

Unacceptably Slow - Bar Association Boss Vows To Help To Oil The Wheels Of Justice

The Gleaner

Barbara Gayle

The cries for justice to be administered in a timely manner will have caught the attention of the newly elected president of the Jamaican Bar Association, Sherry Ann McGregor, who has vowed to do her part to ensure that the wheels of justice turn faster.

Days after Attorney General Marlene Malahoo-Forte announced plans to meet with members of the legal fraternity to discuss measures to speed up the justice process, McGregor has voiced her concerns about the slow pace of the system.

"One of the most valuable resources is time, and we are not using it wisely," McGregor told The Sunday Gleaner last week.

"How many times do we walk the corridors of the court and the courtrooms are empty?" she queried as she charged that cases are too often adjourned.

According to McGregor, while she is aware that there is not enough budgetary support for the courts, the empty courtrooms reflect an inefficient utilisation of time.

McGregor says she has already met with Minister of Justice Delroy Chuck, Chief Justice Zaila McCalla and other stakeholders in the system to see what can be done to improve the situation.

"We are creeping back into the period where civil trial dates are too far away from the case management dates, and that shows you that something is not right," said McGregor as she expressed concern that litigants have to wait for too long to get justice.

McGregor charged that the trial of a simple matter, which will last for two to three days, is now being set for late 2017 or 2018.

She said last October she had a two-day case set for May 2017.

The Bar Association president highlighted the difficulty litigants face even to get hearings for injunctions in urgent matters, and argued that a judge should be available on call to hear such matters.

FREQUENT COMPLAINTS

One of the most frequent complaints by lawyers and litigants is the long delay in getting judgments handed down, a situation which McGregor argued should never happen.

"I am deeply concerned that we have judges who retire before they deliver judgments. We have outstanding cases, some several years old, in which judgments are yet to be delivered.

"We need judges to get into the habit of delivering oral judgments speedily and then give their written reasons at a later date, as the litigants would then know the outcome of their cases," said McGregor.

The Bar Association has long expressed its concern about the delays and backlogs in the criminal and civil courts, and its new president told our news team that while the recent focus has been on the delays in having criminal cases disposed of, there are also long delays in civil matters.

McGregor said while several measures had been suggested to reduce the delays, the system is being hampered by inefficiencies in the court's registry and the absence of proper statistics to properly define the extent of the backlog.

The Bar Association head endorsed the recommendation of the chief justice, that cases on the court list for five years and more should be sent to a special judge who would review the files and determine how to move on.

According to McGregor, this would be a very reasonable approach as it would give the prosecution and the defence the opportunity to determine whether it is worthwhile for such cases to remain in the system.

But she is adamant that in each case the interest of the accused and the victims and their families must be protected.

RIGHT TO A FAIR TRIAL

"The accused has a right to a fair trial within a reasonable time, but if that fair trial is delayed for reasons that can be overcome, then why should the victims and their families be faced with the possibility of the cases being thrown out without being tried?"

McGregor argued that when many cases are placed on the trial list in the criminal courts each week with full knowledge that they will not all be tried, it breeds frustration.

She said in the same way that the setting of civil cases for trial was revamped in 2003 so that a matter is set for trial on a specific date and for a fixed number of days, the same approach could be taken in respect of criminal trials.

The attorney warned that multiple court appearances and adjournments could cause witnesses and even victims to lose the desire to participate in the legal process.

On the civil side, McGregor said while there has been some improvement, there is room for even more, given the backlog of divorce cases.

She said with the new system, once the petitions had no errors or omissions, then they should be completed within six months. There is also a backlog with probate cases and McGregor said the focus must be to reduce the time it takes to obtain grants of Probate and Letters of Administration.

Bad Lawyers Hurting Legal Profession

The Gleaner

Arthur Hall

New chairman of the General Legal Council (GLC), Allan Wood, QC, has his sights set on introducing more protection for persons who fall victims to unscrupulous attorneys.

Wood was recently elected to succeed Michael Hylton, QC, who had led the GLC for six years and had indicated that he would not be seeking re-election.

"The GLC will continue its efforts to weed out bad lawyers," Wood told The Sunday Gleaner late last week.

According to the veteran attorney who served on the GLC's Disciplinary Committee for 15 years, over this year, the body plans to introduce a compensation fund and implement rules to regulate the charging of contingency fees.

"The compensation fund might not be a lot, but it will be a start," said Wood as he responded to concerns that in recent times, a number of lawyers have been found to have mishandled assets of their clients.

But he argued that members of the public have to play their part in helping to weed out the bad lawyers.

"Before you go and entrust your money, land or property with an attorney, you should check that they are compliant."

Wood noted that the GLC has on its website a list of lawyers who are entitled to carry out private practices, and a list of attorneys who were issued practising certificates in 2013 but were not cleared to practise in 2014 or 2015.

The website also includes a list of the almost 50 attorneys who have been banned from practising in Jamaica since 1998.

MAKE USE OF TOOLS

"Members of the public need to make use of the tools available to them," declared Wood who was called to the Jamaican Bar in 1982 and appointed a Queen's Council in 2010.

In the meantime, president of the Jamaican Bar Association, Sherry Ann McGregor, is to initiate renewed discussions on the long-proposed Judicial Code of Conduct.

"It has been floating in the sea," McGregor told The Sunday Gleaner as she added that she would be asking about it when the Bench and Bar Committee meets.

"When one attorney-at-law infringes the law, it affects all members of the profession. So it is important for us not only to preserve our personal integrity but the integrity of the profession as a whole," said McGregor.

She urged young attorneys to align themselves with senior lawyers so they can get effective guidance as they embark on their legal practice.

"They must appreciate that experience teaches wisdom, and there is much more to learn than what you read in books," stressed McGregor as she urged young layers to maintain their integrity and honour at all costs.

McGregor has been an attorney-at-law since 1999 and is a partner in the law firm Nunes Scholefield DeLeon and Co. She was appointed president of the JBA in March.

Algix's Reynolds defends position against Appleton

BY KIMONE FRANCIS

AQUACULTURIST and managing director of Algix Jamaica, Maurice Reynolds, has defended his company's position to file an injunction against the J Wray & Nephew-operated Appleton Estate in St Elizabeth and to claim for damages in excess of US \$40 million.

Algix, in filing the injunction, claimed that Appleton was discharging effluent from the sugar factory that was killing its fish, an allegation that J Wray & Nephew has flatly denied.

Algix also filed a claim for damages in which it originally sought US\$23 million, for what it claimed was damage sustained to its operations, but later inflated that claim to US\$49 million. Reynolds explained to the Jamaica Observer during a visit to the company on Friday, that the US\$49 million would cover "special damage" and "future".

Reynolds' son, Ricardo, who is the chief technology officer and lead researcher in Pangasius species, sought to explain that the US\$49 million was not exorbitant and that the company was within its rights to claim for it.

"You have what you call special damage, which is your immediate damage. It's like your vehicle is valued at \$3 million and it meets in an accident. That is a write-off for \$3 million, but for you

to procure a new vehicle; you're going to have to go through a certain process which is going to cost you a certain amount of money to replace that vehicle.

"When we lost our production, whatever happened in February and March to our inventory, we lost our Broodstock for the Pangasius fish and that fish especially takes three years to become sexually mature; and what we lost were sexually mature fish," Reynolds explained.

He said the loss had set back the company significantly, by a minimum of three years, so it had to claim for those three years where it will not be able to produce at the capacity that it had signed off on in contractual agreements.

Reynolds also told the Sunday Observer that the company lost over 400 fish, male and female, whose fecundity can produce 150,000 eggs per kilogramme. This, he said, can result in 500,000 eggs coming from one female at three kilogrammes, while a 10 kilogramme fish can produce over one million eggs.

"We have technology that allows us to increase our survival rate beyond industry norm. Industry norm is 70 per cent, but we claim for 50," Reynolds said, adding that this was done by their lawyers so that it could "stand up to any scrutiny".

Algix, in a statement last week, lauded the Appeal Court's decision to uphold the injunction. "The ruling by the Court of Appeal sends a strong message for industries to abide by and respect the environmental laws of the country", the statement said.

"Algix Jamaica has no interest in closing down J Wray & Nephew's operations at Appleton Estate, but was forced to seek a legal remedy for the major negative impact that effluent discharges from the Appleton sugar factory has had on our fish farm operations," the statement read.

The End
