

Re Compensation Fund established under s 75 of the Legal Profession Act (Cap 161, 2000 Ed)
[2001] SGHC 320

Case Number : OS 601132/2001
Decision Date : 22 October 2001
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Andrew Chan (Allen & Gledhill) for the applicant; N Sreenivasan (Derrick Ravi Partnership), Treasurer of the Law Society of Singapore
Parties : —

Trusts – Trustees – Law Society trustees of Compensation Fund under Legal Profession Act – Law Society borrowing money – Application by Law Society to use Fund to settle loan – Whether loan taken for purposes of Fund – Whether to grant application – s 75(9)(d) Legal Profession Act (Cap 161, 2000 Ed)

Trusts – Trustees – Definition – No express trust – Whether Law Society trustees by implication of law – Whether Law Society can apply under Trustees Act for court sanction of proposed scheme – Whether proposed scheme an 'investment' or 'other transaction' – Whether proposed scheme 'expedient' – Whether conferment of power on court or trustees – Whether statutory prohibition against Law Society proposing scheme – s 75(5) Legal Profession Act (Cap 161, 2000 Ed) , ss 3 & 56(1) Trustees Act (Cap 337, 1999 Ed)

Words and Phrases – 'moneys borrowed'- s 75(9)(d) Legal Profession Act (Cap 161, 2000 Ed) – 'expedient' – s 56(1) Trustees Act (Cap 337, 1999 Ed)

:

The originating summons

In this originating summons, the Law Society of Singapore seeks the following orders:

- 1. A declaration that the Law Society may under section 75(9)(d) of the Legal Profession Act (Cap 161) apply or otherwise credit monies, investments or other property in the Compensation Fund that is administered by the Law Society pursuant to section 75 of the Legal Profession Act in accordance with the scheme set out in the Schedule annexed hereto; and/or*
- 2. An order under section 56 of the Trustee Act (Cap 337) conferring power on the Law Society to apply or otherwise credit monies, investments or property in the Compensation Fund that is administered by the Law Society pursuant to section 75 of the Legal Profession Act in accordance with the scheme set out in the Schedule annexed hereto; and/or*
- 3. Such further or other orders as the Honourable Court deems fit.*

The Schedule

The Schedule referred to in the originating summons sets out the following proposed scheme, which is in essence a realignment of the Law Society's finances to achieve a more economically sensible arrangement:

- 1. To utilise up to \$3.75 million in the Compensation Fund established under section 75 of the Legal Profession Act ("the said monies") in payment of an outstanding loan taken out by the Law Society from Overseas-Chinese Banking Corporation Limited ("OCBC Bank") pursuant to or in connection with an OCBC Bank facility letter dated 27 August 1997 for the purchase of the premises known as the Law Society Building that is located at 39/41 South Bridge Road, Singapore 058673.*
- 2. To withdraw the said monies from investments placed with UOB Asset Management Ltd and monies deposited at the OCBC bank in cash.*
- 3. To treat the withdrawal of the said monies as a loan to the Law Society at the interest rate of average fixed deposit rates of the existing local banks in Singapore at the time of computation of interest plus 0.5% per annum, computed on an annual rest basis and payable in advance ("the Fund Loan");*
- 4. To utilise the annual Building Fund levies of the Law Society that will be collected for the years 2002 to 2007 to repay the Fund Loan and interest by way of:*
 - (a) 5 payments of \$0.7 million yearly, for the years 2002 to 2006; and*
 - (b) a final payment of the balance of the Fund Loan in year 2007.*
- 5. To maintain an open mortgage on the Law Society Building to secure an overdraft facility up to the amount of \$3.8 million. The overdraft facility is to be utilised solely, for so long as the Fund Loan remains outstanding:*
 - (a) to repay any shortfall in payments set out in paragraph 4 of this Schedule; and/or*
 - (b) in the event of any shortfall in the Compensation Fund, for the payment of such amounts as may be needed to meet any claims made against the Compensation Fund provided that such amounts drawn on the overdraft facility shall not exceed the amount of the Fund Loan outstanding and shall be credited towards repayment of the Fund Loan.*

The Compensation Fund

The Treasurer of the Law Society, N Sreenivasan, who is also an advocate and solicitor, explains the background to the application and its rationale in his affidavit. He begins with the Compensation Fund established pursuant to s 75 of the Legal Profession Act (Cap 161, 2000 Ed) (`LPA`) which allows any person who has sustained loss as a result of dishonesty on the part of advocates and solicitors or their employees to receive payment out of the Compensation Fund for the purpose of relieving or

mitigating that loss. As the meaning of various portions of s 75 of the LPA will be examined, it is helpful to set out the section in full below:

Compensation Fund

(1) The Society shall maintain and administer in accordance with this section a fund to be known as the Compensation Fund (referred to in this section as the Fund).

(2) Every solicitor shall, in each year prior to his application for a practising certificate, pay to the Society a contribution of such sum not exceeding \$200 as the Council may, from time to time, determine and the Society shall pay that contribution to the Fund.

(3) A solicitor who applies for a practising certificate between 1st October in any year and 31st March in the next year shall be required to pay only half the contribution so determined if the practising certificate for which he proposes to make an application will remain in force for less than 6 months.

(4) The Society may invest any moneys which form part of the Fund and are not immediately required for any other purposes.

(5) For the purposes of this section, the Society shall have all the powers vested in trustees under the law for the time being in force in Singapore.

(6) The Society may borrow for the purposes of the Fund from any lender and may charge any investments of the Fund by way of security for such a loan.

(7) The Society may insure with any person authorised by law to carry on insurance business within Singapore for such purpose and on such terms as the Society may consider expedient in relation to the Fund.

(8) There shall be carried to the credit of the Fund -

(a) all annual contributions paid to the Society in pursuance of subsection (2);

(b) all interest, dividends and other income or accretions of capital arising from the investments of the Fund;

(c) the proceeds of any realisation of any investments of the Fund;

(d) all moneys borrowed for the purposes of the Fund;

(e) all sums received by the Society under any insurance effected by the Society under subsection (7); and

(f) any other moneys which may belong or accrue to the Fund or be received by the Council in respect thereof.

(9) All moneys from time to time forming part of the Fund and all investments of the Fund shall be applicable -

(a) for payment of any costs, charges and expenses of establishing, maintaining, administering and applying the Fund;

(b) for payment of any costs, charges and expenses of the Council in ascertaining whether the rules made under section 72 have been complied with, pursuant to the powers given by those rules;

(c) for payment of any premiums on insurances effected by the Society under subsection (7);

(d) for repayment of any moneys borrowed by the Society and for payment of interest on any moneys so borrowed;

(e) for payment of any grants which the Society may make under subsection (11); and

(f) for payment of any other sums properly payable out of the Fund by virtue of this section.

(10) If in any year there has been neither an application for a grant from the Fund nor a grant made from the Fund, the Council may, in its discretion, transfer from the Fund all interest, dividends and other accretions of capital arising from the Fund or any part thereof to a fund of the Society established for the purposes of purchasing or maintaining a library for the use of the members of the Society.

(11) Where it is proved to the satisfaction of the Council that any person has sustained loss in consequence of dishonesty on the part of any solicitor or any clerk or servant of a solicitor in connection with that solicitor's practice in Singapore as a solicitor or in connection with any trust in Singapore of which that solicitor is a trustee or any officer or employee of a law corporation in connection with legal services performed in Singapore by the law corporation, then subject to this section, the Society may, if the Council thinks fit, make a grant to that person out of the Fund for the purpose of relieving or mitigating that loss.

(12) A grant may be made under this section whether or not the solicitor had in force a practising certificate when the act of dishonesty was committed and notwithstanding that subsequent to the commission of that act the solicitor has died or had his name removed from or struck off the roll or has ceased to practise or been suspended from practice or the law corporation had wound up, as the case may be.

(13) On the making by the Society of any grant under this section to any person in respect of any loss -

(a) the Society shall to the amount of the grant be subrogated to any rights and remedies in respect of the loss of the person to whom the grant is made or of the solicitor, clerk or servant;

(b) the person to whom the grant is made shall have no right under bankruptcy

or other legal proceedings or otherwise to receive any sum out of the assets of the solicitor, clerk or servant in respect of the loss until the Society has been reimbursed the full amount of its grant.

(14) References to subsection (13) (a) and (b) to the person to whom the grant is made or to the solicitor, clerk or servant shall include, in the event of his death, insolvency or other disability, references to his personal representative or any other person having authority to administer the estate.

(15) The Council may make rules with respect to the procedure to be followed in giving effect to this section and with respect to any matters incidental, ancillary or supplemental to these provisions or concerning the administration or protection of the Fund.

(16) No grant shall be made under this section in respect of any loss unless notice of the loss is received by the Society in such manner and within such time after the loss first came to the knowledge of the person sustaining the loss as may be prescribed by the rules.

Although the Law Society has the authority to collect up to \$200 from each member as an annual contribution to the Compensation Fund, the current levy is only \$100. As at 15 May 2001, 3,237 advocates and solicitors have taken out practising certificates for the practice year 1 April 2001 to 31 March 2002. The total annual contribution to the Compensation Fund is therefore expected to be about \$300,000.

The financial year of the Compensation Fund is from 1 August to 31 July of the following year. Over the last five years from 1996 to 2000, there was a net surplus in the Compensation Fund for each year and, as at 30 June 2001, the amount in the Compensation Fund stands at \$5.7m. This comprises \$1.75m in fixed deposits with OCBC Bank, \$0.35m in cash deposit in the same bank and \$3.6m in cash or near cash assets placed in the care of UOB Asset Management Ltd. The average annualised rate of return between September 1995 to June 2001 is 0.59%.

The Building Fund

At the annual general meeting of the Law Society in 1993, its members gave the Council the mandate to locate and, subject to their approval, to purchase suitable premises. In 1995, an unanimous resolution was passed to approve the imposition of an annual building levy of \$300 on each member. In 1996, the Building Fund was established with the collections from such levy.

In September 1997, the Law Society purchased its present building at 39/41 South Bridge Road Singapore 058673 for \$7m, of which \$5.6m was borrowed from the OCBC Bank. This bank loan is to be repaid in full by 2008. The current interest rate for the bank loan is 5.75%^a, calculated on the basis of prime lending rate plus 0.25%. As at 30 June 2001, approximately \$4.25m remained owing to the bank.

Between 1996 and 2000, the annual contributions to the Building Fund ranged from \$0.9m to \$1.08m.

The scheme

The bank loan is to be repaid in full with \$3.75m from the Compensation Fund and \$0.5m from the Building Fund. This amount of \$3.75m will be withdrawn from the investments placed with UOB Asset Management Ltd and from the cash deposit in OCBC Bank, leaving a balance of \$1.95m in the Compensation Fund. No penalty or break-up fees will be payable to UOB Asset Management Ltd or to OCBC (where the early repayment of the bank loan is concerned).

The money from the Compensation Fund will be regarded as a loan to the Law Society at an interest rate which is the average of the fixed deposit rates of the existing local banks here at the time of computation of interest plus 0.5%. This will be computed on an annual rest basis and payable in advance.

The Law Society will then use the annual contributions to the Building Fund for the years 2002 to 2007 to repay the loan from the Compensation Fund. The first repayment will be made on 1 May 2002. An open mortgage, as set out in para 5 of the proposed scheme, will be maintained.

The Treasurer goes on to explain that the proposed scheme is to address the forecasted financial constraints of the Law Society. The Law Society needs more income to finance existing projects and to meet rising costs but the decreasing number of lawyers applying for practising certificates has resulted in correspondingly lower income for the Society. The interest payable on the bank loan is a major item of expenditure. It does not make sense to pay interest at 5.75% while the money in the Compensation Fund generates much lower returns.

The Treasurer was therefore asked by the Council to draw up a proposal to optimise the use of funds as a cost-saving measure. He did so early this year. On 16 March 2001, the Council deliberated on the proposal and decided that an application be made for the court's sanction for the scheme. He concludes his affidavit as follows:

23. The Council of the Law Society favoured putting in place the Proposal for the following reasons:

(a) The Fund will earn higher interest from the Fund Loan as compared to fixed deposit rates; since the Fund Loan will be repaid at average fixed deposit rates of the existing local banks in Singapore at the time of computation of interest plus 0.5% per annum. Based on our historical data (see paragraph 11 above), the interest payable on the Fund Loan would likely be significantly higher than the historical average yield from investment made by the fund managers.

(b) The Law Society will save on the interest chargeable to the outstanding OCBC loan totaling to a sum of slightly more than \$600,000. Such savings can be utilised to satisfy the financial needs of the Law Society so that the Law Society can better achieve the purposes for which it is established.

(c) The operation of the Fund will unlikely be affected by the Proposal for the following reasons:

(i) The historical data in the last 5 years (exhibit "NS-1") shows that no claim was made against the Fund in the years of 1997, 1999 and 2000. For the years of 1996 and 1998, claims made against the Fund were \$132,620 and \$67,500 respectively. For the year of 2001, possible claims amounting to a sum of about \$600,000 may be made against the Fund as a result of the dishonesty on the

part of Mr Krishna Bhaksavatsalu. During the first year of the Fund Loan, the Fund will have a cash balance of not less than \$1.95 million. Based on the above historical data, the \$1.95 million cash balance should be sufficient to meet possible claims.

(ii) Beginning in April 2002, the amount of the cash balance should grow, as the Fund Loan will be repaid from the annual Building Fund levies yearly. Further, the annual contributions to the Fund collected from lawyers will also be deposited into the Fund. The available cash would increase at the rate of about \$1 million per year (before payments out).

(iii) If the cash balance of the Fund cannot satisfy any claims made against the Fund, the overdraft facility that is secured by the open mortgage of the Law Society Building will be drawn up to the amount of the outstanding Fund Loan to pay all proper claims. In addition, the overdraft facility will also be drawn to satisfy any defaults on repayment to the Fund Loan, and so long as the Fund Loan has not been fully repaid, the overdraft facility will not be utilised for purposes other than those purposes set out in this sub-paragraph 23(c)(iii).

(d) The Fund Loan will be made out of the Fund at no cost because no expenses will be incurred in respect of withdrawing the investment placed with UOB Asset Management Ltd.

24. I verily believe that the proposed investment scheme for the Fund as set out in the Proposal is both a sound and profitable investment and would help the Law Society in its mission of serving the community and serving its members. Accordingly, I pray for an appropriate order to be made.

On 11 September 2001, the Law Society sent a copy of the originating summons to the Attorney General and to the Ministry of Law to seek their comments.

On 13 September 2001, the Solicitor General replied as follows:

1. The Originating Summons (`OS`) application to the Court refers to Section 75(9)(d) of the Legal Profession Act (Cap. 161, 2000 Ed). The section provides that:

"All moneys from time to time forming part of the (Compensation) Fund ... shall be applicable for repayment of any moneys borrowed by the (Law) Society and for payment of interest on any moneys so borrowed."

2. In my view, this section has to be read in conjunction with Sections 75(6) and 75(8)(d), both of which refer to moneys borrowed for the purposes of the Compensation Fund. It would be difficult to maintain that the loan taken by the Law Society when it first purchased its premises and mortgaged the premises to OCBC Bank was for the purposes of the Compensation Fund. I believe that the premises were purchased exclusively for the use of the Law Society as its office. Hence, Section 75(9)(d) is inapplicable. The Fund cannot be used to repay moneys borrowed by the Law Society, which had not been originally

borrowed for the purposes of the Fund.

3. The next question is whether Section 75(4) is applicable. Under this section, the Law Society may invest any moneys which form part of the Fund and are not immediately required for any other purposes. The issue then is whether the loan scheme as set out in the Schedule to the OS application amounts to an investment.

4. By proceeding with the application under Section 56 of the Trustees Act (Cap 337, 1999 Ed), I assume that the Law Society is regarding itself as the trustee managing and administering the Fund, and that the Fund is constituted a trust within the ambit of the Trustees Act. I note that under Section 75(5) of the Legal Profession Act, the Law Society has been given all the powers vested in trustees under the law in force in Singapore and that includes the Trustees Act. Section 6(2) of the Trustees Act also applies to limit the power of Law Society to invest in accordance with directions of the Minister (in particular with regards to investments listed in Parts II and III of the First Schedule to the Trustees Act). By implication of law, the Law Society is the trustee of the Fund and the Trustees Act will apply.

5. On this premise, I do not think that a loan to the Law Society (albeit with an interest rate 0.5% higher than the average fixed deposit rates of the existing local banks) can be regarded as an investment falling within Section 4 and the First Schedule of the Trustees Act (Cap. 337, 1999 Ed). There are very strict guidelines as to what investments can be made by the trustees. Unless the Fund itself buys the Law Society premises at South Bridge Road and the Minister`s approval has been obtained, then it will be an investment in a building falling within paragraph 4 of Part II of the First Schedule. Income will be from the rentals and the Law Society may be one of its long term tenants. However, in choosing investments, trustees must consider the need for diversification of the investments of the trust having regard to the risk and the circumstances of the trust, which includes the provision in this case for ready liquidity to pay compensation as and when the need arises. Of course that liquidity can be provided by a standing Overdraft Facility used only for the purposes of the Fund and secured on the investment property purchased by the Fund. I do not mean however to suggest this as an alternative but merely as an example of an investment which may be within the purview of the Law Society as trustees of the Fund.

6. The fact that the application is taken up under section 56 of the Trustees Act for the High Court to approve the loan proposal suggests to me that this proposed transaction is one which the Law Society itself clearly recognises to be outside its existing powers as trustees. The sanction of the Court is thus required for this rather unusual transaction, although from the commercial view point of the Law Society, it does make sense to reduce substantially the costs of borrowing by the Law Society and at the same time, let the Fund earn a minimally better return of only 0.5% p.a. more. If the Law Society is a trustee, I wonder if the Law Society can take the majority of the savings in interest payments for itself, and not let the Fund have the full benefit of the interest savings. You may have to consider this as the application appears to be taken by a trustee for the statutory compensation fund, which focuses on the

benefits to itself than on the benefits to the Fund.

7. To further safeguard the Fund, you may wish to consider the following additional conditions to be imposed by the Court :-

(a) That the Council of the Law Society undertakes to the Court that it will not, without the consent of the Court, further mortgage or encumber the Law Society premises in any way should the Court approve the withdrawal of monies from the Fund to discharge any part of the outstanding loan taken by the Law Society from OCBC for the purchase of its premises;

(b) That the Council of the Law Society undertakes to the Court that it will not, without the consent of the Court, use the OCBC overdraft facilities presently secured on the premises for any other purpose except to repay in full or in part the outstandings of the loan disbursed to the Law Society from the Fund.

(c) That all costs involved in effecting the loan transaction shall be borne by the Law Society.

8. I am in no position however to comment on how the Court should or should not exercise its discretionary powers in relation to your application. Nevertheless, I hope you will find my comments above to be of some use.

On 3 October 2001, the Ministry of Law wrote to the Law Society to say that they had no objections to the proposal.

I am informed by the Treasurer of the Law Society that the Attorney General's Chambers and the Ministry of Law have indicated that they will not be participating further in these proceedings apart from expressing their views stated above.

The decision of the court

The Law Society submits that s 75(9)(d) of the LPA empowers it to apply moneys and investments of the Compensation Fund towards borrowings of the Society. It relies on the legislative history of the present s 75 of the LPA to support this contention.

Section 75 of the LPA has its origin in s 41D of the repealed Advocates and Solicitors Ordinance (`ASO`). Section 41D of the ASO was an amendment introduced in 1962 to make provisions for the setting up of the Compensation Fund. A comparative table annexed to the Bill introduced in 1966 (Bill No 57 of 1966) to enact the LPA, which would replace the ASO, shows that s 41D of the ASO corresponded with s 32 and the Second Schedule to the English Solicitors Act 1957. The English provisions set up a compensation fund in England. The Law Society says it is entitled to look at any explanatory statement relating to a Bill when interpreting the law by virtue of s 9A(3)(b) of the Interpretation Act (Cap 1, 1999 Ed). Section 41D of the ASO became s 78 of the LPA 1966 which in turn became the current s 75 of the LPA.

The present s 75(9)(d) of the LPA corresponds with para 7(c) of the Second Schedule to the English Solicitors Act which reads:

7. All moneys from time to time forming part of the fund and all investments of the fund shall be applicable -

...

*(c) for repayment of any moneys borrowed by the Society **for the purpose of the fund** and for payment of interest on any moneys so borrowed; ...*
[Emphasis is added.]

While our s 75 follows closely the words in the English provisions, significantly, the words `for the purpose of the fund` in the English provisions were omitted from our s 75(9)(d). This suggests that the borrowings by the Law Society contemplated in this provision are not restricted to borrowings for the purpose of the Compensation Fund. Accordingly, the Law Society argues, it may apply moneys and investments of the Compensation Fund for the repayment of any moneys borrowed and the interest payable thereon, whatever the purpose of the borrowings might be.

I am not able to agree with this interpretation. It is clear that s 75 of the LPA (and its predecessor) is meant to govern the Compensation Fund only and is not a general provision on the financial powers of the Law Society. Paragraphs (a), (c), (e) and (f) of s 75(9) all have specific reference to the Compensation Fund. Even para (b), which, when read cursorily, could be said to have extended the use of the Compensation Fund for purposes unconnected with it, is in fact related to the Council's powers under s 75(11) to satisfy itself that there has been dishonesty which has caused loss. Section 72 [referred to in s 75(9)(b)] enables the Council to make rules on the keeping of accounts by solicitors and also rules empowering the Council to take such action as may be necessary to enable it to ascertain whether or not the rules are being complied with. Read in the context in which s 75(9)(d) appears, it is therefore plain that the `moneys borrowed` must be those envisaged in s 75(6) and (8) (d) and must be for the purposes of the Compensation Fund. It cannot be that the Compensation Fund may be depleted by borrowings for other purposes.

It is accepted that the loan for the purchase of the Law Society's building is not one for the purposes of the Compensation Fund and therefore cannot be repaid out of the Compensation Fund.

The Law Society's alternative arguments centre on the Trustees Act (Cap 337, 1999 Ed) (`TA`) which features here because of s 75(4) and (5) of the LPA. Sections 4 and 6 of the TA provide:

Powers of investment of trustees

4(1) Subject to the provisions of this Act, a trustee may invest any funds in his hands, whether at the time in a state of investment or not, in any manner specified in Part I, II or III of the First Schedule and may also from time to time vary such investments.

(2) Part IV of the First Schedule shall have effect for the interpretation and for restricting the operation of Parts I to III of that Schedule.

(3) Every power conferred by this section shall be exercised according to the discretion of the trustee, but subject to any consent or direction, with respect to the investment of the trust funds, required by the instrument, if any,

creating the trust or by any written law.

*(4) The Minister may, from time to time by order published in the **Gazette**, amend the First Schedule.*

Statutory powers of investment

6(1) In the case of trustees constituted under any written law, other than the Companies Act (Cap. 50), the power to invest in any manner mentioned in Parts II and III of the First Schedule shall apply only in so far as the Minister may direct.

(2) Where any body of persons, not being trustees, have under any written law power (however expressed) to make the like investments as trustees are for the time being authorised by law to make, the power to invest in any manner mentioned in Parts II and III of the First Schedule shall not apply to the body except in so far and as to such extent as the Minister may direct.

(3) Any direction under this section may be given generally or in a particular case, and unconditionally or subject to conditions.

The Law Society accepts that, if it comes within s 6(2) of the TA, it will not be able to put the proposed scheme into effect as the scheme will not be within the purview of Pts II and III of the First Schedule. Even if it is a trustee, Pt I of the First Schedule will not permit such an investment.

Section 75(1) of the LPA (and its predecessor) has again departed from the wording in the equivalent provision in the English Solicitors Act by omitting the words `shall be held by the Society on trust` in reference to the Compensation Fund. Despite the absence of an express trust, I am of the view that there is an implied trust as evidenced by s 75(5) of the LPA. The Law Society is therefore within the definition of a `trustee` in s 3 of the TA.

Being a trustee by implication of law, the Law Society is entitled to make an application to sanction the proposed scheme under s 56 of the TA. Section 56 of the TA (which comes under Pt V of the Act relating to powers of the court) reads:

Power of court to authorise dealings with trust property

(1) Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may -

(a) by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the court may think fit; and

(b) direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

(2) The court may, from time to time, rescind or vary any order made under this section, or may make any new or further order.

(3) An application to the court under this section may be made by the trustees, or by any of them or by any person beneficially interested under the trust.

The proposed scheme falls within the terms `investment` or `other transaction` in this section.

The Court of Appeal in **Leo Teng Choy v Leo Teng Kit** [2001] 1 SLR 256 has held (at [para]22) that s 56 of the TA does not confer powers on the trustees. Instead it confers powers on the court to make the orders sought and is therefore not subject to s 2(2) of the TA which reads:

The powers conferred by this Act on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.

Section 3 of the TA defines `instrument` as including a written law. The Court of Appeal also held (at [para]24) that s 56(1) of the TA could not be invoked to sanction or authorise an act or transaction expressly prohibited in the trust instrument.

Is the proposed scheme `expedient`? In **Riddle v Riddle** [1952] 85 CLR 202, Williams J in the High Court of Australia, in dealing with s 81 of the Trustee Act 1925-1942 (NSW), said (at pp 221 and 222):

The ordinary natural grammatical meaning of "expedient" is "advantageous", "desirable", "suitable to the circumstances of the case". If the Court forms the opinion that it is desirable to extend the investment powers of trustees it can extend them.

...

The one and only test is the expediency of the act or thing which the Court is asked to authorize the trustees to do or abstain from doing. The Court has only to be of opinion that the trust property as a whole will in fact benefit from the making of the order.

The LPA does not expressly prohibit the Law Society from doing what it proposes to do through the scheme. For the reasons given by the Treasurer in his affidavit, it is clear that the Compensation Fund will benefit significantly without having to undertake additional risk or incur extra costs. Its operation and integrity will not be compromised. In fact, the current year`s contributions to the Compensation Fund need not even be utilised for the scheme.

It makes no difference that the Law Society will also benefit from the savings in interest payments. This additional benefit is not at the expense of the Compensation Fund. It is a collateral benefit resulting from a sensible readjustment of the Law Society`s financial arrangements and commitments. The Law Society is not making a profit for itself; it is merely seeking to spend less on interest payments while at the same time ensuring a higher and more assured yield for the Compensation Fund. Clearly, therefore, the scheme is expedient for the Compensation Fund and should be sanctioned by the court.

The Law Society is willing to include the additional conditions suggested by the Solicitor General in paras 7(a) and (c) of his letter of 13 September 2001 (reproduced in full earlier). The condition in para 7(b) of that letter is already included in the proposed scheme.

Accordingly, I make the following orders:

- (1) a declaration that s 75(9)(d) of the LPA does not permit the Law Society to put the proposed scheme into effect;
- (2) an order sanctioning the proposed scheme pursuant to s 56 of the TA;
- (3) the conditions set out in paras 7(a) and (c) of the Solicitor General`s letter dated 13 September 2001 are to be incorporated in the proposed scheme; and
- (4) the Law Society has liberty to apply for consequential orders.

Outcome:

Application allowed.