

TOAST TO THE EASTERN CARIBBEAN SUPREME COURT

by

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(RETIRED CHIEF JUSTICE)

at

THE BANQUET HELD ON 24th FEBRUARY 2007 TO
CELEBRATE THE COURT'S 40th ANNIVERSARY

I consider it an honour to have been invited to propose a toast to the Eastern Caribbean Supreme Court. I accepted the kind invitation uncertain as to the circumstances under which the toast would be proposed.

Thirty years ago (when the male barristers outnumbered their female colleagues), I could have predicted the ambiance of an occasion such as this. It would have been an atmosphere of mild insobriety, frivolity and ultimate somnolence which were the usual concomitants of a sumptuous banquet attended by members of the legal fraternity.

Remarkably, things have changed. Just as Equity operated to temper the rigidity of the Common Law, so too has feminine domination of the legal profession operated to temper the intemperance of lawyers at ceremonial banquets. The result is that we have gathered here this evening in apparent sobriety and good behaviour to celebrate the 40th Anniversary of our Supreme Court. This enables me to interrupt the festivity with a brief but serious interval to pay tribute to our Supreme Court on this solemn occasion.

The Eastern Caribbean Supreme Court (which was originally known as the West Indies Associated States Supreme Court) was established by Imperial Order No.223 of 1967 which came into operation on 27th February 1967. This Supreme Court consists of a High Court of Justice and a Court of Appeal.

Initially, our Supreme Court comprised 8 judges - 3 appellate justices and 5 High Court judges. In 1982 and for the first time, a lady was appointed to the High Court. Presently, our Supreme Court comprises 20 judges and 2 Masters. There are currently 5 appellate justices and 15 High Court judges (9 of whom are ladies). Their Ladyships now unintentionally outnumber their Lordships in the High Court. All indications are that this delightful feminine majority will prevail indefinitely to the great glory and happiness of their Lordships and the legal fraternity.

Our Supreme Court has been serving 9 States - the 6 independent States of Grenada, Saint Vincent & the Grenadines, Saint Lucia, Dominica, Antigua & Barbuda and Saint Christopher or Saint Kitts and Nevis and the 3 British colonies or dependent States of the British Virgin Islands, Montserrat and Anguilla.

The independence of our Supreme Court is secured by constitutional provisions governing the appointment, tenure of office and removal of our judges. Our Chief Justice is appointed by Her Majesty the Queen conventionally with the

unanimous approval of the Prime Ministers or Heads of Governments of the nine States which our Supreme Court serves. The other judges of our Supreme Court are appointed by the Judicial and Legal Services Commission under the Chairmanship of our Chief Justice. No judge of our Supreme Court can be removed from office except for inability to discharge the functions of the office or for misbehaviour and except in accordance with the constitutional procedure for such removal.

The constitutional provisions which secure the independence of our Supreme Court are deeply entrenched or protected by the Constitutions of the 6 independent States. This means that those entrenched or protected provisions cannot be repealed or altered unless the legislative bill for this purpose has been supported by the votes of not less than two-thirds or three-quarters (as the case may be) of all the elected members of Parliament and has been approved by a majority of the votes cast at a Referendum.

The comparative independence of the English Judiciary is vividly described by A.P. Herbert in his amusing publication entitled “Uncommon Law.” In the fictitious case of **Willow v Capital Pictures Corporation**, the imaginary Mr. Justice Wool (in a fit of exasperation) is reported to have said:

“Thus neither the Monarch in person, nor his Ministers by the exercise of their powers of advice to him, nor the dominant political party by a vote of the House of Commons,

nor even the great Electorate by an unmistakable expression of opinion at the polls can diminish by a single hour the tenure of office of one of His Majesty's judges. Secure alike from the intrigues of courtiers, the malice of Ministers, the spleen of parties and the windy passions of the mob, nothing but our own demise or misbehaviour can threaten us. And that misbehaviour must be so notorious that not only the volatile and jealous Commons but the sagacious Lords themselves can be persuaded to present to the Throne a reluctant petition that we be dismissed.

It is not for nothing, Sir Humphrey, that those who have to hold the scales of justice evenly have been provided with a firm, unshakable base on which to perform that delicate operation. Thus only can we discharge our duties without fear or favour, affection or ill-will."

Inspired and fortified by the constitutional independence of our Judiciary as depicted by the mythical Mr. Justice Wool, the judges of our Supreme Court have consistently discharged their judicial functions with commendable diligence, competence, erudition, versatility, integrity and impartiality. Proof of these attributes can be found in the judgments of our Supreme Court reported in the West Indies Law Reports, the Commonwealth Law Reports, the O.E.C.S. Law Reports, the Eastern Caribbean Law Reports and the internet.

These attributes were officially and perhaps belatedly acknowledged in the year 1992. Acting pursuant to the Judicial

Committee Amendment Act 1895, Her Majesty in Council enacted the Judicial Committee (The Eastern Caribbean Supreme Court) Order No.2664 of 1992 which came into operation on 29th October 1992. By that Order in Council, our Supreme Court acquired the eminent status of a Superior Court of the Commonwealth. This exaltation made it possible to appoint any judge of our Supreme Court to be a Member of the Judicial Committee of the Privy Council.

On the same day that the Order in Council came into operation, the person who was then our Chief Justice was appointed a Member of the Judicial Committee of the Privy Council. Such membership was later bestowed on his immediate successor in office. Both Privy Councillors are alive, but not necessarily with the same degree of vitality.

We are privileged to have with us this evening another Privy Councillor who was appointed by Her Majesty the Queen to advise Her on administrative matters. This Right Honourable Gentleman is one of the many competent lawyers who elected to serve the Legislature and the Executive in preference to the Judicature. Recently, he was elected, appointed and sworn in as Head of Government for the seventh time thereby qualifying for entry in the Guinness Book of Records. I have no doubt that the Right Honourable gentleman would have attained parallel heights had he elected in favour of the Judiciary. Unfortunately, we had to abide by the doctrine of estoppel by election.

Fortunately, our Supreme Court has learnt how to

endure such disappointments. In the year 2005, one of our appellate justices (who was then acting Chief Justice of our Supreme Court) was appointed a judge of the Caribbean Court of Justice. The moral of that appointment is that when a person or commission is authorised and required to appoint a jurist to the highest appellate court (whether it be the Judicial Committee of the Privy Council or the Caribbean Court of Justice), that person or commission would be well advised to select a judge of the Eastern Caribbean Supreme Court. What better credential can a jurist present than the fact that he or she is a judge of a Court which has been officially declared to be a Superior Court of the Commonwealth?

Credit for the nobility of our Supreme Court belongs to our former and present judges. Our former judges (most of whom are no longer with us) established the admirable reputation which our Supreme Court currently enjoys and did so by their exemplary judicial performance. Our present judges have maintained that reputation by emulating their predecessors. We are thus immeasurably grateful to all our judges (past and present) for creating this gratifying cause for celebration.

It is against this historical background that it gives me great pleasure to propose a toast to the Eastern Caribbean Supreme Court. It is a toast in praise of the constitutionally protected independence of our Judiciary. It is a toast in honour of the exalted status of our Supreme Court. It is a toast in

gratitude to our late judges who cannot be present here this evening. It is a toast in tribute to the learned judges who now

comprise our Supreme Court. It is a toast in approbation of the creditable judgments which our erstwhile judges have delivered and which their Lordships and their Ladyships continue to pronounce. It is a toast in congratulations of our Supreme Court on the attainment and celebration of its 40th anniversary.