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CAYMAN ISLANDS



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DRAFT NO.9

**A BILL FOR A LAW TO REPEAL AND REPLACE THE LEGAL
PRACTITIONERS LAW (2003 REVISION) IN ORDER TO PROVIDE
FOR THE ESTABLISHMENT OF A COMPLAINTS COMMITTEE; TO
PROVIDE FOR THE ESTABLISHMENT OF A DISCIPLINARY
TRIBUNAL; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

MEMORANDUM OF OBJECTS AND REASONS

[TO BE INSERTED UPON FINAL APPROVAL OF THE DRAFT BILL]

THE LEGAL PRACTITIONERS BILL, 2007

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CAYMAN ISLANDS

A BILL FOR A LAW TO REPEAL AND REPLACE THE LEGAL PRACTITIONERS LAW (2003 REVISION) IN ORDER TO PROVIDE FOR THE ESTABLISHMENT OF A COMPLAINTS COMMITTEE; TO PROVIDE FOR THE ESTABLISHMENT OF A DISCIPLINARY TRIBUNAL; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands

PART I – PRELIMINARY

1. This Law may be cited as the Legal Practitioners Law, 2007.

Short title

2. In this Law unless the context otherwise requires –

Interpretation

"affiliate" means, in relation to a recognised firm, any business, a majority of the equity interests of which is-

- (a) directly or indirectly owned or controlled by such recognised firm; or
- (b) directly or indirectly owned or controlled by one or more persons a majority of whom own or control the equity interests in such recognised firm,

and where, in each case such business practises is the same or in all material respects the same name as such recognised firm;

"attorney-at-law" means a person admitted to practise the law of the Cayman Islands within or outside the Islands;

“Caymanian” means a person who possesses Caymanian status under the Immigration Law (2003 Revision) or any earlier law providing for the same or similar rights and includes a person who acquired that status under Part III of the Immigration Law, 2003;

“Chief Justice” means the Chief Justice of the Cayman Islands;

“Clerk of the Court” means the officer appointed under section 9 of the Grand Court Law (1995 Revision) to be the Clerk of the Court;

“Complaints Committee” means the complaints committee established by section 25;

“court” means the Grand Court of the Cayman Islands;

“Court of Appeal” means the Court of Appeal of the Cayman Islands;

“Court Office” means the office established pursuant to section 10 of the Grand Court Law (1995 Revision);

“Court Roll” means the register maintained by the Clerk of the Court pursuant to section 6;

“Disciplinary Tribunal” means the Cayman Islands Legal Practitioners Disciplinary Tribunal established by section 31;

“equity interest” means a share, shareholding or equity partnership in a business;

“firm” means-

- (a) two or more attorneys-at-law practising as a partnership or a limited liability partnership; or
- (b) a company regulated under the Legal Practitioners (Incorporated Practice) Regulations, 1998;

“government attorney-at-law” means an attorney-at-law employed by the Portfolio of Legal Affairs;

“judge” means –

- (a) a judge of the Grand Court appointed as such under section 49I of Schedule 2 to the Cayman Islands (Constitution) Orders 1972 to 1993 or a person acting as such by virtue of section 49K of the said Schedule; or
- (b) a judge of the Court of Appeal;

“Legal Advisory Council” means the Council established by section 18 of the Legal Practitioners Law (2003 Revision) and continued under section 28 of this Law;

“member” means a member of the Complaints Committee;

“misconduct”, in relation to an attorney-at-law, includes –

- (a) the making of a statement by an attorney-at-law which the attorney-at-law knows is false in any material particular for the purpose of procuring his admission to practise law or the admission of any other person so to do;
- (b) employing any disqualified or unqualified person, or permitting any disqualified or unqualified person in his employ to engage, in any business, matter or thing in contravention of this Law;
- (c) contravening any rule or regulation made under this Law; or
- (d) failing to comply with the rules of conduct;

“Monetary Authority” means the Cayman Islands Monetary Authority established under section 5(1) of the Monetary Authority Law (2005 Revision) and includes any employee of the Authority acting under the Authority’s authorisation;

“recognised corporate body” means a body corporate recognised under section 21;

“recognised firm” means a firm where at least half of the partners or other persons holding equity interests in the firm are Caymanians or persons who are ordinarily resident in the Islands or any affiliate of such a firm;

“relevant financial business” has the same meaning assigned by section 4 of the Money Laundering Regulations (2005 Revision);

“Residency and Employment Rights Certificate” means a certificate issued under section 29 of the Immigration Law 2003 which entitles the holder to accept employment from any employer of his choice but which restricts him to working within the particular occupation or occupations specified by the Caymanian Status and Permanent Residency Board; and

“rules of conduct” means rules of professional conduct set out in Schedule 5.

PART II- GENERAL

Admission of persons to
practice as attorneys-at-
law

3. (1) Subject to this Law, any person who is not an undischarged bankrupt and who-

- (a) is a Caymanian;
- (b) holds a current work permit or a Residency and Employment Rights Certificate; or
- (c) is employed by the Government,

may be admitted to practise generally as an attorney-at-law in the Islands in accordance with subsection (2).

(2) A judge of the Grand Court may admit any person specified in subsection (1) as an attorney-at-law where such person -

- (a) (i) is entitled to practise at the Bar of England and Wales or the Bar of Northern Ireland; and;
- (ii) having received a certificate of call from either of those Bars, has either –
 - (A) served twelve months pupillage in England, Wales or Northern Ireland; or
 - (B) served the term of articles in the Islands required by the Third Schedule to the Legal Practitioners (Students) Regulations (2003 Revision);
- (iii) is a member of the Faculty of Advocates of Scotland or a solicitor of the Supreme Court of Judicature of England, Scotland or Northern Ireland;
- (iv) is an attorney-at-law of the Supreme Court of Jamaica; or
- (v) is a Writer to the Signet of Scotland or a solicitor admitted to practice in Scotland;
- (b) satisfies a judge that he is entitled to practise in any court of any country of the Commonwealth and possesses a qualification comparable as to standard law, practice and procedure with those specified in paragraph (a); or
- (c) is qualified to practise as an attorney-at-law under regulations made under section 19.

(3) Any person who is qualified under this section may apply for admission to practise as an attorney-at-law and such application shall be made by motion to the Grand Court and be filed in the Court Office together with -

- (a) the certificate of the applicant's call to the Bar or, as the case may be, of his admission to the Faculty of Advocates or of his admission as solicitor, Writer to the Signet or Law Agent

aforesaid, or the corresponding certificate relating to any qualification referred to in paragraph (b) or (c) of sub-section (1); and

(b) an affidavit verifying his qualifications.

(4) The judge may, for due cause, including lack of fitness of character, refuse to admit any applicant to practise generally as an attorney-at-law notwithstanding that he may possess the qualifications specified under this section.

4. (1) A judge may admit temporarily to practice as an attorney-at-law for the purpose of any specified suit or matter in regard to which the person so admitted has been instructed-

Limited admission as attorney-at-law

- (a) by an attorney-at-law in the Islands; or
- (b) where the Clerk of Court has certified that it is not possible to assign the services of an attorney-at-law to a person to whom a legal aid certificate has been granted under section 3 of the Legal Aid Law (1999 Revision), by such person,

1999 Revision

any person who possesses the specified qualifications, if –

- (i) such person has come or intends to come to the Islands for the purpose of appearing, acting or advising in that suit, cause or matter; and
- (ii) an application for such admission is made in such manner as the judge may think fit.

(2) A person temporarily admitted to practise as an attorney-at-law under subsection (1) shall be entitled to practise for the purpose of the suit, cause or matter concerned but not otherwise and while so admitted shall be subject to Parts V and VI to the same extent as a person who is otherwise generally admitted as an attorney-at-law.

(3) The Clerk of Court shall not issue a certificate under subsection (1) (b) unless he is satisfied-

- (a) that every reasonable effort has been made to obtain the services of a generally admitted attorney-at-law for the person to whom the legal aid certificate has been granted; and
- (b) that there is no generally admitted attorney-at-law who is willing and able to advise or represent that person pursuant to a legal aid certificate.

5. (1) Any person admitted to practise as an attorney-at-law shall pay the admission fee specified in Schedule 1.

Admission fees

(2) Notwithstanding subsection (1) a person who is admitted to practise as an attorney-at-law with the Government is exempt from the payment of the admission fee.

Enrolment of attorneys-at-law

6. (1) The Clerk of Court shall continue to keep a register of attorneys-at-law known as the Court Roll on which he shall cause to be registered the name of every person entitled to practise law under section 7 or admitted and entitled to practise law under sections 3 and 4, together with the following particulars in respect of each such person –

- (a) his full name and address;
- (b) the date of his admission to practise law; and
- (c) a description and date of the qualifications in respect of which he has been admitted to practise law,

and upon being so enrolled, such person shall be entitled to a certificate of enrolment in the form set out as Form I Schedule 2 under the seal of the Grand Court and signed by the Clerk of the Court.

(2) The production of such certificate shall be *prima facie* evidence that the person named therein is duly enrolled as an attorney-at-law, and such certificate shall be admissible in evidence without further proof of the sealing and signing thereof by the Clerk of the Court.

(3) The Court Roll shall at all reasonable times be open to inspection by members of the public at the Court Office.

(4) Any person whose name is so enrolled shall, subject to section 7, be entitled to practise as an attorney-at-law in every court in the Islands.

(5) The Clerk of the Court shall make such alterations in the particulars registered in the Court Roll as are necessary in accordance with this Law.

(6) Any attorney-at-law, whether generally or temporarily admitted, shall be deemed to be an officer of the Court.

Clerk of the Court's duty to register persons entitled to practise immediately before this Law

7. The Clerk of the Court, shall as soon as possible after the commencement of this Law, cause to be registered on the Court Roll the particulars specified in section 6 (1) of every person who immediately before the commencement of this Law was entitled to practise as an attorney-at-law under the Legal Practitioners Law (2003 Revision).

Status of attorney-at-law

8. (1) Every person whose name is entered on the Court Roll in accordance with this Law shall be known as an attorney-at-law and-

- (a) subject to subsection (2)(b), is entitled to practise law and sue for and recover his fees for services rendered in that respect;
- (b) subject to subsection (2) (b), has the right of audience before any court;
- (c) is an officer of the court.

(2) No person may practise law unless-

- (a) his name is entered on the Court Roll in accordance with this Law; and
- (b) he is the holder of a valid practising certificate.

9. (1) Every attorney-at-law who is registered on the Court Roll, except an attorney-at-law who is admitted pursuant to section 4 and an attorney-at-law employed by the Government and who desires to practise law in any year shall, subject to subsection (3), in the month of January in that year, apply to the Clerk of the Court for an annual practising certificate.

Practising certificate and annual fees

(2) Subject to subsections (3) and (4), the Clerk of the Court shall issue to an attorney-at-law applying under subsection (1) an annual practising certificate in the form set out as Form II in Schedule 2 where that attorney-at-law-

- (a) satisfies the criteria specified in section 3 (1);
- (b) provides the Clerk of the Court with a registration document prescribed by the court, setting forth such information as the court may require including but not limited to -
 - (i) his current residence and office addresses; and
 - (ii) the bars of all jurisdictions to which he is admitted; and
 - (iii) whether he has done or committed any act or thing which could cause or did cause his name to be struck off the roll in jurisdictions in which he is admitted; or
 - (iv) that to the best of his knowledge, information and belief his name still remains on the roll of the jurisdictions in which he is admitted; and
- (c) pays the annual registration fee specified in Schedule 1,

(3) An attorney-at-law who is employed by the Government so long as he remains employed as such by the Government shall be deemed to be the holder of a valid practising certificate.

(4) A certificate in the form set out as Form 3 in Schedule 2 signed by the Attorney-General to the effect that a particular person is a government attorney-at-law is *prima facie* evidence of that fact.

(5) A practising certificate which is issued to an attorney-at-law who is admitted to practice after 31st January of any year shall extend up to 31st January

of the following year and the fee payable for such certificate shall be pro rated in accordance with the number of months during which it is valid.

(6) If a person who is registered on the Court Roll applies to the Clerk of the Court for a practising certificate in a month other than January, the Clerk of the Court shall, on payment of the appropriate fee for late payment specified in Schedule 1, unless that person is exempt from such payment, issue to him a practising certificate.

(7) An annual practising certificate is valid for the year in which it is issued and expires on the 31st January of the following year.

(8) The Clerk of the Court shall cause to be published in the Gazette-

- (a) in the month of February in every year, an alphabetical list of persons who have at the 31st January in that year obtained an annual practising certificate; and
- (b) as soon as practicable, after he obtains a practising certificate, the name of any person obtaining a practising certificate after 31st January in any year.

(9) If the name of an attorney-at-law is removed from the Court Roll pursuant to this Law any practising certificate issued to him shall cease to be valid and the Clerk of the Court shall cause notice of this to be published in the Gazette.

(10) During the period of suspension of an attorney-at-law from practice, no practising certificate shall be issued to him and any practising certificate issued to him prior to such suspension shall cease to be valid for the period of that suspension.

(11) If an attorney-at-law is adjudicated bankrupt any practising certificate issued to him shall cease to be valid for the period during which he remains an undischarged bankrupt.

(12) If an attorney-at-law declares that he has been disbarred in any other jurisdiction, or such information is otherwise brought to the attention of the Clerk of the Court, the Clerk shall not issue a practising certificate to him and the provisions of Part VI shall apply.

(13) A copy of the Gazette containing the list referred to subsection (8) (a) or the name of any person published pursuant to subsection (8) (b) shall be prima facie evidence in any court of the registration on the Roll of the name of, and the

holding of a valid practising certificate by, any person mention in subsection (8) (a) or (b).

(14) A person, who is not an attorney-at-law employed by the Government or who is not practising law by virtue of section 4, shall not hold himself out as practising or purport to practise as an attorney-at-law within or outside the Islands without being in possession of a current annual practising certificate issued under this section; and any person who contravenes this subsection commits an offence and is liable on conviction to a fine of ten thousand dollars, to a further fine of one thousand dollars for every day on which the offence continues after conviction thereof, to disciplinary action under Part VI or to all such penalties.

(15) Where an attorney-at-law fails to file the registration document required under subsection (2) the Clerk of the Court shall, within 7 days after such document should have been filed, send a notice to the attorney-at-law requiring him to file the document not later than 14 days of the date of the notice; and where the attorney-at-law fails to comply with this notice he shall be summarily suspended and shall remain suspended until he has filed the document whereupon, subject to sections 47 and 48, he shall become reinstated without further order.

10. (1) Subject to subsection (2), an attorney-at-law shall be entitled to sue for and recover his fees and costs in respect of services rendered as an attorney-at-law

Right to sue for fees and costs

(2) An attorney-at-law is only entitled to sue in accordance with subsection (1) for services rendered during any period when he was the holder of a practising certificate.

11. (1) Nothing in this Law shall prevent any party to a suit, cause or matter from representing himself before any court in the Islands and where such party is a company, subject to obtaining the leave of the court, it may be represented by a director of that company.

Persons representing themselves in court and preparing certain instruments

(2) Any person who is not an attorney-at-law who directly or indirectly draws or prepares any bill for any private Law of the Legislative Assembly, any memorandum of a company or any instrument which is intended to create or affect legal relations or otherwise to have legal effect, unless he proves that the act was not done for or in expectation of any fee, gain or reward, commits an offence.

(3) A person who commits an offence under subsection (2) is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of two years, or to both.

(4) Subsection (2) does not apply to-

- (a) a will which does not have trust provisions;
- (b) any document relating to the sale, purchase or lease of land where no charge is involved;
- (c) a letter or power of attorney;
- (d) the transfer of stock containing no trust or limitation;
- (e) a public officer or the employee of a company or firm preparing or drawing any instrument for his employer in the course of his employment;
- (f) a person engrossing any instrument in the course of his employment; or
- (g) any professional accountant, as respects the drawing or preparing, in the course of his practice as such an accountant, of a memoranda of association of a company,

and nothing in subsection (2) shall be construed as preventing a person in the regular employment of an attorney-at-law from preparing in the course of such employment and under the supervision of the attorney-at-law any instrument which is required by the attorney-at-law and for which the attorney-at-law assumes responsibility.

Operational licence fee

12. (1) A firm which wishes to practise law in the Islands shall be a recognised firm.

(2) Every recognised firm practising within the Islands shall pay to the Clerk of the Court an annual operational licence fee specified in Schedule 3.

(3) For the purposes of Schedule 3 any attorney-at-law employed by an affiliate of such recognised firm shall be considered to be employed by such recognised firm.

(4) The Clerk of Court shall issue to each firm to which this section applies, on payment of the annual operational licence fee, an annual operational licence in the form prescribed in Schedule 4.

(5) Where a firm engages or attempts to engage in the practice of law without being in possession of a current operational licence issued under subsection (4) or without being a recognised firm, the persons holding the equity interests in such firm are liable to disciplinary action under Part VI.

(6) The provisions of this section apply, with the necessary modifications, to recognised corporate bodies.

(7) Where a recognised corporate body to which this section applies carries on business or attempts to carry on business as a recognised corporate body without being in possession of a current operational licence issued under subsection (4), that recognised corporate body is liable to suspension and revocation of recognition as specified under regulation 11 of the Legal Practitioners (Incorporated Practice) Regulations, 1998.

13. (1) An application by an attorney-at-law to procure the removal of his name from the Court Roll shall be made in a summary manner to the Grand Court, which shall make such order thereon as it thinks fit.

Removal of name from
the Court Roll

(2) Rules of court may prescribe the form and manner of any application made under subsection (1).

(3) An attorney-at-law who-

- (a) possesses Caymanian status; or
- (b) is a permanent resident of the Islands in accordance with the Immigration Law (2006 Revision); and
- (c) retires from the practice of law,

and who wishes for his name to remain on the Court Roll shall, by affidavit, so inform the Clerk of the Court who shall amend the Roll accordingly.

(4) Where an attorney-at-law to whom subsection (3) does not apply has failed to pay the annual fee by 30th June in any year, the Clerk of the Court shall send a notice of final warning addressed to the attorney-at-law at his address on the Court Roll setting out that if the fee and the late fee are not paid before the end of the period of 14 days beginning with the day on which the notice was issued, his name will be removed from the Roll; and if no payment is so made, the Clerk of the Court shall remove the name of the attorney-at-law from the Court Roll by 30th September of the same year.

(5) Where the Clerk of the Court removes the name of an attorney-at-law from the Court Roll he shall publish a notice in the Gazette of that fact.

14. (1) Nothing in this Law-

- (a) prejudices or affects the rights, including the right in connection with the duties of his office to act as an advocate, or privileges of the Attorney-General or of any person holding public office in the Attorney-General's chambers or of a person instructed by or

The Attorney –General
savings

on behalf of the Attorney-General to appear for the Attorney-General in any cause or matter and who possesses the prescribed qualification; or

- (b) affects any enactment empowering any person, whether or not an attorney-at-law, to conduct or otherwise act in relation to any legal proceeding.

(2) Part VI does not apply to the Attorney-General or to any government attorney-at-law.

PART III- ARTICLES

Articled clerks

15. (1) An attorney-at-law who has been practising continuously as such in any country in the Commonwealth for a period of at least five continuous years (at least two of which have been in the Islands) may take any person into his service as an articled clerk.

(2) An attorney-at-law shall not take into his service as an articled clerk any person who does not possess the minimum qualifications prescribed under section 19 for admission to service under articles.

(3) An attorney-at-law shall not, without the prior written approval of the Attorney-General, have in his service more than two articled clerks at the same time.

(4) The Attorney-General and, with the special leave of the Attorney-General, the Clerk of Court may have, in their respective service, up to four articled clerks at the same time.

(5) An attorney-at-law shall not take or retain in his service any other person as an articled clerk after he has ceased to practise as an attorney-at-law.

(6) If any person takes or has in his service any articled clerk in contravention of subsection (1), (2), (3) or (5), the Attorney-General may, of his own motion, discharge the articles of that clerk upon such terms as the Attorney-General thinks fit.

(7) Notwithstanding any other provision in this Law, the Attorney-General may, where in his opinion any person in the legal or judicial departments of the public service is performing duties which are mainly legal in nature, certify that the period spent in performing such duties shall, for the purposes of this Law, be equivalent in all respects to a similar period spent in the service of an attorney-at-law under articles and such certificate shall take effect according to its tenor.

16. The Attorney-General may, of his own motion, discharge an articulated clerk on such terms as he thinks fit if -

Discharge of articles in certain circumstances

- (a) the attorney-at-law to whom the articulated clerk is articulated is declared bankrupt or his name is struck off the Court Roll;
- (b) the Attorney-General is satisfied after investigation that the articulated clerk is morally unfit to become an attorney-at-law; or
- (c) upon the application of either the attorney-at-law or the articulated clerk, the Attorney-General is satisfied that the articles ought to be discharged.

17. (1) The Attorney-General may, upon the application of any attorney-at-law and of any articulated clerk and in any case in which he considers it proper so to do and subject to any conditions he may think fit to impose, approve the transfer of the articulated clerk to the service under articles of such other attorney-at-law who is willing to take him.

Transfer of articles, etc

(2) Where an approval is given under subsection (1) the articulated clerk shall be, for all purposes, the articulated clerk of such other attorney-at-law and the written articles of clerkship under which he was serving immediately before such approval shall, subject to any modifications made therein by the Attorney-General, continue to have effect as though such other attorney-at-law had originally been a party thereto.

PART IV- LEGAL ADVISORY COUNCIL AND LEGAL EDUCATION

18. (1) There continues to be established a Legal Advisory Council comprising-

Legal Advisory Council

- (a) the Chief Justice as Chairman;
- (b) the Attorney-General or his nominee; and
- (c) two attorneys-at-law in private practice, one of whom shall be appointed by the Caymanian Bar Association and one of whom shall be appointed by the Cayman Islands Law Society.

(2) Three members of the Council including the Chairman, shall form a quorum.

(3) The Legal Advisory Council has the powers, duties and functions set out in this Law or any other Law.

19. (1) The Governor in Cabinet, after consultation with the Legal Advisory Council, may make arrangements for the provision of-

Regulations relating to legal education and qualification to practice law

- (a) a system of legal education and practical training leading to local qualification for enrolment as an attorney-at-law; and
- (b) a system of law reporting.

(2) No person may undertake the provision of legal education in the Islands without the written authority of the Governor in Cabinet acting on the advice of the Legal Council.

(3) The Governor in Cabinet, after consultation with the Legal Advisory Council, may make regulations relating to matters connected with his functions under subsection (1) and, in particular but without prejudice to the generality of the foregoing, such regulations may prescribe –

- (a) local qualifications for enrolment as an attorney-at-law, which qualifications may, among other things, require either the successful completion of a prescribed period of service under articles or the attainment of prescribed academic qualifications or both;
- (b) qualifications of persons who wish to provide legal education in the Islands;
- (c) qualifications required for admission to legal education in the Islands;
- (d) the examinations to be taken and fees to be paid by candidates for admission and enrolment for legal education and examination and different examinations may be prescribed in respect of persons who possess different qualifications or have followed different courses of study;
- (e) in respect of any examinations, the papers which are to be set within the Islands, the syllabuses to be followed and, so far as may be practicable, in conjunction, if necessary, with any other educational authority, the courses of lectures to be given by suitably qualified lecturers in any subject included in any such examination;
- (f) arrangements for the holding of such examinations (including the times and places thereof), the setting, correcting and marking of papers and, generally, for the conduct of the examinations by suitably qualified persons;
- (g) the terms (including remuneration and conditions of service) on which articled clerks may be taken and retained by attorneys-at-law and the conduct, duties and responsibilities towards each other of the parties to articles, and any such regulations may make different provision in respect of different categories of persons;
- (h) the minimum qualifications for admission to service under articles; and

- (i) such further and other provision as may appear necessary for the governance of service under articles, the tuition of students and their examination, including provision for the practical training and the examination in the Islands of students or other persons.

20. The Governor in Cabinet shall make regulations for the better carrying out of this Law and, without derogation from the generality of the foregoing, in particular for-

Further regulations

- (a) revoking or amending Schedule 1, 2 or 4;
- (b) providing rules of procedure for the Legal Advisory Council; and
- (c) prescribing the penalties which may be imposed for any breach of any regulations made hereunder.

21. The Legal Advisory Council may make regulations -

Regulations to permit attorneys to form incorporated practices

- (a) providing for the management and control by attorneys-at-law of bodies corporate carrying on business as attorneys-at-law;
- (b) prescribing the circumstances in which such bodies may be recognised by the Attorney-General as being suitable bodies to undertake the provision of services as attorneys-at-law;
- (c) prescribing the conditions which (subject to any exceptions provided by the regulations) shall, at all times, be satisfied by bodies corporate so recognised if they are to remain so recognised;
- (d) regulating the conduct of the affairs of recognised bodies and the names that such bodies may use;
- (e) for the suspension or revocation of the recognition of any recognised body granted under this section; and
- (f) to provide for any enactment or instrument passed or made before the 25 November, 1996 and having effect in relation to attorneys-at-law and recognised bodies with such additions, omissions or other modifications as appear to the Governor in Cabinet to be necessary or expedient.

22. (1) A body corporate shall not describe itself as a body corporate for the time being recognised under section 21 unless it is so recognised.

Penalty for pretending to be a recognised body

(2) A body corporate which contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

(3) Where an offence under subsection (1), which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person

purporting to act in any such capacity, he, as well as the body corporate, commits an offence and is liable on summary conviction to a fine of five thousand dollars.

PART V – RULES OF PROFESSIONAL CONDUCT AND DUE DILIGENCE

Rules of Professional Conduct

23. (1) The rules contained in the Code of Professional Conduct set out in Schedule 5 shall regulate the professional practice, etiquette, conduct and discipline of an attorney-at-law.

(2) A breach of any of the rules in Part A of Schedule 5 may constitute professional misconduct and a breach of any of the rules in Part B shall constitute professional misconduct.

(3) Where no provision is made by the Code in respect of any matter, the rules and practise of the legal profession which before the commencement of this Law governed that particular matter, shall apply in so far as is practicable.

(4) The Legal Advisory Council, with the prior written approval of the Chief Justice, may amend Schedule 5.

(5) Where any attorney-at-law, not including the Attorney-General or any government attorney-at-law fails to comply with the Code he is liable to be disciplined in accordance with the provisions of Part VI.

(6) A government attorney-at-law who fails to comply with the Code is liable to be disciplined in accordance with section 46 or in accordance with any other law governing the conduct of public officers.

Proceeds of Criminal Conduct Law compliance certificates

24. (1) Every firm and every attorney-at-law who works as a sole practitioner shall, on or by 31st January in each year, file with the Monetary Authority a certificate in a form prescribed by the Legal Advisory Council that to the best of its or his knowledge and belief it or he has complied and is continuing to comply with the requirements of the Proceeds of Criminal Conduct Law (2005 Revision) and any applicable regulations made thereunder, or, to the extent that they have or he has not done so, disclosing the nature and extent of their non-compliance.

(2) Any person who files a certificate under subsection (1) knowing it to be false is guilty of an offence and liable on summary conviction to a fine of [twenty thousand] dollars.

PART VI- DISCIPLINE WITHIN THE LEGAL PROFESSION

25. (1) There is established, for the purpose of receiving and considering complaints against any attorney-at-law, other than the Attorney-General and a government attorney-at-law, a Complaints Committee.

(2) The Complaints Committee comprises-

- (a) three attorneys-at-law appointed by the President of the Cayman Islands Law Society;
- (b) three attorneys-at-law appointed by the President of the Caymanian Bar Association;
- (c) one attorney-at-law employed by the Legal Portfolio of the Government and appointed by Attorney-General; and
- (d) two persons appointed by the Chief Justice who are not required to be attorneys-at-law and who, in the opinion of the Chief Justice, have demonstrated a wide knowledge of law, finance, financial regulation, accounting or arbitration principles.

(3) An appointment under subsection (2) shall be by instrument in writing made by the relevant appointor and a copy of each instrument shall be filed with the Clerk of the Court.

(4) Subject to subsection (5), a member of the Complaints Committee appointed pursuant to subsection (2)(a), (b) and (c) and pursuant to subsection (2) (d) where such person is an attorney-at-law, shall be of not less than seven years' standing in the legal profession and shall have been practising in the Islands prior to appointment for a continuous period of 3 years or more.

(5) At least two members of the Complaints Committee shall be of at least ten years' standing in the legal profession.

(6) The members of the Complaints Committee shall hold office for two years and shall be eligible for re-appointment.

(7) There shall be a Chairman who shall be of not less than ten years' standing in the legal profession and a deputy Chairman of the Complaints Committee who shall be selected by the members of the Committee.

(8) The Chairman shall appoint a secretary of the Committee and the secretary, among other things, shall cause to be established and maintained -

- (a) a register containing the names and addresses of all members of the Committee;

- (b) a minute book recording the minutes of all meetings of the Committee;
- (c) records of the work and activities of the Committee; and
- (d) such other records or particulars with respect to the Committee as the Chairman may consider necessary.

(9) The Clerk of the Court shall cause the names of the members of the Complaints Committee as first constituted and every change in the membership thereof to be published in the Gazette.

Rules of the Complaints Committee

26. (1) Subject to this section, the Complaints Committee shall have power to make rules governing its own practice and procedure and shall take all actions and reach its decisions by majority vote of its members; however, where the Committee comprises an equal number of members and there is an equality of votes the Chairman shall have a second or casting vote.

(2) The Rules contained in Schedule 7 shall have effect in relation to the Complaints Committee as if made under subsection (1) until rules are made under that subsection; and the Rules in Schedule 6 may be amended or revoked by the Committee.

Application of Schedule 6 to the Complaints Committee
Expenses of the Complaints Committee

27. The provisions of the Schedule 6 shall apply to the Complaints Committee.

28. All expenses incurred by the Complaints Committee in carrying out its functions under this Law shall be paid out of moneys provided in equal amounts by the Cayman Islands Law Society and the Caymanian Bar Association.

Complaints

29. (1) Any person may file a complaint against an attorney-at-law, other than the Attorney General or a government attorney-at-law, with the Complaints Committee.

(2) A complaint received by the President of the Cayman Islands Law Society or the President of the Caymanian Bar Association relating to an attorney-at-law, other than the Attorney General or a government attorney-at-law, shall be referred to the Complaints Committee.

(3) If an attorney-at-law is convicted of an offence punishable by a term of imprisonment, the Clerk of the Court shall refer the matter to the Disciplinary Tribunal (provided that there is no outstanding appeal against the conviction), informing the Attorney-General and the Presidents of the Cayman Islands Law Society and the Caymanian Bar Association that he has done so.

(4) The Complaints Committee shall investigate complaints in accordance with this law and the rules and where the Complaints Committee has completed

its investigation it shall either dismiss a complaint or refer the complaint to the Disciplinary Tribunal.

(5) Where it appears to the Complaints Committee when investigating a complaint that there is *prima facie* evidence that the attorney-at-law against whom the complaint is made has committed a criminal offence the Complaints Committee shall also refer the matter to the Commissioner of Police.

(6) Where a complaint is dismissed the Complaints Committee shall give written reasons for doing so to the complainant and to the attorney-at-law.

(7) The Complaints Committee, where it is of the opinion that the conduct of an attorney-at-law *prima facie* constitutes misconduct and no such complaint has been made by any person, may, on its own motion, refer evidence of the conduct of that attorney-at-law to the Disciplinary Tribunal.

(8) For the purposes of this section “Rules” means rules made pursuant to section 26.

30. (1) Any person who has a complaint against a government attorney-at-law may file such complaint with the Clerk of the Court; and the Clerk of the Court shall submit such complaint to the Chief Justice for such action as the Chief Justice considers appropriate in accordance with section 46.

Complaints against
government attorneys

(2) As soon as possible after the Clerk of the Court has submitted a complaint to the Chief Justice pursuant to subsection (1) he shall cause a copy thereof to be sent to the Attorney-General for his information only.

31. (1) There is established a tribunal called the Cayman Islands Attorneys-at-Law Disciplinary Tribunal comprising-

Constitution of the
Disciplinary Tribunal

- (a) a chairman who shall be the Chief Justice or a judge of the Grand Court designated by him;
- (b) one member appointed by the Chief Justice after consultation with the President of the Cayman Islands Law Society; and
- (c) one member appointed by the Chief Justice after consultation with the President of the Caymanian Bar Association.

(2) One of the two members appointed by the Chief Justice shall be an attorney-at-law and such attorney-at-law, so far as is possible, shall be of not less than ten years’ standing in the legal profession; and the other member need not be an attorney-at-law but shall be a person who, in the opinion of the Chief Justice, has demonstrated a wide knowledge of law, finance, financial regulation, accounting or arbitration principles.

(3) The members of the Disciplinary Tribunal appointed by the Chief Justice shall hold office subject to such terms and conditions as the Chief Justice considers necessary.

(4) An appointed member shall hold office for two years and is eligible for re-appointment.

(5) An appointed member may resign his office by letter addressed to the Clerk of the Court.

(6) The Chief Justice may at any time revoke the appointment of a member.

(7) Where a complaint is referred to the Disciplinary Tribunal and the Chairman is of the opinion that there may be a conflict of interest for any one or more of the members of the Disciplinary Tribunal the Chief Justice shall appoint such other person or persons for the purpose of hearing and determining that complaint only.

(8) The Clerk of the Court shall be secretary to the Disciplinary Tribunal and shall perform such functions as are assigned to him by the chairman of the Disciplinary Tribunal.

(9) Subject to this section the Rules Committee of the Grand Court shall make rules governing the practice and procedure of the Disciplinary Tribunal.

Function and powers of
the Disciplinary
Tribunal

32. (1) The Disciplinary Tribunal shall hear and determine complaints against attorneys-at-law that are referred to it by the Complaints Committee or by the Clerk of the Court pursuant to section 30(3).

(2) The Complaints Committee may instruct counsel to present the complaint on its behalf, and if it fails to find counsel prepared to do so it may request the Attorney General to do so instead.

(3) If the Disciplinary Tribunal is satisfied that the attorney-at-law –

- (a) is guilty of misconduct in his professional capacity;
- (b) has behaved in a manner tending to bring the legal profession into disrepute; or
- (c) has been convicted of an offence punishable by a term of imprisonment or an offence involving moral turpitude,

it may impose a disciplinary sanction in accordance with subsection (4).

(4) The Disciplinary Tribunal may impose any one or more of the following disciplinary sanctions -

- (a) subject to section 33, order that the attorney-at-law's name be struck off the Court Roll;
- (b) order that the attorney-at-law's practising certificate be qualified to the effect that he shall not be entitled to appear as an advocate before all or any courts or tribunals in the Islands or to practise in specific areas of law either permanently or for a specified period;
- (c) order that the attorney-at-law be suspended from practise as an attorney-at-law for a specified period, not exceeding five years;
- (d) order the attorney-at-law to pay a fine of twenty five thousand dollars;
- (e) where the attorney-at-law practises in other jurisdictions or is temporarily admitted, report his conduct to any other professional association or authority having jurisdiction over him in those jurisdictions;
- (f) reprimand the attorney-at-law;
- (g) advise that attorney-at-law as to his future conduct; or
- (h) take no action.

(5) The Disciplinary Tribunal may order the attorney-at-law to pay the costs of the complainant and of the Complaints Committee and such costs shall be taxed on an indemnity basis in accordance with the Rules of the Grand Court.

33. The Disciplinary Tribunal shall not order that an attorney-at-law's name be struck off the Court Roll unless it is satisfied that he is not a fit and proper person to practise as an attorney-at-law.

Making of order for striking off Court Roll or for suspension from practice

34. (1) The Disciplinary Tribunal may, on the application of the Complaints Committee-

Interim suspension from practice

- (a) make an interim order that an attorney-at-law be suspended from practice until the complaint has been heard and determined; or
- (b) make an order that a trust fund or funds shall, until a complaint has been heard or determined, be operated by an accountant or a bank if the complaint contains an allegation of misuse of trust funds.

(2) The attorney-at-law shall be given 14 days' notice of any application under subsection (1) (a) and an application under subsection (1) (a) or (b) shall be heard and determined summarily as soon as reasonably possible but no later than 14 days after it is received by the Disciplinary Tribunal.

Restoration of name to
Court Roll

35. (1) An attorney-at-law whose name has been struck off the Court Roll or suspended from practice may at any time apply to the Disciplinary Tribunal for the restoration of his name or for the termination of his suspension.

(2) On hearing the application, the Disciplinary Tribunal, if satisfied that the applicant is a fit and proper person to practise as an attorney-at-law, may-

- (a) order that the attorney-at-law's name be restored to the Court Roll subject to such conditions, if any, as the Disciplinary Tribunal thinks fit; or
- (b) order the termination, with effect from the date specified in the order, of the attorney-at-law's suspension from practice.

(3) Where the Disciplinary Tribunal orders under subsection (2) the restoration of an attorney-at-law's name to the Court Roll or the termination of his suspension from practice, the Clerk of the Court shall cause a note of the effect of the order to be entered in the Court Roll and a notice thereof to be published in the Gazette.

(4) The fee to be paid by an attorney-at-law for the restoration of his name to the Court Roll is three thousand dollars.

(5) The Governor in Cabinet may, by order, change the fee specified in subsection (4).

(6) Upon the publication in the Gazette of an order made under subsection (2) and on the payment of any fee specified under subsection (4), the Clerk of the Court shall restore the name of the attorney-at-law to the Court Roll.

Order for striking off,
restoration, or
suspension to be filed in
Court

36. (1) Where, the Disciplinary Tribunal orders that an attorney-at-law's name be struck off or restored to the Court Roll, or that an attorney-at-law be suspended from practice otherwise than by an interim order made under section 34, the order shall be filed in the Court Office.

(2) Subject to subsection (3), an order of the Disciplinary Tribunal shall take effect and be enforceable as if it were an order of the Grand Court.

(3) Where it is ordered that an attorney-at-law's name be struck off the Court Roll or that he be suspended from practice, the order shall not take effect until the expiry of the time allowed for appeal under section 37, or, if an appeal is commenced, unless and until the appeal is dismissed.

(4) An order against an attorney-at-law which is filed in the Court Office under subsection (1) may be inspected by any person during office hours of the Court Office without payment of a fee.

37. (1) An attorney-at-law may appeal to the Court of Appeal against any order or decision of the Disciplinary Tribunal made under this Part in relation to him.

Appeal from decision of the Disciplinary Tribunal

(2) Every such appeal shall be by way of rehearing de novo, and shall be made within such time and in such form as may be prescribed by Rules of the Court of Appeal.

(3) On hearing any such appeal, the Court of Appeal may confirm, reverse, or modify the order or decision appealed against.

38. An order that an attorney-at-law be suspended from practice or struck off the Court Roll shall, when such order becomes effective pursuant to section 36(3), be published in the Gazette by notice under the hand of the Clerk of the Court.

Notice of orders for striking off, restoration, or suspension to be published in Gazette

39. The Disciplinary Tribunal shall not impose any sanction upon an attorney-at-law unless he has been given a reasonable opportunity to be heard, either in person or by counsel.

Right of person charged to be heard.

40. The Disciplinary Tribunal shall have the same powers as the Grand Court to issue a subpoena requiring any person to attend and give evidence and to produce relevant documents in his possession, custody or power.

Evidence

41. Any document purporting to be an order of the Disciplinary Tribunal and to be signed on its behalf by the Chairman of the Disciplinary Tribunal shall, in the absence of proof to the contrary, be taken to be an order of the Tribunal duly made, without proof of its making, or proof of signature, or proof that the person signing the order was in fact entitled to sign the order.

Form and proof of order of Disciplinary Tribunal

42. When the Disciplinary Tribunal makes an order imposing a fine or providing for the payment of costs under this Part, such fine or payment shall take effect as if it were a debt owing to the Crown.

Enforcement of order of Disciplinary Tribunal

43. (1) In any proceedings before it under this Part, including any appeal, the Disciplinary Tribunal or the Court of Appeal may, if in its opinion it is proper to do so having regard to the interests of any person and to the public interest, make an order prohibiting the publication of the name of any attorney-at-law or of any

Power of Disciplinary Tribunal or Court of Appeal to prohibit publication of person's name or affairs

complainant involved in the proceedings or of any particulars of the said proceedings.

(2) Any breach or any attempted breach of any such order, or any evasion or attempted evasion of it, may be dealt with as a contempt of Court.

(3) This section shall not apply to the publication in the Gazette pursuant to section 38 of a notice of an order for the striking off or restoration to the roll of an attorney-at-law's name, or of an order for his suspension from practice.

Trusteeships held by
attorney-at-law
suspended or struck off

44. (1) Where an attorney-at-law is suspended from practice or his name is struck off the Court Roll, the Complaints Committee may serve on him or on any of his partners, employers or employees, or on any person conducting his practice, a notice signed by two members of the Complaints Committee requiring the person on whom the notice is served to supply to the Complaints Committee, so far as it is practicable to do so-

- (a) a list of all wills in which the attorney-at-law is appointed as a trustee, and the names and addresses of the testators;
- (b) a list of all other trusteeships that are held by the attorney-at-law under any trust or are to be held by him on the occurrence of any event;
- (c) where the attorney-at-law is a sole practitioner, details of all client funds held by him; and
- (d) such other particulars as may be necessary to enable the Complaints Committee to exercise its powers under subsection (2).

(2) Notwithstanding anything in this Law, on receipt of any list or details referred to in subsection (1) the Complaints Committee may notify-

- (a) the testator under any such will;
- (b) the other trustee or trustees under any such trust; or
- (c) any person having power to appoint or remove the trustees,

that the attorney-at-law has been suspended from practice or that his name has been struck off the Court Roll.

(3) In this section the term "trust" means a trust of any kind and includes the duties incident to the office of a personal representative, and "trustee" and "trusteeship" have corresponding meanings.

(4) A person commits an offence against this Law who, without lawful justification or excuse, fails to comply with any requirement of the Complaints Committee in any notice given under subsection (1) and is liable-

- (a) on summary conviction to a fine of five thousand dollars or to imprisonment for two years, or to both; or
- (b) on conviction on indictment to a fine of ten thousand dollars or to imprisonment for five years, or to both.

45. The Complaints Committee, the Disciplinary Tribunal and any member, officer, or employee of any of those bodies shall not be under any criminal or civil liability in respect of anything done or omitted to be done, or in respect of words spoken or written-

Protection of Complaints
Committee, Disciplinary
Tribunal members

- (a) at or for the purposes of any inquiry or the hearing of or otherwise dealing with any proceedings under this Law;
- (b) in connection with any investigation of an attorney-at-law's conduct or affairs or accounts for the purposes of this Law; or
- (c) in the publication of any report or statement relating to any proceedings before the Disciplinary Tribunal or the Complaints Committee under this Law, in the exercise or purported exercise of any power conferred by this Law to publish any such report or statement,

unless it is proved to the satisfaction of the Court before which any proceedings are taken that the defendant in those proceedings has acted out of malice.

46. (1) Without prejudice to any other rule of law or to any rule of practice whereby the Grand Court is empowered to take disciplinary action against a person admitted to practise as an attorney-at-law, the Grand Court has the power to take disciplinary action against an attorney-at-law, including a government attorney-at-law, in accordance with rules of court made for the purpose with respect to professional conduct against attorneys-at-law and in particular the Grand Court may make any of the following orders-

Disciplinary proceedings
by Grand Court

- (a) an order removing from the Roll the name of the attorney-at-law against whom disciplinary proceedings have been instituted;
- (b) an order suspending the attorney-at-law from practice for such time as the Grand Court deems fit;
- (c) such order as to costs, as regards both the proceedings before it as the Grand Court deems fit; or
- (d) such further or other order as the circumstances of the case may require.

(2) The attorney-at-law whose professional conduct is the subject of any disciplinary proceedings before the Grand Court is entitled as of right to appeal to the Court of Appeal from any decision or other determination of the Grand Court in such proceedings.

Discipline imposed by
other Courts.

47. (1) Notwithstanding section 9 (2) (b), any attorney-at-law admitted to practice in the Islands shall, upon being subjected to struck off the Roll by a court of any other jurisdiction, no later than 30 days after such action inform the Clerk of the Court of such action.

(2) Upon the filing of a certified copy of a judgment or order demonstrating that an attorney-at-law admitted to practice in the Islands has been struck off the Roll by another court, the court in the Islands shall forthwith issue a notice directed to the attorney-at-law containing-

- (a) a copy of the judgment or order from the other court; and
- (b) an order to show cause directing that the attorney-at-law inform the court within 30 days after service of that order upon the attorney-at-law, personally or by mail, of any claim by the attorney-at-law predicated upon the grounds set forth in subsection (4) that the imposition of the identical discipline by the court would be unwarranted and the reasons therefor.

(3) Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of subsection (2), the court shall strike the attorney-at-law of the Roll unless the respondent-attorney-at-law demonstrates, or the court finds, that upon the face of the record upon which the discipline in another jurisdiction is based it clearly appears-

- (a) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- (b) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or
- (c) that the imposition of the same discipline by the court would result in grave injustice; or
- (d) that the misconduct established is deemed by the court to warrant substantially different discipline,

and where the court determines that any of above elements exist, it shall enter such other order as it deems appropriate.

(5) In all other respects, a final adjudication in another court that an attorney-at-law has been guilty of misconduct and should be struck of the Roll shall establish conclusively the misconduct for purposes of a disciplinary proceeding in the court.

Struck off the Roll on
consent or resignation in
other Courts

48. (1) An attorney-at-law admitted to practice in the Islands shall, upon being struck off the Roll by consent or resigning from the bar of any other jurisdiction

while an investigation into allegations of misconduct is pending, promptly inform the Clerk of the Court of such disbarment on consent or resignation.

(2) An attorney-at-law admitted to practice in the Islands who is struck off the Roll by consent or who resigns from the bar of any other jurisdiction as provided in subsection (1) shall, upon the filing with the court of a certified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice in the Islands and shall be stricken from the Court Roll.

PART VII – MISCELLANEOUS PROVISIONS

49. Notwithstanding anything in this Law, the jurisdiction, power or authority vested in any court immediately before the commencement of this Law by the common law to discipline attorneys-at-law or by any enactment to deal with contempt of court committed by attorneys-at-law shall continue to be exercisable after such commencement in relation to attorneys-at-law.

Saving of jurisdiction of courts

50. Subject to this Law, any person who commits an offence against this Law and who is convicted of such offence is liable, if the offence is a continuing one, to a further fine of one thousand dollars for every day on which the offence has continued after the person has been convicted of the offence.

Continuing offences

51. An information in respect of any offence against this Law may be laid at any time within two years after the date on which the offence was committed.

Information in respect of any offence

52. The Legal Practitioners Law (2003 Revision) is repealed.

Repeal

53. (1) An annual practising certificate or an operational licence issued under the Legal Practitioners Law (2003 Revision) and which is current and valid immediately before the commencement of this Law shall continue to remain in full force and effect until the expiration date set out in the certificate or licence.

Savings and transitional provisions

(2) Any attorney-at-law employed by the Government at the date of the commencement of this Law shall be considered to have been admitted to practice under this Law and the name and particulars of the attorney-at-law shall be entered in the Court Roll by the Clerk of the Court as soon as possible after the commencement of this Law.

(3) References to an attorney-at-law admitted to practice under the Legal Practitioners Law (2003 Revision) in any enactment, instrument or other document passed or made before the repeal of that Law shall be construed as references to an attorney-at-law admitted to practice under this Law.

(4) All proceedings in respect of offences committed or alleged to have been committed against the Legal Practitioners Law (2003 Revision) may be commenced or continued as if this Law had not come into force.

(5) Where, apart from this section, anything done under or for the purposes of the Legal Practitioners Law (2003 Revision) would cease to have effect by virtue of the repeal of that Law it shall have effect as if it had been done under and for the purposes of the corresponding provisions of this Law.

(6) Until regulations are made under this Law to provide for a matter that may be prescribed by regulations, the regulations made under the Legal Practitioners Law (2003 Revision) that are in force immediately before the commencement of this Law or the repeal of that Law shall have effect until expressly repealed by this Law or by regulations made under this Law.

SCHEDULE 1

Sections 5 and 9

Admission Fees

1. General Admission Three hundred dollars
2. Temporary Admission Three hundred dollars

Annual fee for practising certificate

Annual fee for each Attorney-at-law, one thousand five hundred dollars payable on or before 2nd January in each year.

Late fee for a practising certificate is a surcharge not exceeding one-twelfth of the annual fee for every month or part of a month that the annual fee is not paid.

FORM 3

LEGAL PROFESSION LAW [YEAR]

CERTIFICATE OF GOVERNMENT ATTORNEY-AT-LAW

It is hereby certified that is a government attorney-at-law holding the office of in the public service and appointed by the [*the appropriate authority*].

Dated this day of 2007

ATTORNEY GENERAL

SCHEDULE 3

Section 12

Operational Licence Fees

Firm/recognised body-

A firm or recognised body employing 1 – 5 attorneys-at-law	Exempt
A firm or recognised body employing 6 – 10 attorneys-at-law	\$20,000
A firm or recognised body employing 11 – 15 attorneys-at-law	\$40,000
A firm or recognised body employing 16 – 20 attorneys-at-law	\$60,000
A firm or recognised body employing 21 – 25 attorneys-at-law	\$200,000
A firm or recognised body employing 26 – 30 attorneys-at-law	\$250,000
A firm or recognised body employing 31 – 40 attorneys-at-law	\$300,000

A firm or recognised body employing 41 – 50 attorneys-
at-law \$350,000

A firm or recognised body employing 51 or more
attorneys-at-law \$400,000

SCHEDULE 4

GRAND COURT OF THE CAYMAN ISLANDS

section 12

LEGAL PROFESSION LAW [year]

OPERATIONAL LICENCE

The firm/recognised body (name of firm/recognised body) having complied with section 10(1) of the Legal Profession Law (year of Law) is entitled to carry on business in the Islands as a firm/recognised body until the thirty-first day of December, [year], upon the terms and subject to the conditions set forth in the said Law.

Dated this day of

CLERK OF COURT

SCHEDULE 5

CODE OF PROFESSIONAL CONDUCT

PART A

General

A. In relation to the Profession and the attorney-at-law:

1. An attorney-at-law shall –

- (a) observe the rules of this Code;
- (b) maintain his integrity and the honour and dignity of the legal profession;
- (c) encourage other attorney-at-laws to act similarly both in the practise of their professions and in their private lives; and
- (d) shall refrain from conduct which is detrimental to the profession or which may tend to discredit it.

2. An attorney-at-law shall expose without fear or favour before the proper tribunals unprofessional or dishonest conduct by any other attorney-at-law and shall not lightly refuse a retainer against another attorney-at-law who is alleged to have wronged his client or committed any other act of professional misconduct.

3. (1) An attorney-at-law shall scrupulously preserve his independence in the discharge of his professional duties.

(2) An attorney-at-law practising on his own account or in partnership, shall not engage in any other business or occupation if doing so may cause him to cease to be independent.

4. An attorney-at-law shall protect the profession against the admission thereto of any candidate whose moral character or education renders him unfit for such admission.

5. (1) An attorney-at-law shall not endeavour by direct or indirect means to attract the clients of another attorney-at-law and where a client is referred to him by another attorney-at-law the client remains for all other purposes the client of the referring attorney-at-law and the attorney-at-law to whom the client is referred shall act with due deference to the relationship between the client and the referring attorney-at-law.

(2) Where a referred client offers other work to the attorney-at-law to whom he is referred and the offer is sufficiently proximate to the referral, that attorney-at-law shall not accept that offer unless it has been brought to the attention of the referring attorney-at-law.

6. An attorney-at-law may speak in public or write for publication on legal topics so long as he does not thereby advertise his own professional competence and is not likely to be regarded as being concerned thereby with the giving of individual advice.

7. The best advertisement for an attorney-at-law is the establishment of a well merited reputation for personal integrity, capacity, dedication to work and fidelity to trust and it is unprofessional-

- (a) to solicit business by circulars or advertisement or interviews not warranted by personal relations; and
- (b) to seek retainers through agents of any kind.

8. An attorney-at-law shall defend the interests of his clients without fear or judicial disfavour or public unpopularity and without regard to any unpleasant consequences to himself or to any other person.

9. An attorney-at-law is not obliged to act either as adviser or advocate for every person who may wish to become his client; he has a right to decline employment.

10. No client is entitled to receive nor should any attorney-at-law render, any service or advice involving disloyalty to the Islands or disrespect for judicial office or the corruption of any persons exercising a public or private trust or deception or betrayal of the public.

11. An attorney-at-law should also bear in mind that he can only maintain the high traditions of his profession by being a person of high integrity and dignity.

B. In Relation to the Islands and the public

12. An attorney-at-law owes a duty to the Islands to maintain the integrity of the Islands, their Constitution and laws and not to aid, abet, counsel or assist anyone to act in any way contrary to those laws.

13. When engaged as a public prosecutor the primary duty of an attorney-at-law is not to secure a conviction but to see that justice is done and to that end he shall not withhold facts tending to prove either the guilt or innocence of the accused.

14. An attorney-at-law shall endeavour by lawful means, where the needs of society require, to promote and encourage the modernisation, simplification and reform of the laws.

15. An attorney-at-law shall not by his actions, stir up strife or litigation by seeking out defects in titles, claims for personal injury or other causes of action for the purpose of securing a retainer to prosecute a claim therefore; or pay or regard any person directly or indirectly for the purpose of procuring him to be retained in his professional capacity, and where it is in the interest of his client he shall seek to obtain reasonable settlements of disputes.

16. An attorney-at-law shall not be deterred from accepting proffered employment owing to the fear, or dislike to incurring disapproval, of officials, other attorneys-at-law or members of the public.

17. Where an attorney-at-law consents to undertake legal aid and he is requested by the court and consents to undertake the representation or to obtain legal aid, the attorney-at-law shall not, except for compelling reasons, seek to be excused from undertaking such representation.

18. An attorney-at-law in undertaking the defence of persons accused of crime shall use all fair and reasonable means to present every defence available at law.

C. In Relation to Clients

19. (1) An attorney-at-law shall always act in the best interest of his client, represent him honestly, competently and zealously and endeavour by all fair and honourable means to obtain for him the benefit of any and every remedy and defence which is authorised by law, steadfastly bearing in mind that the duties and responsibilities of the attorney-at-law are to be carried out within and not outside the bounds of the law.

(2) The interests of his client and the exigencies of the administration of justice should always be the first concern of an attorney-at-law and rank before his right to compensation for his services.

20. (1) Before advising on a client's cause an attorney-at-law should obtain full knowledge thereof and give a candid opinion of the merits or demerits and probable results of pending or contemplated litigation.

(2) An attorney-at-law should refrain from giving bold and confident assurances to his client (especially where employment may depend on such assurances) always bearing in mind that seldom are all the law and facts on the side of his client and that *audi alteram partem* is the safest rule to follow.

(3) Where it appears that a conflict can be easily resolved without resort to litigation an attorney-at-law should so inform his client and advise him to avoid or to settle the conflict without further litigation.

21. (1) An attorney-at-law shall at the time of retainer disclose to his client all the circumstances of his relations to the parties and his interest in or connection with the controversy, if any, which might influence the client in his selection of an attorney-at-law.

(2) An attorney-at-law shall scrupulously guard and never divulge his client's secrets and confidences.

22. An attorney-at-law shall treat adverse witnesses, litigants and another attorney-at-law with fairness and courtesy refraining from all offensive personal references and shall avoid imparting to his professional duties his client's personal feelings and prejudices.

23. It is the right of an attorney-at-law to undertake the defence of a person accused of crime regardless of his own personal opinion as to the guilt of the accused and having undertaken such defence he is bound by all fair and honourable means to present every defence that the law of the land permits so that no person may be deprived of life or liberty except by due process of law.

24. (1) An attorney-at-law may represent multiple clients only if he can adequately represent the interests of each and if each consents to such representation after full disclosure of the possible effects of multiple representation.

(2) In all situations where possible conflict of interest arises, an attorney-at-law shall resolve all conflict by leaning against multiple representation.

25. (1) An attorney-at-law shall deal with his client's business with all due expedition and shall whenever reasonably so required by the client provide him with full information as to the progress of the client's business.

(2) It is improper for an attorney-at-law to accept a case unless he can handle it without undue delay.

26. Where an attorney-at-law determines that the interest of his client requires it, he may, with the specific or general consent of the client, refer his business or part of it to another attorney-at-law whether or not a member of his own firm.

27. (1) Queen's Counsel shall be entitled to accept instructions, appear or do any work without a junior, except where he would be unable properly to carry out his instructions or conduct his case if he were to do so.

(2) Where more than one attorney-at-law appears as advocate for the same party in the same proceedings, the attorney-at-law who shall lead the conduct of the party's case shall be subject to the instructions of the client and be settled by the attorneys-at-law representing that party before they appear in court and the leader shall have all authority over the conduct of the case.

28. An attorney-at-law including a Queen's Counsel who appears with the leader is entitled to a negotiated fee appropriate for his conduct of the case.

29. (1) An attorney-at-law is entitled to reasonable compensation for his services but shall avoid charges which either overestimate or undervalue the service rendered.

(2) An attorney-at-law should avoid controversies with clients regarding compensation for his services as far as is compatible with self-respect and his rights to receive reasonable compensation for his services.

30. The right of an attorney-at-law to ask for a deposit or to demand payment of out-of-pocket expenses and commitments, failing payment of which he may withdraw from the case or refuse to handle it, shall not be exercised where the client may be unable to find other assistance in time to prevent irreparable damage done.

31. Where an attorney-at-law engages a foreign colleague to advise on a case or to co-operate in handling it, he is responsible for the payment of the latter's charge except where there is express agreement to the contrary, but where an attorney-at-law directs a client to a foreign colleague he is not responsible for the payment of the latter's charges, nor is he entitled to a share of the fee of his foreign colleague.

32. An attorney-at-law may at any time withdraw from employment-

- (a) where the client fails, refuses or neglects to carry out an agreement with, or his obligation to, the attorney-at-law as regards the expenses or fees payable by the client;
- (b) where his inability to work with colleagues indicates that the best interest of the client is likely to be served by his withdrawal;
- (c) where his client freely assents to the termination of his employment;
- (d) where by reasons of his mental or physical condition or other good and compelling reason it is difficult for him to carry out his employment effectively; or
- (e) in cases of conflict as contemplated in rule 24 of this Part or rule 8 of Part.

33. (1) An attorney-at-law should not appear as a witness for his own client except as in merely formal matters or where such appearance is essential to the ends of justice.

(2) If an attorney-at-law is a necessary witness for his client with respect to matters other than such as are merely formal, he should entrust the conduct of the case to another attorney-at-law of his client's choice.

D. In Relation to the Court and the Administration of Justice

34. (1) An attorney-at-law shall maintain a respectful attitude towards the Court and shall not engage in undignified or discourteous conduct which is degrading to the Court.

(2) An attorney-at-law shall encourage respect for the Court and Judges.

(3) An attorney-at-law shall support Judges and Magistrates against unjust criticism.

(4) Where there is ground for complaint against a Judge or Magistrate an attorney-at-law may make representation to the proper authorities and in such cases, the attorney-at-law shall be protected.

35. An attorney-at-law shall endeavour always to maintain his position as an advocate and shall not either in argument to the Court or in an address to the jury assert his personal belief in his client's innocence or in the justice of his cause or his personal knowledge as to any of the facts involved in the matter under investigation.

36. An attorney-at-law should never seek privately to influence directly or indirectly the Judges of the Court in his favour or in the favour of his client, nor should he attempt to curry favour with juries by fawning flattery or pretended solicitude for their personal comfort.

37. An attorney-at-law shall be punctual in attendance before the Courts and concise and direct in the trial and disposition of causes.

38. An attorney-at-law appearing before the Court shall at all times be attired in such a manner as prescribed or agreed by the proper authorities and as befits the dignity of the Court.

E. In relation to his fellow attorney-at-laws

39. (1) The conduct of an attorney-at-law towards his fellow attorney-at-laws shall be characterised by courtesy, fairness and good faith and he shall not permit ill-feeling between clients to affect his relationship with his colleagues.

(2) All personal conflicts between attorneys-at-law should be scrupulously avoided as should also colloquies between them which cause delay and promote unseemly wrangling.

40. (1) An attorney-at-law shall reply promptly to letters from another attorney-at-law making inquiries on behalf of their clients.

(2) An attorney-at-law shall endeavour as far as reasonable to suit the convenience of the opposing attorney-at-law when the interest of his client or the cause of justice will not be injured by so doing.

41. An attorney-at-law shall not give a professional undertaking that he cannot fulfil, and he shall fulfil every undertaking that he gives.

42. There is a duty on every attorney-at-law to report improper or unprofessional conduct by a colleague to the Complaints Committee, save where the information relating to the improper or unprofessional conduct is received in professional confidence in which case he must respect the duty of silence imposed in such circumstances.

43. Where an attorney-at-law has been sent money, documents or other things by a colleague which, at the time of sending, are expressed to be sent only on the basis that the attorney-at-law to whom they are sent will receive them on his undertaking to do or refrain from doing some act, the receiving attorney-at-law shall forthwith return whatever was sent if he is unable to accept them on such undertaking, otherwise he must comply with the undertaking.

44. An attorney-at-law shall not in any way communicate upon a subject in controversy or attempt to negotiate or compromise a matter directly with any party represented by another attorney-at-law except through such other attorney-at-law or with his prior consent.

45. (1) An attorney-at-law shall not ignore the customs or practices of the legal profession even when the law expressly permits it, without giving timely notice to the opposing attorney-at-law.

(2) An attorney-at-law should avoid all sharp practises and should refrain from taking any paltry advantage when his opponent has made or overlooked some technical error or matter, bearing in mind that no client has a right to demand that an attorney-at-law representing him shall be illiberal or shall do anything repugnant to his own sense of honour and propriety.

46. An attorney-at-law shall not accept instructions to act in court proceedings in which to his knowledge the client has previously been represented by another attorney-at-law, unless he first notifies the other attorney-at-law of the change, and makes reasonable efforts to ensure that the attorney-at-law has been paid for his services, but shall be deemed to have notified the other attorney-at-law if he has made reasonable efforts to notify him.

47. An attorney-at-law shall not accept instructions to act in proceedings (other than court proceedings) in which to his knowledge, another attorney-at-law has previously represented the client unless he makes reasonable efforts to ascertain that the retainer of that attorney-at-law has been terminated by the client, or that the client wishes both attorney-at-laws to represent him.

48. An attorney-at-law who instructs or employs another attorney-at-law to act on behalf of his client, unless otherwise agreed, shall pay the proper fee of such attorney-at-law whether or not he has received payment from the client.

49. In undertaking to render assistance to a foreign colleague, an attorney-at-law shall remember that his responsibility is much greater both when giving advice and handling a case, than would be had he undertaken to assist a colleague in the Islands.

E. General

50. Nothing herein contained shall be construed as derogating from any existing rules of professional conduct and duties of an attorney-at-law which are in keeping with the traditions of the legal profession although not specifically mentioned herein.

51. Where in any particular matter explicit ethical guidance does not exist, an attorney-at-law shall determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession.

52. (1) A person who previously held a substantive appointment as a Judge of the Grand Court shall not appear as an attorney-at-law in any of the Courts of the Islands for a period of ten years commencing on the date of his retirement, resignation or other termination of such appointment.

(2) This rule shall not apply to a person who is appointed to act as a Judge in a temporary capacity.

PART B

Mandatory provisions and specific prohibitions

53. Subject to this Law, an attorney-at-law shall not practise as such unless he has been issued a practising certificate in accordance with the provisions of this Law.

54. An attorney-at-law shall never knowingly mislead the court.

55. An attorney-at-law shall not hold out any person who is not qualified to practise law as a partner, associate, consultant or an attorney-at-law.

56. An attorney-at-law shall not solicit business or consent to become involved in a matter unless at the request of a party thereto; but it is proper for an attorney-at-law to become involved in matters referred to him by the courts or by another attorney-at-law or for which he is engaged in any other manner not inconsistent with this Code.

57. An attorney-at-law shall not in the carrying on of his practice or otherwise permit any act or thing which is likely or is intended to attract business unfairly or can reasonably be regarded as touting or advertising.

58. (1) An attorney-at-law shall ensure that any advertisements to any or any communications with any person relating to his services or the services of the attorneys-at-law in his firm are consistent with the maintenance of proper professional standards and in so doing the following shall apply-

- (a) the advertisement or communication must not be false, misleading or deceptive or likely to be so;
- (b) the advertisement or communication may indicate a field or fields of practice in which the attorney-at-law is prepared to take instructions;
- (c) if any advertisement or communication contains or refers to testimonials, endorsements or the like about an attorney-at-law or the services offered, the attorney-at-law must be able to show on enquiry that such testimonials or endorsements were not provided for monetary or other reward;
- (d) the advertisement or communication must not disparage any other attorney-at-law;
- (e) the attorney-at-law must not consent to nor permit being mentioned in any advertisement or other promotion by a third party which is misleading in relation to the legal services offered.

(2) An attorney-at-law shall not, in any advertisement to, or any other communication with, any person, claim to be a specialist or to have a special expertise in any field or practice unless such claim is true,

(3) In offering services other than by normal advertising channels, whether within or outside the Islands, an attorney-at-law shall ensure that approaches to persons who are not current clients are made in a manner which does not bring the profession into disrepute and such approaches-

- (a) shall accord with professional standards and shall not be misleading or misrepresent the standard of services provides by other attorneys-at-law; and
- (b) shall not be intrusive, offensive or disparage any other attorney-at-law.

59. Where an attorney-at-law commits any criminal offence which in the opinion of the Complaints Committee is of a nature likely to bring the profession into disrepute, such commission of the offence shall constitute professional misconduct if-

- (a) he has been convicted by any Court, including a foreign Court of competent jurisdiction, for the offence;
- (b) although he has not been prosecuted the Disciplinary Tribunal is satisfied of the facts constituting the criminal offence; or
- (c) he has been prosecuted and has been acquitted by reason of a technical defence or he has been convicted but such conviction is quashed by reason of some technical defence.

60. An attorney-at-law shall not acquire directly or indirectly by purchase, or otherwise a financial or other interest in the subject matter of a case which he is conducting.

61. (1) An attorney-at-law shall not enter into partnership or fee sharing arrangements concerning the practice of law with non-qualified bodies or persons.

(2) An attorney-at-law shall not enter into an arrangement for or charge or collect a fee in contravention of this Code or any other law.

62. (1) An attorney-at-law shall not charge fees that are unfair or unreasonable and in determining the fairness and reasonableness of a fee the following factors may be taken into account-

- (a) the time and labour required, the novelty and difficulty of the questions involved and the skill required to perform the legal service properly;

- (b) the likelihood that the acceptance of the particular employment will preclude other employment by the attorney-at-law;
- (c) the fee customarily charged in the Islands for similar legal services;
- (d) the amount, if any, involved;
- (e) the time limitations imposed by the client or by the circumstances;
- (f) the nature and length of the professional relationship with the client;
- (g) the experience, reputation and ability of the attorney-at-law concerned;
- (h) any recommended guide as to charges prescribed by any legal Association.

(2) An attorney-at-law shall not accept any fee or reward for merely introducing a client or referring a case or client to another attorney-at-law.

(3) An attorney-at-law shall not charge a contingency fee but may charge reasonable commissions on collection of liquidated claims with the prior agreement of the client.

63. (1) Except with the specific approval of his client given after full disclosure, an attorney-at-law shall not act in any manner in which his professional duties and personal interests conflict or are likely to conflict.

(2) An attorney-at-law shall not accept or continue his retainer or employment on behalf of two or more clients if their interests are likely to conflict or if his independent professional judgment is likely to be impaired.

64. (1) An attorney-at-law who withdraws from employment under rule 32 of Part A shall not do so until he has taken reasonable steps to avoid foreseeable prejudice or injury to the position and rights of his client including-

- (a) giving due notice;
- (b) allowing time for employment of another attorney-at-law;
- (c) delivering to the client all documents and property to which he is entitled subject however to any lien which the attorney-at-law may have over the same;
- (d) complying with such laws, rules or practice as may be applicable; and
- (e) where appropriate, obtaining the permission of the Court where the hearing of the matter has commenced.

(2) An attorney-at-law who withdraws from employment shall refund promptly such part of the fees, if any, already paid by his client as may be fair and reasonable having regard to all the circumstances.

65. An attorney-at-law shall withdraw forthwith from employment or from a matter pending before a tribunal-

- (a) where the client insists upon his representing a claim or defence that he cannot conscientiously advance;
- (b) where the client seeks to pursue a course of conduct which is illegal or which will result in deliberately deceiving the Court;
- (c) where a client has in the course of the proceedings perpetrated a fraud upon a person or tribunal and on request by the attorney-at-law has refused or is unable to rectify the same;
- (d) where his continued employment will involve him in the violation of the law or a disciplinary rule;
- (e) where the client by any other conduct renders it unreasonably difficult for the attorney-at-law to carry out his employment as such effectively, or in accordance with the judgment and advice of the attorney-at-law, or the rules of law or professional ethics; or
- (f) where for any good and compelling reason it is difficult for him to carry out his employment effectively.

66. An attorney-at-law shall not retain money he received on his client's behalf for longer than is necessary.

67. An attorney-at-law shall never disclose, unless lawfully ordered to do so by the Court or required by statute, what has been communicated to him in his capacity as an attorney-at-law by his client and this duty not to disclose extends to his partners, to a junior attorney-at-law assisting him and to his employees provided however that, an attorney-at-law may reveal confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.

68. An attorney-at-law shall not permit his professional services or his name to be used in any way which would make it possible for persons who are not legally authorised so to do to practise law.

69. An attorney-at-law shall not delegate to a person not legally qualified and not in his employ or under his control, any functions which are by the laws of the Islands only to be performed by a qualified attorney-at-law.

70. In the performance of his duties an attorney-at-law shall not act with inexcusable or undue delay, negligence or neglect.

71. An attorney-at-law shall not engage in undignified or discourteous conduct which is degrading to the Court or his profession.

72. An attorney-at-law shall not wilfully make false accusations against a Judge or Magistrate.

73. An attorney-at-law who holds public office shall not use his public position to influence or attempt to influence a tribunal to act in favour of himself or of his client.

74. An attorney-at-law shall not accept private employment in a matter upon the merits of which he previously acted in a judicial capacity or for which he has substantial responsibility while he was in public employment.

75. An attorney-at-law shall not give, lend or promise anything of value to a Judge, or juror or official of a tribunal before which there is a pending matter in which he is engaged.

76. In any proceedings in a court an attorney-at-law shall not communicate or cause any other person to communicate with a juror as to the merits of such proceedings, and shall only do so with a Judge or person exercising judicial functions-

- (a) in the normal course of the proceedings; or
- (b) where authorised by law, or the practise of the Court.

77. An attorney-at-law shall not for the purpose of making any person unavailable as a witness, advise or cause that person to secrete himself or leave the jurisdiction of the Court.

78. An attorney-at-law shall not pay or offer to pay or acquiesce in the payment of compensation to a witness for giving evidence in any cause or matter save as reimbursement for expenses reasonably incurred and as reasonable compensation for loss of time in attending for preparation and for testifying, and in the case of an expert witness a reasonable fee for his professional services.

79. An attorney-at-law shall not knowingly use perjured testimony or false evidence or participate in the creation of or use of evidence which he knows to be false.

80. An attorney-at-law shall not counsel or assist his client or witness, in conduct that the attorney-at-law knows to be illegal or fraudulent, and where he is satisfied that his client has in the course of the particular representation perpetrated a fraud upon a person or tribunal, he shall promptly call upon him to rectify the same.

81. An attorney-at-law shall not knowingly make a false statement of law or fact.

82. (1) An attorney-at-law shall not commit a breach of undertaking given by him to a Judge, a court or other tribunal or an official thereof, whether such undertaking relates to an expression of intention as to further conduct or is a representation that a particular state of facts exists.

(2) An attorney-at-law shall not knowingly represent falsely to a Judge, a court or tribunal or to an official of a court or other tribunal that a particular state of facts exists.

83. In pecuniary matters an attorney-at-law shall be most punctual and diligent, he shall never mingle funds of others with his own and he shall at all times be able to refund money he holds for others.

84. An attorney-at-law shall keep such accounts as clearly and accurately distinguish the financial position between himself and his client as and when required.

85. Nothing contained in rules 29 and 30 shall deprive an attorney-at-law of any recourse or right whether by way of lien, set-off, counterclaim, charge or otherwise against moneys standing to the credit of a client's account maintained by that attorney-at-law.

86. An attorney-at-law shall reply promptly to any letter received from the Complaints Committee relating to his professional conduct.

87. Where no provision is made in this Code in respect of any matter, rules and practices of the legal profession which formerly governed the particular matter shall apply in so far as is practicable.

90. (1) Breach by an attorney-at-law of any of the rules contained in this Part shall constitute professional misconduct and an attorney-at-law who commits such a breach shall be liable to any of the penalties which the Complaints Committee recommends and the Disciplinary Tribunal and the Court imposes.

(2) Breach by an attorney-at-law of any of the provisions of Part A while not automatically amounting to punishable professional misconduct is a derogation from the high standards of conduct expected from an attorney-at-law and may, depending on the circumstances of the particular case, amount to such misconduct or form a material ingredient thereof.

Section 27

SCHEDULE 6

The Complaints Committee

Proceedings at meetings, etc

1. (1) The Complaints Committee shall meet at such times as may be necessary for the transaction of business and such meetings shall be held at such places and times and on such days as the Committee determines.

(2) The Chairman or in his absence, the deputy Chairman, shall preside at meetings of the Committee

(3) If at any meeting of the Complaints Committee, the Chairman and deputy Chairman are absent, the members present may elect one of their number to act as Chairman at the meeting.

(4) The quorum of the Complaints Committee shall be three members, two at least of whom shall be of more than ten years' standing in the legal profession.

(5) Subject to this Law, the Complaints Committee shall have power to make rules governing its own practice and procedure and shall take all actions and reach its decisions by majority vote of its members; however, in the event of an equality of votes, the Chairman shall, in addition to his original vote, have a casting vote.

(6) The validity of any proceeding of the Complaints Committee shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member.

(7) The office of a member is not a public office.

2. (1) If a member of the Complaints Committee has any pecuniary or other interest in any matter to be dealt with by the Committee he shall disclose the fact

to the Complaints Committee and shall not take part in any meeting at which the matter is considered or discussed.

(2) A member who fails to comply with subsection (1) commits an offence and is liable -

- (a) on summary conviction to a fine of twenty thousand dollars and to imprisonment for two years; or
- (b) on conviction on indictment to a fine of fifty thousand dollars and to imprisonment for five years,

unless he proves that he did not know that matter in which he had an interest was the subject of consideration at that meeting.

(3) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Complaints Committee.

3. For the purposes of paragraph 2, a member of the Complaints Committee shall be treated, as having a pecuniary interest in a matter if he is the partner, director or employee of or consultant to the firm of which the attorney-at-law, who is the subject of a complaint, is a partner, director or employee.

4. (1) Where the Chairman of the Complaints Committee is satisfied that-

- (a) a member of the Complaints Committee is absent or is temporarily incapable of performing the duties of a member; or
- (b) the office of a member is vacant,

he shall so inform the Clerk of the Court and another person may be appointed to act in the place of such member during the period of absence or incapacity or until the vacancy is filled.

(2) Where the power to appoint a person to act is being exercised pursuant to this section, such appointment shall be made in such manner and from among and by such persons as would be required in the case of a substantive appointment.

(3) An acting member appointed under this section has the powers, duties and entitlements of a member.

5. A member may resign his office by letter addressed to the secretary of the Complaints Committee.

Revocation of
appointment

6. A person who makes an appointment under section 31 may by instrument in writing addressed to the Clerk of the Court revoke the appointment of a person appointed by him.

Filling of vacancies

7. If any vacancy occurs in the membership of the Complaints Committee, such vacancy shall be filled by the appointment of another member who shall, subject to this Part, hold office for the remainder of the period for which the previous member was appointed; and such appointment shall be made in the same manner and by the same person as in the appointment of the previous member.

Section 26

SCHEDULE 7

THE COMPLAINTS COMMITTEE RULES, 2006

Citation

1. These Rules may be cited as the Complaints Committee (Attorneys-at-law) Rules, 2007.

Interpretation

2. In these Rules, unless the context otherwise requires, "respondent" means an attorney-at-law against whom a complaint has been made under section 29.

Complaints

3. The Complaints Committee shall require a complainant to provide written particulars of and such other evidence in support of his complaint as the Complaints Committee may require; and the Complaints Committee may, where it considers it necessary, require such particulars and other evidence to be given by way of affidavit.

Preliminary inquiry into complaints

4. (1) Where a complaint is made to the Complaints Committee, the Committee shall-

- (a) give notice in writing to a respondent of receipt of such complaint; and
- (b) sit to make such initial inquiries as appear to the Complaints Committee to be necessary to enable the Complaints Committee to perform the functions assigned to it under paragraph (4).

(2) The Complaints Committee shall sit in such place and at such time as the Chairman of the Committee may direct.

(3) A complainant and a respondent shall be parties to any inquiry or investigation of a complaint of misconduct.

(4) After making initial inquiries under paragraph (1) the Complaints Committee shall conduct a preliminary inquiry to determine whether—

- (a) a complaint is trivial, frivolous or lacking in merit; or
- (b) a complaint has some merit.

(5) Where it is determined that a complaint has some merit, the Complaints Committee shall investigate the complaint in accordance with rule 6.

5. Where, after conducting a preliminary inquiry into a complaint, the Complaints Committee determines that the complaint is trivial, frivolous or lacking in merit, the Complaints Committee may dismiss the complaint summarily without further inquiry or investigation, and the Complaints Committee shall inform the parties in writing of any such dismissal.

Dismissal of non-meritorious complaints after preliminary inquiry

6. (1) Where the Complaints Committee determines that there is some merit to a complaint, the Secretary, on the direction of the Chairman, shall write to a respondent in such terms as the Complaints Committee may specify to inform him that—

Investigation of meritorious complaints

- (a) the Complaints Committee has received a complaint which may constitute improper conduct by him in the terms specified in the letter; and
- (b) within 14 days of the delivery of the letter from the Secretary to him personally or his place of business, he may comment upon the contents of the letter in writing or in person.

(2) The Complaints Committee may require a respondent to provide written particulars of and such other evidence in support of his complaint as the Committee may require and where the Complaints Committee considers it necessary, it may require particulars and such other evidence from the respondent to be given by way of affidavit.

(3) Where a respondent replies to the Secretary's letter within 14 days of the date of its delivery to him, the Complaints Committee shall, as soon as is practicable thereafter, investigate the complaint in the light of all the material available to it, including the respondent's reply, to determine whether a prima facie case of misconduct is made out on the evidence before it.

(4) Where a respondent does not reply to the Secretary's letter within 14 days of the date of its delivery to him, the Complaints Committee may proceed to

investigate the complaint in his absence as if he has denied the substance and merit of the complaint in its entirety.

(5) Where the Complaints Committee commences an investigation of a complaint and is unable to make a *prima facie* determination on the facts before it, the Complaints Committee may defer further investigation of the complaint until it has conducted further inquiries.

(6) The Secretary, on the direction of the Chairman, may by written notice given to a person, require a person to appear before the Complaints Committee at a specified time and place to give further evidence or to produce specified documents.

Refusal to provide information

7. An attorney-at-law who, without lawful justification or excuse, refuses or fails to provide such evidence as may be requested by the Complaints Committee is guilty of misconduct and shall be disciplined by the Disciplinary Tribunal in accordance with section 32.

Dismissal of meritorious complaint after investigation

8. After investigating a complaint in accordance with rule 6, the Complaints Committee may, if it deems appropriate so to do, dismiss the complaint summarily if it is satisfied that no *prima facie* case has been made out against a respondent.

Complaint disclosing *prima facie* case

9. Where a *prima facie* case of misconduct is disclosed by a complaint in the opinion of the Complaints Committee, the Committee-

- (a) shall direct that the complaint should form the subject matter of a formal complaint before the Disciplinary Tribunal; and
- (b) shall cause such formal complaint to be prepared.

Complainant to be kept informed of progress of investigation of complaint

10. The Chairman shall take such steps as are reasonably practicable to inform the complainant of the progress and result of an investigation into the complaint made by him.

