving effect to this Act.

(2) Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the terms and conditions of appointment of persons appointed under Subsection (1) are as determined by the Council.

*Note* The *Salaries and Conditions Monitoring Committee Act* (Chapter 384) was repealed and replaced by the *Salaries and Conditions Monitoring Committee Act 1988* (No. 10 of 1988).

**24. SERVICE OF THE SOCIETY.**

The—

- (a) Secretary; and
- (b) officers appointed under Section 23,

comprise the service of the Society.

<sup>9</sup> Section 21(4) added by the *Lawyers (Amendment) Act 1987* (No. 7 of 1987).

<sup>10</sup> Section 21(4) added by the *Lawyers (Amendment) Act 1987* (No. 7 of 1987).

**PART III. – ADMISSION TO PRACTISE.****25A. ADMISSION COUNCIL.**

<sup>11</sup>(1) There is hereby established an Admission Council comprising–

- (a) the Attorney-General, who shall be the Chairman; and
- (b) the Chief Justice; and
- (c) the President of the Society,

all *ex officio*.

(2) The Admission Council has such functions in relation to admission to practise as are specified in this Act and may make Rules concerning admission to practise.

(3) Notice of Rules made under Subsection (1) shall be given in the National Gazette by the Attorney-General and the Rules shall come into operation on–

- (a) the gazettal of such notice; or
- (b) such other date as is specified in the notice.

**25. QUALIFICATIONS FOR ADMISSION.**

(1) An applicant for admission to practise shall satisfy the Court that he possesses the required academic and practice qualifications and that he is a fit and proper person to be admitted as a lawyer.

(2) The required academic qualifications referred to in Subsection (1) are–

- (a) possession of the degree of Bachelor of Laws from the University of Papua New Guinea; or
- (b)<sup>12</sup> such other academic or educational qualifications as are prescribed by the Rules made by the Admission Council under Section 25A(2).

(3) The required practice qualifications referred to in Subsection (1) are–

- (a)<sup>13</sup> a certificate in the form prescribed by the Rules made by the Admission Council under Section 25A(2) signed by the Director of the Papua New Guinea Graduate Legal Training Institute certifying that the applicant has successfully completed the course of training conducted by that Institute; or
- (b)<sup>14</sup> a certificate from the appropriate overseas authority certifying that the applicant was admitted to practise in a country prescribed by the Rules made by the Admission Council under Section 25A(2) together with evidence that the applicant has practised as a lawyer in a country

<sup>11</sup> Section 25A added by the *Lawyers (Amendment) Act 1989* (No. 30 of 1989), s2.

<sup>12</sup> Section 25(2)(b) amended by the *Lawyers (Amendment) Act 1989* (No. 30 of 1989), s3(a).

<sup>13</sup> Section 25(3)(a) amended by the *Lawyers (Amendment) Act 1989* (No. 30 of 1989), s3(b)(i).

<sup>14</sup> Section 25(3)(b) amended by the *Lawyers (Amendment) Act 1989* (No. 30 of 1989), s3(b)(ii).



prescribed by the Rules made by the Admission Council under Section 25A(2) for a period of not less than three years following the date of his admission to practise in that country; and

(c)<sup>15</sup> such other practice qualifications as are prescribed by the Rules made by the Admission Council under Section 25A(2); and

(d)<sup>16</sup> a certificate signed by the Attorney-General that the applicant is a fit and proper person to be admitted to practice in Papua New Guinea.

(4)<sup>17</sup> <sup>18</sup>In determining whether or not to grant a certificate under Subsection (3)(d), the Attorney-General may require the applicant—

(a) to attend before him for a personal interview; and

(b) to produce to him such evidence of his fitness and academic and practice qualifications as the Attorney-General thinks fit.

(5)<sup>19</sup> <sup>20</sup>Where the Attorney-General is of the opinion that an applicant has not provided adequate evidence of his academic and practice qualifications, he may require the applicant to sit examinations and for this purpose may set such examinations.

## 26. APPLICATION FOR ADMISSION TO PRACTISE.

(1) An application for admission to practise shall be made to the Court.

(2) An application under Subsection (1) shall be—

(a) made in the manner prescribed by the Rules of Court; and

(b) accompanied by—

(i) evidence of qualifications for admission as required under Section 25; and

(ii) the fee prescribed by the Rules of Court.

## 27. PUBLICATION AND SERVICE OF APPLICATION.

An applicant for admission to practise as a lawyer shall—

(a) not less than 14 days prior to the date of his application under Section 26, publish in a newspaper circulating throughout Papua New Guinea, notice of his intention to apply for admission to practise as a lawyer; and

(b) as soon as possible after making his application under Section 26 serve on the Secretary a copy of the application and of the evidence lodged therewith.

<sup>15</sup> Section 25(3)(c) amended by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s3(b)(iii).

<sup>16</sup> Section 25(3)(d) repealed and replaced by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s3(b)(iv).

<sup>17</sup> Section 25(4) repealed and replaced by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s3(c).

<sup>18</sup> Section 25(4) repealed and replaced by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s3(c).

<sup>19</sup> Section 25(5) added by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s3(d).

<sup>20</sup> Section 25(5) added by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s3(d).

**28. COURT MAY ADMIT APPLICANT TO PRACTISE.**

(1) The Court may, at any sitting, on motion, admit an applicant to practise as a lawyer if that applicant shows to the satisfaction of the Court that he possesses the required qualifications.

(2) In considering an application for admission to practise as a lawyer, the Court may waive all or any of the requirements of Section 25.

**29. SOCIETY MAY MAKE SUBMISSIONS.**

The Society may, on an application for admission under Section 26, appear and make such submission as it thinks fit in support of or in opposition to the application.

**30. ROLL OF LAWYERS.**

(1) The Registrar shall keep a Roll of Lawyers.

(2) The Roll of Lawyers under Subsection (1) shall be—

(a) in such form; and

(b) kept in such place and manner,

as is prescribed by the Rules of Court.

**31. LAWYER TO SIGN ROLL ON ADMISSION.**

A person admitted to practise as a lawyer under Section 28 shall sign the Roll.

**32. REGISTRAR TO ISSUE CERTIFICATE OF ADMISSION.**

The Registrar shall issue to each person who has—

(a) been admitted to practise as a lawyer under Section 28; and

(b) has signed the Roll,

a certificate of admission in the form prescribed by the Rules of Court.

**33. PRACTISE.**

A person—

(a) who has been admitted to practise as a lawyer under Section 28; and

(b) has signed the Roll,

may practise as a lawyer in accordance with the provisions of this Act.

**34. FEES.**

All fees paid under Section 26 shall be paid to the credit of the National Court Library Account.

**PART IV. – PRACTISING CERTIFICATES.**

**35. REQUIREMENT TO HOLD A PRACTISING CERTIFICATE.**

(1) A person shall not practise as a lawyer unless–

(a) he has signed the Roll; and

(b) he is the holder of a current restricted or unrestricted practising certificate.

(2) A person who practises as a lawyer contrary to the provisions of Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

**36. PERSON CONVICTED OF AN OFFENCE UNDER SECTION 35 NOT ENTITLED TO RECOVER FEES, ETC.**

A person who is convicted of an offence against Section 35 shall not be entitled to recover fees or costs from any person in respect of work in the nature of legal work carried out by him during the period to which the offence relates, except that he may recover moneys actually paid by him for or on behalf of any person.

**37. RESTRICTED PRACTISING CERTIFICATE.**

(1) A lawyer who is the holder of a current restricted practising certificate shall not practise as a lawyer on his own account or in partnership with another lawyer or hold moneys in trust for another person who is a client.

(2) A lawyer who practises contrary to Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

**38. PERSON CONVICTED OF AN OFFENCE UNDER SECTION 37 NOT ENTITLED TO RECOVER FEES.**

A person who is convicted of an offence against Section 37 shall not be entitled to recover fees or costs from any person in respect of work in the nature of legal work carried out by him during the period to which the offence relates, except that he may recover moneys actually paid by him for or on behalf of any person.

**39. PRACTISING CERTIFICATES.**

(1) The Council may, on behalf of the Society, in accordance with the provisions of this Act, issue to a lawyer who has signed the Roll a practising certificate which shall be–

(a) an unrestricted practising certificate; or

(b) a restricted practising certificate.

(2) A practising certificate issued under Subsection (1)(a) or (b)–

- (a) shall be in the form prescribed in the Rules; and
- (b) shall be issued for a period not exceeding one year; and
- (c) shall expire on 31 December in the year in which it was issued.

(3) An unrestricted practising certificate issued under Subsection (1)(a) entitles the holder to practise as a lawyer in any manner allowed under this Act.

(4) A restricted practising certificate issued under Subsection (1)(b) entitles the holder to practise as a lawyer, but not—

- (a) on his own account; or
- (b) in partnership with another lawyer; or
- (c) hold moneys in trust for another person who is a client.

**40. RESTRICTED PRACTISING CERTIFICATE.**

A lawyer who—

- (a) has signed the Roll; and
- (b) is a citizen or resident of Papua New Guinea,

may be issued with a restricted practising certificate.

**41. UNRESTRICTED PRACTISING CERTIFICATE.**

(1) A lawyer may be issued with an unrestricted practising certificate if—

- (a) he—
  - (i) is the holder of, or is entitled to hold, a restricted practising certificate; and
  - (ii) has been employed exclusively as a lawyer for—
    - (A) not less than two years from the date of his admission to practise; or
    - (B) not less than two years in the five years preceding the date of his application for an unrestricted practising certificate, by a lawyer, who during the period of employment was the holder of an unrestricted practising certificate; or
- (b) he—
  - (i) has practised exclusively as a lawyer within a class of lawyers prescribed in the Rules for the purpose for a period of not less than two years in the period of five years immediately prior to his application for an unrestricted practising certificate; and
  - (ii) satisfies the Society that he has obtained experience in the practice of law at least equivalent to that gained by an applicant under Subparagraph (a)(ii); or

- (c) he—
  - (i) has been admitted to practise law for a period of not less than three years following his admission to practise in such countries as are prescribed by the Rules; and
  - (ii) has practised with a restricted practising certificate in Papua New Guinea for a period of not less than three months immediately prior to his application for an unrestricted practising certificate; or
- (d) he satisfies the Society that he has obtained experience in the practise of law, which, in the opinion of the Society, is at least equivalent to that gained by an applicant under Subparagraph (a)(ii); or
- (e) he has been carrying on practice exclusively as a barrister in a country prescribed by the Rules of Court for a period of not less than five years preceding his application for an unrestricted practising certificate.

(2) For the purposes of Subsection (1)(e), “**barrister**” means a person who is a member of the bar in a country prescribed by the Rules of Court.

(3) Sections 39(2) and 42(2)(b) apply to an unrestricted practising certificate under Subsection (1)(e).

#### **42. APPLICATION FOR A PRACTISING CERTIFICATE.**

- (1) An application for a practising certificate shall be made to the Secretary.
- (2) An application under Subsection (1) shall be—
  - (a) in the form prescribed by the Rules; and
  - (b) accompanied by any fee prescribed by the Rules.

#### **43. SOCIETY SHALL REQUIRE EVIDENCE OF PROFESSIONAL INDEMNITY INSURANCE.**

An applicant for an unrestricted practising certificate shall produce evidence of professional indemnity insurance with an insurer approved by the Society in an amount considered adequate by the Society.

#### **44. APPLICATIONS TO BE SUBMITTED TO COUNCIL FOR CONSIDERATION.**

- (1) The Secretary shall submit an application for a practising certificate to the Council, which may grant or refuse an application.
- (2) Where the Council refuses an application, it shall state its reasons for so refusing in writing and notify the applicant of those reasons.
- (3) The Council shall renew a practising certificate issued under Section 39 on its expiry in accordance with this section on application by the holder of the

certificate in the form prescribed and upon payment of any fee unless the holder, at the time of application or the date of expiry of the practising certificate—

- (a) has failed to comply with this Act; or
- (b) having been called upon by the Council or the Lawyers Statutory Committee, has failed to give a satisfactory explanation of any matter relating to his conduct or practice as a lawyer.

#### **45. REVIEW OF COUNCIL'S DECISION.**

(1) An applicant, who is refused an application for a practising certificate, may apply to the Court for—

- (a) a review of the decision by the Council to refuse his application; and
- (b) an order directing the Society to issue to him a practising certificate on such terms as the Court thinks fit pending the review by the Court.

(2) The Court, on an application under Subsection (1), shall review the application to the Society for a practising certificate and may—

- (a) uphold the decision of the Society to refuse the application; or
- (b) order that the application be granted.

(3) The National Court may, pending a review under Subsection (1)(a), grant an order under Subsection (1)(b).

(4) The Society shall comply with and give effect to an order under—

- (a) Subsection (2)(b); or
- (b) Subsection (3).

#### **46. WITHDRAWAL OF PRACTISING CERTIFICATE.**

(1) The Society shall withdraw a practising certificate from a lawyer if—

- (a) the Committee advises the Secretary that the name of the lawyer has been directed to be removed from the Roll; or
- (b) the Committee advises the Secretary that the lawyer's right to practise has been suspended.

(2) Where the lawyer's right to practise has been suspended, the practising certificate shall be withdrawn for the period of the suspension.

(3) The Society may withdraw a practising certificate from a lawyer if—

- (a) he is declared insolvent or of unsound mind; or
- (b) he is convicted of a serious offence which provides for the penalty of imprisonment and the offence involves dishonesty or moral turpitude.

(4) A practising certificate shall be deemed to have been withdrawn at the time when the Secretary notifies the lawyer in writing of its withdrawal.

**47. REVIEW OF WITHDRAWAL OF PRACTISING CERTIFICATE.**

(1) A lawyer, whose practising certificate is withdrawn under Section 46(3), may apply to the Court for—

- (a) review of the decision by the Society to withdraw the practising certificate; and
- (b) an order directing the Society to issue to him a practising certificate on such terms as the Court thinks fit pending the review by the Court.

(2) The Court, on an application under Subsection (1), shall review the decision by the Society to withdraw the practising certificate and may—

- (a) uphold the decision of the Society to withdraw the practising certificate; and
- (b) order that the practising certificate be restored.

(3) The Court may, pending a review under Subsection (1)(a) grant an order under Subsection (1)(b).

(4) The Society shall comply with and give effect to an order under—

- (a) Subsection (2)(b); or
- (b) Subsection (3).

**PART V. – PROFESSIONAL CONDUCT.**

**48. LAWYERS STATUTORY COMMITTEE.**

<sup>21</sup>(1) There is hereby established a Lawyers Statutory Committee—

- (a) which shall be administered by the Society; and
- (b) the cost of operation of which shall be borne by the Society.

(2) The Lawyers Statutory Committee shall comprise—

- (a) the Attorney-General, *ex officio*; and
- (b) one member of the Council, nominated by the Council, who shall be Chairman; and
- (c) three practising lawyers with the qualifications specified in Subsection (3) recommended by the Council and appointed under Subsection (4); and
- (d) two lay persons recommended by the Council.

(3) The qualifications for membership of the Committee under Subsection (2)(c) are—

- (a) not less than five years' unrestricted practice in the country; or
- (b) not less than three years' unrestricted practice as a lawyer in a country prescribed in the Rules, together with not less than two years' unrestricted practice as a lawyer in the country.

(4) The members referred to in Subsection (2)(b), (c) and (d) shall be appointed by the Chief Justice.

(5) The membership of the Committee shall at all times comprise a greater number of practising lawyers than lay persons.

(6) The members of the Committee shall be appointed for a term of three years and are eligible for re-appointment.

**49. CHAIRMAN OF THE LAWYERS STATUTORY COMMITTEE.**

(1)<sup>22</sup> <sup>23</sup>The member of the Committee referred to in Section 48(2)(b) is the Chairman of the Lawyers Statutory Committee and shall preside at meetings of the Committee.

(2) Where the Chairman is unable to preside at any meeting, the members present shall elect a Chairman who shall preside at that meeting.

<sup>21</sup> Section 48 repealed and replaced by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s4; repealed and replaced by the *Lawyers (Amendment) Act* 1997 (No. 15 of 1997), s2.

<sup>22</sup> Section 49(1) repealed and replaced by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s5; amended by the *Lawyers (Amendment) Act* 1997 (No. 15 of 1997), s3.

<sup>23</sup> Section 49(1) repealed and replaced by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s5; amended by the *Lawyers (Amendment) Act* 1997 (No. 15 of 1997), s3.



**50. VACATION OF OFFICE.**

The office of a member of the Committee is vacated if that member—

- (a) dies; or
- (b) becomes incapable of carrying out his duties by reason of mental or physical illness; or
- (c) becomes insolvent or makes an arrangement or composition with his creditors; or
- (d) is convicted of an offence under this Act or is found to have been guilty of improper conduct under this Act; or
- (e) is convicted of an offence under any law and is sentenced to a term of imprisonment; or
- (f) not being a lawyer at the date of his appointment becomes a lawyer during the period of appointment; or
- (g) being a lawyer at the date of his appointment, ceases to practise as a lawyer during the period of appointment; or
- (h) ceases to reside permanently in the country.

**51. PROTECTION OF THE COMMITTEE.**

No act done by or under the authority of the Committee shall be declared invalid by reason of any defect that is subsequently discovered in the appointment or qualifications of any member of the Committee.

**52. FUNCTIONS OF THE COMMITTEE.**

(1) The function of the Committee is to enquire into complaints against a lawyer of improper conduct as a lawyer.

(2) Any person may request the Committee to enquire into an allegation that a lawyer has been guilty of improper conduct as a lawyer.

(3) An enquiry under this section shall continue notwithstanding that a lawyer has ceased to be a lawyer after the commencement of the enquiry.

**53. PROCEDURES AND POWERS OF THE COMMITTEE.**

(1)<sup>24</sup> <sup>25</sup>The Committee shall have the powers of a Commission of Inquiry under the *Commissions of Inquiry Act 1951*, but may otherwise determine its own procedures when enquiring into complaints of improper conduct and shall observe the rules of natural justice in carrying out an inquiry.

(2) Evidence given before the Committee shall be given on oath and witnesses may be examined and cross examined.

<sup>24</sup> Section 53(1) repealed and replaced by the *Lawyers (Amendment) Act 1989* (No. 30 of 1989), s6.

<sup>25</sup> Section 53(1) repealed and replaced by the *Lawyers (Amendment) Act 1989* (No. 30 of 1989), s6.

(3) The Committee may permit a lawyer instructed by the Society to assist in carrying out an enquiry.

(4) Proceedings of the Committee shall not be open to the public.

(5) Witnesses appearing in the course of an enquiry shall be protected against self-incrimination.

(6) The Committee shall cause a written record to be kept of proceedings of an enquiry.

#### **54. POWER OF COMMITTEE TO IMPOSE PENALTIES.**

Where, after an enquiry, the Committee is of the opinion that a lawyer has been guilty of improper conduct as a lawyer, it may impose any one or more of the following penalties:—

- (a) make a finding of improper conduct as a lawyer;
- (b) reprimand the lawyer;
- (c) apply to the Court to remove the lawyer's name from the Roll;
- (d) suspend the lawyer from practice for such period as it thinks proper;
- (e) impose a monetary penalty not exceeding K10,000.00;
- (f) order that the lawyer pay compensation in cash or in kind to another person;
- (g) where the lawyer is the holder of an unrestricted practising certificate, order that he be issued with a restricted practising certificate for such period as it thinks fit;
- (h) order the lawyer to complete such course of legal education as the Committee determines;
- (i) order that the lawyer make his practice and books of accounts relating to his practice available to such persons as the Committee determines at times determined by the Committee;
- (j) order the lawyer to report on the conduct of his practice at such times and in such form as the Committee determines;
- (k) order the lawyer to take advice on the management and conduct of his practice from such persons and for such period as the Committee determines;
- (l) order the lawyer not to accept work or to hold himself out as accepting work in an area of the law specified by the Committee;
- (m) order that the lawyer employ in his practice a member of a class of persons specified by the Committee;
- (n) order that the lawyer not employ such persons as are specified by the Committee;

- (o) order that the lawyer perform work for such persons within such time and for such fees, if any, as the Committee determines;
- (p) order that, subject to conditions determined by the Committee, the lawyer waives any lien he possesses as a lawyer;
- (q) order that the lawyer reduce his fees in respect of any work carried out by him where these fees are the subject of any enquiry by the Committee;
- (r) order that the lawyer pay the costs of the enquiry.

**55. DECISION OF COMMITTEE.**

Where, after an enquiry, the Committee is of the opinion that a lawyer has not been guilty of improper conduct as a lawyer, it shall make a decision to that effect.

**56. COMMITTEE MAY MAKE ORDER RELATING TO A PERSON OTHER THAN A LAWYER, ETC.**

(1) Where in the course of an enquiry, the Committee is of the opinion that a person who is not a lawyer has been a party to, or has caused, or assisted in causing any act of default in the practice of a lawyer who employed him, it may order that no lawyer shall, in connection with his practice as a lawyer, employ such person for such period as it may specify.

(2) An order made under Subsection (1) shall be published in a newspaper circulating in the country.

**57. COMMITTEE TO ADVISE SOCIETY OF ORDER TO REMOVE NAME FROM ROLL, ETC.**

(1) Where the Court has granted an application for an order under Section 54(c) to remove the name of a lawyer from the Roll, the Committee shall so advise the Society and the Society shall forthwith revoke any practising certificate issued to the lawyer.

(2) Where the Committee makes an order under Section 54(d) to suspend a lawyer from practise, it shall so advise the Society, which shall revoke any practising certificate for the period specified in the order.

**58. APPEAL FROM DECISION OF COMMITTEE.**

(1) A lawyer may appeal against a decision of the Committee to the Court within 21 days of the date of the decision.

(2) A person, whose complaint has been the subject of an enquiry by the Committee, may appeal to the Court against the decision of the Committee on that complaint within 21 days of the date of the decision.

(3) An appeal under Subsection (1) or (2) may be against the findings of the Committee, or against a penalty imposed, or both.

(4) An appeal under Subsection (1) or (2) shall be by way of rehearing by the Court.

(5) On an appeal, the record of proceedings of the enquiry by the Committee may, with the consent of the person making the complaint and the lawyer, be given in evidence on the appeal and shall be admissible evidence of the opinion of the Committee in relation to any matter contained in it and of the facts upon which the opinion is based.

## 59. POWERS OF COURT TO IMPOSE PENALTIES.

Where, after an appeal under Section 58, the Court is of the opinion that a lawyer has been guilty of improper conduct as a lawyer, it may confirm the penalty imposed by the Committee or may vary it by imposing any one or more of the penalties specified in Section 54.

## 60. OFFENCES.

(1) It is an offence for a person who has not been admitted to practise as a lawyer—

- (a) to practise, or purport to practise, as a lawyer; or
- (b) to hold himself out or represent himself to be a lawyer; or
- (c) to permit other persons to use his name as being admitted to practise as a lawyer.

Penalty: A fine not exceeding K1,000.00.

(2)<sup>26</sup> <sup>27</sup>The qualification for carrying out the work specified in Paragraphs (a) to (e) inclusive is admission to practise as a lawyer, and subject to Subsection (3), it is an offence for a person who has not been admitted to practise as a lawyer, in expectation of a fee, gain or other reward—

- (a) to draw or prepare a will or other testamentary settlement; or
- (b) to draw or prepare a conveyance or other deed or instrument in relation to real or personal property; or
- (c) to issue, defend or carry on judicial proceedings or proceedings in the name of another person; or
- (d) to draw or prepare an instrument creating or regulating rights between parties where stamp duty would be payable in respect of that instrument; or

<sup>26</sup> Section 60(2) amended by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s7(a)(i); Section 60(2)(c) amended by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s7(a)(ii); Section 60(2)(d) added by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s7(a)(iii); Section 60(2)(e) added by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s7(a)(iii).

<sup>27</sup> Section 60(2) amended by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s7(a)(i); Section 60(2)(c) amended by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s7(a)(ii); Section 60(2)(d) added by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s7(a)(iii); Section 60(2)(e) added by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s7(a)(iii).

- (e) to draw or prepare a document or instrument relating to the incorporation or formation of a limited company.

Penalty: A fine not exceeding K1,000.00.

(3) It is not an offence against Subsection (2) where the person—

- (a) drawing or preparing the will or other testamentary settlement; or
- (b) drawing or preparing the conveyance or other deed or instrument in relation to real or personal property; or
- (c)<sup>28</sup> issuing, defending or carrying on judicial proceedings in the name of another person; or
- (ca)<sup>29</sup> drawing or preparing an instrument creating or regulating rights between parties; or
- (cb)<sup>30</sup> drawing or preparing a document or instrument relating to the incorporation of a limited company,

was, at the time of the alleged offence—

- (d)<sup>31</sup> a public officer, who draws or prepares documents or instruments in the course of his official duty; or
- (e) an employee of a lawyer admitted to practise who, in his capacity as an employee, carries out general legal work in the ordinary course of his employment on behalf of his employer.

(4) It is an offence for a lawyer to share his costs or fees with a person other than—

- (a) a lawyer who is the holder of an unrestricted practising certificate; or
- (b) the survivors of a deceased former partner; or
- (c) the immediate family of the lawyer or a company beneficially owned by the lawyer or his immediate family; or
- (d) a person who carries on practise as a lawyer in another country and for whom the lawyer performs work as an agent; or
- (e) a person admitted to practise law in another country, who would if resident in Papua New Guinea be qualified to be admitted as a lawyer and with whom the lawyer carries on practice in partnership; or
- (f) a person practising law in another country approved by the Rules.

Penalty: A fine not exceeding K1,000.00.

(5) It is an offence for a lawyer, without the consent of the Society, knowingly to employ any person—

<sup>28</sup> Section 60(3)(c) amended by the *Lawyers (Amendment) Act 1989* (No. 30 of 1989), s7(b)(i).

<sup>29</sup> Section 60(3)(ca) added by the *Lawyers (Amendment) Act 1989* (No. 30 of 1989), s7(b)(ii).

<sup>30</sup> Section 60(3)(cb) added by the *Lawyers (Amendment) Act 1989* (No. 30 of 1989), s7(b)(ii).

<sup>31</sup> Section 60(3)(d) amended by the *Lawyers (Amendment) Act 1989* (No. 30 of 1989), s7(b)(iii).

- (a) whose name has been removed from the Roll; or
- (b) who has been disqualified from practice as a lawyer; or
- (c) whose right to practise as a lawyer has been suspended in another country.

Penalty: A fine not exceeding K1,000.00.

(6) It is an offence for a lawyer—

- (a) to act knowingly in any legal proceedings or other matter requiring the services of a lawyer as the agent of a person who is not a lawyer; or
- (b) to allow his name to be used by a person who is not a lawyer for the purpose of any legal proceedings or other matter requiring the services of a lawyer.

Penalty: A fine not exceeding K1,000.00.

(7) It is an offence for a lawyer to employ knowingly a person whose name has been published by the Committee as being a person who shall not be employed by a lawyer for a specified period.

Penalty: A fine not exceeding K1,000.00.

(8) The conviction of a lawyer for an offence under this section constitutes improper conduct by that lawyer for the purposes of this Act.

(9)<sup>32</sup> <sup>33</sup>An offence against Subsection (2) shall not affect the validity of the instrument or document the subject of the offence.

#### **60A. AMOUNT OF FINANCIAL PENALTIES AND FINES TO BE PAID TO THE FUND.**

<sup>34</sup>All financial penalties and fines imposed and collected under this Part shall be paid into the Fund and shall be applied to defray the costs and expenses of the Lawyers Statutory Committee.

#### **61. PROFESSIONAL CONDUCT COMMITTEE.**

- (1) A Professional Conduct Committee is hereby established.
- (2) The Professional Conduct Committee shall comprise—
  - (a) the President; and
  - (b) two practising lawyers appointed by the President; and
  - (c) a lay person appointed by the Minister.

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<sup>32</sup> Section 60(9) added by the *Lawyers (Amendment) Act 1989* (No. 30 of 1989), s7(c).

<sup>33</sup> Section 60(9) added by the *Lawyers (Amendment) Act 1989* (No. 30 of 1989), s7(c).

<sup>34</sup> Section 60A inserted by the *Lawyers (Amendment) Act 1997* (No. 15 of 1997), s4.

(3) The Professional Conduct Committee shall make recommendations to the Society as to the standard of professional conduct of lawyers practising in the country.

(4) The Society shall accept or reject the recommendations of the Professional Conduct Committee and if it accepts such recommendations shall make Rules prescribing the standard of professional conduct.

**PART VI. – REMUNERATION OF LAWYERS.****62. ACTION TO RECOVER COSTS.**

(1) A lawyer shall not bring proceedings to recover costs due to him until the end of a period of one month after a bill of the costs has been delivered in accordance with this Act.

(2) A bill shall contain the particulars required by the Rules of Court.

(3) Where there is probable cause for believing that the party chargeable with the costs is about to—

- (a) leave the country; or
- (b) become insolvent; or
- (c) compound with his creditors; or
- (d) do any other act which would tend to prevent or delay the lawyer's obtaining payment,

the Court may give the lawyer leave to commence proceedings for recovery before the expiration of the period of one month referred to in Subsection (1).

(4) The bill of costs shall—

- (a) be signed—
  - (i) by the lawyer, or, if the costs are due to a firm, by one of the members of the firm, in his own name or in the name of the firm; or
  - (ii) for or on behalf of the lawyer, or if the costs are due to a firm, for or on behalf of the firm, by a lawyer employed by the lawyer or by the firm, as the case may be, or be enclosed in, or accompanied by, a letter that is so signed and refers to the bill; and
- (b) be delivered to the party charged personally, by sending it to him by registered post to, or by leaving it for him at, his place of business, dwelling house or last known place of abode.

(5) Where a bill is proved to have been delivered in accordance with Subsection (4), it is not necessary in the first instance for the lawyer to prove the contents of the bill and the bill shall be assumed, until the contrary is shown, to be a *bona fide* bill complying with this Act.

(6) The provisions of this section do not affect the operation of any Act which makes special provision for lawyers' bills of costs.

**63. TAXATION ON APPLICATION OF PARTY CHARGEABLE OR LAWYER.**

(1) On application at any time by a lawyer who has delivered a bill of costs as required by Section 62(4)(b), the Registrar shall order that the bill be taxed.



(2) On application by the party chargeable with a lawyer's bill made within one month of delivery of the bill, the Registrar shall order that the bill be taxed and that no action be commenced until the taxation is completed.

(3) After the period of one month provided in Subsection (2), and before the expiration of 12 months from the date of delivery of the bill under Section 62(3)(b), and where—

- (a) the bill has not been paid; or
- (b) judgement has not been obtained in an action for recovery of the costs covered by the bill,

the Registrar may, upon such terms as he thinks fit (not being terms as to the costs of taxation) order that—

- (c) the bill be taxed; and
- (d) no action on the bill be commenced or that any pending action be stayed.

(4) After—

- (a) the expiration of 12 months from the delivery of the bill; or
- (b) payment of the bill; or
- (c) judgement in an action for recovery of the costs covered by the bill,

the Court shall not make an order for taxation, except in circumstances which, in the opinion of the court, are special circumstances.

#### **64. TAXATION BY TAXING OFFICER.**

The taxing officer shall tax the bill in accordance with the Rules of Court.

#### **65. TAXATION ON APPLICATION OF THIRD PARTIES, ETC.**

(1) Subject to Subsection (2), where a person other than the party chargeable with the bill for the purposes of Section 62 has paid, or is or was liable to pay, the bill to the lawyer or to the party chargeable with the bill, the person or his executor, administrator or assignee may apply to the court for an order for the taxation of the bill as if he were the party chargeable with the bill, and the Court may make the same order (if any) as it might have made if the application had been made by the party chargeable.

(2) Where the Court has no power to make an order except in special circumstances, the Court, in considering whether there are special circumstances sufficient to justify it in making an order, may take into account circumstances that affect the applicant but do not affect the party chargeable with the bill.

(3) Subject to Subsection (4), where a trustee, executor or administrator has become liable to pay the bill of a lawyer, the Court—

- (a) may—

- (i) on the application of a person interested in any property out of which the trustee, executor or administrator has paid, or is entitled to pay, the bill; and
- (ii) on such terms (if any) as it thinks proper,
  - order the bill to be taxed; and
- (b) may order such payments in respect of the amount found due to or by the lawyer and in respect of the costs of the taxation, to be made—
  - (i) to or by the applicant; or
  - (ii) to or by the lawyer; or
  - (iii) to the executor, administrator or trustee,
    - as it thinks proper.

(4) In considering an application under Subsection (3), the Court shall have regard to—

- (a) the provisions of Section 63 as to applications by the party chargeable with the taxation of a lawyer's bill so far as they are capable of being applied to an application under Subsection (3); and
- (b) the extent and nature of the interest of the applicant.

(5) If an applicant under Subsection (3) pays any money to the lawyer, he has the same right to be paid that money by the trustee, executor or administrator chargeable with the bill as the lawyer had.

(6) The following provisions apply to applications under this section:—

- (a) except in special circumstances, an order shall not be made for the taxation of a bill that has already been taxed; and
- (b) if the Court orders taxation of the bill, it may order the lawyer to deliver to the applicant a copy of the bill on payment of the costs of the copy.

## **66. REMUNERATION BY AGREEMENT.**

(1) A lawyer may make a written agreement with his client as to his remuneration in respect of contentious or non-contentious business done or to be done by him.

(2) An agreement referred to in Subsection (1)—

- (a) may provide for the remuneration of the lawyer by a gross sum, or by commission or percentage, or otherwise, and at a greater or a lesser rate than that at which he would otherwise have been entitled to be remunerated; and
- (b) may be made on the terms that the amount of the agreed remuneration either shall or shall not include all or any disbursements made by the lawyer.

(3) If on motion by the client it appears to a Judge that the agreement is unfair or unreasonable, he may—

- (a) reduce the amount agreed to be payable under the agreement; or
- (b) direct that the costs of the business done by the lawyer be ascertained by taxation.

(4) An agreement—

- (a) subject to Subsection (5), does not affect the amount of, or any rights or remedies for the recovery of, costs payable by the client to, or to the client by, a person other than the lawyer; and
- (b) excludes any claim by the lawyer in respect of the business to which it relates, other than—
  - (i) a claim for the agreed costs; or
  - (ii) a claim for such costs as are expressly excepted from the agreement.

(5) The person referred to in Subsection (4)(a) as the person by whom costs are payable to the client may, unless he has otherwise agreed, require the costs to be taxed according to the rules for the taxation of costs.

(6) A client is not entitled to recover, from a person under an order for the payment of costs to which the agreement relates, more than the amount payable under the agreement by him to his lawyer in respect of the costs.

(7) A provision in the agreement that the lawyer is not liable for negligence, or that he is relieved from responsibility to which he would otherwise be subject as a lawyer, is void.

(8) The agreement may be recovered on or set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of a lawyer.

## **67. DEATH OR INCAPABILITY OF LAWYER.**

(1) Subject to Subsection (2), where, after business has been done under an agreement made under Section 66 but before the lawyer has wholly performed it, the lawyer dies or becomes incapable of acting, a party to, or the representative of a party to, the agreement may apply to the Court under this section.

(2) In the case of an application under Subsection (1), the Court has the same jurisdiction for enforcing the agreement as far as it has been performed, or for setting it aside, as it would have had if the lawyer had not died or become incapable of acting.

(3) The Court may, notwithstanding that it is of the opinion that the agreement is in all respects fair and reasonable, order the amount due in respect of the business done under it to be ascertained by taxation, and in that case—

- (a) the taxing officer, in ascertaining the amount, shall have regard so far as may be to the terms of the agreement; and

- (b) payment of the amount found by the taxing officer to be due may be enforced in the same manner as if the agreement had been completely performed.

#### **68. CHANGE OF LAWYERS.**

(1) A client is entitled to change his lawyer notwithstanding that he has made an agreement with him under Section 66.

(2) Subject to Subsection (3), Section 67 applies in the event of the client changing his lawyer before the conclusion of the business to which the agreement relates in the same manner as it applies if the lawyer dies or is incapacitated.

(3) Where an order is made for the taxation of the amount due to the lawyer in respect of the business done under the agreement, the Court shall direct the taxing officer to have regard to the circumstances under which the change of lawyer has taken place.

(4) Where a direction is given under Subsection (3), unless the taxing officer is of the opinion that there has been no default, negligence, improper delay or other conduct on the part of the lawyer giving to the client reasonable ground for changing his lawyer, he shall not allow to the lawyer the full amount of the remuneration agreed to be paid to him.

#### **69. EXCLUSION OF TAXATION BY AGREEMENT.**

Subject to Sections 67 and 68, the costs of a lawyer in a case where an agreement has been made under Section 66 are not subject to taxation, or to the preceding provision of this Part with respect to the signing and delivery of the lawyer's bill.

#### **70. REMUNERATION OF MORTGAGEE LAWYER.**

(1) In this section, "mortgage" includes any charge on property for securing money or money's worth.

(2) Where a mortgage is given to a lawyer, alone or jointly with another person, he, or the firm of which he is a member, is entitled to recover from the mortgagor in respect of all business transacted and acts done by him or the firm in—

- (a) negotiating the loan; and
- (b) deducing and investigating the title to the property; and
- (c) preparing and completing the mortgage,

such usual costs as he or the firm would have been entitled to receive if the mortgage had been made to a person who—

- (d) was not a lawyer; and
- (e) had retained and employed him or the firm to transact the business and do the acts.

(3) Where—

- (a) a mortgage has been given to, or has become vested by transfer or transmission in, a lawyer, alone or jointly with another person; and
- (b) business is transacted or acts are done by the lawyer, or by the firm of which he is a member, in relation to—
  - (i) the mortgage; or
  - (ii) the security created by the mortgage; or
  - (iii) the property comprised under the mortgage,

he or the firm is entitled to recover from the person on whose behalf the business was transacted or the acts were done, and to charge against the security, such usual costs as he or the firm would have been entitled to receive if—

- (c) the mortgage had been given to and had remained vested in a person who was not a lawyer; and
- (b) the mortgagee had retained and employed him or the firm to transact the business and do the act.

**71. NON-CONTENTIOUS COSTS COMMITTEE.**

(1) A Non-Contentious Costs Committee is hereby established.

(2) The Non-Contentious Costs Committee shall comprise—

- (a) a Judge, who shall be the Chairman of the Committee, appointed by the Chief Justice; and
- (b) two practising lawyers appointed by the President; and
- (c) a lay person appointed by the Minister.

(3) A member of the Non-Contentious Costs Committee shall be appointed for a term of three years.

**72. FUNCTION OF NON-CONTENTIOUS COSTS COMMITTEE.**

The function of the Non-Contentious Costs Committee is to make recommendations to the Minister as to the remuneration of lawyers in respect of non-contentious business.

**73. MINISTER MAY ACCEPT OR REJECT RECOMMENDATIONS.**

The Minister may, when making a submission to the National Executive Council for the purposes of Section 74, accept or reject the recommendations made to him by the Non-Contentious Costs Committee.

**74. REGULATIONS AS TO REMUNERATION IN RESPECT OF NON-CONTENTIOUS BUSINESS.**

(1) The Head of State, acting on advice, may make Regulations prescribing and regulating the remuneration of lawyers in respect of non-contentious business.

(2) Regulations made under this section may—

- (a) prescribe that the remuneration shall be—
  - (i) according to a scale of rates of commission or percentage, varying or not in different classes of business; or
  - (ii) by a gross sum; or
  - (iii) by a fixed sum for each document prepared or perused, without regard to length; or
  - (iv) in any other mode,
    - or partly in one mode and partly in another; and
- (b) regulate the amount of remuneration with reference to all or any of the following considerations:—
  - (i) the positions of the party for whom the lawyer is concerned in the business, that is, whether as vendor or purchaser, lessor or lessee, mortgagor or mortgagee, and the like; and
  - (ii) the place where, and the circumstances in which, the business or any part of it was transacted; and
  - (iii) the amount of capital money or rent to which the business relates; and
  - (iv) the skill, labour and responsibility involved on the part of the lawyer; and
  - (v) the number and importance of the documents prepared or perused, without regard to length; and
- (c) authorize and regulate—
  - (i) the taking by a lawyer from his client of security for payment of any remuneration, to be ascertained by taxation or otherwise, that may become due to him under a rule made under this section; and
  - (ii) the allowance of interest.

**PART VII. – LAWYERS TRUST ACCOUNTS.**

**75. COMPLIANCE WITH PROVISIONS AS TO KEEPING OF TRUST ACCOUNTS.**

(1) The Council acting either–

(a) on its own motion; or

(b) on a written complaint lodged by any person,

may require a lawyer to produce, at a time and place determined by the Council, his books of account kept under this Act for inspection by an inspector appointed by the Council.

(2) Where the Council has intimated a requirement to a lawyer under Subsection (1), the lawyer shall supply to the inspector such information and explanations as the inspector shall require.

(3) The inspector may examine on oath any lawyer or any employee or agent of the lawyer in relation to the books of account.

(4) A lawyer, employee of a lawyer, or agent of a lawyer who–

(a) refuses to produce any books of account to an inspector; or

(b) refuses to answer any questions or provide any explanation relevant to the inspection when required to do so,

is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

(5) A person who, with intent to defeat the purpose of, delay, or obstruct the carrying out of an inspection under this provision–

(a) destroys, cancels or alters any book of account or part of any book of account kept under this Act; or

(b) sends, or attempts to send, or conspires with another person to send out of the country any such book of account belonging to or under the custody or control of the lawyer,

is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

**76. INSPECTOR TO PREPARE REPORT, ETC.**

The inspector appointed under Section 75 shall prepare a report on the inspection carried out by him and shall furnish a copy to–

(a) the Council; and

(b) the lawyer whose books of account were the subject of the inspection.

**77. LAWYER MAY EXPLAIN MATTERS SET OUT IN REPORT.**

A lawyer to whom a copy of a report has been furnished under Section 76(b) may, within 14 days of receipt by him of the report, submit to the Council a written explanation of any matters set out in the report.

**78. COUNCIL TO CONSIDER REPORT, ETC.**

The Council shall consider—

- (a) a report furnished under Section 76(a); and
- (b) any explanation of any matters therein submitted under Section 77,

and may, if it thinks fit, refer the matter to the Committee.

**79. COSTS OF INSPECTION.**

The costs of appointing an inspector shall be borne in the first instance by the Society, but may be recovered from the lawyer as a debt where the Society so directs.



**PART VIII.<sup>35</sup> – DUTIES OF BANKS IN RELATION TO LAWYERS' TRUST ACCOUNTS<sup>36</sup>.**

**80 - 81<sup>37</sup>. [REPEALED.]**

**82. BANKS TO GIVE NOTICE OF LAWYERS' TRUST ACCOUNTS.**

(1) A bank carrying on business in the country shall–

- (a) within 21 days of the coming into operation of the *Lawyers (Amendment) Act* 1989; and
- (b) thereafter from time to time,

give written notice to the Secretary of each trust account maintained at a branch of that bank by a lawyer practising in the country.

(2) A notice under Subsection (1) shall specify–

- (a) the name of the lawyer; and
- (b) the name of the account; and
- (c) the name of the branch at which the account is maintained.

**83. MONEYS PAYABLE BY A BANK INTO THE CONTRIBUTION FUND.**

(1) Subject to Subsection (2), a bank carrying on business in the country shall, on the first business day of the months of April, July, October and January, pay to the Society an amount equal to the amount of interest, which if interest were paid on a lawyer's trust account, would be payable, calculated at a prescribed rate, on the balance of each lawyer's trust account maintained in a branch of the bank on the first business day of the months referred to.

(2) A bank may deduct from an amount payable under Subsection (1) reasonable administration charges in relation to the calculation and payment of the amount payable.

**84<sup>38</sup>. [REPEALED.]**

<sup>35</sup> Part VIII repealed and replaced by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s8.

<sup>36</sup> Part VIII: heading repealed and replaced by the *Lawyers (Amendment) Act* 1997 (No. 15 of 1997), s5.

<sup>37</sup> Part VIII: heading repealed and replaced by the *Lawyers (Amendment) Act* 1997 (No. 15 of 1997), s5.

<sup>38</sup> Section 84 repealed by the *Lawyers (Amendment) Act* 1997 (No. 15 of 1997), s8.

**PART IX. – THE GENERAL FUND.****85. ESTABLISHMENT OF GENERAL FUND.**

(1) There shall be a fund called the General Fund.

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

(3) All moneys belonging to the Fund shall, pending the investment or application thereof in accordance with this Act be paid into a bank in the country to the credit of a separate account to be called the General Fund Account.

(4) The General Fund Account shall be operated in such manner as the Council shall from time to time determine.

**86. COMPOSITION OF THE FUND.**

<sup>39</sup>The Fund shall consist of–

- (a) all sums paid to or on account of the Fund as levies under this Part; and
- (b) interest accruing from the investment of the Fund; and
- (c) fees paid by the members of the Society for membership of the Society; and
- (d) practising certificate fees; and
- (e)<sup>40</sup> moneys paid into the Fund under Section 60A; and
- (f) moneys paid into the Fund under Section 87A; and
- (g) any other moneys that may be lawfully paid into the Fund.

**87. PAYMENT OUT OF THE FUND.**

(1) There shall be paid out from the Fund, from time to time as determined by the Council, in such order as the Council thinks fit–

- (a) all expenses incurred in investigating or defending claims made against the Fund or the Society in respect of the Fund, or incurred in relation to it; and
- (b) the amount of all claims including interest and costs allowed or established against the Society in respect of the Fund as provided in this Act; and
- (c) the costs, charges and expenses of administering the Fund; and
- (d) the costs, charges and expenses of an inspection under Part VII; and
- (e)<sup>41</sup> all reasonable costs, charges and expenses incurred by the Council, the President, the Lawyers Statutory Committee and the Secretary in

<sup>39</sup> Section 86 repealed and replaced by the *Lawyers (Amendment) Act 1997* (No. 15 of 1997), s9.

<sup>40</sup> Section 86(e) repealed by the *Lawyers (Amendment) Act 1989* (No. 30 of 1989), s9.

carrying out their functions, duties and responsibilities under this Act;  
and

- (f) the payment of remuneration and associated terms and conditions of employment of the Secretary and the staff of the Society; and
- (g) the costs of administering the Society, including all rents, rates, utility charges payable in respect of any premises occupied by the Society and the cost of any property, real or personal, owned or operated by the Society; and
- (h) any other moneys payable out of the Fund in accordance with this Act; and
- (i)<sup>42</sup> the costs of establishing, maintaining, administering and financing the Lawyers Statutory Committee.

#### **87A. MONEYS PAYABLE BY A BANK INTO THE FUND.**

<sup>43</sup>(1) Subject to Subsection (2), a bank carrying on business in the country shall, on the first business day of the months of April, July, October and January, pay to the Society an amount equal to the amount of interest, which if interest were paid on a lawyers trust account, would be payable, at a prescribed rate, on the balance of each lawyer's trust account maintained in a branch of the bank in the first business day of the months referred to.

(2) A bank may deduct from an amount payable under Subsection (1) reasonable administration charges in relation to the calculation and payment of the amount payable.

(3) Amounts paid to the Society under this section shall be paid into the Fund.

#### **88. AUDIT OF THE FUND.**

The accounts of the Fund shall be audited each year by an accountant appointed for that purpose by the Council.

#### **89. ADMINISTRATION OF THE FUND.**

(1) The Fund shall be administered by the Council on behalf of the Society.

(2) The Council may by resolution delegate all or any of its powers in relation to the Fund to the Secretary.

(3) The Council may vary or rescind a resolution under Subsection (2) by another resolution.

(4) Any moneys in the Fund not immediately required for the purpose of the Fund may be invested as the Council thinks fit.

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<sup>41</sup> Section 87(e) amended by the *Lawyers (Amendment) Act 1997* (No. 15 of 1997), s12.

<sup>42</sup> Section 87(i) added by the *Lawyers (Amendment) Act 1997* (No. 15 of 1997), s10.

<sup>43</sup> Section 87A inserted by the *Lawyers (Amendment) Act 1997* (No. 15 of 1997), s11.

**90. IMPOSITION OF LEVY.**

(1) Where at any time the Council is of the opinion that the Fund holds insufficient funds to satisfy the liabilities of the Society, the Council may, by resolution, impose on every lawyer who is the holder of a practising certificate, for payment into the Fund, a levy of such amount as the Council thinks fit.

(2) A resolution under Subsection (1) may impose a levy which differs according to whether the lawyer, on whom it is imposed, is engaged in practise—

- (a) on his own account; or
- (b) in partnership with another lawyer; or
- (c) as an employee of another lawyer; or
- (d) as an employee of a person who is not a lawyer; or
- (e) as an employee of a corporation or other instrumentality.

(3) The amount of the levy shall become payable on a date and in a manner determined by the Council, and in a special case, the Council may allow time for payment of the levy, or part of it.

(4) A lawyer who fails to pay a levy on the date determined by the Council shall not be issued with a practising certificate until he has made payment.

**91. APPLICATION OF THE FUND.**

Subject to this Part, the Fund shall be applied for the purpose of compensating a person who has suffered pecuniary loss by reason of—

- (a) theft by a lawyer; or
- (b) fraudulent misapplication by a lawyer; or
- (c) the failure by a lawyer to account to a client for any moneys or other valuable property entrusted to the lawyer or to the employee or agent of the lawyer,

in the course of his practise as a lawyer.

**92. CLAIMS AGAINST THE FUND.**

(1) A person who has suffered pecuniary loss by reason of—

- (a) theft by a lawyer; or
- (b) fraudulent misapplication by a lawyer; or
- (c) the failure of a lawyer to account to a client for any moneys or other valuable property entrusted to the lawyer or to the employee or agent of the lawyer,

in the course of his practise as a lawyer, may make a claim to the Council for compensation to be paid out of the Fund.

(2) A claim under Subsection (1) shall be made to the Council—

- (a) as soon as reasonably practicable; and
- (b) in any event, not later than three months,

after the person making the claim became aware of the circumstances giving rise to the claim.

(3) The—

- (a) Council; or
- (b) where the Council refuses to allow it and an appeal is made to the Court—the Court,

may extend the time limit specified in Subsection (2)(b).

**93. COUNCIL TO RECEIVE AND INVESTIGATE CLAIMS, ETC.**

(1) The Council shall—

- (a) receive a claim under this Part; and
- (b) investigate the claim; and
- (c) determine the claim by—
  - (i) allowing; or
  - (ii) compromising; or
  - (iii) settling; or
  - (iv) disallowing,

it in whole or in part.

(2) The Council may give to a claimant not less than 21 days notice in writing requiring the claimant—

- (a) to take such steps for the purpose of pursuing his claim; or
- (b) to do such things; or
- (c) to supply to the Council such particulars in connection with the claim,

as are specified in the notice.

(3) Where a claimant fails to comply with a notice under Subsection (1), the Council may—

- (a) disallow the claim wholly or in part; or
- (b) direct that the whole or part of any interest which would otherwise be payable from the Fund in respect of the claim be not so payable.

**94. PERSON NOT TO RECOVER FROM THE FUND A SUM GREATER THAN PECUNIARY LOSS.**

A person shall not be entitled to recover from the Fund an amount greater than the balance of the pecuniary loss suffered or incurred by the claimant by reason of the default, after deducting the amount or value of all moneys or other benefits—

- (a) received or recovered; or
- (b) which, in the opinion of the Council, might but for his neglect or default have been received or recovered,

by the claimant from any source other than the Fund in reduction of the pecuniary loss.

**95. EFFECT OF PAYMENTS RECOVERY AFTER PAYMENT FROM THE FUND.**

Where a person has suffered or incurred pecuniary loss by reason of a lawyer's default, and in respect of the pecuniary loss—

- (a) a payment has been made to the person out of the Fund; or
- (b) the person has a judgement against the Society in relation to a claim against the Fund,

and the person receives or recovers from any source, other than the Fund, any moneys for or on account of the pecuniary loss—

- (c) the person shall repay to the Council; or
- (d) the Society's liability under the judgement shall be reduced by,

an amount equal to the amount by which the amount of the payment or judgement, as the case may be, together with the amount of the moneys so received or recovered, exceeds the amount of the pecuniary loss.

**96. CLAIM TO BE DEFERRED UNTIL CONVICTION.**

Unless the Council otherwise determines, no person shall be entitled to claim against the Fund in respect of any loss, unless and until—

- (a) the person who committed the theft or fraudulent misapplication giving rise to the loss has been convicted for the theft or fraudulent misapplication; or
- (b) the Court, for reasons which the Court considers sufficient, has ordered that the person claiming should be permitted to claim in the absence of a conviction.

**97. NO INTEREST TO BE PAID OUT OF FUND.**

No amount shall be paid out of the Fund as interest in respect of the amount of any claim allowed against the Fund by a judgement of the Court.

**98. PROCEEDINGS AGAINST THE SOCIETY IN RELATION TO A CLAIM AGAINST THE FUND.**

(1) A person entitled to claim against the Fund under this Part may bring proceedings against the Society by way of an action as for a debt due by the Society.

(2) No action under Subsection (1) may be commenced unless—

(a) a claim has been made under Section 92; and

(b) the Council has disallowed the claim under Section 93(1)(c)(ii).

(3) In an action brought under Subsection (1), all defences are available to the Society, which would have been available to the lawyer in an action brought against him for payment of compensation for the loss suffered.

**99. EFFECT OF SETTLEMENT OF CLAIM ARISING FROM DEFAULT OF EMPLOYEE OF LAWYER.**

(1) Where a payment has been made out of the Fund in settlement of a claim arising out of the default of an employee of a lawyer, the Society shall be subrogated to the extent of such payment to all the rights and remedies of the claimant against the lawyer, the employee or any other person.

(2) When considering a claim in respect of the default of the employee of a lawyer, the Council may require the claimant to produce such documents as are necessary to support such claim.

(3) In default of delivery of documents required under Subsection (2), the Council may reject the claim.

**100. NO MONEYS, ETC., OF THE SOCIETY TO SATISFY JUDGEMENT IN RELATION TO THE FUND.**

No moneys or other property of the Society, other than the Fund, are available to satisfy any judgement obtained against the Society in relation to the Fund or for the payment of any claim allowed by the Council.

**101. NO PROCEEDINGS TO ENFORCE A JUDGEMENT AGAINST THE SOCIETY TO BE TAKEN WITHOUT LEAVE OF THE COURT.**

No proceedings to enforce a judgement against the Society in respect of the Fund may be taken without the leave of the Court.

**PART X. – RECEIVER.****102. APPOINTMENT OF RECEIVER.**

(1) Where the Council is of the opinion—

- (a) that any failure to account has, or may have occurred, in relation to any trust account or trust fund of any lawyer; or
  - (b) that through—
    - (i) the mental or physical infirmity of a lawyer; or
    - (ii) the death or insolvency of a lawyer; or
    - (iii) the sequestration or assignment for the benefit of creditors of the estate of a lawyer; or
    - (iv) the abandonment of a lawyer's practice; or
    - (v) a lawyer—
      - (A) having been and remaining struck off the Roll; or
      - (B) having been and remaining suspended from practice,
- any person is unable to obtain payment or delivery of money or other property held for or on behalf of that person by the lawyer, or by any firm of lawyers of which the lawyer is or was a partner,

the Court, on application in that behalf by the Society and on being satisfied that the Council has reasonable grounds for such opinion, may appoint a receiver of all or any property which—

- (c) is held by—
    - (i) the lawyer or the firm of lawyers of which he is or was a partner; or
    - (ii) some other person on behalf of the lawyer; or
  - (d) is recoverable by the lawyer or the firm of lawyers of which he is or was a partner; or
  - (e) where the lawyer is dead, by reason of his death is or may be recoverable by his personal representative.
- (2) Where the Council has—
- (a) refused to issue a practising certificate or renewal of a practising certificate to a lawyer; or
  - (b) cancelled a practising certificate issued to a lawyer; or
  - (c) resolved to refer to the Committee for enquiry any question as to the improper conduct of a lawyer; or



- (d) resolved to initiate proceedings in the Court in respect of the improper conduct of a lawyer,

the Court may, on application in that behalf made by the Society not later than 12 months after the date of the refusal, cancellation or resolution, and on being satisfied that the Council had reasonable grounds for the refusal, cancellation or resolution, appoint a receiver of all or any property which—

- (e) is held by—
  - (i) the lawyer or the firm of lawyers of which he is or was a partner; or
  - (ii) some other person on behalf of the lawyer; or
- (f) is recoverable by the lawyer or the firm of lawyers of which he is or was a partner; or
- (g) where the lawyer is dead, by reason of his death is or may be recoverable by his personal representative.

#### **103. POWERS OF A RECEIVER.**

(1) A receiver appointed under Section 102(1) has, in relation to the lawyer in respect of whose trust account or business he was appointed, the following powers:—

- (a) to forbid withdrawal of moneys from a bank account operated by the lawyer;
- (b) to require delivery of property held by or owing to the lawyer;
- (c) to take possession of and deal with property held by or owing to the lawyer;
- (d) to do all things necessary to recover money or property due by the lawyer to any person;
- (e) to set aside transfers made in breach of trust by the lawyer.

(2) A receiver appointed under Section 102(1) may apply to the Court for direction on any matter pertaining to his powers and duties as a receiver.

#### **104. COSTS OF APPOINTING RECEIVER.**

The costs of appointing a receiver shall be borne in the first instance by the Society but may, at the direction of the Society, be recovered from the moneys of the lawyer as a debt.

**PART XI. – MISCELLANEOUS.****105. THE NATIONAL COURT LIBRARY.**

<sup>44</sup>(1) The Chief Justice may from time to time fix an annual fee to be paid by each lawyer for the purpose of maintenance of the National Court Library.

(2) An annual fee under Subsection (1) shall be paid at such time and in such manner as the Chief Justice directs.

(3) The Chief Justice may exempt from payment of a fee under Subsection (1) a specified lawyer or class of lawyers.

(4) Fees provided by Subsection (1) shall be paid into the National Court Library Account.

**106. REMOVAL OF NAME FROM THE ROLL ON DEATH.**

The Registrar shall remove from the Roll the name of a lawyer who has died.

**107. PRECEDENCE.**

(1) The Attorney-General has precedence over all lawyers in any court.

(2) As between themselves, persons admitted take precedence—

(a) subject to Paragraph (b), according to the date of their respective admissions; and

(b) where more than one such person were admitted on the same day, according to the order in which their names appear on the Roll in respect of that admission.

**108. LAWYER TO BE COMMISSIONER FOR OATHS.**

For the purposes of the *Oaths, Affirmations and Statutory Declarations Act* 1962, every lawyer admitted to practise in the country is, by this Act, appointed a Commissioner for Oaths.

**109. REGULATIONS.**

(1) The Head of State, acting on advice, may make Regulations not inconsistent with this Act prescribing all things that are necessary to be prescribed and all matters that are convenient to be prescribed for the purpose of giving effect to this Act including, without prejudice to the foregoing generality, Regulations dealing with accounts required to be kept by lawyers.

(2) Regulations under Subsection (1) may impose penalties of fines not exceeding K1,000.00 for offences against the Regulations.

<sup>44</sup> Section 105 repealed and replaced by the *Lawyers (Amendment) Act* 1989 (No. 30 of 1989), s10.

**PART XII. – REPEAL.**

**110. REPEAL.**

The *Lawyers Act* (Chapter 91) is repealed.

**PART XIII. – TRANSITIONAL.****111. PRACTISING CERTIFICATES.**

The following persons shall be entitled to an unrestricted practising certificate, provided that application for such certificate is made within six months of the coming into operation of this Act:–

- (a) a lawyer practising as a lawyer under the repealed Act on his own account or in partnership at the date of commencement of this Act; or
- (b) a lawyer who has been employed as a lawyer for a period of not less than two years prior to the date of application for a certificate by a lawyer practising alone or in partnership or by a prescribed authority; or
- (c) such other lawyers as the Society in its discretion determines.

**112. LAWYER UNDER REPEALED ACT.**

A lawyer, whose name, immediately before the coming into operation of this Act, was on the Roll kept under Section 11 of the repealed Act shall, on the coming into operation of this Act, be deemed–

- (a) to have his name on the Roll under Section 30 of this Act and to have signed the Roll; and
- (b) if fully admitted under the repealed Act, to have carried on unrestricted practise as a lawyer in the country from the date on which he was admitted to practise under the repealed Act; and
- (c) if provisionally admitted under the repealed Act, to have carried on restricted practice as a lawyer in the country from the date on which he was provisionally admitted to practice under the repealed Act.

**113. QUALIFICATIONS FOR MEMBERSHIP OF COMMITTEE.**

For the purposes of the qualifications for membership of the Committee under Section 48(3), any time spent in practice as lawyer in the country under the repealed Act shall be counted towards the periods of unrestricted practice in the country as specified in Section 48(3)(a) or (b).

**114. PROFESSIONAL CONDUCT.**

(1) Improper conduct under the repealed Act shall be deemed to be improper conduct under this Act, and the provisions of this Act may be applied to any case of improper conduct by a lawyer committed prior to the coming into operation of this Act but in respect of which no proceedings had been initiated under the repealed Act.

(2) All proceedings before the Council of Legal Education under the repealed Act commenced but not completed prior to the coming into operation of this Act shall be continued as proceedings before the Committee under this Act.

**115. TRANSFER OF ASSETS, ETC., OF PAPUA NEW GUINEA LAW SOCIETY INCORPORATED.**

<sup>45</sup>(1) In this section, “**the former Society**” means the Papua New Guinea Law Society Incorporated, an association incorporated under the *Associations Incorporation Act 1966* and wound up by virtue of Section 115 of this Act.

(2) All assets and liabilities of the former Society immediately before the coming into operation of the *Lawyers (Amendment) Act 1987* are, on that coming into operation, transferred to the Society.

(3) All contracts and agreements (other than contracts of employment) made with or addressed to the former Society are, to the extent that they were, immediately before the coming into operation of the *Lawyers (Amendment) Act 1987*, binding on and enforceable against the former Society, binding on and of full force and effect against or in favour of the Society as fully and effectually as if the Society had been a party to them or bound by them or entitled to the benefit of them.

(4) Where, immediately before the coming into operation of the *Lawyers (Amendment) Act 1987*, any arbitration, action or proceeding was pending or existing by, against or in favour of the former Society, it does not on that coming into operation abate or discontinue, but may be prosecuted, continued or enforced by, against or in favour of the Society.

**116. WINDING UP OF PAPUA NEW GUINEA LAW SOCIETY INCORPORATED.**

<sup>46</sup>The Papua New Guinea Law Society Incorporated, an association incorporated under the *Associations Incorporation Act 1966*, is wound up and all the requirements of that Act in relation to the winding up of an incorporated association are deemed to have been complied with.

Office of Legislative Counsel, PNG

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<sup>45</sup> Section 115 added by the *Lawyers (Amendment No. 2) Act 1987* (No. 29 of 1987), s1.

<sup>46</sup> Section 116 added by the *Lawyers (Amendment No. 2) Act 1987* (No. 29 of 1987), s2.