

LEGAL PRACTITIONERS ORDINANCE 1928-1938.⁽¹⁾

An Ordinance Relating to Legal Practitioners.

BE it ordained by the Governor-General of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *New Guinea Act 1920-1926*, as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Legal Practitioners Ordinance 1928-1938*.⁽¹⁾

Short title.
Amended by
No. 3 of 1934,
s. 50.

2.—(1.) This Ordinance shall commence on a date to be fixed by the Administrator by notice in the *New Guinea Gazette*.⁽¹⁾

Commencement.

(2.) It shall not be necessary to fix one date for the commencement of the whole Ordinance but the several Parts, Sections and Schedules may commence on such dates as are respectively fixed by the Administrator by notice in the *New Guinea Gazette*.

(1) The *Legal Practitioners Ordinance 1928-1938* comprises the *Legal Practitioners Ordinance 1928*, as amended by the other Ordinances referred to in the following Table:—

PART I.—ORDINANCES MADE BY THE GOVERNOR-GENERAL IN COUNCIL.

Short title, number and year.	Date on which made by Gov.-Gen. in Council.	Date on which notified in <i>Cwth. Gaz.</i>	Date on which took effect.
<i>Legal Practitioners Ordinance 1928</i> (No. 11 of 1928)	28.5.1928	31.5.1928	Parts I, II, and III, and 1st and 2nd Schedules on 21.6.1928 (<i>N.G. Gaz.</i> of 15.6.1928); Part IV on 21.7.1928 (<i>N.G. Gaz.</i> of 16.7.1928)
<i>Legal Practitioners Ordinance 1933</i> (No. 18 of 1933)	21.4.1933	27.4.1933	27.4.1933 (<i>Cwth. Gaz.</i> of 27.4.1933)

PART II.—ORDINANCES OF THE LEGISLATIVE COUNCIL.

Short title, number and year.	Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
<i>Legal Practitioners Ordinance 1934</i> (No. 15 of 1934)	7.2.1934	15.8.1934	7.2.1934 (<i>Laws of T.N.G.</i> , Vol. XIII, p. 50)
<i>Legal Practitioners Ordinance 1935</i> (No. 38 of 1935)	31.7.1935	15.2.1936	31.7.1935 (<i>Laws of T.N.G.</i> , Vol. XIII, p. 339)
<i>Legal Practitioners Ordinance 1938</i> (No. 21 of 1938)	24.8.1938	30.11.1938	24.8.1938 (<i>Laws of T.N.G.</i> , Vol. XIV, p. 143)

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Parts.
Section 3
amended by
No. 38 of 1935,
s. 2.

3. This Ordinance is divided into Parts, as follows:—
- Part I.—Preliminary.
 - Part II.—Council of Legal Education.
 - Part III.—Admission of Barristers and Solicitors.
 - Part IIIA.—Remuneration of Barristers and Solicitors.
 - Part IV.—Miscellaneous.

Definitions.

Amended by
No. 15 of 1934,
s. 2.

4. In this Ordinance, unless the contrary intention appears—
- “Barrister and Solicitor” means a person who, under this Ordinance, has been admitted as a barrister and solicitor of the Supreme Court;
 - “Member” means a member of the Council;
 - “The Chairman” means the Chairman of the Council;
 - “The Council” means the Council of Legal Education appointed under this Ordinance;
 - “The Secretary” means the Secretary of the Council.

PART II.—COUNCIL OF LEGAL EDUCATION.

Constitution
of Council.

- 5.—(1.) For the purposes of this Ordinance, there shall be a Council of Legal Education.
- (2.) The Council shall consist of three members, who shall be—
- (a) the person for the time being performing the duties of Crown Law Officer of the Territory, who shall be the Chairman of the Council; and
 - (b) two persons appointed by the Chief Judge of the Territory by notice in the *New Guinea Gazette*.
- (3.) The two members appointed in pursuance of paragraph (b) of the last preceding sub-section shall be appointed for a term of two years and shall be eligible for re-appointment.

Temporary
appointments.

6. In the event of—
- (a) the illness or temporary inability of a member to perform the duties of office;
 - (b) the absence from the Territory of a member; or
 - (c) the office of a member becoming vacant,

the Chief Judge of the Territory may appoint a person to act during the illness, temporary inability or absence, or until the appointment of a member, as the case may be, and the person so acting shall have all the powers and functions and perform all the duties of the member in whose place he acts.

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7. The Registrar of the Supreme Court shall be the Secretary of the Council.

Secretary
of Council.
Amended by
No. 15 of 1934,
s. 2.

8.—(1.) Sittings of the Council shall be convened by the Chairman.

Sittings
of Council.

(2.) The Chairman shall preside at all meetings of the Council at which he is present, and, in the event of his absence from any meeting, the members present shall elect one of the members to preside as Chairman.

9.—(1.) For the conduct of business, any two members of the Council shall be a quorum, and shall have all the powers of the Council.

Quorum
of Council.

(2.) At meetings of the Council the decision of the majority shall prevail.

(3.) The Chairman shall have a deliberative vote, but not a casting vote.

(4.) Where, at a meeting of the Council, at which one of the members is absent, there is an equality of votes on any question, the determination of that question shall be postponed to a meeting at which all the members are present.

(5.) The Secretary shall keep a record of the proceedings of the Council.

10.—(1.) Where a complaint is made to the Council by any person against a barrister and solicitor for improper conduct as a barrister and solicitor, or where, in any case, the Council considers it advisable, the Council may hold an inquiry.

Complaints to
Council against
barrister and
solicitor.

(2.) The Council may, by notice in writing, summon the barrister and solicitor, against whom the complaint has been made, and any other person whom it considers it expedient to summon, to give evidence upon oath before it.

(3.) Any person, who has been so summoned to give evidence, and who fails to appear without reasonable cause, or refuses to be sworn or to produce documents or to answer questions, shall be guilty of an offence.

Penalty: Two hundred pounds.

(4.) Where, after an inquiry has been made in pursuance of this section, the Council considers it expedient to take proceedings against a barrister and solicitor, the Council may apply to the

Sub-section (4)
amended by
No. 15 of 1934,
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Supreme Court to have the barrister and solicitor struck off the Roll of Barristers and Solicitors of the Supreme Court.

Fees.

Amended by
No. 15 of 1934,
s. 2.

11. All fees collected by the Council shall be paid to the Treasurer of the Territory and shall be credited by him to an account to be called the Supreme Court Library Account.

Power of
Council to
make Rules.

12.—(1.) Subject to the provisions of this Ordinance, the Council may, with the concurrence of the Chief Judge of the Territory, make Rules⁽²⁾ relating to the service of articles of clerkship by candidates and to the admission of candidates as barristers and solicitors.

(2.) Rules made in pursuance of this Ordinance shall—

(a) be published in the *New Guinea Gazette*; and

(b) take effect from the date of publication, or from a later date specified therein.

(3.) Rules made under this Ordinance shall be subject at any time to disallowance by the Administrator, and any Rules so disallowed shall cease to have effect from the date of publication of the disallowance in the *New Guinea Gazette*.

PART III.—ADMISSION OF BARRISTERS AND SOLICITORS.

Persons
admitted to be
barristers and
solicitors.

Section 13
amended by
No. 15 of 1934,
s. 2.

13. The following persons may be admitted as barristers and solicitors of the Supreme Court:—

(a) Persons who are entitled to practise as barristers or solicitors, or both, in the High Court of Australia or in the Supreme Court of any State of the Commonwealth of Australia; or

(b) Persons who have obtained the degree of Bachelor of Laws in any University in the British Dominions, not being an honorary degree, and who, for the full term of two years, have served under articles as a clerk to a barrister and solicitor in actual practice in the Territory.

Issue of
certificate of
qualification.

14.—(1.) Any person, who possesses the qualification referred to in paragraph (a), or the qualification referred to in paragraph (b), of the last preceding section, and who desires to be admitted as a barrister and solicitor, may apply to the Council for a certificate of qualification.

(2.) The Council may, if it is satisfied, after a personal interview with the applicant, that the applicant—

(2) See the *Council of Legal Education Rules*, printed on p. 3054.

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- (a) possesses the necessary qualification, as prescribed in the last preceding section;
- (b) has complied with the Rules for the time being in force in relation to the admission of barristers and solicitors; and
- (c) is a fit and proper person to be admitted as a barrister and solicitor,

upon payment to it of the fee prescribed in the First Schedule to this Ordinance, issue to him a certificate in accordance with Form 1. of the Second Schedule to this Ordinance:

Provided that where the applicant presents to the Council a certificate signed by the Administrator that the applicant is an officer of the Public Service of the Territory, the certificate may be issued without payment of any fee.

Proviso added by No. 18 of 1933, s. 2.

15. No person shall be admitted as a barrister and solicitor, until he has received from the Council a certificate issued in accordance with Form 1. of the Second Schedule to this Ordinance.

Certificate must be received before practising.

16. A person may be admitted as a barrister and solicitor at any sitting of the Supreme Court.

Person may be admitted at any sitting of Court.

Amended by No. 15 of 1934, s. 2.

17.—(1.) The holder of a certificate issued in accordance with Form 1. of the Schedule⁽³⁾ to this Ordinance, who applies for admission as a barrister and solicitor, shall—

Matters to be complied with on admission before receiving certificate of admission.

- (a) file in the office of the Registrar of the Supreme Court the certificate issued to him by the Council in accordance with Form 1. of the Second Schedule to this Ordinance;
- (b) personally attend the sitting of the Supreme Court at which he is seeking admission as a barrister and solicitor.

Paragraph (a) amended by No. 15 of 1934, s. 2.

Paragraph (b) amended by No. 15 of 1934, s. 2.

(2.) Every person, who has been admitted as a barrister and solicitor, shall—

- (a) take the oath of allegiance; and
- (b) sign the Roll of Barristers and Solicitors of the Supreme Court to be kept by the Registrar of the Supreme Court.

Paragraph (b) amended by No. 15 of 1934, s. 2.

18. Notwithstanding anything contained in this Ordinance, upon receipt from the Administrator of a document certifying that the person named therein—

Crown Law Officer or Legal Assistant to be admitted on receipt of certificate from Administrator.

- (a) holds the office of Crown Law Officer of the Territory or the office of Legal Assistant in the Crown Law Office of the Territory; and

Section 18 amended by No. 15 of 1934 s. 2.

(3) The words "the Schedule" appeared in the original Ordinance. They have now been omitted and the words "the Second Schedule" inserted in their stead by the First Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

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- (b) is a person who has been admitted to practise as a barrister or solicitor, or both, in the High Court of Australia, or in the Supreme Court of any State of the Commonwealth of Australia,

the Supreme Court may admit the person named in the document as a barrister and solicitor.

Fee payable where barrister and solicitor ceases to be an officer in the Public Service. Inserted by No. 18 of 1933, s. 3.

18A. Any person who, in pursuance of section fourteen or section eighteen of this Ordinance, has been admitted to practise as a barrister and solicitor without payment of fee, shall, if he continues, after ceasing to be an officer of the Public Service of the Territory, to practise in the Territory as a barrister and solicitor be liable to make payment to the Council of the fee prescribed in the First Schedule to this Ordinance.

Right of persons admitted to receive certificate of admission and to practise. Sub-section (1) amended by No. 15 of 1934, s. 2.

19.—(1.) Every person who has been admitted as a barrister and solicitor and has complied with the provisions of sub-section (2.) of section seventeen of this Ordinance shall, on payment of a fee of One pound, be entitled to receive from the Registrar of the Supreme Court a certificate of admission, which shall be issued in accordance with Form 2 of the Second Schedule to this Ordinance and signed by a Judge of the Supreme Court, and shall bear the Seal of the Supreme Court.

Sub-section (2) amended by No. 15 of 1934, s. 2.

(2.) Every person who—

- (a) has been admitted as a barrister and solicitor; and
(b) has received a certificate of admission in pursuance of the last preceding sub-section,

shall, so long as his name remains on the Roll of Barristers and Solicitors of the Supreme Court, be entitled to practise in any branch of the law in any court in the Territory.

Suspension of right to practise as barrister and solicitor.

Section 20 amended by No. 15 of 1934, s. 2; substituted by No. 38 of 1935, s. 3.

20.—(1.) The Supreme Court, on the application of any person, or of the Council, to strike a barrister and solicitor off the Roll of Barristers and Solicitors of the Supreme Court, may—

- (a) suspend, for such period as it thinks proper, the right of the barrister and solicitor to practise in his profession; or
(b) remove the name of the barrister and solicitor from the Roll of Barristers and Solicitors of the Supreme Court,

on the ground that he has been—

- (c) in the opinion of the Supreme Court, guilty of misconduct in the practice of his profession;

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- (d) in the opinion of the Supreme Court, guilty of disgraceful conduct; or
- (e) convicted of a crime or misdemeanour.

(2.) An application referred to in the last preceding sub-section shall be made by motion in the Supreme Court for a rule *nisi*.

21.—(1.) Any person—

- (a) whose right to practise as a barrister and solicitor is suspended; or
- (b) whose name has been removed from the Roll of Barristers and Solicitors of the Supreme Court,

Restoration of right to practise as a barrister and solicitor.
Sub-section (1) amended by No. 15 of 1934, s. 2.

may make application to the Supreme Court in manner prescribed by rules made by that Court for the removal of the suspension or the restoration of his name to the Roll of Barristers and Solicitors of the Supreme Court.

(2.) The Court shall consider the application and, after hearing such evidence as it thinks fit, grant or refuse the application.

PART IIIA.—REMUNERATION OF BARRISTERS AND SOLICITORS.

Part IIIA, inserted by No. 38 of 1935, s. 4.

21A. In this Part, unless the contrary intention appears—

Definitions.
Section 21A inserted by No. 38 of 1935, s. 4.

“client” includes any person who as principal or on behalf of another person retains or employs, or is about to retain or employ, a barrister and solicitor, and any person who is or may be liable to pay a barrister and solicitor’s costs;

“contentious business” includes any business done by a barrister and solicitor in any court, whether as a solicitor or as an advocate;

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

“non-contentious business” includes any business not being contentious business connected with sales, purchases, leases, mortgages, settlements, and other matters of conveyancing;

“taxing officer” means the taxing officer of the Supreme Court.

21B.—(1.) The Administrator, with the concurrence of the Chief Judge, may make regulations⁽⁴⁾ prescribing and regulating in such manner as he thinks fit the remuneration of barristers and solicitors in respect of non-contentious business.

Power to make regulations as to remuneration of barristers and solicitors in non-contentious business.

(2.) Regulations under this section may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates

Section 21B inserted by No. 38 of 1935, s. 4.

(4) See the *Solicitors’ Remuneration Regulations*, printed on p. 3057.

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of commission or percentage, varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode and partly in another, and may regulate the amount of remuneration with reference to all or any of the following, among other, considerations:—

- (a) The position of the party for whom the barrister and solicitor is concerned in the business, that is, whether as vendor or purchaser, lessor or lessee, mortgagor or mortgagee, and the like;
- (b) The place where, and the circumstances in which, the business or any part of it is transacted;
- (c) The amount of capital money or rent to which the business relates;
- (d) The skill, labour, and responsibility involved on the part of the barrister and solicitor;
- (e) The number and importance of the documents prepared or perused, without regard to length.

(3.) Regulations under this section may authorize and regulate—

- (a) the taking by a barrister and solicitor from his client of security for payment of any remuneration, to be ascertained by taxation or otherwise, which may become due to him under any regulation made under this section; and
- (b) the allowance of interest.

(4.) As long as any regulation under this section is in operation, the taxation of bills of costs of barristers and solicitors shall, subject to the provisions of section twenty-one D of this Ordinance with respect to agreements as to remuneration, be regulated by that regulation.

21c.—(1.) If a mortgage is made to a barrister and solicitor, either alone or jointly with any other person, he, or the firm of which he is a member, shall be entitled to recover from the mortgagor in respect of all business transacted and acts done by him or the firm in negotiating the loan, deducing and investigating the title to the property, and 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 was not a barrister and solicitor and that person had retained and employed him or the firm to transact the business and do the acts.

(2.) If, whether before or after the commencement of this Ordinance, a mortgage has been made to, or has become vested by transfer or transmission in, a barrister and solicitor, either alone or

Remuneration
of a barrister
and solicitor
who is a
mortgagee.
Section 21C
inserted by
No. 38 of 1935,
s. 4.

jointly with any other person, and if after the commencement of this Ordinance any business is transacted or acts are done by that barrister and solicitor, or by the firm of which he is a member, in relation to that mortgage, or the security thereby created or the property comprised thereunder, then he or the firm shall be 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 the mortgage had been made to and had remained vested in a person who was not a barrister and solicitor and that person had retained and employed him or the firm to transact the business and do the acts.

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

21D.—(1.) A barrister and solicitor may make an agreement in writing with his client (not being a native) as to his remuneration in respect of any contentious business or non-contentious business done, or to be done, by him.

Agreement with regard to remuneration of barrister and solicitor.

Section 21D inserted by No. 38 of 1935, s. 4.

(2.) The agreement may provide for the remuneration of the barrister and solicitor by a gross sum, or by commission or percentage, or otherwise, and at a greater or a less rate than that at which he would otherwise have been entitled to be remunerated, and it may be made on the terms that the amount of the remuneration stipulated for either shall or shall not include all or any disbursements made by the barrister and solicitor.

(3.) If it appears to a Judge upon motion by the client that the agreement is unfair or unreasonable, he may reduce the amount agreed to be payable under the agreement.

(4.) The agreement—

(a) shall not affect the amount of, or any rights or remedies for the recovery of, any costs payable by the client to, or to the client by, any person other than the barrister and solicitor, and that person may, unless he has otherwise agreed, require the costs to be taxed according to the rules for the time being in force for the taxation of costs:

Provided that the client shall not be entitled to recover from any person under any order for the payment of any costs to which the agreement relates more than the amount payable by him to his barrister and solicitor in respect thereof under the agreement; and

(b) shall be deemed to exclude any claim by the barrister and solicitor in respect of the business to which it relates other than—

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- (i) a claim for the agreed costs; or
- (ii) a claim for such costs as are expressly excepted from the agreement.

(5.) A provision in the agreement that the barrister and solicitor shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as a barrister and solicitor, shall be void.

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

Death,
incapability,
or change of
barrister and
solicitor, &c.
Section 21E
inserted by
No. 38 of 1935,
s. 4.

21E.—(1.) If, after some business has been done under an agreement made in pursuance of the provisions of the last preceding section but before the barrister and solicitor has wholly performed it, the barrister and solicitor dies or becomes incapable of acting, then any party to, or the representative of any party to, the agreement, may apply to the Supreme Court and the Supreme Court shall have the same jurisdiction as to enforcing the agreement so far as it has been performed, or setting it aside, as it would have had if the barrister and solicitor had not died or become incapable of acting:

Provided that the Supreme Court may, notwithstanding that it is of opinion that the agreement is in all respects fair and reasonable, order the amount due in respect of the business done thereunder to be ascertained by taxation, and in that case—

- (a) the taxing officer, in ascertaining that 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.

(2.) The provisions of the last preceding sub-section shall apply in the event of the client changing his barrister and solicitor (as, notwithstanding the agreement, he shall be entitled to do) before the conclusion of the business to which the agreement relates in the same manner as they apply when the barrister and solicitor dies or is incapacitated, with this modification, that if an order is made for the taxation of the amount due to the barrister and solicitor in respect of the business done under the agreement, the Supreme Court shall direct the taxing officer to have regard to the circumstances under which the change of barrister and solicitor has taken place, and the taxing officer, unless he is of opinion that there has been no default, negligence, improper delay, or other conduct on the part of the barrister and solicitor affording to the client reasonable ground for changing his barrister and solicitor, shall

not allow to the barrister and solicitor the full amount of the remuneration agreed to be paid to him.

21F. Subject to the provisions of the last preceding section, the costs of a barrister and solicitor in any case where an agreement has been made in pursuance of the provisions of section twenty-one D of this Ordinance shall not be subject to taxation, nor to the subsequent provisions of this Part with respect to the signing and delivery of a barrister and solicitor's bill.

Agreement
excludes
taxation.
Inserted by
No. 38 of 1935,
s. 4.

21G.—(1.) The jurisdiction of the Supreme Court to make orders for the delivery by a barrister and solicitor of a bill of costs and for the delivery up of, or otherwise in relation to, any deeds, documents, or papers in his possession, custody, or power, shall extend to cases in which no business has been done by him in the Supreme Court.

Power of
Supreme Court
to order a
barrister and
solicitor to
deliver his
bill &c.
Section 21G
inserted by
No. 38 of 1935,
s. 4.

(2.) In this and the next three succeeding sections, the expression "barrister and solicitor" includes the executors, administrators, and assignees of the barrister and solicitor.

21H.—(1.) Subject to the provisions of this Part, no action shall be brought to recover any costs due to a barrister and solicitor until one month after a bill of the costs has been delivered in accordance with this section:

Action to recover
barrister and
solicitor's costs.
Section 21H
inserted by
No. 38 of 1935,
s. 4.

Provided that, if there is probable cause for believing that the party chargeable with the costs is about to leave the Territory, or to become insolvent, or to compound with his creditors, or to do any other act which would tend to prevent or delay the barrister and solicitor's obtaining payment, a Judge, a Stipendiary Magistrate, or a District Officer administering a District may, notwithstanding that one month has not expired from the delivery of the bill, authorize the barrister and solicitor to commence an action to recover his costs.

(2.) The bill shall—

- (a) be signed by the barrister and solicitor, or, if the costs are due to a firm, one of the partners of the firm, either in his own name or in the name of the firm, or be enclosed in, or accompanied by, a letter which is so signed and refers to the bill:

Provided that if the bill or letter is signed for or on behalf of the barrister and solicitor or for or on behalf of the firm by a barrister and solicitor employed by the barrister and solicitor or by the firm, the bill or letter shall be deemed to be duly signed for the purposes of this sub-section; and

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- (b) be delivered to the party charged therewith, either personally or by being sent to him by registered post to, or left for him at, his place of business, dwelling house, or last known place of abode.

(3.) Where a bill is proved to have been delivered in accordance with the last preceding sub-section, it shall not be necessary in the first instance for the barrister and solicitor to prove the contents of the bill, and it shall be presumed, until the contrary is shown, to be a bill *bona fide* complying with this Part.

(4.) Nothing in this section shall be deemed to repeal, annul, or limit the operation of any Ordinance wherein special provision is made as to barristers and solicitors' bills of costs.

Taxation of bills on the application of the party chargeable or the barrister and solicitor.
Section 211 inserted by No. 38 of 1935, s. 4.

211.—(1.) On the application, made within one month of the delivery of a barrister and solicitor's bill, of the party chargeable with the bill, the Supreme Court shall, whether the business contained in the bill is contentious business or non-contentious business, without requiring any sum to be paid into court, order that the bill shall be taxed and that no action shall be commenced thereon until the taxation is completed.

(2.) If an application referred to in the last preceding sub-section is not made within the period mentioned in that sub-section, then, on the application either of the barrister and solicitor or of the party chargeable with the bill, the Supreme Court may, upon such terms, if any, as it thinks fit (not being terms as to the costs of the taxation), order—

- (a) that the bill shall be taxed; and
(b) that, until the taxation is completed, no action shall be commenced on the bill, and any action already commenced be stayed:

Provided that—

- (c) if twelve months have expired from the delivery of the bill, or if the bill has been paid, or if a verdict or judgment has been obtained in any action for the recovery of the costs covered thereby, no order shall be made on the application of the party chargeable with the bill except in special circumstances and, if an order is made, it may contain such terms as regards the costs of the taxation as the Supreme Court thinks fit; and
(d) in no event shall any such order be made after the expiration of twelve months from the payment of the bill.

(3.) Every order for the taxation of a bill shall require the

taxing officer to tax not only the bill but also the costs of the taxation and to certify what is due to or by the barrister and solicitor in respect of the bill and in respect of the costs of the taxation.

(4.) If, after due notice of any taxation, either party thereto fails to attend, the officer may proceed with the taxation *ex parte*.

(5.) Unless—

(a) the order for taxation was made on the application of the barrister and solicitor and the party chargeable does not attend the taxation; or

(b) the order for taxation otherwise provides,

the costs of the taxation shall be paid by the barrister and solicitor if one-sixth of the amount of the bill is taxed off, but otherwise by the party chargeable:

Provided that the taxing officer may certify any special circumstances relating to the bill or the taxation of the bill to the Supreme Court, and the Supreme Court may make any such order as it thinks fit respecting the payment of the costs of the taxation.

21J.—(1.) Where a person other than the person who is the party chargeable with the bill for the purposes of the last preceding section, has paid, or is, or was, liable to pay, the bill either to the barrister and solicitor or to the party chargeable with the bill, that person or his executors, administrators, or assignees may apply to the Supreme Court for an order for the taxation of the bill as if he were the party chargeable with the bill, and the Supreme Court may make the same order, if any, as it might have made if the application had been made by that party:

Taxation on application of third parties and beneficiaries under trusts, &c.
Section 21J inserted by No. 38 of 1935, s. 4.

Provided that in cases where the Supreme Court has no power to make an order except in special circumstances the Supreme Court may, in considering whether there are special circumstances sufficient to justify it in making an order, take into account circumstances affecting the applicant, but which do not affect the party chargeable with the bill.

(2.) If a trustee, executor, or administrator has become liable to pay the bill of a barrister and solicitor, the Supreme Court may, upon the application of any person interested in any property out of which the trustee, executor, or administrator has paid, or is entitled to pay, the bill, and upon such terms, if any, as it thinks fit, order the bill to be taxed, and may order such payments, in respect of the amount found due to or by the barrister and solicitor and in respect of the costs of the taxation, to be made to or by the applicant, or to or by the barrister and solicitor, or to the executor, administrator, or trustee, as it thinks fit:

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Provided that in considering any such application, the Supreme Court shall have regard to—

- (a) the provisions of the last preceding section as to applications by the party chargeable with the taxation of a barrister and solicitor's bill so far as they are capable of being applied to an application made under this sub-section; and
- (b) the extent and nature of the interest of the applicant.

(3.) If an applicant under the last preceding sub-section pays any money to the barrister and solicitor, he shall have the same right to be paid that money by the trustee, executor, or administrator chargeable with the bill as the barrister and solicitor had.

(4.) The following provisions shall apply to applications made under this section:—

- (a) Except in special circumstances, no order shall be made for the taxation of a bill which has already been taxed; and
- (b) The Supreme Court may, if it orders taxation of the bill, order the barrister and solicitor to deliver to the applicant a copy of the bill upon payment of the costs of that copy.

General provisions as to taxations.
Section 21K inserted by No. 38 of 1935, s. 4.

21K.—(1.) Every application for an order for the taxation of a barrister and solicitor's bill or for the delivery of such a bill and the delivering up of any deeds, documents, and papers by a barrister and solicitor shall be made in the matter of that barrister and solicitor.

(2.) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Supreme Court, be final as to the amount of the costs covered by the certificate, and the Supreme Court may make such order in relation to the costs covered by the certificate as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.

PART IV.—MISCELLANEOUS.

Removal of name from the roll on account of death.

Amended by No. 15 of 1934, s. 2.

Sex not to be disability.

Amended by No. 15 of 1934, s. 2.

22. The Registrar of the Supreme Court shall from time to time remove from the Roll of Barristers and Solicitors of the Supreme Court the name of any barrister or solicitor who has died.

23. No person shall, by reason of sex, be deemed to be under any disability for admission as a barrister and solicitor of the Supreme Court.

Legal Practitioners Ordinance 1928-1938.

24.—(1.) The Crown Law Officer of the Territory shall have precedence over all barristers and solicitors in any Court in the Territory. Precedence.

(2.) Subject to the right of precedence of the Crown Law Officer, the right of precedence amongst barristers and solicitors shall be regulated by the date of their admission as barristers and solicitors.

25. No barrister and solicitor shall be entitled to any costs, as between party and party or as between solicitor and client— Restriction as to costs.

- (a) for instructions to or attendances upon counsel in any case in which he, or his partner or partners, is or are the counsel referred to; or
- (b) for attendances as solicitor at Court on trial or hearing or in chambers, where he, or his partner or partners, is or are also acting and receiving a fee as counsel for the like attendance and for the same client.

26.—(1.) A barrister and solicitor who—

- (a) wilfully and knowingly acts in any legal proceedings as agent for a person who is not a barrister and solicitor;
- (b) allows his name to be used in connexion with any legal proceedings conducted by a person who is not a barrister and solicitor;
- (c) suffers his name to be used, by a person who is not a barrister and solicitor, in order to enable that person to undertake, for the purposes of transacting any of his business, any matters that must, according to law, be conducted by a barrister and solicitor;
- (d) carries on the profession of a barrister and solicitor in partnership with, or as an employee of, a person who is not a barrister and solicitor; or
- (e) agrees to pay a portion of the profits of his business, as a barrister and solicitor, to a person who is not a barrister and solicitor,

Barristers and solicitors not to allow unqualified persons to act in their name, &c.

shall be guilty of an offence.

Penalty: Two hundred pounds.

(2.) Any barrister and solicitor, who commits any of the acts referred to in the last preceding sub-section, or suffers anything to be done, the doing of which is prohibited by that sub-section, shall, in addition to any other penalty provided for under this Ordinance, on application being made by any person to the Supreme Court, be struck off the Roll of Barristers and Solicitors of the Supreme Court.

Sub-section (2) amended by No. 15 of 1934, s. 2.

LEGAL PRACTITIONERS—

Prohibition
against
unqualified
persons.

27. Except as provided for in any Ordinance, no person shall act as a barrister, as a solicitor, or as a barrister and solicitor, or conduct any proceeding in the name of any other person in any court of civil or criminal jurisdiction in the Territory, unless he has been admitted as a barrister and solicitor, and is entitled to practise as a barrister and solicitor at the time of so acting or of conducting any proceedings referred to, as the case may be.

Penalty: One hundred pounds.

Unqualified
persons not
to adopt
titles, &c.
Section 28
amended by
No. 18 of 1933,
s. 4.

28. Any person who, wilfully and falsely—

- (a) pretends to be a barrister and solicitor;
- (b) assumes or uses any name, title, addition or description implying that he is duly qualified to act as a barrister and solicitor; or
- (c) assumes or uses any name, title, addition or description implying that he is recognized by law to be duly qualified as a barrister and solicitor,

shall be guilty of an offence.

Penalty: One hundred pounds, or imprisonment for six months, or both.

No costs, &c.
recoverable by
unqualified
person.

29. No costs, fee, reward or disbursement on account of, or in relation to, an act or proceeding done or taken by any person, who acts as a barrister, as a solicitor, or as a barrister and solicitor, without being duly qualified so to act, shall be recoverable in any action, suit or matter by any person or persons.

Conveyancing
by unqualified
persons to be
prohibited.

30. Any person, other than—

- (a) a barrister and solicitor;
- (b) a person solely employed to engross any deed, instrument or other proceeding, which deed, instrument or other proceeding is not drawn or prepared by himself and for his own account, respectively; or
- (c) a public officer drawing or preparing official instruments applicable to his respective office and in the course of his duty,

who shall, for, or in expectation of, any fee, gain or reward, directly or indirectly draw or prepare any conveyance or other deed or instrument in writing relating to any real estate or to any proceedings in law or equity, shall be guilty of an offence.

Penalty: One hundred pounds.

Legal Practitioners Ordinance 1928-1938.

31.—(1.) All moneys received for or on behalf of any person by any barrister and solicitor shall be held by him exclusively for that person, to be paid to that person or as he directs, and until so paid the moneys shall be paid into a general or separate trust account in a bank carrying on business in the Territory.

Duty of barrister and solicitor with respect to trust moneys.

Section 31 added by No. 18 of 1933, s. 5.

(2.) Moneys received for or on behalf of any person by any barrister and solicitor shall not be available for payment of the debts of any creditor of that barrister and solicitor other than the person for whom or on whose behalf the moneys were received nor shall those moneys be liable to be attached or taken in execution under the order or process of any Court at the instance of any creditor referred to in this sub-section.

(3.) Any barrister and solicitor who knowingly acts contrary to the provisions of this section shall be guilty of an offence.

Penalty: One hundred pounds or imprisonment for six months, or both.

(4.) Nothing in this section shall be construed to take away or affect any just claim or lien which any barrister and solicitor may have against any moneys received by him for or on behalf of any person.

32. An auditor appointed under the Regulations made under this Ordinance shall not divulge, otherwise than as in such Regulations provided, any information which he has obtained in the course of conducting an audit of the trust accounts of a barrister and solicitor made under the provisions of such Regulations, and shall be subject to the like liability in damages to any client of the barrister and solicitor as the barrister and solicitor would be if he had divulged such information.

Liability of auditor.

Added by No. 18 of 1933, s. 5.

Penalty: One hundred pounds or imprisonment for six months, or both.

33.—(1.) The Administrator in Council may make regulations⁽⁵⁾ not inconsistent with this Ordinance—

Power to make regulations relating to audit of trust accounts.

Section 33 added by No. 18 of 1933, s. 5; amended by No. 21 of 1938, s. 2.

- (a) providing for an annual audit of the trust accounts of every barrister and solicitor and for a report of the result of such audit;
- (b) providing for a special audit of the trust accounts of a barrister and solicitor and for a report of the result of such audit;
- (c) defining the class or classes of persons authorised to make such audits;

(5) See the *Legal Practitioners (Trust Accounts) Regulations*, printed on p. 3066.

LEGAL PRACTITIONERS—

- (d) requiring the production to the auditor of books, papers, and accounts, subject to such conditions as are prescribed;
- (e) prescribing the persons to whom reports of auditors shall be sent for inspection, information, or record;
- (f) prescribing a scale of fees to be paid to auditors making audits under the Regulations made under this section;
- (g) prescribing by whom the auditors' fees shall be paid;
- (h) prescribing such matters as are necessary or convenient to be prescribed to ensure that trust accounts of every barrister and solicitor shall be duly kept and audited; and
- (i) imposing penalties not exceeding One hundred pounds for breaches of the Regulations made under this section.

Sub-sections
(2) & (3)
omitted by
No. 21 of 1938,
s. 2.

* * * * *

Sub-section (4)
added by
No. 38 of 1935,
s. 5.

(4.) Wilful failure by a barrister and solicitor to comply with any regulation made under this section shall be deemed to be misconduct in the practice of his profession.

THE SCHEDULES.

THE FIRST SCHEDULE.—SECTION 14.

SCALE OF FEES.

On application for admission as a barrister and solicitor—

	£ s. d.
(a) of a person not previously admitted as a barrister or solicitor, or both, in the High Court of Australia or in the Supreme Court of any State of the Commonwealth of Australia	31 10 0
(b) of a person previously admitted as a barrister or solicitor, or both, in the High Court of Australia or in the Supreme Court of any State of the Commonwealth of Australia	21 0 0

Legal Practitioners Ordinance 1928-1938.

THE SECOND SCHEDULE.—SECTION 14.

FORM 1.

TERRITORY OF NEW GUINEA.

Legal Practitioners Ordinance 1928.

CERTIFICATE OF COUNCIL OF LEGAL EDUCATION.

Amended by
No. 15 of 1934,
s. 2.

We, _____ hereby certify that
_____ of _____ is
[here set out the qualification for admission possessed, as prescribed in
section 13 of the Ordinance]

and that we believe him to be a fit and proper person to be admitted as a
barrister and solicitor of the Supreme Court of the Territory.

Signed on behalf of the Council this
day of _____
and _____

One thousand nine hundred _____

Chairman.
Member.

FORM 2.

THE TERRITORY (ARMS) OF NEW GUINEA.

CERTIFICATE OF ADMISSION.

Amended by
No. 15 of 1934,
s. 2.

In the Supreme Court
of the
Territory of New Guinea.

On the _____ day of _____
thousand nine hundred and _____

One

[Name in full]

of _____ was admitted as a barrister and
solicitor of the Supreme Court of the Territory of New Guinea.

Given under my Hand and the Seal of the Court, at Rabaul, this
day of _____

One thousand nine hundred and _____

[L.S.]

Judge of Supreme Court.