

DÁIL ÉIREANN

AN BILLE UM RIALÁIL SEIRBHÍSÍ DLÍ, 2011 —AN TUARASCÁIL

LEGAL SERVICES REGULATION BILL 2011 —REPORT

Leasuithe Breise Additional Amendments

30a. In page 19, between lines 22 and 23, to insert the following:

“(10) Notwithstanding any other provision of this Act, the Authority shall not distinguish between barristers who are members of the Law Library and barristers who are not members of the Law Library and barristers who are members of a professional body other than the Bar Council.”.

—Catherine Murphy.

49a. In page 35, to delete lines 25 and 26 and substitute the following:

“**35.** (1) Subject to *subsection (2)* a legal practitioner shall be entitled to hold client moneys of clients and no professional code shall operate to prevent a legal practitioner from holding moneys of clients.”.

—Catherine Murphy.

49b. In page 35, line 28, to delete “solicitors” and substitute “legal practitioners”.

—Catherine Murphy.

49c. In page 37, line 39, to delete “Bar Council” and substitute “Authority”.

—Catherine Murphy.

49d. In page 37, line 40, to delete “Bar Council” and substitute “Authority”.

—Catherine Murphy.

49e. In page 38, line 7, after “Council” to insert “and barristers who are not members of the Law Library”.

—Catherine Murphy.

49f. In page 43, line 9, after “barrister” where it secondly occurs to insert “who has not served at any time on the Bar Council, or on any Bar Council permanent or non-permanent committee”.

—Catherine Murphy.

50a. In page 57, between lines 11 and 12, to insert the following:

“(c) where the person is a barrister, have not served on the Bar Council or on any Bar

Council committee or the Barristers Professional Conduct Tribunal or the Barristers Professional Conduct Appeals Board.”.

—Catherine Murphy.

53a. In page 66, to delete lines 4 to 37, to delete pages 67 and 68 and in page 69, to delete lines 1 to 36 and substitute the following:

“Levy to be paid by Law Society, Bar Council

- 79.** (1) Subject to *section 81*, the following shall, in accordance with this Part, pay to the Authority in each financial year a levy in the amount determined in accordance with this section:
- (a) the Law Society;
 - (b) the Bar Council.
- (2) At the end of each financial year, the Authority shall, with the consent of the Minister for Public Expenditure and Reform, determine for the purposes of this section—
- (a) the operating costs and administrative expenses that are properly incurred in that financial year by the Authority in the performance of its functions under this Act (in this section referred to as “approved expenses of the Authority”), and
 - (b) the operating costs and administrative expenses incurred in that financial year by the Disciplinary Tribunal in the performance of its functions under this Act (in this section referred to as “expenses of the Disciplinary Tribunal”).
- (3) The approved expenses of the Authority include—
- (a) the remuneration (including allowances for expenses) of the members of the Authority,
 - (b) the remuneration (including allowances for expenses and superannuation benefits) of inspectors and members of the staff of the Authority,
 - (c) any superannuation contributions paid in respect of the members of the staff of the Authority out of moneys provided by the Oireachtas,
 - (d) fees due to consultants and advisers appointed under *section 16*,
 - (e) the cost of office premises, and
 - (f) any costs or expenses, not referred to in *paragraphs (a) to (e)*, incurred by the Authority in the performance of its functions under *Part 5*.
- (4) The Authority shall determine—
- (a) the proportion of the approved expenses of the Authority that was incurred by the Authority in the performance of its functions—
 - (i) under *Part 5*, and
 - (ii) under this Act, other than *Part 5*,
- and

- (b) in relation to the approved expenses of the Authority referred to in *paragraph (a) (i)*, the proportion of those expenses that was incurred by the Authority in the consideration and investigation of—
 - (i) complaints in respect of solicitors, and
 - (ii) complaints in respect of barristers.
- (5) The Authority, in consultation with the Disciplinary Tribunal, shall determine, in relation to the expenses of the Disciplinary Tribunal, the proportion of those expenses that was incurred by the Tribunal in the consideration of applications brought before it that concerned—
 - (a) complaints in respect of solicitors, and
 - (b) complaints in respect of barristers.
- (6) The amount of the levy payable in each financial year shall be the sum of—
 - (a) the approved expenses of the Authority, and
 - (b) the expenses of the Disciplinary Tribunal,in respect of the preceding financial year.
- (7) The liability for payment of the amount referred to in *subsection (6)* shall be apportioned as follows:
 - (a) in the case of the proportion of the approved expenses of the Authority referred to in *subsection (4)(a)(i)*—
 - (i) 10 per cent of that amount shall be apportioned to the Bar Council,
 - (ii) 10 per cent of that amount shall be apportioned to the Law Society, and
 - (iii) the remaining 80 per cent of that amount shall be apportioned *pro rata* among the Law Society and the Bar Council according to the proportion, calculated under *subsection (4)(b)*, of those expenses that was incurred by the Authority in the consideration and investigation of—
 - (I) complaints in respect of solicitors, and
 - (II) complaints in respect of barristers;
 - (b) the proportion of approved expenses referred to in *subsection (4)(a)(ii)* shall be apportioned *pro rata* among the Law Society and the Bar Council respectively, according to the number of solicitors on the roll of solicitors, the number of barristers on the roll of practising barristers;
 - (c) in the case of the expenses of the Disciplinary Tribunal—
 - (i) 10 per cent of that amount shall be apportioned to the Bar Council,
 - (ii) 10 per cent of that amount shall be apportioned to the Law Society, and
 - (iii) the remaining 80 per cent of that amount shall be apportioned *pro rata* among the Law Society and the Bar Council according to the proportion,

calculated under *subsection (5)*, of those expenses that was incurred in the consideration of applications brought before the Tribunal that concerned—

- (I) complaints in respect of solicitors, and
- (II) complaints in respect of barristers.

- (8) The Authority shall calculate, in accordance with *subsection (7)*, the proportion of the amount referred to in *subsection (6)* that is payable by—
 - (a) the Law Society, and
 - (b) the Bar Council.
- (9) As soon as practicable after the beginning of each financial year, the Authority shall provide a notice (in this Act referred to as a “levy assessment notice”) to each of the bodies or persons referred to in *subsection (1)*.
- (10) A levy assessment notice shall specify—
 - (a) the approved expenses of the Authority in respect of the preceding financial year,
 - (b) the proportion of the approved expenses referred to in *subparagraphs (i) and (ii) of subsection (4)(a)*,
 - (c) the proportion, calculated under *subsection (4)(b)*, of the expenses referred to in *subsection (4)(a)(i)* that was incurred in the consideration and investigation of—
 - (i) complaints in respect of solicitors, and
 - (ii) complaints in respect of barristers,
 - (d) the expenses of the Disciplinary Tribunal in respect of the preceding financial year,
 - (e) the proportion, calculated under *subsection (5)*, of the expenses of the Disciplinary Tribunal that was incurred in the consideration of applications brought before it concerning—
 - (i) complaints in respect of solicitors, and
 - (ii) complaints in respect of barristers,
 - (f) the amount of levy payable by the professional body or person concerned, calculated in accordance with *subsection (7)* and, where applicable, *subsection (8)(b)*,
 - (g) the date by which the levy becomes payable, and
 - (h) the rate of interest payable if all or part of the amount specified under *paragraph (f)* is not paid by the date referred to in *paragraph (g)*.
- (11) The levy received under *subsection (1)* shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform directs.
- (12) For the purposes of this section—

- (a) reference to the number of barristers whose names are on the roll of practising barristers shall be construed as a reference to the number of barristers whose names are on that roll during the financial year to which the expenses concerned relate, less the number of such barristers to whom *section 81* applies, and
 - (b) a reference to the number of solicitors on the roll of solicitors is a reference to the number of solicitors on that roll in the financial year to which the expenses concerned relate, less the number of such solicitors to whom *section 81* applies.
- (13) In this Part “superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death.”

—Catherine Murphy.

59b. In page 70, to delete lines 3 to 15.

—Catherine Murphy.

65a. In page 71, line 31, to delete “, other than a contentious matter.”.

—Catherine Murphy.

80b. In page 80, to delete line 6.

—Catherine Murphy.

91. In page 118, to delete lines 26 to 39, to delete page 119 and in page 120, to delete lines 1 to 4 and substitute the following:

151. (1) The Authority may, with the consent of the Minister, make regulations in relation to commercial communications by providers of legal services in a regulated profession that relate to—

- (a) the independence, dignity and integrity of the profession, and
- (b) professional secrecy,

in a matter consistent with the specific nature of the profession.

(2) Without prejudice to the generality of *subsection (1)*, regulations made under that subsection or any professional code—

(a) may not make rules in relation to commercial communications by providers of a legal service in a regulated profession unless the rules—

- (i) are non-discriminatory, and
- (ii) are justified by an overriding reason relating to the public interest, and

(iii) are proportionate,

(b) may not impose any total prohibitions on the use of any form of commercial communications by providers of a legal service in a regulated profession,

(c) may provide for the manner in which the Authority is to determine whether any particular commercial communication by a provider of a legal service in a regulated profession is in contravention of any provision of, or regulations under,

this section.

- (3) A provider of legal services in a regulated profession shall not publish or cause to be published commercial communications which do not comply with regulations under *subsection (1)*.
- (4) No professional code shall operate to prevent a group of practising barristers, who share a facility, premises or cost of practice, from advertising themselves as such a group.

—Catherine Murphy.