

STATEMENT BY THE JAMAICAN BAR ASSOCIATION

Date:- 15.10.2014

From:- Donovan C. Walker – President

Re:- Claim No. HCV 2014 04772 – Jamaican Bar Association vs. The Attorney General of Jamaica and The General Legal Council – Re; The application of the Proceeds of Crime Act to the Legal Profession.

Pursuant to a resolution passed at an Extraordinary General Meeting held on June 28, 2014, the Jamaican Bar Association (“Jambar”) has filed a suit by way of a Constitutional challenge against the amended provisions of the Proceeds of Crime Act, insofar as it applies to Attorneys-at-Law by virtue of The Proceeds of Crime (Designated Non-Financial Institution) (Attorneys-at-law) Order, 2013 (the “Order”). The Respondents are The Attorney General and the General Legal Council. An application for a stay/injunction with respect to the Order will be made at the earliest date and the first hearing is scheduled for 24th October, 2014.

Copies of our pleadings will be posted on our Jambar website at www.jambar.org. **We shall provide updates to the profession by e-mail as well as on our website.**

The concerns that have been highlighted by Jambar in these proceedings include the “Independence of the Bar”, confidentiality, Legal Professional Privilege, the Independence of the Judiciary, ‘Fundamental Justice’, Attorneys’ loyalty to their clients and client “trust and confidence”. The Independence of the Bar is one of the foundations upon which our society is built. Any threat to its existence or effectiveness can lead to the unravelling of any system of justice, anarchy, tyranny and a breach of our democracy. The Order by the Minister of National Security dated November 15, 2013 conflicts with our independence and violates the principle of Fundamental Justice to an unacceptable degree. The independence of the Bar is but an extension of the Independence of the judiciary because without an independent Bar, there is no independent judiciary that can function effectively.

The entitlement to do routine, special, random, and follow up examinations of Attorneys files under the regime facilitates state access to information which is *prima facie* the subject of Attorney client confidentiality. STRs are required in Jamaica and is the centrepiece of our regime in addition to the requirement to secure and store information about our clients. Jamaican lawyers are required to abide by the FID consent regime, annual filing and the Routine, Random, Special and Follow-Up Examinations from the Competent authority (GLC Audits) on FIDs behalf, due to the new requirements imposed by the Minister.

Attorneys-at-Law should not be conscripted to secure and store confidential information, names, addresses, relationships, and the purpose and details of their clients’ financial transactions, to be made easily accessible to the Examiners (auditors) and the General Legal Council or the FID.

The burden placed on Attorneys-at-Law, the destruction and damage to Legal Professional Privilege, Client confidentiality, the Independence of the Bar and matters of fundamental justice are not proportionate to the mischief sought to be addressed. That is, the Order will damage the

rights of the citizens of Jamaica to an independent legal profession and impact adversely on fundamental principles of justice.

Jambar will continue to act in vigorous defence of our citizens and the legal profession to ensure that the legal profession is able to maintain its independence.

In the interim, it is important to keep in mind that although Jambar is challenging the Order, it presently remains in force and therefore applicable to the legal profession.

We must commend the hard work of the Jambar POCA team who all have worked tirelessly on researching this matter, meeting on same, drafting, filing and serving the relevant pleadings. The team presently comprises:-

1. The Hon. RNA Henriques, O.J., Q.C.,
2. Mr. Richard Mahfood Q.C.,
3. Mr. Ransford Braham, Q.C.,
4. Mr. Ian Wilkinson, Q.C.,
5. Mrs. Georgia Gibson-Henlin,
6. Mr. Donovan Jackson,
7. Mr. Maurice Manning,
8. Mrs. Shawn Wilkinson,
9. Mrs. Janet Morrison,
10. Mrs. Sherry Ann McGregor, and
11. Mr. Donovan Walker

Finally, please feel free to let us have your feedback, comments and ideas by e-mail to jba@flowja.com or to dcwalker@hmf.com.jm.

Yours faithfully,
DONOVAN C. WALKER
PRESIDENT,
JAMAICAN BAR ASSOCIATION