

REFORM OF THE LEGAL PRACTITIONERS LAW

Ladies and Gentlemen, it is my privilege and pleasure to be delivering the Keynote Address to you on behalf of the Judiciary of the Cayman Islands at this lovely, (in fact, my first), CBA Gala.

Your President issued the kind invitation to the Honourable Chief Justice to be your keynote speaker and I must tender apologies on his behalf, as he is unavoidably absent, attending a conference overseas. I am honoured, and humbled, to be standing in for him, and speaking on behalf of the Cayman Islands Judiciary.

The litigation lawyers among you are probably only too aware of the potential dangers of issuing an open invitation to a Judge to speak at a Bar function! ... But I will resist the temptation to deliver a long and rambling judgment, (there will no doubt be other occasions for that!)... I'll also do my best to abide by the MC's case management directions as to time.

I'm also going to strive for clarity. I don't want to be like the Family Court Judge who, after hearing a wife's maintenance application said to the respondent "Mr. Brown, after reviewing this case very carefully, I have decided to give your wife \$275.00 per week,"..... At which point, the

husband then said “That’s very fair, my Lord. And every now and then I’ll try and send her a few dollars myself!” So I’ll try to be a bit clearer than that!

Tonight, Ladies and Gentlemen, I wish to address you briefly on the subject of reform of the Legal Practitioners Law. As is well-known, the Legal Practitioners Law governs the practice of Cayman Law and the legal industry in this jurisdiction. I have not been in the jurisdiction for very long, but I do know that reform of this Law has been under consideration and has been the subject of much debate here for some time now. As indeed reform of equivalent Laws is, and continues to be, in many other parts of the World. Whilst I understand that the calls for reform and concerns voiced have come mainly from within, there have also been calls from outside the profession as well, including Regulators in other jurisdictions.

In preparing for tonight, I had the privilege of reading the Joint Position Paper prepared by the Caymanian Bar Association and the Cayman Law Society, dated August 2014. That Paper was presented to the Chief Justice last year, for any preliminary comments that the Judiciary might have, given that we would be expected to comment upon any draft bill that might arise from further engagement with the Executive. The Chief

Justice, after discussion with his colleagues, responded by letter dated 5 September 2014, addressed to the Vice President of the Caymanian Bar Association, Mr. Brett Basdeo, offering preliminary comments.

I wish to add my own commendation to that of the Chief Justice, for the thorough and thoughtful quality of the Joint Paper. I echo the sentiments of the Chief Justice where he hailed the Paper as one which “should be welcomed as a positive and mature representation of the views of the profession on the difficult policy issues which the paper seeks to address. It presents a rational basis for discussions with the Executive towards a modern and effective regulatory scheme for the profession, given the realities of today’s global environment in which the profession must compete and operate”.

To put things in context, I have extracted your main recommendations from the helpful summary in the Joint Paper. They are as follows:

1. That the content of the Legal Practitioners’ Law should be limited to dealing principally with the subjects of admission, practicing certificates and discipline.

2. Practice of Cayman Islands Law outside of the Islands should be permitted.
3. There should be protective provisions devised to keep control of the practice of Cayman Islands Law with Caymanians/with attorneys based in the Cayman Islands.
4. Provisions should be introduced to create additional career opportunities for Caymanians.
5. There should be safeguards to ensure that appropriately qualified Caymanians are considered for promotions inside and outside of Cayman.
6. Provisions should be legislated to ensure standards within the profession are maintained.
7. All firms, sole practitioners and foreign lawyers must be registered with the Grand Court.
8. A voluntary code of conduct approved by the Chief Justice to be adopted.
9. A supervisory body should be established for the profession.

Despite the fact that there is in existence a 2015 Revision, there has been very little change in the substantive content of the Law for decades.

Thus, it would appear that the impetus for reform and modernization remain vibrant and very much alive.

Time (and I'm sure, the after effects of the sumptuous fare we have just consumed!), do not permit a long and detailed discussion, so I will just make a few comments in relation to the joint recommendations.

Legal services are a key international industry. As you have put it in your Paper, part of Cayman's reputation and attraction as a leading Off-Shore Finance Centre has to do with the quality of the legal services provided, and the fact that many Cayman law firms have set up overseas offices. One of the concerns we would have is that all attorneys practicing Cayman law, wherever it is that they may be practicing, must first be admitted to practice as attorneys, and therefore as officers, of the Grand Court. They must correspondingly be required to acknowledge and be cognizant of the obligations that arise from that office. In the same vein, the Judiciary considers it vital that there be effective mechanisms in place for oversight of compliance by both the overseas and the local legal practices with the professional disciplinary code to be implemented.

Having spoken to my colleagues on the Grand Court Bench, I know that your proposal that the current voluntary Code of Conduct be

implemented and made mandatory, meets with resounding approval. Indeed, the view is that such a Code should be implemented as a matter of urgency.

We all know the stories and jokes told about lawyers, (and, as you know, Judges too!) In fact, some of the jokes are even about lawyers in comparison to other professions.

The story is told of this job interview. It was for a very versatile job, so interviews took place across a number of disciplines. The interview took place with a panel of interviewers in a very nice room like this, except it had curtains, and had a long table, and table and chair for the interviewees to sit at. The first person interviewed was an engineer. The Chairman of the panel says to him, "Sir, we will in the interests of fairness and transparency, be asking all of the applicants for this job the same question. So, can you tell us: What is two plus two?" The engineer, being a maths whiz, rattles off the answer: "Why, two plus two is four!" The panel thanked him, and said he would hear from them. The next interviewee was an accountant. So they asked him the same question, "What is two plus two?" The accountant was a bright guy; he knew the answer in his head. But being an accountant, he was a very careful person, so he pulls out his calculator, and does a

calculation, and says “Two plus two equals four.” The interview panel thanked him and he left. The last interviewee was a lawyer. The Chairman of the panel says to him, “Yes, Sir, we wish you to respond to the same question we have been asking all of the applicants: What is two plus two?”

...Well, the lawyer looks to the left of the panel, to the right, looks behind the curtain, looks under the table. Then he looks at the panelists straight in the eyes, shrugs, and says: “Two plus Two?Whadda you want it to be???”

...So, we need a Code for that guy!

But back to a serious note, ladies and gentlemen. We also know that much of the criticism of the profession and cynicism is unfair. However, it is critical that we have a Code that can serve as a fundamental guideline for all, setting out the requirements for desirable ethical behaviours, standards and practices which all Attorneys must adhere to.

We consider it important that attorneys appreciate not only the powers of the Court to deal with contempt, in the face of the Court and otherwise, but also the general significance of the duties and obligations that arise from being an Officer of the Grand Court. This acceptance of responsibility holds true, whether, as proposed by the Paper, the profession

becomes self-regulating or whether the disciplinary process continues to be overseen by the Chief Justice or other Judge of the Grand Court, as currently provided for in section 7 of the Law. The cloak of responsibility that comes with being an Officer of the Court must be worn at all times.

We have taken note of your joint recommendation that the draft Bill include protective provisions to keep control of the practice of Cayman Islands Law with Caymanians, or with Attorneys based in the Cayman Islands. The Judiciary are indeed appreciative of your quest to ensure that requirements are legislated aimed at ensuring the fair participation of Caymanians in the legal sector of the Financial Services Industry. Regard has also been had to the concern that appropriately qualified Caymanians be considered for promotions both inside and outside of Cayman. We consider it both worthwhile and timely for consideration to be given to these recommendations.

Allow me now to turn briefly to the matter of self-regulation. The Judiciary can see the wisdom and perceived need for the profession to be self-regulating. Indeed, this would bring the Legal Profession in line with a number of other professions in the Cayman Islands, (and elsewhere in the World) which are also self-regulated, for example, in Cayman, the Cayman

Islands Society of Professional Accountants, or (“CISPA”), as they are referred to.

However, we would sound a note of caution based upon what has been mooted to be the experience in other jurisdictions when there are self-regulating bodies. If such a body is established, there is a need to ensure that there is no conflict between the regulatory and representative functions of this body. See for example, the very useful discussion which I accessed at *LexisNexis Butterworths, Cordery on Legal Services/Division (A). The Regulatory Framework, Section 1, Division (B) Where did the Impetus for Reform Come From?* (as at September 3 2015), page 3. There the learned authors discuss and quote from the March 2004 consultation paper prepared by Sir David Clementi, the former Deputy Governor of the Bank of England) (“the Clementi Report”), entitled “Review of the Regulatory Framework for Legal Services in England and Wales” The Clementi Report, in response to criticisms of how the legal profession’s self-regulatory functions were being performed by a number of professional front-line bodies, recommended a model which would allow professional bodies to retain their regulatory responsibilities, but giving oversight to a new overarching Regulator. Another model which was canvassed but

rejected was placement of responsibilities in the hands of a new unified regulator, removing them from the professional bodies altogether.

Whilst we make no recommendation along any particular lines, we simply encourage the Associations to consider and to keep ever present and under consideration, the question of the most beneficial model to put forward, bearing in mind, as we know you have been, the unique characteristics of the Cayman Islands jurisdiction. But at the same time, please benefit from an examination of the experience in other jurisdictions, and take steps to prevent, rather than having to cure, such ills as may arise from self-regulation.

I also note that one of your recommendations is that in relation to the private bar, complaints dealing with serious matters of discipline should be dealt with by a Disciplinary Tribunal, with a final right of appeal to the Chief Justice or his designate. No doubt that would allow for relatively swift resolution and finality to be brought to bear on these important matters. However, it seems to us that you may want to consider very carefully whether you would wish to have a system that comprises only one tier of appeal. This is particularly so, given that one is concerned with an individual's profession and all that that involves. For example, in Jamaica,

there is a self-regulating body, the General Legal Council, and a Disciplinary Committee, comprised of Attorneys, drawn from the Council members or other attorneys of a particular number of years standing, or persons who hold or have held high judicial office. The relevant law, the Legal Profession Act, provides for an appeal straight from the decision of the General Legal Council to the Court of Appeal by way of a rehearing. There is a further right of appeal to the Privy Council. That right of appeal to the Privy Council is often exercised, particularly where the disciplinary sanction imposed is the highest; that of being struck off the Roll of Practicing Attorneys.

These are of course, just different ways in which this subject matter can be dealt with and are raised simply as matters to perhaps reflect upon prior to the next round of discussions with the Executive.

Lastly, ladies and gentlemen, we therefore urge all stakeholders to remain vigilant and focused on ensuring that reform of this important Law remains very much in the foreground for consideration by the Executive and ultimate passage by the Legislature. It goes without saying that the Judiciary remains committed to our paramount role of interpreting and applying the Law correctly, and justly. We will be steadfast in fulfilling the

central functions which we currently carry out, and in continuing or carrying out any new functions under a Reformed Legal Practitioners Law.

Thank you for listening.

Presented by The Hon. Justice Ingrid Mangatal,
Judge of the Grand Court, at the Caymanian Bar Association's 27th
Anniversary Gala Dinner
12 September 2015