

JAMAICA

No. 8 -2007

I assent,

[L.S.]

(sgd.) Prof. Kenneth O. Hall
Governor-General

23rd April 2007

AN ACT to Amend the Legal Profession Act.

[24th April, 2007]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Legal Profession (Amendment) Act, 2007, and shall be read and construed as one with the Legal Profession Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title
and
construction.

2. Subsection (3) of section 3 of the principal Act is amended by deleting—

Amendment
of section 3
of principal
Act.

- (a) the colon appearing after the word “functions” and substituting therefor a fullstop; and
- (b) the proviso thereto.

Amendment
of section 5
of principal
Act.

3. Section 5 of the principal Act is amended by—

- (a) deleting subsection (3) and substituting therefor the following—

“ (3) Where the Council is satisfied that an attorney is practising in contravention of subsection (2), the Council shall, by notice in writing, require such attorney to pay the prescribed fees within such time as may be prescribed by the Council; and any attorney who, having been issued with a notice, continues to practise after such time without having paid the prescribed fees, shall be guilty of professional misconduct.”;

- (b) inserting next after subsection (8) the following as subsection (9)—

“ (9) The Council may make regulations amending the Second Schedule.”

4. Section 8 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “two hundred” and “four hundred” and substituting therefor the words “five hundred thousand” and “one million” respectively;
- (b) in subsection (2), by deleting the words “two hundred” and substituting therefor the words “five hundred thousand”; and
- (c) in subsection (3)—
- (i) by deleting the word “and” appearing immediately after the word “qualified” and substituting therefor the word “or”; and
- (ii) by deleting the words “two hundred” and substituting therefor the words “five hundred thousand”.

Amendment
of section 8
of principal
Act.

5. The principal Act is amended by inserting next after section 8 the following as section 8A—

Insertion of
new section
8A in princi-
pal Act.

“ Admission
to practice
gained by
fraud or
mis-
represen-
tation.

8A.—(1) It is hereby declared, for the avoidance of doubt, that, subject to subsection (2); where the Supreme Court, the Council or the Legal Education Authority (hereinafter referred to as the Authority) as the case may be, is satisfied that the issue of a qualifying certificate or a practising certificate or the enrolment of an attorney-at-law is obtained as a result of fraud or misrepresentation—

- (a) the Authority may revoke the qualifying certificate issued to the attorney;
- (b) the Council may cancel any practising certificate issued to the attorney; and
- (c) the Supreme Court, on the application of the Council, may strike the name of the attorney from the Roll.

(2) The Authority or Council shall before taking action under subsection (1), give written notice to the attorney-at-law concerned of its intention to take such action and shall afford to that attorney-at-law an opportunity to be heard.”

6. Section 11 of the principal Act is amended by inserting therein next after subsection (2) the following as subsections (3) and (4)—

Amendment
of section 11
of principal
Act.

“ (3) It is hereby declared, for the avoidance of doubt, that the Committee shall have jurisdiction to hear and determine or continue to hear and determine or otherwise deal with the following allegations made under section 12, that is to say—

- (a) in the case of attorneys who are suspended from practice, allegations of misconduct committed prior to or during suspension; and

- (b) in the case of persons whose names are struck off the Roll, allegations of misconduct committed prior to such striking off.

(4) Subsection (3) shall apply in like manner to any case where the striking off or suspension took place before the coming into operation of the Legal Profession (Amendment) Act, 2006, as it applies to such cases subsequent thereto.”.

Amendment
of section 12
of principal
Act.

7. Section 12 of the principal Act is amended by—

- (a) deleting subsection (4) and substituting therefor the following—

“ (4) On the hearing of any such application the Committee may, as it thinks just, make one or more of the following orders as to—

- (a) striking off the Roll the name of the attorney to whom the application relates;
- (b) suspending the attorney from practice on such conditions as it may determine;
- (c) the imposition on the attorney of such fine as the Committee thinks proper;
- (d) subjecting the attorney to a reprimand;
- (e) the payment by any party of costs of such sum as the Committee considers a reasonable contribution towards costs; and
- (f) the payment by the attorney of such sum by way of restitution as it may consider reasonable,

so, however, that orders under paragraphs (a) and (b) shall not be made together.”;

- (b) inserting next after subsection (4) the following as subsections (4A), (4B) and (4C)—

“ (4A) Subject to subsection (4B), the Disciplinary Committee may, pending the hearing or

determination of any application, make an interim order suspending an attorney from practice in any case in which the attorney is convicted of any offence prescribed by the Council by rules made under this Part.

(4B) An order under subsection (4A) shall cease to have effect if—

- (a) the conviction is quashed on appeal; or
- (b) the attorney shows good cause as to why the order of suspension should be revoked.

(4C) Upon the hearing or determination of any application the Committee may—

- (a) without finding any misconduct proved against the attorney, nevertheless order him to pay the costs of the complainant, or any part thereof, if, having regard to his conduct and to the circumstances of the case, it seems just to the Committee so to do;
- (b) if satisfied that an attorney against whom a complaint has been made has, by his conduct in relation to the complaint, caused delay or committed acts wasteful of the Committee’s time, make an order awarding costs against the attorney whether or not any other order as to costs has been made; and the amount of any such costs shall be paid into the funds of the Council.”; and

- (c) by deleting subsection (5) and substituting therefor the following—

“ (5) Where a fine is imposed under subsection (4) (c)—

- (a) the amount of such fine or part thereof may, if the Committee so directs, be paid

to the person making the application in full or partial satisfaction of any damage caused to him by the act or default giving rise to the application; or

- (b) if no direction is made under paragraph (a), or direction is made only as to part thereof, the amount of such fine or remainder thereof shall be paid into the funds of the Council.”.

Insertion of new sections 12A and 12B in principal Act.

8. The principal Act is amended by inserting next after section 12 the following as sections 12A and 12B—

“ Power to suspend filing of orders.

12A.—(1) The Committee shall have power, upon the application of a party against or with respect to whom it has been made an order, to suspend the filing thereof with the Registrar.

(2) The filing of an order may be suspended under this section for a period ending not later than—

- (a) the period prescribed for the filing of an appeal against the order; or
(b) where such an appeal is filed, the date on which the appeal is determined.

(3) Where the filing of an order is suspended under this section, the order shall not take effect until it is filed with the Registrar and if the order is an order that an attorney be suspended from practice, the period of suspension shall be deemed to commence on the date of the filing of the order with the Registrar.

Committee may hear applications pending criminal proceedings.

12B.—(1) It is hereby declared, for the avoidance of doubt that where—

- (a) an application made in respect of an attorney pursuant to section 12 is pending; and

- (b) criminal proceedings arising out of the facts or circumstances which form the basis of the application are also pending,

the committee may proceed to hear and determine the application, unless to do so would, in the opinion of the Committee, be prejudicial to the fair hearing of the pending criminal proceedings.

(2) Where the Committee hears an application in the circumstances described in subsection (1), the Committee may, if it thinks fit, on its own initiative or at the request of the attorney, defer the filing, pursuant to section 15 (2), of any order made by it in relation to that application until the conclusion of the criminal proceedings mentioned in subsection (1) (b).”.

9. Section 13 of the principal Act is amended—

- (a) in subsection (1), by inserting immediately after the words “section 12” the words “and of reviewing its decision pursuant to section 19,”;
- (b) in subsection (2)—
- (i) by inserting immediately after the word “application” the words “or carry out such review”; and
- (ii) by inserting immediately after the word “determination”, wherever it appears, the word “, review”;
- (c) by inserting next after subsection (2) the following as subsection (2A)—

“(2A) Any division of the Committee, whether or not constituted in the same manner as the division which directed that an attorney be suspended from practice, may make an order in accordance with section 19 in relation to that decision.”.

Amendment of section 13 of principal Act.

Amendment
of section 15
of principal
Act.

10. Section 15 of the principal Act is amended—
- (a) in the marginal note thereto, by inserting immediately after the word “made” the words “and directions given”;
 - (b) in subsection (1), by inserting immediately after the word “made” the words “and all directions given”;
 - (c) in subsection (2), by inserting immediately after the word “order” the words “and directions”;
 - (d) in subsection (3), by inserting immediately after the word “order” the words “and all directions”;
 - (e) by deleting subsection (4) and substituting therefor the following—
 - “ (4) Upon the filing of any order or directions as aforesaid—
 - (a) the Register shall cause a notice stating the effect of the operative part of the order or directions to be published in the *Gazette*; and
 - (b) the Committee may, in such manner as it thinks fit, publish a notice of the operative part of any order—
 - (i) suspending an attorney from practice or withdrawing an order of suspension; or
 - (ii) striking the name of an attorney from the Roll or reinstating the name of an attorney to the Roll.”;
 - (f) in subsection (5), by inserting immediately after the word “orders” the words “and directions”; and
 - (g) by inserting next after subsection (5) the following as subsection (6)—
 - “ (6) An order of the Committee shall be enforceable at the instance and on the application of the Secretary of the Council.”.

Amendment
of section 16
of principal
Act.

11. Section 16 of the principal Act is amended by—
- (a) renumbering the section as subsection (1);
 - (b) inserting in subsection (1) as renumbered immediately after the word “relates,” the words “including the Registrar of the Supreme Court or any member of the Council,”; and
 - (c) inserting next after subsection (1) as renumbered the following as subsection (2)—
 - “ (2) The lodging of an appeal under subsection (1) against an order of the Committee shall not operate as a stay of execution of the order unless the Court of Appeal otherwise directs.”.
12. Subsection (2) of section 17 of the principal Act is amended by deleting the words “date of” and substituting therefor the words “date specified in”.
13. Section 20 of the principal Act is amended by deleting—
- (a) from subsection (3) the words “two hundred” and substituting therefor the words “five hundred thousand”;
 - (b) from subsection (4) the words “two hundred” and substituting therefor the words “five hundred thousand”.
14. Section 21 of the principal Act is amended—
- (a) in subsection (1), by inserting immediately after the words “attorney may” the words “,subject to any regulations made by the Council under subsection (7),”;
 - (b) by inserting next after subsection (2) the following as subsections (3), (4), (5), (6), (7) and (8)—
 - “ (3) In the absence of evidence to the contrary, it shall be presumed that legal fees agreed to be paid or collected out of the proceeds of a judgment are contingency fees, so, however, that it shall be lawful for the Committee to examine any written agreement mentioned in subsection (1) for the

Amendment
of section 17
of principal
Act.

Amendment
of section 20
of principal
Act.

Amendment
of section 21
of principal
Act.

purpose of determining whether or not the fees agreed in that agreement are contingency fees.

(4) All causes of action and all applications to the Committee pursuant to section 12 in relation to the charging of contingency fees shall be commenced or made within a period of twelve months.

(5) The limitation period mentioned in subsection (4) shall run—

- (a) from the date of final payment by the attorney to the client of the proceeds recovered under a judgment, after any deduction of contingency fees; or
- (b) where a written tender or offer of such final payment has been made by the attorney to the client, from the date of the receipt by the client, of such tender or offer.

(6) Where the amount of any contingency fees paid to an attorney is in excess of the amount properly chargeable in accordance with regulations made under subsection (7) the amount of such excess shall be refunded by the attorney.

(7) The Council may make regulations with respect to the making of agreements for contingency fees and in particular—

- (a) the types of causes of action in respect of which such fees may be charged; and
- (b) the requirements to be met by an attorney for the making of such agreements.

(8) In this section “contingency fees” means any sum (whether fixed or calculated either as a percentage of the proceeds or otherwise) payable only in the event of success in the prosecution of any action, suit or other contentious proceedings.”

15. Subsection (2) of section 30 of the principal Act is amended by deleting the words “one hundred” and substituting therefor the words “two hundred and fifty thousand”. Amendment of section 30 of principal Act.

16. Section 31 of the principal Act is amended by deleting the words “two hundred” and substituting therefor the words “five hundred thousand”. Amendment of section 31 of principal Act.

17. The Minister may amend the monetary penalties specified in the Act, by Order subject to affirmative resolution. Order to amend monetary penalties.

18. The Fourth Schedule to the principal Act is hereby amended by deleting rules 18 and 19. Amendment of Fourth Schedule to principal Act.

Passed in the Senate this 9th day of February, 2007 with six (6) amendments.

SYRINGA MARSHALL-BURNETT, C.D., J.P.
President.

Passed in the House of Representatives this 27th day of March, 2007.

MICHAEL PEART
Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to the Houses of Parliament.