

**PROPOSED AMENDMENTS TO
THE LEGAL PROFESSION ACT,
CHAPTER 90:03**

**REPORT OF
THE LEGAL PROFESSION ACT
SUBCOMMITTEE**

8th March 2017

I. INTRODUCTION

This document is intended to present a consolidation of proposed amendments to the Legal Profession Act, Chap. 90:03 ("the LPA") which have been considered by the Council of the Law Association over many years.

The LPA was passed in 1986 and since then the legal profession and the society which it serves has changed. This package of proposals is intended to address many of the areas that need adjusting in order to better organize and regulate the profession in contemporary Trinidad and Tobago.

The proposals submitted hereunder are presented in a tabular format, identifying for ease of discussion:

- (a) the section to be amended;
- (b) the specific amendment; and
- (c) the policy behind the amendment.

The specific amendments are in a form that can easily be transposed into a Bill format by the Chief Parliamentary Counsel. Likewise, the policy statements would enable the drafting of the Explanatory Notes to the Bill.

Consequential amendments and the renumbering of sections have not been included.

By email dated the 7th February, 2017 the Council of the Law Association circulated the Report of the Legal Profession Act Sub-Committee dated the 26th January, 2017 and invited comments from the Members. Comments were received from several Members of the Law Association and were duly considered by the Sub-Committee. The Sub-Committee notes that there were several suggestions received which requested consideration of the introduction of Limited Liability Partnerships of Attorneys at Law, as is done in other jurisdictions. These suggestions have not been incorporated into proposed amendments for the purpose of this Report but represent an important issue for further consideration by the Council of the Law Association and its membership.

2. THE PROPOSALS

| SECTION | AMENDMENT | POLICY |
|---------|---|--|
| 2 | In the definition of the term "Minister" by deleting the words "Minister responsible for Legal Affairs" and replacing it with the words "Attorney General." | To designate the Attorney General as the Cabinet Minister responsible for any executive functions to be carried out by the Minister in the Act |

| | | |
|---------------------|---|--|
| 3(2) | By deleting the words "practitioner members, non-practitioner members" ¹ and replacing it with the word "members" | To eliminate the category of non-practitioner members and to create a universal definition of "member" |
| 6(1) | By deleting section 6(1) and replacing it with the following: "(1) Every Attorney-at-Law is a member of the Association and entitled to practise so long as his practising certificate has effect." | To declare all Attorneys-at-law members regardless of whether they hold a practising certificate, but to limit their right to practise only where their practising certificate has effect |
| 6(3) | By deleting section 6(3) | To eliminate the category of practitioner members |
| 7 | By deleting section 7 | To eliminate the category of non-practitioner members |
| 9(2) | By deleting the word "practitioner" | To eliminate the category of non-practitioner members |
| 9 (2) (a) and (b) a | By renumbering the existing subsections in section 9 (2) (a) and (b) as 9 (2) (b) and (c) respectively and inserting two new subsections in section 9(2) as follows: "9 (2) (a) To nominate a candidate for election to the Council; (b)... (c)...; and (d) to requisition a Special General Meeting" | To bring in line with the proposed sections 3 (2) and 6 (1) and consequential amendments to the Act wherever the word practitioner member occurs. |
| 9(3) | By deleting section 9(3) and replacing it with the following: "Members may by resolution exclude any member from a general meeting of the Association or any part thereof." | Consequential amendment as well as clarifying the power to exclude any member from a general meeting by resolution |
| 10(1) | By deleting the words "practitioner member or a non-practitioner" | Consequential amendment |
| 12(1) | By deleting the words "through the Registrar" and replacing it with the words "in such manner as the Association may direct." | To facilitate the payments of annual subscriptions directly to the Association instead of through the Registrar and to facilitate the payment of annual subscriptions through the Banks etc. |
| 12(4) | By deleting section 12 (4) and replacing it by the following: "The Council may fix levies and penalties payable by members for any of the purposes of the Association and in particular penalties for the late payment of annual subscriptions and annual contributions to the Fund." | To enable the Council to fix penalties for late payments of practising fees |
| 12 (5) | By deleting the word "practitioner" | |
| | | |

¹ The words "practitioner" and "non practitioner" shall be deleted from the Act wherever it appears

| | | |
|-----------|--|---|
| 15(1A)(c) | By repealing this provision, such repeal to come into force on a date not later than 2 years after its proclamation by the President. | To phase out the admission of BVC graduates over two years and comply with Treaty obligations under the Agreement defined in s. 2(1) of the Legal Profession Act and set out in the Schedule to the Council of Legal Education Act Ch. 39:50. |
| 15(1A)(d) | By repealing this provision, such repeal to come into force on a date not later than 2 years after its proclamation by the President. | To phase out the admission of LPC graduates over two years and comply with Treaty obligations under the Agreement defined in s. 2(1) of the Legal Profession Act and set out in the Schedule to the Council of Legal Education Act Ch. 39:50. |
| 15(1A)(e) | By replacing the word "ten" with the word "fifteen" and by replacing the word "six" with the word "twelve". | Pending the repeal of sections 15(1A)(c) and 15(1A)(d), to increase the years' standing for attorneys eligible to give attachment certificates and also to increase the period of attachment to one year |
| 15(1A)(e) | By deleting "work relating the practice of Law" and replacing it with the words "in accordance with rules which may be made by the Council for prescribing and regulating the manner of such attachment". | Pending the repeal of sections 15(1A)(c) and 15(1A)(d), to ensure quality and to standardize what is expected during the period of attachment |
| 15A | By inserting after the words "in the Order" the words "but subject to the payment of practising fees as prescribed by Council." | To mandate that Special Case Admissions must pay practising fees fixed by Council |
| 20(4) | By deleting the words "a legal document" and replacing it with the words "any legal document including without limitation any conveyance, contract, will, pleading, document to be used in any court, tribunal or arbitration" | To expand the requirement for identifying the Attorney preparing legal documents for accountability and for better enforcing the requirement to pay annual fees |
| 23(1) | By deleting the word "Registrar" and replacing it with the word "Association" | To require members to apply to the Association for practising certificates |
| 23(2) | By deleting section 23(2) and replacing it with the following: "Subject to Section 27, upon an Attorney-at-Law satisfying the Association that he has paid his annual subscription to the Association under section 12 and his annual contribution to the Fund under section 56 and that none of the provisions of section 24(2) apply to him, the Association shall issue to him a practising certificate." | To require members applying for a practising certificate to satisfy the Association that none of the provisions of section 24(2) apply |
| 23(4) | By replacing the word "Registrar" with the word "Association" and also inserting after the word "Gazette" the words "and two daily newspapers in general circulation". | To give the Association the responsibility to publish lists of practising attorneys and to publish those lists in the newspapers and well as the Gazette |
| 24(1) | By replacing the word "Registrar" with the word "Association" wherever it occurs | consequential amendment |

| | | |
|----------|--|---|
| 25 | By inserting a new subsection (2) as follows: "(2) For the avoidance of doubt, the Association may apply to the High Court for a declaration that an attorney-at-law to whom paragraphs (b), (e), (f) or (g) of section 24(2) applies be deemed to be suspended from practising law". | To allow the Association to apply for a declaration that by operation of law, an attorney-at-law is suspended from practising law |
| 26(2) | By deleting the words "and to be a practitioner member" | Consequential Amendment |
| 27 | By deleting subsections (a) and (b) and inserting after the word "paying" the words "the annual contribution to the Compensation Fund" | To require law officers to pay annual subscriptions (but not contributions to the Compensation Fund) as a prerequisite to attending and voting at meetings of the Association and also to be elected to Council |
| 34(1) | By deleting the word "circumstances" | To correct an obvious typographical error |
| 34(2)(b) | By deleting subsection 2(b) and replacing it with the following: "(b) after death or having been adjudged a bankrupt or a person of unsound mind the attorney-at-law concerned immediately before such adjudication or immediately before his death was practising as an attorney-at-law on his own account and not in partnership with another attorney-at-law." | To expand the categories of cases where the Court will allow the Council to control the keeping and distribution of monies held by a bank in an attorney's client account |
| 37(1) | By deleting the words "or a law officer"; to also insert the words ", the Association" after the word "Registrar" | To enable a complaint to be made against a law officer. Also for the removal of doubt to empower the Association through the Council to bring a disciplinary complaint |
| 37(2) | By deleting the words "or a law officer"; to also insert the words ", the Association" after the word "Registrar" | To empower the court to cause a complaint to be made against <u>any</u> attorney-at-law (including a <u>law</u> officer) through the Council |
| 38(1) | By replacing subsection (1) with the following: "(1) The Fifth Schedule shall have effect in relation to disciplinary proceedings against attorneys-at-law other than the Attorney General." | Consequential amendment |
| 39(1) | By inserting a new subsection (1)(b) as follows: "suspend the attorney-at-law to whom the application relates from practising law for a period of not more than six months; or" | To expand the power of the Disciplinary Committee to suspend attorneys for a maximum period of six months |
| 39(4) | By inserting a new subsection (4)(c) as follows: "Every decision or order made under this section for the payment of a fine, compensation or costs, certified under the hand of the Registrar shall have the same effect and shall be enforceable as an order of the High Court by the Association in respect of the recovery of fines, and by the person aggrieved in respect of the recovery of compensation and costs." | To allow the Association through the Council to enforce orders of the Disciplinary Committee for the recovery of fines, and by the complainant for the recovery of compensation and costs. |
| 39(5) | By inserting a new subsection 39(5) as follows: "Where an order is made pursuant to section | To allow the Registrar to notify the public at large of orders |

| | | |
|------------------------------|--|---|
| | 39(1)(b) the Registrar shall, not earlier than 42 days after the making of such order, cause such order to be published in the Gazette and two daily newspapers in general circulation" | suspending Attorneys, but only after the time for appealing has expired. |
| 46 | By replacing the word "five" with the word "twenty" | To increase the fine from \$5,000.00 to \$20,000.00 |
| 47(2) | By replacing the word "five" with the word "twenty" | To increase the fine from \$5,000.00 to \$20,000.00 |
| 48 | By replacing the word "five" with the word "twenty" | To increase the fine from \$5,000.00 to \$20,000.00 |
| 51(1) | By deleting section 51(1) and replacing it with the following new section 51(1): "On an application made by an attorney-at-law not before one month of the delivery of a bill of costs on the person charged with the payment thereof, the High Court may order that the bill be assessed and give directions for the assessment thereof." | To address the lacuna caused by the repeal of the Solicitors Act, Chap. 6:50 (1980 Rev. Laws) in respect of how to apply for assessment of an Attorney/Client bill and the jurisdiction of the Court to give directions for such assessment |
| 51(2) | By renumbering the existing sections 51(2),(3) and (4) as 51(3),(4) and (5) respectively and inserting a new section 51(2) as follows: "Subject to this section an attorney-at-law may not commence any suit for the recovery from his client of the amount of any bill of costs for any legal business done by him unless the bill of costs is assessed and a copy of the order made upon such assessment is served on the client with a demand in writing for payment fifteen days before the filing of the suit." | To clarify the existing section 51(1) and bring it in line with the proposed section 51(1)(A) |
| 56(1) | By deleting the word "practitioner" | Consequential amendment |
| 56(2) | By replacing the word "Registrar" with the word "Association" | Consequential amendment |
| Part A of the First Schedule | Paragraph 5 is amended by inserting the word "other" after the word "every" | To increase the life of the Council from 1 year to 2 |
| | Paragraph 7 delete the words "The Association and" in line 1 and the word practitioner | To correct an error and consequential amendment |
| | Paragraph 8 is amended by deleting the words "every year" and inserting the words "the year in which it is held pursuant to paragraph 5" | Consequential amendment |
| | Paragraph 14 is amended by replacing the word "six" with the word "eighteen" wherever it occurs in Paragraphs 14(a) and 14(b) | To provide for Bye-Elections within the first 18 months of the term of a 2-year Council and for appointments to fill vacancies during the last 6 months |
| | Paragraph 17(b) is amended by deleting and replacing it with the following: "He is absent from any five meetings of the Council without its consent in any calendar year" | |
| | Paragraph 23 By deleting the word "practitioner" | Consequential amendment |
| | Paragraph 24 By deleting the word "practitioner" | Consequential amendment |
| Part A of the Third Schedule | By deleting the word "ten" in Rule 54(1) and replacing it with the word "five" | To reduce the time within which a former Judge of the Supreme Court is restricted from appearing in the courts after his retirement, resignation or termination of employment |

| | | |
|------------------------------|---|---|
| Part B of the Third Schedule | By deleting Rule 10(3) | To provide for a regulated system of Conditional Fees with protection for clients |
| Part B of the Third Schedule | <p>By inserting after Rule 10 the following:</p> <p>“10A. (1) An attorney-at-law shall not charge a contingency fee but may charge fees in the manner prescribed by this Rule (hereinafter called “Conditional Fees”).</p> <p>(2) An attorney-at-law may only enter into a Conditional Fee arrangement in the following types of cases:-</p> <ul style="list-style-type: none"> (a) personal injuries; (b) commercial cases in which an award of damages is the primary remedy; (c) product liability; (d) insolvency; (e) employee’s compensation; (f) professional negligence; (g) debt collection; or (h) judicial review or other administrative orders. <p>(3) Subject to subrule (4), an attorney-at-law shall not charge a Conditional Fee in excess of the maximum fee determined in accordance with Appendix B of Part 67 of the Civil Proceedings Rules, 1998. (In determining the maximum permissible Conditional Fee, the sum collected shall be regarded as the value of the claim).</p> <p>(4) In cases for judicial review or other administrative orders an attorney-at-law shall not charge a Conditional Fee in excess of the total fees (inclusive of out-of-pocket expenses) to be fixed and/or assessed and/or prescribed by the Court as payable by the State to his client (inclusive of any applicable interest thereon).</p> <p>(5) Save in cases for judicial review or other administrative orders, an attorney-at-law may, as part of a Conditional Fee arrangement, charge Reduced Fees in the event that he is not successful in collecting the claim or any part thereof. Such Reduced Fees shall not exceed 15% of the maximum fee determined in accordance with Appendix B of Part 67 of the Civil Proceedings Rules, 1998. (In determining</p> | To provide for a regulated system of Conditional Fees with protection for clients |

| | | |
|--|--|--|
| | <p>the maximum permissible Reduced Fee, the sum claimed shall be regarded as the value of the claim).</p> <p>(6) Every Conditional Fee arrangement entered into by an attorney-at-law shall be based on one of the following conditions:-</p> <p>(i) Conditional Fees to be payable only upon successful collection of the claim or any portion thereof (or success in cases for judicial review or other administrative orders). No fees or out-of-pocket expenses to be payable if the attorney-at-law is not successful;</p> <p>(ii) Conditional Fees to be payable only upon successful collection of the claim or any portion thereof (or success in cases for judicial review or other administrative orders). Out-of-pocket expenses only to be payable if the attorney-at-law is not successful; or</p> <p>(iii) Conditional Fees to be payable only upon successful collection of the claim or any portion thereof. Reduced Fees and out-of-pocket expenses to be payable if the attorney-at-law is not successful.</p> <p>(7) Subject to rule (6) an attorney-at-law may in a Conditional Fee arrangement agree with his client that in the event the attorney-at-law withdraws from employment under Rule 34 of Part A or his retainer is terminated by the client before completion of the case, fair and reasonable fees and all out-of-pocket expenses incurred to the date of such withdrawal or termination shall become payable.</p> <p>(8) An attorney-at-law who instructs or employs another attorney-at-law to act on behalf of his client in circumstances where a Conditional Fees arrangement is in place shall ensure that the fees of such attorney-at-law (inclusive of any Value Added Tax that may be payable thereon) are fixed by prior agreement and paid out of such Conditional Fees (or Reduced Fees where applicable).</p> <p>(9) All Conditional Fee arrangements shall</p> | |
|--|--|--|

| | | |
|--|---|--|
| | <p>be by duplicate agreement in writing as between the attorney-at-law and his client and shall set out clearly:-</p> <ul style="list-style-type: none"> (i) the specific condition stipulated by subrule (6); (ii) the precise basis for determining the Conditional Fee; (iii) if applicable, any agreement required by subrules (7) and (8); (iv) that the Conditional Fee is to be paid from the fund collected on behalf of the client; (v) contain an acknowledgement by the client that he has read or has had the agreement read to him and that he has understood fully the contents of same. <p>(10) Subject to this Rule, an attorney-at-law may enter into a collective Conditional Fee arrangement with two or more clients in the same case or matter.</p> <p>(11) Unless otherwise provided for in the Conditional Fee arrangement, the Attorney-at-Law shall be entitled to any costs recovered by the client with respect to interlocutory proceedings or procedural applications”.</p> | |
| | | |

Respectfully submitted.

Dated this 8th day of March, 2017.

Elton Prescott S.C (Convenor)
Darrell P. Allahar
Theresa Hadad
Anand Singh
Nigel Floyd