

ADDRESS

**BY
THE CHIEF JUSTICE
OF**

THE EASTERN CARIBBEAN SUPREME COURT

THE HON. MR. JUSTICE HUGH RAWLINS

TO MARK

THE OPENING OF THE LAW YEAR 2008/2009



**CASTRIES
SAINT LUCIA**

MONDAY, 15th SEPTEMBER 2008

**PRODUCED BY
THE COURT OF APPEAL OFFICE
CASTRIES, SAINT LUCIA**

Introduction

- Your Excellency, Dame Pearlette Louisy, Governor-General of Saint Lucia and Their Excellencies, the Heads of State of each of the OECS Member States and Territories;;
- Honourable Heads of Government of each of the OECS Member States and Territories;
- The Hon. Attorney-General & Minister of Justice, Senator Dr. Nicholas Frederick, and Hon. Attorneys-General and Ministers of Justice of each of the OECS Member States and Territories;
- Honourable Ministers of Government of Saint Lucia and of each of the OECS Member States and Territories;
- Honourable Judges of the Court of Appeal, Judges of the High Court and Masters ;
- Honourable Leaders of the Opposition of the OECS Member States and Territories;
- The Honourable Speakers of the Houses of Representatives, Presidents of the Senates and Members of Parliament of each of the OECS Member States and Territories;
- Chief/Senior Magistrates and Magistrates of the OECS;
- The Chief Registrar, Deputy Chief Registrar and Registrars of the Eastern Caribbean Supreme Court;
- The President of the OECS Bar Association and Presidents of constituent Bar Associations;

- Learned members of the Inner Bar of each of the OECS Member States and Territories;
- Members of the Utter Bar, learned in the Law, of each of the OECS Member States and Territories;
- Commissioners of Police, Police Officers and Heads of Correctional Facilities of St. Lucia and of each of the OECS Member States and Territories;
- Staff of the various Court Offices in each of the OECS Member States and Territories;
- Distinguished Guests;
- Citizens of the Eastern Caribbean:

Permit me to recognize, in particular, the retired judges of our Court who may be present in any of our courts for this simulcast. Here in Saint Lucia it is our pleasure to have Acting Justice of Appeal (retired) the Honourable Madame Suzie d’Auvergne. Permit me also to take the opportunity to greet and salute Sir Vincent Floissac, QC, former Chief Justice of our Court and Privy Councilor, whose judgments have stood the test of time; retired Justice of Appeal Satrohan Singh; retired Acting Justice of Appeal Ephraim Georges; and retired Justices Neville Smith, Odel Adams, Stanley Moore, Sylvia Bertrand, Monica Joseph, Lyle St. Paul, Henry Moe and Dunbar Cenac. We also greet Sir Clement Arrindell and Sir Allan Louisy, past Judges of our Court who had the distinction of becoming Governor-General of St. Kitts and Nevis and Prime

Minister of Saint Lucia, respectively. Sir Allan is ailing and we pray God's Blessing upon him and wish him well.

It also gives me great pleasure to make special mention of Mr. Tapley Seaton, CVO, QC, a fellow student at school and at University, and the Attorney General of St. Kitts and Nevis when I was the Solicitor General. He was elected President of the OECS Bar Association on Saturday and we wish him a successful and fulfilling term in office.

It is perhaps an understatement to state that it gives me great pleasure to address the distinguished persons who are gathered in all of our Courts throughout the OECS at this the Opening of the Law Year 2008-2009. This is in keeping with the now established tradition that the Opening of the Law Year is done by simulcast to each of the jurisdictions of the Eastern Caribbean Supreme Court (ECSC).

As in years past, from 2000, this simulcast is made possible by virtue of the assistance of Cable and Wireless, the Government Information Services throughout our jurisdictions and the IT Department of the Court. For the first time in the history of live broadcast in the OECS, at least nine Radio Stations along the OECS News-Link are, on the occasion of the new Law Year, broadcasting this Address simultaneously. I have been informed that when contacted, the OECS News-Link stations expressed great interest in being part of this live coverage and decided to carry the event with little hesitation.

Permit me to extend thanks to all of these entities for facilitating this most worthy annual tradition by which we seek to bridge the artificial divide which the sea creates between our islands.

It is my intention that this simulcast would permit us to reflect briefly on the endeavours and significant achievements of the Court over the past year, as well as to make projections as we attempt to chart the future course of the Court. In doing so I shall first express farewells; refer to appointments that were made during the past year, and speak to endeavours which in the main revolve around the reform programmes of the Court which have evolved over the past decade. It is not my intention, however, to use this occasion to provide statistics on the performance of the Court. This information is available in the Courts Annual Report for 2007-2008, which has been published in a timely manner this year on the insistence of Ms. Claudette Valentine, the Court's Information Services Manager.

Farewells

In the months past we have had various activities to bid farewell to the Hon Chief Justice (Ag.) (Retired), Sir Brian Alleyne, SC, KCN. We are still in the process of becoming accustomed to his absence from these benches. We take the opportunity of this combined simulcast to thank him for his sterling work and tireless service to the Courts of this sub-region. This institution has been enriched by his contribution

and we are profoundly grateful for it. We wish Sir Brian and Lady Brenda Alleyne well in their “retirement”, in a manner of speaking, but what we know will really be a shift of their focus to other pursuits and endeavours in the years to come.

The opportunity is also taken to express our profound gratitude and appreciation to the former Chief Justice of our Court, Sir Dennis Byron, Privy Councilor, who has also effectively retired from our Court. Sir Dennis served this Court for over twenty (20) years. It was his vision for the improved efficiency of the Court in the delivery of justice that occasioned him to pioneer the far-reaching programme of reforms which have and will transform the Court. These reform programmes commenced with the reform of the Civil Justice process, which was spear-headed by the promulgation of new Rules of Civil Procedure in 2000.

Complimentary reforms followed: the introduction of technology in the courts’ process; the introduction of court-connected mediation; the introduction of a Court Structures Project. The Criminal Justice Reform Project is subsumed hereunder, by way of a Criminal Division, as well as a Commercial Division of our Court. The Court Structures Project also includes the proposed institution of a Family Court Division of our Court, as well as a Halls of Justice Project. There is also a project aimed at integrating the Magistracy and the Supreme Court.

These projects have set the groundwork which successive Chief Justices must consolidate and seek to build upon. Sir Dennis is at the moment the President of the United Nations Criminal Tribunal for Rwanda, which sits in Arusha, Tanzania. We wish him well as he continues his work as an adjudicator on the international stage. It is significant, in my view, that this international recognition has been conferred upon a member of our court.

Another jurist of our Court, retired Justice of Appeal, the Honourable Justice Albert Redhead, was recently invited to sit on a similar UN Criminal Tribunal which is being instituted in the Gambia. He would have been on his way there, but for the fact that he decided to fulfill a prior commitment to assist us in the Virgin Islands while the Honourable Justice Indra Hariprashad-Charles acts on the Court of Appeal. It is all reflective of the confidence which is reposed in jurists of this Court internationally.

Earlier this year we joined Mrs. Cynthia Williams, the wife of retired Justice Lloyd Williams, QC, and other members of their family as they said a sad farewell to him and celebrated his life at a service conducted in St. Kitts. Justice Williams served our Court in the northern islands for many years up to the early 1990's. After his retirement, he served for some years on the United Nations Criminal

Tribunal for Rwanda, before failing health caused him to give way to Sir Dennis Byron on the Tribunal.

Appointments

As we say farewell, we are reminded that the Court is always in the process of continuity and renewal. As we bade farewell to Justices Albert Redhead, Monica Joseph and Dr. Joseph Halliday as members of the Judicial and Legal Services Commission, we welcomed the Honourable Justice Michael Gordon, retired Justice of Appeal, the Honourable Justice Frederick Bruce-Lyle, High Court Judge and Mr. Frank Myers, Chairman of the Saint Lucia Public Service Commission, to replace them. We place on record our appreciation for the services which the retiring members rendered to the Court as members of the Commission.

In August 2007, we welcomed the Honourable Justice Francis Cumberbatch as a High Court Judge. He was assigned to Grenada. Justice Cumberbatch brings a wealth of experience from the public and private bar. I am certain that he will continue, as he has in the past year, to make a substantial contribution to the bench and the development of our jurisprudence.

There were periods during the past year when the Court drew upon the experience of retired judges. It is well that we are able to do so

since they are the Court's institutional memory, which we can ill afford to put out to pasture in the interest of continuity. They provide a strong bridge between the past and the future. We thank retired Justices of Appeal Albert Redhead and Albert Matthew for their outstanding contributions in the High Court over the past year. We also thank the Honourable Dancia Penn, QC, Honourable Errol Thomas, Honourable Ola Mae Edwards, Messrs. Tyrone Chong, QC, Dane Hamilton, QC, and John Carrington. They assisted us at the appellate level during the course of the year. Their work ensured that the integrity of our system was not impaired and that the delivery of justice was facilitated in a timely manner, while the Court of Appeal is in the process of being reconstituted.

There has been a steady loss of judges at that level for some time without the making of the full complement of appointments to the Court of Appeal. We welcome the Honourable Justice Hariprashad-Charles to the Court of Appeal in an acting capacity during the next Law Term and wish her a fulfilling stint.

I also extend special thanks to Mr. Kelvin John, a legal practitioner in Antigua and Barbuda, for having, at very short notice, accepted an acting assignment as a Master of the Court in Antigua and in St. Vincent and the Grenadines at a time of present urgent need.

Civil Justice Reform

The Eastern Caribbean Supreme Court Civil Procedure Rules 2000 were intended to enhance the efficiency of the civil justice process. While the statistics provided in Annual Reports of the Court show that there have been steady improvements in the system, we are ever sensitive to the need for further improvements to provide for the delivery of justice in a prompt and efficient manner, in keeping with our Mission Statement.

One of our main concerns at this juncture is improvement in case-flow management. This revolves around the work of Registrars and Court Administrators and the critical imperative that the Court must push cases through the system in a timely manner. Cognizant of this, the Court, through the Judicial Education Institute, conducted joint sessions between Registrars and Court Administrators at the Annual Judicial and Registrars' Conference in St. Kitts and Nevis in July this year. We intend to increase our focus on this area of the system in the coming year.

Rules Revision

Since the Rules came into force eight years ago, the experience gained from their use in practice shows that there is a present need for the revision of some aspects of these Rules and for the making of Practice Directions, Protocols and Practice Notes. With this in mind, and

accepting a suggestion by Justice of Appeal Michael Gordon, QC, the proposed amendments to the Rules were the subject of extensive discussion and review during the Annual Judicial Conference in August 2007, at which the OECS Bar Association also presented its suggestions. The Rules Review Committee considered the Report from that Meeting and the process of drafting the proposed amendments, practice directions and protocols has now commenced with the gratuitous assistance of David and Louise di Mambro.

Mr. di Mambro is a legal practitioner in England and a member of the Civil Procedure Rules Committee of England and Wales. His wife is presently Deputy Head of the Judicial Office in the House of Lords and Acting Registrar of the United Kingdom Supreme Court. They are also Editors of *The Green Book*, a practitioners' text on Civil Court practice in England. They recently edited a substantial civil practice text, *The Caribbean Civil Court Practice*. It was officially launched here on Friday 12th September 2008 by Mr. di Mambro and Ms. Nicole Sylvester, a member of the Editorial Board, at the 5th Regional Law Fair hosted by the OECS Bar Association.

The first comprehensive revision of rules is now imminent. For this I express grateful thanks and appreciation to the di Mambros for their invaluable assistance to the Court, as well as to Justice of Appeal, Denys Barrow, SC, Justice Kenneth Benjamin, former Acting High Court Judge Murray Shanks, Ms. Nicole Sylvester and the OECS Bar

Association and constituent Bars, and Mrs. Kimberly Phulgence, for their invaluable contribution to the Rules Revision process.

Mediation

Our court-connected mediation programme continues to provide a credible alternative to our traditional adversarial approach to dispute resolution. It would be remiss of me not to record our gratitude to Mr. Francis Compton, our Regional Mediation Co-ordinator, for his unswerving commitment to the successful institution and continuity of this aspect of the reform programme. During the new Law Year, he will institute a training programme for mediators in the specialized area of family mediation. We have recognized for some time that this is an area which could benefit from mediation services.

My observation is that the Court's mediation services are under-utilized.¹ We encourage our Courts proactively to recommend mediation to litigants. We also encourage legal practitioners and the public to make better use of these services, which provide a flexible, relatively quick and cost effective means for resolving disputes.

Technology in the Court's process

¹ Referrals have shown a marked decline since 2004. In Saint Lucia, for example, there were 206 referrals in 2002/2003, and 121 in 2004. Despite a settlement rate of over 60%, the number of referrals has dwindled to less than 100 per year since then: see Eastern Caribbean Supreme Court Annual Report 2008/2009.

Hardware and software maintenance, and upgrades, continue to play a pivotal role in the operations of the Court's Information Technology Department. In this age of all pervasive technology, our systems will only be as efficient as the technologies employed in its service. My main vision for our Courts is to improve the efficiency of all of our processes by the use of technology in a manner that eventually leads to the total displacement of the use of paper records in our Offices. This will permit better security and easier accessibility to all records of births, deaths and marriages; civil and criminal records; records of probate, land titles, company related activities, intellectual property records and other Court records and Court Orders. It is my view that this must be accomplished if we are to keep on terms with the methods by which business is conducted in changing times.

At the turn of the century the Court embarked upon the use of the Judicial Enforcement Management Systems (JEMS) programme as the main software for facilitating case-flow management and generating statistical information for use in judicial administration decision making. Although there are some issues with the programme, it has provided a reliable service. Our Courts have become quite dependant on JEMS to support their case-flow and case management systems. Efforts continue to ensure that the JEMS Servers within Member States and Territories are upgraded to the latest version of the software. This year, the upgrade was to JEMS 5.0 -December 2007 edition.

In order to enhance technological connection between the Head-office of the Court and the Magistrates and Family Courts throughout the OECS, the Court has commenced the establishment of a Virtual Private Network (VPN) in the entire sub-region. This project is being implemented with assistance from the Canadian International Development Agency (CIDA), primarily in the form of procurement of the required equipment and facilitation of travel for the technical support necessary for implementation. To date the following locations have been connected to the JEMS Servers in the respective Member States: (1) the Saint Lucia Criminal Division, (2) the St. Vincent and the Grenadines Magistrates Court, (3) the St. Vincent and the Grenadines Family Court, and (4) the Commonwealth of Dominica (Portsmouth) Magistrates Court.

Connections between other off-site Court offices to locations where the main JEMS Servers are hosted will continue during the new Law Year. The implementation of this VPN connectivity will have a major impact on the operations of the Court. This will:

- (1) Allow the ECSC direct/real-time access to the JEMS Databases located at the High Courts within all Member States.
- (2) Allow the ECSC Statistician and other officers to run JEMS reports remotely and in real-time.
- (3) Facilitate IT Staff to undertake remote management of servers and computers; the remote upgrading of JEMS applications on

the Servers located at the various High Court Offices, and remote support to users thereby reducing the frequency of travel and improving response times to problems.

(4) Allow users in the off-site Court Offices to access JEMS seamlessly.

(5) Facilitate the use of IP telephone connectivity to key court personnel in the other Member States thereby reducing telecommunications costs.

Other Court-related Technologies

I am pleased to report that an **Electronic-Filing Pilot Project** will shortly commence with a group of Attorneys in Saint Lucia. Additionally, the **Interactive Voice Response Technology**, which allows users to track the progress of cases of interest to them, will also be introduced in the Magistrates' Court in Dominica. The commencement of the use of the Jury Manager Software is also underway. This will be facilitated by amendments to the Criminal Codes of Saint Lucia and Dominica. This software will provide increased efficiency in Jury Management. The intention is to extend this facility to the courts of other Member States.

Video Conferencing Technology: The ECSC recently facilitated the Family Court in Saint Lucia with the establishment of a Video Link Facility for Child Victims and Witnesses. The project was financed by

the British Government through the Resident British High Commissioner. The objective of the Facility is to improve the protection of child victims and witnesses by the installation of a video link for the Family Court. This facility should lend itself to the successful prosecution of cases of domestic violence, child abuse and unlawful carnal knowledge. The project entailed the setting up of Cameras, TV Monitors, and Microphones at two separate locations: one in the Courtroom, and the other at an off-site location.

This is a pilot project. The Court is exploring funding to expand the use of this technology at Correctional Facilities and appropriate viable locations throughout the OECS. The Court also plans to explore the use of similar technology to facilitate more efficient interaction between the Headquarters and the Member States.

Information Services

The Court has taken steps to ensure more ready access to Court information and the decisions of the Court. The Court's quarterly Newsletter, Annual Report and webpage all provide a means by which we may keep abreast of developments in our system.

In the past year, there have been notable improvements to these services. The Court of Appeal digests are now regularly uploaded to the webpage. These digests provide, in a succinct format, an

invaluable record of oral decisions of the Court of Appeal delivered at sittings and monthly Chamber Hearings. Since November 2007, all Court of Appeal judgments are head-noted prior to delivery in order to assist readers to readily determine the issues discussed in the cases and the reasons for the decisions.

There have been some frustrations, particularly with respect to having a more user-friendly search engine on the court's website. It is anticipated that the Court's new website, which will be more user friendly, will address this concern.

The Criminal Division

Significant steps were taken recently to facilitate full implementation of the Criminal Division project, which is being piloted in Saint Lucia. The Legislature recently passed the necessary legislation. The rules to support this are in draft. A team from the Court will meet with the Honourable Attorney General this afternoon with a view to finalizing the Rules. The Court owes a debt of gratitude to Justice Albert Redhead, the first Judge of the Division, and to the Hon. Justice Kenneth Benjamin, the present judge of the Division and Chairman of the Criminal Division Implementation Committee. Justice Benjamin, Senior Magistrate, Ms. Floreta Nicholas, Mrs. Victoria Charles, the Director of Public Prosecutions, Mrs. Esther Brathwaite, Permanent Secretary in the Ministry of Justice, Mr. Francis Letang,

Ms. Kit-Juelle Frank-Amoroso and other members of the Committee are to be commended for their consistent endeavours towards the implementation of the Criminal Division in St. Lucia.

The Commercial Division

The establishment of the Commercial Division of the High Court, which will be headquartered in the Virgin Islands, is at a very advanced stage. Retired Justice of Appeal, the Honourable Michael Gordon, QC, was instrumental in drafting the Commercial Court Rules for the establishment of the Division. He has also chaired the Committee which drew up the short-list of applicants who are to be interviewed for appointment to the office of Commercial Court Judge and will in a few days also chair the Committee which will interview those persons. It is anticipated that the Commercial Division will be fully operational from early 2009. Although the Commercial Division will be located in the Virgin Islands, it will be the Court which adjudicates on commercial cases throughout the OECS.

The integration of the Magistracy

The OECS Authority of the Heads of Government, at their 49th meeting held on 24th May 24 2008 in Saint Lucia, approved the draft report and the proposed bill and draft agreement for the integration and regionalization of the magistracy. The agreement seeks

administratively to merge the Magistrates' Courts of the OECS with the higher judiciary under the supervision of the Chief Justice. The Honourable Heads of Government requested the fine-tuning of the proposed bill.

Halls of Justice

Last year, the Court expressed an intention to propose the establishment of a "Hall of Justice" complex in each member state. A justification report was presented to the OECS Authority of the Heads of Government at their meeting in May 2008. The Honourable Heads have agreed in principle with the proposed project and work on the implementation is ongoing. The funding for the project is now under discussion with the relevant stakeholders in all of the Member States and with potential funding sources. Special commendation is extended to Honourable Justice Anthony Ross QC, and Mr. Francis Letang, Deputy Court Administrator for their endeavours towards making this project a reality.

Judicial Education

The Judicial Education Institute (JEI) of our Court continues to make a significant contribution to the delivery of court programmes. The Institute provides continuing education for the various branches of the Court. As we seek to establish and maintain ever higher

standards of performance for Judges, Masters, Magistrates, Registrars and administrative and professional support staff, it is axiomatic that judicial education must continue to be given a particular priority and prominence in our endeavours.

Over the past year, the Institute presented a range of programmes, which included orientation programmes for Bailiffs, Court Administrators and newly appointed Judicial Clerks. The JEI also provided customer service training for judicial support staff of the Magistrates' Courts in a number of Member States, as well as Resource Based Management training for Judges, Magistrates and officers of the Court's Headquarters in Saint Lucia. Similar training opportunities are to be extended to Court personnel in other member states during the new law year.

The work of the Institute in this Law Year will focus on customer service, the training of Bailiffs and Crown and Police prosecutors, Justices of the Peace, as well as Registrars and Court Administrators.

I laud the Institute for its ongoing contribution to judicial education, which underpins the Court's Reform programme. I pay particular tribute to its Chairperson, Justice Ianthea Leigertwood-Octave; its indefatigable Project Co-ordinator, Ms. Alana Simmons, Chief Registrar, Mrs. Kimberly Cenac-Phulgence and Deputy Chief Registrar, Ms. Agnes Actie; Court Administrator, Mr. Greg Girard

and Deputy Court Administrator, Mr. Francis Letang, for their dedication to the planning of the work of the Institute.

Family Law Reform

The initiative for consolidating and updating our family laws and also for unifying the jurisdiction of the Court in family matters in a new Family Division of the Court is ongoing. Towards this end, the drafting division of the OECS Secretariat has now presented Model Legislation on a number of Family Law areas, a draft Family Court Bill and Family Division Rules. The Court will continue its consultations and work that will lead to the realization of this initiative.

Professionalism and Professional Ethics

The reason for raising this topic today is to express a present concern with issues that seem to multiply with the many complaints from the public reaching me, which raise serious ethical and professional questions. It is not my intention to rush to judgment as these are matters which the system must deal with by due process. It would be remiss of me, however, to close this Opening Address without reminding all of us in this honourable profession of the need to be guided by honesty, integrity and fairness in all of our undertakings. Knowledge of the law puts a powerful tool at our disposal. I am

constantly reminded of the words of my fore-bearers that while it is a good thing to have a lion's strength, it is tyrannous to use it as such.

The Court recognizes that it must move to assist the process of discipline, which appears to be dogged by complex or non-existing procedures. We are in the process of engaging the services of a person to draft the Rules which are required to support the legislation for disciplining members of the profession. The Court cannot address the problem alone. The Court cannot be cast in the role of complainant, investigator, prosecutor and adjudicator.

I invite the Bar Associations in the Member States and Territories to be cognizant of the critical role they need to play in ensuring that the ethical standards of the legal profession are upheld. The Bar Associations are urged to embark on the relevant continuing legal education programmes and to institute systems for ensuring that ethical standards are known and adhered to.

Conclusion

As we open another Law Year, I wish to express my grateful thanks to my colleagues in the judiciary, the Registrars and Deputy Registrars, the professional, technical, administrative, and support staff of the Court and the Police and Prison services. Last, but by no means least, we greatly appreciate the support of the members of the

Bar and the Bar Associations in fulfilling our mission. I sincerely thank also those who continue to provide support for our work: particularly the Authority of the Heads of Government of the OECS, Ministers of Justice and Attorneys-General of the OECS and the various aid agencies, particularly the Canadian International Development Agency (CIDA).

This morning we were recipients of a very inspiring service at the Holy Trinity Church in Castries. It was a blessing and a fitting way to begin the Law Year. Archdeacon Randolph Evelyn admonished us to uphold the highest standards of judicial and legal honesty and integrity. Those of us who know him are aware that Archdeacon Evelyn does not mince his words. I wish that he were here to bring that message to the region. We were also given a treat by Professor Dr. Vaughn Lewis who played the organ at the service. It brought the calm and atmosphere which can only be provided by an organ when it is well played. It is my hope that the service has set the tone for our Law Year 2008-2009.

May God bless us with a productive and fulfilling Law Year.

Hugh A. Rawlins

Chief Justice

15th September 2008