

Compensation Fund

General Legal Council

Jamaica



JAMBAR/GLC CLE Weekend Seminar 2012

Prepared By: John Bassie



OVERVIEW

primarily for clients who have suffered loss as a result of their Attorney-at-Law's “**acts or omissions**” in the practice of law.

OVERVIEW cont'd

**FINANCIAL RELIEF TO CLIENTS
WHO HAVE SUFFERED LOSS DUE TO
ATTORNEY-AT-LAW “acts or
omissions”**

***CURRENT
RELIEF UNDER THE
LEGAL
PROFESSION ACT***

Legal Profession Act & Compensation

- Section 12 (1)
- *“Any person alleging himself aggrieved by an act of professional misconduct (including any default) committed by an attorney may apply to the Committee to require the attorney to answer allegations contained in an affidavit made by such person, and the Registrar or any member of the Council may make a like application to the Committee in respect of allegations concerning any of the following acts committed by an attorney”*

Legal Profession Act & Compensation cont'd

- Section 12(4)(f)
- *“On the hearing of any such application the Committee may, as it thinks just, make one or more of the following orders as to-*
 - *the payment by the attorney of such sum by way of restitution as it may consider reasonable”*

Legal Profession Act

- Discipline addressed under Part IV of the LPA
- Aggrieved persons may apply to the Disciplinary Committee
- Attorney may be required to attend a hearing
- On hearing the matter, the Committee may make one of the following orders:
 - Striking the Attorney off the Roll
 - Suspension from practice
 - Imposition of a fine



Legal Profession Act cont'd

- Reprimand
- Costs
- Payment of sum by way of restitution

Legal Profession Act cont'd

- Section 12(5) LPA
- Where fine is imposed as a result of misconduct or any other reason determined by the Committee
 - Funds may be paid fully or partly to the complainant
 - Funds may be paid into the Funds of the Council



AMENDMENT TO THE LEGAL PROFESSION ACT

Amendment to the Legal Profession Act

- Bill containing amendments to the **LEGAL PROFESSIONAL ACT** passed through both Houses and is awaiting the Governor General's Assent.
- Contains specific provisions for the establishment of a Compensation Fund.



HOW WILL THE COMPENSATION FUND WORK?

Compensation Fund

- Contributions from practicing Attorneys
- Possible sliding scale based on the number of years standing at the bar
- To be mandatory for all Attorneys
- To be explored – possible contributions by Non-Attorneys-at-Law

Use of Funds

- **Funds to be held to compensate aggrieved persons that have suffered as a result of the “acts or omissions of an Attorney-at-Law**



ANALYSIS OF COMPENSATION FUNDS IN OTHER JURISDICTIONS



ANALYSIS OF FUNDS cont'd

- **Maintenance**
- **Size and Number of members**
- **Limitation Periods**
- **Claims not considered**
- **Claims covered and**
- **Maximum recovery**

ANALYSIS OF FUNDS cont'd

MAINTENANCE OF FUND

MALAYSIA

Every practicing lawyer registered with the Bar Council must pay an annual fee of RM100 to the Fund. The Council may invest funds surplus in worthwhile projects. Council may borrow money with annual interest set by Malaysian Association of Bankers. Members may obtain loans from funds.

ANALYSIS OF FUNDS cont'd

MAINTENANCE OF FUND

SINGAPORE

Every lawyer in private practice contributes \$100 per year to the Fund. Sing\$1= US\$1.26

ANALYSIS OF FUNDS cont'd

MAINTENANCE OF FUND

TRINIDAD AND TOBAGO

Every practitioner must pay an annual contribution to the Fund.
(s.56(1) LPA

Payments are as follows:

- Member overseas \$100
- 0-4 years \$200
- 5-9 years \$400
- Over 10 years \$600
- Senior Council \$1,200
- Sec 15A \$1,200

Member admitted to practice pursuant to a Ministerial order under
s.15A LPA 1986; 1 TT\$= US\$6.40

ANALYSIS OF FUNDS cont'd

MAINTENANCE OF FUND

CANADA

- Every lawyer must pay an annual fee which is allocated to three different funds. These are
 - General fund
 - County Law Library fund
 - Compensation Fund
- There are also different categories of lawyers.

ANALYSIS OF FUNDS cont'd

MAINTENANCE OF FUND

CANADA cont'd

- Category 1- sole practitioners
- Category 2- employed in education
- Category 3- retired or in full time school

ANALYSIS OF FUNDS cont'd

MAINTENANCE OF FUND

CANADA cont'd

	Categ. 1	Categ.2	Categ. 3
	100% fee	50% fee	25% f
• Annual fee	\$1,826.00	\$913.00	\$456.50
• HST	<u>\$237.38</u>	<u>\$118.69</u>	<u>\$59.35</u>
• Total	\$2,063.38	\$1,031.69	\$515.85

ANALYSIS OF FUNDS cont'd

SIZE OF FUND AND NUMBER OF MEMBERS

Malaysia:

Approximately 12,800 members

Size of fund currently stands in excess of RM12.8mn
(1RM=US\$3.16)

Singapore:

3,800 members

(size of fund unknown)



ANALYSIS OF FUNDS cont'd

SIZE OF FUND AND NUMBER OF MEMBERS cont'd

Trinidad and Tobago:

Approximately 2000 members
(size of fund unknown)

ANALYSIS OF FUNDS cont'd

LIMITATION PERIOD

- **Malaysia**
- s. 80 (8) LPA 1978 – lawyer must be struck off the Roll before a claim can be made against him.
- Claim must be made within 21 days from notice of the list of disbarred lawyers is published in the newspaper by the Council.

ANALYSIS OF FUNDS cont'd

LIMITATION PERIOD

Singapore

Application must be made within 6 months after knowledge of your loss. The Council may allow application outside the time limit if delay is reasonably justified.

Canada

Application must be made within 6 months after knowledge of your loss. The Law Society may extend to two years but not a guarantee.

ANALYSIS OF FUNDS cont'd

CLAIMS NOT CONSIDERED

Malaysia

- Losses suffered when a lawyer is not acting in his professional capacity
- Default of client's personal loan advance to lawyer or suffered in business ventures
- Legal fee
- Negligence

ANALYSIS OF FUNDS cont'd

CLAIMS NOT CONSIDERED

Singapore

- Losses suffered when a lawyer is not acting in his professional capacity
- Losses suffered by his staff not acting in the course of his employment
- Professional negligence or malpractice of your own lawyer
- Clients own dishonest acts, negligence, omission or delay
- Inability to prove dishonesty

ANALYSIS OF FUNDS cont'd

CLAIMS COVERED

Malaysia

- Misappropriation of money
- Loss involving money held from estate or real estate closing.

ANALYSIS OF FUNDS cont'd

CLAIMS COVERED cont'd

Singapore

- Dishonesty of a lawyer in his practice or when he was a lawyer/trustee to a client
- Dishonesty of a member of the lawyer's staff in the course of his employment by the practice

ANALYSIS OF FUNDS cont'd

CLAIMS COVERED cont'd

Trinidad and Tobago

- Loss due to dishonesty of Attorney and hardship (See s. 57 and 58 LPA)
- This is determined after a finding of breach of the Code and depending on whether it is a Part A or a Part B provision. The fact is that successful recovery from the fund is based upon an independent investigation and quasi-judicial finding.

ANALYSIS OF FUNDS cont'd

CLAIMS COVERED cont'd

UK

The fund compensates people who have suffered financial loss due to a solicitor's dishonesty or failure to account for monies received. It mainly covers default by sole practitioners and small partnerships, as indemnity insurance will cover claims against partnerships where there is an innocent partner.

ANALYSIS OF FUNDS cont'd

MAXIMUM RECOVERY

Canada

- Lawyer's dishonesty- \$150,000 per claimant
- Paralegal's dishonesty-\$10,000 per claimant

UK

- Up to £2 million per claim

Compensation Fund in Jamaica

- **Things to be considered:**
 - **Contributions of Attorneys**
 - **Frequency of contributions**
 - **How the funds will be held**
 - **Use of Funds**
 - **Access to funds by Attorneys**
 - **Mandatory nature**
 - **Sanctions for failure to contribute**

Compensation Fund in Jamaica cont'd

- Maintenance of Fund
- Time Limits
- Claims not covered
- Should fund only apply to attorneys with practicing certificates

Questions



THANK YOU

A decorative graphic consisting of a solid red horizontal bar that spans the width of the page. Below this bar, on the right side, there are several horizontal lines of varying lengths and colors, including red and white, creating a layered, graphic effect.