

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 2009/2010



**ROSEAU
DOMINICA**

TUESDAY, 15th SEPTEMBER 2009

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

Introduction

- Honourable 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 Honourable Attorney-General of the Commonwealth of Dominica, Mrs. Francine Baron-Royer and the Honourable Minister for Legal Affairs and Tourism, Mr. Ian Douglas and Hon. Attorneys-General and Ministers of Justice & Legal Affairs of each of the OECS Member States and Territories;
- Honourable Ministers of Government of the Commonwealth of Dominica and of each of the OECS Member States and Territories;
- Honourable Judges of the Court of Appeal, Judges of the High Court and Masters ;
- Sir Vincent Floissac, QC, retired Chief Justice; Sir Brian Alleyne, SC, retired Acting Chief Justice, both of the Eastern Caribbean Supreme Court. Permit me also to mention Lady Floissac and Lady Alleyne;
- Honourable Suzie d’Auvergne, retired Judge and all 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, Deputy Chief Registrar and Registrars of the Eastern Caribbean Supreme Court;
- The President of the OECS Bar Association Mr. Tapley Seaton, CVO, QC, 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 The Commonwealth of Dominica 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 a pleasure to have the opportunity to mark the opening of another New Law Year in this address, which is carried live by simulcast to all nine Member States and Territories of the jurisdiction of the Eastern Caribbean Supreme Court. This simulcast is made

possible through the technological expertise of LIME and their usual efficient assistance, which we greatly appreciate.

This address is also broadcast live throughout the OECS via television and 14 Radio Stations along the OECS News-Link, through the coordinating work of Mr. Raymond O'Keeffe of the OECS Secretariat. We are grateful to all facilitators, including the Government Information Services throughout the jurisdiction of the Court. Permit me to mention the work of the IT Department of the Court, headed by Mr. Mark Ernest, who, with Mr. Augustus Marcellin, has ensured the successful co-ordination of this address. We also appreciate the facilities afforded by the resident judges of the Commonwealth of Dominica, the Registrar, Deputy Registrar and the other court staff in ensuring the standard of today's proceedings.

As with last year's address, I shall not present extensive departmental reports or statistical information since these can easily be accessed on the Court's website at <http://www.eccourts.org> and in the Annual Report for the year 2008-2009, which was again published in a timely manner at the insistence of Ms. Claudette Valentine, the Court's Librarian and Information Services Manager.

In this year's address I shall reflect, briefly, on the endeavours and significant achievements of the Court over the past year and project, where possible, the future course of the Court. I shall also speak

briefly on some matters which concern the professionalization of the Bar. Permit me first, however, to recall a few matters which touch us more humanly – bereavements, farewells and appointments.

Bereavements

Life brings moments of joy, as well as moments of pain and sorrow. We mourned the passing on Sunday 7th June 2009 of the Honourable Justice Sylvia Judith Bertrand, retired High Court Judge, in her 79th year, in the Commonwealth of Dominica. Justice Bertrand served as Resident High Court Judge between 1985–1992 in St. Vincent and the Grenadines, Antigua and Barbuda, and in the Virgin Islands.

At the Headquarters of the Court we were also shocked and saddened by the tragic passing on 8th July 2009 of Mrs. Monica Chandler, our Human Resources Officer for 3 years. She was in her 39th year. She leaves to mourn her husband, Franklin and her children, Stacey, 12, Franya, 7 and Joel, 5. We cherish the memories of her ever present good humour, warm and affable personality and passion and exuberance for life. We miss her greatly.

On behalf of the Court I extend sincere condolences to the families of Justice Sylvia Bertrand and Mrs. Monica Chandler, and pray that God will continue to provide strength and comfort in their bereavement.

Farewells

During the past Law Year we bade farewell to Justice of Appeal Denys Barrow SC, and High Court Judge Sandra Mason QC. Their contribution to the Court over the periods of their tenure was invaluable. We thank them for their service and wish them well. They have been appointed to the Court of Appeal of Belize and Barbados, respectively.

Appointments to the High Court

In May 2009, the Meeting of the OECS Authority approved an increase in the establishment of High Court Judges from 20 to 22. This would assist us with the introduction of the Criminal Division of the Court in jurisdictions outside of Saint Lucia. The judiciary of our High Court will be fully constituted early in this law year with the appointment of 5 new judges. They are Honourable Justices Mr. Mario Michel; Ms. Rosalyn E. Wilkinson; Mrs. Margaret Price-Findlay; Ms. Jennifer Remy and Mrs. Birnie Stephenson-Brooks. We welcome them and wish them all fulfilling careers on the Bench.

The law year 2008-2009 was one of rebuilding and transition. The opportunity is taken to express sincere appreciation for the work of a

number of retired judges who returned to assist us during this period. They enabled the Court to keep hearing schedules and facilitated the mentoring of new Judges and Masters. We thank the Honourable Justices Albert Redhead, Albert Matthew, Odel Adams and Monica Joseph, as well as Honourable Justice Lyle St. Paul, who will continue to serve in this instance until 30th September 2009; Honourable Justice Ephraim Georges, who will continue to serve until 31st December 2009 and Honourable Justice of Appeal Michael Gordon, QC, who will continue to serve until 31st December 2009.

We also express very grateful appreciation to legal practitioners Ms. E. Ann Henry, Mrs. Tana'ania Small-Davis, Mrs. Margaret Price-Findlay, Ms. Jennifer Remy, Mr. Peter Foster and Mr. Mario Michel, who did acting stints for various periods as High Court Judges during the past year.

Appointments to the Court of Appeal

We welcomed the appointments of High Court Judges Ola Mae Edwards and Janice George-Creque to the Court of Appeal in January 2009. They have contributed to the Court immeasurably over the years and have continued to do so in their elevated capacity. During the law year, other High Court Judges who have also contributed very greatly had acting stints with the Court of Appeal.

They are Honourable Justices Indra Hariprashad-Charles, Rita Joseph-Olivetti and Davidson Baptiste. Justice Baptiste will continue with the Court of Appeal until 31st December 2009.

It was a demanding year for members of the Judicial and Legal Services Commission. I hereby record the appreciation of the Court for the duties undertaken by the Honourable Justice of Appeal Michael Gordon, QC, the Honourable Justice Frederick Bruce-Lyle, Mr. Frank Myers and Ms. Evelyn Jackson, the Members of the Commission, as well as for the duties of the Members of the Judicial and Legal Services Commissions of the Virgin Islands and Anguilla, which I also chair.

Court Administration

The administration of the Court over the last law year has been challenging, particularly given the global economic crisis. Notwithstanding the best endeavours of the Member States of the OECS, it has been necessary to embark on our own austerity programme and to curtail some of the Court's activities, particularly in the area of judicial education. It has not helped that, during the last law year, the Judicial and Legal Reform (JLR) Project of the Canadian International Development Agency (CIDA) came to an end. The financial assistance provided through that project, which was

approximately CAD \$850,000, facilitated a number of our reform activities in a timely manner. We greatly appreciated that assistance.

However, we were able to continue some critical reform endeavours, noteworthily in the areas upon which I shall touch briefly.

- *The Court Structures Project*

This project is intended to usher in 4 specialized divisions of the Court with a view to improving efficiency and meeting present and projected needs. There will be Civil, Criminal, Commercial and Family Divisions of our Court.

The Civil Division

This has been the subject of comment in Addresses for about a decade and needs no further introduction in this address, except to mention, in passing, that the process of drafting the proposed amendments, practice directions, practice guides and protocols to our Civil Procedure Rules 2000, continued over the past year. This was done with the gratuitous assistance of Mr. David di Mambro, a member of the Civil Procedure Rules Committee of England and Wales, his wife, Mrs. Louise di Mambro, the Registrar of the United Kingdom Supreme Court, and Mr. Michael Fay, a legal practitioner in the Virgin Islands. They were assisted by the Rules Revision Committee of our Court and

other administrative staff at the Court's Head Office. It is anticipated that the revised rules, practice directions, practice guides and protocols will be circulated to legal practitioners within the jurisdiction for suggestions by December 2009.

The Criminal Division

The Criminal Division is intended to operate in a manner that would facilitate the continuous and speedy hearing of criminal cases by foregoing preliminary inquiries and replacing them with sufficiency hearings; introducing case management and mediation in criminal cases at an early stage and setting down cases for speedy trials. The present aim is to ease the backlog of cases and lengthy remand problems thereby preventing delays.

The work of the pilot project for the Criminal Division in Saint Lucia, under the able guidance of the Honourable Justice Kenneth Benjamin, was facilitated by the promulgation of the Supreme Court (Saint Lucia) (Criminal Division) Rules and the Criminal Procedure Delay Reduction Rules in December 2008. They came into effect in January 2009.

The success of this project was recently the subject of comment in the press in Trinidad by well known writer in Criminal Justice, Ms. Dana Seetahal. She lauded the efficiency which the Project has brought to the Criminal Justice process in Saint Lucia and recommends it to the

authorities in Trinidad and Tobago. We are satisfied that the Division can now be introduced in other Member States and Territories, resources permitting, during the course of this law year. Grenada has already embarked upon continuous sittings of the Criminal Court even without the introduction of the Division.

The Commercial Division

This Division is intended to specialize in and to bring a new and dynamic dimension to cross-border litigation. The Division was officially opened in May 2009 in the Territory of the Virgin Islands, pursuant to new enabling rules styled “The Eastern Caribbean Supreme Court Commercial Division Procedure Rules (Application to the Virgin Islands) (Amendment) Order, 2008”. The first Judge of the Commercial Division, Justice Edward Bannister, QC, is presently leading the exercise for the preparation of Practice Directions and Practice Guides to buttress the rules.

The successful establishment of the Division was the culmination of endeavours that were led by Justice of Appeal the Honourable Michael Gordon, QC, who was ably assisted by the Commercial Division Implementation Committee in the Territory of the Virgin Islands and our Deputy Court Administrator, Mr. Francis Letang. The aim of this division of the Court is to facilitate the speedy and efficient resolution of commercial cases in our system, in a manner that permits the Court to maintain a competitive international profile.

This is to support the international business sector, which is now the life-blood of some of the economies of the Eastern Caribbean States.

The Family Division

The need for a specialized Family Division arises out of the recognition of the sensitivities inherent in the sphere of family litigation. The ultimate aim is to establish an efficient family court system, which takes this into its process and provides all of the services which the Court can afford in one location in each Member State and Territory. A small committee under the Honourable Justice of Appeal Ola Mae Edwards is providing the leadership for the institution for this Division of the Court.

- *Other Projects*

The Halls of Justice Project

The aim of this project is to construct modern and suitably equipped court facilities in all the Member States and Territories of the Court. It is a major undertaking, which has made significant headway over the past year under the leadership provided by Mr. Francis Letang and Mr. Gregory Girard, assisted by the Honourable Justice Anthony Ross, QC.

The Court has, through the Caribbean Development Bank, secured a technical assistance grant of US\$900,000 to conduct a feasibility study for the Project in the areas of demand assessments, data analysis, topographical surveys, social and environmental impact assessments, and the preparation of schematic drawings and preliminary costings. The feasibility study should be completed by September 2010. The Court is in the process of selecting a project director, as well as a consulting architect and engineer. Local committees have been instituted to assist with the co-ordination of the project in each Member State and Territory. The Court has now engaged in activities to identify possible funding sources, so that the construction phase can commence in a timely manner once the feasibility phase has been completed.

We greatly appreciate the facilities which have been extended by the Caribbean Development Bank and the expert guidance which its staff provided throughout our consultations with them.

The Integration of the Magistracy

Work on the integration of the magistracy has been in progress for well over a decade. This is not, in my view, evidence of procrastination, but of the complexity of the undertaking, given the constitutional, legislative, administrative and other logistical hurdles to final implementation. Consider that the United Kingdom with its

resources and without the encumbrance of a written constitution took that step about one year ago. Ontario started many moons ago, arrived at a certain juncture and halted. I have been advised that an attempt at integration in Guyana has left the Magistracy in an administrative void because no thought was apparently afforded to the administrative and human and financial resource framework in which the magistracy would function. It is my view that the integration of the magistracy cannot be a mere exercise in window-dressing, convenience and public relations. We must do what is necessary to put in place a system that is viable and successful in the continuity of its implementation and functioning.

Important steps were taken during the past law year to produce a final draft Magistracy Integration Agreement for submission to the Authority of the Heads of Government. With the assistance of the Canadian Cooperation Fund (CCF), Mrs. Jennifer Astaphan and the Caribbean Centre for Development Administration (CARICAD) and the OECS Secretariat, the Court met with Attorneys General from the OECS on three (3) occasions during the year to discuss the proposed agreement. The last of these meetings, which was held in Saint Lucia in August 2009, discussed the comments on the draft agreement from a number of stakeholders and experts, including Professors Ralph Carnegie and Winston Anderson of the Caribbean Law Institute Centre of the University of the West Indies.

In undertaking this integration challenge, the Court also endeavoured over the past year to rationalize the human resource element. In this regard, meetings were held with Permanent Secretaries from Ministries of Justice, Human Resource and Personnel Officers throughout the jurisdiction to discuss these issues with a view to developing a work plan for implementation. In this aspect of the project we are seeking the assistance of the World Bank in addition to that which CARICAD has provided.

Court-Related Technologies

In last year's address, I indicated that an **Electronic-Filing Pilot Project** was to commence in Saint Lucia for civil cases, while an **Interactive Voice Response Technology**, which permits the tracking of the progress of cases, was to be introduced in the Magistrates Court in Dominica. These endeavours were hampered by various technical challenges during the year. The Court's IT department reports that the last of the hurdles have now been negotiated and the commencement of the full implementation of these pilot projects is imminent. A plan has been developed with the software providers to examine all the technical issues which essentially involve upgrading to a later version of the JEMS case management software.

The Court conducted training for the users of the JEMS Case Management Software from all of the Member States and Territories in

November 2008 in Saint Lucia. This was critical to ensure the proper utilization of the software and to facilitate the generation of accurate and timely information and statistical data.

The Video Link facility for the Family Court in Saint Lucia has been used for hearings on three occasions, one of which involved the examination of a child-victim. The Family Court in Saint Lucia is expected to make greater use of this facility in the coming months.

One other initiative which the Court hopes will be possible during this law year is the establishment of a video conferencing facility at the Court's Headquarters. Once established, this will pave the way for setting up similar facilities in each Member State in the future, thereby further bridging the artificial divide which the sea creates between our islands. The end result is that costs associated with travel for meetings, case management conference sessions, and even some Court of Appeal sittings could be significantly reduced.

The Court's Website

The Court launched its redesigned website on 12th February 2009. It provides a more user-friendly and uniform interface, with a more powerful judgments search facility. Our statistics show that from the re-launch, the facility is being used with greater frequency within our jurisdiction, as well as in many countries around the world.

The opportunity is taken to express appreciation to Ms. Claudette Valentine, Information Services Manager, and Mr. Garvin Lawrence, Website Administrator, for their contribution in developing and maintaining the website. I urge everyone to visit the site and to share with us your suggestions to assist us to improve the site's efficiency.

- **The Legal Profession**

The Law Fair and Symposium

On Friday 11th and Saturday 12th September 2009, the Court once again had the privilege to join the OECS Bar Association and its constituent Bars in the 6th Annual Law Fair and, in addition, a Symposium, which was co-hosted by the Judicial Education Institute and the Court for the second year. Everyone has lauded the success of the sessions, and, in particular, the planning, co-ordination and implementation of them by the immediate past President of the OECS Bar Association, Ms. Nicole Sylvester, and the present President of the Association, Mr. Tapley Seaton. This year, the presence and participation of legal practitioners from Florida and Canada and judges from Florida was an added invaluable dimension. We welcome these activities for the opportunity that they provide for Bench/Bar interaction, and exchange of ideas and perspectives. We look forward to having the benefit of these

continued activities, which will continue next year in St. Kitts and Nevis and in 2011 in Antigua and Barbuda.

The Conferment of SILK

The Court has recognized the need to regularize the procedure and requirements for the conferment of the rank of Queen's Counsel/Senior Counsel. To this end, we embarked upon an initiative which is intended to bring some degree of standardization and certainty to the process. I held consultations with members of the local Bars, as well as members of the OECS Bar Association, and sought recommendations through consultative committees. Some reports were received and we shall seek to complete this exercise by the turn of the New Year 2010.

The Professionalization of the Bar

In last year's address I voiced the wish that as members of this honourable and noble profession we must at all times be guided by honesty, integrity, efficiency and fairness in all our undertakings. It was, in effect, a call to professionalism and the observance of the highest ethical standards. They were sentiments born of the numerous complaints which are constantly received from members of the public entreating me or insisting that I should use my office to

investigate, institute proceedings, prosecute, adjudicate and provide remedies for their alleged grievances. This is of course inimical to legal provisions, principles and due process. The complaints to me have multiplied and it is clear that many need to be advised as to how the system works.

In Saint Lucia, Antigua and Barbuda, and in St. Kitts and Nevis, there are now Legal Profession Acts, which in the main require complaints to be directed to the Secretaries of the Bar Associations. We are in the process of finalizing the Disciplinary Proceedings Rules which will support the Legal Profession Act of Saint Lucia in terms of procedures in disciplinary proceedings against legal practitioners. These rules may provide a guide for other jurisdictions.

In other countries which do not yet have Legal Profession Acts, the various Supreme Court Acts provide for the Chief Justice to appoint a judge, in the case of Anguilla, or two (2) judges, in other islands, to carry out investigations and to decide these matters. An appeal would lie from the judges' decisions to the Court of Appeal of which the Chief Justice is President.

In all instances, therefore, these proceedings must be instituted by filing original process in order to give jurisdiction to the Court and to the Chief Justice to act in accordance with statute and principle.

In St. Vincent and the Grenadines there are Barristers and Solicitors Rules, which specifically regulate disciplinary procedure thereby supplementing the provisions of the Supreme Court Act. There is a body of case law on these provisions and these rules may commend themselves to other countries. The case law indicates that the procedure by which proceedings are commenced under these rules is a very simple one. They note that proceedings may be instituted, *inter alia*, by counsel acting on behalf of persons allegedly affected by the action complained of. The St. Vincent Rules may commend themselves for use in other countries which are under the provisions of the Supreme Court Act.

In the meantime, I shall simply raise a few questions. Do the St. Vincent rules merely enact, in some measure, the practice and procedure in such proceedings, which we are to take from England and follow in any event? Do local Bar Associations have standing to institute disciplinary proceedings following the English practice and procedures? Would Attorneys-General, as the principle law officers of the Crown or State, have the right or duty to institute disciplinary proceedings in appropriate cases in all States, in any event?

As I leave these questions with you, my ultimate charge this morning as it relates to the professionalization of the Bar, seems to follow logically from the foregoing. It is a charge to the various Bar Associations to organize ongoing training programmes in Ethics,

Accounting and Management of law offices and clients' funds and affairs. I venture to observe that time honoured standards of protocol are slipping, as evidenced, for example, by letters addressed to my office touching matters that are the subject of appeals before the Court over which I preside.

On another note, there are practitioners in our islands who consistently assist persons *pro bono*. It is always a pleasing experience, which is in keeping with the highest ideals of the profession. I urge everyone to consider lending a little time and resources to provide legal assistance in appropriate cases. As Sir Brian Alleyne, QC, KCN, reminded us in his address at the OECS Bar Dinner last Friday, legal aid assistance should always be a watchword and mission in any area of the profession.

Finally, I think that it would be remiss of me not to note what some may refer to as the acerbic terms which appear to be employed at times in statements critical of judgments or decisions of judges of our courts. While criticism in the throes of searching analysis is to be encouraged, it is inimical to legal propriety to go beyond certain boundaries, particularly by criticism bordering on personal attacks. May I suggest that we may wish to be refreshed by reference to the Privy Council's judgment in **Andre Paul Ambard v The Attorney General of Trinidad and Tobago** [1936] 1 All E.R. 704, and kindred cases?

Conclusion

This opportunity is taken to express sincere gratitude to the Honourable Justices of Appeal, High Court Judges and Masters. You continue to serve the courts in our region with honour, dignity and diligence as you seek to fulfill our mandate. Your contributions continue to be highly commendable as you work under difficult circumstances. Your work is greatly appreciated. I commend, in particular, the Honourable Justices Clare Henry and Mortimer Cumberbatch, in Grenada, who, with Mr. James Bristol, then Attorney General, Mr. Ashley Bernadine and the Bar Association instituted a Bench/Bar Committee, which has, among other things, initiated training programmes for court office staff. I have already commended this to other islands.

To the Magistrates, Registrars, Deputy Registrars and support staff of the various court offices across the jurisdiction, you continue to serve the region with commendable commitment. To the Chief Registrar, Mrs. Kimberly Phulgence, the Court Administrator, Mr. Gregory Girard, our Accountant, Mr. Irvin Ferdinand, and the staff of the Court's Headquarters, I express sincere thanks for your indefatigable service.

In difficult times, the Authority of the Heads of Government of the OECS continues to provide support for our mission to deliver justice

in an efficient, fair and timely manner. Various departments of the public services and the Police have also continued to be supportive. Thanks, especially, to the Commissioner of Police, the Officers and Rank of the Police Force of the Commonwealth of Dominica, as well as the Band and Honour Guard, for all facilities and the very proficient display which they mounted this morning. But then, that is the standard that we have become accustomed to here over the years.

We were encouraged and inspired in a special way by His Grace, Bishop Malzaire, the Choir with the organ and the Band, and by Rev. Greenaway in the message that was delivered at the Church Service at the Cathedral this morning. We here express heartfelt appreciation for the Blessing in which we shared.

It is my prayer that we shall all have a productive, fulfilling and Blessed Law Year 2009-2010.

Hugh A. Rawlins

Chief Justice