



ANALYSIS

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2008, No. 9

An Act to amend the Law Practitioners' Act 1993-94

(27 June 2008)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled and by the authority of the same as follows:

1. Short Title and commencement – (1) This Act may be cited as the Law Practitioners' Amendment Act 2008 and shall be read together with and deemed part of the Law Practitioners' Act 1993-94 ("the principal Act").

(2) This Act shall come into force on the 1st July 2008.

2. Application for admission – Section 4 of the principal Act is amended by adding after subsection (3), the following new subsection –

“(4) Every person who has been admitted pursuant to subsection (2) shall before a Judge of the Court of Appeal or of the High Court, or a Justice of the Peace –

(a) take the following oath –

Oath

I [*name*] swear by Almighty God that I will be faithful and bear true allegiance to Her [or his] Majesty [*specify the name of the reigning Sovereign as thus: Queen Elizabeth the Second*] as the Head of State of the Cook Islands, Her [or His] heirs and successors, and to uphold the Constitution of the Cook Islands, and that I will truly and honestly conduct myself in the practice of a barrister and solicitor [*or barrister as the case may be*] to the best of my knowledge and ability: So Help Me God.”

or

(b) affirm as follows –

Affirmation

I [*name*] affirm that I will be faithful and bear true allegiance to Her [or His] Majesty [*specify the name of the reigning Sovereign as thus: Queen Elizabeth the Second*] as the Head of State of the Cook Islands, Her [or His] heirs and successors, and to uphold the Constitution of the Cook Islands, and that I will truly and honestly conduct myself in the practice of a barrister and solicitor [*or barrister as the case may be*] to the best of my knowledge and ability.”

3. The legal profession – Section 8 of the principal Act is amended by deleting subsection (1) and substituting the following new subsection –

“(1) No person shall act in the Cook Islands as a barrister and solicitor or barrister whether in the High Court or the Court of Appeal or otherwise who is not at the time of his or her so acting duly enrolled under this Act or who has not at the time of his or her so acting, taken either the oath or the affirmation set out in section 4(4).”

4. Penalty and costs – The principal Act is amended by repealing section 20 and substituting the following –

“20. Penalty and costs - If after inquiring into the conduct of a practitioner the Chief Justice is satisfied that the practitioner is guilty of any of the matters set out in paragraphs (a) to (d) of section 15(2), the Chief Justice may make one or more of the following orders –

- (a) that the name of the practitioner be struck from the roll of barristers and solicitors, or the roll of barristers, or both;
- (b) censuring the practitioner;
- (c) that the practitioner shall cease to accept work, or to hold him or her self out as competent in such fields or practice, and for such period or periods as are specified in the order;
- (d) that the practitioner do for any specified person such work within such time and for a fee not exceeding such sum as is specified in the order;
- (e) where it appears to the Chief Justice that any person has suffered loss by reason of any act or omission of the practitioner, that the practitioner pay to that person such sum of money by way of compensation as is specified in the order, being a sum not exceeding \$5,000;

- (f) that the practitioner reduce his or her fees for any work done by the practitioner that is the subject of a complaint before the Chief Justice by such amount as is specified in the order and, for the purposes of giving effect to the order, to refund any specified sum already paid to him or her;
- (g) that the practitioner make his or her practice available for inspection at such times and by such persons as are specified in the order;
- (h) that the practitioner to make reports on his or her practice in such manner and at such times and to such persons as are specified in the order;
- (i) that the practitioner take advice in relation to the management of his or her practice from such persons as are specified in the order;
- (j) that the practitioner pay –
 - (i) to the Cook Islands Government Account, the reasonable costs and expenses of and incidental to the inquiry by the Chief Justice; and
 - (ii) to any person appointed pursuant to sections 15(3), 25(3) or 25(4), that person's reasonable costs and expenses incurred in connection with any investigation, audit or examination and any report undertaken or made in relation to a complaint against that practitioner.

(2) If the complaint is not one to which subsection (1) applies but the Chief Justice is of the opinion having regard to the circumstances of the case that the making of the complaint was justified, the Chief Justice may make an order under paragraph (e) of subsection (1) where that paragraph is applicable, and under any one or more of paragraphs (f) to (i) of subsection (1).

(3) Without prejudice to subsections (1) and (2), if any case arises wholly or partly out of a complaint of overcharging by a practitioner and the Chief Justice considers that the practitioner's bill of costs in respect of the matter to which the complaint relates is unfair or unreasonable, the Chief Justice may whether or not any other order is made under this section, undertake a review of the bill of costs under section 58.

(4) In paragraphs (g) to (i) of subsection (1), the term "specified" in relation to any person, means specified either by name or as the holder for the time being of any particular office or appointment.

(5) An order made under this section may be made on and subject to such conditions as the Chief Justice thinks fit.

(6) The making of an order under this section for the payment of compensation to any person shall not affect the right (if any) of that person to recover damages in respect of the same loss; but any sum ordered to be paid under this section shall be taken into account in assessing any such damages.

(7) The Chief Justice may from time to time publish particulars of specific complaints, the decision and the orders made, where in the opinion of the Chief Justice, such publication is in the public interest: Provided that the Chief Justice may suppress the name and details of the complainant to such extent as the Chief Justice thinks desirable in the interests of the complainant's privacy."

5. Trust accounts – Section 22 of the principal Act is amended by adding after the word "only" the following -

"nor to any solicitor exempted by section 37."

6. Application of this Part – The principal Act is amended by repealing section 37 and substituting the following -

"37. Application of this Part - This Part applies to every solicitor who is for the time being the holder of a current practicing certificate but shall not include a solicitor who -

- (a) is employed, whether by contract or otherwise, in either part or full time employment with the Government of the Cook Islands or in the Public Service of the Cook Islands under the Public Service Act 1995-96; or
- (b) is employed, whether by contract or otherwise, in either part or full time employment as in-house counsel within the private sector; and
- (c) does not operate a trust account."

7. Taxation of charges – The principal Act is amended by repealing section 58 and substituting the following -

"58. Taxation of charges – (1) A Judge may revise a practitioner's bill of costs, whether it has been paid or not, either -

- (a) on the Judge's own motion; or
- (b) on the reference in writing of the party chargeable; or
- (c) by order of the Court, which may be made with such directions and subject to such conditions as the Court thinks fit.

(2) Unless the practitioner and the person chargeable otherwise agree, every reference under paragraph (b) of subsection (1) shall be made within 12 months after the date of delivery of the bill.

(3) A Judge may upon revising a bill of costs make such orders as may be deemed necessary to facilitate and give effect to the revision and any decision thereon, including as to costs."

8. Offences and penalty – Section 61 of the principal Act is amended, by inserting after subsection (2), the following new subsections -

"(2A) Every person who has been or is granted approval under subsection (2), must open and maintain a separate trust account with a licensed domestic bank having a branch at Rarotonga, into which all monies received by that person on account of fees and disbursements, must be paid.

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(2B) The Chief Justice may from time to time prescribe rules for the keeping and audit of accounts required to be kept pursuant to subsection (2A).

(2C) Notwithstanding subsection 2B, the Chief Justice or any other Judge or a Justice of the Peace may when granting approval pursuant to subsection (2), grant the approval subject to conditions (not inconsistent with any rules prescribed by the Chief Justice) as the Chief Justice, Judge or Justice of the Peace thinks fit as to the opening, operation, keeping (including the keeping or records) and audit of an account required to be opened and kept pursuant to subsection (2A).

(2D) Part IV of this Act shall, with the necessary modifications, apply to a trust account opened pursuant to subsection (2B) and to the person acting as agent as if that person was a practitioner.

(2E) Every person who by act or omission breaches any of subsections (2A) to (2D) commits an offence and shall on conviction be liable to a fine not exceeding \$5,000."

9. Savings and transition – (1) Notwithstanding sections 4(4) and 8(1) of the principal Act (as inserted by this Act) every person who is at the time of coming into force of this Act duly enrolled as a barrister and solicitor or barrister of the High Court may continue to act as such for a period not exceeding one month from the date of coming into force of this Act without having to comply with those provisions but must take the oath or affirmation before acting as such thereafter.

(2) Every person to whom section 61(2) of the principal Act applies and who at the time of coming into force of this Act is in possession or control of monies given to that person on account of fees or disbursements for acting in the Land division of the High Court, shall within one month of the coming into force of this Act pay those monies into an account opened pursuant to subsection (2A) of that section, as inserted by this Act.

This Act is administered by the Ministry of Justice