

ADDRESS BY THE CHIEF JUSTICE OF THE
EASTERN CARIBBEAN SUPREME COURT



THE HON. MR. JUSTICE HUGH A. RAWLINS

TO MARK
THE OPENING OF THE
LAW YEAR 2010-2011



ST. KITTS & NEVIS
MONDAY, 13th SEPTEMBER 2010

PRODUCED BY
THE COURT OF APPEAL OFFICE
CASTRIES
SAINT LUCIA

Introduction

- Honourable Heads of State of each of the OECS Member States and Territories; It was an honour having His Excellency, Sir Cuthbert Sebastian share in our Church Service at the Basseterre Wesley Methodist Church this morning. He left after the service because he travels this morning;
- Dr. the Honourable Denzil Llewellyn Douglas, B.Sc, MB, BS, Chairman of the OECS Authority and Prime Minister of St. Kitts and Nevis and Honourable Heads of Government of each of the OECS Member States and Territories;
- Honourable Patrice Nisbett, Attorney-General and Minister of Legal Affairs of Saint Kitts & Nevis, and Hon. Attorneys-General and Ministers of Justice & Legal Affairs of each of the OECS Member States and Territories;
- Honourable Ministers of Government of Saint Kitts & Nevis and of each of the OECS Member States and Territories;
- His Honour, the Deputy Governor General, Mr. Eustace John and Mrs. Dahlia John;
- Honourable Judges of the Court of Appeal, Judges of the High Court and Masters of the Eastern Caribbean Supreme Court;
- The Director General of the OECS and Staff of the Secretariat;
- Retired Judges of the Eastern Caribbean Supreme Court;
- Honourable Leaders of the Opposition of the OECS Member States and Territories;

- 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, the Acting Chief Registrar, the Acting Deputy Chief Registrar and the Registrars, as well as Deputy and Assistant Registrars of the Eastern Caribbean Supreme Court;
- The Court Administrator, and Deputy Court Administrator/Project Co-ordinator;
- Mr. Tapley Seaton, CVO, QC, the President of the OECS Bar Association, Members of the Council of the Association;
- Mr. Charles Wilkin, CMG, QC, the President of the St. Kitts and Nevis Bar Association, and Presidents and Members of the Councils of the constituent Bar Associations in the OECS;
- 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 Saint Kitts & Nevis 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:

It is an honour to address you from the Federation of Saint Kitts and Nevis on the occasion of another opening of the law year. How time flies. It was in September 2002 that I attended the opening of the Law Year in this country. It was held in Nevis then. Here we are again by rotation. I savour this occasion in the knowledge that I would not bring this Address when it is the turn of my home Territory again.

This address, which is being delivered at the High Court, St. Kitts, is again carried live by way of video simulcast throughout the other eight Member States and Territories of this Court. This is made possible through the technical expertise of CABLE & WIRELESS/LIME with their usual hallmark efficiency, and by the Staff of the IT Department of the Court's Headquarters led by Mr. Gregory Girard and Mr. Mark Ernest.

This address is also carried by live television and radio by way of the local station, ZIZ. This station is working in conjunction with our Information Services Manager, Ms. Claudette Valentine and the representatives of the various Government Information Services in each Member State and Territory.

It is not necessary for me to go into the departmental reports of the Court in any detail. That information is available on the Court's website at www.eccourts.org, as well as in the Annual Report for the year 2009 to 2010, thanks to the indefatigable efforts of the Court's Librarian and Information Services Manager, Ms Claudette Valentine.

I understand that there is an opinion that this occasion should be dedicated to an esoteric or philosophical presentation on some matter affecting the Court. The wish, it seems, is that the presentation should focus on the well worn subjects: the Rule of Law or the Independence of the judiciary. Alternatively, the wish is that an address should revolve around the discussion of a recent topical case: the Judge Levers case, perhaps,

which culminated in a seminal opinion by the Privy Council recently. In my view, that suggestion fits quite neatly into the era prior to telecast or broadcast. This latter development dictates that an opening address should primarily inform all in our societies, who must of necessity have an interest in our justice system, of our endeavours over the past year and the plans and projections of the Court as it carries out the mandate guided by our Mission Statement and concomitant strategic plan.

Our MISSION is to serve Member States of the Court by providing access to a system of justice that is accountable and independent, and administered by officers in a prompt, fair, efficient and effective manner. Our every reform endeavour over the past decade is guided by this mission. Our present challenge is to meet this mission to provide an efficient system of justice in the face of the unprecedented increases in both criminal and civil cases that are being filed in the courts, given that our human and other resources have not benefited from commensurate increases. The result is that our system is everywhere under severe stresses and strains.

For some years now the courts have embraced computer technology as part of its modernization program to meet our mission in these changing times. For this purpose, we introduced JEMS (Judicial Enforcement Management Systems) to underpin our case flow and case management processes.

JEMS: Past, Present and Future

This electronic case management system continues to have a positive impact on the operations of High Court Offices throughout the Sub-region. This past year, several High Court Offices and departments demonstrated a keen interest in more efficiently using the basic JEMS software or one of its advanced modules. The IT department assisted and we saw an improvement in the efficiency of case flow management and reporting operations.

Network connectivity has now been established from the Court's Headquarters to the JEMS Servers located in all Member States and Territories. Although the level of IT functions that can be effectively undertaken from the Headquarters vary between Members States, the ability of the IT Department to provide remote support, data access for analysis and backups in the event of a disaster, have been greatly enhanced.

Unfortunately, our attempts to introduce and maintain the operation of the JEMS software in the Magistrates Court Offices in the sub-region have met limited success. The IT Department has undertaken to work with the staff of the Magistrates Court Offices to remedy this.

Generally, the Department is seeking to upgrade JEMS to version 6.0 by the end of 2010 and to introduce the web version of JEMS, Internet JEMS, early in 2011. This should permit Judicial Officers to better manage cases electronically, and would lessen the need to handle physical case files.

JEMS training for Judges, Masters, Magistrates and court office staff will be ongoing. The Court will conduct training for court office staff in October this year. This training will focus on Criminal Case management in the advent of the roll-out of the Criminal Division to other Member States and Territories.

One of our greatest concerns, however, is the frequency with which clerks are transferred from the court offices especially after they are trained in the use of JEMS. This has militated against the continuity of the benefits which this system offers. The need to continuously train persons in the use of JEMS poses a serious challenge to court offices and the IT Department. We wish to work with the various public service departments to facilitate a smoother transition in the event that it is absolutely necessary for staff to be transferred in the future.

In the end, however, it is my view that further adaptation of modern information technology to improve the efficiency of our Courts' processes must be the main focal point of our future endeavours given the technology's all pervasiveness and rapid development. We have therefore embarked on other IT initiatives.

Video-Conferencing Technology

Recently, the IT Department provided technical assistance to the High Court, Attorneys General Chambers and Magistrates Court to host court sessions by way of the Video Conferencing Facility located at the First District Court office in Saint Lucia. The Department also provided training to key staff members in the use and management of the facility.

The Court has now installed Video Conferencing equipment at its own Headquarters in Saint Lucia. This facility will be complemented by installations that are being undertaken by the Caribbean Court of Justice (CCJ) at High Courts of all the independent Member States of the OECS. The CCJ project is expected to be completed by the end of this year. On completion, the Court of Appeal will conduct some sittings by way of this facility. The facility will also be used to take evidence from similar facilities round the world, as well as for bail and other hearings from prisons.

Electronic Jury Manager

Significant changes are underway to enable the Court to use computer programs and electronic databases in Jury Management. The pilot project is underway in the Criminal Division in Saint Lucia. Rule 12.1 of the Criminal Procedure Rules 2008 of Saint Lucia confers power upon the Criminal Division manager to carry out the duties ascribed to the Registrar in the Criminal Code to manage the jury. The Rules also provide for the use of a computer program and electronic database, instead of the Juror's Book for the

selection, summoning and empanelling of jurors. The IT Department will initiate discussions with the software vendor PCSS to develop mechanisms for the use of their Jury Manager software to manage the entire Jury process at the Criminal Division.

E-Filing and Interactive Voice Response (IVR) Technologies

During the past law year, new technical issues arose with the implementation of E-Filing and Interactive Voice Response (IVR) technologies. Whereas the E-Filing solution will eventually be established by the Court, the implementation of the Interactive Voice Response is being revisited to iron out issues with its user-friendliness. The Court is exploring the movement towards an alternative technology, Interactive Voice Response.

The proposed amendments to CPR 2000 contain provisions to facilitate the e-filing of documents. However, all of our IT developments must be backed by comprehensive legislation. In this, I am minded to note the suggestion that the Governments of the region should conduct a comprehensive audit of cyber issues requiring legislative intervention and facilitate the Courts and its users with the legislation for these areas.

Court-Recording Technology

In 2003 we introduced Audio (Analog) recorders in our courts. It signified the commencement of automation of the recording of court proceedings. These systems have now become obsolete and are being replaced by newer, more efficient and cost effective digital audio recording technology in our courtrooms. To date, the High Court in St. Vincent and the Grenadines has implemented the use of Digital Court Recorders. The Ministry of Justice in Saint Lucia also acquired one unit. It is now in use in the Criminal Division Court there. Eventually, we must move to real-time transcription and end the tedious and time-consuming use of the Notebook by judicial officers.

Reports on other Projects and Matters

The Halls of Justice Project

The Halls of Justice project progressed considerably over the last law year. You will recall that the Court is endeavouring to have state-of-the-art courts constructed in each country within our jurisdiction. The protocols for coordinating the feasibility study were finalized and the study commenced. We established national working committees in each country. The project implementation unit was established. The Project Director is Mr. Kevin Magill, a qualified architect from Canada. He commenced duties in April 2010.

The feasibility study phase of the project is financed by grant funds from the Caribbean Development Bank. The Court is at an advanced stage of engaging the consultants who will conduct the feasibility studies and prepare the preliminary designs and costs for the construction of the Halls of Justice.

Messrs. Magill and Letang are working assiduously to ensure that the project progresses along the scheduled timelines. They visited each country, met with the National Working Committees and reviewed the identified or proposed sites. It is anticipated that during the law year 2010-2011 the project will move into the three remaining phases: the final design and costing phase; the tendering phase, and, finally, the construction phase.

The exact modalities of the construction phase are still to be developed. However, the Court continues to work with members of the donor community and lending institutions to secure the necessary funding.

The integration of the Magistracy

When the Heads of Government of the Eastern Caribbean States (OECS) met in Saint Lucia in June 2010, they accepted, in principle, the draft agreement between the States for the first step towards integrating the magistracy into the judiciary. This process has been diligently pursued over a number of years with great care to ensure that each step is constitutionally and legally sound, with the ultimate aim to provide the Magistrates of the OECS with safeguards to their independence and to place them within a court-controlled administrative framework.

The governments of the OECS are now taking steps towards the signing of the agreement as a pre-cursor to its ratification.

For the purpose of setting up the administrative framework, the Court has and is collaborating with CARICAD and the Ministries of Justice, Personnel and Establishment Divisions in all of the Member States of the OECS.

The Criminal Division Roll Out

The Criminal Division of the Court in Saint Lucia has emerged from pilot mode into full fledged continual sitting. Save for some personnel issues, cases are being satisfactorily processed under the new **Criminal Procedure Rules**.

During the year 2010/2011 the court will continue the process of reviewing and evaluating the criminal division. For this purpose, Justice Kenneth Benjamin and support personnel will work closely with all stakeholders to ensure the continued work of the division, as well as the full implementation of the Criminal Division in Dominica and Grenada. It is expected that the experience gained in the pilot project in Saint Lucia will inform a smooth implementation in these two member States.

In each of the other Member States, the Court has established a working committee. It includes persons from the offices of the Attorneys General and representatives from the local Bar Associations. They have started the process of reviewing the rules and making recommendations to have the rules enacted.

The Commercial Division

The Commercial Division of the Court is now fully operational in a new dedicated facility in the Virgin Islands. The Commercial Division Rules, Practice Directions and Guides were enacted during the past Law Year. They were prepared by the Commercial Court Judge, Justice Edward Bannister and a Committee of the Court headed by Retired Justice of Appeal Michael Gordon. They were assisted by Mr. Ray Harris, the Law Revision Commissioner of the Virgin Islands.

Civil Procedure Rules Amendments

You were informed in last year's address that the **Civil Procedure Rules 2000** were under review for the purpose of amendment. This initiative commenced some 3 years ago on recommendations from the judiciary and suggestions from the OECS and constituent Bar Associations. The work towards the revision of the Rules continued throughout the course of the law year under the guidance of a Rules Review Committee of the Court.

The opportunity is here taken to thank, in particular, Mr. David di Mambro, a member of the English Civil Law Revision Committee and legal practitioner in the United Kingdom, and his wife, Mrs. Louise di Mambro, the Registrar of the English Supreme Court, for their assistance throughout this revision exercise. Mr. di Mambro is the Editor-in-Chief of *The Green Book*, and *The Caribbean Civil Court Practice*. The 2nd edition of the latter, which will incorporate the amendments to CPR 2000, as well as the new

detailed Practice Directions to the Rules, will go to Press imminently. We intend to promulgate the amendments and Practice Directions in October 2010 in order to facilitate this. The opportunity is also taken to extend appreciation to the OECS Bar Association and to the constituent bar associations and the individual legal practitioners who greatly assisted the review process throughout the amendment exercise.

I further extend appreciation to the Members of the Review Committee, Justices of Appeal Ola Mae Edwards, Janice George-Creque and Davidson Baptiste; former Justice of Appeal, Michael Gordon; Justice Kenneth Benjamin; the Chief Registrar, Mrs. Kimberly Cenac-Phulgence; the Court Administrator, Mr. Gregory Girard; the Deputy Chief Registrar, Ms. Agnes Actie; the Deputy Court Administrator, Mr. Francis Letang; and the Executive Legal Assistant to the Chief Justice, Mrs. Michelle John-Theobalds, and Mrs. Georgis Taylor-Alexander.

Increase in the number of Masters

The office of Master was introduced in the Eastern Caribbean Supreme Court in the year 2000 to support the new **Civil Procedure Rules (CPR) 2000**. At that time, two Masters were appointed. The introduction of this office facilitated the reduction of the backlog and more speedy resolution of civil cases. It became necessary to review the number of positions of Master with a view to facilitating better utilization of the judicial resources.

Our concern was that High Court Judges still spend too much time dealing with Chamber applications. This reduces their available time for trials and to prepare and deliver judgments. It appears that if there are 3 instead of 2 Masters to cover the 9 Member States and Territories of the Court, it should be more convenient for Judges to have their schedules made to facilitate a greater number of trials and to write judgments in a more timely manner.

Professionalization of The Bar

Last year I spoke to this issue at some length. Among other things, I encouraged all of our countries to enact Legal Profession Acts. I also informed that we were in the process of finalizing the Disciplinary Proceedings Rules which will support the Legal Profession Acts of Saint Lucia and other countries by revised versions. During the past year Mrs. Georgis Taylor-Alexander assisted us to conduct consultations with the members of the Saint Lucia Bar Association and other stakeholders on Draft Rules, which were prior circulated for comments. Her recommendations have assisted in the preparation of a revised draft of the Rules, which will be promulgated shortly.

The Conferment of "Silk"

The Court recognized the need to regularize the procedure and requirements for the conferment of the rank of Queen's Counsel/Senior Counsel in an effort to bring some degree of standardization and certainty to the process. The initiative was supported by the Heads of Government of the OECS, as well as from the OECS and constituent Bars across the region. The draft protocol was subjected to very helpful deliberations at a consultation in Saint Lucia in June 2010, which was attended by Judges, Attorneys General and legal practitioners from across the sub-region. The final formulation of the protocol was adopted with its guidelines and forms. The Heads of OECS Governments at their 51st Authority Meeting in Saint Lucia approved them. We shall now establish the date by which these procedures will come into effect and commence the processing of applications in the manner agreed at the consultation.

Very briefly, the appointment of Queen's and Senior Counsel will be done biennially. Applications will be considered by a selection committee of five members, who will be appointed by the Chief Justice. The committee will recommend persons for

appointment. This will be passed to the Chief Justice who, after consultation with the judges of the Court of Appeal, will refer the selected applicants to the appropriate Head of State of the Member State or Territory recommending appointment.

Legal Aid

Legal Aid has occupied our thoughts, particularly upon the insistence of Ms. Josie Laurent, who is involved in this process in Antigua and Barbuda. A Legal Aid Clinic was established in St. Kitts and Nevis, under Ms. Donna Harris. Chief Justices before me encouraged Bar Associations to assist with the establishment of Legal Aid Clinics for the benefit of those in our societies who need that service. I hereby record the need to consider the institution of these clinics in our communities.

Appointments to the Court

We welcomed the appointment of the Honourable Justice Davidson Baptiste to the Court of Appeal on 1st May 2010. We wish him well as he continues to serve the Court. We also here record sincere appreciation for the assistance which past Judges and Legal Practitioners afforded as judges and masters during the past year. In this regard we recognize the services of Retired Justices of Appeal Michael Gordon, QC, and Albert Redhead, as well as Retired Justice Lyle St. Paul, Ephraim Georges, Henry Moe, Suzie d'Auvergne and Monica Joseph. We also thank Messrs. Tyrone Chong, QC, Mr. Kenneth Allen, QC, Mr. Paul Webster, QC, who served as Acting Justices of Appeal; Mr. Peter Foster, who served as an Acting High Court Judge; Retired Master Ralph Doyle of the High Court of Trinidad and Tobago, who served as an Acting High Court Judge and Acting Master, and Mr. Kelvin John and Ms. Veronica Barnard, who served as Acting Masters. We greatly appreciate it, that some of these persons served at very short notices and at personal inconvenience.

Congratulations

The opportunity is taken to heartily congratulate the Honourable Justice Francis Cumberbatch on his appointment as Chancellor of the Anglican Diocese of the Windward Islands. Justice Cumberbatch replaces Justice Lyle St. Paul who served in that capacity until his recent resignation. It is an honour that another judge of the ECSC has been asked to fill this office and I am confident that Justice Cumberbatch will serve the Diocese faithfully.

Conclusion

As we embark on a new law year, it would be remiss of me to overlook those persons who have contributed to the initiatives and endeavours of the justice system in the OECS over the past year. I hereby extend my sincere appreciation to our judges; Masters; Magistrates; Registrars; the Police and Prison services; and the staff of the Court's Headquarters, the High Courts and Magistrates Courts of the Member States and Territories.

The Authority of the Heads of Government of the OECS continued to support the initiatives and endeavours of the Court in these stringent times. The recent improvement in our circumstances will now permit us to fully pursue our judicial education programs during the coming year.

May I express appreciation to Mrs. Claudette Jenkins and Ms. Janine Harris, as well as to the Staff of the High Court in St. Kitts and Nevis, who, working with the Staff of the Court's Head Office, organized this special sitting for today's ceremonial opening of the Law Year. Our appreciation is also extended to Mr. Austin Williams, the Commissioner of Police of St. Kitts and Nevis and the Officers of the Police Force for their assistance in all aspects of the Opening of this Law Year.

Finally, I ask that we all keep Sir Vincent Floissac, former Chief Justice of our Court, in our prayers. He is ailing.

We close this Ceremonial Opening of the Court in the sure knowledge that the Blessings of the exhortations from the sermon by the Rev. Dr. Wycheley Gumbs this morning, as well as those expressed in all of the other Churches in the OECS Member States and Territories will be with us throughout the coming Law Year and beyond. I leave with you the inspirational words from one of the Hymns, which we sang this morning:

Be Thou my vision, O Lord of my heart;
Naught be all else to me, save that thou art
Thou my best thought, by day or by night,
Walking or sleeping, thy presence my light.

Hugh A. Rawlins

Chief Justice of the Eastern Caribbean Supreme Court

13th September 2010