

## **MCDONALD-BISHOP JA**

### **ORDER**

[1] It is **DECLARED AND ORDERED** that:

- I. The appeal is allowed, in part.
- II. The Proceeds of Crime (Designated Non-Financial Institution) (Attorneys-at-Law) Order, 2013 designating attorneys-at-law as non-financial institutions (“DNFIs”) for the purposes of the Proceeds of Crime Act, 2007 is not unconstitutional and is, therefore, valid and lawful.
- III. The amendment to the Legal Profession Act to insert section 5(3C) as well as any regulation(s) made pursuant thereto, including the Legal Professional (Annual Declaration of Activities) Regulations, 2014 is not unconstitutional and is, therefore, valid and lawful.
- IV. The Regime (save and except the provisions of the Regime at paragraphs II and III above) has contravened, is contravening, or is likely to contravene the following rights guaranteed to attorneys-at-law by the Charter of Fundamental Rights and Freedoms (Amendment) Act, 2011 (“the Charter”):
  - i. protection from search of their property in contravention of section 13(3)(j)(i);
  - ii. respect for and protection of private life in contravention of section 13(3)(j)(ii);

- iii. protection of privacy of other property and of communication in contravention of section 13(3)(j)(iii); and
- iv. the right to liberty and not to be deprived of liberty in contravention of section 13(3)(a).

V. The following instruments, **in so far as they apply to attorneys-at-law**, are unconstitutional, null and void and of no legal effect, for being inconsistent with sections 13(3)(j) and 13(3)(a) of the the Charter:

- i. The Proceeds of Crime Act, 2007 (as amended by the Proceeds of Crime (Amendment) Act, 2013, ("the POCA"), section 91A(2) (save and except 91A(2)(b)); 91A(5); 94(2) and 95, in so far as it requires attorneys-at-law to report suspicious transactions directly to the designated authority, namely, the Chief Technical Director of the Financial Investigation Division ("the FID").
- ii. The provisions of the Proceeds of Crime (Money Laundering Prevention) Regulations, 2007 ("the Regulations") and the amendments to it that touch and concern the enforcement of the provisions of the Regime as set out at paragraph V(i) of this order and any other penalty provisions.
- iii. The Legal Profession (Canons of Professional Ethics)(Amendment) Rules, 2014 that amends the Legal Profession (Canons of Professional Ethics) Rules, 1978 ("the Canons") to permit attorneys-at-law to reveal client

confidences or secrets in compliance with the POCA and the attendant regulations.

iv. The provisions of the General Legal Council of Jamaica: Anti-Money Laundering Guidance for the Legal Profession, published in the Jamaica Gazette Extraordinary of Thursday, 22 May 2014, No 22<sup>3A</sup> ("the GLC Guidance") that are designed to enforce the provisions of the Regime set out at paragraph V(i) of this order.

VI. In respect of the annual declaration of activities by attorneys-at-law filed pursuant to section 5(3C) of the Legal Profession Act, the General Legal Council shall not make any disclosure of any information contained therein.

VII. Injunctive reliefs denied.

VIII. There shall be no order as to costs, unless within 14 days from the date of this order, written submissions are filed and served by the parties for the court to make an order as to costs after a consideration of the matter on paper.

IX. There shall be liberty to apply to give effect to this order.