

**ADDRESS BY SIR DENNIS BYRON
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EASTERN CARIBBEAN SUPREME COURT
AND PRESIDENT OF THE COURT OF APPEAL
DELIVERED AT THE PRESENTATION CEREMONY
FOR GRADUATES OF THE
NORMAN MANLEY LAW SCHOOL ON
SATURDAY, 30TH SEPTEMBER 2000**

The Vision for the Legal Profession and Judiciary in the 21st Century

Mr. Dennis Morrison, QC, Chairman of the Council of Legal Education; Hon. Keith Sobian, Principal; Ms. Beverly Phillips, Registrar; Dr. Lloyd Barnett, Past Chairman; distinguished invited persons; members of the graduating class of 2000; ladies and gentlemen.

My main charge today is to prefer some thoughts on civil justice reform in the Eastern Caribbean, as well as on the introduction of the Caribbean Court of Justice. I have noted, however, that the Norman Manley and the Hugh Wooding Law Schools, which are and have been administered by the Council of Legal Education accepted their first students in 1973. They held their first graduating ceremony in 1975. On this the silver anniversary of that ceremony, I salute the twenty-sixth graduating class of this institution. I also feel compelled to ask you to indulge me, first, in a brief survey of the endeavours and achievements of our system of legal education and, from this perspective, to suggest some imperatives of legal education in the Caribbean as we go into the 21st century.

From a universal perspective, the history of legal education in the Commonwealth Caribbean is relatively short. The Council of the University of the West Indies appointed the founding Committee in 1963. Its duty was to make recommendations for the training of legal practitioners in the West Indies. It is noteworthy that the Committee was appointed because of the desire of the

Council to fulfill its mandate of service to the West Indian community, and in the light of its responsibility for satisfying our intellectual and professional needs.

The Chairman of the Committee was the late Reverend and eminent Caribbean jurist, Sir Hugh Wooding. The faculty of law of the University of the West Indies was established to provide the academic programme leading to the LLB degree. The Council of Legal Education was established to administer the Law Schools on the recommendations of that Committee. These institutions have pioneered legal education as a joint venture in the Commonwealth Caribbean since they were established in the early 1970s.

Statistics reveal that with this graduating class, 1426 persons have graduated from this Law School since 1975. Female graduands have exceeded the males in every year since 1986. Comments or factual conclusions on this latter statement are beyond the scope of this address.

We are all aware, however, that the level of legal education which these institutions have provided over the years, reflect an excellence which gives us a great degree of pride. We have seen graduates of this institution take their places in every legal field in the Commonwealth Caribbean and beyond. Many have attained high office and served with distinction.

This occasion of the silver anniversary of this institution presents an opportune time for us to laud the vision and sacrifices of the founding fathers and all of the pioneers who have brought legal education in the Caribbean to the present stage. We encourage those upon whom the mantle now falls to be clear of vision and strong of purpose as they chart the course into the 21st century.

The past affords us good reason to be confident that their endeavours will succeed. It is noteworthy that this institution has from time to time put mechanisms in place to render it responsive to changing legal demands, as social and economic circumstances have required. Thus, for example, the Marshall Committee was established in 1980 to assist a Joint Committee of the Faculty of Law and the Council of Legal Education to review legal education in the

Caribbean. The recommendations of the Committee focused mainly upon curriculum development as a collaborative effort between the two institutions.

For the purpose of this address, I draw special attention to recommendation 30 of the Report of that Committee. It urged Caribbean governments to afford a higher priority to the law and to lawyers, as they pursue their quest for development. The Recommendation stressed, in particular, the need for lawyers to participate in the drafting and preparation of development schemes. It is my view that the involvement of knowledgeable and competent legal personnel in every stage in this quest is now even more critical, given the complexities which globalization has brought, particularly under the regime of the GATT IV Agreement.

In 1996, the report of another Committee which was established by the Council to review legal education was submitted. The revised terms of reference of this Committee, which was chaired by Dr. Lloyd Barnett, changed it, *inter alia*, to examine and make recommendations regarding the scheme of legal education and training and the projected needs of the region. This was to be done:

“taking into account the current development in technology, regional trade and international economic law.....”

In my view, these terms and conditions capture the essential vision which must guide our undertakings for reform in legal education, our laws, our justice system and judicial system as we move into the 21st century.

It is gratifying to know that his vision is not merely an exercise in thought. There is evidence that practical steps are being taken in order to realize the vision. Over the past four years, for example, the Faculty of Law has expanded its final year options. It has introduced new courses in the areas of regional trade and integration, international economic law, the law relating to restitution and remedies and alternative dispute resolution.

It is also noteworthy that, in its Report, the Barnett Committee has stressed the need for legal education to emphasize practical training in lawyer

skills and in the implementation techniques required to manage a legal practice in a competent manner.

Over the next few years, there will be complex developments which will impact our offshore legal section. Evidence of this is already apparent. There will also be unprecedented developments in Information Technology and concomitant increases in cross-border transactions. The legal systems in developed countries have been extended to their limits to cope with, or even predict the likely impact of these developments upon the delivery of legal services in the future.

There is not much evidence of rationalized or sustained attempts among our legal fraternity to address these issues. My greatest fear is that we may be prepared to be reactive when developments will have already overwhelmed us. It appears that, as a matter of urgency, it is necessary, as an initial step, to add to our curriculum courses in the law of information technology, information technology crimes, intellectual property and offshore law.

The reference in the Barnett Committee Report to the lawyer skills and implementation techniques which are required to manage a legal practice in a competent manner, reminds us that, traditionally, lawyers are not good managers. The challenge of change for survival will, however, demand serious changes in the culture of the practice of the law. It will soon become clear to you that computer automation must be an essential component of any law office. Office management and the keeping of a proper system of accounting will also be very critical.

It is only necessary to remind you that detailed provisions which regulate the keeping of accounts, especially those of clients, are contained in your Legal Profession [Accounts and Records] Regulations, 1999. In part, these rules are informed by circumstances that demand a renewed emphasis on ethical standards of practice in the profession. It is a realization that has prompted

Antigua and Barbuda and St. Lucia to pass Legal Profession Acts in 1997 and 2000 respectively.

These bits of legislation are in turn reflective of the wind of legislative reform which is at present blowing across the Caribbean as we awake to the fact that the law must be oxygenated and that we cannot now depend on others for this. This address will not adumbrate fully the ambit of the recent legislative reforms, since my task is to speak to civil justice reform, and, particularly, to make a brief assessment of the Rules Revision Programme, which will introduce The Eastern Caribbean Civil Procedure Rules, 2000. These Rules will replace the present Rules of the Supreme Court, 1970, as amended.

Civil Justice Reform

Introduction and objectives

Concerns have been expressed in recent years, that our civil justice system has become so bemired in procedural complexity that it is now inimical to justice. This is because the process is too costly, occasions lengthy delays, and is shrouded in such mystique that it prevents the citizen whom it is intended to serve from participating in it meaningfully.

The objectives, which have driven the civil justice reform process, are, in my view, aptly summarized in two passages, which are worthy quotation. The first appears in the letter, which was addressed, to the Chief Justice and the Attorney General of Ontario by the members of the Civil Justice Review Committee when it submitted its First Report on 7 March 1995. The letter reads in part:

“The recommendations made to you in this report are intended to lay the groundwork for a civil justice system which meets the benchmark criteria established at the outset of our deliberations: fairness, affordability, accessibility, timeliness, accountability,

efficiency & cost-effectiveness, [and] a streamlined process and administration”

The second is extracted from the Report itself, and appears at pages 2 and 3, under the rubric “The Need for the Review”. It reads:

“No civilized society can remain stable without a mechanism whereby its members can resolve their disputes peacefully and, where necessary, in a binding fashion. The alternative to such a mechanism is chaos at best, and unbridled violence at worst. Unreasonable delay in the disposition of disputes is, indeed, *the enemy of justice and peace* in the community. It leads to unreasonable costs. It breeds inaccessibility. It fosters frustration, and frustrates fairness. The administration of justice falls into disrepute.”

These statements reflect the quintessential objectives that have fuelled the civil justice reform processes that have broken out around the world.

In fact, the Civil Justice Review Committee whose Report was just quoted, had been established by the Chief Justice of the Province of Ontario in the early 1990s. The Committee was mandated to develop an overall strategy for the civil justice system in an effort to provide a speedier, more streamlined and efficient structure that will maximize the utilization of the public resources allocated to the system.

In England, the Master of the Rolls, the Right Honourable Lord Woolfe, in his celebrated work, *Access to Justice*, advocated the simplification of the civil justice system. On the basis of his recommendations, the Old English Supreme Court Rules have been repealed and replaced with effect from 1st April 2000.

The Eastern Caribbean Perspective

The rationale for reform

My decision to initiate the civil reform programme in the Eastern Caribbean was motivated by a desire to promote a fair, efficient and effective delivery of justice by an independent and competent judiciary. In fact, the revision of the Rules of civil procedure is only a part of a wider reform of the justice system generally, which is being undertaken at this juncture of our legal history. My hope is that these reforms will ultimately lead to the computerization of all the processes of the Court, and the automation of the trial process. It is also hoped that they will bring about a rationalized reorganization of the administrative department of the Court.

A study has already been carried out, on the basis of which we have embarked upon the recruitment of highly qualified persons for the Supreme Court office. It is also our intention to build a cadre of highly trained, specialized and motivated persons to man our Registries and Court Offices.

The reform programme has, and will continue to identify legislation for revision on a harmonized basis for all of the territories within the jurisdiction of the Court. It will seek to uphold the ideals of transparency and accountability, and, in that light strengthen the independence and integrity of the judiciary as well as the effectiveness of the Judicial and Legal Services Commission. It will also emphasize continuing judicial education for persons at all levels of the system.

The reform program was introduced as my response to expressions of concern that were voiced by the public about the quality of service which they have been receiving, the delay and the excessive costs of litigation, and their inability to procure legal representation in some cases, which have resulted in a number of certain categories of grievances not being heard. They have also come as my response to complaints by the public about the lack of a transparent

complaints procedure to address incidents of intolerance and rudeness, inefficiency and unethical practices, and their inability at times to get information that they can comprehend about their own litigation.

The process of reform

In the Eastern Caribbean, our search for a more just civil justice system had its genesis in 1996. I threw out the idea at “in house” sessions, and mooted it with the Bar Associations of the various territories that are served by the Court. In September 1998, assisted by the British Government, we procured the consultancy of the Honourable Justice Greenslade, a former Judge of the English High Court.

The Judge consulted members of the bench and bar of the legal profession, as well as the Attorneys General of all of the governments of the OECS, as well as interested members of the public. He then presented a report which rationalized the present need for the reform of the system. He was mandated to present draft rules after he had further consultations with the stakeholders in the process. The Draft Rules, which he presented in 1998, were modified after they were circulated and further discussed with the stakeholders, informally, in Workshop sessions, and by UWIDITE teleconferencing and Meetings of the Eastern Caribbean Supreme Court Rules Revision Committee.

The final draft is in fact the result of a team effort by the Eastern Caribbean Bar Association, and the Bar Associations of each country within the jurisdiction of the Court, the Judicial Education Institute, the Rules Review Committee, an advisory body of legal practitioners, legislative draftspersons, lay persons and members of the judiciary, whom I have appointed. It is also the result of the efforts of the Chief Registrar, her predecessor in office, the legal counsel of the OECS Secretariat, a USAID Consultant, members of the Court Administration Department of Port of Spain, Trinidad, our first two Masters around whom the case management system and the new Rules will revolve, and

a CIDA and Canadian Department of Justice Consultant who was in fact nurtured in our jurisdiction.

The essential characteristics of the reform

The main characteristics of the civil justice system, which will be introduced by our new Rules, mirror, to a great extent, those which are contained in the English Supreme Court Rules. They also reflect the characteristics which the Ontario Review Committee identified in its First Report as the eight (8) desired characteristics of a modern civil justice system. They are as follows:

1. The system must have the confidence of the public, and the public must have a legitimate and meaningful involvement in the way the system works.
2. The system must be properly and adequately funded and resourced.
3. It must focus on “dispute resolution” and make available to the public, on an institutional basis, both the traditional court adjudication processes and the whole panoply of alternative dispute resolution techniques to enable the parties to work out their disputes on their own or with the assistance of a third party.
4. The courts in the civil justice system must be presided over by an impartial and completely independent judiciary, comprised of persons who can bring the skills as case managers and general disputes resolvers to their task, and who are persons of the highest caliber and character.
5. Qualified and trained personnel at all levels must staff the administration of such a system.

6. It must feature a unified management, administrative and budgetary model, which has clearly defined lines, for the administration of the system.
7. The system must be equipped with modern computer and technology to enable the participants to work effectively.
8. It must operate under the model of case-flow management, a time and event managing system which facilitates early resolution of cases, reduces delay and backlogs, and lowers the cost of litigation. Case-flow management shifts the overall management of cases from the bar to the judiciary.

I have already spoken to some of these characteristics within the Eastern Caribbean perspective. Undoubtedly, the most innovative aspects of the Civil Procedure Rules 2000, is the introduction of the concepts of case flow management and mediation in Parts 25, 26 and 27.

Case flow management

Part 25 of the Draft Rules mandates the Court to actively manage cases, *inter alia*, by identifying the issues in a case at an early stage, disposing summarily of issues which do not require full investigation and trial, actively encouraging the parties to settle the case or any part thereof, fixing timetables or otherwise controlling the progress of the case, making appropriate use of technology, and giving directions to ensure that the trial of a case proceeds quickly and efficiently. Part 26 elaborates the powers of the Court in the management of cases. In this regard, it empowers the Court to make orders of its own initiative to apply sanctions in certain circumstances for failure to comply with the Rules, and to rectify procedural errors. Part 27 details the Case Management Procedures. In essence, the Rules introduce a court driven civil justice process in the place of one which is driven by the parties.

Some concerns have been expressed at what, at first blush, appear to be a loss of control over the process. That has been an early experience in every jurisdiction into which the Rules have been introduced. Experience has given proof, however, that this has redounded to the benefit of the system and, ultimately, to that of lawyers and the public.

Let us take the experience of Ottawa as an example. The case flow management system was introduced in that city in 1997. The statistics for cases filed and which reached the stage of mediation, case conference or trial in 1997 show the following (as at March 2000):

Cases filed	3550
Cases completed	3309 or 97%
% of cases settled at mediation	40%
% of cases settled at conference	58%
% of cases determined by trial	2%

- The statistics for cases filed in 1998 show that 85% of these were completed as at March 2000.
- The statistics for cases filed in 1999 show that 60% were completed as at March 2000.

This, it is submitted, reflects the efficiency of the system, and stresses the point that this should be our foremost consideration. My only wish is that it was possible for everyone to hear, firsthand, the expressions of satisfaction by members of the public and persons who were skeptics during the early stages.

Court annexed mediation

The Draft Rules do not at this stage make the use of alternative dispute resolution compulsory in the Eastern Caribbean. This is not because we entertain any doubts as the usefulness of ADR processes for the resolution of civil disputes. Rather, it is merely cognizant of the absence of a culture of the use of court annexed alternative dispute resolution mechanisms in our jurisdiction. The

Rules, however, confer a discretion upon a Master to encourage the parties to resort to mediation in proper cases. We are now about to embark upon the training of persons whose names will be placed on the panel of mediators, the services of whom the Masters will be able to draw.

Vision for the Judiciary

It is fashionable to speak of the independence of the judiciary in abstract terms, which bring into discussion the separation of powers doctrine. From the perspective of our written constitutions, reference is usually made to the provisions, which establish the Judicial and Legal Services Commissions and invest it with the responsibility for the appointment of Judges, provisions which grant security of tenure and security of remuneration.

These are, of course, minimum requirements. They should not lure us into a false sense of security and make us reticent to the guardianship of judicial independence. While, for example, they were meant to secure us from pressures from the other branches of government, it is incumbent upon us to guard against the possible compromise of our independence and integrity from other sources. Our independence and integrity are imperatives for the discharge of the judicial function in a manner that is just.

This is not intended to advocate that our independence is merely to set us apart from the other branches of government. The judiciary is an essential partner within the government. Our independence and integrity is meant to emphasize the right of the citizen to a system of justice which guarantees a fair trial. It also requires the judiciary to afford judicial leadership and to provide impartial, competent, efficient and effective judicial service.

In the Eastern Caribbean, we have taken the following practical steps for the realization of the ideals which there are in this vision:

- The Judicial Education Institute was established in 1997, as one of the vehicles which will assist in the maintenance of a soundly educated judiciary which is dedicated to continuing education.
- Judicial officers at all levels are being encouraged to become knowledgeable and to make use of information technology to improve their research capabilities, knowledge, and efficiency.
- Since “independence and integrity” are kindred notions, we are in the process of formulating a Code of Ethics to guide the conduct of judicial officers.

The Caribbean Court of Justice

The plans which are being made for the institution of the Caribbean Court of Justice are at an advanced stage. The Draft Instruments for the establishment of the Court will confer upon it the final appellate jurisdiction which is now the purview of the Judicial Committee of the Privy Council. The Instruments will also confer upon the Court, an original and exclusive jurisdiction in disputes which arise from the Treaty regimes which establish the CARICOM Single Market and Economy. This is to permit the Court to function as the arbiter in disputes which arise under the Regime.

Undoubtedly, the original jurisdiction which is to be conferred upon the Court is very critical for the deepening of the regional integration process. There was no effective machinery for the resolution of disputes which arose under the

present regime the Treaty of Chaguaramas and its Protocols. It was perhaps not desirable, but it was not detrimental, since that regime did not create the plethora of rights and obligations which are contained in the Treaty regime for the CARICOM Single Market and Economy. In the second place, the possible impact and requirements of globalization dictate that the Caribbean should have an appropriate institution which could adjudicate trade disputes effectively. The European Court of Justice which was established under the Treaty of Rome serves this function for the European Community. The imminence of the CARICOM Single Market and Economy should signal urgency for the establishment of the Caribbean Court of Justice.

It should not be necessary, at this stage, for us to revisit the greatly canvassed debate which seeks to rationalize the support or otherwise for the introduction of the Caribbean Court of Justice. It suffices to state that, in my view, our independence and concomitant sovereignty dictate that we should have, and shape our own legal institutions. No particular pride should be derived from the thought that almost every other country, from the United States to the Gambia, which have attained independence over the years has forged their own legal institutions, while we are loathe to take this step which is necessary to complete our independence.

We are not however oblivious to the concerns of those who oppose the establishment of the Court because they cannot entertain the thought that a Caribbean Court should assume the jurisdiction which is presently exercised by the Privy Council. They cite mistrust for the initiative which is now fuelling the move to establish the Court. They have voiced the opinion that the guardianship of our Constitutions is more secure with the Privy Council than with their own Courts. This conclusion sometimes omits two considerations. One is that there are Caribbean Courts which have been as vigilant and zealous in their guardianship of constitutional rights. The other is that, placed where it is at the top of our hierarchy of courts, the Privy Council has ultimate judicial

policymaking power. It can change the legal principles as it sees fit. The precedents which it sets, on the other hand, bind our Courts. Let me attempt to illustrate this.

Recently, in a decision in the *Neville Smith* case, the Privy Council held that a convicted murderer is entitled to a fair hearing before the Mercy Committee when that Committee is determining whether to exercise the prerogative of mercy on behalf of the applicant. This is a landmark decision, in which that Court overruled its previous decision which was made only recently in the *Reckley* case. The same issue was raised recently in the High Court of St. Lucia before Justice d'Auvergne in the case *Morrel Cox v. The Attorney General*. The judge was bound by *Reckley*. She did not take the point. This was a case in which the applicant alleged that a delay of four years and nine months between the date of sentence and execution amounted to cruel and inhumane treatment and therefore infringed section 5 of the Constitution of St. Lucia. However, applying the principles in *Pratt and Morgan*, the judge commuted the sentence of death.

There is also some opposition to the establishment of the Court on the ground that the independence of the judiciary cannot be guaranteed. Article IV of the Draft Instruments for the establishment of the Court contain provisions which are similar to those which are contained in our constitutions which seek to safeguard the independence of our judiciary. They also contemplate an open selection process for the selection of judges. There is also a Draft Code of Judicial Conduct by which Judges are to be guided.

Concern has now been raised about the financial security of the Court. The opinion has also been voiced that our Courts which are lower in the hierarchy cannot have the benefit of constitutional entrenchment, while our highest Court does not.