

# House of Representatives

## Supplementary Order Paper

Wednesday, 9 March 2005

### Lawyers and Conveyancers Bill

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#### *Proposed amendments*

Stephen Franks, in Committee, to move the following amendments:

#### *Clause 57*

To omit this clause, and substitute the following clause:

#### **57 Regulatory functions**

The regulatory functions of the New Zealand Law Society are to—

- (a) control and regulate the practice in New Zealand by barristers and by barristers and solicitors of the profession of the law;
- (b) monitor and enforce the provisions of this Act, and of any regulations and rules made under it, that relate to the regulation of lawyers;
- (c) assist and promote the reform of the law;
- (d) maintain and administer a fidelity fund.

#### *Clause 59*

To omit subclauses (2), (3), and (4).

#### *Clause 60*

To omit subclauses (2) and (3).

#### *Clauses 61, 62, 63, 64 and 64A*

To omit these clauses, and substitute the following clauses:

#### **61 Rules of New Zealand Law Society**

- (1) The New Zealand Law Society must have rules that provide for—
  - (a) a Council of the New Zealand Law Society and the powers of the Council; and
  - (b) the admission of members of the New Zealand Law Society and the cessation of membership; and

- (c) the summoning and holding of general meetings of the New Zealand Law Society, and the method of voting at those meetings; and
  - (d) a President and one or more Vice-Presidents of the New Zealand Law Society; and
  - (e) an Executive Board of the New Zealand Law Society; and
  - (f) the proper and reasonable conduct of lawyers; and
  - (g) a Standards Committee to investigate complaints against lawyers and former lawyers and the powers and procedure of that Committee; and
  - (h) a Disciplinary Tribunal to hear complaints and matters referred to it by the Professional Conduct Committee and the powers and procedure of that Tribunal; and
  - (i) an Appeals Council to hear appeals from decisions of the Disciplinary Tribunal and the powers and procedure of that Council; and
  - (j) the kinds of conduct, including criminal offences, professional misconduct, and financial misconduct, for which a lawyer or former lawyer may be disciplined; and
  - (k) the actions that may be taken in respect of, and the penalties that may be imposed on, a lawyer or former lawyer by the Standards Committee or a disciplinary body for such conduct; and
  - (l) admission as a barrister and solicitor and the maintenance by the Registrar of a roll of barristers and solicitors; and
  - (m) the striking off and removal from the roll of barristers and solicitors; and
  - (n) a Special Fund to provide for the collection of interest on nominated trust accounts to be paid to the Legal Services Agency for the purpose of funding community law centres within the meaning of section 85 of the Legal Services Act 2000; and
  - (o) the amendment and replacement of the rules.
- (2) In addition to the provisions required by **subsection (1)**, the rules may contain any other provisions that are not inconsistent with this Act or any other enactment or any rule of law.
- (3) Rules made by the New Zealand Law Society must promote the purpose of this Act.
- (4) The Council must, not later than 14 days after the day on which this Act comes into force, deliver to the Registrar of Companies at Wellington for registration a document described as, and which constitutes, the rules of the New Zealand Law Society.
- (5) The Council must, not later than 14 days after the passing of any amendment to the rules, or replacement of the rules,

deliver to the Registrar of Companies at Wellington for registration a copy of the amendment or the new rules.

- (6) The New Zealand Law Society must consult with lawyers before making or amending rules under this section.

**62 Rules proposed by representative bodies**

- (1) The New Zealand Law Society must recognise a representative practitioner group for the purpose of this section where the New Zealand Law Society is satisfied the group includes a significant proportion of lawyers in a particular area of practice.
- (2) The New Zealand Law Society must consider all issues, proposals and proposed rules raised with it by a representative practitioner group.

**63 Code of ethics**

- (1) The New Zealand Law Society must always have a code of ethics that governs the professional conduct of lawyers.
- (2) The code of ethics must be prescribed by the New Zealand Law Society.
- (3) The New Zealand Law Society must, not more than 14 days after the day on which this Act comes into force, deliver a copy of the code to the Registrar of Companies at Wellington for registration.
- (4) The Council may at any time amend the code, or revoke the code and replace it with a new code.
- (5) The Council must, not later than 14 days after passing any amendment to the code or replacing the code, deliver to the Registrar of Companies at Wellington for registration a copy of the amendment or the new code.
- (6) The New Zealand Law Society must consult with lawyers before making or amending the code of ethics.

**64 Application of Regulations (Disallowance) Act 1989 to certain rules and code of ethics**

The Regulations (Disallowance) Act 1989 applies to—

- (a) the rules that relate to the matters referred to in **sections 61 and 63**; and
- (b) rules that relate to the entitlement of members to use the designation “lawyer”,—

as if they were regulations within the meaning of that Act.

*Clauses 83 to 95*

To omit clauses 83 to 95.

*Clauses 107 to 230*

To omit clauses 107 to 230, and substitute the following clauses:

**107 Standards Committee and disciplinary bodies to observe rules of natural justice**

In the exercise of their functions and powers, the Standards Committee and each disciplinary body must observe the rules of natural justice.

**108 Evidence at hearings of disciplinary bodies**

- (1) A disciplinary body may—
  - (a) receive evidence on oath and, for that purpose, an officer or employee of the New Zealand Law Society, or a member of the disciplinary body, may administer an oath:
  - (b) permit a person appearing as a witness before it to give evidence by tendering a written statement and verifying that statement by oath.
- (2) A hearing before a disciplinary body is a judicial proceeding for the purposes of section 109 of the Crimes Act 1961.

**109 Disciplinary bodies may summon witnesses**

- (1) A District Court Judge may, on the application of a party to proceeding before a disciplinary body, give a certificate authorising the disciplinary body to issue a summons under this section.
- (2) A District Court Judge must not give a certificate under **subsection (1)** unless satisfied that—
  - (a) the evidence of the witness is or may be material to the hearing of a matter by the disciplinary body; and
  - (b) it is necessary or desirable that the summons be issued to compel the attendance of the witness at the hearing.
- (3) A disciplinary body must, on production of a certificate referred to in **subsection (1)**, issue a summons in writing, signed by a member of the disciplinary body, requiring a person specified in the summons to attend a hearing of the disciplinary body at the time and place specified in the summons and do all or any of the following at the hearing:
  - (a) give evidence:
  - (b) give evidence under oath:
  - (c) produce documents, things, or information or any specified documents, things, or information in the possession or control of that person that are relevant to the hearing.
- (4) A disciplinary body may require that any documents or information produced under this section be verified by oath, statutory declaration, or otherwise.
- (5) A disciplinary body may—
  - (a) require that copies of any documents or information produced under this section also be provided to any person appearing at the hearing; and

- (b) impose any terms and conditions in respect of the provision of copies of any documents or information to a person appearing at the hearing and the use that may be made of them.
- (6) A summons may be served—
  - (a) by delivering it to the person summoned; or
  - (b) by posting it to the person summoned at that person's usual place of residence.
- (7) A summons under must,—
  - (a) if it is to be served under **subsection 6(a)**, be served at least 24 hours before the attendance of the witness is required;
  - (b) if it is to be served under **subsection 6(b)**, be served at least 10 days before the attendance of the witness is required.
- (8) A summons that is posted must be treated as having been served when it would have been served in the ordinary course of post.
- (9) There must be paid or tendered to the witness by the person requiring the attendance of the witness at the time the summons is served, or at some other reasonable time before the hearing, the sum estimated to be payable to that witness for fees, allowances, and expenses in accordance with the scales for the time being prescribed by regulations under the Summary Proceedings Act 1957.

**110 Protection for members of disciplinary bodies and others**

- (1) No action lies against a member of the Standards Committee or a disciplinary body in exercising, in good faith, any power or function under this Act or the rules.
- (2) Every person has the same privileges as witnesses have in a court who—
  - (a) provides documents, things, or information to the Standards Committee; or
  - (b) produces documents or things to a disciplinary body; or
  - (c) gives evidence or answers questions at a hearing of a disciplinary body.
- (3) Every counsel appearing before a disciplinary body has the same privileges and immunities as counsel in a court.

**111 Enforcement of orders**

- (1) Where the Standards Committee or a disciplinary body, acting in accordance with this Act or the rules, makes an order or otherwise exercises any power in respect of any person who is or was a member of the New Zealand Law Society, that order

or other exercise of any power has effect whether or not that person remains a member of the New Zealand Law Society.

- (2) Where the Standards Committee or a disciplinary body, acting in accordance with this Act or the rules, orders any person who is or was a member of the New Zealand Law Society to pay a penalty, expenses, or other monetary amount to the New Zealand Law Society, that amount is recoverable by the New Zealand Law Society from that person as a debt due to the New Zealand Law Society, whether or not that person remains a member of the New Zealand Law Society.

#### **112 Failure to comply with summons of disciplinary body**

- (1) Every person summoned under **section 109** of this Act to attend a hearing of a disciplinary body commits an offence if he or she, without sufficient cause, does any or all of the following:
- (a) fails to attend in accordance with the summons:
  - (b) does not give evidence when required to do so:
  - (c) does not give evidence under oath when required to do so:
  - (d) does not answer any question that is lawfully asked by the disciplinary body:
  - (e) does not provide any documents, things, or information the summons requires that person to provide.
- (2) A person summoned to attend a hearing of a disciplinary body may not be convicted of an offence against **subsection (1)** unless witness expenses are paid or tendered to that person in accordance with **section 109(9)**.
- (3) Every person who commits an offence against this section is liable on summary conviction to a fine not exceeding \$1,000.

#### *Clauses 318 to 328*

To omit clauses 318 to 328, and substitute the following clause:

#### **318 Transitional provisions relating to disciplinary proceedings**

The Law Practitioners Act 1982 continues to apply in respect of any complaint made, and any disciplinary proceedings commenced, under that Act before the commencement of this Act, notwithstanding the repeal of that Act by **section 317**.

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### **Explanatory note**

This Supplementary Order Paper reduces the degree of prescription in the Lawyers and Conveyancers Bill. The current Bill is unnecessarily prescriptive and cumbersome and, accordingly, poor law. The Bill fails completely to

achieve the objective of a flexible, efficient regulatory regime that will deliver better outcomes to consumers.

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