

## ***THE JAMAICAN BAR ASSOCIATION***

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**BY E-MAIL**

### **MEDIA RELEASE – 23<sup>RD</sup> May, 2014**

#### **The Termination of contractual arrangements by UWI with Professor Brendan Bain as director of CHART .**

May 23, 2014

The Jamaican Bar Association (“Jambar”) notes with concern a statement published by the University of the West Indies (“UWI”) on its website dated May 20, 2014 wherein UWI sought to explain and justify the termination of Professor Brendan Bain (“Bain”).

As we understand, in summary, the events and facts leading up to the termination of Bain by UWI are as follows:-

1. Bain is a medical doctor practicing in that field for over 30 years. During that time Bain has come to be regarded as a pioneer and leading expert in the Caribbean as regards clinical infectious disease (in particular HIV and AIDS in the Caribbean region). At all relevant times Bain was the Director of Caribbean HIV/AIDS Regional Training (CHART) Centre (“CHART”). Bain is regarded as an expert in the field of HIV and AIDS in the Caribbean region.
2. In 2010 a case was filed in the Belize Supreme Court (Caleb Orozco and the United Belize Advocacy Movement Vs. The Attorney general Of Belize) (“the Orozco Case”). The claimants in the Orozco case brought an action challenging the constitutionality of Section 53 of the Criminal Code of Belize.
3. In that case Bain prepared and submitted an expert report dated August 7, 2012 (the “Bain report”). The Bain report is some 52 pages containing a 14 page report as well as 7 exhibits attached thereto.
4. In the Orozco Case Bain presented the Bain report in his capacity as an expert in his own right and based on his years of experience. Bain expressly disassociated the Bain report from UWI and/or CHART and/or any other entity.

5. On its website the UWI statement reads (inter alia) “...*the issue in question arose about two years ago in {the Orozco Case}. Bain provided a Statement on behalf of a group of churches seeking to retain the 1861 Law. Many authorities familiar with the Brief presented believe that Professor Bain’s testimony supported arguments for retention of the law.... This opinion is shared by the lesbian, gay and other groups who are served by CHART... For the last year, there has been considerable controversy surrounding the appropriateness of Professor Brendan Bain serving as Director of CHART...*”.
6. The UWI statement further reads and concludes “...*While the University recognises the right of Bain to provide expert testimony in the manner he did, it has become increasingly evident that Bain has lost the confidence and support of a significant sector of the community which the CHART programme is expected to reach, including the loss of his leadership status in PANCAP, thereby undermining the ability of this programme to effectively deliver on its mandate. It is for this reason that the University of the West Indies has decided to terminate the contract of Professor Bain as Director of CHART...*”.
7. Jambar is further advised that by letter dated 24<sup>th</sup> April, 2014 a coalition of various NGO’s and other groups wrote to Professor E. Nigel Harris demanding the “...*removal of Bain from any leadership position in the CHART programme and all positions of representations of the University of the West Indies on issues of HIV and Aids...*”. This letter was apparently written based on the fact that Bain submitted and prepared the Bain report in the Orozco case.

We do not yet know if Bain was given a fair and impartial hearing by UWI before his contract was terminated, and we will therefore refrain from commenting on that issue, except to say that he is entitled to have such an opportunity.

Firstly, our concern has to do with the reports of an apparent agenda of retaliation and retribution against Bain by persons or entities who are not pleased by the content of the Bain report. The fact is Bain is an expert in his field and whether we agree or disagree with his opinion he has provided his expert report which can be tested and challenged under the rigorous scrutiny of cross examination in the courts or (if available) other expert opinion to counter and rebut the Bain Report.

Secondly, we note the certification in the Bain report where he states (on page 14) that based on “... *my professional experience together with information from research literature related to the matter under consideration. The opinions expressed in this report are mine and should not be attributed to any institution to which I am associated...*” Importantly, Bain further certifies that he has been “...*given no instruction by any party, by any person representing a party, or by any other person with respect to this report...*”. How then, in the face of this certification, has UWI concluded that the Bain report was “...given on behalf of a group of churches...”?

Thirdly, we identify with the comments issued by the Medical Association of Jamaica (“MAJ”) where they state “...*the MAJ and its members are committed to improving the health of all members of society... Our training and expertise are in science and scientific*”

*research. The veracity of a scientific conclusion should only be challenged on the basis of science and NOT on emotion or sentiment its conclusions may evoke. Statements of fact are never meant to be offensive...As an expert witness, his testimony to the court is a duty to the Court, and, is the opinion of the expert himself. He is therefore obliged to discharge his testimony truthfully and professionally. Many Doctors are asked to give expert testimony to the Courts, both locally and internationally, on a variety of areas. We sincerely hope that our responsibility under the law to the court is not under any form of attack. ...”* We certainly hope not, as well.

The legal profession routinely relies on expert testimony to advance the cases of our clients. As such we are very concerned that the actions of UWI against Bain could adversely impact on the freedom of expression by experts giving testimony in Jamaica. In civil proceedings in the Supreme Court that are governed by the Civil Procedure Rules, an expert witness has a duty *“to help the court impartially on the matters relevant to his or her area of expertise”* and *“that duty overrides any obligations to the person by whom he or she is instructed or paid”*. In giving expert evidence, the information presented to the court *“must be and should be seen to be, the independent product of the expert witness uninfluenced as to form or content by the demands of the litigation. An expert witness must give independent assistance to the court by way of objective unbiased opinion in relation to matters within the expert witness’ expertise.”*

In that context, Bain’s dismissal may cause such experts (many of whom reside in tenure at UWI) to become fearful to express their honest and considered belief as they may face adverse repercussions even when their thoughts are based on decades of study and research and independent of the office that they hold. This sort of retaliation against Bain may well be contemptuous of our system of justice as same could be considered as a wrongful interference in a judicial process.

Many of us studied at UWI and have taken pride in the strong regional academic experience. Regrettably, the recent academic censorship and contractual termination by UWI of Bain raises serious questions in the minds of all persons who look to UWI for independent thought and creative thinking given its position as a bastion of Caribbean research and pedagogy. We are concerned that the work and worth of Professor Bain and other leaders in other academic fields can be so easily circumscribed.

The Jamaican Bar Association calls upon Professor Nigel Harris and the leadership of UWI, if it has not done so, to give due process to Professor Bain. We remind UWI that while not all academic pursuits may lead to outcomes, hypotheses or conclusions that are desirable or popular with your constituents and donors full respect must be accorded to the process and the freedom of expression and thought that we trust will always remain a true and guarded virtue by the University of the West Indies.

**Donovan C. Walker**

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