Nigel Gayle, Contributor

Law can be viewed as a cognitive institution as theorised by Katharina Pistor. It can, therefore, be problematic when laws and/or their reform processes are neither 'bottom-up' nor legitimate enough. In succinctly, illustrating, it appears the recent legal amendment that resulted in the passing of the Legal Professional (Continuing Legal Professional Development (CLPD)) Regulation, 2013, which makes it mandatory for lawyers licensed to practise in Jamaica to complete a stipulated number of credits annually was not particularly demanded by lawyers, the professionals most affected - financially, emotionally, and legally. Consequently, it would not be surprising if the intent of or mischief that the drafters were attempting to deal with is not realised and the law/regulation is deemed ineffective. While I embrace continuing learning and capacity development of all professionals, including lawyers, which is not novel to developed societies, the approach, method and process should be in keeping with the rule of law. It is essential to ensure that the reform is demanded by the "rights/claim-holders", albeit monitored by the "duty-bearers" and its process extremely transparent, consultative, inclusive, and participatory.

Recent enactments, in this instance, the said CLPD regulation, should continually be reviewed and where necessary, amended in line with the demands of lawyers, the ones most affected. The fee per session (if at all any), type of courses offered, course contents, delivery methods (onsite/online/use of technology), type of activities to be awarded credits, and frequency of the requirement should also be dictated, as far as practicable, by majority lawyers or a highly representative sample.

Was a needs assessment conducted before the regulation was passed? What were the gaps identified? Could this mandatory requirement be seen as the majority lawyers being 'punished' for the unprofessional and unethical conduct of a few practitioners specialising in particular areas of law?

The point is, sometimes the solution is not a legal one; the problem not arising from a lack of knowledge of legal requirements, but a matter of the lack of personal character and honesty, which might be considered by some as incurable through mere training sessions. Arguably, a longer-term cure might have been to weed out envisaged 'undesirables' before admission to the bar and cumulatively introduce a character-interview requirement for admission to the law school.

duty-bearers

With the conscientiousness and accommodating attitude of the current director of the CLPD, the immediate 'duty-bearers', we remain hopeful. It can never be too late to conduct a regulatory impact assessment and to correct weaknesses, guided mainly by the demands of the "rights/claim-holders", in this case, the lawyers. Otherwise, a progressive intent is likely to fail and cause more harm than good at this time of economic hardship.

To this end, the remedy should be as the lawyers dictate. As an affected lawyer, maybe the intent is better served in the immediate if the requirement was bi-annual, or better yet, once every three years. In the interim also, perhaps legal-aid services rendered by attorneys-at-law could be afforded continuing legal professional development credits also as an amendment to the Legal Professional (Continuing Legal Professional Development (CLPD)) Regulation, February 1, 2013. This could assist in the availability of lawyers, free of cost or almost free, to broaden the coverage and quality of legal-aid providers, to possibly jump-start the civil legal-
aid regime and to relieve the strain on its public funding. It could also assist in improving the rule of law and governance, through improvement in access to justice in Jamaica, thereby, effecting positive change in the lives of the poor, marginalised, and vulnerable in the society.

These are just some of the possible strategies that can be ascertained through listening to the people most affected in dealing with the post-regulatory problem of the 'routinisation' or of the mere reluctant attendance by lawyers to the mandatory sessions. The aim, as I perceive it, is to replace such regulatory illegitimacy, implementation deficit, and covert disorder with self-realisation of the need for continuous legal development as a lawyer. A public education campaign targeted at lawyers, in this regard, might have been necessary for such an important regulation or enactment to be embraced by this somewhat 'orthodox' and dignified profession. The upshot, adherence to the rule of law would so dictate.

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