

LEGAL PRACTITIONERS.

No. 46 of 1968.

AN ACT to amend the *Legal Practitioners Act 1959*. [29 October 1968.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title and citation.

1—(1) This Act may be cited as the *Legal Practitioners Act 1968*.

(2) The *Legal Practitioners Act 1959*, as subsequently amended, is in this Act referred to as the Principal Act.

Interpretation.

2 Section three of the Principal Act is amended by inserting in subsection (1), after the definition of “Law Society”, the following definition:—

“‘local court’ means a court within the meaning of the *Local Courts Act 1896*;”.

Admission of certain officers and clerks.

3 Section twelve of the Principal Act is amended by omitting subsection (3) and substituting therefor the following subsection:—

“(3) A period of service as clerk to the Solicitor-General shall, for the purposes of this Act, be treated as a period of service under articles.”.

Admission of articled clerks as practitioners.

4 Section thirteen of the Principal Act is amended by inserting in paragraph (b) of subsection (1), after the word “Tasmania”, the words “or in some other university declared by the Governor, by order, to be a university approved for the purposes of this subsection”.

5 After section fourteen A of the Principal Act the following section is inserted:—

Irregularities in service under articles.

“14B—(1) Where a person, having entered into articles, has, throughout any period (whether before or after the commencement of this section), been employed by a practitioner in the proper business, practice, and employment of a practitioner the court may, on the application of that person, allow that period to be reckoned as a period of service under articles, notwithstanding—

(a) that those articles lapsed, determined, or otherwise ceased to have effect before the expiration of that period; or

(b) that, during that period, there was a failure to comply with this Act or the terms of those articles,

if the court considers that the lapsing, determination, or ceasing to have effect of the articles, or the failure to comply with this Act or the terms of the articles, occurred by mistake or inadvertence and should be excused.

“(2) No application shall be heard under this section unless the prescribed notice has been given to the Law Society, and section sixteen applies to an application under this section as it applies to an application for admission.”.

6 After section fifteen of the Principal Act the following section is inserted:—

“15A—(1) On an application under this section the court may enlarge or abridge the time appointed by this Act for the giving or advertisement of any notice with respect to the application for admission of a person. Relaxation of requirements as to notices.

“(2) An application under this section may be made by the person in respect of whose application for admission the notice is required to be given or advertised.

“(3) The court shall not hear an application under this section unless it is satisfied that reasonable notice of the hearing has been given to the Law Society, and that society may appear before the court hearing the application and is entitled to be heard thereat by counsel, with or without witnesses.”.

7 After section twenty of the Principal Act the following Part is inserted:—

“ PART IIA.

“ LIMITED RIGHT OF AUDIENCE OF ARTICLED CLERKS.

“20A In this Part ‘the roll’ means the roll required to be kept under subsection (7) of section twenty B. Interpretation of Part IIA.

“20B—(1) Subject to this section the court may grant a limited right of audience to an articulated clerk who has— Grant of limited right of audience to certain articulated clerks.

(a) passed the examinations required for the degree of Bachelor of Laws in a university referred to in paragraph (b) of subsection (1) of section thirteen; and

(b) completed at least twelve months’ service under articles.

“(2) An application for a limited right of audience shall not be granted unless the applicant has—

(a) satisfied the court he is in every respect of good fame and character, and a fit and proper person to be granted that right; and

(b) paid to the Registrar the prescribed fee payable in respect of this application.

“(3) The powers conferred on the court by this section may be exercised by the Master.

“(4) Proceedings for an application under this section may be commenced notwithstanding that the articted clerk to which they relate has not passed the examinations referred to in subsection (1) of this section or completed the period of service under articles so referred to, but no notice of an intention to make such an application shall be lodged with the court or an officer thereof unless the articted clerk has completed at least nine months’ service under articles.

“(5) At least one month before an application under this section is heard a copy thereof shall be lodged with the Law Society.

“(6) Section sixteen applies in respect of the granting under this section of a limited right of audience as it applies in respect of the admission of a practitioner.

“(7) The Registrar shall keep a roll of the names of articted clerks who have under this section been granted a limited right of audience and shall issue to an articted clerk whose name is so enrolled a certificate in the prescribed form stating that he is so enrolled.

“(8) Before the name of any person is entered on the roll he shall take and subscribe the oath set forth in the fifth schedule and the oath of allegiance set forth in the *Promissory Oaths Act 1869*.

Removal of
names from
the roll.

“20C—(1) The court may order the name of any person to be struck off the roll if it is satisfied that he has been guilty of such conduct as would warrant, if he were a barrister, his being disbarred or would warrant the refusal of his admission as a practitioner.

“(2) The name of a person who has died or who has been admitted as a practitioner shall be struck off the roll.

Extent of
right of
audience of
articted clerks
on the roll.

“20D—(1) Subject to this section, an articted clerk whose name appears on the roll is entitled to appear in any proceedings specified in Part I or Part II of the sixth schedule as counsel or advocate for any person who is a party to those proceedings.

“(2) Notwithstanding anything in subsection (1) of this section an articted clerk is not entitled to appear as counsel or advocate in any proceedings other than those specified in Part I of the sixth schedule unless, while so appearing, he is accompanied by a practitioner.

“(3) In relation to proceedings before a coroner references in this Act to a party to these proceedings shall be construed as including references to any person who, personally or by counsel, is entitled to examine or cross-examine witnesses in these proceedings.

“(4) Subject to this Act, where, pursuant to this section, an articted clerk appears in any proceedings as counsel or attorney for any person he has the same rights and privileges, and is subject to the same duties and obligations, as he would be if he were a practitioner appearing as counsel or attorney for that person.

“20E An articted clerk is not entitled to recover any fees, charges, or disbursements in respect of his appearance in any proceedings pursuant to this Part, but the legal practitioner to whom he is articted is entitled to make a reasonable charge in respect of any such appearance directed to be made by that practitioner, and any such charge may be recoverable in like manner as if the appearance had been made by that practitioner.”

Costs in respect of appearances by articted clerks.

8 Section twenty-eight of the Principal Act is amended by inserting, after subsection (2A), the following subsections:—

Conditions for articting clerks.

“(2B) For the purposes of this Part a practitioner who is employed as the solicitor to a State instrumentality shall, while so employed, be deemed to be actually carrying on business as a practitioner in the court.

“(2C) For the purposes of subsection (2B) of this section, ‘State instrumentality’ means any body corporate that is constituted, established, or appointed under any enactment or in the exercise of the prerogative rights of the Crown that the Governor, by order, declares to be a State instrumentality for the purposes of that subsection.”

9 Section thirty-one of the Principal Act is amended—

Service as judge’s associate.

(a) by omitting subsection (1) and substituting therefor the following subsection:—

“(1) Subject to this section, a period of service as a judge’s associate shall, upon a certificate granted by the judge that that service has been rendered to his satisfaction, be treated for the purposes of this Act, as a period of service under articles.”; and

(b) by omitting from subsection (2) the word “Part” and substituting therefor the word “Act”.

10 Section seventy-four of the Principal Act is amended by inserting, after paragraph (a) of subsection (2), the following paragraph:—

Persons not to act as barristers or solicitors unless admitted.

“(ab) an articted clerk from exercising the rights conferred on him by section twenty D;”.

11 Section seventy-six of the Principal Act is amended by adding at the end thereof the following subsection:—

Control of practitioners by court.

“(2) References in this section to a practitioner shall be construed as including references to a person whose name is, or has been, on the roll referred to in Part IIA.”.

Appropriation of fees, penalties, and duty.

12 Section seventy-eight of the Principal Act is amended by inserting in subsection (2), after the word "practitioner", the words "or for the grant to him of a limited right of audience under Part IIA".

Rules.

13 Section eighty of the Principal Act is amended—

(a) by omitting paragraph (f) and substituting therefor the following paragraph:—

"(f) the conditions under which, or the cases or circumstances in which, the passing of an examination held otherwise than by the Board or of any subjects of such an examination shall be deemed to be equivalent to the passing of an examination held by the Board, or of subjects in such an examination;" and

(b) by inserting in paragraph (g), after the word "admitted", the words "or granted the limited right of audience referred to in Part IIA".

The first schedule.

14 The first schedule to the Principal Act is amended by adding at the end thereof the following item:—

"On an application for the grant of the limited right of audience referred to in Part IIA \$2.00".

Additional schedules.

15 The schedules set forth in the first schedule to this Act are added as schedules at the end of the Principal Act.

Consequential amendments.

16 The Acts that are specified in the second schedule to this Act are amended as respectively specified in that schedule.

THE FIRST SCHEDULE.

(Section 15.)

"THE FIFTH SCHEDULE.

(Section 20B (8).)

"I, A.B., do swear [or solemnly affirm, as the case may be] that I will truly and honestly demean myself in the exercise of the limited right of audience granted to me pursuant to Part IIA of the *Legal Practitioners Act 1959* to the best of my knowledge and ability. [So help me God.]"

"THE SIXTH SCHEDULE.

"(Section 20D.)

"LIMITED RIGHT OF AUDIENCE OF ARTICLED CLERKS.

"Part I—Proceedings in which an articulated clerk may appear unaccompanied by a practitioner.

"1. The following proceedings in the Supreme Court, that is to say:—

(a) Proceedings in chambers in aid of execution or otherwise for the purpose of enforcing or giving effect to a judgment or order of the court or a judge;

- (b) Proceedings in chambers before the Master;
- (c) Proceedings in chambers before a judge that are not contested.

" 2. The following proceedings in a local court, that is to say:—

- (a) Proceedings in an action wherein the amount of the sum claimed by the plaintiff, together with the amount of any sum set-up by the defendant by way of counter-claim, does not exceed two hundred dollars;
- (b) Proceedings in an action in which no notice of defence is given or at the trial or hearing of which the defendant does not appear;
- (c) Proceedings in aid of execution or otherwise for the enforcement of a judgment or the recovery of costs;
- (d) Proceedings in an action before the giving of judgment therein other than the trial or hearing of the action.

" 3. The following proceedings in a court of petty sessions (including a children's court), that is to say:—

- (a) Any application for—
 - (i) the admission of any person to bail;
 - (ii) the adjournment of any proceedings; or
 - (iii) the remand of any person;
- (b) The entry of a plea of guilty by any person to an offence under a regulation made under section ten, section thirty, or section thirty-one of the *Traffic Act 1925* and proceedings before the court before which it is made consequent upon the entry of the plea.

" 4. Any proceedings before a coroner.

" *Part II—Proceedings in which an articled clerk may appear accompanied by a practitioner.*

" Any proceedings in a local court."

THE SECOND SCHEDULE.

(Section 16.)

ENACTMENTS AMENDED.

Law Society Act 1962.

(No. 27 of 1962.)

Section twelve is amended—

- (a) by omitting from paragraph (b) of subsection (2) the word "and"; and
- (b) by adding at the end of that subsection the following word and paragraph:—

"; and

"(d) matters arising under Part IIA of the *Legal Practitioners Act 1959* or under any other provision of that Act in respect of persons who have been granted a limited right of audience under that Part of that Act."

Local Courts Act 1896.

(60 Vict. No. 48.)

Section one hundred and thirty-nine is amended by adding at the end thereof the following subsection:—

"(3) This section has effect subject to Part IIA of the *Legal Practitioners Act 1959*."