

THE JAMAICAN BAR ASSOCIATION

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STATEMENT TO MEMBERS – 27.05.2014

Dear Jambar Colleagues,

As you are probably aware by Ministerial Order dated 15th November, 2013 (“the Order”), all persons named on the Roll of Attorneys-at-Law (carrying out certain professional activities listed in that Order) were designated as “a non-financial institution” for the purposes of the Proceeds of Crime Act (“POCA”). The Order is to take effect from 1st June, 2014.

It is to be noted that on 17th April, 2014 Jambar received copies of the following draft documents (all pursuant to the Order):-

- A. The Legal Profession (Annual Declaration of Activities) Regulations 2014 (“the draft regulation”), and
- B. The General Legal Council of Jamaica: anti-money laundering guidance for the legal profession (“the draft guidance notes”).

I refer to the draft regulation and the draft guidance notes, collectively as “the documents”. We have not yet seen the final version of the documents nor do we know if same have been prepared.

Jambar has noted the comments and concerns raised by many members of the legal profession.

To update you on what Jambar has been doing since we first received the documents on April 17, 2014, I advise as follows:-

- a) This writer was invited to and attended a meeting of the GLC POCA Subcommittee on April 28, 2014. At that meeting I raised and discussed with that sub-committee preliminary issues of concern. I feel the discussions were productive and I am prepared to continue dialogue with that sub-committee.
- b) The documents were circulated by e-mails to the Bar Council (in April, 2014) and Jambar members (on May 5, 2014) for review and comments.
- c) In the meeting of the Bar Council on May 19, 2014 the documents were discussed and some concerns were raised about POCA and the legal profession. The Council agreed that in light of the concerns that we would seek and obtain the opinion of Mr. R.N.A Henriques Q.C.. A sub-committee was established to meet with Mr. Henriques to review POCA and the documents. That Sub-committee presently comprises Mrs. Jacqueline Samuels Brown Q.C, Mr. Ian Wilkinson Q.C., Mr. Peter Champaigne, Mrs. Sherry Ann-McGregor and this writer.

- d) The Publications and Continuing Legal Education Sub-Committees of the Bar will be producing Jambar Journals and arranging seminars to discuss issues and focus on POCA, Legal Professional Privilege and Confidentiality. It is hoped that the Jambar Journal for July, 2014 will be have strong and useful content for our members.
- e) I have written to the President of the Law Society of Trinidad & Tobago -LSTT (copy of our recent e-mail exchange is attached) requesting any information on POCA in Trinidad and details of legal challenges that are presently being mounted in Trinidad. Jacqueline Samuels-Brown Q.C has agreed to follow up with the LSTT President to get and share further information from them.
- f) On May 27, 2014 Jambar wrote to the Minister of National Security and request that he postpone by 4 months (until October 1, 2014) the implementation of POCA. This letter was copied to all relevant stakeholders (including the Advocates Association and other bar associations). A copy of the letter is attached for your review.
- g) A meeting will be arranged at the request of the US Embassy who want to discuss POCA with Jambar. I have contacted the embassy and we are trying to arrange the meeting for next week and I will confirm the date/time.
- h) Mr. Henriques Q.C. has indicated that he will provide his opinion and answer to the below questions in say the next 3 weeks in time for the next Jambar Council meeting set for 16th June, 2014.
- i) An Extraordinary General Meeting (EGM) of Jambar will be called to discuss POCA and the Opinion of Mr. Henriques. We are hoping to have that EGM on Saturday 28th June, 2014 at 11:00 A.M at the UWI Law Faculty. We shall provide further details and the appropriate Notice in very short order.
- j) Just prior to the EGM (on the same date and at the same place) the CLE Sub-Committee of Jambar is planning to host a free seminar on POCA between 9-11 A.M.
- k) We shall update Bar Council and the wider membership of and further developments. In the interim, we urge all members to provide any comments or concerns to us.

FYI, as regards the application of the Proceeds of Crime Act (POCA) to Attorneys-at-Law, our questions for consideration by Mr. Henriques Q.C are:-

1. *Having regard to previous rulings of our court and other decisions from commonwealth courts do the provisions of the POCA or any of them impact the constitutional rights or charter of rights of the citizen?*
2. *Having regard to previous rulings of our court and other decisions from commonwealth courts, is it your opinion that the provisions of the POCA or any of them impact the existing legal duties of lawyers in protecting and administering lawyer/client confidentiality and the related rights of citizens to privacy?*
3. *Does the application of POCA to the legal profession (as presently contemplated) cause Attorneys-at-Law to be in breach of obligations and the duty of confidentiality owed by Attorneys-at-Law to their clients (particularly as regards the canons of the Legal Profession)?*
4. *Does the application of POCA to the legal profession (as presently contemplated) cause Attorneys-at-Law to be in breach of the clients right to legal professional privilege?*

5. *Is the specific exemption from POCA of Attorneys-at-Law who are in-house Counsel as well as the exclusion of “para-legals” an unfair and discriminatory application of POCA to certain members of the legal profession?*
6. *Can an Attorney-at-Law be a competent or compellable witness by virtue of the application of POCA to give evidence against a client of that Attorney-at-Law?*
7. *Is the concept of a “random search” (as set out in the POCA Guidance Notes) legal and/or proper?*
8. *Where a client provides a cheque from a banking institution (as opposed to cash), why should there still be a duty on an Attorney-at-Law to investigate the source of those funds?*
9. *Will it be sufficient protection for Attorneys to require signed declarations from clients to state the source of funds in engagement letters or the client acknowledging in their engagement letters that LPP may be waived in certain circumstances?*
10. *As you pointed out yesterday, the Ministerial Order dated 15th November, 2013 (“the Order”) applies to all Attorneys-at-Law on the Roll – which seems to extend to Attorneys-at-Law who are retired from active practice or choose not to apply for an up to date practicing certificate. Is the Order too wide in its application as not every Attorney-at-Law on the Roll is practicing.*
11. *Based on your answers to the above questions posed is there a basis for challenging the legislation or any aspect of it by court action or for obtaining the courts clarification by declaratory relief or otherwise.*

Please do not hesitate to contact us at jba@flowja.com with your comments.

Best regards,

Donovan C. Walker

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