

Fulfilling our Strategic Vision in Challenging times

Address by :

Her Ladyship, The Hon. Dame Janice M. Pereira, Chief Justice
To mark the Opening of the Law Year 2014-2015

17th September, 2014
Anguilla



- Justices of Appeal, Judges and Masters of the ECSC;
- Your Excellency, Christina Scott, Governor of Anguilla, and their Excellencies, Heads of State of each of the OECS Member States and Territories;
- Hon. Mr. Hubert Hughes, Chief Minister of Anguilla and Honourable Heads of Government of each of the OECS Member States and Territories;
- Retired Judges of the Eastern Caribbean Supreme Court;
- Honourable Rupert Jones Attorney General of Anguilla, and Hon. Attorneys General and Ministers of Justice & Legal Affairs of each of the OECS Member States and Territories;
- Honourable Ministers of Government of Anguilla and of each of the OECS Member States and Territories;
- Chief/Senior Magistrates and Magistrates of the OECS;
- Honourable Speakers of the Houses of Representatives, Presidents of Senates and Members of Parliament of each of the OECS Member States and Territories;
- Honourable Leaders of the Opposition of the OECS Member States and Territories;
- Director General, OECS
- Directors of Public Prosecutions of each of the OECS Member States and Territories;
- Solicitors General of each of the OECS Member States and Territories;

- The Chief Registrar, Deputy Chief Registrar, Registrars, as well as Deputy and Assistant Registrars of the Eastern Caribbean Supreme Court;
- The Court Administrator, and the Director of Projects;
- The President of the OECS Bar Association Mr. Ruggles Ferguson, President of the Bar Association of Anguilla, Ms. Yvette Wallace, and Presidents of constituent Bar Associations of the Eastern Caribbean;
- Members of the Clergy
- Members of the Diplomatic Corp.
- Learned members of the Inner Bar of each of the OECS Member States and Territories;
- Members of the Utter Bar of each of the OECS Member States and Territories;
- Commissioner of Police Mr. Rudolph Proctor and other Commissioners of Police of the other Member States and Territories, Police Officers and Heads of Correctional Facilities of Anguilla and of each of the OECS Member States and Territories;
- Staff of the court's Headquarters and the various court offices in each of the OECS Member States and Territories;
- Distinguished Guests;
- Citizens and residents of the Eastern Caribbean:

Good Morning.

Before I begin my formal address, I wish firstly to take the opportunity to welcome to the Bench of the Court of Appeal, in a substantive capacity,

Justice Gertel Thom. Justice Thom came to the OECS region in 1991, and since then has served in many capacities ranging from principal Crown counsel, and serving as Attorney General in both Montserrat and Antigua & Barbuda. She was appointed to the Bench in 2005, and served in Saint Vincent & The Grenadines. In recent years she has acted as Justice of Appeal on many occasions, and was appointed to that post on 1st September, 2014. I have no doubt that Justice Thom will continue to render valuable service to the Judiciary and our region. We are therefore pleased that she has joined us as we work together to advance the administration of justice in our region.

It is always very humbling and gratifying to address you on the occasion of the opening of the law year 2014-2015. It is especially wonderful to address you live via simulcast from the Territory of Anguilla, which for many years was home to me as a resident judge. These occasions however cause me to ponder: To who and for whom is this address delivered? Who has an interest in receiving this address? Is it for the members of the legal profession, the Executive Branch of our Member States and Territories, the civil societies of our region or to a lesser or greater extent, all of these groups? Also, what are the expectations thereafter? Is it a greater awareness of the judiciary and its role in society - a shared understanding of the challenges and successes of our justice system within our democracies; is it to explain how the workings of the judiciary affect our lives; or is it really '**much ado about nothing**'? Indeed some may say, this is simply more, or a repeat of the same. But this should prompt the

question of the truly inquiring mind to ask: **Why it is much of the same?**
Has much changed in relation to, or the perception of, the Judiciary?

Why is it deemed necessary for courts to have a vision? What is it that courts seek to accomplish and why? Very importantly, how are these objectives to be achieved.

The standard is set by our court in its vision statement which states:

“The achievement of professionalism and excellence in the timely, effective and efficient access to, and administration of a cohesive, independent and accountable system of justice for the benefit of its Member States.”

My predecessors kept always, at the fore front of their minds, the core vision for the court. This vision was not short sighted, as it focused on both short term and long term goals. Understanding that the foundation which they laid was critical to the future growth of the court, each successive Chief Justice has built on the vision of their predecessors while paving the way for their successors. This, to a great extent, reflects the place and reference point reached by the court to date.

Our court is also guided by *The Latimer House Principles* which provide an excellent operational manual of good practices governing relations between the executive, parliament and the judiciary. The principles state, among others, that –

“Adequate resources must be provided for the judicial system to operate effectively without any constraints which may hamper judicial independence;

Sufficient and sustainable funding should be provided to enable the judiciary to perform its functions to the highest standards; and

Appropriate salaries and benefits, supporting staff, resources and equipment are essential to the proper functioning of the judiciary.”

The Latimer House Principles also acknowledge that judicial independence and delivery of efficient justice are important for maintaining the balance of power between the three arms of government.

During its 47-year life span the ECSC has sustained its high reputation as a superior court of record, not only in the region but internationally. The landmark decisions which emanate from our courts have undoubtedly placed us in this deserving position. However, as with every institution, amidst the accomplishments there were pitfalls which, if left unattended, threatened to adversely impact the very core of the court’s mission. My predecessors, recognizing that it was necessary to attend to the organizational and functional shortcomings of the court, created a strategic plan for the ECSC. To take the court through the next era, this plan would focus on reforming the entire structure of the court and certain operational areas to address systemic and structural issues. These carefully considered strategies would be buttressed by the need to preserve the independence of the judiciary, ensure access by all to the justice system, and very critically

promote and maintain public confidence in the judiciary. It is of utmost importance that we continually assess the court's performance in the context of its strategic plan to ensure the due administration of justice. Such continual assessment is necessary so as to determine whether we are achieving our objectives, and if not, to identify the factors impacting performance, and to consider the solutions for addressing them.

When we look at the development of the court against this strategic blueprint, we can boast of triumphs and lament the challenges. We can attest to the positive impact which the reform of the court's structure and procedures implemented to date have had in combating the difficulties faced by the court. In the same vein, we can admit that we have not achieved as much as we had hoped. However, through it all, the court has relentlessly pressed on, in its unchanging pursuit to execute its mission and fulfill its vision even in difficult and rapidly changing times and conditions. It is this reality that has inspired my address this year, entitled: **"Fulfilling our Strategic Vision in Challenging times"**.

The Greek philosopher Heraclitus said *"The Only Thing That Is Constant Is Change -"*. The ECSC has tested and proven this to be true. Change is inevitable and as a court *we* do not dictate the pace with which *we* move – *the times do*. The framing of the court's strategic plan has illustrated our ability to adjust as the need arises. We have realized that challenges are synonymous with growth and in moving forward we must alter our

perception of issues and the way in which we handle situations, particularly challenges.

By the turn of the 21st century, an increase in the backlog of civil and criminal matters was becoming the norm. Consequently, processes and procedures needed to be adjusted to deal with the challenges. None of this would be achieved without the change in mindset of everyone involved in the system - the judiciary, the executive, the staff of the court offices, the members of the Bar, and the public. Backlog reduction projects aimed at weeding out old matters which were not being pursued, were implemented. The office of Master was created. New Civil Procedure Rules were introduced placing the court more in the driver's seat for the management of cases. Case managers were introduced. Status Hearings for long outstanding appeals were introduced. Alternative dispute resolution (ADR) in the form of Mediation was also introduced. Beginning with Saint Lucia, new Criminal Procedure Rules were also introduced aimed at speeding up the processing time, from laying of a charge, to trial and final disposition. The challenges being faced also required a critical assessment of the structures of the court to determine whether more streamlined and specialized structures would be more responsive, and efficient in meeting the ends of justice. To this end the court set about creating specialty divisions aimed at ensuring that matters are given the specialist attention which is required to enable it, as far as possible, to fulfill its mandate of providing an independent, efficient, and accountable system of justice.

It then becomes necessary to conduct a critical analysis of the court's performance, having put these measures in place, so as to determine whether they have achieved the desired results.

Looking back, a measure of gratitude and accomplishment lingers in the fact that all four operational divisions of the court (i.e. civil, criminal, commercial and family) have been working in varying degrees throughout the jurisdiction. Amidst this success however, a number of challenges continue to impact this reform initiative and more fundamentally, the overall strategic vision of the court.

It has been said in many quarters, and I agree, that the introduction of the Civil Procedure Rules 2000 has positively impacted civil practice in all jurisdictions in our Member States and Territories for all the stakeholders - the judiciary, practitioners and litigants. A validation of this view could be had from a comparative analysis and examination of the effectiveness and efficiency levels of the civil practice in other jurisdictions operating under the old or dissimilar civil procedure regimes, or put simply, those who continue to operate using the old rules. Although the disposition time of matters in the civil jurisdiction has been reduced since the introduction of these Rules, has it been significant enough? Has the backlog been effectively addressed? Are the Rules being applied as they should? Are there other factors contributing to the backlog? Has the court been sufficiently equipped and otherwise resourced to mitigate or ameliorate

against those other factors? These questions continue to be the subject of much debate. Some argue that any current backlog is more a consequence of the increase in civil litigation coupled with a disproportionate lack of human and other resource issues rather than problems inherent in the civil procedures or the manner in which the rules are to be applied. A number of these matters are not directly within the court's control. I assure you that the court continually assesses and seeks to find ways to implement more effective court management techniques to enhance its efficiency.

In my address last year, I indicated that we would continue to scrutinize the operation of the Civil Procedure Rules with a view to enhancing their fair application. In keeping with this promise, a number of amendments were made during the course of the year designed to create greater functionality, promote clarity and provide greater equity in application. I would like to place on record my thanks to the collective Bar Associations, and in many instances the individual legal practitioners who willingly assisted the court during the consultation period by submitting comments and suggestions. It is this collective effort which allows us to achieve the strides that we do in our justice system. It is my hope that these amendments will ultimately enhance the disposition of matters in the civil jurisdiction.

In the criminal jurisdiction of the court the creation of a specialist division for the disposition of criminal matters has assisted, to some extent, in relieving the backlog of cases at the initial stages of the criminal process.

However, while the Criminal Division has been serving the pilot member state of Saint Lucia well in some respects, an assessment has highlighted a number of further challenges which require urgent redress. This assessment showed that there is nothing inherently problematic with the rules regulating the criminal process in and of itself. Rather, the challenges lie in the resources available or being deployed to effectively apply the rules in the management of the criminal processes. Here, I include the resources necessary for the effective and efficient prosecution of matters, adequate physical facilities and equipment and adequate staffing arrangements. A number of solutions have been identified and although not all are within the direct control of the court, measures have been formulated aimed at resolving these issues. Every State within the Eastern Caribbean must take stock of the rising violent crimes within our region and must be prepared to tackle the problem in a holistic way. Simply placing tougher laws on the statute books does not solve it. Adequate resources must be deployed not only for swift detection of crimes but also swift prosecutions with adequate facilities and manpower for the fair and efficient disposition of criminal trials throughout all stages of the criminal process.

These matters must be addressed if the public is to gain and maintain confidence in our criminal justice system. It is often lamented throughout the region, through various public fora, that violent crimes are overtaking our comparatively small societies. It is also well recognized that crime is the antithesis to economic development. High incidences of crime stifle

economic growth. The casual link between high crime rates and slow or stagnant economic growth cannot be denied and cannot be ignored.

During the last law year, the Prime Ministers, Premiers and Chief Minister of the OECS, all concurred in increasing the number of Masters serving our court from 3 to 5. This was identified as one of the needed measures for expediting the High Court criminal process. The Master assigned to the Criminal Division would have the jurisdiction of a judge of the High Court to preside over pre-trial events for indictable offences ranging from conducting case management of indictable criminal matters, to hearing Bail Applications and accepting plea indications. This approach will remove from the trial judge the time consuming element of case management, as well as the often lengthy “trial within a trial” process known as the ‘voir dire’ and the sufficiency hearing, placing these responsibilities on the Master, thereby allowing the trial judge to focus primarily on the conduct of trials. The necessary legislative amendments are already in train to achieve this.

This in the immediate term will be bolstered by a Practice Direction on *“Early Guilty Pleas.”* A Practice Direction on *“Sentence Indications”* has already been put into effect in the States of Saint Lucia and Saint Vincent and the Grenadines, with positive results. Data received from Saint Vincent and the Grenadines showed the quick disposition of 9 cases within a few weeks using the guidance provided in the *“Sentence Indications”* Practice Direction.

The third specialist division which was framed in the court's strategic plan is the Family Division. Over the last 2 decades the Member States and Territories experienced radical social changes which resulted in an increase in a number of social ills such as juvenile delinquency, domestic violence and sexual crimes. This in turn has placed an increased burden on the workload of the courts. These social ills, have common links and share common roots. Thus a specialist Family Division is needed with the aim of providing a "*one stop shop*" manned by judicial officers, and support staff, equipped with the tools and coupled with the necessary specialist training to address these issues.

To bring this about, our family law legislation throughout the OECS must be modernized and harmonized. Over the last law year, work continued on the UNICEF- sponsored consultancy focusing on the development of rules and redrafting of the family law legislation for Antigua and Barbuda. The first draft of the laws (Domestic Violence Bill, Status of Children Bill, Children (Care and Adoption) Bill and the Juvenile Justice Bill) were submitted to the Attorney General's Chambers for review and comments. Consultations were held to discuss the Bills with a view to finalization and preparation for Parliament. In the interim, the court is currently reviewing the first draft of the Family Division Rules submitted under that consultancy. In the coming year it is the expectation that further progress will be realized. It is hoped that some priority will be given to the enactment of these much needed Bills in the region.

The final specialist division of the court, the Commercial Division, was created in 2009 in the Territory of the Virgin Islands (TVI). There is no doubt that this Division has made a significant difference in relation to the efficient disposition of commercial disputes with resultant benefits to the economy of the Virgin Islands. Some preliminary work to assess the feasibility of the establishment of a Commercial Division in Saint Lucia is already under way with a target date set to commence operations in January 2015. This approach and success can be replicated within the region, whether by the establishment of similar Divisions in other States or by developing a single uniform specialist commercial division tasked with the management and conduct of all commercial matters within any of our Member States. The court, after all, in the wisdom of the architects of the Supreme Court Order, is already established in precisely that way and has been so serving the States and Territories of our region for over 47 years. There is great wisdom and financial benefits in pooling resources. As the region strives for greater and deeper economic integration the court is well placed to continue to play an integral role in this integration process.

While the establishment of the four specialist divisions of the court is a major goal of the strategic plan, it is not the only reform initiative needed to facilitate the court's strategy to achieve overall better access to justice. Two other major components are *the transformation of (1) the internal structure and (2) operating systems and procedures, of the court*. Both of these components are vital to the reform process.

The transformation of the internal structure of the court, through the creation of a unified court is an essential part of the court's vision. The greater integration of the High Court and District Courts would provide the foundation of this transformation. Although this process was commenced by my predecessors, progress in this area has been slow. Having executed the Agreement for the administrative integration of the Magistracy into the High Court structure, the next phase entails the ratification of the Agreement in each of the Member States and Territories. To date this phase of the process has only been completed in Saint Vincent & The Grenadines, Antigua & Barbuda and Montserrat. It is my hope that in the coming year the remaining Members States and Territories will follow suit, thereby bringing us closer to the achievement of this goal. In the interim, we await a response from the Inter-American Development Bank (IADB), to which a detailed proposal has been submitted, to fund the activities leading to the full integration of the Magistracy. In the coming law year we also expect some assistance through donor-funded projects, to begin to address some of the needs of the program for the administrative integration of the Magistracy.

In terms of overhauling its operating systems and procedures, the court has over the past year increased its use of technology in an effort to overcome the logistical, financial and organizational challenges caused by the geographical separation of the Member States and Territories.

More video-conferencing facilities were installed in the courts within the jurisdiction. Grenada and Antigua and Barbuda joined all the other independent OECS Member States in utilizing this facility to take the evidence of vulnerable witnesses and children from a secure location via video link without requiring them to be in the same physical space as the accused.

The Court of Appeal has increased and will continue to increase its use of video-conferencing technology in the coming year to hear appeals. This has proven to be highly beneficial not only saving on the expense and inconvenience incurred by the court physically travelling to hear these matters but also saving the parties the expense of having to travel to the next scheduled court sitting. It also acts as a good case management tool to hear urgent matters more expeditiously. The court's ultimate goal is to be able to hear appeals within any State or Territory by 'virtual location' within the State or Territory, through the use of e-technology.

In April 2014, the Prison Video Link launched in Saint Lucia, provided a video link between the main courtroom at the High Court and the Bordelais Correctional Facility. This video link facility is being utilized for a number of administrative hearings, including those where, in permitted circumstances, evidence is being taken. It has already impacted significantly in relation to the hearing of bail applications. This facility is a major triumph for the court as it is expected to provide a substantial reduction in the costs associated with the transportation of prisoners

between the courtroom and the correctional facility. There is also the benefit of lowering the risks to inmates, correctional facility employees, and members of the public which are attendant with the transfer of prisoners. *Criminal Practice Direction No. 1 of 2014* was issued to establish the procedure for the use of the facility and serves as a useful guide to legal practitioners, litigants and staff of the court and the correctional facility.

The delay in the preparation of transcripts has been a major challenge in most of the Member States and Territories, so much so, that in a number of instances we have had to look at outsourcing this task outside of our region. This is not the desired approach. The court is therefore making every effort to address this through the use of technology by promoting and assisting with the implementation of digital audio recording of courtroom proceedings. Digital court-recording equipment was purchased and is available for use by all the Judges, Masters, and Magistrates in Saint Lucia. Additionally, funding has been approved by the British High Commission for the purchase and installation of this equipment in one courtroom in each of the other independent Member States. Currently, an audit is being conducted in respect of recording equipment in every courtroom or chamber throughout the OECS. In the coming year, the court will continue work on its Transcript Preparation Project which aims at providing efficient and cost effective options for the timely preparation of transcripts through agencies within or without the sub-region. I also hope that we can commence steps to look into the possibility of making the digital audio recording the official record of the proceedings thereby

reducing the need to type and print the transcript. Such a step would net significant time and cost savings not only with the preparation of records but timelier disposition.

In May 2014, the court launched a project for the electronic filing of documents as a pilot in the Territory of the Virgin Islands. Through this initiative parties could file documents pertaining to Court of Appeal matters electronically directly through the Central Registry located at the court's Headquarters in Saint Lucia. To facilitate this, *Practice Direction 3 (B): 'Filing by Electronic Means of Communication'*, which sets out the procedure for electronic filing, was issued for the Territory of the Virgin Islands. The concept of electronic filing is consistent with modern court administration practice. The implementation of electronic filing is therefore a huge cost-saving and time-saving advancement for the court. The project is being evaluated in an effort to make any necessary adjustments which will enable us to move towards electronic filing of appeal matters in the other Member States and Territories during this law year. The court has also taken the opportunity to review the filing fees and has started consultations with the various Governmental authorities in this regard. The intention is to harmonize and, as far as possible, have uniformity in the court fees structure across the court's OECS jurisdiction.

While the reform initiative as contemplated in the court's strategic plan has been successful in many regards, its implementation has been met with some measure of adversity in a few areas, a significant one being that of

finance. The declining fiscal situation in the Member States and Territories has contributed considerably to exacerbating the difficulties faced by the court, which is financed by the contributions of each Member State and Territory after collective approval of the overall annual budget by the OECS Authority. The percentage of the national budget allocated to the operations of the court for each Member State and Territory ranges from as low as 0.69% to a high of 1.87%. The reality is that in 7 out of the 9 Member States and Territories the courts' national budgetary allocation is below 1%! To put it more figuratively, the national contributions, even when combined, are but a mere drop in the bucket when compared to the entire national budget of each contributor. The financial situation of the court is further compounded by the irregular and tardy payments of contributions from Member States and Territories, while the work of the court is expected to continue unabated. Over the past decade for instance, the court's Headquarters has not once received all the approved budget contributions from all the Member States. Despite all of this, the court is obligated to provide the best quality service to the citizens that we serve. The citizens, in turn, demand high quality service and rightly so.

In 2013 for instance, the revenue generated by the court through the collection of fees and fines exceeds US 3.5 Million dollars in the Territory of the Virgin Islands, EC 1.2 million dollars in Antigua and Barbuda, close to EC 1 million dollars in Saint Vincent and the Grenadines, and over EC 3.5 million dollars in Saint Lucia. Considering the importance of the work of the courts to the economic well-being of our countries, the amounts which

are being allocated to the proper functioning of the justice system are, in my view, woefully inadequate.

As mentioned earlier, our court is guided by *The Latimer House Principles* which postulate that sufficient and sustainable funding should be provided to the judiciary to allow that institution to perform its functions to the highest standard possible. Those principles also readily recognize the difficulty posed to a judiciary that is independent of the Executive, but yet is dependent on it financially. In the case of our court, this financial dependency has resulted in the court being burdened with constraints brought on by inadequate financing and consequently making it an uphill task to perform at the desired level.

These same principles stress the fact that in order for the judicial system to operate effectively without constraint and yield quality results, adequate resources must be impelled into it. This begs the question – What does the amount put into the justice system say about the quality of justice we expect? Is the court to be seen as an exception to the universally accepted concept that output is a reflection of the measure of input?

Another useful reference point in this discussion is the *International Framework for Court Excellence* which was produced by an International Consortium, a useful tool which many courts around the world use to assess and improve the quality of justice and court administration that they deliver. One of the key areas for court excellence stressed in this framework is the need for courts to ensure that they have sufficient human, material

and financial resources to fulfill their objectives and adequately manage and maintain these resources.

The inadequate resources with which the court has had to function on a daily basis has adversely impacted our output. Inadequate judicial physical space has been a major challenge faced throughout the jurisdiction. Our court is frequently called upon to adjudicate on matters relating to safety in the workplace or breach of statutory duty to provide a safe and secure working environment, while it finds itself operating from an environment which may be considered less than safe or otherwise hazardous to health. Although the courtrooms and court offices are central to every facet of the judicial process, many of these facilities are in a dire state. In many of the islands there are challenges wrought by the lack of sufficient courtrooms and other accommodations (including inadequate security measures) for judges, court staff, litigants, lawyers, jurors and disabled persons. Added to this, the court has to contend and make do with physically disjointed spaces which detract from ease of operation, resulting in inefficiency and lack of accountability. Courts should never have to be closed because of safety concerns except in the event of natural disasters or other Acts of God. Such occurrences severely undermine the justice system and erode public confidence in the judiciary. In the coming year our efforts will be refocused on encouraging Member States and Territories to source the necessary financing to move to the implementation phase of the 'Halls of Justice' Project. We look forward with fervent anticipation when one of our States or Territories takes the lead in the

construction of a state-of-the art judicial complex to provide the necessary environment for dispensing justice in keeping with *The Latimer House Principles* which were affirmed by the Heads of State of the OECS.

The Latimer House Principles and the *International Framework for Court Excellence* have both espoused clear guidelines indicating the necessary components to ensure a high standard and quality of service. Our Member States and Territories in full commitment to these principles must do all within their power to put them into practice.

I share the vision of many of my predecessors that one day our ideal arrangement will be attained whereby our dependency on the Executive for the funding of the court will be translated into full fiscal autonomy consistent with the universally accepted concept of judicial independence. This achievement, no doubt, will go a long way towards us promoting and meeting the vision of the court.

Until this vision is realized, to assist in alleviating this strain the court has had to resort to the use of counter measures, one of which is the sourcing of external funding to implement a number of the initiatives which are needed to improve overall access to justice. Even this creates its own share of uncertainties since project funding is largely dependent on a number of external factors including the nature of the programs, the policies of donor agencies at the time of requests, and the funds which are available for allocation to individual projects. Implicitly therefore, much of the court's

programming could be compromised, or areas of priority go unaddressed. Even in the face of such hurdles however, the court has been fortunate in receiving funding from a number of agencies for the implementation of many projects which are pertinent to our reform initiatives. I wish to express my profound thanks to organizations such as:

- the British High Commission in Barbados who funded the Prison video link facilities in Saint Lucia,
- the US Embassy in Barbados with whom we are working to acquire funding for similar Prison Video Links for courts in Grenada and St. Vincent & the Grenadines and who also assisted with funding additional JEMS software licenses,
- the Canadian and British embassies in Barbados who jointly funded the installation of video conferencing facilities in some of our courts, and
- UNICEF, USAID, the Commonwealth Secretariat and the Government of the Virgin Islands (The Financial Services Commission), for providing funding for various judicial education activities.

Having highlighted the foregoing challenges, I assure you that the court has remained undaunted in carrying out its mission. Indeed, times of adversity should be viewed as great opportunities for imagination, and innovation. We have been striving to make the best use of the limited resources provided. The reformation in structures and internal processes and methodologies highlighted earlier, attest to this.

How do we measure performance? The court relies heavily on statistical data to measure its output so that improvements can be done as necessary. This the court obtains from the JEMS Case Management software system and through other methods. Sir William Thompson, in his wisdom, correctly said *“To measure is to know! If you cannot measure it you can't improve it.”* The empirical data collected, in many respects, tells a positive story as it relates to the court's performance over the years.

Our statistical analysis revealed that in the calendar year 2013 the Court of Appeal presided over a total of **49** sittings, in the form of sittings of the full court, teleconferences, video conferences and chamber hearings. By the end of the calendar year the court issued **42** written judgments and orally delivered **743**, making a total disposition of **785** appeals.

It is a noteworthy observation that in 2013 the total disposition of judgments delivered by the Privy Council was less than 35 and were all in written form. This work is being performed by 12 judges at the Privy Council, double the approved complement of judges at the ECSC over the last year.

I also wish to highlight the increased number of oral judgments delivered by our Court of Appeal. The **743** oral judgments delivered in 2013 was a marked increase from the **348** oral judgments delivered in the 2012 calendar year; more than double the number from 2012. Many have

lamented about the delay in delivery of judgments of the court, particularly reserved judgments, and there is no doubt that such a development is a positive step moving forward. The increase in the delivery of oral judgments is one of the only ways that the Court of Appeal can seek to deal with the growing demands being placed on its judges as the number of appeal matters filed, increases. In the High Courts throughout the jurisdiction the total number of cases disposed of for the calendar year 2013 was **4,085**. Over 50% of this figure represents matters disposed of in the civil jurisdiction of the court. Probate, Criminal and Matrimonial matters also comprised a significant percentage of the cases disposed.

During the last law year a review of the Commercial Division was conducted to assess the workings of the division. This review reflected what our statistical data has been showing which is that the division has been functioning as expected, as a significant amount of work is being conducted by the single judge in the Division. For the 2013 calendar year, **166** cases were filed and **105** cases were disposed of.

Our annual report will afford you a better appreciation of the work done by the court. I therefore urge you to visit our court's website which will provide you with detailed information about the court, and a fuller and more informed understanding of the workings of the court. This would enable you, the public, to have access to information to facilitate meaningful debate about the workings and performance of the court and to

assess comments emanating from persons who may not be as well informed. He who speaks from knowledge may speak with authority.

Throughout this address I have stressed, in various ways, the importance of judicial independence and the need to preserve it. The strategies implemented by the court are all geared toward this end. We must remain steadfast in our stride to imagine, develop and implement new ways which will promote and ensure better and equal access by all to the justice system – the rich, the powerful, the poor, the weak, the marginalized, the fit, the disabled, the old and the young.

Our free societies are founded and built upon respect and adherence to the rule of law. An independent judiciary, as the upholder and enforcer of the rule of law, is a critical and necessary construct of a free society. The Eastern Caribbean Supreme Court views, undertakes and discharges this responsibility with utmost seriousness.

Thomas Jefferson said:

"The dignity and stability of government in all its branches, the morals of the people and every blessing of society depend so much upon an upright and skillful administration of justice, that the judicial power ought to be distinct from both the legislative and executive and independent upon both, that, so it may be a check upon both, as both should be checks upon that."

This statement aptly describes the relationship yet necessary linkages existing between the three co-equal branches of Government within our democratic societies. Each branch is set up in such a way as to allow each to operate within its own sphere, while ensuring that each branch operates as a check against the other. This is the foundational premise of our democratic constitutions. Therefore not only must the court safeguard its independence, but the executive and the legislative branches of government must ensure that their action or indeed inaction does not erode or encroach upon the independence of the judiciary. Where a judiciary is reliant on funding and the provision of other critical resources such as security, from the Executive, their failure to put in place adequate security measures to safeguard judicial officers as well as other court users, is, in every sense, an erosion and thus poses a real threat to the independence of the judiciary – individually and institutionally.

To safeguard the individual and institutional independence of the judiciary a **holistic approach** must be taken as **a number of key elements** must be present and functioning adequately.

One key element is adequate court resources, discussions on which are often inextricably linked to the concept of preserving judicial independence as enshrined under *The Latimer House Principles* to which I referred earlier.

Another key element, also couched in *The Latimer House Principles*, states that “*an independent, effective and competent legal profession is fundamental to*

the upholding of the rule of law and the independence of the judiciary.” This is significant because lawyers are the link between the litigants and the courts and are therefore obliged to ensure that they provide the best quality service to their clients and to the courts. This in turn aids in ensuring the proper functioning of the justice system and by extension in upholding the rule of law.

Also of great importance is judicial ethics. Judicial ethics and judicial independence go hand in hand as judicial ethics is essential to the preservation of the rule of law, democracy and good governance, which in turn, are essential elements in the exercise of judicial independence. The Lord Chief Justice of England and Wales summed up the relationship most profoundly when he said:

“Judicial independence and the rule of law...are closely intertwined as a mutually dependent and loving couple after many years of marriage, where one simply cannot survive without the other.”

Judicial officers of the ECSC ascribe to the ECSC Judicial Code of Ethics, as well as international best practices, as these are viewed as the hallmark, if not the safeguard of judicial integrity and accountability. Value 1 of the Bangalore principles of judicial conduct states:

“Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.”

The men and women who make up our judiciary have made the commitment by the Oaths they have taken, to serve our *“Member States and Territories by ensuring fair trials and upholding the highest standards of integrity and accountability.”* The court’s vision statement, which can be found on the court’s web site, sets the standard of achievement for every judicial officer. Judicial officers are keenly aware that they must espouse the highest standards of conduct - both in and out of court - as this is essential to the building of public trust and confidence in the judiciary. It is often a task for members of the public to fully appreciate and accept the concept of judicial independence in all its facets, unless judicial officers, by their conduct exemplify it. Only when this is done can judges effectively discharge, and be seen to discharge, their constitutional responsibility of providing justice fairly, impartially and accountably.

Former Chief Justice of Australia Sir Gerard Brennan noted:

“The judiciary, ... has public confidence as its necessary but sufficient power base. It has not got, nor does it need, the power of the purse or the power of the sword to make the rule of law effective, provided the people whom we serve have confidence in the exercise of the power of judgment.”

This position explains succinctly what our reality is in the OECS. As judges, we must ensure that the power of the judgment is utilized in the proper way in order to reflect the true perception of the court. It is not a coincidence that justice is depicted through the use of scales which are balanced. Every action done by a judicial officer in the dispensation of

justice must be balanced with justice and impartiality to every litigant regardless of their gender, race, or status in society. Judicial officers are therefore required to be vigilant while not sacrificing justice and fairness.

Too many times the judiciary has been unfairly targeted and inappropriately branded as the reason for all the problems in our judicial system, such as the backlog in the system and the delay in the hearing of matters, without an appreciation of the many and multi-faceted contributing factors. Many persons who castigate the judiciary have a myopic perspective of the judicial system, based on incorrect or inaccurate information. The system is not perfect. As I have earlier stressed, there are a number of deficiencies. However, the committed judicial officers of our court do their best with the limited and sometimes meager resources allowed and in many cases, often at risk to their personal safety and health.

As I indicated earlier in my address, the statistical data provided in our annual report will show the significant number of cases heard and disposed of by our judicial officers during the 2013 calendar year.

I therefore wish to publically thank the industrious men and women of our judiciary who, day in and day out, give of their best indefatigably to ensure not only that the ECSC fulfills its mandate, but also that the court attains an impeccable standard of exemplary performance regionally and internationally. To the justices of appeal, High Court judges, masters, registrars and magistrates I know that at times the task may seem daunting

and you may feel like your efforts are unappreciated, but I would like to assure you that I am grateful for your dedicated service and look forward to working with you all in the coming year as we continue on the path forward.

I would also like to recognize the contribution made by a number of retired judges, as well as attorneys-at-law who during the law year agreed to the serve the court in various acting capacities. Many practicing attorneys-at-law who have so done, have often marveled, with a new found appreciation at the sheer breadth and expanse of the work of judicial officers. I am indeed grateful for your willingness to assist the court when called upon to do so. I also express the hope that many of you who have so ably assisted, would find it possible to make a full time commitment to judicial service.

At this juncture, permit me to make mention of the passing of one of our retired judges, Madame Justice Suzie d’Auvergne, who passed away on Monday, 18th August 2014 in Saint Lucia. Justice d’Auvergne served the legal and judicial service for almost 4 decades in various capacities leading to her retirement as an Acting Justice of Appeal in December 2004. Even after her retirement she continued to serve the court periodically when called upon to do so and at the time of her passing she was a member of the Judicial and Legal Services Commission. On behalf of the judges and staff of the court I hereby extend sincere and heartfelt condolences to the family of the late Justice d’Auvergne.

The OECS Bar over the past law year also lost one of its stalwarts and Founding President, Dr. Joseph Archibald, QC, a legal luminary who remained steadfast in his support of the Judiciary and its independence. I also place on record our sincere condolences to the family of the late Dr. Archibald.

Moving on, I would also like to thank the staff of the court's Headquarters and throughout the region at the various court offices for the service which they perform in carrying out the work of the court. Each of you, whether as receptionist, secretary, office assistant, clerk, bailiff or court crier, case manager, court administrator or registrar, plays a significant role in the efficient working of the judicial system. Without your assistance the day to day operations of the system would be significantly hampered. In particular, I express my thanks and appreciation to the Registrar and staff of the High Court in Anguilla for their efforts in putting things in place for the hosting of the opening of the law year for 2014-2015. I also recognize the efforts of the Director and staff of the Government IT Department in Anguilla for organizing the required technical infrastructure to facilitate the hosting of this simulcast. My appreciation is extended to Radio Anguilla and other media houses across the OECS region for their live broadcast of this address. I thank Father Knight for the stimulating and inspirational homily delivered at the church service earlier this morning as well as all the participating members of the clergy, in marking the commencement of the new law year.

Sincere appreciation is also extended to the OECS Heads of Government, for the support given to the judicial branch of government, especially in these trying economic times.

I wish to extend gratitude to the Commissioners of Police, Police Officers, Superintendents/Directors of Prisons/Correctional Facilities and prison officers of our Member States and Territories for your pivotal role in the dispensation of justice.

To the Honorable Attorneys General and Ministers of Legal Affairs or Justice, Directors of Public Prosecution, Presidents of the Bar Associations, Attorneys-at-law, and all government departments and agencies, I am truly thankful for your support, hard work and dedication upon which the court is continually reliant.

In conclusion, to you the citizens of the Member States and Territories, as we embark on this new law year, I would like to thank you for your trust and confidence in the judiciary and our cause. Although the court's story which will be written in the annals of time may be laden with the challenges articulated here, it is certain that the theme of triumph will also resonate with clear and unmistakable conviction. Author *Roger Crawford* posits that while "*Being challenged in life is inevitable, being defeated is optional.*" So, while there are still many difficulties which we face, we

remain resolute and determined to fulfill our mandate in the manner which is expected of us.

As Chief Justice, I renew my commitment to remain steadfast in fulfilling the vision and mandate of the court and look forward with anticipation and renewed vigor in steering the court through many other reformative processes for achieving our vision. And so I end, in essence where I began, with the question: **is this much ado about nothing, or is this really fundamental to everything?** You, the people of our region, individually and collectively, will over time, be the judge of that.

I end with this prayer: that God gives us the intelligence to study his will, the courage to preform it and the devotion to love it; and that the grace of God which has taken us through the years past, will sustain us through the coming law year.

I thank you.

Dame Janice M. Pereira
Chief Justice