



## GREETINGS FROM THE CHIEF JUSTICE

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Dear Readers:

Despite being away on leave from the Eastern Caribbean Supreme Court and on duty in faraway Arusha, Tanzania, the accolades continue to follow the Hon. Sir Dennis Byron.

Today, I offer congratulations on behalf of the Court and its staff to Sir Dennis Byron on his recent elevation to membership of The Privy Council. It is most interesting that this appointment comes at a time when the region is moving towards the establishment of its own Caribbean Court of Justice (CCJ) that will replace the Privy Council as the final Court of Appeal.

Interestingly too, alongside Sir Dennis Byron, the President-designate of the CCJ, Trinidadian Mr. Michael de la Bastide, and the very distinguished Dame Joan Sawyer of the Bahamas, have also been named to the Privy Council.

I do not think I would be wrong in concluding that the three appointments represent a tremendous vote of confidence by the British Government in the integrity of Caribbean judges. This deserves to be noted, coming at a time when some in our region, have been publicly expressing reservations about the ability of Caribbean judges on the CCJ to dispense justice impartially and fairly, because of the role being played by the region's political leadership in the establishment of the new Court.

Sir Dennis Byron's elevation to the Privy Council, his selection to serve on the International Criminal Tribunal for Rwanda and his appointment as a Master of the Bench of the Inner Temple of England, all within the first seven months of this year, testify to his immense stature, not only regionally, but internationally as well.

It also testifies to the calibre of jurists that our region has continued to produce over several decades, and sends a clear message that their ability to dispense justice efficiently and fairly is widely recognized.

We in the Eastern Caribbean have a lot to be proud of in the esteem of our Court system. It has taken some hard work getting where we are, but the journey has really only just begun.

Please send comments, suggestions and contributions to the newsletter at [appeal@candw.lc](mailto:appeal@candw.lc)

## FEATURE ARTICLE



### THE RELEVANCE OF CONFLICT RESOLUTION

*By the Hon. Justice Francis H.V. Belle*

#### **The Parameters**

The field of conflict resolution operates in three major spheres of conflict; these are (1) interpersonal conflict, (2) inter-group conflict, (3) international conflict. As different as these spheres may be, they all rely on the same base of theoretical work and practice. These theories and approaches are interdisciplinary, involving, psychology; sociological and political theory; systems analysis; and communications theory inter alia. I will argue that all of these theoretical bases contribute to an understanding of conflict and could assist practitioners in resolving conflict. I also maintain that since the practice of law is a form of conflict resolution the approaches are applicable to the practice of the law and litigation.

#### **Interpersonal Conflict**

The study and practice in the field of interpersonal conflict tends to focus on family relationships, relationships between children and adults in general, gender issues, communication issues and power relations in the family setting. Some authors have looked into the possible conflicts which may arise in relations between husband and wife, parents and children and between siblings. Family issues usually involve problems relating to values, family history, emotions and communication. Gender issues are also of some importance as they figure regularly in the problems between the sexes at home, at work and in other social groups.

The recent attention paid to domestic abuse has directed some study toward the issues relating to the management of anger, and the abuse of violence. Still

further, these issues bring into focus the need for the diagnosis and treatment of post traumatic stress disorder and other psychological disorders which arise as a result of generations of problems in the family and are known to be symptoms found in the victims of violence, especially sexual violence.

Some authors emphasize the need for improved communication skills to deal with various problems in relationships because of the way we tend to speak to each other. They expose the common use of blocks to communication by persons in their everyday discourse. These blocks to communication because they are so alienating, in turn make it difficult for parties to resolve their conflict by means of conversation or dialogue without third party intervention. Others emphasize the need to develop listening skills, the ability to empathize with others, and look for common needs and interests as problem solving tools. These are skills commonly taught in negotiation and mediation training.

It is thought that whether at the workplace or at home or in other social groups we need to focus on the needs and interests of the parties in disputes and to recognize that we all contribute to heightened conflict by our own behaviour as disputes escalate. All in all, interpersonal relationships provide a bountiful source of information for the development of conflict resolution theory and practice, and the training of practitioners in conflict resolution skills.

## **Group Conflict**

This second sphere of conflict intervention at one level, involves organizational theory and analysis and theories of organizational development. In the course of assisting groups with their problems, practitioners may rely on theoretical approaches such as systems analysis and chaos theory. These theoretical approaches and the practices which are derived from them are of some importance to the business community in a fast changing and crisis prone market place.

Group conflict calls for an understanding of all of the issues which affect interpersonal relations, along with an understanding of micro-cultures and approaches to leadership, group learning, and development. Negotiation, mediation and facilitation skills are often used to assist subject groups with these matters.

In recent times conflict resolution practitioners have been utilized to intervene to help groups create vision and mission statements. Central to successful formulation of such statements is an understanding of the purpose and values of

the subject organization and the need to unite the group, by achieving buy-in to the central themes of the vision or mission statements.

A broader understanding of group conflict can be gleaned from the experiences of interest groups who compete to influence government policy or educate the community about problems which could be resolved by the community itself.

Many of the issues relevant to interpersonal conflicts are also relevant to group conflicts. However it is thought that group conflict may rely more heavily on the intervention of experts on broad areas of community interest such as the impact on the law on matters relating to the electoral process, the environment, health and education policies, labour policies and the use and distribution of resources. Such areas of dispute are hot spots of conflict which sometimes give way to violence and the victimization of minorities or the weak by the strong.

Facilitators trained in mediation and negotiation skills will use these skills to guide groups towards solutions to their problems. Central to the modus operandi of the facilitator will be the attention paid to the laying down of ground rules during the process of intervention, to achieve the fullest possible participation in the dialogue, the avoidance of personal attacks, bullying and name calling, and the use of unbridled brainstorming to select the possible solutions to problems. This process is designed to achieve, **free informed consent**.

To the extent that groups over a period of time may become embroiled in intractable conflict, violence is very possible and could break out as a symbol of defiance of the law, as is the case with some anti-abortion activists in North America. Values and interests will be central to the causes and solutions to the conflict. Violence intervention and crisis negotiation skills will be of some importance in those areas where violence has broken out over the disputed issues. Hot spots in group conflict may be the school, the workplace and the community in general where clashes may take place between those who perceive themselves as representatives of these conflicted groups. It is therefore in the interest of the community to identify potential hot spots and promote dialogue around the relevant issues.

Of special note in this area of conflict resolution is the appearance of the “**truth and reconciliation commission**” as an exercise in reconciling the conflicting parties as they seek to emerge from a period of protracted conflict which may have caused much suffering in the subject community. Truth and reconciliation commissions are legal devices formulated to combine dialogue with the process of reconciliation and restorative justice, for the purpose of bringing closure to the distress caused by injustice, and comfort for the loss suffered during the period of conflict.

## International Conflict

The conflict practitioner who is involved in international conflict relies heavily on studies in international relations, ethnography, history and anthropology. It is useless to become involved in trying to resolve international conflict without some understanding of the foreign cultures with which one interfaces. In today's world of globalization there is a greater likelihood of a clash of foreign cultures than ever before.

Attitudes often differ from culture to culture and therefore modification of the theory and presumptions behind the practice of negotiation and mediation may have to be made to accommodate the nuances of various cultures. For example it is thought that in some cultures only authority figures can successfully resolve conflict. The intervener is obliged to respect such a local cultural norm.

As the caption suggests international conflict relies heavily on international relation skills and diplomacy. Special attention should be paid to the influence of contextual norms on particular kinds of behaviour in the conflicting cultures, along with the role of power and authority, religion and other value based systems which impact decision making and governance in the affected societies.

International conflict is often based on negative attribution or the tendency to attribute bad motives to the acts of others rather than to consider other influences behind seemingly injurious acts. Often whole societies are dehumanized by prejudice and hatred grown out of intractable conflict. The skills of mediation and negotiation are greatly taxed to integrate all aspects of techniques and lessons learnt from the subject cultures themselves, thus affecting approaches and attitudes to resolving conflict. This is the reason why those who are involved in advanced mediation at this level should receive continuous training.

### Generally

In all of these matters issues of language, communication, belief systems, religion and culture tend to overlap. The skills utilized also tend to overlap. These include negotiation, mediation, facilitation, story telling and ethnography. Often violence intervention becomes of some importance as does victim reintegration, trauma diagnosis and treatment.

The development of modes of dialogue around conflict issues has become the most sought after approach to conflict resolution generally. **Dialogue** differs from **discussion** in that; it reduces the prevalence of the use of intimidation and other fear tactics by more aggressive and boisterous parties. It encourages group empathy and the negation of negative attribution, prejudice and hatred and relies heavily on the use of creative tension, brainstorming expert intervention,

and the selection of scientifically based criteria for the choice of solutions. As was previously stated, the aim is to bring about free informed consent and decision making by consensus.

## **Mentoring**

One special skill worth mentioning is that of mentoring. Mentoring involves the use of experience in a field to assist others in developing themselves and facing their problems as they grow in their respective field of activity. Good mentors help to teach people how to cope with difficult situations including conflict situations. Also of importance is the mentorship performed by change agents who set the course for others to follow in areas such as gender studies, labour and race relations.

## **Application to Law Practice**

Law practice is a form of conflict resolution. It is probably the most formal mode of conflict resolution one would find in any social system. It is less obvious that tools such as listening and assertion skills will assist lawyer and client alike in understanding and analyzing issues and personalities in any case at hand.

Lawyers use concepts such as, "intention," "inference," and "presumption," which all rely for their meaning, on context, culture, prejudice, and values. Also of relevance is the fact that emotions may sometimes cloud the meaning of certain acts and indeed the important issues and interests which are at stake. The field of conflict resolution provides the tools for in-depth analysis of these issues in the manner outlined above.

Lawyers who wish to fully understand all relevant issues in a dispute at hand, especially where the matter is based on interpersonal conflict, should recognize that what is called for is a deep understanding of the social issues involved and these may not be seen at first glance but only after serious analysis. Successful articulation of the position of a witness in a witness statement for example may depend on the depth of understanding of the meaning the witness attributes to the entire dispute. This meaning is found after an examination of the issues outlined in the relevant subheads above.

In the area of criminal law, conflict resolution has been used as a tool of restorative justice where the convicted person promises to embrace a process of repairing and restoring the losses suffered by the victim, and the victim in turn embraces reconciliation and forgiveness as part of a restorative process.

Quite apart from the litigation arena, the management of conflict has been incorporated into the law by way of the inclusion of arbitration and mediation

clauses in agreements. These clauses mandate that one of these modes of dispute resolution be utilized before filing suit or as an alternative to filing suit. This approach is very prevalent in construction contracts. However it may be useful to include such clauses in various kinds of contractual arrangements while maintaining the litigation option as a last resort.

Finally it must be said that we are now becoming familiar with the use of mediation as a tool of conflict resolution in the civil courts of the Eastern Caribbean Supreme Court. But mediation can be put to even broader use. Outside of our region mediation has also proven itself useful in areas of family law, especially divorce settlements and the planning of the lives of children of the marriage after separation. No doubt mediation will become an integral part of the matrimonial court's work in the Eastern Caribbean in due course.

### **Conclusion**

Knowledge of the field and practice of conflict resolution will benefit the Caribbean community at large. Possible projects above and beyond training in negotiation and mediation could include developing listening and articulation skills, and fostering and developing dialogue among interest groups on issues which are critical to the guidance of social policy and governance.

In this age of CSME, open markets and globalization, conflict will tend to grow rather than diminish. No doubt the outcomes of the conflict will largely depend on our ability to manage it.

## EASTERN CARIBBEAN SUPREME COURT NEWS

### SIR DENNIS BYRON: A MEMBER OF THE PRIVY COUNCIL



Sir Dennis Byron, Chief Justice of the Eastern Caribbean has been appointed to Her Majesty's Most Honourable Privy Council.

News of the appointment has been communicated to Sir Dennis by Britain's Prime Minister Tony Blair.

Sir Dennis is currently on leave from the Eastern Caribbean Supreme Court and is serving as a Permanent Judge of the International Criminal Tribunal for Rwanda, which operates from Arusha, Tanzania.

The title of Privy Counsellor is the latest to be conferred on Sir Dennis in recent times. Earlier this year he was appointed as an Honorary Bencher of the Honourable Society of the Inner Temple.

Sir Dennis was appointed to the Court of Appeal of the Eastern Caribbean Supreme Court in 1990. Before that he served as a High Court Judge in Antigua, Montserrat, Dominica and St. Lucia. In April 1999, he was appointed Chief Justice.

In recent years, Sir Dennis' reputation in the fields of Judicial Education and Judicial Reform has attracted attention in the international community. He is also the President of the Commonwealth Judicial Education Institute which is based in Halifax, Canada.

Although the Privy Council is a United Kingdom Institution, Members are appointed from some Commonwealth countries. Membership of the Privy Council is for life and all Privy Counsellors are entitled to be [styled "The Right Honourable"](#).

## MEDIATION IN THE EASTERN CARIBBEAN SUPREME COURT

Mediation within the Jurisdiction of the Eastern Caribbean Supreme Court started as a pilot project in St. Lucia in October 2002 by the introduction of Practice Direction No. 1 of 2002. Practice Direction No. 1 of 2003 extends Court-Connected Mediation to all Member States and Territories and makes provision for referral to Mediation of civil action filed in the Court.

Under Part 25(h) of the Rules, the Court must actively manage cases by encouraging the parties to use any appropriate forms of dispute resolution including in particular, Mediation, if the Court considers it appropriate and facilitating the use of such procedures.

In order to facilitate the use of such procedures and to provide litigants with a timely and cost effective method to the conventional way of resolving Civil disputes, the Court is instituting Court Connected Mediation in the Member States and Territories.

To date, the Eastern Caribbean Supreme Court has trained persons to be Mediators, and set up Mediation Rosters in the following States/Territories: St. Lucia, Grenada, Antigua, Montserrat, and the British Virgin Islands.

Mediation sessions have been ongoing in St. Lucia for over one year, but in the case of the other islands, the actual mediation sessions have only recently begun (within the last two months).

In the case of St. Vincent & the Grenadines, the Commonwealth of Dominica, St. Christopher & Nevis and Anguilla, Mediation Co-ordinators, and Mediation Committees have been appointed. Public Relations work has begun in St. Vincent & the Grenadines and St. Christopher & Nevis; and this is also expected to commence in the remaining two countries in the very near future.

Preparatory ground-work is actually in progress, with a view to start Mediation training in these territories within the next month or two.

## JEMS MAGISTRACY PROJECT



The Eastern Caribbean Supreme Court is now expanding on the implementation of the JEMS Magistracy Project. Under the OECS/CIDA Judicial & Legal Reform Project, a pilot project was coordinated at the Magistrates Court in St. Lucia; sub-regional application trainings were conducted; and most recently, computer systems were procured for several Member States.

In an effort to begin the process of replication of the computerization in the Magistrates Courts in the different Member States, the ECSC has once again contracted Consultant Stephen Louis. He, along with Mark Ernest, the IT Manager of the Court, are scheduled to visit the Member States during the period, August 13 to October 29, 2004, in order to undertake various support, upgrade and technical tasks as it relates to the effective computerization of the case management processes of the Courts.

The team is expected to undertake the following tasks:

- [1] Perform server and Client upgrade to JEMS 4.6/4.8 and Jury Manager 4.5 at the High Courts.
- [2] Initiate the use of the JEMS Imaging module at the High Courts.
- [3] Under JEMS, set up all new computers (as far as possible) procured under the CIDA/JLR Project for Magistrates Courts.
- [4] Assist in the development of all codes, tables and court agency setups for use of JEMS in Magistrates Courts for case types including: Criminal, Civil, Traffic, Maintenance, etc.
- [5] Perform all JEMS configuration required for capturing financial (fines, fees, costs, bonds, etc) information (including the printing of receipts) at the Magistrates Courts.
- [6] Explore the setting-up of JEMS for use by offices of the Director of Public Prosecution.
- [7] Undertake an assessment of the extent to which JEMS is utilized by Court Staff and record any limitations that exist with the use of the software.

- [8] Provide end-user exposure to at least one staff member at each Magistrates Court who has been assigned the title as “JEMS Champion”.

NEWS! NEWS! NEWS!

The named Officers participated in the following activities on behalf of the Eastern Caribbean Supreme Court:

Honourable Hugh Rawlins, High Court Judge  
and

Ms. Heather Franklyn, Deputy Chief Registrar:

**Intensive Study Programme for Judicial Educators** hosted by the Commonwealth Judicial Education Institute, Halifax, Ottawa & Toronto, Canada, June 13 – July 2, 2004.

Mr. Gregory Girard, Court Administrator:

**The National Association of Court Managers Conference** held in Dallas, Texas, July 11 – 15, 2004.

Ms. Claudette Valentine, Librarian/Information Services Manager:

**The 19<sup>th</sup> Conference and Annual General Meeting of the Caribbean Association of Law Libraries** held in Nassau, Bahamas, July 5 – 7, 2004.

(Note: See **Conferences, Seminars & Workshops** for reports of these activities)

## CONFERENCES, SEMINARS & WORKSHOPS

### REGIONAL

#### CARALL XIX CONFERENCE/ANNUAL GENERAL MEETING

The Caribbean Association of Law Libraries (CARALL) held its 19<sup>th</sup> annual conference at the British Colonial Hilton in New Providence, Nassau, Commonwealth of the Bahamas, during the period July 5 - 7, 2004, under the theme: "Building and Protecting Our Legal Environment".

This year's attendance has been the largest since the inception of the Association, with a total of 36 participants from Barbados, the Cayman Islands, the Commonwealth of the Bahamas, Jamaica, the OECS and Trinidad & Tobago. The OECS was represented by one person each from the BVI (private law firm), Montserrat (AG's Chambers), St. Lucia (ECSC), and St. Vincent & the Grenadines (AG's Chambers).

The conference began with the opening ceremony on Monday, July 5, 9:00 a.m. The Honourable Alfred Sears, Attorney General General and Minister of Education of the Bahamas was the guest speaker. His presentation focused on the role played by librarians and libraries in the delivery of justice. He noted that the delivery of justice is, to a large extent, determined by the quality of research materials available in our law libraries. He further highlighted some benefits to be derived from legal collections, noting specifically the benefits he has derived and continue to derive, thus the necessity to maintain and preserve said collections.

The main focus of the conference was the workshops on: Moys Classification Scheme for Legal Materials and Disaster Preparedness.

To facilitate quick and easy retrieval of materials, one of the tools used by law librarians is the Moys Classification Schedule. However like most man-made designs there are discrepancies in the system. This formed the central theme of discussion. Common problems encountered by professionals were highlighted with possible solutions. This was followed by the actual classification of a few titles, which served to demonstrate some of the same problems that were previously discussed.

In preparation for the workshop, Mr. John Aarons, Government Archivist, Jamaica, gave a brief introduction to disaster preparedness as it relates to

libraries in the Caribbean. This workshop was facilitated by Ms. Elizabeth Fergusson, Preservation Field Services Officer, Southeastern Library Network.

The objectives were to facilitate participants to be able to:

- ❑ Identify threats to collection
- ❑ Learn ways to minimize potential damage
- ❑ Understand the disaster planning process
- ❑ Understand elements of response and recovery
- ❑ Perform Basic salvage techniques

Areas covered included: disaster protection from both fire and water. The steps in disaster planning, namely information gathering, implementation and ongoing maintenance were given high prominence in the workshop. Disaster recovery also formed a significant part, and various salvage techniques were explored.

This was followed by a practical session where participants were given the opportunity to use a few of the techniques discussed. Certificates of participation were presented at the end of the session.

Other presentations were: Development Of CARICOM Law by Justice Ian Don Mitchell, Q.C., Eastern Caribbean Supreme Court; The Surinamese Legal System by Ms. Ruby Bleau, Attorney-at-Law, Suriname; and Development of Commercial Law in the Caribbean by Ms. Lesley Walcott, Lecturer, Faculty of Law, University of the West Indies, Cave Hill Campus, Barbados.

The information gathered at this conference was quite relevant as it brought into focus two important facets of Librarianship: the arrangement of information to facilitate its retrieval and dissemination in a timely manner; and the ability to store this information in a manner that will minimize threats to its continued availability. Very important also, is the networking that conferences of this nature facilitate, thus realizing not just immediate, but long term benefits to an organization.

## INTERNATIONAL

### INTENSIVE STUDY PROGRAMME FOR JUDICIAL EDUCATORS

On Friday 11<sup>th</sup> June 2004 and Wednesday 16<sup>th</sup> June 2004, Justice Hugh Rawlins, High Court Judge, BVI, and Ms. Heather Franklyn, Deputy Chief Registrar, traveled to Canada to participate in a three-week Intensive Study Program for Judicial Educators, hosted by the Commonwealth Judicial Education Institute. The program commenced in Halifax, Nova Scotia, on Sunday 13<sup>th</sup> June, 2004 and ended in Toronto on Friday 2<sup>nd</sup> July 2004.

The first two weeks of the program were spent in Halifax where participants attended classroom sessions at the Dalhousie University Faculty of Law. The final week was spent in Ottawa and Toronto, during which many courts and other facilities were visited.

Participants in the Intensive Study Program (ISP) came from 13 Commonwealth countries and 1 non-Commonwealth country. :

Chief Justice M.L. Lehohla	Lesotho
Justice John A. Ajakaiye	Nigeria
Justice Ghulam Rabbani	Pakistan
Justice Frank O. Kabui	Solomon Islands
Justice Oliver A. Saksak	Republic of Vanuatu
Justice Peter Jamadar	Trinidad & Tobago
Justice Hugh Rawlins	OECS
Justice Elneth Kentish	Barbados
Magistrate Rex Faulkna	Solomon Islands
Magistrate Marva Clarke	Barbados
Mr. Robin N. Mohammed (Deputy Registrar and Marshall)	Trinidad & Tobago
Magistrate John Obed	Republic of Vanuatu
Ms. Heather Franklyn (Deputy Chief Registrar)	OECS
Justice Lucas P. Bersamin	Philippines (Non-Commonwealth)

Although participating countries were at varying levels of development in judicial education, with Nigeria and the Philippines taking the lead, and other jurisdictions such as Barbados just in the process of getting their education institute off the ground, all countries appeared to be concerned with delay reduction and improving impartiality and independence of their judiciary.

The ISP included sessions on the *Objectives and Scope of Judicial Education and Judicial Reform; Judicial Education Resources; Perspectives on Impartiality; Drafting National Judicial Education Objectives and Standards; Developing Annotated Codes of Ethics; Curricula Development; Curricula Development in Case Flow Management and Delay Reduction; Computer Training and the use of Quicklaw; Providing Instruction for Adults; Planning for Programmes; Teaching and Learning; Judgment Writing; Communication in the Courtroom; Developing an Orientation Program; Using Sentencing Hypotheticals as an effective teaching technique in Sentencing; and Long Range Judicial Education Planning.*

Participants were required to do assignments on

- *The Use Of Bibliographies in Program Session Design;*
- *Preparing National Judicial Education Objective and Standards;*
- *Needs Assessment;*
- *Developing Design of a Session Program;*
- *Making a Video For Use as a Teaching Tool;*
- *Developing a Three Year Plan for Judicial Education;*
- *Developing a Three Day Orientation Program;*
- *The Use of Teaching Tools/Techniques in Delivering a Presentation.*

Keeping up with deadlines for assignments was a little less than easy sailing, but burning the midnight oil and collegiality saw the participants through.

The focus of the ISP was not so much on content, but rather on methodology. The program was not geared towards participants obtaining knowledge to make actual presentations in program when they returned home, but on gaining the required skills and capacity to advance the goals of judicial education and reform and to develop curricula. The target group for participation in the ISP is therefore not restricted to judges, but a keen interest in judicial education and reform is a prerequisite.

The workshops on *Curricula Development* and the sessions on *Developing National Judicial Education Objectives and Standards and Planning for Program* were particularly useful because the Eastern Caribbean Supreme Court has undertaken a number of reform projects and these are correspondingly matched by related judicial education programs.

The ISP has provided greater insight into the role that must be played by the Eastern Caribbean Supreme Court Judicial Education Institute, and how it can function optimally. It is now time for the ECSC to seriously focus on the development and capacity of Judicial Education Institute and for governments to be encouraged to give adequate and appropriate support to judicial education.

Public confidence in the justice system is a major concern. This can only be enhanced by continued judicial education.

Interacting with participants from many different jurisdictions for the three-week period facilitated and created a formidable network for exchange of ideas and resources, and helped to foster important friendships. Three Cheers for CJEI!

Numerous educational and sightseeing tours were also part of the programme. These included a visit to the Waterville Youth Centre, a penal institution for young offenders; a visit to the Maritime Museum and the Citadel in Halifax. In Ottawa other visits were to: the Supreme Court of Canada; the Senate; the Superior Court of Justice; the Family Court; Small Claims Court; the Mediation Centre for the Family Court; and the Canadian Judicial Council. In Ottawa, Master Beaudoin gave an address on case management. In Toronto participants of the program met with The Honourable Justice David Wake, Associate Chief Justice of the Provincial Division of the Ontario Court of Justice; the Honourable Justices Ted Ormston and Paul Bently, respectively, Judges of the Mental Health Court and the Drug Treatment Court.

Fun time was not excluded from the list of activities. An enviable lobster dinner was hosted by CJEI Chair, Judge Sandra Oxner, in honour of Sir Dennis Byron, President of CJEI, on his appointment as a Permanent Judge of the International Criminal Tribunal for Rwanda, and to celebrate the 10<sup>th</sup> anniversary of CJEI's existence. Participants had the honour and privilege of dining with the Honourable Justice Constance Gllube, Chief Justice of Nova Scotia, at the Halifax Club; and of being inducted into the Order of Good Times by the Lieutenant Governor of Nova Scotia, the Honourable Myrna A. Freeman, at Government House. The highlight of the fun activities was a trip to Niagara on the Lake, with an unforgettable boat ride, on the "Maid of the Mist", in the cascading waters of Niagara Falls.

The ISP is an opportunity not to be missed.

## NATIONAL ASSOCIATION OF COURT MANAGERS CONFERENCE

The National Association of Court Managers Conference was held at the Gaylord Texan Resort in Dallas, Texas, July 11 - 15, 2004. The participants were primarily from various United States and Canadian Courts. Other countries represented included St. Lucia, Guam, El Salvador, and Nigeria.

Sol Wachtler, a former Chief Judge of the New York State Court System presented *“Balancing Justice and Efficiency in Hard Times”* as the first day’s keynote address. He emphasized the need for courts to maintain their independence, impartiality, and efficiency in the face of political pressures to do more with less. He shared with participants the situation which the New York Court faced after he became the Chief Judge, where the Executive cut the already tight budget of the Court. In response to this he precipitated a constitutional crisis by suing the Governor of New York, Mario Commo, in a successful effort to compel the proper funding of the courts in order to maintain the integrity of the third branch of Government. He strongly advocated the view that there can be no justice without due process of law.

He also spoke of the negative reaction of the other members of the Judiciary when he introduced the concept in the New York Courts that the Chief Administrator did not have to be a judge, which was the traditional way that it was done.

The second day’s keynote address *“The Agile Court - Improving Courts in Lean Times”* was presented by Vance Kasten from Unisys Global Business Transformation. He explained that courts exist to uphold the timeless values of impartiality, dignity, and fairness while responding to demands from legislators, litigants, and citizens that require them to administer justice faster and better with flat or declining budgets. Kasten’s presentation focused on the fact that “change” is the only constant, and courts must plan for uncertainty, embrace it, and exploit it. The ‘agile’ courts are those which are successful in managing and exploiting this change.

### BREAKOUT SESSIONS

#### **1. The Chief Judge / Court Manager Relationship**

Chief Judge, Mary Staley and Court Administrator, Skip Chesshire, of the Cobb County Superior Court in Georgia spoke about how they work together as a team. Chesshire shared his experiences in addressing particular situations which arise, and the communication which exists between him and his Chief Judge, and

with other judges of the court to promote unity and cohesiveness. The Court Administrator's role in gathering information from other stakeholders in order to best provide advise for the consideration of the Chief Judge was also discussed.

## **2. Integrating Judicial and Managerial Cultures: A Core Strategy for Achieving the Efficient and Effective Administration of Justice**

The Presenter, Dale Lefever, discussed how the structural relationship of the Administrative Judge and the Court Manager is converted into a meaningful relationship that helps the Court manage its affairs efficiently and effectively in an increasingly complex and rapidly changing environment.

The strategy developed is contingent on: precedent (what has happened in the past), premises (the assumptions made with respect to the roles of the different persons), preferences (what the different persons prefer), and priorities (what is seen as important).

According to Lefever, the first three components are extremely subjective and could vary significantly from person to person. The recommendation is that the court through the Chief Judge and the Court Administrator develop the priorities which they agree are the priorities of the Court, and allow the form to follow the function. Once the priorities are defined, the strategy employed would include any precedent, premise, or preference of the players.

Lefever also spoke of the differences in the Professional and the Managerial Cultures in terms of the following:

### **Professional Culture**

Abstract Goals

Diffuse Authority

Low Interdependence

Internal Measures of Performance

### **Managerial Culture**

Concrete Goals

Formal authority

Task Interdependence

External Measures of Performance

The characteristics of effective Judge/Court Manager Relationships include a shared vision for the organization, a collaborative model for policy development, clear roles and responsibilities with delegated authority, frequent and candid communications, and mutual trust and support.

### **3. Fiscal Pressures can Improve Court Performance**

Brenda Ivey from Praxis Consulting and Steve Steadman from Policy Studies Inc. presented some examples of what courts are doing to improve their performance in light of the current fiscal climate, and offered some ideas to help courts ready themselves for better economic times.

They presented towards a theme that “impossible” only means that “you have not found a solution yet”. The new logic for organizations is that the success factors are speed, flexibility, integration, and innovation.

To speed up the process in the organization, one must increase efficiency and accuracy utilizing technology and eliminate unnecessary policies and procedures. Choose simplicity over complexity and undergo job and workflow redesign. Flexibility requires the organization to quickly deploy resources to meet changing customer expectations and respond to changing mandates.

The organization must create an integrated whole with one point of contact for tasks and services.

Finally the organization should be innovative and constantly search for the new, different, and unthinkable. Innovation requires thinking “outside of the box” and opening organizational boundaries.

### **4. Advanced Jury Management Systems: An Update**

Tom Munsterman from the National Center for State Courts provided an update on the operation of jury systems through the use of technology to save costs, improve citizen responses, and provide better service to citizens.

He presented the developments of I-Jury (Internet Jury), where the Internet is being used to present general information, juror qualification details, and allow jurors to indicate available dates among other things. This is seen as a positive step to improve the traditional Juror Orientation Program, reduce on the time that jurors are kept waiting and place more emphasis on Case Scheduling.

The Jury Patriotism Act has been presented by the American Legislative Exchange Council (ALEC) to various States, some of whom have begun to implement. The Act basically provides a policy for each State to indicate that all qualified citizens have an obligation to serve on juries when summoned by the Court of the State unless they have been excused.

## **5. Court Facility Planning and Construction**

This session focused on “Field Expedient Technology”, which facilitates remote hearings and conducting hearings in temporary locations.. The presenter, Peter Rich, is the Senior Vice President and the National Criminal Justice Director for The Facility Group which specializes in the planning, design, and construction of courthouses.

He expressed the view that in the past, one observed the development of expensive “high tech” integrated courtrooms. More recently given the advances in technology there has been greater emphasis on portable equipment for reasons of cost, support, and architecture. Use of simple wireless technology can convert any room into a “high tech” courtroom without the added cost of installing the typical infrastructure.

As demonstration, he used a wireless device from a company called Avocent, and with a laptop projector, and document projector the presentation room was converted to a courtroom-ready area. Add to this a portable video conferencing unit, for example the Tandberg 1000, with an Internet connection, and one would be able to bring into the room a judge, a defendant, or any other party necessary to conduct the trial.

This technology makes it possible for example, for Magistrates to remain in their Chambers or Courtroom, and conduct remand hearings where the prisoners do not have to leave the prison facility. This would result in tremendous savings in judicial time, as well as the use of police and prison resources.

## **6. Caseflow Management - Basic**

Barry Mahoney, President Emeritus, The Justice Management Institute, Denver, Colorado, presented the definition of caseflow management as “the coordination of court processes and resources to ensure that cases move from filing to resolution in a timely manner”. This includes all pre-trials, trials, and post disposition case activities. The core purpose of caseflow management is to enable justice to be done promptly and fairly in all cases.

Mahoney raised the issue of setting goals for the courts’ caseflow management which could include case processing time standards, targets for the optimum size and composition of pending caseloads, standards for certainty in scheduling trials and other case events.

Some of the American Bar Association Case Processing Time Standards were cited, for example in General Civil Cases the following are the standards set:

- 90% of cases concluded within 12 months of filing;
- 98% within 18 months; and
- the remainder within 24 months, except in exceptional circumstances.

In order to implement time standards, Mahoney suggests that in addition to setting standards, reports for monitoring must be prepared and made available to the judiciary in order to see their performance, as well as that of the other judges in their court.

Key management information reports include:

1. Pending Caseload Report by case category (age distribution and status)
2. Open case list (age, status, and next action date)
3. Case scheduling effectiveness
4. Continuance Rates / Trial Date Certainty
5. Trend Data (Filings, Disposition, Pending Caseload size, and Age)
6. Age of cases at disposition by case category

It was indicated that in some courts this information is made available to the public.

## **7. Visioning and Strategic Planning**

The session which was conducted by Brenda Ivey from Praxis Consulting and John Martin from the Center for Policy Studies focused on the steps involved in strategic planning. The general questions which must be answered include:

- a. Where is the Court presently?
- b. Where is the Court going?
- c. How do you propose to get there?

In order to develop the strategic plan a nine-step process for courts was proposed. These steps are as follows:

1. Initiate and agree on the planning process.
2. Define the Mission.
3. Develop the Vision.
4. Conduct Trends Analysis and Construct Scenarios.
5. Conduct Organizational Assessment.
6. Identify and Define Strategic Issues & Key Result Areas.
7. Develop Comprehensive Strategies.
8. Operationalize the Strategic Plan.
9. Monitor Progress and Evaluate Results. Update Plan as Needed.

## 8. Caseflow Management - Advanced

The advanced session followed on the basic session. In this session Mahoney looked at the benefits of problem-oriented courts, and in particular the Drug Courts, and the impact that these types of courts are having on the traditional caseflow management.

The benefits of the specialized courts to society, the justice system, and the defendants/program participants are numerous; however these benefits are not achieved without overcoming some challenges. These challenges include:

1. Preserving the neutrality of the judiciary in dispute resolution.
2. Guarding against the pressures to alter or diminish the core mission of the judiciary. Conducting fair and impartial resolution of cases while seeing to it that the court does not become another social service agency.
3. Ensuring the protection of defendants due process rights.
4. Marshalling adequate support services and non-court resources.
5. Providing needed education and training for judges, court staff, and other players.
6. Making effective use of limited resources.
7. Developing support/buy-in from a broad range of judges.
8. Shaping the vision of a dramatically improved criminal justice system.
9. Gaining justice system, community, media, and funding source support.

This conference provided the opportunity to meet and discuss with persons in the United States Court System, court management reforms similar to that being undertaken by the Eastern Caribbean Supreme Court.

**Judicial Appointments for the period  
July 1 - 31, 2004**

**Eastern Caribbean Supreme Court**

- [1] *His Lordship, the Hon. Justice Adrian Saunders* has been appointed to act as Chief Justice, Eastern Caribbean Supreme Court with effect 1<sup>st</sup> July, 2004.
- [2] *The Hon. Justice Hugh A. Rawlins* was appointed to act as a Justice of Appeal for the purpose of the Sittings of Court of Appeal in St. Kitts and Nevis for the period 26<sup>th</sup> to 30<sup>th</sup> July, 2004.
- [3] *His Lordship, the Hon. Justice Emile Ferdinand* was appointed to act as a High Court Judge, Eastern Caribbean Supreme Court with effect from 1<sup>st</sup> June to 31<sup>st</sup> July, 2004. Assigned to Antigua and Barbuda.

**Commonwealth of Dominica**

The following persons have been appointed as follows:-

- [1] **Ms. Evelina Bapiste** Magistrate, to act as Chief Magistrate, Commonwealth of Dominica for the period 1<sup>st</sup> July to 31<sup>st</sup> December, 2004.
- [2] **Mr. Reginald Winston**, to act in the office of Registrar, Registrar General and Provost Marshal, Commonwealth of Dominica for the period 1<sup>st</sup> July to 30<sup>th</sup> September, 2004 in a vacant post.
- [3] **Mr. Keith Thom**, Crown Counsel 1, Office of Public Prosecutions to act as Magistrate vice Mr. Asquith Riviere.

## Grenada

- [1] **Mr. Keith Friday** has been appointed to Senior Legal Counsel, Ministry of Legal Affairs, Grenada with effect from 5<sup>th</sup> July, 2004.
- [2] **Ms. Karen Noel** has been appointed to act as Magistrate, Eastern District, Grenada with effect from 3<sup>rd</sup> November to 2<sup>nd</sup> December, 2004 vice Mrs. Oforiwa Augustine, who will be proceeding on vacation leave during that period.
- [3] **Ms. Avril Trotman** has been appointed to act as Solicitor General, Grenada with effect from 21<sup>st</sup> June to 19<sup>th</sup> July, 2004 vice Nicholas Barnes, who proceeds on vacation leave.
- [4] **Ms. Avril Trotman** has been appointed to the post of Solicitor General, Grenada for a period of two [2] years with effect from 19<sup>th</sup> July, 2004.

## Saint Lucia

- [1] **Ms. Allison Isaac** has been appointed to the post of Legislative Drafter 11, Attorney General's Chambers, St. Lucia for a period of one [1] year with effect from 1<sup>st</sup> November, 2004.
- [2] **Mrs. Christine Phulchere** has been appointed to the post of Magistrate 11, First and Second District Courts, St. Lucia for a period of two [2] years.

## St. Vincent and The Grenadines

- [1] **Mr. Carl Joseph** was appointed to the post of Senior Magistrate/Vice President, Family Court, St. Vincent & the Grenadines for a period of one [1] year from 1<sup>st</sup> July, 2004.
- [2] **Mr. Carlyle Dennis Dougan, Q.C.** was appointed temporary Magistrate for a period of six [6] months.

## **WRITTEN JUDGMENTS**

The following are written judgments available for the month of **July 2004**:

### **COURT OF APPEAL JUDGMENTS**

#### **BVI**

##### **The Attorney General v Conrad Seghers et al**

BVI

Civil Appeal Nos. 15/2003 & 21/2003

Alleyne, J.A.

Delivered: 15/07/04

##### **Harry Samuel v Commissioner of Police et al**

BVI

Civil Appeal No. 02/2004

Saunders, C.J. [Ag.]

Delivered: 13/07/04

#### **DOMINICA**

##### **Ulysees Auguiste v David Robin et al**

Dominica

Civil Appeal No. 02/2004

Alleyne, J.A.

Delivered: 22/07/04

#### **GRENADA**

##### **Cleveland Donald v The Attorney General**

Grenada

Civil Appeal No. 32/2003

Saunders, C.J. [Ag.]

Delivered: 26/07/04

**ST. VINCENT & THE GRENADINES**

**DIPCON Engineering Services Ltd v Webster Jordan**

St. Vincent & The Grenadines

High Court Civil Appeal No 16/2003

Gordon, J. A.

Delivered: 16/07/04

**Darren Miller v The Commissioner of Police**

St. Vincent & The Grenadines

Magisterial Criminal Appeal No 38/2004

Saunders, C.J. [Ag.]

Delivered: 26/07/04

## HIGH COURT JUDGMENTS

### ANTIGUA & BARBUDA

**H.C. Grant (t/a Caribbean Wholesale Agency) v Teddy Santos**

Antigua & Barbuda

Claim No ANUHCV1997/0373

Ferdinand, J.

Delivered: 13/07/04

**William Martin v Director of Public Prosecutions**

Antigua & Barbuda

Claim No ANUHCV2003/0422

Ferdinand, J.

Delivered: 20/07/04

**William Martin v The Attorney General of Antigua & Barbuda**

Antigua & Barbuda

Claim No ANUHCV2003/0485

Ferdinand, J.

Delivered: 01/07/04

**Charles Joseph v Antigua Commercial Bank**

Antigua & Barbuda

Claim No ANUHCV2003/0537

Mathurin, Master

Delivered: 15/07/04

### BRITISH VIRGIN ISLANDS

**Enzo Addari v Edy Gay Addari**

B.V.I

Claim No. BVIHCV2003/0209

Rawlins, J

Delivered: 19/07/04

**Liston Potter v Attorney General et al**

B.V.I

Suit No. 103/2000

Shanks, J

Delivered: 20/07/04

**Gilda Minerva Richardson v Corentz Clifton Richardson**

B.V.I

Suit No. 15/2000

Shanks, J

Delivered: 20/07/04

**Ashley Nibbs v Neil Todman**

B.V.I

Suit No. 42/1992

Shanks, J

Delivered: 22/07/04

**ST CHRISTOPHER & NEVIS**

**Marvin Phillips v Attorney General of St. Christopher & Nevis et al**

St. Christopher & Nevis

SKBHCV2004/0003

Baptiste, J

Delivered: 13/07/04

**Richard Rowe et al v Administrative Services Ltd et al**

St. Christopher & Nevis

SKBHCV2003/0022

Baptiste, J

Delivered: 23/07/04

**James Maher v The Island Paradise Beach Village Homeowners Association**

St. Christopher & Nevis

Claim No. SKBHCV1997/0015

Joseph-Olivetti, J

Delivered: 13/07/04

**ST. LUCIA**

**The Queen v Johnny Anthony**

St. Lucia

Case No. 11/2004

Edwards, J

Delivered: 07/07/04

# EASTERN CARIBBEAN SUPREME COURT

As at 31<sup>st</sup> July 2004

The Chief Justice

His Lordship, the Hon. Chief Justice [Ag.], Adrian Saunders – Saint Lucia

## Justices of Appeal

His Lordship, the Hon. Justice Brian Alleyne, SC – Saint Lucia

His Lordship, the Hon. Justice Michael Gordon [Ag.] – Saint Lucia

## High Court

Her Ladyship, the Hon. Justice Suzie d’Auvergne – British Virgin Islands

His Lordship, the Hon. Justice Kenneth Benjamin – Grenada

His Lordship, the Hon. Justice Don Mitchell, QC – Antigua & Barbuda

Her Ladyship, the Hon. Justice Indra Hariprashad-Charles – Saint Lucia

His Lordship, the Hon. Justice Frederick Bruce-Lyle – Saint Vincent & The Grenadines

His Lordship, the Hon. Justice Hugh Rawlins – British Virgin Islands

Her Ladyship, the Hon. Justice Charmaine Pemberton – Grenada

His Lordship, the Hon. Justice Davidson Baptiste – Saint Christopher & Nevis

Her Ladyship, the Hon. Justice Ola Mae Edwards – Saint Lucia

Her Ladyship, the Hon. Justice Rita Joseph-Olivetti – Antigua & Barbuda

His Lordship, the Hon. Justice Errol Thomas – Antigua & Barbuda

His Lordship, the Hon. Justice Janice George-Creque – Anguilla/Montserrat

His Lordship, the Hon. Justice Louise Blenman – St. Vincent & the Grenadines

His Lordship, the Hon. Justice Clare Henry-Wason – Commonwealth of Dominica

His Lordship, the Hon. Justice Francis Belle - Grenada

His Lordship, the Hon. Justice Murray Shanks [Ag.] - Grenada

His Lordship, the Hon. Justice Albert Redhead [Ag.] - Saint Lucia

Master Brian Cottle – Saint Lucia

Master Cheryl Mathurin – Antigua & Barbuda

Mrs. Ianthea Leigertwood-Octave, Chief Registrar - Saint Lucia