

LEGAL PROFESSION (AMENDMENT) BILL, 2014

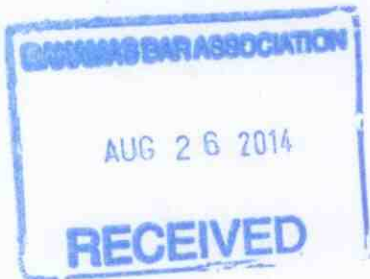
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OBJECTS AND REASONS

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LEGAL PROFESSION (AMENDMENT) BILL, 2014

A BILL FOR AN ACT TO AMEND THE LEGAL PROFESSION ACT

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act, which amends the Legal Profession Act¹, may be cited as the Legal Profession (Amendment) Act, 2014.
- (2) This Act shall come into operation on such date as the Attorney-General may appoint by notice published in the Gazette.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act is amended by the deletion of—

- (a) the definition of the words “admit to practice” and the substitution of the following definition —
“admit to practice” means certify as eligible to practice as counsel and attorney in the courts of The Bahamas;”
- (b) the word “articles” and the related definition;
- (c) the definition of the words “counsel and attorney” and the substitution of the following definition —
“counsel and attorney” means a counsel and attorney called to the Bar in accordance with section 13;
- (d) the definition of the words “specially admitted” and the substitution of the following definition —
“specially admitted” means called to the Bar in accordance with section 13 pursuant to a determination by the Bar Council under section 11;

¹*Ch. 64, Vol. 11, Statute Law of The Bahamas*

- (e) in the definition of “Register of Associates”, the words “subsection (4)” and the substitution of the words “subsection (2)”.

3. Amendment of section 3 of the principal Act.

Section 3 of the principal Act is amended in subsection (4) by —

- (a) the deletion after the word “Secretary” of the word “and” and the substitution of a comma; and
- (b) the insertion after the word “Treasurer,” of the words “Assistant Secretary and Assistant Treasurer,”.

4. Insertion of section 3A into the principal Act.

The principal Act is amended by the insertion immediately after section 3 of the following new section —

“3A. Bar Association a body corporate.

- (1) The Bar Association shall be a body corporate with perpetual succession and a common seal capable of —
 - (a) suing and being sued;
 - (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of, property whether movable or immovable; and
 - (c) doing or performing all such other things or acts for the performance of its functions under, and the furtherance of the provisions of, this Act which may lawfully be done or performed by a body corporate.
- (2) The common seal of the Association shall —
 - (a) be kept in such custody as the Bar Council directs and shall not be used except upon the order of the Council;
 - (b) be authenticated by the signatures of the Chairman of the Council, or any other member of the Council duly authorised by the Council in that behalf, and by the Secretary; and
 - (c) when affixed to any document and authenticated under this section, be judicially and officially noticed and any order or authorisation under such seal shall be presumed to have been duly given unless and until the contrary is proved.”.

5. Amendment of section 6 of the principal Act.

Section 6 of the principal Act is amended by the insertion immediately after subsection (3) of the following new subsection —

- “(4) For the purposes of subsection (2), if a member of the Bar Council absents himself from Council meetings for a period of three

consecutive meetings without cause his office shall be deemed vacant.”.

6. Repeal and replacement of section 10 of the principal Act.

Section 10 of the principal Act is repealed and replaced by the following —

“10. Qualifications and disqualifications for admission to practice.

- (1) Subject to subsection (1) of section 11, no person shall be admitted to practice unless —
 - (a) he is a citizen of The Bahamas;
 - (b) he is qualified in accordance with the First Schedule; and
 - (c) he is not disqualified for admission under subsection (2).
- (2) A person shall be disqualified for admission to practice—
 - (a) unless the Bar Council otherwise determines, if he has been disqualified for or suspended from practice in the courts of any place outside The Bahamas and such disqualification or suspension is in force at the date of his application for such admission; and
 - (b) if he is, in the opinion of the Bar Council, not of good character.”.

7. Repeal and replacement of section 11 of the principal Act.

Section 11 of the principal Act is repealed and replaced by the following —

“11. Special admission.

- (1) Notwithstanding anything to the contrary in this Act, the Bar Council, upon being satisfied that the interest of justice so requires, may determine that any person qualified in accordance with the First Schedule may be specially admitted to practice —
 - (a) for the purpose of conducting particular proceedings specified in such determination;
 - (b) if such person is appointed to a legal public office; or
 - (c) if such person is an employee of the Council of Legal Education and stationed in The Bahamas by virtue of his employment.
- (2) The Bar Council shall give notice of a determination made pursuant to subsection (1) to the Chief Justice.
- (3) A person called to the Bar pursuant to a determination under subsection (1) shall, so long as he is conducting the particular proceedings, or holds a legal public office, or is an employee of the Council of Legal Education stationed in The Bahamas, be entitled to practice law in all the courts in The Bahamas.

- (4) Upon termination of the particular proceedings or appointment or employment pursuant to paragraphs (a), (b) and (c) of subsection (1), as the case may be, a person who is not a citizen of the Commonwealth of The Bahamas shall not thereafter be entitled to practice law unless and until such person is again admitted to practice under this Act.”.

8. Insertion of new sections 12A, 12B, 12C, 12D, 12E, 12F and 12G into the principal Act.

The principal Act is amended by the insertion immediately after section 12 of the following —

“12A. Practising Certificate.

- (1) Every counsel and attorney who wishes to practice as a counsel and attorney in any year shall, in the month of January in such year, apply to the Bar Council for a practising certificate and the Council shall on payment of the prescribed annual fee issue to such person a practising certificate in the form set out in regulations.
- (2) A person whose name is entered in the Register of Associates or the Register of Legal Executives who desires to exercise his functions or rights under this Act in any year shall, in the month of January in such year, apply to the Bar Council for a practising certificate and the Council shall on payment of the prescribed annual fee issue to such person a practising certificate in the form set out in regulations.
- (3) Notwithstanding subsections (1) and (2), the Bar Council may consider an application for a practising certificate in a month other than January and, upon such application, may issue to the applicant a practising certificate for any period ending on the thirty-first day of December of such year.
- (4) Every person issued a practising certificate pursuant to subsections (1) and (2) shall display the certificate in a prominent place in their place of practice.

12B. Duration and renewal of practising certificate.

- (1) Every practising certificate shall —
 - (a) take effect on the date specified in the certificate as the date on which it is to take effect; and
 - (b) subject to this Act, expire on the thirty-first day of December next following the effective date unless renewed.

- (2) A person who wishes to renew his practising certificate shall —
 - (a) make application to the Bar Council not later than the thirty-first day of January in each year; and
 - (b) pay the prescribed fee.
- (3) A person who fails to comply with subsection (2) and whose practising certificate expires on the thirty-first day of December of the immediately preceding year shall not be considered to be un-certificated for the purposes of this Act during the period commencing with such date and ending on the thirty-first day of January of the succeeding year.
- (4) A person who fails to pay by the thirty-first day of January in the relevant year the annual fee for renewal of a practising certificate shall pay, in addition to the annual fee, a late fee in an amount equal to the annual fee.
- (5) The Bar Council may, where a practising certificate has been lost, destroyed, or mutilated, issue a replacement copy of the certificate upon —
 - (a) the application in writing of the holder of the certificate; and
 - (b) payment of the prescribed fee.

12C. Publication of list.

- (1) The Bar Council shall cause to be published in the Gazette —
 - (a) in the month of February in each year, a list of persons who have at the thirty-first day of January in such year obtained a practising certificate; and
 - (b) as soon as practicable, the names of persons obtaining a practising certificate after the thirty-first day of January in any year.
- (2) A copy of the Gazette containing the list of persons referred to in paragraph (a), or the names of persons published pursuant to paragraph (b), of subsection (1) shall be *prima facie* evidence in any court of the holding of a valid practising certificate by such persons.

12D. Offences.

- (1) A person who carries out the functions of a counsel and attorney, a registered associate, or a legal executive, without first obtaining a practising certificate commits an offence and is liable on summary conviction —
 - (a) to a fine not exceeding one thousand dollars; and

- (b) to a further fine not exceeding five hundred dollars for each day in which he continues to practice without a practising certificate.

12E. Disqualifications in relation to issuance of a practising certificate.

A counsel and attorney shall not be entitled to the issuance of a practising certificate where such counsel and attorney —

- (a) is not admitted to practice in accordance with section 10;
- (b) has his name struck off the roll or is suspended under subsection (1) of section 38;
- (c) is serving a term of imprisonment;
- (d) is subject to an order under the Mental Health Act (*Ch. 230*);
- (e) is in default of payment of a fee prescribed by this Act or the regulations;
- (f) is adjudged a bankrupt under the Bankruptcy Act (*Ch. 69*) and has not been discharged; or
- (g) has not rectified a complaint made against him to the Ethics Committee.”.

9. Amendment of section 30 of the principal Act.

Section 30 of the principal Act is amended by the insertion immediately after subsection (2) of the following new subsection —

“(3) The Bar Council may —

- (a) make recommendations to the Ethics Committee on the procedure for laying complaints; and
- (b) at the direction of Council, appoint a marshal to assist the Ethics Committee.”.

10. Amendment of section 31 of the principal Act.

Section 31 of the principal Act is amended in subsection (1) by the insertion immediately after paragraph (b) of the following new paragraph —

- “(c) to order that the name of a counsel and attorney be struck off the Roll if he has been convicted of a criminal offence which has been classified as a serious offence in accordance with the regulations.”.

11. Amendment of section 40 of the principal Act.

Section 40 of the principal Act is amended as follows —

