

A BILL
ENTITLED

AN ACT to Amend the Legal Profession Act.

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:-

Short title.

1. This Act may be cited as the Legal Profession (Amendment) Act, 2005, and shall be read and construed as one with the Legal Profession Act (hereinafter referred to as the principal Act) and all amendments thereto.

Amendment of section 5 of principal Act.

2. Section 5 of the principal Act is amended by deleting subsections (2) and (3) and substituting therefor the following -

(2) Subject to section 7, a person shall not practise as a lawyer except by virtue of and in accordance with a practising certificate which shall be issued by the Council -

(a) on payment of the prescribed fee to the Secretary of the Council, in the appropriate form in the Second Schedule; and

[(b) in the case of an attorney-at-law who has practised for more than 12 months, if the Council is satisfied that the attorney-at-law has complied with the prescribed requirements for continuing legal education].

(3) Where the Council is satisfied that a person is practising in contravention of subsection (2), the Council shall, by notice in writing require such person -

(a) to pay the prescribed fee within the time specified in the notice; and

(b) to provide evidence of having satisfied the prescribed requirements for continuing legal education.

(3A) A person who, having been issued with a notice under subsection (3), continues to practise as a lawyer without having complied with the notice, shall be guilty of professional misconduct."

Amendment of section 9 of principal Act.

3. Subsection (1) of section 9 of the principal Act is amended by inserting in paragraph (a) immediately after the word "education" the words "including continuing legal education".

Amendment of section 10 of principal Act.

4. Section 10 of the principal Act is amended -
(a) by renumbering the section as subsection (1) of the section; and
(b) by inserting next after subsection (1) as renumbered, the following as subsection (2) -

" (2) The General Legal Council may make regulations relating to matters connected with continuing legal education and, in particular, but without prejudice to the generality of the foregoing, prescribing the requirements for continuing legal education."

Insertion of Parts IVA in principal Act.

5. The principal Act is amended by inserting next after Part IV the following as Part IVA -

" PART IVA. *Circumstances in which Council may intervene*

Circumstances for intervention by Council. 20A. - (1) The General Legal Council shall intervene into the practice of an attorney where -

(a) an attorney becomes bankrupt or compounds with or suspends payment to his creditors and no satisfactory arrangements are

made for the continuance of his practice;

(b) an attorney's name has been struck off the Roll;

(c) an attorney is suspended from practice and no satisfactory arrangements are made in relation to clients' money in trust accounts, and records, files and other documents relating to his clients;

(d) an order is made by a Judge of the Supreme Court -

(i) where an attorney has died and no satisfactory arrangements have been made for the continuance of his practice;

(ii) in relation to an attorney who has been found guilty by a court of competent jurisdiction of any offence involving dishonesty or any improper conduct in relation to the money or other property of any other person;

(e) an attorney becomes of unsound mind or becomes permanently unable to properly administer

his clients' account by reason of ill health;

(f) an employee or agent of an attorney has stolen any money or other property entrusted to the attorney;

(g) an attorney has ceased to practise or has left the jurisdiction but has neglected to wind up his clients' accounts.

Bank to
pay out
monies from
attorney's
account upon
receipt of
notice.

20B. - (1) The General Legal Council may serve or cause to be served on any bank or other financial institution in which an attorney has a client's account in which money is held on behalf of any person or persons, a signed notice requiring the bank or financial institution to pay out to the Council or its agent the money held in such account.

(2) A bank or other financial institution which is served with a notice pursuant to subsection (1), shall pay to the Council or the agent of the Council such moneys as are therein required and such payment shall constitute an absolute discharge of the bank or other financial institution from any liability in respect of such money.

Council to
pay moneys

20C. - [(1)] If the Council takes possession of any sum of money to which

into special
account or
client's
account.

section 20B applies, the Council shall
pay it into -

(a) a special account in the name
of the Council or of a person
nominated on behalf of the
Council; or

[(b) a client account of an attorney
nominated on behalf of the
Council.]

(2) The Council shall hold sums
of money to which this section applies
on trust and shall, subject to the
rights of those beneficially entitled
thereto, exercise in relation to such
sums the powers conferred by this Part.

Possession of
records or
documents of
attorney.

20D. - (1) The Council or its appointed
agent may take possession of any
records of documents belonging to, or
in possession or under the control of,
an attorney in the course of his
practice [where those records or
documents relate to any matter to
which a complaint is made against an
attorney].

(2) The Supreme Court, on the
application of the Council or its
appointed agent, may issue a warrant
to the Council or its appointed agent,
as the case may be, enabling the
applicant to enter, search and seize
any records or documents to which
subsection (1) relates.

[Court may
order postal
articles of
attorney to
be redirected
to other
address.]

20E. - (1) The Supreme Court, on the application of the Council, may from time to time order that for such time, not exceeding 18 months as the Court thinks fit, postal articles addressed to the attorney or his firm at any place mentioned in the order shall be directed to the Council or any person appointed by the Council at any other address therein mentioned.

(2) The Council or person acting on its behalf, may pursuant to the order made under subsection (1), take possession of any such articles received at that address.

[(3) Where an order under subsection (1) is made, the Council shall pay to the Post Office the like charges (if any), as would have been payable for the redirection of the articles if the addressee had permanently ceased to occupy the premises to which they were addressed and had applied to the Post Office to redirect them to him at the address mentioned in the order.]

(4) For the purpose of this section "postal articles" has the same meaning as in section 2(1) of the Post Office Act.]

Notice to
be given

20F. The Council on taking possession of any records, documents, postal

to attorney
20D or personal
representative
of possession.

articles or money under section 20B,
or 20E, shall serve upon the attorney,
his personal representatives and any
other person from whom they were
received on the Council's behalf or
from whose premises they were taken, a
notice -

(a) stating that possession has
been taken on the date
specified in the notice; and

(b) identifying the records,
documents or money taken.

Application
to Court for
return of
records and
documents

20G: Any attorney or his firm adversely
affected by the removal of records or
documents pursuant to section 20D may,
within 21 days of the service of the
notice under section 20F, apply to the
Supreme Court for an order directing
the Council or its appointed agent, as
the case may be, to return any records
or documents referred to in the notice
to the applicant.

Application to
Court for
repayment of
money paid
out by bank
or financial
institution.

20H. - (1) Any person who is or may
be adversely affected by any payment
made pursuant to section 20B may apply
to the Supreme Court -

(a) for an order directing the
Council or its appointed
agent to repay the money, or
any part of it, into the bank
or financial institution
from which it was paid; or

(b) for such other order as the Court thinks fit.

(2) A judge of the Supreme Court may, on hearing an application under subsection (1), make an order directing the Council or its appointed agent, as the case may be, to repay the money into the bank or financial institution from which it was paid out.

Amendment of section 35 of principal Act.

6. Section 35 of the principal Act is amended in paragraph (a) by inserting next after the words "bank accounts" the words "or building society accounts".

MEMORANDUM OF OBJECTS AND REASONS

The Government has accepted recommendations made by the General Legal Council and the Jamaican Bar Association for amendments to the Legal Profession Act with a view to enhancing the quality of the service provided by and the conduct of attorneys-at-law.

This Bill therefore seeks to amend the Legal Profession Act in order to give effect to those recommendations.

The Bill contains provisions empowering the General Legal Council to -

- (a) intervene in the practice of an attorney-at-law for the protection of monies, property or documents of that attorney's clients;
- (b) maintain client trust accounts; and
- (c) institute continuing legal education for attorneys.

The Bill also includes provisions -

- (a) empowering the General Legal Council to require a financial institution holding funds for an attorney's clients to pay over such funds to the

Council to be deposited in a special account for the benefit of the clients;

- (b) permitting the redirection of postal articles (originally destined for an attorney's address) to an address provided for by the General Legal Council.

A.J. Nicholson, Q.C.
Minister of Justice

**SECTION 5 OF THE PRINCIPAL ACT WHICH IT IS PROPOSED
TO AMEND**

5.—(1) Every person whose name is entered on the Roll shall be known as an attorney-at-law (hereinafter in this Act referred to as an attorney-at-law)—

Status of attorney-at-law and practice as a lawyer.

(2) Subject to section 7, a person shall not practise as a lawyer except by virtue of and in accordance with a practising certificate which shall be issued by the Council, on payment to the Secretary of the Council of the prescribed fee, in the appropriate form in the Second Schedule

Second Schedule.

(3) A person who practises in contravention of subsection (2) shall be liable on summons or on complaint for the recovery of any fee or costs on account of or in relation to any matter or proceedings done or taken by him in the course of such practice.

**SECTION 9 OF THE PRINCIPAL ACT WHICH IT IS PROPOSED
TO AMEND**

Arrangements for legal education.

9.—(1) It shall be the duty of the Legal Education Authority (hereinafter referred to as the Authority) to make arrangements—

(a) for a system of legal education

**SECTION 10 OF THE PRINCIPAL ACT WHICH IT IS PROPOSED
TO AMEND**

Power to make regulations.

10. The Authority may make regulations relating to matters connected with legal education and, in particular, but without prejudice to the generality of the foregoing concerning—

(a) the conduct of examinations and the fees to be charged in respect of persons sitting the examinations; and

(b) the issue of diplomas and degrees who have passed examinations prescribed in section 9

SECTION 35 OF THE BANKING ACT, 1947 WHICH IS PROPOSED

(1)

35-(1) The Central Bank may, subject to the provisions of this section, regulate the opening of accounts by banks in such manner as may be determined by the Central Bank.

Regulations
in respect
of accounts.

(a) to open and operate bank accounts of clients
money and custody provisions as to the
manner in which such accounts may be operated
and