**THE ETHICAL LAWYER – BURNISHING THE BRAND**

**Introduction**

1. In the introduction to her extraordinarily valuable recent compilation, ‘The Ethical Lawyer: A Caribbean Perspective’[[1]](#footnote-1), Dr Shazeeda Ali observes that:

“The title, *The Ethical Lawyer*, may be viewed by many as a contradiction, a paradox or even an oxymoron. Indeed, the perception amongst the majority of persons is that lawyers are deceitful, manipulative people who are motivated by sheer avarice. The image of the lawyer as a shark or other savage creature is not uncommon and the number of lawyer joke books in existence could easily fill a small library. The portrayal of lawyers in the media, literature and the arts is testament to the public fascination with the legal profession, but whilst the lawyer is occasionally given the role of the hero, in most cases it is the rogue lawyer who is the star. One must thus question whether art is imitating life or simply mocking it.”

2. Indeed. Consider, for instance, the fate of poor old Atticus Finch. Atticus Finch, it will be recalled, was the iconic hero of Harper Lee’s wonderful 1960 novel, ‘[To Kill a Mockingbird](https://www.pastemagazine.com/tag/To+Kill+a+Mockingbird)’. Famously, the novel chronicled lawyer Finch’s successful defence of a black labourer who was wrongly accused of raping a white woman, the ultimate taboo of the time, in Alabama in the early 1930s. Atticus Finch’s courage, integrity and fidelity to his calling as a lawyer, sworn to do justice by all men, became a ready metaphor in late twentieth century America for justice and the rule of law which he so passionately articulated:

“But there is one way in this country in which all men are created equal - there is one human institution that makes a pauper the equal of a Rockefeller, the stupid man the equal of an Einstein, and the ignorant man the equal of any college president. That institution gentlemen, is a court. It can be the Supreme Court of the United States or the humblest JP court in the land, or this honorable court which you serve. Our courts have their faults as does any human institution, but in this country our courts are the great levelers, and in our courts all men are created equal.”

3. But now, in a stunning reversal of reputational fortune, in ‘Go Set a Watchman’[[2]](#footnote-2), Harper Lee’s long awaited sequel to ‘[To Kill a Mockingbird](https://www.pastemagazine.com/tag/To+Kill+a+Mockingbird)’, Atticus Finch is depicted in later life as a racist who seems happy for segregation to continue in Alabama. It is as if, as one commentator was moved to observe, “… the Statue of Liberty had been discovered to have cloven hooves”[[3]](#footnote-3).

4. The story of what happened to Atticus Finch, though obviously one for a different time and a distinctly different place, plainly mimics the transformation in the public eye in the image of lawyers, from that of crusaders for right, symbols of ethical conduct, if you like, to that of cynical, self-seeking predators. For all lawyers who believe that, as Dr Ali goes on to assert, “[t]he reality is that most lawyers are hard-working professionals who strive to uphold the honour and dignity of the profession”, this must surely rank high among the saddest transformations of our time. So, as Professor Jonathan Herring has observed[[4]](#footnote-4), “[a]lthough the phrase ‘lawyers’ ethics’ itself might bring a smile to the face of some, the issue is extremely important”.

5. It therefore seems to me that the challenge for all lawyers who continue to embrace and espouse the conception of law as an ethical and noble profession is how to ensure that our lofty vision of ourselves remains a reality, both as a matter of fact and in the perception of the public. This must necessarily involve a keen appreciation of a number of factors, including, but obviously not limited to, the significant role of ethics in the maintenance and promotion of the rule of law; the need to keep the actual content of ethical rules under constant review to ensure their continued relevance in the face of ever emerging new realities; the imperative of ensuring that our law faculties’ and law schools’ curricula adequately reflect the centrality of ethics to the practice of law; and the critical importance of a robust programme of continuing legal education, or continuing legal professional development, for lawyers.

6. In this last regard, one important aspect of the contemporary context that needs to be kept in mind is the well-known (some would say notorious) fact that the number of lawyers being admitted to practice throughout the region annually has been increasing steadily, in some cases quite dramatically, over the last several years. The experience of the last 10 years in nine regional jurisdictions suffices to demonstrate the position:[[5]](#footnote-5)

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| --- | --- | --- | --- |
| **COUNTRY** | **2006** | **2016** | **% INCREASE** |
| ANGUILLA | 217 | 328 | 51% |
| ANTIGUA & BARBUDA | 434 | 549 | 26% |
| BVI | 544 | 1472 | 171% |
| BARBADOS | 479 | 681 | 42% |
| BELIZE[[6]](#footnote-6) | 161 | 267 | 66% |
| JAMAICA | 1851 | 2970 | 60% |
| NEVIS | 62 | 144 | 132% |
| ST LUCIA | 382 | 513 | 34% |
| TRINIDAD & TOBAGO | 2545 | 4350 | 71% |

8. Another distinguished regional commentator, Mrs Tonya Bastian Galanis, Principal of the Eugene Dupuch Law School, puts it even more directly, observing that “[t]he sheer number of persons entering the profession has tested adherence to time-honoured values that have traditionally undergirded the profession and has also tested the attorney’s fiduciary responsibilities”[[7]](#footnote-7).

9. This is not, of course, a peculiarly Caribbean phenomenon, as a simple Google search under the heading ‘Increase of number of lawyers’ will readily reveal.[[8]](#footnote-8) There, one will find learned discourses on the topic, going back several years, in relation to countries as diverse as the United States of America, Israel and The Netherlands. Nor is all of this comment uniformly negative: at least one American observer makes the point that, since there are still many people who need lawyers, but simply cannot afford to pay them, the contemporary ‘flood-of-lawyers’ problem really has to do with the unavailability of well-paid work, rather than the absence of a need for lawyers.[[9]](#footnote-9) Most recently, no doubt reflecting a distinctly different perspective on the issue, there is the case of Singapore, where 509 new lawyers were called to the Bar in August of this year, representing a 500% increase over the number called five years ago. As a result, the Chief Justice of Singapore has now appointed a committee to consider the implications of what is considered to be an oversupply of lawyers.[[10]](#footnote-10)

10. However, it is no part of my concern in this brief reflection to suggest that there is or is not yet a general oversupply of lawyers in the Commonwealth Caribbean. The fact is that, despite numerous recommendations made over many years that a needs survey for the legal profession should be conducted for the region, this has not yet materialised.[[11]](#footnote-11) Much of the comment on the impact of increasing numbers in the profession across our region is therefore to an extent still anecdotal; and, in any event, may not necessarily hold good for every jurisdiction. So while, on the face of it, Mrs Bastian Galanis’ characterisation of the increase in the number of persons being admitted as attorneys-at-law in the region as “exponential”[[12]](#footnote-12) could possibly be true of, say, Trinidad and Tobago, for example, the position might well be different in Belize, to take another example, in respect of which, as recently as 20 years ago complaint was made by no less a person than the Chief Justice of an undersupply of lawyers.[[13]](#footnote-13) In other cases, for instance in the BVI, the seemingly large increase in attorney numbers could also have to do with the nature of legal practice in that jurisdiction and the possibility that the figures might also include a number of ad hoc or relatively short term admissions. So the issue of numbers is by itself one of great complexity, now demanding careful and rigorous study on a country by country basis.

11. But what can be said with confidence is that any significant increase in the number of lawyers admitted to practice that is not accompanied by a concomitant expansion in available facilities for proper regulation, mentorship and continued professional development will almost inevitably attract the risk of deficits in professional conduct. This may particularly be so, I would suggest, in the generally infertile economic environment that has prevailed throughout the region over the last several years. More to the point for present purposes, therefore, is the extent to which any such deficits may be mitigated and even made whole, given the absolute necessity, as it seems to me, for the profession as a body to ensure that members of the public do not suffer from any ethical inadequacies on the part of the profession.

**Why rules of professional conduct?**

12. Rules of professional conduct are inevitably concerned with the inculcation, preservation and promotion of ethical behaviour. Professor Andrew Boon has described ‘ethics’ as “a branch of philosophy concerned with how people make good and right decisions on problems with a moral dimension”[[14]](#footnote-14). All definitions of ethics import some notion of moral conduct, and good – as opposed to bad – behaviour. In the introductory chapter of the path-breaking work, As Dr Noel Cowell put it in 2007 his thoughtful introduction to a path-breaking collection of essays on ethical perspectives in business in the Caribbean -

“Conduct which is deemed to be right by any given set of ethical rules is often said to be moral (or of a high moral/ethical standard). In contrast, wrong behaviour is said to be immoral (unethical).”[[15]](#footnote-15)

13. So, to borrow again from Professor Boon, “[l]awyers’ ethics reflect standards of behaviour expected in the conduct of legal work”[[16]](#footnote-16). The notion of ethics in the legal profession, as indeed in any profession, therefore speaks to the expectation that, as a matter of personal disposition no less than of professional obligation, its members will conduct their clients’ business with honesty and integrity, competence, conscientiousness, dignity, zeal and fidelity.

14. The promulgation and maintenance of standards of professional conduct is generally regarded as a distinguishing feature of any profession. Various formulations of the need for rules of professional conduct may be found in the books. Thus, giving evidence to the Monopolies Commission in September 1968, the Council of the Law Society stated that[[17]](#footnote-17) –

“The learned professions have not suddenly come into existence but have developed over the centuries as a result of needs generated in all advancing societies. Before any profession can emerge, circumstances must exist which the general public require protection; … In order to maintain their own repute and standing and to retain public confidence in their abilities, these groups imposed upon themselves a discipline and adopted ethical rules and restrictions, sometimes to their own personal disadvantage but always designed to establish their probity and competence in the eyes of the public … When a profession is fully developed it may be described as a body of men and women (a) identifiable by reference to some register or record; (b) recognised as having a special skill and learning in some field of activity in which the public needs protection against incompetence, the standards of skill and learning being prescribed by the profession itself; (c) holding themselves out as being willing to serve the public; (d) voluntarily submitting themselves to standards of ethical conduct beyond those required of the ordinary citizen by law; (e) undertaking to accept personal responsibility to those whom they serve for their actions and to their profession for maintaining public confidence.”

15. And, in a 1971 report on legal education in the United Kingdom, the Ormrod Committee pointed out that[[18]](#footnote-18) –

“… a profession involves a particular kind of relationship with clients, or patients, arising from the complexity of the subject matter which deprives the client of the ability to make informed judgments for himself and so renders him to a large extent dependent upon the professional man. A self-imposed code of professional ethics is intended to correct the imbalance in the relationship between the professional man and his client and to resolve the inevitable conflicts between the interests of the client and the professional man or of the community at large.”

16. Then, finally, I should mention the statement by the Law Society of Upper Canada that “[a] sensitivity to professional and ethical issues not only makes one a better lawyer but also a better contributor to society”[[19]](#footnote-19).

17. Taken together, these formulations denote rules of professional conduct as a necessary corollary of professional status. Such rules are equally as important for the protection of clients, who are generally in a dependent relationship with their lawyers, as they are for the profession, which has a vested interest in preserving and enhancing the reputation and standing of its members. It is by this means that the profession – indeed, any profession - retains public confidence in the ability of its members to service the needs of clients with skill, learning and integrity.

18. Rules of professional conduct, developed and maintained by the legal profession itself, also provide a critical marker of the independence of the profession. As Geoffrey Vos QC, then chairman of the Bar Council of England and Wales, observed in an address to an International Bar Association (IBA) symposium in Moscow in 2007, “[t]he application and enforcement of ethical principles by a legal profession are a clear indication of its independence … we [cannot] underestimate the value of a proper system of ethical principles applicable, and applied, to lawyers by their professional body”[[20]](#footnote-20).

19. The independence of the profession is in turn fundamental to its role in the protection of the rule of law. In societies governed by legal rules, as our own Dr Lloyd Barnett has suggested, “the legal profession plays a critical normative role”[[21]](#footnote-21). Therefore, the now accepted foundation precept of the organisation of the modern democratic state, that is, “that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts”[[22]](#footnote-22), cannot be effectively given meaning in practice without the input of an active, robust and independent legal profession. For, as the Honourable Justice Michael Kirby suggested even more plainly over 10 years ago, the rule of law will not prevail unless lawyers are assured “a very high measure of independence of mind and action[[23]](#footnote-23)”.

20. Against this background, the Solicitors’ Code of Conduct promulgated by the Solicitors Regulation Authority of England and Wales now states the following as part as the solicitors’ core duties:

“A modern just society needs a legal profession which adopts high standards of integrity and professionalism. Lawyers, law firms and those who work in them serve both clients and society. In serving society, you uphold the rule of law and the proper administration of justice.”[[24]](#footnote-24)

**The current regulatory landscape**

21. There is no need for present purposes to revisit in any detail the history and development of the principal ethical rules governing the profession. It suffices to recall in broad outline some of the steps that have brought us to today’s reality.

22. In England, the predecessor of the Law Society, The Society of Gentlemen Practisers in the Courts of Law and Equity, established in 1729, declared their “utmost abhorrence and detestation of all [mal] and unfair practice”, resolving to use their “utmost endeavours to detect and discountenance the same”. The Law Society itself was established in 1825 and continues to fulfil its charter objective of, in respect of the solicitors’ branch of the profession, “promoting professional improvement and facilitating the acquisition of legal knowledge”[[25]](#footnote-25). And, on the barristers’ side of the profession, the Benchers of the various Inns of Court fully accepted as part of their responsibility the duty of upholding standards of behaviour.[[26]](#footnote-26)

23. In 1970, the IBA published a short booklet entitled ‘Professional Ethics’[[27]](#footnote-27). The author was the then Director-General of the IBA, Sir Thomas Lund.[[28]](#footnote-28) The IBA publication was written as a result of a study of the rules of professional ethics in a number of countries. The study suggested that, despite occasional differences in their application to particular cases, there was in fact a high degree of uniformity with regard to the basic principles themselves.

24. The final chapter of the booklet was devoted to ‘Advice for the Young Lawyer’. In proffering this advice, Sir Thomas sought to distil the essence of a variety of published talks given over the years by leading lawyers in different jurisdictions, in an effort “to advise the rising generation in the light of their lifetime’s experience”[[29]](#footnote-29). The advice concluded with Sir Thomas’ “Ten Commandments of the profession”[[30]](#footnote-30):

1. You shall never act dishonestly or dishonourably or take part in any transaction which in your opinion is dishonest or dishonourable.
2. You shall regard your client’s interests as paramount.
3. You shall, subject only to legal requirements, never disclose your client’s confidences.
4. You shall render your assistance with scrupulous care and diligence – as well when assigned to represent an indigent person as in any other case.
5. You shall be punctilious in your handling of client’s moneys.
6. You shall always honour your word.
7. You shall fearlessly defend your client’s interests, without regard to any unpleasant consequences to yourself or to any other person.
8. You shall always treat the Court and your colleagues with candour, courtesy and fairness.
9. You shall always maintain the honour and reputation of the profession.

10) You shall always observe the code of conduct laid down by your profession in the spirit as well as in the letter.

25. Fast forwarding to the present, comprehensive codes of professional ethics now exist in Antigua and Barbuda, The Bahamas, Barbados, Belize, Jamaica, St Kitts and Nevis, St Lucia and Trinidad and Tobago. In addition, as Dr Barnett has noted[[31]](#footnote-31), the national professional associations in several of the Eastern Caribbean States have adopted the Organisation of Eastern Caribbean States Bar Association Code of Ethics, 1991. This code has since received judicial recognition as “a fair and acceptable statement … of the traditional rules governing the relations between Solicitors acting on opposite sides in contested actions …”[[32]](#footnote-32).

26. Dr Barnett goes on to list the following basic requirements as being typical of the content of these codes:

“(1) An attorney shall assist in maintaining the dignity and integrity of the legal profession and shall avoid even the appearance of professional impropriety.

(2) An attorney shall not indulge in or assist in any unauthorised, improper or unprofessional practice.

(3) An attorney owes a duty to the public to make his counsel available and a duty to the State to maintain its Constitution and its laws and shall assist in improving the legal system.

(4) An attorney shall act in the best interests of his client and represent him honestly, competently and zealously within the bounds of the law. He shall preserve the confidence of his client and avoid conflicts of interest.

(5) An attorney has a duty to assist in maintaining the dignity of the courts and the integrity of the administration of justice.

(6) An attorney has a duty to maintain a proper professional attitude towards his fellow attorneys.

(7) An attorney shall maintain proper accounts and observe proper accounting principles in the conduct of his accounts especially as regards accounting for the funds of his clients.”

27. These codes therefore exhibit a strong family resemblance, not only to each other, but to the general body of rules, developed over centuries, which preceded them. As Dr Barnett concludes on this point –

**“**These statements express long established ethical principles of both traditional branches of the legal profession.The continuity of the ethical rules and professional standards were ensured not only by the fact that the provisions of the Canons are in conformity with the standards of the old professions of barristers and solicitors but sometimes expressly state that the old principles continue to be relevant. For example, the Jamaican Canons of Professional Ethics state

"where no provision is made herein in respect of any matter, the rules and practice of the legal profession which formerly governed the particular matter shall apply in so far as is practicable, and a breach of such rules and practice (depending on the gravity of such breach) may constitute misconduct in a professional respect."

An examination of these Canons/Codes of Ethics demonstrates that they are not concerned merely with the prohibition of wrongful conduct but the promotion of best practices in relation to clients' welfare, as well as the administration of justice.”

**Looking ahead**

28. But, of course, none of this is cast in stone. No less so in the law than in life, we are where we are today as a result of centuries of largely beneficial development and change, with the old ways being discarded where necessary (though, some would say, not quickly enough) for the new. Standards of professional conduct, although often treated as immutable, must equally be subject to review and modification over time. And, as experience has shown, “what is proper in one generation may be irregular for the succeeding generation and highly improper in the next”[[33]](#footnote-33).

29. For example, even complete integrity on the part of lawyers and judicial officers, now taken as an article of faith in most modern societies, was not always insisted on across the board. As one historian of the English Bar has pointed out, “[s]ome counsel took fees from both sides, and some judges, until Cromwell’s Parliaments banned them, accepted gifts”[[34]](#footnote-34). The learned author goes on to recount the sorry tale of Lord Chancellor Nottingham, who was appointed in 1673, and who used to receive about £3000 a year from the customary New Year’s gifts of money from those who appeared in his court. However, he so hated himself for being ‘forced’ to accept the money that he would cry out in his lisping voice, “‘*OH, TYRANT CUTHTOM*’”, even as he pocketed it. This particular custom was only discontinued in 1705. Somewhat closer to modern times, the segregation of the client’s funds from the lawyer’s own funds, now governed in some Caribbean jurisdictions by specific ethical rules[[35]](#footnote-35), and regarded as a given in most properly run practices, only became obligatory in England in 1935, when the first set of Solicitors’ Accounts Rules were issued.[[36]](#footnote-36)

30. In the United States, despite the introduction of successive versions of canons of professional ethics, reflecting lofty ideals, by the American Bar Association (ABA) throughout the last century, African Americans were totally excluded from membership in the association as late as 1954. In a 1990 publication, as an example of ethical confusion, Professor Monroe Freedman instanced the case of Henry S Drinkler, the first chairman of the ABA’s Committee on Professional Ethics and Grievances: when asked to apply a rule citing “conduct involving moral turpitude” as a ground for disbarment, Mr Drinkler, who had long been regarded as the bar’s leading authority on lawyers’ ethics, considered the case of a lawyer who had participated in the lynching of an African American to be a “difficult” one.[[37]](#footnote-37)

31. And there are naturally numerous other examples of change and improvement in professional standards over the years, in many cases, such as lawyer advertising for example, going completely against the long-established dogma of a previous age.[[38]](#footnote-38)

32. So things change, as indeed they must. Against this background, it seems to me that there are at least four areas relating to ethical conduct in which the challenges of change are now at their most acute. These are, first (and no doubt predictably), the impact of the now all-pervasive and still ongoing technological revolution; second, the need to reform legal education, particularly at the undergraduate stage, so as to include greater ethical content; third, the need to deepen and strengthen programmes of continuing professional development for lawyers; and fourth, the need to promote and require some element of pro bono work as an ethical obligation, as part of an attorney’s social responsibility.

**Ethics and the march of technology**

33. It is difficult to recall now that the current deep penetration of the internet in all areas of our lives reflects a reality that is still not even fully 25 years old.[[39]](#footnote-39) In 1996, when Professor Richard Susskind predicted in his best-selling book, ‘The Future of Law’[[40]](#footnote-40), that, within the next decade, electronic mail (‘email’) would become the principal mode of communication between lawyers and their clients, many people suggested that he was a danger to the legal profession; that he was possibly insane; and that he should not be allowed to speak in public. He was accused of a lack of understanding of the importance of the obligation of confidentiality and the view was expressed, dismissively, that email would have only a peripheral impact on traditional ways of practising law. Professor Susskind’s further prediction that the internet would in time replace the traditional law library as the main source for legal research was greeted with like skepticism.[[41]](#footnote-41) Yet, in hindsight, as I am sure we will all readily attest, his was clearly a prophetic – and perhaps even conservative – vision. The very practice of law has now been transformed by the internet, with communications by email now being the norm rather than the exception; and citation of authority in court being routinely the product of internet searches. The greater allure of online research has already resulted in many of the traditional law booksellers shifting their focus away from the production of books to the provision of online services.

34.But, despite these sea-changes, we in the Commonwealth Caribbean persist in applying “offline rules for an online world”[[42]](#footnote-42), with many members of the profession still proudly proclaiming themselves to be technological dinosaurs. It is no doubt true that, even under existing rules of ethical conduct, wilful or even negligent ignorance of relevant technological processes may place lawyers in danger of breaching their existing obligation to deal with their clients’ business competently.[[43]](#footnote-43) However, might it not now be time for regulators in the Commonwealth Caribbean to consider the introduction of a specific duty of competence in technology?

35. Just over four years ago, the ABA found itself at a similar crossroads:

“For years, lawyers have not only embraced their Luddite ways[[44]](#footnote-44), they've touted them as a point of pride. It has been argued that the practice of law is by nature one of thoughtful investigation and analysis, not naturally suited for the fast-paced, ones and zeros world of computers. Many lawyers still prefer legal pads over iPads, written letters over email. However, there is little doubt even by the most ardent of legal traditionalists that technology has and will continue to transform the legal profession.”[[45]](#footnote-45)

36. In 2012, in recognition of this evolution, the ABA formally approved a change to its ‘Model Rules of Professional Conduct’, to make it clear that lawyers have a duty to be competent, not only in the law and its practice, but also in technology. Thus, under the heading ‘Maintaining Competence’, Comment 8 to Model Rule 1.1 now reads (with the added words shown in bold) as follows:

“To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology**, engage in continuing study and education and comply with all the continuing legal education requirements to which the lawyer is subject.”[[46]](#footnote-46)

37. Most of the problems in this still evolving area in American practice have arisen in the context of electronic discovery (‘e-discovery’), that is, discovery of electronically stored information (‘ESI’). On 30 June 2015, the State Bar of California’s Standing Committee on Professional Responsibility and Conduct issued an opinion[[47]](#footnote-47) on the ethical duties of attorneys-at-law in the handling of discovery of ESI.[[48]](#footnote-48) At the outset of its discussion of the issues, the authors of the opinion make the point that –

“Not every litigated case involves e-discovery. Yet, in today’s technological world, almost every litigation matter *potentially* does. The chances are significant that a party or a witness has used email or other forms of ESI, stores information digitally, and/or has other forms of ESI related to the dispute.”

38. The conclusions of this very valuable opinion may be summarised as follows:[[49]](#footnote-49)

(1) An attorney’s obligations under the ethical duty of competence must evolve as new technologies develop and become integrated with the practice of law.

(2) Attorney competence related to litigation generally requires, among other things, and at a minimum, a basic understanding of, and facility with, issues relating to e-discovery, including the discovery of electronically stored information.

(3) On a case-by-case basis, the duty of competence may require a higher level of technical knowledge and ability, depending on the e-discovery issues involved in the matter and the nature of the electronically stored information.

(4) Competency may require even a highly experienced attorney to seek assistance in some litigation matters involving electronically stored information.

(5) The ethical duty of competence requires an attorney to assess at the outset of each case what discovery issues may arise during the litigation, including the likelihood that e-discovery will or should be sought by either side.

(6) If e-discovery will probably be sought, the duty of competence requires an attorney to assess his or her own e-discovery skills and resources as part of the attorney’s duty to provide the client with competent representation.

(7) An attorney lacking the required competence for e-discovery issues may (a) acquire sufficient learning and skill before performance is required; (b) associate with our consult with technical consultants or competent counsel; or (c) decline the client representation.

(8) Lack of competence in e-discovery issues may also lead to an ethical violation of an attorney’s duty of confidentiality.

39. In a commentary on the California State Bar’s opinion published in the ABA’s Section on Litigation newsletter on 19 January 2016, the upshot of all of this is stated succinctly[[50]](#footnote-50):

“The takeaway messages are simple. Attorneys have a duty to be well versed and educated in this rapidly changing field. Competent advice to clients in electronic preservation matters is an ethical obligation that attorneys cannot afford to ignore.”

40. It seems to me that this is equally a message for lawyers in the Commonwealth Caribbean. It cannot be too long before professed technological incompetence will no longer be an excuse, if ever it was, for a failure to afford clients the best possible representation in this new dispensation. Although I have been discussing the issue in the context of e-discovery, the requirement that “a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology” obviously goes much deeper than that. If Professor Susskind is right about the impact of advances in technology on the delivery of legal services and legal practice generally, and he was right the first time, “[l]awyers may feel they are through the revolution but, in reality, we have barely started”[[51]](#footnote-51).

41. And, lastly under this head, I must mention the question of social media. In this regard, I need do no more than quote the distinguished former chairman of the Disciplinary Committee of the General Legal Council of Jamaica (‘the GLC’), Mrs Pamela A Benka-Coker QC, writing under the rubric, “Emerging Ethical Issues”[[52]](#footnote-52):

“The emergence of the internet and, with it, social media such as Facebook and Twitter, has introduced other considerations which attorneys have to take into account if they wish to avoid the pitfalls of professional misconduct that these media present. The instant and, sometimes, thoughtless manner in which an objectionable communication may be published on these media may indeed expose an attorney to charges of professional misconduct. Indeed, it must always be remembered that any publication on the Internet is not private.

…

The misuse of the Internet by attorneys may violate the attorney/client confidentiality principle; it may contravene the rules against advertising and may, therefore, depending on the circumstance of the case, breach the Canons. It means, therefore, that attorneys have to be very careful when using the internet and social media, in order to ensure that they are not committing acts which amount to professional misconduct.

**On the other hand, the regulatory bodies, in the light of the advances made in technology, have to keep abreast of these developments and ensure that their procedures are competent to enforce the ethical obligations of attorneys, in a world in which technology is increasingly used. Unfortunately, this is a new area which does not appear to have been explored in this jurisdiction**.” (Emphasis added)

42. Clearly a plea from the heart, if ever there was one, from a senior and experienced regulator, fully alive to the ethical pitfalls of this new age and to the deficiencies in existing disciplinary mechanisms in respect of them.

**Ethics and legal education**

43. Specific exposure to legal ethics is not a compulsory part of the training for an undergraduate law degree, either in the United Kingdom or in the Commonwealth Caribbean. Indeed, in the Commonwealth Caribbean, the student aspiring to be a lawyer receives his or her first exposure to ethics as a formal body of learning in the final year of the Legal Education Certificate programme at one of the three law schools operated by the Council of Legal Education. This is in stark contrast to the situation in the USA, where the teaching of legal ethics has long been a standard component of a law degree.[[53]](#footnote-53)

44. In the United Kingdom, various calls have been made in recent years for the inclusion of legal ethics in undergraduate law training. One study recommended that “awareness of and commitment to legal values and the moral context of the law, [be] mandatory in undergraduate law degrees”[[54]](#footnote-54). Subsequently, in response to requests for the production of a model curriculum, Professor Boon proposed a legal ethics course for inclusion in a law degree which would explore “the relationship between morality and law, the values underpinning the legal system, and the regulation of the legal services market, including the institutions, professional roles and ethics of the judiciary and legal profession”[[55]](#footnote-55).

45. These calls have come against the backdrop of the multiple financial crises of the last several years, which have seen the collapse of mighty financial empires and professional groupings. Among others professionals, lawyers have not escaped the perception that a great number of persons, who should have known better, failed to perform true to their callings. Arising out of these events, a distinguished Australian commentator, Professor Adrian Evans, puts the case for developing greater strength of character in lawyers in this way[[56]](#footnote-56):

“The quest to develop lawyers’ capacity for goodness has never been more important. In the short period since the new millennium, corporate failure around the Western world has focused community and judicial disillusion on the professionals implicated. Accountants, auditors, financiers and lawyers (in-house and external) have all suffered loss of reputation and self-esteem, not to mention jobs. Lawyers were rarely the main drivers of these collapses, but our entrenched role in validating and enabling deals and a wide range of financial products was always crucial. Perhaps it’s because we often think of ourselves as only the mouthpiece, never the mouth - in the comfortable lawyer role of agent, not actor - that as a profession, we do not seem to have been interested in offering much by way of apology for those momentous events in 2007-2008. But some atonement may be possible by strengthening individual lawyers’ character. We may then be able to show enough compassion for the victims of our mistakes (and in some cases our greed), to limit the impact of traditional role morality and the risk of recurrence.”

46. Despite these powerful arguments, the traditional resistance to including legal ethics in undergraduate law degree curricula has persisted. Among other things, it is said that the law degree is not simply a preparation to be a lawyer, in that many law graduates do not go on to pursue careers in the law; that ethics is not amenable to instruction, since the basic principles of honesty and integrity are an ingrained part of character; and that, in any event, ethical views are a matter of opinion best left to be formulated by individuals, rather than taught.[[57]](#footnote-57)

47. But the arguments in favour of strengthening the ethical component of legal education received new impetus recently with the publication in 2014 of a report produced by the University of Birmingham Centre for Character and Virtues[[58]](#footnote-58). As far as institutional legal education is concerned, the report’s main recommendations were that (i) more time is needed for ethics education in undergraduate courses and in vocational training; (ii) ethics education for the legal profession should embrace a variety of ethical theories, including virtue ethics, to enable students to make sense of the moral nuances of being a good lawyer; and (iii) the contribution of lawyers who are models of ethical character, reasoning and action needs highlighting, both in the post-qualification training and continuing professional development of lawyers, as much as those bringing commercial success.[[59]](#footnote-59)

48. The justification offered by the authors of the report[[60]](#footnote-60) for these recommendations is, in my view, utterly compelling:

“Individual preparedness in formal training largely relies on codes of conduct that inevitably fail to cover all eventualities. A broader perspective on legal ethics and what constitutes ‘good law’ can, therefore, contribute to re-thinking the content of undergraduate degrees. The high standard of intellectual ability required to practice law should also be applied more vigorously and extensively in analysing and reflecting upon ethical and virtuous practice in the law. Initial education and training needs to find ways to sustain and develop motivations relating to justice and fairness so that they become embodied in professional life. Undergraduate courses on ethics can be exciting and innovative opportunities for study. Consideration of ethical principles and the virtues of ‘good law’ can help embed a broad conception of what the law means. Our interviews suggest that pro bono voluntary law clinics, moots and other opportunities to gain practice-like experience constitute important means of encouraging reflection on virtue principles and should be actively incorporated into the formal design of undergraduate education in law. Many law undergraduates have had no opportunity to observe legal practice at first hand and some experienced lawyers commented negatively on how practice was unlike anything they had anticipated. Law Schools should do more to help students make an informed choice about the area of law they may wish to practise, so that their career path is better matched to their ethical preferences.”

49. All of these considerations appear to me to be equally valid in the Commonwealth Caribbean. Standing by themselves, codes of professional ethics, while undoubtedly having great value as a kind of professional ready reckoner or *vade mecum*, are nevertheless limited by their very prescriptiveness, telling lawyers what and what not to do, without any explanation of the underlying ethical rationale for particular rules.[[61]](#footnote-61) Quite apart from helping to foster and develop the notion of ‘goodness’ as a valuable attribute in a lawyer from the very outset of legal education, it seems to me that exposure at the undergraduate stage to legal ethics will also help to ensure that all persons seeking careers in the law have an ample appreciation of the roles they will be required to play as guardians of rule of law, itself a profoundly ethical notion if ever there was one.

**Ethics and continuing professional development**

50. Law is a demanding profession. The demands start with an extensive period of training, in the Commonwealth Caribbean, a three-year degree course followed by a further two years of vocational training. Then, after admission to practice, there will be an inevitable period, sometimes painful, often slow, of informal apprenticeship and experience gathering. But even after a lawyer considers him or herself to be fully up to speed in practice, the learning continues, fuelled by the ever increasing pace of law reform and the introduction of new laws on matters sometimes not even thought of (or thought up, as some would no doubt say) during the law school days.

51. Experience over the years has shown that, while a fair number of attorneys have from time to time been willing to avail themselves on a voluntary basis of opportunities for further training in the law, a far larger number have traditionally been strenuously resistant to any notion of compulsory continuing professional development. The comment of one attorney on the introduction of just such a programme in Jamaica in 2013 amply ventilates one aspect of the resistance:

“A clever, bold but painful fund raising strategy on the part of the GLC. NMLS graduates should not be made to pay for curriculum deficiencies in these dire times. To make CLPD a statutory mandate is draconian.”[[62]](#footnote-62)

52. However, although clearly heartfelt, this comment is, with respect, somewhat beside the point. All lawyers no doubt accept that they should be competent and diligent in the conduct of their clients’ business. But, as Professor Evans has explained, “[c]ompetence is also … about being systematic in re-educating ourselves”[[63]](#footnote-63). And this is what continuing professional development is about. Therefore, to the extent that competence is generally accepted as an ethical value, so too should continuing professional development be embraced as a matter of ethical obligation.

53. This is the background to the introduction in Jamaica in 2013 of a programme of continuing professional development, styled ‘Continuing Legal Professional Development’ (‘CLPD’). In 2012, the Legal Profession Act (‘LPA’), which is the statute governing the organisation of the legal profession in Jamaica, was amended to require that, as a condition of the issuing of an annual practising certificate to an attorney, the GLC’, which is the body charged under the LPA with the upholding of standards of professional conduct, must be *“*satisfied that the attorney has complied with such requirements for continuing legal professional development as may be prescribed”[[64]](#footnote-64). Issued pursuant to the LPA, the Legal Profession (Continuing Legal Professional Development) Regulations came into effect on 1 February 2013 and now require all attorneys to participate in a minimum level of CLPD activity on a calendar year basis. ‘CLPD activity’ includes participation in courses and seminars; researching and writing on legal theory or practice; teaching of legal courses; participation in law related conferences, at home or abroad; and delivering addresses on legal topics.[[65]](#footnote-65)

54. For present purposes, it is unnecessary to dwell in any detail on the contents of the CLPD regulations. Nor is it necessary to essay a review of the operation and impact of the CLPD programme in Jamaica to date, save to say that, in the three years of its existence, it has already achieved a level of acceptance and compliance well beyond the expectations of the GLC. But I would commend it as a thoughtful approach to the introduction of a modern continuing professional development programme in the Commonwealth Caribbean. Hopefully, as the acceptance, which I naturally contend for, of the ethical value of continuing professional development spreads throughout the region, the Jamaican experience will prove to be a valuable precedent.

**Ethics and pro bono work**

55. The phrase ‘pro bono’, or ‘pro bono publico’, literally means “for the public good”[[66]](#footnote-66). In modern usage, of course, it is taken to refer to legal advice or representation provided by lawyers in the public interest and free of cost. Professor Herring observes that “[p]ro bono work is seen by some as an essential aspect of being a lawyer”[[67]](#footnote-67), quoting Mr Justice Kirby’s statement that it is –

“… the least that lawyers should do to maintain their own credibility and the credibility of the system of justice that they help to deliver …

… The bottom line is that law is not just a business. Never was. Never can be so. It is a special profession. Its only claim to public respect is the commitment of each and every one of us to equal justice under the law.”[[68]](#footnote-68)

56. While the phrase itself may not be in as common usage in the Commonwealth Caribbean as it is in other jurisdictions, the concept of legal aid is founded in the same general idea. One key recommendation of the Wooding Committee Report, which would in time lead to the establishment of the Faculty of Law at the University of the West Indies in 1970, and the Council of Legal Education in 1971, was that legal aid training facilities should be established and operated by the law schools, as part of the vocational training stage of legal education.[[69]](#footnote-69) It is clear that the inclusion of clinical legal education in the general scheme of training was primarily for training purposes. But there can be no doubt that it was also intended to fulfil a further mandate, as the following extract from an article by the Director of Legal Education, published within weeks of the commencement of law school teaching in 1973[[70]](#footnote-70), demonstrates:

“There is no good substitute for practical experience … it is proposed also to establish legal aid clinics which will have the threefold purposes of providing firstly practical experience for students, secondly, an opportunity for students to give public service to the community and thirdly, a low cost or free legal service for persons with insufficient means to consult professionals in practise [sic].[[71]](#footnote-71)”

57. The need to inculcate in lawyers in training an appreciation of the value of public service, through the medium of the provision of legal aid, was therefore an explicit aim of the system of legal education which came into being at the beginning of the 1970s.

58. Many of the existing codes of ethics in the region have a provision very similar to Canon III(d) of the Jamaican Legal Profession (Canons of Professional Ethics) Rules, 1978:

“(d) When an Attorney consents to undertake legal aid and he is appointed by the Court or is requested by his professional association to undertake the representation of a person unable to afford such representation or to obtain legal aid such attorney shall not (except for compelling reasons) seek to be excused from undertaking such representation.”[[72]](#footnote-72)

59. In addition, Canon III(e) of the Jamaican Canons provides that “[a]n Attorney shall not (except for good reasons) refuse his services in Capital offences”.

60. So, neither the Jamaican canons nor any of the other codes, enshrines the provision of legal aid as an ethical obligation. Rather, they treat it as a voluntary service which, once undertaken, should not be lightly abandoned. Which is a pity. For it remains the almost unspeakable incongruity of today’s world that, for all the technological and other advances which we justly celebrate and embrace, poverty remains the major obstacle to the full actualisation by so many persons of the panoply of human rights which various international instruments, and our several constitutions, guarantee them.

61. As Justice Paula-Mae Weekes and Mrs Nalini Persad-Salick have recently observed –

“In any civilised society, justice and equal access to justice are imperatives. Justice must never be seen as the exclusive right of the elite or the wealthy. There must be justice for all.”[[73]](#footnote-73)

62. In the area of the criminal trial, all Commonwealth Caribbean constitutions, differing in minor detail and emphasis only, offer fair hearing guarantees similar to that found in section 6(2) of the Constitution of Belize[[74]](#footnote-74). Equality of arms between prosecution and defence in the criminal trial lies, as has been said, “at the heart of the right to a fair trial”[[75]](#footnote-75). Taken in this context, therefore, the provision of legal aid in criminal cases can be seen as an indispensable catalyst to justice. It accordingly seems to me that, as part of an attorney’s duty to uphold the constitution and to promote the rule of law, the provision of legal aid, particularly in criminal cases, must be regarded as one part of the bundle of ethical obligations that professional status necessarily entails.

**Conclusion**

63. As I have attempted to show, the legal profession has over the years attempted to take its ethical obligations seriously. Most lawyers still consider themselves to be virtuous, good, honourable, upright, decent, worthy, moral and ethical[[76]](#footnote-76) persons, who bring all of those qualities to bear on the conduct of their professional lives. The heroic exploits of Atticus Finch still resonate with those who were first attracted to the law as a response to the need to give a voice of the voiceless.

64. And still, despite all of this, the perception of lawyers as predators, without a doubt the central paradox of our professional lives, persists. Increased numbers in a profession that is ill-equipped to deal with them bring additional challenges. So do far reaching changes, not only in the content of the law, but in technology, now the dominant reality of the lawyer’s general operating environment. And, as things change around us, so must we. In the past, old rules have given way to new and changing times have brought different perspectives. But the pace of change in the modern world has now completely outstripped the expectations of even the most adventurous among us. The challenges of change have therefore become even more acute. It is therefore imperative that the legal profession as a body should take on the task of modernising itself to meet the challenges as a matter of professional obligation.

65. Naturally, it will to some extent be impossible to alter public perception in this way. After all, according to some interpretations at any rate, lawyer-bashing is as old as Shakespeare’s famous call, “The first thing we do, let's kill all the lawyers”[[77]](#footnote-77). But even this is problematic: some commentators point out that Dick the Butcher, who spoke those words, was a follower of the rebel Jack Cade, who thought that if he disturbed law and order, he could become king. So, it is said, Shakespeare’s acknowledgement that the first thing any potential tyrant would need to do in order to eliminate freedom was to “kill all the lawyers” was in fact meant as a compliment to attorneys and judges who instil justice in society.[[78]](#footnote-78)

66. At all events, whatever the rights of this particular controversy, it is our duty as lawyers to do the best that we can in our time to burnish the reputation of this profession that we call noble. As a modest beginning, we must ensure (i) that in whatever area of practice we find ourselves, we are fully equipped to be able to afford our clients the full benefits of the ongoing technological revolution; (ii) that those who aspire to be lawyers are immersed in the ethics of the profession from the earliest stage of their student careers; (iii) that post-qualification continuing professional development becomes and remains an ethical obligation of high importance at all stages of a lawyer’s career; and (iv) that the rule of law is preserved and enhanced by the quality of professional service rendered, in particular to the less fortunate in our respective societies.

**C. Dennis Morrison**

**23 October 2016**

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1. Sweet & Maxwell, 2015, page xi [↑](#footnote-ref-1)
2. Harper Perennial, 2015 [↑](#footnote-ref-2)
3. The Guardian, 11 July 2015 - https://www.theguardian.com/books/2015/jul/11/atticus-finch-racist-go-set-watchman [↑](#footnote-ref-3)
4. Herring, Legal Ethics, OUP 2014, page 2 [↑](#footnote-ref-4)
5. These figures were very kindly supplied, at short notice, by court registrars in the various jurisdictions. Some have advised that all figures may not be completely up to date, because of the fact that some deaths of attorneys may not yet have been noted. However, I am assured that they do nevertheless provide a fair picture of the current position, [↑](#footnote-ref-5)
6. The figures given for Belize may not be entirely accurate, since the Registrar General advises that they include the names of at least 32 deceased attorneys-at-law. [↑](#footnote-ref-6)
7. See Tonya Bastian Galanis, ‘A Balancing Act: Fiduciary Obligations and Conflicts of Interests’, published in ‘The Ethical Lawyer: A Caribbean Perspective’, para 4-001. As at the date of completion of this paper, up to date figures in relation to The Bahamas were not available, due to lingering Hurricane Matthew issues. But, in the article referred to above, the figures given by Mrs Bastian Galanis showed a 62% increase of the number of lawyers in that jurisdiction between 1993 and 2013. [↑](#footnote-ref-7)
8. https://www.google.com.jm/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=increase%20in%20number%20of%20lawyers [↑](#footnote-ref-8)
9. ‘The flood of US lawyers: natural fluctuation or professional climate change?’, by Professor Bruce A Green of Fordham University Law School, published in the International Journal of the Legal Profession, 2013, Volume 19, Issue 2-3, pages 193-207; see also, ‘It’s the law schools stupid! Explaining the continuing increase in the number of lawyers’, by Professor Herbert M Kritzer of the University of Minnesota Law School, at pages 209-225. [↑](#footnote-ref-9)
10. See ‘New panel to address oversupply of new lawyers’, by Zhaki Abdullah, The Straits Times, 28 August 2016 - http://www.straitstimes.com/singapore/new-panel-to-address-oversupply-of-new-lawyers [↑](#footnote-ref-10)
11. See most recently, ‘Legal Education at a crossroad – framing the discussion’, a report presented to the Council of Legal Education at its September 2014 meeting on the subject of expansion of the law schools, para 24 [↑](#footnote-ref-11)
12. Bastian Galanis, *op cit, loc cit* [↑](#footnote-ref-12)
13. See the Report of the Review Committee on Legal Education in the Commonwealth Caribbean to the Council of Legal Education, 1996, pages 47-49 [↑](#footnote-ref-13)
14. Andrew Boon, Lawyers’ Ethics and Professional Responsibility (Hart Publishing, 2015), page 3 [↑](#footnote-ref-14)
15. Dr Noel Cowell and others (eds), Ethical Perspectives for Caribbean Business, Arawak Publications (2007), page 2 [↑](#footnote-ref-15)
16. Ibid, page 37 [↑](#footnote-ref-16)
17. In A Guide to the Professional Conduct of Solicitors, issued by the Council of the Law Society, 1974 (‘the 1974 Guide’), para 1:4 [↑](#footnote-ref-17)
18. Ibid at para 1:3 [↑](#footnote-ref-18)
19. Ibid, at para 1:9 [↑](#footnote-ref-19)
20. Geoffrey Vos, Independence of the Judiciary and the Legal Profession, published in Francis Neale, The Rule of Law – Perspectives from Around the Globe, page 79. [↑](#footnote-ref-20)
21. Lloyd Barnett, The Evolution and Philosophy of Legal Ethics and Professionalism, published in The Ethical Lawyer: A Caribbean Perspective, para 1-001 [↑](#footnote-ref-21)
22. This formulation of the modern content of the rule of law is Lord Bingham’s – see Tom Bingham, The Rule of Law (Allen Lane, 2010), page 8 [↑](#footnote-ref-22)
23. In a speech to the Law Council of Australia, Presidents of Law Associations in Asia Conference, Queensland, 20 March 2005; quoted in Boon, *op cit*, page 10. [↑](#footnote-ref-23)
24. Law Society, Solicitors Code of Conduct 2007 (June 2009 edn) para 1.06(1) [↑](#footnote-ref-24)
25. See the 1974 Guide, paras 2:1-2:2 [↑](#footnote-ref-25)
26. See generally RG Hamilton, All Jangle and Riot – A Barrister’s History of the Bar. See in particular pages 184-201, for the sometimes amusing, but ultimately very sad, tale of the disbarment on 18 July 1861 of Edwin John James QC, undone, or so it was said, by drink and gambling. [↑](#footnote-ref-26)
27. Published in conjunction with Sweet & Maxwell Ltd, the slim booklet would become a hugely influential source of ethical guidance for the generation of Caribbean trained lawyers who came under the influence of the late, and still not sufficiently celebrated, H Aubrey Fraser, the founding Director of Legal Education. All early graduates of the Hugh Wooding and Norman Manley Law Schools were presented with a copy, suitably inscribed by Mr Fraser himself. [↑](#footnote-ref-27)
28. Sir Thomas had previously served as the secretary of the English Law Society and, in that capacity, had also been responsible for the publication in 1960 of a Guide to the Professional Conduct and Etiquette of Solicitors, based on a series of lectures given by him some 10 years previously. [↑](#footnote-ref-28)
29. Professional Ethics, page 34. [↑](#footnote-ref-29)
30. At pages 37-38 [↑](#footnote-ref-30)
31. Barnett, *op cit*, para 1-012 [↑](#footnote-ref-31)
32. See **Re Matadial Haaeraj**, VC 2001 HC 43, a decision of the High Court of St Vincent and the Grenadines. [↑](#footnote-ref-32)
33. See the 1974 Guide, para 2:11 [↑](#footnote-ref-33)
34. Hamilton, *op cit*, page 260 [↑](#footnote-ref-34)
35. See, for instance, rule 31 of the Trinidad & Tobago Code of Ethics, which provides that an attorney “shall never mingle funds of others with his own and he shall at all times be able to refund money he holds for others”. [↑](#footnote-ref-35)
36. See the 1974 Guide, para 2:11 [↑](#footnote-ref-36)
37. Monroe H Freedman, Understanding Lawyers’ Ethics, (1990, reprinted 1999) page 4. [↑](#footnote-ref-37)
38. See now, for example, Canons II(d)-(i) of the Jamaican Legal Profession (Canons of Professional Ethics) Rules, as amended in 1998 by the Legal Profession (Canons of Professional Ethics) (Amendment) Rules 1998. See also B St Michael Hylton QC and Kevin O Powell, A Sensational Case of Advertising, published in The Ethical Lawyer: A Caribbean Perspective, chapter 9. Among the matters considered by the learned authors is the question of the compatibility of the traditional ban against lawyer advertising with the right to freedom of expression enshrined in the section 13(3)(c) of the Charter of Fundamental Rights and Freedoms. [↑](#footnote-ref-38)
39. For a fascinating history of the internet, see Andrew Blum, Tubes – Behind the Scenes at the Internet (Viking, 2012) [↑](#footnote-ref-39)
40. Oxford, 1996 [↑](#footnote-ref-40)
41. For Professor Susskind’s ironic account of all of this, see his later work, The End of Lawyers (OUP, 2010), pages 17-23 [↑](#footnote-ref-41)
42. I am greatly indebted to Justice Paula-Mae Weekes, recently retired judge of the Court of Appeal of Trinidad & Tobago, for her permission to ‘borrow’ her beautifully apt phrase. [↑](#footnote-ref-42)
43. See, for example, Rule II of The Bahamas Bar Association Code of Professional Conduct, which provides that: “The attorney must perform all the work and services which he undertakes on behalf of his client in a competent manner, providing a quality f service at least equal to that which attorneys generally would expect of a competent attorney in a like situation.” [↑](#footnote-ref-43)
44. ‘Luddites’ were members of the bands of English workers who opposed mechanisation and destroyed machinery in the early 19th century. The term now denotes persons opposed to, among other things, new technology: see the Concise Oxford Dictionary, 111th edn, page 847. [↑](#footnote-ref-44)
45. Andrew Bartholomew, writing in the E-Discovery and Information Governance Blog, 5 September 2012 - http://www.exterro.com/blog/experts-consider-e-discovery-implications-of-new-aba-ethics-rules-amendments/ [↑](#footnote-ref-45)
46. As of 11 July 2016, 21 states in the USA are reported to have adopted the new duty of technology competence: see generally Robert Ambrogi, The Week in Legal Tech: Ethics and Technology Competence, published on the Above the Law website, 11 July 2016 - <http://abovethelaw.com/2016/07/this-week-in-legal-tech-ethics-and-technology-competence?rf=1>. I must thank Mr Andre Staple, attorney-at-law, for bringing this material to my attention. [↑](#footnote-ref-46)
47. Formal Opinion No 2015-193 [↑](#footnote-ref-47)
48. http://ethics.calbar.ca.gov/Portals/9/documents/Opinions/CAL%202015-193%20%5B11-0004%5D%20(06-30-15)%20-%20FINAL.pdf. [↑](#footnote-ref-48)
49. Although not binding, opinions of ethics committees in California must be consulted by attorneys for guidance on proper professional conduct. [↑](#footnote-ref-49)
50. See Lisa Sherman, Benjamin Rose, and Jim Carden, ‘California’s New E-Competence Rule’, published in the ABA’s Section of Litigation, Ethics and Professionalism newsletter, 19 January2016, http://apps.americanbar.org/litigation/committees/ethics/articles/winter2016-0116-california-new-e-competence-rule.html [↑](#footnote-ref-50)
51. Susskind, The End of Lawyers, (OUP, 2010), page 22 [↑](#footnote-ref-51)
52. Pamela Benka-Coker QC, Lawyers Behaving Badly: Professional Misconduct and the Disciplinary Process, published in The Ethical Lawyer: A Caribbean Perspective, para 11-020. [↑](#footnote-ref-52)
53. See generally Herring, *op cit*, pages 36 to 39 [↑](#footnote-ref-53)
54. Law Society, Preparatory Ethics Training for Future Solicitors (Law Society, 2009), page 3, quoted in Herring, page 37. [↑](#footnote-ref-54)
55. See Boon, Legal Ethics at the Initial Stage: A Model Curriculum (Law Society, 2010), page 14. [↑](#footnote-ref-55)
56. Adrian Evans, The Good Lawyer, (Cambridge University Press, 2014), page 85 [↑](#footnote-ref-56)
57. Herring, *op cit* [↑](#footnote-ref-57)
58. J Arthur, K Kristjansson, H Thomas, M Holdsworth, LB Confalonieri and T Qiu, Virtuous Character for the Practice of Law, (Birmingham, Jubilee Centre for Character and Virtues, University of Birmingham, 2014) [↑](#footnote-ref-58)
59. See the Executive Summary of the report at page 5 [↑](#footnote-ref-59)
60. At page 24 [↑](#footnote-ref-60)
61. Though, as a general statement, this should probably be qualified in relation to The Bahamas Bar Association Code of Professional Conduct, which includes reasonably detailed commentaries after each rule. [↑](#footnote-ref-61)
62. Comment posted on 12 June 2013 on the General Legal Council of Jamaica’s website, as a response to the Council’s overview of the then new continuing professional development requirements - http://www.generallegalcouncil.org/clpd/clpd-overview/ [↑](#footnote-ref-62)
63. Evans, *op cit*, page 192 [↑](#footnote-ref-63)
64. LPA, section 5(3)(b) [↑](#footnote-ref-64)
65. See generally, http://www.generallegalcouncil.org/clpd/clpd-overview/ [↑](#footnote-ref-65)
66. Bryan A Garner, A Dictionary of Modern Legal Usage, 2nd edn (Oxford, 1995), page 695 [↑](#footnote-ref-66)
67. Herring, *op cit*, page 380 [↑](#footnote-ref-67)
68. M Kirby, Law firms and justice in Australia, speech given at Australian Law Awards, Sydney, 7 March 2002 [↑](#footnote-ref-68)
69. See Karen Nunez-Tesheira, The Legal Profession in the English-Speaking Caribbean (Caribbean Law Publishing Company, 2001), pages 8-10. [↑](#footnote-ref-69)
70. H Aubrey Fraser. Legal Developments and Law Reform in the West Indies, Jamaica Law Journal, October 1973, page 67 [↑](#footnote-ref-70)
71. Ibid, at page 74 [↑](#footnote-ref-71)
72. See guideline 19 in the Antigua & Barbuda, OECS and Trinidad & Tobago codes, and rule 22 in the Barbados code [↑](#footnote-ref-72)
73. Paula-Mae Weekes and Nalini Persad-Salick, Let’s be Fair and Reasonable: Attorneys Remuneration, published in The Ethical Lawyer: A Caribbean Perspective, para 3-013. [↑](#footnote-ref-73)
74. Which requires that a person charged with a criminal offence “shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law”. [↑](#footnote-ref-74)
75. Per Lord Bingham in **Brown v Stott**[2011] 2 All ER 97, 106 [↑](#footnote-ref-75)
76. All synonyms for ‘noble’ – see the Concise Oxford Thesaurus, 3rd edn, page 565 [↑](#footnote-ref-76)
77. Henry VI, Part II, Act IV, Scene II, line 73. [↑](#footnote-ref-77)
78. See Debbie Vogel, ‘Kill the Lawyers’, A Line Misinterpreted, New York Times, 17 June 1990 (<http://www.nytimes.com/1990/06/17/nyregion/l-kill-the-lawyers-a-line-misinterpreted-599990.html)>; and Brian Kisimose, ‘Law: A Noble Profession’, Sunday Vision, 11 February 2014 (http://www.newvision.co.ug/new\_vision/news/1337554/law-noble-profession) [↑](#footnote-ref-78)