
CHAPTER 64
LEGAL PROFESSION
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CHAPTER 64

LEGAL PROFESSION

An Act to make provisions with respect to the practice of law by persons in The Bahamas, for the admission of persons to such practice, for the creation of a registered associate and legal executive, for the conduct and discipline of registered associates, legal executives and persons admitted to practice, and for matters incidental to or connected with the aforesaid matters.

*26 cf 1992
23 cf 1994
6 cf 1997*

*[Assent 30th June, 1992]
[Commencement 1st June, 1993]*

PART I PRELIMINARY

1. This Act may be cited as the Legal Profession Act. Short title.
2. In this Act — Interpretation.
 - “admit to practice” means admit to practice as counsel and attorney in the courts of The Bahamas;
 - “appointed day” means the 1st day of June 1993; *SI 23/1993*
 - “articles” means written articles of clerkship binding a person to serve a counsel and attorney as an articulated clerk;
 - “Bar” means the Bar of The Bahamas;
 - “Bar Association” or “Association” means The Bahamas Bar Association mentioned in section 3;
 - “Bar Council” or “Council” means the Bar Council mentioned in section 4;

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- “complaint” means a complaint made to the Ethics Committee alleging conduct on the part of a counsel and attorney that is not in keeping with the standards of etiquette and professional conduct required of a counsel and attorney, and includes a complaint alleging improper conduct on the part of a registered associate or a legal executive;
- “counsel and attorney” means a counsel and attorney admitted to practice under this Act;
- “Court” means the Supreme Court;
- “Disciplinary Tribunal” or “Tribunal” means the Disciplinary Tribunal established in accordance with section 31;
- “Ethics Committee” or “Committee” means the committee established in accordance with section 30;
- “legal executive” means a person whose name appears in the Register maintained under subsection (2) of section 51;
- “legal public office” means any office to which Article 117 of the Constitution applies;
- “Register of Associates” means the register of associates provided for in subsection (4) of section 26;
- “registered associate” means a person whose name appears in the Register of Associates;
- “Registrar” means the Registrar of the Court;
- “Roll” means the Roll of the Court to be maintained under section 16;
- “specially admitted” means specially admitted to practice under section 11;
- “unqualified person” means either a person whose name does not for the time being appear on the Roll or counsel and attorney whose name is on the Roll but who is for the time being suspended from practice, but does not include —

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- (a) a person specially admitted, a registered associate or a legal executive as respects the performance by him of any function falling within his competence under this Act as a person specially admitted or as a registered associate or a legal executive; or
 - (b) any person within the benefit of section 25, and “qualified person” shall have a corresponding meaning.

PART II
THE BAHAMAS BAR ASSOCIATION AND THE BAR COUNCIL

3. (1) All persons admitted to practice other than persons specially admitted shall form and be members of The Bahamas Bar Association. Bahamas Bar Association

(2) Notwithstanding subsection (1), a counsel and attorney may at any time by notice in writing to the Bar Council cease to be a member of the Bar Association.

(3) A counsel and attorney who has ceased to be a member of the Bar Association under subsection (2) is eligible for readmission in the Association subject to compliance with such conditions as the Bar Council may prescribe.

(4) The Bar Association shall in accordance with section 6 elect from among its members a President, Vice President, Secretary and Treasurer, hereinafter referred to as the “officers of the Bar Association” to hold office for a term of two years each.

4. (1) The Bar Council shall consist of — Bar Council
- (a) the officers of the Bar Association;
 - (b) five members of the Bar Association elected in accordance with section 6, except that two members shall be elected for a term of three years each and three members for a term of one year each; and

- (c) one person appointed by the Attorney-General after consultation with the President of the Bar Association for such period not exceeding two years as is specified in the instrument effecting the appointment.

(2) A member of the Bar Council is eligible for re-election or re-appointment, as the case may be, upon the expiration of his term of office.

Responsibility of
Bar Council

5. (1) The Bar Council may make bye-laws for the direction, control and government of the Bar Association.

(2) In addition to any other powers or duties conferred or imposed by this or any other Act, the Bar Council shall be responsible for —

- (a) the maintenance of the honour and independence of the Bar and the defence of the Bar in its relations with the executive and the judiciary;
- (b) the encouragement of legal education and the promotion of the study of jurisprudence;
- (c) the promotion of standards of etiquette and professional conduct required of members of the Bar;
- (d) the protection of the public right of access to the courts and the right of representation by members of the Bar before courts and tribunals;
- (e) the encouragement of the improvement of the administration of justice and procedure including the arrangements for legal advice and aid for persons in need thereof;
- (f) the promotion and support of law reform;
- (g) the furtherance of good relations between members of the Bar and lawyers of other countries;
- (h) such other matters of professional concern to members of the Bar as the Bar Association may determine.

Meeting of Bar
Association

6. (1) The President of the Bar Association shall in each year summon a meeting of the Association to be held in such month as may be prescribed for the purpose of —

- (a) submitting a report of the proceedings of the Bar Council in respect of the preceding year; and

(b) electing persons to fill any vacancy in the membership of the Bar Council.

(2) If an officer of the Bar Association vacates his office or a vacancy otherwise occurs in the membership of the Bar Council, other than by effluxion of time, the President of the Bar Association or the Vice-President, or if neither of them is able to do so the Attorney-General, shall as soon as practical summon a meeting of the Association for the purpose of electing a member to fill the vacancy.

(3) At a meeting held under subsection (1) or (2) the election shall be conducted by ballot in the prescribed manner.

7. (1) Subject to subsection (2), at any meeting of the Bar Association, thirty members constitute a quorum.

Quorum of Bar Association

(2) If within the period of thirty minutes after the time of commencement of a meeting of the Bar Association thirty members are not present, the President shall adjourn the meeting for one week, and if when the meeting is convened thirty members are not present within the thirty minute period, the members present shall constitute a quorum.

8. (1) The President of the Bar Association shall be the Chairman, and the Vice-President of the Bar Association shall be the Vice-Chairman, of the Bar Council.

Chairman and Vice-Chairman of Bar Council

(2) At every meeting of the Bar Council the Chairman, or in his absence the Vice-Chairman, shall preside and if both the Chairman and the Vice-Chairman are absent from a meeting any other member selected by the members present shall preside.

9. (1) The quorum for any meeting of the Council shall be five.

Quorum and procedure of Bar Council

(2) Subject to this Act, the Bar Council may make its own rules of procedure.

**PART III
COUNSEL AND ATTORNEYS**

Qualifications and disqualifications for admission to practise. First Schedule.

10. (1) No person shall be admitted to practice unless he is qualified in accordance with Part A, B or C of the First Schedule and is not disqualified for admission under subsection (2).

(2) A person shall be disqualified for admission to practice —

- (a) unless the Bar Council otherwise determines, if he has been disqualified for or suspended from practice in the courts of any place outside The Bahamas and such disqualification or suspension is in force at the date of his application for such admission;
- (b) if he is, in the opinion of the Bar Council, not of good character; or
- (c) save in the case of a person appointed to a legal public office or of a person applying for special admission, if he is not a citizen of The Bahamas.

Special admission.

First Schedule.

11. Notwithstanding anything to the contrary in this Act, the Bar Council, upon being satisfied that the interests of justice so require, may determine that any person qualified in accordance with the First Schedule shall be specially admitted to practice for the purpose of conducting particular proceedings specified in such determination, and shall give notice of its determination to the Chief Justice.

Application for admission.

Second Schedule.

12. (1) Any person desiring to be admitted to practice or to be specially admitted shall make application to the Bar Council in such form as the Council may require, attaching to the application the appropriate certificate or certificates in accordance with the Second Schedule and an affidavit declaring —

- (a) that any certificate produced in support of the application is a true certificate and relates to the applicant;
- (b) that the applicant is not suspended from or disqualified for practice in the courts of any place outside The Bahamas and has not done any act or been guilty of any omission which would render the applicant liable to be so suspended or disqualified; and

- (c) save in the case of a person appointed to a legal public office or of a person applying for special admission, that the applicant is a citizen of The Bahamas.

(2) Where upon receipt of an application made under subsection (1) the Bar Council is satisfied that the applicant is qualified to be admitted to practice or to be specially admitted, the Council shall so determine and shall give notice of its determination to the Chief Justice; but in every case where the Council is minded to refuse to make a determination the Council shall afford to the applicant an opportunity to show cause, whether by representation in writing or, if the applicant so desires, orally before the Council, why such a determination should be made.

13. (1) Upon receipt of notice of a determination of the Bar Council under section 11 or subsection (2) of section 12 in relation to any person and upon payment by that person of the prescribed fee, the Chief Justice shall admit the person by calling him to the Bar in such manner as the Chief Justice thinks fit.

Call to the Bar.

(2) Every person upon being called to the Bar shall take before the Chief Justice the oath prescribed in the Third Schedule and shall inscribe his name in the Roll or Supplementary Roll, as the case may be.

Third Schedule.

14. Every person admitted to practice other than a person specially admitted is entitled to receive from the Registrar a certificate of enrolment under the seal of the Court.

Certificate of enrolment.

15. (1) A counsel and attorney may apply to the Attorney General for appointment as one of Her Majesty's Counsel.

Appointment of Queen's Counsel.

(2) The Attorney-General, after consultation with the Chief Justice, the President of the Bar Association and such other persons as the Attorney-General sees fit, may recommend to the Prime Minister the appointment of the applicant.

(3) Upon receipt of a recommendation from the Attorney-General the Prime Minister may advise the Governor-General to appoint the applicant as one of Her Majesty's Counsel.

(4) Every counsel and attorney who is immediately before the appointed day or who thereafter is appointed a Queen's Counsel shall be a member of the Inner Bar and entitled to use the suffix Q.C. immediately after his respective family name.

Roll.

16. (1) The Registrar shall keep in such form as the Chief Justice may direct a roll, to be called the Roll of the Court, in which persons admitted to practice shall inscribe their names as required by section 13.

(2) The Registrar shall create and maintain in the Roll a part wherein is entered the counsel and attorneys who have been accorded the rank of Queen's Counsel in accordance with this Act.

Supplementary Roll.

17. The Registrar shall keep in such form as the Chief Justice may direct a roll, to be called the Supplementary Roll of the Court, in which persons specially admitted shall inscribe their names as required by section 13, and the Registrar shall against each name enter the particular proceedings in respect of which each person is specially admitted.

Rights and liabilities of persons admitted to practice.

18. (1) Any person admitted to practice under this Act shall be deemed to be an officer of the Court and, subject to section 19, shall be entitled to practice as counsel and attorney in all courts in The Bahamas.

(2) Notwithstanding subsection (1), a person who is specially admitted is only entitled to practice for the purpose of the particular proceedings in respect of which he was specially admitted.

(3) A counsel and attorney may, subject to this Act, sue for and recover the fees and expenses in respect of services rendered as counsel and attorney.

Pupillage after call in certain cases.

19. (1) Notwithstanding anything to the contrary in this Act, a person called to the Bar, being a person to whom this section applies —

(a) shall be obliged to serve a term of pupillage of twelve months, of such nature and on such terms and conditions as may be prescribed (but so that, until he has completed six months of his pupillage, he shall not conduct any case or part

of any case in any court), in the chambers of a counsel and attorney in actual practice in The Bahamas; and

- (b) shall not be entitled to practice as counsel and attorney (save to the extent allowed by his pupillage) until the certificate required by subsection (2) has been deposited with the Registrar.

(2) A certificate, signed by the counsel and attorney in whose chambers a person to whom this section applies has served as a pupil in accordance with subsection (1) and certifying that the person named therein has completed the term of pupillage required under subsection (1), shall be deposited with the Registrar, and the Registrar shall note in the Roll, opposite to the name of the person therein inscribed, such particulars of the certificate as the Chief Justice may direct.

(3) This section applies to any person who is called to the Bar by virtue of any qualification specified in Part A or Part B of the First Schedule other than —

First Schedule

- (a) a person in whose case the Governor-General, acting on the recommendation of the Bar Council, upon the Council being satisfied that the person possesses sufficient familiarity with the laws of The Bahamas, determines that the requirements of this section shall be waived; or
- (b) a person who is specially admitted to practice under this Act.

20. (1) Save where expressly permitted by this or any other Act, no unqualified person shall act as a counsel and attorney, or as such sue out any writ or process, or commence, carry on or defend any action, suit or other proceeding, in the name of any other person or in his own name, in any court, or act as counsel and attorney in any case, civil or criminal, to be heard or determined in any court.

Unqualified person not to act as counsel and attorney

(2) Any person contravening this section is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months.

Pretending to be counsel and attorney, registered associate or legal executive

21. Any unqualified person who wilfully pretends to be, or takes or uses any name, title, addition or description implying that he is, qualified, or recognised by law as qualified, to act as a counsel and attorney, a registered associate or a legal executive, is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars.

Unqualified person not to prepare certain instruments
23 cf 1994, s 2

22. (1) Any unqualified person who directly or indirectly draws or prepares any instrument relating to real or personal property or to any legal proceedings is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars, unless he proves that the act was not done for or in expectation of any fee, gain or reward.

23 cf 1994, s 2

- (2) Subsection (1) shall not apply to —
- (a) a public officer preparing or drawing any instrument in the course of his employment;
 - (b) a person merely engrossing any instrument in the course of his employment;
 - (c) a justice of the peace preparing or drawing an instrument relating to real property; or
 - (d) a commissioner preparing or drawing an instrument relating to real property in respect of the district of which he is in charge.

(3) Nothing in subsection (1) shall be construed as preventing a person in the regular employment of a counsel and attorney from preparing, in the course of that employment and under the supervision of the counsel and attorney, any instrument that is required by the counsel and attorney and for which the counsel and attorney assumes responsibility.

(4) In this section the expression “instrument” does not include —

- (a) a will or other testamentary instrument;
- (b) an agreement under hand only;
- (c) a letter or power of attorney; or
- (d) a transfer of stock containing no trust or limitation.

23. (1) Any unqualified person who either directly or as the agent of any other person (whether or not that other person is a qualified person) takes instructions for or draws or prepares any papers on which to found or oppose a grant of probate or of letters of administration or a resealing thereof is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars for each offence, unless he proves that the act was not done for or in expectation of any fee, gain or reward, and without prejudice to any other liability or disability to which he may be subject under this or any other Act.

Unqualified person not to prepare probate papers.

(2) Nothing in subsection (1) shall be construed as preventing a person in the regular employment of a counsel and attorney from preparing, in the course of that employment and under the supervision of the counsel and attorney, any instrument that is required by the counsel and attorney and for which the counsel and attorney assumes responsibility.

24. No costs in respect of anything done by an unqualified person acting as a counsel and attorney or as a registered associate or legal executive shall be recoverable in any action, suit or matter by any person.

No costs recoverable where unqualified person acts.

25. Nothing in this Act shall derogate from any enactment empowering an unqualified person to conduct, defend or otherwise act in relation to any legal proceedings.

Saving for unqualified persons.

26. (1) Subject to this Act, any person registered under this section, in this Act referred to as a “registered associate”, may act as the agent of the counsel and attorney by whom he is for the time being employed, in the drawing and preparation of the instruments and the performance of the business and functions specified in section 27.

Registered Associate.

(2) A person may not be registered as an associate under this section unless he is qualified in accordance with the Fourth Schedule and produces to the Registrar the statement required by subsection (3).

Fourth Schedule.

(3) A person shall be registered as an associate under this section upon application being made to the Registrar by the counsel and attorney by whom he is employed,

accompanied by a certificate from a competent authority evidencing the qualifications of that person and a statement by the counsel and attorney that to the best of his knowledge and belief that person would not be disqualified for admission to practice under paragraph (a) or (b) of subsection (2) of section 10 were he applying for such admission.

(4) Upon receipt of the application the Registrar shall enter the name of the counsel and attorney making the application and the name and qualifications of the person in respect of whom the application is made in a register to be known as the Register of Associates.

Rights of registered associate

27. (1) Notwithstanding anything to the contrary in this Act, a registered associate is entitled to act as the agent for the counsel and attorney by whom he is employed —

- (a) in the drawing and preparation of instruments relating either to real or personal property, or on which to found or oppose a grant of probate or letters of administration or a re-sealing thereof;
- (b) in the taking of instructions from clients;
- (c) in the giving of instructions to counsel;
- (d) in the preparation of such documents relating to legal proceedings as are to be prepared in the chambers of the counsel and attorney; and
- (e) generally in the conduct of such of the business of the counsel and attorney as is normally conducted in the chambers of a counsel and attorney.

(2) Any instrument prepared by a registered associate shall bear the name of the registered associate preparing it and the name of the counsel and attorney by whom the registered associate is employed.

Minimum fees prohibited

28. Nothing in this Act shall be construed as or have the effect of authorising the imposition or sanction by the Bar Association or the Bar Council of a minimum scale of fees for services rendered by a counsel and attorney.

**PART IV
DISCIPLINE**

- 29.** For the purposes of this Act, it shall be improper conduct — Improper conduct
- (a) in the case of a counsel and attorney, if the counsel and attorney —
 - (i) for the purpose of procuring his admission to practice, made a statement which is false in any material particular;
 - (ii) makes while acting in the capacity of counsel and attorney a statement which to his knowledge is false in any material particular;
 - (iii) knowingly or recklessly makes any statement for the purpose of an application under subsection (3) of section 26 which is false in any material particular;
 - (iv) contravenes any regulation under this Act as to the professional practice, conduct or etiquette of counsel and attorneys, or the keeping of accounts by them;
 - (v) employs any unqualified person, or permits any unqualified person in his employ, to engage in any business, matter or thing in which such a person is prohibited from engaging under this Act;
 - (vi) takes an articulated clerk otherwise than in accordance with section 44;
 - (vii) is otherwise guilty of conduct unbecoming a counsel and attorney; and
 - (b) in the case of a registered associate or legal executive, if the registered associate or legal executive —
 - (i) for the purpose of procuring his registration as a registered associate or legal executive, produced a certificate which is false in any material particular or does not relate to himself, or made any statement to his employer relating to his qualifications for such registration which is false in any material particular; or

- (ii) in any business, matter or thing in which he is entitled to engage on behalf of his employer under this Act, acts in any manner which would, were he a counsel and attorney, constitute improper conduct under paragraph (a).

Ethics Commi-
tee

30. (1) There is hereby established a committee to be known as the Ethics Committee of the Bar Council the functions of which shall be —

- (a) to receive complaints made in respect of the conduct of counsel and attorneys, registered associates and legal executives;
- (b) to determine whether there exists reasonable grounds for the making of a complaint and if so to refer it to the Disciplinary Tribunal where the Committee considers that should the complaint be established before the Tribunal the facts of the complaint would warrant a penalty or order other than a reprimand;
- (c) to reprimand counsel and attorneys, registered associates and legal executives where the Committee considers that though the allegations of a complaint have been made out a reprimand is the adequate penalty;
- (d) generally to uphold standards of professional conduct for counsel and attorneys, registered associates and legal executives.

Fifth Schedule

(2) The provisions of the Fifth Schedule shall have effect as to the constitution of the Ethics Committee and otherwise in relation thereto.

Disciplinary Tri-
bunal

31. (1) There is hereby established a tribunal to be known as the Disciplinary Tribunal the functions of which shall be —

- (a) to hear complaints referred to them by the Ethics Committee; and
- (b) to discipline in the manner provided in section 38 counsel and attorneys, registered associates and legal executives who are found guilty of improper conduct.

(2) The Secretary to the Association or any other person employed by the Association for the purpose shall perform the duties of secretary to the Tribunal.

(3) The provisions of the Sixth Schedule shall have effect as to the constitution of the Disciplinary Tribunal and otherwise in relation thereto. Sixth Schedule

32. (1) The Court upon an application by the Bar Council may by order prohibit any counsel and attorney, subject to such conditions and exceptions as may be specified in the order, from dealing with any monies in an account in the name of that attorney at any financial institution, being a counsel and attorney against whom a complaint is pending before the Disciplinary Tribunal. Restraint order

(2) An application for an order under subsection (1) (hereinafter referred to as a restraint order) may be made on an *ex parte* application to a judge in chambers and the order shall provide for notice to be given to persons affected by the order.

(3) A restraint order —

- (a) may be discharged or varied in relation to any monies; and
- (b) shall be discharged when the proceedings on the complaint before the Disciplinary Tribunal are concluded in favour of the counsel and attorney.

33. (1) The Court may make a charging order for a sum not exceeding the amount specified in the order. Charging order

(2) For the purposes of this section, a charging order is an order made under subsection (1) imposing on monies standing to the credit of an account in the name of a counsel and attorney at a financial institution a charge for securing the payment of a sum to a person who is or was a client of that counsel and attorney in consequence of a finding by the Disciplinary Tribunal of misconduct on the part of the counsel and attorney in a matter undertaken by him on behalf of that person.

(3) A charging order may be made only on an application on behalf of the Bar Council and may be made on an *ex parte* application to a judge in chambers.

(4) The Court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the amount, payment of which is secured by the charge, is paid into Court.

Appointment of
receiver

34. (1) Where in consequence of the hearing of a complaint against a counsel and attorney an order has been made by the Disciplinary Tribunal for the suspension or disbarment of the counsel and attorney, the Court may on an application on behalf of the Bar Council exercise the powers conferred by subsections (2) to (6).

(2) The Court may at the time of the making of a restraint order or during its duration appoint a receiver to manage or otherwise deal with, in accordance with the directions of the Court, monies affected by the order.

(3) The Court may appoint a receiver to take possession of any property in the possession of or under the control of the counsel and attorney or former counsel and attorney for the purpose of preserving, carrying on or winding up the practice of that attorney.

(4) A receiver appointed under subsection (2) or (3) shall in respect of any trust property of the counsel and attorney be the trustee thereof in place of the counsel and attorney where the position of the latter in relation to the trust property came into being in the course of the carrying on of his practice.

(5) The Court may upon application made to it vary, discharge or give any directions in the carrying out of an order made under subsection (2) or (3) as the Court sees fit.

(6) A judge may in any order under this section make provision for the remuneration, disbursement and indemnification of the receiver out of such monies or otherwise as he may specify.

Proceedings in
name of the Bar
Council

35. Any legal proceedings on behalf of or against the Council, the Ethics Committee or the Disciplinary Tribunal may be brought by or in the name of the Bar Council.

36. (1) No disciplinary action on a complaint by or on behalf of a client or former client of a counsel and attorney shall be taken by the Disciplinary Tribunal against that counsel and attorney or any registered associate or legal executive employed by the counsel and attorney unless the complaint is substantiated under oath by or on behalf of the complainant.

Hearing of complaints

(2) In the carrying out of their respective functions the Disciplinary Tribunal and the Ethics Committee shall have those powers exercisable by a judge of the Court in relation to the summoning and examination of witnesses and of parties and the production of books and documents.

(3) If the person whose conduct is being investigated fails to appear in answer to a notice issued by the Disciplinary Tribunal or the Ethics Committee in respect of the time and place for the hearing of a complaint or at the time and place of an adjournment thereof, the Disciplinary Tribunal or the Ethics Committee, as the case may be, if it is satisfied that there is no reasonable excuse for the failure to appear, may proceed with the hearing of the complaint in the absence of that person.

(4) A hearing of a complaint and every application relating to a complaint by the Disciplinary Tribunal or the Ethics Committee shall be heard in private, but if the person whose conduct is being investigated requests otherwise by a notice in writing delivered to the Secretary to the Tribunal or the Ethics Committee, as the case may be, before the day fixed for the hearing, the Disciplinary Tribunal or the Committee shall conduct the hearing in public.

(5) After the hearing of a complaint the decision of the Disciplinary Tribunal shall be pronounced in public.

(6) A hearing of a complaint may be adjourned at any time.

(7) A person whose conduct is being investigated, if present in person at the hearing, has the right to be represented by counsel, to adduce evidence and to make submissions, and any such person may be compelled to attend and give evidence but the person shall be advised of his right to object to answer any question or produce any document by reason that the answer to the question or the production of the document would tend to be self-incriminating in respect of a criminal offence.

(8) The Disciplinary Tribunal or the Ethics Committee may proceed with the hearing of a complaint notwithstanding that the complainant is absent or is no longer desirous of proceeding where the Tribunal or the Committee, as the case may be, considers the improper conduct alleged in the complaint is of such a nature or frequency that it is in the interest of the legal profession to do so.

Powers exercisable by the Tribunal or Committee during hearings

- 37.** (1) If any person —
- (a) on being duly summoned to appear to give evidence before the Disciplinary Tribunal or the Ethics Committee does not appear;
 - (b) being in attendance to give such evidence refuses to be sworn or to make a solemn affirmation as may be legally required by the Tribunal or the Committee to be taken or made or refuses to produce any document in his power or control legally required to be produced; or
 - (c) does any other thing which if the Tribunal or the Committee had been a court of law having power to commit for contempt, would have been contempt of that court,

the Chairman of the Disciplinary Tribunal or the Ethics Committee, as the case may be, may certify the offence of that person under his hand to the Court.

(2) Where an offence is certified to it under subsection (1), the Court may inquire into the alleged offence and, after hearing any witness who may be produced against or on behalf of the person charged with the offence and any statement that may be offered in defence, may punish or take steps for the punishment of that person as if the person had been guilty of contempt in the Court.

(3) In the case of the Disciplinary Tribunal, the Chairman of the Disciplinary Tribunal may proceed to deal with an offence as one occurring before a judge of the Court in lieu of certifying the offence under subsection (1).

(4) Subject to section 36, any person appearing before the Disciplinary Tribunal or the Ethics Committee in answer to a complaint and any witness appearing thereat together with their respective representatives shall be entitled to the same immunities and privileges as are parties, witnesses and representatives in civil proceedings before a Court.

(5) Any document required by the Disciplinary Tribunal or the Ethics Committee to be served upon a person for the hearing of a complaint shall be served personally upon that person or by mailing a copy thereof by registered mail to the person at his last known address.

38. (1) On the hearing of a complaint the Disciplinary Tribunal may either dismiss the complaint or make such order of a disciplinary nature as they think fit, and any such order may in particular include without prejudice to section 34, provision for any of the following matters —

Powers of Disciplinary Tribunal

- (a) striking off the Roll or removing from the Register of Associates or the Register of Legal Executives the name of the counsel and attorney, registered associate or the legal executive, as the case may be, to whom the complaint relates;
- (b) in the case of a counsel and attorney, suspending the counsel and attorney from practice for a period not exceeding three years;
- (c) payment by the counsel and attorney, registered associate or legal executive, as the case may be, of a penalty not exceeding one thousand dollars, which shall be forfeited to the Crown;
- (d) payment by the counsel and attorney, registered associate or legal executive, as the case may be, of compensation for any personal injury, loss or damage resulting from the improper conduct that is the subject matter of the complaint;
- (e) payment by any party of costs or of such sum other than on a complaint against a legal executive as the Tribunal may consider a reasonable contribution towards costs.

(2) Compensation to be paid under paragraph (d) of subsection (1) shall be of such amount as the Disciplinary Tribunal considers appropriate having regard to —

- (a) any evidence and any representations that are made by or on behalf of the counsel and attorney, registered associate or legal executive, as the case may be; and
- (b) the means of the person against whom the compensation order is made, so far as they appear or are known to the Disciplinary Tribunal.

Removal of name
from Register of
Associates

39. The Registrar shall remove the name of any registered associate from the Register of Associates —

- (a) on receipt of a certificate from the counsel and attorney whose name is for the time being entered in the Register in relation to such associate pursuant to subsection (4) of section 26 that the registered associate is no longer in his employ;
- (b) upon the application of the registered associate; or
- (c) upon the taking effect of an order to that effect of the Disciplinary Tribunal under section 40 in relation to the registered associate.

Orders of Disci-
plinary Tribunal

40. (1) Every order made by the Disciplinary Tribunal under section 38 shall be prefaced by a statement of their findings on the facts of the case and shall be signed by the Chairman of the Tribunal.

(2) Every such order shall take effect when filed with the Registrar, and shall be so filed —

- (a) where no appeal under section 54 is brought against the order within the time limited for the appeal, on the expiration of that time;
- (b) where an appeal under section 54 is brought and is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of the appeal; or
- (c) where such an appeal under section 54 is brought and is not withdrawn or struck out for want of prosecution, if and when the appeal is dismissed and not otherwise,

and shall thereupon be acted and be enforceable in the same manner as a judgment or order of the Court to the like effect.

(3) The Registrar shall cause a note of the effect of every order filed with him pursuant to subsection (2) to be entered —

- (a) in the case of a counsel and attorney, in the Roll; and
- (b) in the case of a registered associate, or legal executive in the Register of Associates or the Register of Legal Executives as the case may be,

against the name of the counsel and attorney, registered associate or legal executive to whom the order relates and, except in the case of an order making provision only for costs, shall upon the filing of the order cause a notice stating the effect of the order to be published in the Gazette.

41. (1) The Bar Council may at any time, upon application being made by any person whose name has been struck off the Roll under this Act, determine that such person's name shall be restored to the Roll, and shall give notice of any such determination to the Registrar.

Restoration to
Roll of the name
of persons struck
off

(2) Upon receipt of notice of a determination made by the Council under subsection (1) in relation to any person, the Registrar shall cause the name of that person to be restored to the Roll.

PART V LEGAL EDUCATION

42. In the discharge of its responsibility in respect of legal education under paragraph (b) of subsection (2) of section 5 the Bar Council may —

Examinations

- (a) prescribe the examinations to be taken and fees to be paid by candidates for call to the Bar and persons seeking to qualify as legal executives and may prescribe different examinations in respect of persons who possess different qualifications or have followed or are following different courses of study;
- (b) in respect of any examinations the papers in which are to be set within The Bahamas —
 - (i) prescribe syllabuses to be followed and, so far as may be practicable, in conjunction if necessary with any other educational authority, courses of lectures to be given by suitably qualified lecturers in any subject included in any such examination;
 - (ii) prescribe minimum qualifications for candidates;

- (iii) arrange for the holding of such examinations at such times (not being less than twice a year) and at such places as the Council may appoint, and for the setting, correcting and marking of all papers and, generally, for the conduct of the examinations by suitably qualified persons;
- (c) by regulations make such further and other provisions as to the Council may appear expedient for the tuition of students and their examination, including provision for the practical training and the examination in The Bahamas of students or graduates in law of any university.

PART VI ARTICLES

Articles

- 43.** (1) The Bar Council may make regulations —
- (a) prescribing the minimum qualifications for admission to service under articles;
 - (b) prescribing the period to be served under articles for the purpose of qualifying for admission to practice;
 - (c) providing for the terms on which articled clerks may be taken and retained by counsel and attorneys, and for 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 classes of persons.

(2) Until regulations otherwise providing are made by the Council under paragraph (b) of subsection (1), the period of articles shall be eighteen months in the case of a person mentioned in paragraph (a) of Part C of the First Schedule.

Restrictions on taking articled clerks

44. (1) A counsel and attorney who has not been in continuous practice in The Bahamas for a period of at least five years shall not, without the special leave of the Bar Council, take any person into service as an articled clerk.

(2) A counsel and attorney shall not take into service as an articulated clerk any person who does not possess the minimum qualifications prescribed under paragraph (a) of subsection (1) of section 43 for admission to service under articles.

(3) A counsel and attorney shall not, without the approval of the Bar Council, have in his service more than two articulated clerks at the same time.

(4) A person who has ceased to practice as a counsel and attorney shall not take or retain or purport to take or retain in his service any other person as an articulated clerk.

(5) If any person takes or has in his service any articulated clerk in contravention of this section; the Bar Council may of its own motion discharge the articles of that clerk upon such terms, including terms as to the return of any premium, as the Bar Council thinks fit.

45. The Bar Council may of its own motion discharge the articles of a clerk on such terms as the Council thinks fit, including terms as to the return of any premium, if—

Power to discharge articles

- (a) the counsel and attorney to whom the clerk is articulated is declared bankrupt or his name is struck off the Roll;
- (b) the Council is satisfied after investigation that the clerk is not of good character; or
- (c) upon the application of either the counsel and attorney or the clerk, the Council is satisfied that the articles ought to be discharged.

46. (1) The Bar Council may, upon the application of a counsel and attorney and of an articulated clerk, in any case in which it considers it proper so to do and subject to any conditions it thinks fit, approve the transfer of the clerk to the service under articles of such other counsel and attorney as is willing to take the articulated clerk.

Transfer of articles

(2) Where an approval is given by the Bar Council under subsection (1), an articulated clerk shall be for all purposes the articulated clerk of the counsel and attorney to whom he has been transferred and the written articles of clerkship under which he was serving immediately before the approval shall, subject to any modifications made therein by the Council, continue to have effect as though the counsel and attorney to whom the articulated clerk has been transferred had originally been a party thereto.

PART VII
POWERS OF INTERVENTION

Intervention in
counsel and at-
torneys practice
with respect to
money

47. (1) The Bar Council shall exercise the powers conferred by this section —

- (a) where a counsel and attorney has been adjudged bankrupt or has made a composition or arrangement with his creditors; or
- (b) on the death of a sole counsel and attorney.

(2) The Court, on the application of the Bar Council, may order —

- (a) that no payments shall be made without the leave of the Court by any person (whether or not named in the order) of any money held by him (in whatever manner and whether it was received before or after the making of the order) on behalf of the counsel and attorney; or
- (b) that any money to which the order applies, and the right to recover or receive the money, shall vest in the Bar Council to be held by the Bar Council on trust for the persons beneficially entitled to such money.

(3) No order under subsection (2) shall take effect in relation to any person to whom it applies unless the Bar Council has served a copy of the order on that person (whether or not the person is named in it) and in the case of a bank, has indicated at which of its branches the Bar Council believes that the money to which the order relates is held.

(4) A person shall not be treated as having disobeyed an order under subsection (2) by making a payment of money if that person satisfies the Court that he exercised reasonable care to ascertain whether it was money to which the order related but nevertheless failed to ascertain that the order related to it.

(5) Within 14 days of the service under subsection (3) of a copy of an order the person on whom it is served may apply to the Court for a variation or revocation of the order.

(6) If the Bar Council takes possession of any money to which an order under subsection (2) applies, the Bar Council shall pay it into a special account in the name of the Bar Council on trust for the persons beneficially entitled to it.

(7) A bank at which a special account is kept shall be under no obligation to ascertain whether that account is being dealt with properly.

(8) Without prejudice to the foregoing provisions of this section if the Court is satisfied, on an application by the Bar Council, that there is reason to suspect that any person holds money on behalf of a counsel or attorney in respect of whom the powers under this section are exercisable, the Court may require that person to give to the Bar Council information as to any money and the accounts in which it is held.

48. (1) The Bar Council may give notice to a counsel and attorney or his firm requiring the production or delivery to any person appointed by the Bar Council at a time and place to be fixed by the Bar Council, where the powers conferred by this section are exercisable by virtue of paragraph (a) of subsection (1) of section 47, of all documents in the possession of the counsel and attorney or his firm in connection with his practice.

Intervention in
counsel and at-
torney's practice
with respect to
documents

(2) Except in a case where an application has been made to the Court under subsection (5) of section 47 any person in possession of any documents referred to in subsection (1) who fails to comply with a requirement under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars.

(3) The Court, on the application of the Bar Council, may order a person required to produce or deliver documents under subsection (1) to produce or deliver them to any person appointed by the Bar Council at such time or place as may be specified in the order and authorise that person to take possession of the documents on behalf of the Bar Council.

(4) If on an application by the Bar Council the Court is satisfied that there is reason to suspect that documents in relation to which the powers conferred by subsection (1) are exercisable have come into the possession of some person other than the counsel and attorney or his firm, the Court may order that person to produce or deliver the documents to any person appointed by the Bar Council at such time and place as may be specified in the order and authorise him to take possession of the documents on behalf of the Bar Council.

(5) On making an order under this section or at any later time, the Court, on the application of the Bar Council may authorise any person appointed by the Bar Council to enter any premises (using such force as is reasonably necessary) to search for and take possession of any documents to which the order relates.

(6) The Bar Council, on taking possession of any documents under this section, shall serve a notice upon the counsel and attorney or his personal representatives and upon any other person from whom the documents were received on the Bar Council's behalf or from whose premises the documents were taken on the date specified in the notice.

(7) A person upon whom a notice under subsection (6) is served, on giving not less than two clear days notice to the Bar Council, may apply to the Court for an order directing the Bar Council to withdraw the notice. A notice under this subsection shall be given within eight days of the service of the Bar Council's notice under subsection (6).

(8) Without prejudice to this section, the Bar Council may apply to the Court for an order as to the disposal or destruction of any documents in its possession by virtue of this section.

49. (1) The powers in relation to sums of money and documents conferred by sections 47 and 48 shall be exercisable notwithstanding any lien on them or right to their possession.

(2) An application to the Court under sections 47 and 48 may be heard in Chambers.

General provisions relating to intervention in counsel and attorney's practice

(3) Subject to any order for the payment of costs that may be made on an application to the Court under sections 47 and 48, any costs incurred by the Bar Council for the purpose of those sections, including, without prejudice to the generality of this subsection, the costs of any person exercising powers under sections 47 and 48 on behalf of the Bar Council, shall be paid by the counsel and attorney or his personal representatives and shall be recoverable from him or them as a debt owing to the Bar Council.

50. The reference to “legal proceedings” in section 177 of the Evidence Act shall be deemed to include a reference to an inquiry or proceeding before the Disciplinary Tribunal, the Ethics Committee or proceedings by the Bar Council under this Act.

Application of section 177 of Ch. 65.

PART VIII LEGAL EXECUTIVES

51. (1) The Registrar shall maintain a register to be known as the Register of Legal Executives in which the names of persons employed by counsel and attorneys as legal executives shall be recorded.

Legal Executives.

(2) A person shall not hold himself out as employed or be employed as a legal executive unless his name is on record at the time in the Register of Legal Executives.

(3) A person shall be registered as a legal executive upon application being made to the Registrar in the prescribed manner for registration by the counsel and attorney by whom the legal executive is employed and the Registrar, on being satisfied that the person satisfies the prescribed qualifications, shall on payment of the prescribed fee enter the name of the person in the Register of Legal Executives.

(4) Any person who contravenes subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Removal of name
from Register of
Legal Executives

52. The Registrar shall remove the name of any legal executive from the Register of Legal Executives upon —

- (a) the application of the legal executive; or
- (b) the taking effect of an order to that effect of the Disciplinary Tribunal under section 40 in relation to the legal executive.

Functions of le-
gal executives

53. The Attorney-General after consultation with the Bar Council may make regulations in respect to the work to be done by legal executives and without prejudice to the generality thereof as regards —

- (a) appearances before a tribunal or other authority by a legal executive on behalf of the counsel and attorney in whose service the legal executive is employed; and
- (b) the type or group of legal matters which a legal executive may or may not perform on behalf of a counsel and attorney.

PART IX MISCELLANEOUS

Appeal to the
Court of Appeal

54. (1) Any person aggrieved by —

- (a) the failure or refusal of the Bar Council to make a determination in his favour under subsection (2) of section 12;
- (b) an order made by the Ethics Committee under paragraph (c) of subsection 2 of section 30;
- (c) an order made by the Disciplinary Tribunal under section 38 in relation to a complaint made by or against him; or
- (d) the discharge by the Council of his articles, or by the terms on which his articles are discharged by the Council, under subsection (5) of section 44 or under section 45,

may appeal on that account to the Court of Appeal; and in relation to every such appeal section 9 of the Court of Appeal Act shall *mutatis mutandis* apply as if the matter in respect of which the appeal is brought were a judgment or order of the Court.

(2) No further appeal shall lie from the decision of the Court of Appeal on an appeal made under this section.

Ch 52

55. The Bar Council may, with the approval of the Governor-General, make regulations — Regulations

- (a) regulating in respect of any matter the professional practice conduct, etiquette and discipline of counsel and attorneys, registered associates and of legal executives and providing for or regulating the making of complaints to the Ethics Committee;
- (b) regulating the hearing and determination of complaints by the Ethics Committee or the Disciplinary Tribunal;
- (c) as to the opening and keeping by counsel and attorneys of accounts at banks for clients' money; the keeping of accounts containing particulars of money received, held or paid by counsel and attorneys for or on account of clients; and empowering the Bar Council to take such action as the Council may consider necessary to ascertain whether or not such regulations are being complied with;
- (d) in respect to the dues to be paid to the Association by members of the Bar Association;
- (e) generally for the better carrying out by the Council of its functions under this Act;
- (f) prescribing any matter or thing authorised by this Act to be prescribed.

56. Any person who procures the registration of himself or of any other person as a registered associate or as a legal executive by any false or misleading certificate or statement is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or imprisonment for three years or to both such fine and imprisonment. Offences

57. (1) The Governor-General may by order amend the First Schedule. Amendment of
First Schedule

(2) The provisions of section 31 of the Interpretation and General Clauses Act shall not apply in relation to any order made by the Governor-General under subsection (1), but instead every such order shall be subject to affirmative resolution of both Houses of Parliament. Ch 2

(3) In subsection (2) the expression “subject to affirmative resolution of both Houses of Parliament” in relation to an order means that any such order is not to come into operation unless and until approved by a resolution of each House of Parliament.

FIRST SCHEDULE (Sections 10, 11, 19(3), 57)

QUALIFICATIONS FOR ADMISSION

PART A

A person is qualified for admission to practice under this Part of this Schedule if —

- (a) he has been called to the Bar of England, Scotland, Northern Ireland or Eire, or of such other country, whether within the Commonwealth or not, as may be prescribed; or
- (b) he has been admitted to practice as a solicitor in the Supreme Court of England, Scotland, Northern Ireland or Eire, or of such other country, whether within the Commonwealth or not, as may be prescribed.

PART B

A person is qualified for admission to practice under this Part of this Schedule if he has been awarded a Legal Education Certificate by the Council of Legal Education of the West Indies.

6 cf 1997, s 2

PART C

A person is qualified for admission to practice under this Part of this Schedule if he —

- (a) holds a degree in law from a university or institution approved by the Bar Council and the Council of Legal Education of the West Indies as being academically equivalent to a Bachelor of Laws degree from the University of The West Indies;
- (b) is a person who completed the period of articleship required by subsection (2) of section 43 with a counsel and attorney in actual practice in The Bahamas and such articles began on or before the expiration of two years from the appointed day or on such later date as the Attorney-General may by order designate;
- (c) has passed the examinations approved by the Bar Council and the Council of Legal Education of the West Indies for the purposes of this Part.

SECOND SCHEDULE (Section 12)
QUALIFICATIONS FOR ADMISSION
Certificates to Accompany Application for Admission

| <i>Qualification</i> | <i>Certificate</i> |
|--|---|
| 1. Where the qualification claimed falls under Part A of the First Schedule. | A certificate from the competent authority in the country in which the applicant claims to have been called to the Bar or admitted to practice, as the case may be, that the applicant has been so called or admitted to practice. |
| 2. Where the qualification claimed falls under Part B of the First Schedule. | A Legal Education Certificate from the Council of Legal Education of the West Indies. |
| 3. Where the qualification claimed falls under Part C of the First Schedule. | <p>(a) A certificate from the university establishing, in the opinion of the Bar Council, that the applicant has passed the final examination of that university and has been awarded a first degree in law;</p> <p>(b) a certificate from the Bar Council that the applicant has passed the examination approved by the Bar Council for the purposes of Part C;</p> <p>(c) a certificate from each of the counsel and attorneys whom the applicant has served as an articled clerk sufficient to establish that the applicant has served such period of articles as is required by or under section 43; and</p> <p>(d) a certificate from the Council of Legal Education of the West Indies that the applicant has satisfactorily completed a six month course of legal training organised by the Council.</p> |

THIRD SCHEDULE (Section 13)**OATH**

The following oath shall be taken by a person upon admission to practice, that is to say —

“I,
do swear that I will truly and honestly demean myself as counsel and attorney of the Supreme Court in that and every other court in which I shall practice in The Bahamas. So help me God.”

FOURTH SCHEDULE (Section 26)**QUALIFICATIONS FOR REGISTRATION AS REGISTERED ASSOCIATE**

A person is qualified for registration as an associate in accordance with this Schedule if he has been called to the Bar or admitted to practice as a barrister or a solicitor or as an attorney-at-law before a court of unlimited jurisdiction in any country whether within or without the Commonwealth and, under the provisions of any enactment for the time being in force regulating the right to engage in gainful occupation or to be employed in The Bahamas, may lawfully be employed to perform the functions allowed to a registered associate under this Act.

FIFTH SCHEDULE (Section 30)**ETHICS COMMITTEE**

1. The Bar Council shall at its first meeting or no later than the month of February following upon the election of its members, which ever is the earlier, proceed to constitute the Ethics Committee by appointing to the Committee five members of the Bar Association of not less than five years standing at the Bar.

2. The names of the members of the Ethics Committee shall be notified to the Registrar of the Supreme Court.

3. The appointments of members of the Ethics Committee shall expire upon the next election of members of the Bar Council following upon the appointments.

4. The members of the Ethics Committee may appoint a Chairman from among themselves.

5. A quorum of the Ethics Committee shall be three.

6. Notwithstanding that the term of office of members of the Ethics Committee may have expired, any act or thing lawfully done by those members in respect of a complaint shall not be prejudiced by that expiration and where the hearing of a complaint in which evidence was taken before those members was pending at the time of the expiration, the members may thereafter continue to exercise in respect of that complaint all the powers of the Committee to enable the conclusion of the hearing by it of that complaint.

SIXTH SCHEDULE (Section 31)

DISCIPLINARY TRIBUNAL

1. The Disciplinary Tribunal shall consist of —

- (a) two judges of the Supreme Court appointed by the Chief Justice;
- (b) two persons selected from outside the legal profession appointed by the Attorney-General; and
- (c) seven counsel and attorneys of not less than seven years standing at the Bar appointed by the Bar Council.

2. The members of the Disciplinary Tribunal may resolve themselves to sit in two divisions except that each division when hearing a complaint shall consist of —

- (a) a Chairman who shall be one of the judges appointed under paragraph 1(a); and
- (b) not less than three other members one of whom must be a person appointed under paragraph 1(b),

and for all purposes any division shall be deemed to be the Disciplinary Tribunal.

3. A member of the Tribunal appointed under subparagraph (b) or (c) of paragraph 1 shall subject to any prior resignation or revocation and without prejudice to any reappointment hold office for the period ending 31st December of the year following that in which he was appointed or such shorter period as may be specified in his letter of appointment.

4. Notwithstanding paragraph 3 and save in the case of a resignation or revocation, the Chairman of the Tribunal may allow a person to continue to act as a member of the Tribunal for the purpose of enabling the completion of the hearing of a complaint in which evidence was taken before the period of his appointment expired where the Chairman considers it is in the interest of the legal profession to do so.

5. Subject to the provisions of this Act the Disciplinary Tribunal may regulate its own procedure.