

DO YOU KNOW?

- **THAT BARRISTERS IN JAMAICA ARE NOW PREPARING CONVEYANCES AND TRANSFERS AND HANDLING MONIES ON BEHALF OF CLIENTS?**
- **THAT THEY REFUSE TO DISCONTINUE THIS TYPE OF WORK AND ARE IN FACT CONSOLIDATING THEIR POSITION?**
- **THAT THE PRESENT INDICATIONS ARE THAT WITHIN THREE YEARS THERE WILL BE MORE BARRISTERS THAN SOLICITORS IN JAMAICA?**

FUSION

by

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This is a personal appeal to every Solicitor in Jamaica to support Amalgamation (Fusion) of both branches of the legal profession in Jamaica. Not only for the protection of the general public, but for the benefit of the entire profession, and for the protection of the present Solicitors.

Unfortunately some Solicitors take a selfish view of this matter. Some feel that they are not personally affected, and they apparently do not really care what happens to other Solicitors. Some also feel that because they do not want the right to appear in the Supreme Court or in the Circuit Court, that under no circumstances they desire any Solicitor to have any such right. Some Solicitors are prepared to go to great lengths with delaying tactics to prevent the amalgamation of the both branches of the profession.

Every Solicitor, however affluent he may be, should also consider the financially poorer Solicitors; he should also consider the future of the present Articled Clerks; above all, he should consider the good of the profession as a whole. I humbly appeal to all Solicitors to whom these remarks may apply to join with the other Solicitors who are advocating Fusion.

Many Solicitors will have read the majority report of Messrs. L. E. Ashenheim, A. E. Brandon, Douglas Judah, N. J. Fraser and myself, supporting legal fusion and presented to the Extraordinary General Meeting of our Law Society held in May 1963.

Whilst many Solicitors are fully aware of what many Barristers are now doing in Jamaica—further to articles appearing in the press, I desire to summarise some truths concerning the legal profession in Jamaica in the following form:-

Position in Other Countries:

1. Do you know that in the majority of the nations of the world there is a fused or amalgamated legal profession?
2. Do you know that all newly admitted Barristers who propose to practice in England are required by convention to read in Chambers (which more or less corresponds with being articulated) with a qualified Barrister for one or two years?
3. Do you know that in England 90% of the practicing legal profession are Solicitors whilst 10% are Barristers?
4. Do you know that there is a strong minority group of Solicitors in England now actually recommending Fusion for England?
5. Do you know that two separate Branches of the legal profession—Solicitors and Barristers—can only work best in countries (without Barristers trespassing on Solicitors work) where there

are substantially more Solicitors than Barristers in actual active practice?

6. Do you know that in Trinidad where there are more Barristers than Solicitors that Barristers do both Barrister and Solicitor work, while the Solicitors are limited to Solicitors work?

7. Do you know that Sir Thomas Lund, Secretary of the Law Society of England, in a recent speech to University students in England said:-

"I do not accept the view that 10% of the profession (Barristers in England) have a monopoly of the wisdom of all the other qualities which go to make a good judge"?

8. Do you know that there is fusion in the majority of the countries of the British Commonwealth such as Canada, New Zealand, Kenya, Tanganyika, Uganda, Nigeria, Ghana, the greater portion of India including Bombay, New Delhi and Madras, Pakistan, the majority of the States in Australia, Sierra Leone, Antigua, St. Kitts, British Honduras, Grand Cayman, Bahamas, Bermuda, and the various small British Colonies?

9. Do you know that in Canada all lawyers (including Queen's Counsel) are termed Barristers and Solicitors?

10. Do you know that in the Province of Ontario in Canada, for instance, every Law Student has to attend Law School for at least 4 years, and if he is successful in the Law Examinations he obtains a Law Degree, and he has also to serve Articles with a suitable practising lawyer for at least 3 years (which can be done during the same

period of studies at the Law School) and thereafter he is admitted to practice both as Barrister and Solicitor?

11. Do you know that although there is complete Fusion in Canada, yet the majority of the profession (say about 80%) practice in fact as Solicitors only, 10% practice as both Solicitors and Barristers and 10% practice as Barristers only (and accept briefs from other Lawyers)?

12. Do you know that in other countries where there is fusion that some lawyers practice as advocates only and accept briefs from other lawyers?

13. Do you know that the majority of the few respectable Barristers (including Queen's Counsel) who practice correctly in Jamaica (that is, do Barrister work only), have often stated that even if there is Fusion of the both branches, that they will still practise as advocates only and still receive briefs from other Lawyers?

Course of Studies for Solicitors and Barristers:

1. Do you know that there is no requirement in Jamaica for newly admitted Barristers to read in Chambers with another Barrister?

2. Do you know that the majority of the few Barristers in Jamaica in private practice who are practising correctly as Barristers (and who amount to not more than about ten in number) either read in Chambers in England or in Jamaica, or were performing actual duties for over two

years as Clerk of Courts in Jamaica, before commencing active practice as Barristers in Jamaica?

3. Do you know that the majority of the Barristers in Jamaica, say about 85% or more, have never read in Chambers, or have never previously performed actual duties as Clerk of the Courts?

4. Do you know that the Course and Examinations required for Solicitors in Jamaica or England are longer, harder and more tedious than the course and examinations required for Barristers?

5. Do you know that the normal course of studies to be a Solicitor is 5 years, whilst the normal course of studies required to be a Barrister is $2\frac{1}{2}$ to 3 years?

6. Do you know that as an Independent Nation, that it is in accordance with our pride and dignity to provide for our own legal education in Jamaica, instead of being **solely** dependent, as at present, only on examinations set in another country, to wit, England.

7. Do you know that it is much more expensive to provide legal education in Jamaica separately for two branches of the legal profession instead of one unified course for an amalgamated profession?

8. Do you know that it is now much cheaper and easier to become a Barrister than a Solicitor?

Barristers Now Doing Solicitors Work in Jamaica

1. Do you know that there is now 'De Facto'

Fusion in Jamaica on the part of Barristers only with the vast majority of Barristers substantially doing Solicitors work as well as Barristers work, whilst Solicitors are limited by the present Laws to Solicitors work?

2. Do you know that Barristers are filing Letters of Administration and Probate Applications in their own names as Counsel in the Resident Magistrate's Court and in the Supreme Court?

3. Do you know that Barristers are lodging Applications for Registered Title at the Titles Office in their own names as Counsel on behalf of Applicants?

4. Do you know that Barristers are writing several letters on behalf of clients, dealing with accident claims, handling clients monies, and that the existing Laws do not give sufficient protection to clients with Barristers doing such business?

5. Do you know that Barristers are filing Divorce Petitions in the Supreme Court in their own names as Counsel?

6. Do you know that in several Divorce Cases filed by Barristers that there is no instructing Solicitor?

7. Do you know that if a Solicitor files a Divorce case, he must engage the services of a Barrister to present the case at the hearing or trial, otherwise the client will have to represent himself?

8. Do you know that Barristers are now pre-

paring Conveyances and Transfers on behalf of clients, and are having Carriage of Sale, preparing some mortgages, and are increasing this type of work?

9. Do you know that at the present time many Barristers doing Conveyancing and Transfer work charge and collect more fees for such work than present Solicitors (substantially above the Law Society Scales)?

10. Do you know that many Barristers are now doing every type of Solicitors work which comes to them, without any intention of desisting from doing those types of work?

11. Do you know that it is now expected that the majority of new Barristers returning to Jamaica to practise under existing circumstances will be trespassing on Solicitors work?

12. Do you know that several Barristers at present doing Solicitors work are at present vigorously opposed to legal Fusion for the reason that whilst they want to continue doing Solicitors work, yet they are opposed to any Solicitor doing Barrister work?

13. Do you know that even if we should set up a Law School in Jamaica for separate training for Barristers and Solicitors, that under the present circumstances the majority of law students would most likely decide to study to become Barristers as many Barristers now do both Barrister and Solicitor work; and if a student foolishly decides to become a Solicitor under present conditions in

Jamaica, such student would be limited to Solicitors work only?

14. Do you know that under legal fusion any Solicitor in Jamaica can still continue to do the exact type of work that he is now doing, and will not have to do any Barrister work unless he so desires?

15. Do you know that some Barristers have often expressed that they will have no real objection from Solicitors in Barristers doing Solicitors work as Solicitors are too much divided amongst themselves?

16. Do you know that Barristers are now benefiting at the expense of Solicitors by the delay in establishing legal fusion?

17. Do you know that many individual Solicitors in the country parts and in Kingston (particularly those who practise on their own account) have lost much Solicitors work to Barristers within the past two years?

18. Do you know that the legal profession is at present in a chronic bad state of affairs in Jamaica?

19. Do you know that many Barristers have expressed themselves openly that they have no intention of stopping their practice of doing Solicitors work?

20. Do you know that there is bad blood between the two branches of the legal profession now in Jamaica, and that **besides the profession,**

the general public is suffering from the existing state of affairs.

21. Do you know that many Barristers do not want legal fusion because they are already enjoying the fruits of Fusion, and if there were legal fusion Solicitors would have the same right?

22. Do you know that many Barristers who are now doing Solicitors work have no intention of having their names removed from the roll of Barristers and becoming Solicitors under the existing Laws relating to the separation of both branches of the profession, as they regard the description 'Barrister' as a status symbol and would not like to be deprived of the right of being called Barrister?

23. Do you know that in the State of Victoria in Australia (where there is fusion) it is provided that there is not to be two different sets of costs allowed if a lawyer instructs an advocate who belongs to his same firm, but that two sets of costs are only allowed if an advocate is instructed who does not belong to the same firm. And that this rule encourages a number of Advocates to practise on their own account (without being in partnership with any other Lawyer) and hold themselves out as specialists in advocate work.

24. Do you know that Vendors or Purchasers of real estate do not enjoy the same legal protection under our existing Laws when dealing with Barristers acting for Vendors or Purchasers by virtue of our present Conveyancing and Registration of Titles Laws?

25. Do you know that under the present Rules

and Laws relating to Solicitors, no Solicitor can practise his profession whilst he is still a Bankrupt, and that there is no such provision relating to Barristers under our existing Laws?

26. Do you know that a Bankruptcy Order has been made in Jamaica in the Supreme Court against one Barrister, and that he is still practising as a Barrister?

27. Do you know that under our present Laws there is nothing to prevent a Barrister who is a Bankrupt from handling clients' money if he so thinks fit?

28. Do you know that a former Chief Justice whilst he was Chief Justice spoke to some Barristers and suggested that they should stop doing Solicitors work and the Barristers insisted that they would continue to do that type of work?

Growth of Barristers in Jamaica

1. Do you know that in 1945 there were only about six Barristers in private practice, whilst in 1954 there were about 17 Barristers in private practice, and at the end of 1962 there were 64 Barristers in private practice in Jamaica (besides those in Government Service)?

2. Do you know that between 1959 to 1962, the rate of admission of Solicitors and Barristers (with some Barristers in Government Service not worrying themselves to be formally admitted in Jamaica) were as follows:—

Year		Solicitors		Barristers
1959		8		14
1960		9		13
1961		5		22
1962		4		13
		27		62

3. Do you know that there are approximately 100 Jamaican students at present studying to become Barristers in Jamaica, whilst there are only about 25 persons studying to become Solicitors in Jamaica?

4. Do you know that there are perhaps more Barristers than Solicitors at present actively practising in the Resident Magistrates Courts in Jamaica?

5. Do you know that the present indications show that within 3 years time there will be more Barristers than Solicitors in Jamaica?

Position in Government and Judiciary:

1. Do you know that there are much more Barristers than Solicitors in Government Service?

2. Do you know that under our existing Laws Supreme Court and Court of Appeal Judges are only appointed from Barristers, and the present position in respect of appointments to be made in the future is very tragic as the present Barristers for the most part have much less legal training and experience than Solicitors? Do you also know that Solicitors are among the present Senior Resident Magistrates (Judges) in Jamaica?

3. Do you know that some Solicitors in Government Service are worried, discontented and dissatisfied, as they have suffered from discrimination in the Government Service in that Barristers junior to them in practice and in Service with much less experience, ability, and legal training, proceed to obtain higher appointments in the Government Service?

4. Do you know that if we allow the Judiciary to become weak it will destroy peoples' respect and confidence in our Judges and will be detrimental to our Democracy, and will doubtless tend to produce a state of anarchy?

5. Do you know that the Judiciary will tend to be strong if the legal profession is strong, whilst it will grow weaker and weaker if the legal profession is weak?

6. Do you know that at present as a general rule Solicitors in private practice are much better off financially than Barristers in private practice?

7. Do you know that in Government Service Barristers are as a general rule much better off financially than Solicitors due to the discriminatory Laws and practice in not permitting Solicitors to hold certain high positions in the Government Service.

8. Do you know that for selfish reasons many Barristers in Government Service are opposed to amalgamation of the both branches of the legal profession?

Solicitors as Advocates:

1. Do you know that many Solicitors who

conduct cases in the Resident Magistrates Courts (where the majority of advocate work is done in Jamaica) are much better advocates than the several Barristers?

2. Do you know that many a Solicitor often holds his own—and better—than any Barrister in Jamaica when such Solicitor appears against Barristers in the Resident Magistrates Courts or in Chambers in the Supreme Court (where incidentally the majority of Supreme Court work is done)?

3. Do you know that in several country towns where Barristers and Solicitors are now doing the same type of work (that is Conveyancing work, etc., and conducting cases in the Resident Magistrates Courts), that Barristers have the additional advantage of being able to represent prisoners in Circuit Court cases, whilst Solicitors have no such right? Is such a position fair?

4. Do you know that many country Solicitors and many Kingston Solicitors are among the best advocates in Jamaica in the entire legal profession?

Attitude of Some Solicitors:

1. Do you know that some of the leading affluent Solicitors in Jamaica do not care what happens to other Solicitors who are being detrimentally affected by Barristers now doing Solicitors work?

2. Do you know that some Solicitors in considering whether or not there should be legal fusion in Jamaica, are considering same for the

most part on the basis of conditions existing in England which do not now exist in Jamaica, and also on the conditions existing in Jamaica up to about 15 years ago (with proper separation of legal work by the both branches of the profession) and refuse or decline to appreciate existing circumstances in Jamaica?

3. Do you know that many of the leading Solicitors who are now supporting Fusion have nothing to gain or lose by Legal Fusion but are strongly supporting same; firstly for the interest and benefit of the general public, secondly for the benefit and protection of the present solicitors branch, and thirdly for the benefit of the entire legal profession?

4. Do you know that some of our Solicitors in Kingston have expressed that even with Barristers doing Solicitors work, that they are opposed to any right being given to Solicitors to appear and conduct cases in the open Supreme Court or in the Court of Appeal?

Future of the Profession in Jamaica:

1. Do you know that Canada is so insistent on the necessity for practical training that although an English Solicitor (who by definition will have served under articles) may be admitted to the Canadian Bar Admission Course if he was in active practice immediately before taking the course, yet an English Barrister cannot be allowed to take the course without:

- (a) presenting proof that he was in active practice as a Barrister for a continuous

period of at least five years immediately preceding his application and

- (b) presenting proof of graduation in an approved course from an approved University in Canada.

2. Do you know that under legal fusion existing Barristers would not have any unfair advantage over Solicitors?

3. Do you know that if we do not have legal fusion that many Barristers will continue doing Solicitors work due to their large numbers, and if we do not have legal fusion that there will be no corresponding benefits to Solicitors?

4. Do you know that if we do not insist on and obtain legal fusion within a short time, and on our terms, that it may be virtually impossible for Solicitors to obtain legal fusion later, as the numbers of Barristers in Jamaica are growing more and more and they are consolidating their position?

5. Do you know that under legal fusion we would insist that Laws should provide that, generally speaking, all future Barristers before being allowed to practise in Jamaica be articled or read in Chambers with another Lawyer of at least 10 years standing?

6. Do you know that in the medical profession every doctor (medical practitioner) is entitled to do every type of medical work, yet that does not mean that every doctor in fact does every type of medical work, but some specialise in various fields

and do specialist work only? Why should not the same apply in the legal profession?

7. Do you know that in legal fusion every young legal practitioner will have the opportunity to evolve for himself the type of work he likes and at which he is most successful? Some of the work may be parts of Solicitors work, or may be parts of Barrister work, or may be Solicitors work only, or may be Barrister work only.

8. Do you know that under legal fusion each present Solicitor would have the same right in the Supreme Court and the Court of Appeal, as he now has in the Resident Magistrates Courts in that he may appear and conduct a case himself if he thinks fit, or in the alternative may instruct another Lawyer who is an advocate (such as a present Barrister) to conduct the case?

9. Do you know that under legal fusion a better opportunity will be given to all our legal practitioners to earn a better living and they will be able to choose their actual type of work from a wider field of Law and the success of each legal practitioner will mostly depend upon his zeal, integrity, honesty and ability?

10. Do you know that it need not necessarily be difficult to establish immediate legal fusion in Jamaica?

11. Do you know that if Barristers did not now trespass on Solicitors work (due to their large numbers) that many of them would starve?

The General Public:

1. Do you know that the present divided system is more expensive to clients in many matters? In many simple Supreme Court Cases it is required that a person cannot have the services of an Advocate at the trial unless he employs the services of both Solicitor and Barrister? In many of these simple cases in the Supreme Court there is really no necessity to have two legal practitioners and these clients are being mulcted by our present system in having to pay fees for two separate legal practitioners. Again, many of these persons could afford the services of one legal practitioner but not two, and as a result either have to abandon their claims or defenses, or handle their cases themselves while unrepresented and often are at a serious disadvantage due to ignorance of legal matters and procedure?

2. Do you know that the existing legal separation of the both branches of the profession often causes great hardship to clients of limited means?

3. Do you know that under legal fusion clients can still have the rights to two sets of lawyers (as at present) if they so desire?

4. Do you know that under proper laws governing legal fusion (amalgamation) no lawyer would be permitted to practise whilst he is a bankrupt?

Solicitors Supporting Fusion:

Many leading Solicitors have openly expressed their support for legal fusion, and to mention some:-

Mr. L. E. Ashenheim—Chairman of the
Incorporated Law Society

Mr. A. E. Brandon—Vice Chairman,

Mr. N. J. Fraser,

Mr. Douglas Judah,

Mr. George Desnoes,

Mr. Louis Byles,

Mr. Allan Delgado,

Mr. John P. Fraser,

Mr. Douglas Fletcher,

Mr. Clinton Hart,

Mr. Robert Luke,

Mr. Allan Rae,

Mr. Tony Ellington,

Mr. T. N. Willoughby,

Mr. A. E. Nash,

Mr. Noel Silvera,

Mr. O. H. Dunn,

Mr. Jim Bovell,

Mr. John Forrest,

Mr. George Dale,

Mr. Sidney Phillips,

Mr. Owen G. Dale,

And others whose names are too numerous
to mention (please pardon my omission).

I with all humility ask those Solicitors who
in the past have been opposing legal fusion to now
use their efforts and energies to support amalga-

mation of the both branches of the profession, and I ask each and every Solicitor in Jamaica to support the recommendations of the majority of the members of the Committee appointed by our Law Society to consider Fusion and which included the following recommendations:-

Recommendations:

- A Statutory provision should be made for the creation of a single profession with appropriate transitional provisions.
- B The law should provide for fusion of the existing branches of the profession.
- C Adequate provisions be made for the future admission to practice of legal practitioners.
- D Steps be taken for the earliest possible establishment of a faculty of Law at the University of the West Indies.
- E The profession as fused should be subject to similar rules and liabilities as obtain under the present Solicitors Law.

FINALE

I again have much pleasure to request each and every Solicitor to support proper fusion, even if in the past any Solicitor might have spoken or given any opinion whether orally or in writing against fusion.

It is with some satisfaction that I have tried my best to give to all Solicitors the benefit of my

studies and research on the above subject. My personal interest has always been firstly for the protection of the general public, secondly for the protection in particular of the present solicitors as a whole, and thirdly (but not least) for the protection of the entire legal profession.

K. C. BURKE

May 1963.

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