



ANALYSIS

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1981, No. 41

An Act to amend the Incorporated Societies Act 1908

[14 October 1981]

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

1. Short Title—This Act may be cited as the Incorporated Societies Amendment Act 1981, and shall be read together with and deemed part of the Incorporated Societies Act 1908 (hereinafter referred to as the principal Act).

2. Restriction on names—Section 11 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

“(2) Except with the consent of the High Court, no society shall be registered by a name which, in the opinion of the Registrar, is undesirable.”

3. Change of name—(1) The principal Act is hereby amended by repealing section 11A (as inserted by section 2

of the Incorporated Societies Amendment Act 1971), and substituting the following section:

“11A. (1) If—

“(a) Through inadvertence or otherwise, a society at its first registration, or on its registration by a new name, is registered by a name which is in contravention of section 11 of this Act, or of any enactment, other than this Act, relating to restrictions on the use of any name; or

“(b) A society is for the time being registered by a name which, in the opinion of the Registrar, is undesirable,—

the society shall, within a period of 6 weeks from the date of its being required by the Registrar to do so, or such longer period as he may allow, change its name in accordance with section 21 of this Act to a name that is not in contravention as aforesaid and is not, in the opinion of the Registrar, undesirable.

“(2) If a society makes default in complying with the requirements of subsection (1) of this section, it commits an offence and shall be liable on summary conviction to a fine not exceeding \$10 for every day on which the offence has continued.

“(3) No fee shall be payable to the Registrar in respect of an alteration of the rules of a society if the alteration only changes the society’s name pursuant to the requirements of subsection (1) of this section.”

(2) Section 2 of the Incorporated Societies Amendment Act 1971 is hereby consequentially repealed.

4. New sections inserted—The principal Act is hereby amended by inserting, after section 23, the following sections:

“23A. **Power to compromise with creditors and members**—

(1) Where a compromise or arrangement is proposed between a society and its creditors or any class of them, or between the society and its members or any class of them, the High Court may, on the application of the society or of any creditor or member of the society, or, in the case of a society being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the society or class of members, as the case may be, to be summoned in such manner as the Court directs. If any question arises under this section as to whether or not any members or creditors

of a society constitute a class of members or a class of creditors, as the case may be, it shall be determined by the High Court as in the circumstances it thinks proper.

“(2) If a majority in number representing not less than three-fourths in value of the creditors or class of creditors or not less than three-fourths of the members or class of members, as the case may be, voting in person or, where proxies are allowed, by proxy at the meeting agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the High Court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the society, or, in the case of a society in the course of being wound up, on the liquidator of the society.

“(3) An order made under subsection (2) of this section shall have no effect until a sealed copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the rules of the society issued after the order has been made.

“(4) If a society makes default in complying with subsection (3) of this section, the society and every officer of the society who is in default shall be liable on summary conviction to a fine not exceeding \$2 for each copy in respect of which default is made.

“(5) In this section and in section 23B of this Act—

“‘Creditor’ includes every person who has a claim that upon the winding up of the society would be admissible to proof in accordance with section 306 of the Companies Act 1955 (as applied by sections 24 (2) and 26 (3) of this Act):

“‘Officer of the society who is in default’ means any officer of the society who—

“(a) Knowingly and wilfully authorises or permits the default, refusal, or contravention mentioned in this section or in section 23B of this Act; or

“(b) Knew or ought to have known of the default, refusal, or contravention and did not take all reasonable steps to secure compliance by the society with the requirements specified in or imposed by this section or section 23B of this Act.

“23B. **Information as to compromises with creditors and members**—(1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 23A of this Act, there shall—

“(a) With every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the officers of the society, whether as officers or as members or as creditors of the society or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and

“(b) In every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

“(2) Where the compromise or arrangement affects the rights of creditors of the society, the said statement shall give the like explanation as respects any trustees appointed on behalf of creditors as it is required to give as respects the society’s officers.

“(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the society free of charge with a copy of the statement.

“(4) Where a society makes default in complying with any requirement of this section, the society and every officer of the society who is in default shall be liable on summary conviction to a fine not exceeding \$1,000, and, for the purpose of this subsection, any liquidator of the society and any trustees appointed on behalf of creditors of the society shall be deemed to be officers of the society:

“Provided that a person shall not be liable under this subsection if that person shows that the default was due to the refusal of any other person, being an officer of the society or a trustee appointed on behalf of creditors, to supply the necessary particulars as to his interests.

“(5) It shall be the duty of any officer of the society and of any trustee appointed on behalf of creditors of the society to give notice to the society of such matters relating to himself as may be necessary for the purposes of this section, and

any person who makes default in complying with this subsection shall be liable on summary conviction to a fine not exceeding \$100.”

5. New sections inserted—The principal Act is hereby amended by inserting, after section 34, the following sections:

“**34A. Powers of inspection of Registrar**—(1) Subject to subsection (2) of this section, the Registrar or any person authorised by him may, for the purpose of ascertaining whether a society or any officer of a society is complying or has complied with this Act, or of ascertaining whether the Registrar should exercise any of his rights or powers under this Act, or of detecting offences against this Act—

“(a) Require a society or any officer of a society to produce for inspection any registers, records, accounts, books, or papers that are kept by the society; and

“(b) In any case where the Registrar or the person authorised by him considers that the aforesaid purpose cannot be achieved by inspecting only the documents specified in paragraph (a) of this subsection, require any person to produce for inspection any registers, records, accounts, books, or papers that contain information relating to any money or other property that is managed, supervised, controlled, or held in trust by the society; and

“(c) Inspect and make records of any such registers, records, accounts, books, or papers; and

“(d) For the purpose of making records thereof, take possession of and remove from the premises where they are kept, for such period of time as is reasonable in the circumstances, any such registers, records, accounts, books, or papers.

“(2) No person authorised by the Registrar for the purposes of subsection (1) of this section may require the production of a document or make an inspection under that subsection unless he has first made a declaration in the prescribed form that he will not, except in accordance with subsection (3) of this section or for the purposes of this Act or in the course of any criminal proceedings, make a record of or divulge or communicate to any other person any information that he acquires by an inspection under that subsection.

“(3) A person who has made an inspection under subsection (1) of this section shall, upon being directed to do so by a person for the time being holding the office of Registrar, give, divulge, or communicate any records or information that he has acquired in the course of the inspection to such of the following persons as that Registrar specifies, namely:

“(a) The Minister of Justice:

“(b) The Secretary for Justice:

“(c) The Registrar:

“(d) Any person authorised by that Registrar to receive such records or information.

“(4) The Minister of Justice or the Secretary for Justice may, by written notice to that person, require the person for the time being holding the office of Registrar to give a direction under subsection (3) of this section; and that person shall comply with any such requirement.

“(5) Notwithstanding anything in subsection (3) or subsection (4) of this section, the Registrar shall maintain and aid in maintaining the secrecy of all matters that come to his knowledge as a result of any inspection made under subsection (1) of this section, and shall not communicate any such matters to any person except for the purpose of carrying this Act into effect or for the purpose of any criminal proceedings.

“(6) If any person makes a record of or divulges or communicates to any other person, otherwise than in accordance with subsection (3) of this section or for the purposes of this Act or in the course of any criminal proceedings, any information that he has acquired in the course of an inspection under subsection (1) of this section, he commits an offence and shall be liable on summary conviction to a fine not exceeding \$200.

“(7) If any society refuses or fails to produce for inspection to the Registrar, or to any person authorised by the Registrar for the purposes of subsection (1) of this section, any document that the Registrar or authorised person has under that subsection required it to produce, the society commits an offence and shall be liable on summary conviction to a fine not exceeding \$1,000.

“(8) If any officer of a society or other person refuses or fails to produce for inspection to the Registrar, or to any person authorised by the Registrar for the purposes of subsection (1) of this section, any document within the power

or control of that officer or person that the Registrar or authorised person has under that subsection required him to produce, that officer or person commits an offence and shall be liable on summary conviction to a fine not exceeding \$1,000.

“(9) Any person who wilfully obstructs or hinders the Registrar, or any person authorised by the Registrar for the purposes of subsection (1) of this section, while the Registrar or authorised person is making an inspection or a record or taking possession of or removing any documents pursuant to that subsection commits an offence and shall be liable on summary conviction to a fine not exceeding \$1,000.

“34B. Appeals from decisions of Registrar—(1) Any person who is aggrieved by the refusal of the Registrar to register a society, or to register or receive any document submitted to him under this Act or who is aggrieved by any other act or decision of the Registrar under this Act, may appeal to the High Court within 21 days after the date of the refusal or other act or decision, or within such further time as the High Court may allow.

“(2) On hearing the appeal, the High Court may confirm the refusal or other act or decision of the Registrar, or give such directions or make such determination in the matter as the High Court thinks fit.

“(3) No right of appeal shall lie under this section against any act or decision of the Registrar—

“(a) In respect of which there is any express provision in this Act in the nature of an appeal or review; or

“(b) That is declared by this Act to be conclusive or final, or that is embodied in any document declared by this Act to be conclusive evidence of any act, decision, matter, or thing.

“(4) Notwithstanding any other provision of any Act or any rule of law, where a person appeals or applies to the High Court in respect of an act or decision of the Registrar under section 34A of this Act, until a decision on the appeal or application is given, the Registrar, and any person authorised by him under that section for the purpose, may continue to exercise his powers under that section as if no such appeal or application had been made, and no person shall be excused from fulfilling his obligations under that section by reason of that appeal or application:

“Provided that, to the extent that an appeal or application in respect of any such act or decision is allowed or granted, as the case may be,—

“(a) The Registrar shall ensure that, forthwith after the decision on the appeal or application is given, all records made by him, or by a person authorised by him for that purpose, under section 34A (1) (c) of this Act in respect of that act or decision are destroyed or expunged; and

“(b) No information acquired under paragraph (a) or paragraph (b) of section 34A (1) of this Act in respect of that act or decision shall be admissible in evidence in any proceedings.”

6. Repeal—Section 12 of the principal Act is hereby consequentially repealed.

This Act is administered in the Department of Justice.
