

## THE JAMAICAN BAR ASSOCIATION

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2<sup>nd</sup> July, 2014

**By E-mail Only**

**To:- The Editor, The Gleaner Company  
and To:- Mr. Gordon Robinson  
and To:- Mr. Bert Samuels**

**Attention:- The Editor.**

Dear Sirs,

**Re:- Articles Published in the Jamaica Gleaner on 1<sup>st</sup> July, 2014 by Mr. Gordon Robinson and on 2<sup>nd</sup> July, 2014 by Mr. Bert Samuels.**

The Jamaican Bar Association feels it important to respond to remarks attributed to two of your esteemed columnists.

Your columnists, Gordon Robinson and Bert Samuels have used their respective columns to raise important and relevant issues about the Proceeds of Crime (Designated Non-Financial Institution ) (Attorneys-at-Law) Order, 2013 ("the order") which make certain provisions of the Proceeds of Crime Act ("POCA") applicable to Attorneys-at-Law who carry out certain specified activities on behalf of clients. We are pleased that our colleagues are lending their voice and influence in opposition to these egregious changes proposed under the order and the adverse impact on the enshrined and important principles of the independence of the legal profession.

However, Mr. Gordon Robinson, Attorney-at-Law, in a commentary entitled "*Silent Coup Against Lawyers*" published in the Gleaner on 1<sup>st</sup> July, 2014, makes the following unfortunate remark "...*Before last Saturday, The Jamaica Bar Association had said not a word, although it might mean loss of many members' lives in an 'informer-fi-dead' culture...*".

Further, Mr. Bert Samuels, Attorney-at-Law, in a commentary entitled "*Clients Rights Under Siege...*" makes the following inaccurate comment "...*I note, with interest, that the Guyanese Bar has not, like us, taken this blow lying down (I am not surprised)...*".

Had either Mr. Robinson and Mr. Samuels taken the time to first contact the Jamaican Bar Association or even visited our website at [www.jambar.org](http://www.jambar.org) they would have realized that their above statements are factually incorrect and unfortunately misinformed and, in fact, the Jamaican Bar Association is not sitting idly by and doing nothing as regards these recent attempts to erode the sanctity of the independence of Attorneys-at-Law in Jamaica. Indeed, being aware several years ago that the authorities intended to pass the current legislation, the Jamaican Bar Association took a number of steps to inform its members and the public as to the government's plans and the potentially adverse impact on the rights of citizens. These steps included hosting well-attended seminars on the issue over the past three years.

The following chronology lists the recent measured approach and steps that have and are being taken by the Jamaican Bar Association as regards the order and the proposed regulations:-

1. **April 17, 2014** - the draft regulations pertaining to the order and supporting guidance notes were first made available to the Jamaican Bar Association. They were circulated to all members of the Bar Council for review. It is to be noted that the supporting guidance notes were over 100 pages long.
2. **April 28, 2014** - the President of the Jamaican Bar Association attended a meeting of the General Legal Council sub-committee preparing the guidance notes. At that meeting we raised and discussed with that sub-committee preliminary issues of concern.
3. **May 5, 2014** - the draft regulations and guidance notes were circulated by e-mail to all members for their comments.
4. **May 19, 2014** - at the monthly Bar Council meeting the order, POCA, the draft regulations and the GLC guidance notes documents were extensively reviewed and discussed. The Council agreed that we should firstly seek and obtain the independent legal opinion of The Hon. R.N.A Henriques, O.J. 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.
5. **May, 2014** - An Extraordinary General Meeting of the Jamaican Bar Association was called (at least 21 days' notice required) to discuss the order and the application of POCA to Attorneys-at-Law.
6. **May 21, 2014** - The Sub-committee first met with Mr. RNA Henriques and provided him with several documents and cases for his review and Opinion.
7. **May 27, 2014** - The Jamaican Bar Association wrote to the Minister of National Security pointing out our concerns and requesting (inter alia) that he postpone by 4 months (until October 1, 2014) the implementation of the order. This letter was copied to all relevant stakeholders including the Advocates Association of Jamaica and the Cornwall Bar Association.
8. **June 2, 2014** - the Minister of National Security convened a meeting. At that meeting the Minister advised (inter alia) that he was not minded to postpone the implementation date of the order. At that meeting the representatives of the Jamaican Bar Association, The Advocates Association of Jamaica and the Cornwall Bar Association all raised concerns and strident opposition to the order and the regulations.

9. **June 19, 2014** - Mr. Henriques provided his thorough, detailed and considered opinion which has since been circulated to the legal profession. That very detailed opinion referred to and analysed cases on point from several overseas jurisdictions including the case mentioned by Mr. Gordon Robinson.
10. **June 20, 2014** - An emergency Bar Council meeting was convened and Mr. Henriques presented and discussed his opinion with the Bar Council.
11. **June 28, 2014** - The Jamaican Bar Association hosted a free seminar for all members as regards the order, POCA and its application to the legal profession.
12. **June 28, 2014** - The Jamaican Bar Association held an extraordinary general meeting to discuss POCA, the order and the regulations. Representatives from the Cornwall Bar Association and the Advocates Association of Jamaica attended as observers. At that meeting the members resolved that The Jamaican Bar Association institute relevant Judicial proceedings in the Supreme Court of Judicature of Jamaica to challenge the Proceeds of Crime (Designated Non-Financial Institution ) (Attorneys-at-Law) Order, 2013 and the proposed Legal Profession (Annual Declaration of Activities) Regulations, 2014 ("the draft regulations") as being unconstitutional and a breach of the Jamaican Charter of Rights and shall seek such further or other relief as may be necessary.
13. The Publications Sub-Committees of the Association will be publishing a Jambar Journal with a focus on POCA, Legal Professional Privilege and Confidentiality. The Jambar Journal is set for release in July, 2014.
14. We have written to the President of the Law Society of Trinidad & Tobago -LSTT. We have agreed to stay in continued contact on this issue that is also of concern to our colleagues in Trinidad & Tobago.

We trust that Messrs. Robinson and Samuels as well as your readers are now informed and realize, that in stark contrast to the recent assertions in their respective columns, the Jamaican Bar Association has been and remains actively engaged in these matters together with our colleagues at the Cornwall Bar Association and the Advocates Association of Jamaica.

We are glad that Messrs. Robinson and Samuels clearly agree with the view we hold that the order and the proposed regulations will adversely impact on the independence of Attorneys-at-Law which is fundamental to the Jamaican legal system and the provision of justice in Jamaica. Attorneys-at-Law must be free to represent persons without fear or favour in the protection of individual rights and civil liberties against incursions from any source, including the state. The order, the draft regulations and POCA may have an adverse effect on the sanctity of the established and protected principles of legal professional privilege and confidentiality and must be challenged.

We can now direct our collective energies to these serious challenges facing our profession.

Yours sincerely,  
**JAMAICAN BAR ASSOCIATION**

Per:-

  
**DONOVAN C. WALKER - PRESIDENT**