



## **OUTLINE OF PROCEDURE FOR MAKING COMPLAINTS OF PROFESSIONAL MISCONDUCT AGAINST BARRISTERS & ATTORNEYS**

### 1.0 INTRODUCTION AND SUMMARY

- 1.1 This Memorandum is intended to provide general information to members of the public about the procedure for making complaints of professional misconduct against members of the Bermuda Bar Association.
- 1.2 In summary, complaints may be made against lawyers who are admitted to the Bermuda Bar or who are registered associates by writing to the Bermuda Bar Council, the governing body of the Association.
- 1.3 Complaints may only be made in relation to matters constituting professional misconduct by the Bermuda Bar Act. The Bar Council will refer the complaint to the Professional Conduct Committee, which will, if the complaint has some merit, consider what further disciplinary action is appropriate or required.
- 1.4 The following questions are addressed in further below:
  - (a) Against whom can complaints be made?
  - (b) What conduct can form the subject of a disciplinary complaint?
  - (c) How does one make a complaint of professional misconduct against a lawyer?
  - (d) What happens after a complaint is made?

### 2.0 AGAINST WHOM CAN COMPLAINTS BE MADE?

- 2.1 Complaints of professional misconduct can be made against all members of the Bermuda Bar (save for foreign counsel specially admitted to the bar for particular cases).
- 2.2 Persons dealing with lawyers should generally be aware whether, when retaining a firm and subsequently dealing with such firm, the individual they are dealing with is a member of the Bermuda Bar. If work is done on behalf of a firm by a person who is not admitted to the bar and who is not a fully qualified lawyer, the lawyer or lawyers who employs the unqualified person may be responsible for any misconduct on the part of his or her unqualified employee.
- 2.3 The one exception to the general rule that members of the Bermuda Bar are the only lawyers against whom complaints can be made is the case of the “registered associate”. Many local firms employ lawyers from abroad



who are registered as associates prior to their fulfilling the residential requirements for admission to the Bermuda Bar. Complaints of breaches of the Barristers Code of Professional Conduct 1981 (as amended) (“the Code of Conduct”) may be made against registered associates by virtue of section 17 of the Bermuda Bar Act 1974 (as amended), which prescribes against whom complaints may be made.

### 3.0 WHAT CONDUCT CAN FORM THE SUBJECT OF A DISCIPLINARY COMPLAINT?

3.1 In terms of conduct likely to impact on members of the public as a lawyer’s client, the main categories of professional misconduct which can form the subject of a disciplinary complaint are as follows:

- (a) contravening the Code of Conduct;
- (b) conduct unbecoming a barrister.

3.2 The Code of Conduct imposes a wide array of duties on lawyers, the breach of which may form the basis of a disciplinary complaint. These duties are designed to protect the public from, among other things:

- (a) lawyers advising clients in a less than honest manner and generally acting unfairly or unethically on their behalf (rules 9-14);
- (b) lawyers disclosing confidential information received from clients (rules 15-18);
- (c) lawyers acting where they have a conflict of interest (rules 22-29);
- (d) lawyers failing to take care to protect their clients’ property (rules 33-38);
- (e) lawyers misconducting themselves in relation to cases before the Courts (rules 39-69);
- (f) lawyers withdrawing their services without good cause and in a prejudicial manner (rules 70-75);
- (g) lawyers charging unreasonable fees, etc. (rules 90-96) – however see Advice for those making complaints about fees, attached.

### 4.0 HOW DOES ONE MAKE A COMPLAINT OF PROFESSIONAL MISCONDUCT AGAINST A LAWYER?

4.1 In accordance with section 21 of the Bermuda Bar Act, complaints of professional misconduct should be made in writing to the Bar Council.

4.2 Letters should be addressed to the Executive Secretary, Bermuda Bar Association, P O Box HM 125, Hamilton HM AX, Bermuda.

4.3 An attempt should be made to clearly set out the specific conduct to which the complaint relates.



- 4.4 Complaints should not generally be made when the issues in question are the subject of ongoing Court proceedings or should be more appropriately be dealt with by a Court action. For instance, where financial compensation is sought for negligent advice of representation, disciplinary proceedings will usually be inappropriate as they are designed to punish lawyers for misconduct, not to compensate the victim of professional misconduct.
- 5.0 WHAT HAPPENS AFTER A COMPLAINT IS MADE?
- 5.1 As soon as possible after a complaint is received by Bar Council and noted at its monthly meeting (usually on the second Thursday of each month), it will be forwarded to the Professional Conduct Committee.
- 5.2 The Professional Conduct Committee (a statutory committee appointed by the Bar Council) (“the Committee”) will meet to initially review the complaint and will determine whether:
- (a) the complaint lacks merit; or
  - (b) has some merit.
- 5.3 Where the complaint has some merit, the Committee will investigate the complaint with a view to determining whether a case to answer has been made out against the lawyer concerned, who will be given an opportunity to respond to the complaint.
- 5.4 The lawyer against whom a case to answer has been made out may be disciplined informally (if the Committee thinks fit and he or she consents) by way of admonishment following an informal hearing which the complainant may attend.
- 5.5 Where formal charges are considered appropriate, the Committee will formulate a formal charge and refer it to the Chief Justice who will, amongst other things:
- (a) set up a three-member disciplinary tribunal chaired by a judge and including two lawyers unconnected with the complaint; and
  - (b) fix a date for hearing.
- 5.6 The Committee is responsible for prosecuting charges of professional misconduct against lawyers. However, if a complainant wishes to present their own case or retain the lawyer of their own choice to do so at their own expense, the services of the Committee in this regard can be dispensed with.



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- 5.7 Disciplinary offences must be proved to the criminal standard of proof, that is the tribunal must be satisfied beyond reasonable doubt of the “accused’s” guilt. The convicted lawyer may appeal to the Court of Appeal from the decision of the disciplinary tribunal. A complainant has no right of appeal against an acquittal.
- 5.8 Where charges are proved, the following punishments may be meted out by the tribunal:
- (a) striking off the roll of barristers;
  - (b) suspension from practice;
  - (c) a fine;
  - (d) an admonishment.
- 5.9 THE FACT OF A COMPLAINT AND ALL DISCIPLINARY PROCEEDINGS ARE STRICTLY CONFIDENTIAL. ONLY IF CHARGES ARE PROVED AFTER APPEAL RIGHTS HAVE BEEN EXHAUSTED WILL THE PENALTIES (IF MORE SEVERE THAN AN ADMONISHMENT) BE PUBLISHED.

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