

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

*House of Representatives, 14 June 1984.*

**Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.**

*Hon. Mr McLay*

## LAW PRACTITIONERS (TRUST ACCOUNTS)

### ANALYSIS

Title	3. Limitation on professional privilege in respect of searches of solicitors' trust accounts
1. Short Title	PART II AMENDMENT OF SUMMARY PROCEEDINGS ACT 1957
PART I AMENDMENT OF EVIDENCE ACT 1908	4. Part to be read with Summary Proceedings Act 1957
2. Part to be read with Evidence Act 1908	5. Procedure where certain documents seized from solicitors' office

### A BILL INTITULED

#### **An Act to amend the law relating to privilege in respect of solicitors' trust accounts and related matters**

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

**1. Short Title**—This Act may be cited as the Law Practitioners (Trust Accounts) Act **(1983) 1984**.

### PART I

#### 10 AMENDMENT OF EVIDENCE ACT 1908

**2. Part to be read with Evidence Act 1908**—This Part of this Act shall be read together with and deemed part of the Evidence Act 1908\* (hereafter in this Part referred to as the principal Act).

\*R.S. Vol. 2, p. 339  
1980, No. 6; 1980, No. 27; 1982, No. 48

**3. Limitation on professional privilege in respect of searches of solicitors' trust accounts**—The Evidence Amendment Act (No. 2) 1980 is hereby amended by inserting, after section 35, the following section:

“35A. (1) This section applies to books of account and accounting records kept by a solicitor in relation to— 5

“(a) Any trust account money, being money that is subject to section 89 of the Law Practitioners Act 1982; or

“(b) Any ~~(solicitors)~~ solicitors' nominee company operated by a solicitor with the consent of the relevant District Law Society as a nominee in respect of securities and documents of title held for clients. 10

“(2) No rule of law conferring any privilege on communications of a professional character between a barrister or solicitor and his client shall prevent, limit, or affect— 15

*Struck Out*

“(a) The issue or execution of a search warrant under section 198 of the Summary Proceedings Act 1957 in respect of any document to which this section applies; or

*New*

“(a) The issue of a search warrant under section 198 of the Summary Proceedings Act 1957, or the execution of any such warrant issued by a District Court Judge, in respect of any document to which this section applies; or 25

“(b) The giving of any evidence relating to the contents of any such document obtained pursuant to such a warrant in any criminal proceedings for any offence described in the warrant.

“(3) Nothing in this section shall apply to any search warrant issued, or to any entry in any book of account or accounting record made, before the commencement of this section.” 30

## PART II

### AMENDMENT OF SUMMARY PROCEEDINGS ACT 1957

**4. Part to be read with Summary Proceedings Act 1957**— 35  
This part of this Act shall be read together with and deemed part of the Summary Proceedings Act 1957\* (hereafter in this Part referred to as the principal Act).

\*R.S. Vol. 9, p. 583

Amendments: 1982, No. 47; 1982, No. 131; 1982, No. 158

**5. Procedure where certain documents seized from solicitors' office**—The principal Act is hereby amended by inserting, after section 198, the following section:

5 “198A. (1) This section applies to books of account and accounting records kept by a solicitor in relation to—

“(a) Any trust account money, being money that is subject to section 89 of the Law Practitioners Act 1982; or

10 “(b) Any ~~(solicitors)~~ solicitors' nominee company operated by a solicitor with the consent of the relevant District Law Society as a nominee in respect of securities and documents of title held for clients.

*Struck Out*

15 “(2) Where, on the execution of any warrant issued under section 198 of this Act, any document to which this section applies is seized and that document contains information relating to any matter other than or in addition to the offence described in the warrant, the person who seized the document shall cause it to be placed forthwith in a sealed packet and delivered to a District Court Judge.

20 “(3) In such a case, the District Court Judge shall make such order as to the circumstances of access to and possession of the information subject to seizure, and the return of the remaining information, as he thinks fit.”

*New*

25 “(2) Where, on the execution of any warrant issued under section 198 of this Act, any document to which this section applies is seized, the following provisions shall apply:

30 “(a) The member of the Police who is executing the warrant shall, before leaving the premises on which the warrant is executed, prepare an inventory of all such documents so seized:

35 “(b) If any solicitor having possession of the documents is present at the time of the execution of the warrant, the member of the Police shall show the inventory of documents to the solicitor, and invite him to check the accuracy of the inventory:

40 “(c) If, in any case to which **paragraph (b)** of this section applies, the solicitor wishes to dispute the seizure of any document listed on the inventory on the ground that the seizure of that document is outside the authority of the search warrant,—

## New

“(i) The solicitor shall mark the inventory in such a manner as to indicate his objection to the seizure of that document; and

“(ii) The member of the Police shall, in the presence of the solicitor, place each document to which such objection is made in an envelope or package, seal the envelope or package, and deliver it as soon as practicable to a District Court Judge, together with a brief statement of the facts of the case: 5 10

“(d) Notwithstanding anything in **paragraph (c)** of this subsection, before removing any document from the premises, the member of the Police shall, on request by the solicitor, give the solicitor a reasonable opportunity to make a copy of the document: 15

“(e) If no solicitor having possession of the documents is present at the time of the execution of the warrant, the member of the Police shall leave the inventory or a copy of it at the place at which the documents are seized, together with the address of the Police station to which any objection to the seizure of the document should be sent under **paragraph (f)** of this subsection: 20

“(f) If, in any case to which **paragraph (e)** of this subsection applies, the solicitor wishes to dispute the seizure of any document listed on the inventory on the ground that the seizure of that document is outside the authority of the search warrant,— 25

“(i) The solicitor shall, within 7 days after the date of the seizure of that document or within such further time as a District Court Judge may allow, notify the officer in charge of the Police station specified under **paragraph (e)** of this subsection, in writing, of his objection; and 30 35

“(ii) That officer in charge shall cause each document to which such objection is made to be delivered as soon as practicable to a District Court Judge, together with a brief statement of the facts of the case: 40

*New*

- 5 “(g) Where any document is placed before a District Court Judge under **paragraph (c) (ii) or paragraph (f) (ii)** of this subsection, the Judge shall, after giving the parties a reasonable opportunity to be heard, determine whether or not the seizure of the document is within the authority of the search warrant:
- 10 “(h) If the Judge determines that the seizure of the document is within the authority of the search warrant, he shall direct that the document be returned to the Police; and if he determines that the seizure of the document was outside the authority of the search warrant, he shall direct that the document be returned to the solicitor, and any copy of the document or record of its contents made by the Police be surrendered to the solicitor or destroyed forthwith:
- 15 “(i) If the Judge determines that the seizure of the document is within the authority of the search warrant but that it contains any information to which the Police should not have access, he may make such order as he considers appropriate, whether for the excision or concealment of that information, or the extraction or copying of the information to which the Police are entitled to have access, or otherwise:
- 20 “(j) Notwithstanding any other enactment or rule of law to the contrary, no copy of any document or record of the contents of any document that is ordered to be surrendered or destroyed under **paragraph (h)** of this subsection, and no evidence of any information to which the Police have been denied access by order of a District Court Judge made under **paragraph (i)** of this subsection, shall be admissible in any proceedings:
- 25 “(k) Notwithstanding anything in **paragraphs (e) to (h)** of this subsection, while any document to which this section applies remains in the possession of the Police, any solicitor who, at the time of the seizure of the document, had possession of the document shall, on request at any reasonable time, be given a reasonable opportunity to make a copy of the document.
- 30
- 35
- 40

*New*

“(3) Except as provided in **paragraph (j) of subsection (2)** of this section, nothing in that subsection shall limit or affect the admissibility of any evidence, or the discretion of any Court to admit or refuse to admit any evidence, in any proceedings.” 5

## PART III

## AMENDMENT OF LAW PRACTITIONERS ACT 1982

**6. Part to be read with Law Practitioners Act 1982**—This Part of this Act shall be read together with and deemed part of the Law Practitioners Act 1982 (hereafter in this Part referred to as the principal Act). 10

**7. Regulations for audit of trust accounts**—Section 91 (1) of the principal Act is hereby amended by inserting, after paragraph (i), the following paragraph:

“(ia) Prescribing the circumstances (if any), and the conditions 15  
subject to which, any trust account may be kept in a name other than that by which the client is usually known; and requiring trust accounts to be kept in all other circumstances in the names by which the clients are usually known:” 20