# Legislative Assembly of the Cayman Islands

**PRIVATE MEMBER'S MOTION NO. 17/2016-2017**

**Possible Breaches of Penal Code, Legal Practitioner's Law and Immigration Law by Law Firms Engaging in Overseas Practice of Cayman Islands Law**

**WHEREAS** there has been much debate over the past several years with regards to various proposals to promulgate a new Legal Practitioner's Law and much controversy has been generated regarding the reasons for the same, which has resulted in the failure of all past attempts to bring such legislation;

**AND WHEREAS** the current government is proposing yet another Legal Practitioner's Bill, which bill has sparked significant controversy and debate including, among other things, public utterances and letters written by local practitioners to both the Minister of Financial Services and to this Legislative Assembly, which letters have identified, *inter alia,* a number of flaws with regards the process being employed by the Government, including the existence of an alleged glaring conflict of interest with regards to the said Minister who is stewarding this bill and the concomitant allegation is that this flawed process has produced a flawed bill;

**AND WHEREAS** there has arisen from the very intense debate on this bill a series of questions and issues which are even more troubling than a conflict of interest of a member of parliament, in that, it appears that there are a number of law firms in the Cayman Islands that are and have been for a number of years intentionally ignoring and deliberately circumventing Section 10 of the Legal Practitioners Law (2015 Revision) so as to allow a large number of persons who are not qualified Attorneys-at-Law to hold themselves out as such and to practice as qualified Cayman Islands Legal Practitioners in offices outside the jurisdiction, which offices are either owned and controlled by, or affiliated with, those Cayman law firms;

**AND WHEREAS** the very Minister of Financial Services himself is a former Managing Partner of one of the said law firms engaging in that overseas practice of Cayman Islands law by persons falsely holding themselves out as qualified and licensed Cayman Islands Legal Practitioners;

AND WHEREAS Section 322 of the Penal Code (2015 Revision) provides:

> *A person who conspires with another or others to –*
>
> > *(a) prevent or defeat the execution or enforcement of any law or regulation;*
> > *(b) cause any injury to the person or reputation of any person or to depreciate the value of any property of any person;*
> > *(c) prevent or obstruct the free and lawful disposition of any property by the owner thereof for its fair value;*
> > *(d) injure any person in his trade or profession;*
> > *(e) prevent or obstruct, by means of any act or acts which if done by any individual person would constitute an offence on his part, the free and lawful exercise by any person of his trade, profession or occupation;*
> > *(f) effect any unlawful purpose; or*
> > *(g) effect any lawful purpose by any unlawful means,*
> > *commits an offence.*

**AND WHEREAS** there have also been numerous allegations of a somewhat similar nature with regards to breaches of Section 51 of the Immigration Law (2015 Revision) with regards to the promotion and re-designation of positions of lawyers within the same law firms, in apparent breach of the Immigration Law;

**AND WHEREAS** the continued conduct of these activities will have, and no doubt have already had, a deleterious impact on the economy of these islands by allowing the firms involved to avoid the payment of all government fees associated with licensure and work permitting of Cayman Legal Practitioners, as well as depriving the economy of all of the other attendant economic benefits that would come from such persons having to be properly licensed and located within the jurisdiction;

**AND WHEREAS** such activities may well have an adverse effect on the reputation of the jurisdiction, as the firms involved in this practice appear to continue to operate in such a way that, by placing their operatives beyond the reach of the jurisdiction, they effectively avoid both the scrutiny and regulation of this jurisdiction by engaging in unlicensed and unregulated practice of Cayman law overseas, whilst dishonestly holding themselves out to clients and the world at large as licensed Cayman Islands Legal Practitioners;

**AND WHEREAS** the written correspondence and public utterances of many of the partners and/or principals of the relevant firms have confirmed that such practices and operations exist in other jurisdictions and that the same have been created with their full knowledge and consent and/or active participation, and that it is the intention of the firms to now have these practices and operations legitimized by passing legislation to license the same, without any consideration of their past conduct;

**AND WHEREAS** it is clear from their overt actions and public communications that a large number of the partners and principals of the relevant firms are acting in unison and speaking with one voice on this matter, and have invested heavily in trying to pass the necessary legislation to license such practices and operations, without any disclosure of the structure and nature of their various overseas practices and operations, and without offering any form of indemnification to the jurisdiction or recompense to the Cayman Islands economy for any liability or damage thereby caused to date by such practices and operations;

**AND WHEREAS** in the circumstances it appears that a number of partners and/or principals of the relevant firms have conspired together with others to prevent and/or defeat the execution or enforcement of the Legal Practitioners Law and/or the Immigration Law.

**AND WHEREAS** the foregoing being the case, it appears that a *prima facie* case could be made out for prosecution under Section 322 of the Penal Code of all partners and principals and other participating persons in these law firms who conspired with one another to defeat the execution of the said Laws;

**BE IT THEREFORE RESOLVED** that the Government shall consider directing the Attorney General and the Director of Public Prosecutions to take all necessary actions and investigations in order to ascertain what the legal implications are with regard to these activities and business practices and, subject to what those investigations reveal, to take the appropriate actions against any and all offenders, in accordance with their statutory and constitutional duties.

Moved by: _____
Mr. V. Arden McLean, JP, MLA
Elected Member for East End

Seconded by: _____
Mr. Winston Connolly, MLA
Fifth Elected Member for George Town

Tabled in the Clerk's Office 14th day of February, 2017.

Passed/Rejected by the Cayman Islands Government this day of , 2017.

Clerk of the Legislative Assembly