

EASTERN CARIBBEAN SUPREME COURT

40TH ANNIVERSARY CELEBRATION

ST. KITTS AND NEVIS LOCAL COMMITTEE

HISTORICAL SUB-COMMITTEE

**RESPONSE TO ADDRESS BY
THE HONOURABLE ACTING CHIEF JUSTICE
27TH FEBRUARY, 2007**

Members:

Terence V. Byron - Chairperson

Sir Probyn Inniss

Mark A.G. Brantley

Toni Frederick

I have the honour to respond to the Address of the Honourable Acting Chief Justice on behalf of the Historical Sub-Committee of the St. Kitts and Nevis Local Committee for the celebration of the 40th Anniversary of the Eastern Caribbean Supreme Court.

In this presentation, I propose to trace the background to the Eastern Caribbean Supreme Court, formerly styled the West Indies Associated States Supreme Court, and to highlight the unique position held by St. Kitts and Nevis in it.

Delivering his judgment in this Court in the case of FARRELL v ATTORNEY GENERAL OF ANTIGUA (1979) 27 WIR at page 378 letter J, Justice of Appeal the Honourable Neville Peterkin (later Chief Justice the Honourable Sir Neville Peterkin) said:

“Constitutions in the West Indies Associated States have one common feature, in that no provision for a judicature is to be found in the Constitution itself. The judicature is a federal one established by the Courts Order (Statutory Instrument No. 223 of 1967). The Order provided for the establishment of a Supreme Court, consisting of a Court of Appeal and a High Court of Justice, for the jurisdiction of these Courts, and for the appointment and tenure of office of judges in those Courts . . .”

I note that up until the recent inauguration of the Caribbean Court of Justice, this Court had stood out by being the only federal Court in the Caribbean Community during its 40-year operation.

And what of our place in this Court? Section 1 of the 1983 Independence Constitution of this country provides that our two islands shall be a sovereign democratic federal State which may be styled in any of four ways.

This country, then, is the only federal State in what was for over 35 years the only federal Court in the Commonwealth Caribbean.

Let us not forget, however, that our Court has emerged from the mists of a legacy of colonial rule presided over by the British Empire for hundreds of years, forged from a history of imperial convenience.

At the time of the British abolition of slavery in 1834, the British Leeward Islands included, in alphabetical order, Anguilla, Antigua, Barbuda, the British Virgin Islands, Dominica, Montserrat, Nevis, Redonda and St. Kitts.

Since 1832 when these islands were brought together under the administration of a Governor-General of the Leeward Islands who was usually stationed in St. John's, Antigua, it was the proposed policy of the British Government that a federal government should be established for the Leeward Islands with a federal legislature, and a federal judicature.

In 1871, over the stout resistance of, in particular, St. Kitts, which did not see any sense in sharing its relatively wealthy Treasury with the supposedly bankrupt island of Antigua, the Leeward Islands Federation came into being as one colony.

The Leeward Islands Federation was one of only two federations in the history of the British Empire, the other being the Federation of Malaya.

In 1871, the Leeward Islands had, by imperial extension, all of the Courts then in place in Great Britain, the Court of Exchequer, the Court of Chancery, the Court of Common Pleas, the Court of Equity, the Court of Probate and so on.

However, by 1873 came the so-called fusion of the Courts of Law and Equity, not only in Great Britain but in the Leeward Islands as well, amalgamating the then superior Courts of Law and Equity into one Supreme Court of Judicature, laying the basis for the modern system of the administration of justice.

It is to be noted that the Windward Islands never federated and for the first 60 years during the time the Leeward Islands had a federal Court the Windward Islands never had a federal Court.

In 1909 when during the reign of His Majesty King Edward VII, the islands of the Windwards and the Leewards were provided with the right of Appeal to the Privy Council, the Appeals went from the Supreme Court of Grenada, the Royal Court of St. Lucia, the Supreme Court of St. Vincent and the Supreme Court of the Leeward Islands.

Dominica, brought into the Leeward Group in 1832, remained a Presidency of the Leeward Islands Federation until 1st January 1940, with the result that the late Keith Hennessey Alleyne, father of the Honourable Acting Chief Justice, was one of a number of brilliant Dominicans to win the Leeward Islands Scholarship in Dominica.

On the same day that Dominica ceased to be part of the Leeward Islands, 1st January 1940, the Windward and Leeward Islands Supreme Court and the Windward and Leeward Islands Court of Appeal came into being and for the first time the Windward Islands were part of a federal Court. These were two distinct Courts, unlike now.

In 1956, the 85 year-old Leeward Islands Federation was dissolved, splitting up into the colonies of Antigua, St. Christopher, Nevis and Anguilla, Montserrat and the Virgin Islands.

That led to the formation of a new Windward and Leeward Islands Supreme Court and a new Windward and Leeward Islands Court of Appeal, constituted under a 1959 Imperial Order in Council. These were still two distinct Courts.

It was soon after the 1959 Order in Council, in 1960, that the United Nations issued the Declaration on the Granting of Independence to Colonial Countries and Peoples, and this helped to expedite the passage of the West Indies Act 1967 through the British Parliament.

The West Indies Act 1967 made provisions for the assumption of the status of association with the United Kingdom, or Associated Statehood, for all of the constituent members of the 1959 Windward and Leeward Islands federal Courts.

And so it was by virtue of section 6 of the West Indies Act, 1967, that the West Indies Associated States Supreme Court Order 1967 was made by Order in Council on 22nd February, 1967, to come into operation on 27th February, 1967.

An important constitutional document associated with the birth of this Court is the West Indies Associated States Supreme Court Agreement 1967, which was made on 24th February, 1967, and signed by the Chief Ministers of the six participating Governments establishing a pact between the Governments for sharing of expenses of the Court, and so on.

This was a time of great ferment in the emerging Associated States. St. Vincent did not assume associated status until 27th October, 1969, more than 2½ years after the Supreme Court of which it was to be a part came into being.

This made for a less than auspicious start to the Court.

It got worse. The Governments were dilatory in enacting enabling legislation. The Supreme Court came into life on 27th February, 1967, but the first participating Government to pass enabling legislation, St. Lucia, only did so by virtue of the West Indies Associated States Supreme Court (St. Lucia) Act, 1969.

Antigua passed its Act in 1969 as well, Grenada in 1971. St. Vincent passed its Act in 1972, and St. Christopher Nevis and Anguilla passed the West Indies Associated States Supreme Court (St. Christopher Nevis and Anguilla) Act in July, 1975!!

This was after an inordinate delay of more than eight (8) years.

Two appeals to the Court of Appeal of the West Indies Associated States Supreme Court in April, 1972, highlight the confusion that prevailed as a result.

COMPTROLLER OF INLAND REVENUE v GEOFFREY PEARL BOON (1972) 18 WIR 180, and CHIEF OF POLICE v FRANCIS (1972) 18 WIR 182 are two appeals brought by the office of the Attorney General of St. Christopher Nevis and Anguilla on behalf of the same Government that had not yet up to then enacted enabling legislation.

In the first, then Attorney-General, the Honourable Lee L. Moore, Esq., is noted as appearing for the Government.

That was in an appeal from a decision by a judge in Chambers. The Government erroneously addressed the appeal to the Court of Appeal of the West Indies Associated States Supreme Court.

The second appeal was an appeal from a Magistrate's decision, erroneously addressed to the Court of Appeal.

Both appeals were struck out for want of jurisdiction, because according to the Transitional Provisions of the Supreme Court Order 1967, the Appellate Court should have been the High Court “until such time as other provision was made in that behalf by any law in force in any State.”

The enabling legislation had not been made by the legislature of St. Christopher Nevis and Anguilla and the Government lost both appeals as a result, but still did not pass the enabling law until more than three (3) years later.

The reason for this state of affairs is directly attributable to the tripartite nature of the State of St. Christopher Nevis and Anguilla, and the breaking away of Anguilla from the Associated State in 1967, leading to the Government of St. Christopher Nevis and Anguilla fighting a losing battle to get Anguilla back, and refusing to go forward to Independence and to make enabling legislation for the Supreme Court, without Anguilla.

On 1st January, 1940, on the same day when the first federal Supreme Court of the Windward Islands and Leeward Islands came into being, a new Supreme Court Act for St. Christopher Nevis and Anguilla also came into force.

This Supreme Court Act, Chapter 79 in the 1961 Revised Edition of the Laws of St. Christopher and Nevis, was not repealed until section 87 of the Eastern Caribbean Supreme Court (St. Christopher and Nevis) Act, 1975, did so in July 1975.

The rules of Court in force in Her Majesty’s High Court of Justice in England were expressly incorporated into Cap. 79 by imperial extension. Those rules of Court were the U.K. Rules of the Supreme Court, 1907, and it was left to the then Chief Justice and two other Judges selected by him to exercise by the Statutory Instrument known as

the Rules of the Supreme Court (Revision) 1970 the power conferred by section 17 of the West Indies Associated States Supreme Court Order to regulate and update the practice and procedure of the Court of Appeal and the High Court, now since 1967 one Court, as from 17th April, 1971, four (4) years after this Court came into being.

It was left to the 1983 Independence Constitution of this country to re-style, for us, the West Indies Associated States Supreme Court as the Eastern Caribbean Supreme Court, and to re-name the West Indies Associated States (Appeals to Privy Council) Order in its application to St. Christopher and Nevis as the St. Christopher and Nevis Appeals to Privy Council Order.

By these various constitutional and evolutionary means, we embarked upon the 40-year odyssey of this august institution with the unique distinction of being the only part of the High Court divided into circuits.

We were three, now we are two. But that is another story.

May it please you. My Lord.