



# ECSC

## LAW YEAR ADDRESS 2018/2019

Challenges, Opportunitites and Resilience:  
The ECSC paving the way to a Modern and  
Efficient Judiciary for the Eastern Caribbean

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### ADDRESS BY

Her Ladyship, The Hon. Dame Janice M. Pereira, DBE, Chief Justice

To mark the opening of the 2018/2019 Law Year

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**DATE** Tuesday 18th September, 2018

**LOCATION** Basseterre, St. Kitts and Nevis



# Challenges, Opportunities and Resilience: The ECSC paving the way to a Modern and Efficient Judiciary for the Eastern Caribbean

- Justices of Appeal, Judges and Masters of the Eastern Caribbean Supreme Court;
- Their Excellencies, Heads of State of each of the OECS Member States and Territories;
- Honourable Timothy Harris, Prime Minister of St. Kitts and Nevis and Honourable Heads of Government of each of the OECS Member States and Territories;
- Retired Judges of the Eastern Caribbean Supreme Court;
- Honourable Vincent Byron, Attorney General of St. Kitts and Nevis, and Honourable Attorneys General of each of the OECS Member States and Territories;
- Honourable Ministers of Government of St. Kitts and Nevis and of each of the OECS Member States and Territories;
- Chief or Senior Magistrates and Magistrates of each of the OECS Member States and Territories;
- Honourable Speakers of the Houses of Assembly and Presidents of the Senate of each of the OECS Member States and Territories;
- Honourable Leaders of the Opposition of each of the OECS Member States and Territories;
- Members of Parliament of each of the OECS Member States and Territories;
- Dr. Didicus Jules, Director General, OECS Commission;
- Mr. Valston Graham, Director of Public Prosecutions of St. Kitts and Nevis and Directors of Public Prosecutions of each of the OECS Member States and Territories;
- Solicitors General of each of the OECS Member States and Territories;
- Mrs. Michelle John-Theobalds, Chief Registrar, and Ms. Desma Charles, Deputy Chief Registrar, Registrars and Deputy and Assistant Registrars of the Eastern Caribbean Supreme Court;
- Mr. Gregory Girard, Court Administrator of the Court's Headquarters and Mr. Francis Letang, Deputy Court Administrator of the Court's Headquarters;
- Mr. Thaddeus Antoine, President of the OECS Bar Association,
- President of the Bar Association of St. Kitts and Nevis and Presidents of the constituent Bar Associations of each of the OECS Member States and Territories;
- Learned Members of the Inner Bar of each of the OECS Member States and Territories;
- Learned Members of the Utter Bar of each of the OECS Member States and Territories;
- Members of the Clergy;
- Members of the Diplomatic Corps;
- Mr. Ian Queeley, Commissioner of Police of St. Kitts and Nevis and Commissioners of Police of each of the OECS Member States and Territories; Police Officers in St. Kitts and Nevis and each of the OECS Member States and Territories;
- Mr. Ashiel Connor, Acting Superintendent of Prisons in St. Kitts and Nevis and other Directors/Heads of Correctional Facilities in 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;
- Students;
- Citizens and residents of the Eastern Caribbean;

# Challenges, Opportunities and Resilience: The ECSC paving the way to a Modern and Efficient Judiciary for the Eastern Caribbean

Good morning.

It is my honour and indeed a pleasure to address you on this the occasion of the opening of the 2018/2019 Law Year. Today's address is being broadcast live via simulcast from the Federation of Saint Christopher and Nevis to all the other eight Member States and Territories of the Eastern Caribbean Supreme Court where Special Sittings are also taking place. Persons across the region, and indeed the world, are also listening in to this address on the radio and via the internet. The Federation of St. Kitts and Nevis celebrates tomorrow its 35th year of Independence. I extend to the Government and people of the Federation heartiest congratulations on the occasion of this anniversary.

This year's address holds particular significance as it has now been two years since I have had the opportunity to address you on the commencement of a new law year. As many of you would know, last year's activities to mark the opening of the 2017/2018 Law Year were to take place on the "Nature Isle" of the Commonwealth of Dominica. Hurricane Maria intervened bringing all activities to an abrupt halt. All sittings of the Court had to be vacated. This storm caused much death and destruction in Dominica and occurred a mere two weeks after Hurricane Irma caused death and widespread destruction along the northern Caribbean island chain, including the Territories of Anguilla, the Virgin Islands and the island of Barbuda.

These Category 5 Hurricanes set new records in terms of their intensity and will not be soon forgotten by the people of the Caribbean. One year on, some level of normalcy has returned to these islands, but the effects linger on. As we sit here today we are no doubt all aware that we are in the height of the hurricane season. We had a narrow miss with Isaac last week. It is my fervent hope and prayer that our Caribbean region will be spared the ravages of any more storms this year.

## **Impact of 2017 Hurricane Season**

These hurricanes severely impacted normal governmental operations across the affected islands and, without exception, the operations of the judiciary. I will therefore use the first part of this address to briefly share with you the impact on the Court's operations and to provide an update on where matters stand today.

### **Anguilla**

The eyewall of Hurricane Irma passed over the Territory of Anguilla on 6th September 2017 causing widespread destruction. The Court Building as well as the residence of the High Court Judge received some damage. The Court facility was forced to remain closed for several weeks whilst repairs were made and utility services restored. This physical interruption did not however prevent the hearing of urgent applications by telephone and video link, as soon as telecommunications were restored, by the direct routing of hearings to a judge located in Saint Lucia. Full appeal hearings were also conducted in-person and via video link from Saint Lucia. Today, the Court facilities are once more fully functional and were first to resume full operations after the storm.

# Challenges, Opportunities and Resilience: The ECSC paving the way to a Modern and Efficient Judiciary for the Eastern Caribbean

## **The Virgin Islands**

The Territory of the Virgin Islands received the brunt of Hurricane Irma as the eye passed directly over Tortola on 6th September 2017. It caused catastrophic damage to the Territory which is still in the process of recovering. Court infrastructure was severely damaged; judges and some court staff were rendered homeless; the operations of all courts came to a halt; and a breakdown of law and order threatened. The State of Saint Lucia provided early refuge. One of the immediate measures put in place was the temporary relocation of the Commercial Division of the High Court, a critical component of the Territory's financial sector, to the State of Saint Lucia where the Court's Headquarters is based. The temporary relocation of the two Commercial Division Judges, along with some members of the Court staff from the Virgin Islands; the utilization of a rudimentary system of electronic filing via email; the use of other ICT technology put in place by the IT team, complemented by emergency procedural measures, and support from staff of the Court's Headquarters, allowed that Division to continue its operations seamlessly. All matters listed for hearing came on as scheduled. Indeed, it was said by many legal practitioners who experienced this temporary E-Filing arrangement that the Court's processes, by use of this rudimentary method, was operating even more efficiently than the normal paper filings. If there was a need for an argument supporting a paperless judiciary, and as the way forward for building resiliency to natural disasters, the experience of the BVI's Commercial Division made it convincingly. I should also add that during this period, full appeal hearings for the Virgin Islands were held without disruption by means of video-link and in-person appearances from court rooms in Saint Lucia. At this juncture, it is only fitting that I pause for a moment to express thanks to the Prime Minister and Government of Saint Lucia for quickly coming to the aid of the Virgin Islands in facilitating the temporary relocation of the Commercial Division to Saint Lucia during that difficult time. This speaks to the heights which can be achieved and the possibilities which can become realities when there is the will to do so.

The Commercial Division resumed operations in the Virgin Islands in January 2018. The operations of the main Civil and Criminal Divisions however took longer to get up and running. This was due to several factors beyond the Court's control, such as a greater reliance on physical files - many of which were damaged or lost during the hurricane and requiring reconstruction, as well as the need for the appearance of litigants and witnesses in person, not to mention the risks inherent in the movement of prisoners or accused persons on remand. Notwithstanding these limitations, the Court was able to accommodate the hearings of urgent applications including applications for bail, via video or teleconference, conducted by a judge at Court facilities in Saint Lucia. All Divisions of the High Court became fully operational in the Virgin Islands by the middle of February 2018.

## **Commonwealth of Dominica**

Hurricane Maria which struck Dominica on 18th September 2017, resulted in the almost complete destruction of that island. One year on, the island is still struggling to return to some sense of normalcy. The Court's infrastructure was severely damaged, with judges and court staff rendered homeless. Here too a breakdown of law and order threatened. Sadly, one year on, court facilities have not been restored to normal operations. Here, there was an

## Challenges, Opportunities and Resilience: The ECSC paving the way to a Modern and Efficient Judiciary for the Eastern Caribbean

even heavier reliance on paper records and many of them have been reported lost or destroyed. These factors, coupled with a lack of operational facilities, make recovery slower. Some hearings have been facilitated in make-shift facilities while repair works are ongoing. The hearing of appeals from Dominica was also facilitated by the Court of Appeal sitting in Saint Lucia. It is our hope that all efforts will be made to enable the courts to return to full operations. The Court's Headquarters has been doing all within its power to make this happen and has reached out to donor agencies for assistance in replacing the destroyed court equipment necessary for returning the courts to a state of operational efficiency.

International donors, such as Global Affairs Canada, through the JURIST Project as well as the US Embassy have responded positively to our requests and the procurement processes to source and purchase replacement equipment are well underway. Assistance is also being sought from the European Union. Quite apart from that, financial and other support was quickly forthcoming from our neighbouring institutions, judges and organizations. I make specific mention of relief funds generously given by judges of the Caribbean Court of Justice, the Caribbean Association of Judicial Officers, the OECS Bar Association and its constituent Bar Associations across the Member States and Territories, and Judges and staff of the ECSC's Headquarters. I take this opportunity to publicly thank our regional judicial counterparts, international donor agencies, our court staff, Judges, and other regional organizations and associations for their contributions and other assistance to the recovery efforts in our affected Member States and Territories.

Even though the Court has suffered setbacks because of these horrific storms, these provided an opportunity for our communities to truly experience firsthand the positively unique character of the Eastern Caribbean Supreme Court and what it truly means to be a regional court.

The ease with which the Court was able to continue managing, although not optimally, the judicial processes of the affected islands lies within the legislative framework which established the Court. It is this framework which allows any judge of the Court, irrespective of State or residency assignment, to hear matters from an affected Member State in another Member State. Arrangements to be made were administrative only. There was no requirement for legislative or other intervention. The ability of the Court to operate in this way must be seen and guarded as a most useful and remarkable utility being one which allows the Court to continue to serve affected States and Territories and thereby provide access to justice even in times of disasters. This framework in and of itself should be recognized as a strong foundation on which to build an even more resilient framework for ensuring access to justice by the implementation of systems which can effectively manage and support the Court's operations under any adverse condition.

Although disasters may cause the Court to bow, disasters should never be allowed to cause the Court and access to justice to become broken.

# Challenges, Opportunities and Resilience: The ECSC paving the way to a Modern and Efficient Judiciary for the Eastern Caribbean

Out of the depths of adversity there are always positive and enduring lessons to be learned. It also brings forth that positive human desire to innovate, create and seize opportunities. It only remains for us to turn these desires into positive action in moving forward. In the words of the Former First Lady of the United States of America, Michelle Obama: **“You should never view your challenges as a disadvantage. Instead, it is important for you to understand that your experience, facing and overcoming adversity, is actually one of your biggest advantages”**.

I am inspired by the sermonette delivered this morning by Father Cassius around the theme of this year’s Address: He reminded us. **“Tough times don’t last. Tough people do”**

## **Improvements to Court Processes and Procedures**

This leads into the second part of my address and that is to update you on the work of the Court over the past year. Despite the setbacks, the Court has been busy pursuing its mission to continue its reform processes aimed at improving the quality of justice.

## **Sentencing Guidelines Project**

Firstly, I wish to highlight the ECSC’s Sentencing Guidelines Project which is well underway. It has long been recognized that for this Court to serve the people of the Eastern Caribbean region in an efficient and transparent manner, it must continuously find ways to improve its processes and procedures and embrace systems and methods that are transparent and easily understood by the people it serves. Over time, it became increasingly apparent that the sentencing process in a criminal trial across our OECS States was being approached in different ways with results which, to the public, appear to be disparate. Sentencing is one of the areas of great public interest and one which attracts much comment, some of which are often unfounded. In the criminal justice system the sentencing process is one of utmost importance as it invariably engages the liberty of the subject. It therefore calls for deliberate and mature consideration in order to ensure that public confidence in the justice system is maintained. The passing of a sentence must not just be done right but must also be understood as having been done right. It was out of this desire to assist judicial officers, and more importantly the desire to bring consistency to the approach to sentencing, and in so doing transparency and a greater sense of fairness to the sentencing process, that the idea of a Sentencing Guidelines Project took root.

This Project began more than a year ago in November 2016 with financial assistance being provided by the joint collaboration between the United Kingdom Foreign Office and the United States of America with oversight provided by Ms. Sirah Abraham, Criminal Justice Adviser to Barbados and the Eastern Caribbean. By July last year we had formed a committee of experienced jurists and other experts from within our Court, the Caribbean and the United Kingdom. This committee is called the Sentencing Advisory Committee. It held its inaugural meeting in July last year and has been hard at work since then crafting draft sentencing guidelines for use by Judges and Magistrates in our region. The work has focused on rolling out sentencing guidelines in respect of



# Challenges, Opportunities and Resilience: The ECSC paving the way to a Modern and Efficient Judiciary for the Eastern Caribbean

Drugs, Firearms, Theft, Robbery and Sexual Offences as the first series of guidelines. Thereafter, we intend to roll out additional guidelines in respect of other offences, all to be applied in accordance with sentencing principles which will be set out in a Sentencing Practice Direction to be issued by the Court.

The first set of draft sentencing guidelines was introduced to all judicial officers at the Annual Judicial Conference for judges over a three-day period during the last week of July this year, and to Magistrates over a two-day Conference following immediately thereafter. The response from all judicial officers has been positive. The Sentencing Guidelines Project and a sampling of the draft guidelines produced to date were also introduced to Members of the Bar as well as prosecutors from across the OECS Region over the past weekend at the joint symposium of the OECS Bar Association and the ECSC. Their response has also been encouraging. Thereafter, it is intended that a further consultative process engaging the wider public will be undertaken in each State and Territory over the next few months.

I place on record my sincere appreciation for all the hard work undertaken so far by all Members of the Sentencing Advisory Committee, but I would be remiss were I not to say special thanks to Justice Iain Morley who serves Antigua and Barbuda and Montserrat and co-chair of this Committee, Justice Trevor Ward, who serves the St. Kitts circuit, Justice Alice Yorke-Soo Hon, appellate judge of the Supreme Court of Trinidad and Tobago, Justice Dame Maura McGowan of the Royal Courts of Justice, Criminal Division of England and Wales, and Justice Shiraz Aziz, former High Court Judge of the ECSC, now a judge of the Turks & Caicos Islands, for ably conducting all the training sessions on the draft guidelines at our July Conferences. Last but not means least, I express my sincere appreciation and thanks to Justice of Appeal Gertel Thom who as Chair of our Judicial Education Institute took this project fully on board and continues to do all within her power to assist me in making the guidelines become a reality. Justice Thom regrets being unable to be here today due to circumstances beyond her control. I have no doubt that she will be listening in once she is able.

The objective of this Project is to assist judicial officers in providing structured and well-reasoned sentencing remarks as a normal practice and in a format which would encourage their publication. These remarks will build up a bank of authority to assist courts, legal practitioners, students of law and the public to better understand the sentencing process and in turn promote greater confidence in the criminal justice system. Viewed through the eyes of the public, it is not so much the ultimate sentence arrived at, but rather understanding the reasoning leading to that sentence. The aim is not to achieve uniformity of sentences but rather consistency in the approach to sentencing so as to promote fairness and transparency in the process.

## **Model Sexual Offences Court**

The second project I wish to highlight is the implementation of a Sexual Offences Model Court. It has been observed over the years that the number of sexual offences brought before the court has been on the increase. This of course does not mean that the commission of sexual offences has increased. It may be that more sexual

# Challenges, Opportunities and Resilience: The ECSC paving the way to a Modern and Efficient Judiciary for the Eastern Caribbean

offences are being reported and being prosecuted as gender sensitivity awareness grows across all levels of our societies. It is important therefore that the Court be equipped to deal with these matters in a way that also addresses the sensitivity of these types of cases particularly as it relates to the vulnerability of complainants involved, especially children and young persons.

After conducting a review, it was considered that the State of Antigua and Barbuda at this time was best suited for the establishment of a Sexual Offences Model Court. The aim of this initiative is to improve the ability of the court to provide more gender responsive services and to be more focused and understanding of the sensitivity of cases involving victims of sexual offences. To this end, much work has been underway for the implementation of such a court before the end of this year. This project is being spearheaded by the Judicial Reform and Institutional Strengthening (JURIST) Project, a five-year regional Caribbean judicial reform initiative funded under an arrangement with the Government of Canada and of which the Caribbean Court of Justice is the Regional Executing Agency. It is hoped that the successes from this pilot in Antigua and Barbuda will lead to the implementation of similar courts in other Member States and Territories. I take this opportunity to record my appreciation to all the personnel engaged by JURIST in making this Model Court a reality.

## **Judicial Training**

Thirdly, the Court, through the Judicial Education Institute, continues with its work in providing judicial education for newly appointed judges as well as all judicial officers, magistrates, and staff of the Court. In addition to the training in relation to the draft sentencing guidelines at the Annual Judicial Conference in July 2018, we were also the beneficiaries of training sponsored by the World Intellectual Property Organization. We are grateful to them for the opportunity this provided to our judicial officers to gain a fuller appreciation of the law relating to Intellectual Property and more importantly, for strengthening our capacity to deal with Intellectual Property disputes: an ever-growing area, given the super connectivity of the world and all the opportunities which this presents for proper and improper exploitation. We thank them for partnering with us. I also thank the Chairman of the JEI, and staff for their tireless efforts in planning and coordinating our education programs. Doing so is by no means a simple task given our spread across the OECS island States.

## **Other initiatives**

So far, I have spoken of activities which we were only able to undertake with the kind assistance of the international donors I have mentioned. Judicial reform and judicial education go hand in hand in effecting real change. One cannot succeed without the other. We are grateful for their continued support. We share a mutual interest - that of improving the quality of justice which would lead to a more just society. When the people in any country can place the highest confidence in their justice system it ensures greater peace and security. The ability of any country to enjoy peace and security impacts positively on its economy and its place in the world. In these times the world news is replete with the distressing news of failed states which have been causing the dislocation and migration of entire communities of people, the horrific crimes committed against them and all the other



# Challenges, Opportunities and Resilience: The ECSC paving the way to a Modern and Efficient Judiciary for the Eastern Caribbean

attendant adverse consequences. Within our region we must remain vigilant and do all we can to ensure the rights and freedoms which we often take for granted are never diminished or their vindication by access to justice is not whittled down or rendered illusory.

## **Introduction of Harmonized Probate and Administration of Estates Rules**

This brings me to the steps which the Court has undertaken over the past two years to reform various procedures within the Court's civil jurisdiction. Firstly, with the cooperation of the bulk of Member States and Territories, the Court was able to implement a more modern and user-friendly set of procedures for dealing with the estates of deceased persons. In 2017, the Court implemented the Eastern Caribbean Supreme Court (Non-Contentious Probate and Administration of Estates) Rules, 2017. The intention of these rules was to harmonize the procedure for non-contentious probate and administration of estates proceedings across the OECS. Formerly, different procedures guided the probate and administrative process in the different Member States and Territories. Accordingly, for several years the need for the development of a uniform suite of non-contentious probate rules had been the subject of much discussion in the OECS region. Following a consultancy, a draft set of rules was prepared as early as 2003. However, it was not until 2013 that steps to engage in further consultations with a view to finalizing them were undertaken. Save for two States, where the process is ongoing for their implementation, all other States have brought the rules into operation. As with any new procedural reform, their application is being monitored for any necessary adjustments. To complement the new probate and administration of estates rules, the court fees associated therewith were also revised and harmonized given the vast disparities across States, not to mention the very dated rates, some set as far back as the 1950s, and wholly discordant with the services rendered.

## **New Court Filing Fees**

Simultaneously with the implementation of the Probate Rules, the Court, after a consultative process, also implemented a harmonized suite of court filing fees. This was again necessary as the court fees across the OECS States saw many disparities and variations for invoking the same court process pursuant to the same rules of procedure governing the Court's processes. It was recognized that this disjointed approach does not serve the Court well as it seeks to move to the next stage of reforming its processes through digitization and the use of ICT. Furthermore, there is still the perception held by some that courts simply drain the State's coffers of revenue. This is an ill-perceived view but understandable when one considers the requirements for filing fees to be paid by postage stamps. These revenues are not attributed to the operations of the courts but rather the operations of post offices. That said, it must always be recognized that the Court is not intended to be a revenue centre. Its mandate is completely different: Courts exist for the administration and delivery of justice to all – the State and the subjects of the State alike. It was time that this Court, like many other courts around the world, and in keeping with the independent exercise of its jurisdiction and powers, be allowed to manage in the same way that it prescribes rules of procedure, to prescribe, by rules of court, as envisaged under the Supreme Court Order, the rates applicable to its procedures. This approach lends expression to the principle of the separation of powers on

# Challenges, Opportunities and Resilience: The ECSC paving the way to a Modern and Efficient Judiciary for the Eastern Caribbean

which all our democracies are based and grounded as they are, in respect for and adherence to the Rule of Law. By way of example, just as the Judiciary cannot tell the Legislative branch of Government whether it should pass a law decriminalizing marijuana, or the Executive branch to build a large or a small airport, so too the operation and management of the Court's processes and the methodology it considers best suited for its operations are solely the purview of the Judiciary. It is appreciated that the three branches of government must co-exist and must interface but each must do so exercising at all times due respect and deference to the boundaries of the other. One branch must not seek to exert influence over the other lest the independent function of each be compromised and the principle of the separation of powers rendered worthless.

The revised fees have been implemented in all but two States. This harmonized fee structure which is to provide for filing fees to be paid by modern payment methods such as debit cards, credit cards, escrow account debits and the like, helpfully places the Court in the best possible position to realise one of the Court's key objectives: that of bringing the Court into the 21st Century by the utilization of E-Filing, and enhanced electronic case management, allowing for speedy classification and case scheduling, so as to bring to the court systems an unheralded level of efficiency as well as transparency. The harmonized fee structure has provided the court - a regional court with a single jurisdiction running throughout the nine Member States and Territories - the proper platform from which to launch the Eastern Caribbean Supreme Court's E-Litigation Portal. It is to this subject which I now turn.

## **Launch of E-Litigation Portal**

A few years ago, the Court started a search for electronic platforms to replace the JEMS software - an off-the-shelf, non-web-based software which had clearly outlived much of its usefulness over time, with little hope of providing needed upgrades to enable operations in a digitized and an electronically-connected modern world. The Court, like any other organization, had to decide whether to get on board or risk being left behind. We were in search of a solution that could be uniquely tailored to the needs of the ECSC, as well as the Magistracy with a range of user-friendly features which would revolutionize the ease of doing court business right across the Court's 'nine Member States and Territories jurisdiction' as a singular, cohesive and integrated platform, operational and accessible from wherever practitioners may be. No doubt the concept of the ease of doing business has a familiar ring. The economic outlook of countries is now routinely measured by the ease of doing business. It can be no surprise that the performance of the judiciary in its ability to timely decide disputes is a key factor determining where a country ranks on this internationally recognized business index.

And so, with these considerations in mind, and being mindful of the objective we are seeking to achieve, we searched for a tested partner who could deliver a robust software platform complete with technical support when needed. After conducting that review and observing the platform at work in Singapore, we were fully satisfied that the company, Crimson Logic, with their proven track record in many other parts of world in building E-Litigation platforms for use in several common law-based judiciaries had the quality product which is best suited for this

# Challenges, Opportunities and Resilience: The ECSC paving the way to a Modern and Efficient Judiciary for the Eastern Caribbean

Court's operations.

For over a year the Court has been collaborating with that company in designing and customizing the ECSC's E-Litigation Portal. This involved field work, examinations of our current operations and discussions with stakeholders both internal and external so as to fine-tune the electronic mapping of the Court's management processes in accordance with the Court's instructions. Much work has been undertaken by the IT Department of the Court and other court personnel. I am happy to announce that we are now ready to launch the system beginning with the State of Saint Lucia and the Court's Headquarters, to be followed in short order by the Territories of the Virgin Islands and Anguilla. The rollout will continue from State to State until all Member States and Territories are linked.

I am excited about this development! It is my hope that all court users and staff will be too. Following a tagline competition among Court staff across all nine Member States and Territories, I am pleased to announce that the tagline for the E-Litigation Portal is: **"The ECSC E-Litigation Portal - Serving you On-Time and Online"**. The winning entry was submitted by Mr. Myrvin Toussaint of the Grenada High Court Office. We Congratulate Mr. Toussaint for coming up with what I consider to be a most fitting tagline given that the implementation of the E-Litigation Portal will bring about tremendous time and cost savings for court users and legal practitioners in a convenient and accessible manner. It will no longer be necessary to spend valuable time travelling to the Court Office to file a claim or a document in a case, or to seek to beat the Court Office's closing time as was referenced as recent as last week. With the ECSC E-Litigation Portal you will now be able to file anytime, from any place. There will no longer be the need to physically attend the Court Office to conduct a search and worse yet spend valuable time awaiting the physical pulling of a file from some distant vault, cabinet or other location or lose patience over a misplaced and sometimes missing file. There are also the benefits to be derived from no longer having to prepare numerous paper bundles which are both time consuming and costly and then having to truck them off to the Court Office for another waiting period of manual stamping of each copy. It eliminates the need for all the large storage spaces required within Court Offices for proper safekeeping and the issues associated with quick retrieval. I have not seen a Court Office in recent times which does not suffer from inadequate space while the mountains of paper continue to grow up around court staff, who are given the tasks of trying to do their best to keep track of documents in a physically challenging and chaotic environment.

With the E-Litigation Portal, trial bundles and appeal bundles can be created and uploaded online with a click. This should be music to some legal practitioners' ears who have sometimes found it difficult to prepare, collate and index the numbers of required trial and appeal bundles. The Appellate Court which is itinerant knows all too well the costs, time lost and the stress involved in travelling back and forth across the sub-region with boxes and boxes of material at tremendous costs to the Court on faithful LIAT, as well as on-land transportation and the additional manpower and resources at each point for moving all this weighty material - sometimes more than three times over. The cost savings and efficiency to be gained from such a system are tremendous and, in my

## Challenges, Opportunities and Resilience: The ECSC paving the way to a Modern and Efficient Judiciary for the Eastern Caribbean

view, obvious. I see this step as the dawn of a new day in our continuous stride to improve access to justice and the delivery of justice. I was privileged to hear a couple months ago, the Minister of Justice in Jamaica speak of the new face of justice being implemented there by use of similar measures as I am addressing here. As I listened, I felt excited and happy for Jamaica. I am even more excited for us in the OECS.

As with the devising of rules of procedure for the operation and management of the Court's processes, so too the choice of methodology or platform to utilise, whether by way of paper (white, pink or blue), or, by way of digitization, are all operational matters falling solely within the purview of the judiciary and no other branch of Government, entity or person. Of this much I am certain. Nonetheless, it has been quite a journey over the past year, with some distractions seeking to creep in along the way in getting to this stage. The Court, however, has remained focused and committed to its mission of doing all within its power to provide better and greater access to justice and delivery of justice, by using all avenues available to it for so doing.

In addition to these initiatives, I also make mention of the Court's ongoing efforts under the Court's Courtroom Technology Enhancement Project. Under this Project, the Court has, **step by step**, been engaged in the procurement and installation of IT equipment to assist in transforming the courtrooms across the Member States and Territories to become more efficient by operating as a seamless Communication Centre. The goal of this Project as a first step, is to equip at least one court room across each of the Member States and Territories with modern video and audio capability as well as the digitization of Court proceedings using audio transcripts and ultimately transcripts in real time. It is our goal that in time all court rooms will be fully equipped. What are the benefits of these? Again, real savings in time, money and improved efficiency. If a litigant or a witness can access the court without the need for travel by land, air or by sea but instead can fully participate in a proceeding by a video or audio link, then that results in tremendous costs savings to the litigant, including the State, in relation to airfares and land transportation, not to mention hotel accommodation and other attendant expenses. Of utmost importance is the enhanced security which this brings to critical witnesses particularly in criminal trials. We are all too familiar with the fate that has befallen many such witnesses. It also enhances efficiency in the disposal rates of matters which might otherwise have to be adjourned because of the inability of a witness, or litigant to travel. In short, enhanced access to justice! This was amply demonstrated last week on the 11th of September when the Court of Appeal sat during recess to hear an urgent appeal involving the grant of an injunction halting the construction of an airport on the island of Barbuda. The panel of the Court was constituted with two justices of appeal located in Saint Lucia, one justice of appeal in the Virgin Islands, with lawyers located in Antigua and also in the United Kingdom. All this was facilitated by the use of video link aided by high speed internet. The hearing was seamless; all parties could see and hear each other. Notably, the judges were able to confer among themselves in real time as if they were in one physical space. A decision was rendered on the same day. This is the standard we are trying to achieve for normal operations. This is achievable if there is the will on the part of the Executive branch of governments to adequately resource the court.

# Challenges, Opportunities and Resilience: The ECSC paving the way to a Modern and Efficient Judiciary for the Eastern Caribbean

This brings me to the frustrations currently experienced by litigants and practitioners as well as judges with the current incapacity of the court offices across many Member States to produce transcripts of court proceedings. This deficiency cannot be overstated. Right here in the Federation of St. Kitts and Nevis there is a list of pending appeals – the bulk from the High Court - which are not progressing for the lack of transcripts. The Federation is not alone. In some other States – St. Vincent and the Grenadines, Dominica, Grenada -the story is much the same and, in some cases,worse. Transcripts of court proceedings are vital to the appellate process in the bulk of cases. This current incapacity has been rendered so by the failure of many Governments to provide the courts with the needed personnel and equipment for the production of transcripts. Pleas have been made by me directly to the Governments. I have had discussions with governmental officials on these shortcomings,particularly in those States where the resultant delays in the ability of litigants to prosecute their appeals have become especially troubling. These failures are threatening and, in some cases, have resulted in a denial of access to justice. The ability to use audio transcripts or the production of real time transcripts by the installation and use of modern equipment for this purpose provides a solution to this vexing and troubling problem.

To my mind the lasting benefits of all these measures are self-evident. They are all aimed at achieving one objective: proper access to justice and justice delivery. If justice is not properly accessible at the bottom levels of the justice system, then there can be no accessibility at any level of the justice system. Access to justice is not calibrated to flow from the top down but from the bottom up. I take this opportunity to again urge the Governments of the Member States and Territories to support the Court in these initiatives in order to improve for its people, their ability to access justice and ensure a better quality of justice delivery.

## **Court Facilities**

The lack of proper court facilities is as old as the Court itself. Over the years, I, and Chief Justices before me, have repeatedly spoken of and pleaded for the urgent need for Governments to give some priority to and provide adequate court facilities. Fifty-one years on since the establishment of this Court, little, if anything, has been done. Court rooms are still housed in ill-suited buildings which have posed attendant security and health risks to court users and occupiers. Whilst courtroom closures are understandable following the passage of hurricanes and the like, it is unacceptable that court users and occupiers have been consistently placed in harm's way in respect of their health and security. This last year we have experienced the closure of the criminal court facilities in Saint Lucia for security reasons and the closure of all court houses in Grenada for health reasons. These failures pose a real threat to access to justice and justice delivery. I have urged the Heads of those Member States affected by the hurricanes to include the Halls of Justice Project in their reconstruction programs. I take this opportunity to again urge all Heads of Government in Member States to prioritize the construction of Halls of Justice and make them a reality. You the people of this region must be interested and must voice that interest in having these matters addressed. The Courts are there to serve you and you must become engaged in the changes you wish to see.

## Challenges, Opportunities and Resilience: The ECSC paving the way to a Modern and Efficient Judiciary for the Eastern Caribbean

The budgetary allocation for the operations of the Court in any of the Member States and Territories is less than 3% of the annual budget of any of the States in any year. Yet the financial position of the Court, year after year, remains one of grave concern. I am unable to stay silent about it. This Court does not have the benefit of a trust fund arrangement which at least serves as a buffer between the Judiciary and the Executive which holds the power of the purse. This Court must seek approval each year for its operational budget. Even so, the Court is constantly faced with the failure of some States to honour their financial obligations. Arrears continue to mount in respect of monies due to the Court. Currently, the aggregate of arrears in contributions due to the Court stands at just over 22 million dollars. These shortcomings pose real risks to the administration of justice as they affect the Court's ability to plan and implement programs, or to employ resources vital for bringing about reforms or to keep the Court functioning as it should. These failures undermine access to justice and the delivery of justice.

The current financial arrangement and lack of insulation feeds the perception held by many, that **“he who pays the piper calls the tune.”** Or, put another way, that there is a real risk of the exertion of influence over the Judiciary. It does nothing to dispel this perception or lend true meaning and purpose to the principle of separation of powers and to protect against what can be an irresistible temptation. It is time that proper financial arrangements are put in place for the full and effective operations of this Court -our foundational and constitutional courts. I therefore call upon all Heads of Government to address this situation and remove once and for all these perceived notions held by many across our region. These will not be dispelled by lip service but by taking the appropriate action. It would do much to improve the confidence of the public in the justice system across the length and breadth of our region.

That said, I think it is important to share with you some information in respect of the day to day operations of the Court. Notwithstanding the chaos wrought by the killer storms and the persistent financial constraints experienced, the Court has maintained a busy schedule.

In 2017, 450 appeals were filed at the Court of Appeal, marking a marginal increase from 2016 of 417. In 2017 the Court of Appeal heard a staggering 1,302 matters consisting of full court hearings, chambers hearings, video/teleconferences and status hearings. In the same year the Court of Appeal delivered 881 decisions, 67 of which were written judgments and 814 oral decisions. Place that in the context of the number of days in a calendar year which is 365. That equates to an average daily hearing rate of about 4 matters and an average daily delivery rate of more than 2. This is with a complement of 6 judges (inclusive of the Chief Justice) at the appellate level. I ask that you point me to any other Court in the region or anywhere else for that matter, which carries this workload.

At the level of the High Court, 7,197 cases were filed across all Member States and Territories in 2017. In the same year, 4,851 cases were disposed. The overall clearance rate of cases for the year was 67.4%, marking a decline from 83.65% in 2016. No doubt this decline was in part due to the impact of the Hurricanes on affected Member States and Territories. For a more detailed and clearer picture of the trends in cases heard and disposed of by the Court



## Challenges, Opportunities and Resilience: The ECSC paving the way to a Modern and Efficient Judiciary for the Eastern Caribbean

I urge you to read the Court's Annual Report. It is available online at the Court's website. You will find interesting the sheer volume of work this Court must handle across its Member States and Territories every year.

You may ask: how is this achievable given the constraints I have highlighted? The answer lies before you: the committed men and women of the judiciary who work tirelessly and with integrity to deliver justice to the people of our region. Let me be clear, I am not suggesting that there are not shortcomings or that there are not instances where criticism is justified. As Father Cassius reminded us: "No system is perfect". However, the empirical data, which can be searched and examined by anyone interested, demonstrates that the ECSC is in fact a success. Unfortunately, it is easier to criticize the few shortfalls and paint everyone with the same broad brush than it is to address the underlying causes and provide solutions. I am always heartened when our Court is complimented by persons from outside of our region on the work and the performance of this Court and how much they look to our Court and the cases published on our website for guidance. If our website goes down for a day, calls or email queries flow in from regions as far away as India. This is testament to the global reach of our Court in today's world.

On that note, it is important for me to recognize the tremendous efforts of the persons who have ensured that this Court has truly served the people of our States for the last 51 years and their commitment to soldier on into the future. Firstly, the judicial officers of this Court, including our Magistrates who work tirelessly every day, often under less than optimal conditions and with inadequate resources, but who continue to ensure the delivery of decisions that are fair and just. Secondly, and behind the scenes, the support staff working at various levels at the Court's Headquarters and constituent court offices in each of the Member States and Territories. These are some of the most dedicated individuals you could meet and who often go unnoticed for their unwavering dedication to the Court and indeed to their countries.

The Judiciary, whilst always striving to maintain its independence, invariably works together with the other branches of Government. The Heads of Government of the nine Member States and Territories, we hope, will commit to providing an environment and adequate space for the Court to undertake its work independently and impartially without fear or favour. To this end, we acknowledge the work of the various Ministries of Legal Affairs/Justice for the important role they play in providing the support to ensure the running of our court offices and the provision of spaces which are made to function as court rooms and other facilities.

We also salute the hardworking men and women who serve on the various police forces and correctional facilities across our Member States and Territories. These men and women work under extremely trying circumstances to keep you the people of the Eastern Caribbean safe and secure as best they can.

We also thank the Attorneys General, Directors of Public Prosecutions, Prosecutors, Crown Counsel and Members of the Bar across the OECS for the hard work they do and the role they play in maintaining and promoting the

# Challenges, Opportunities and Resilience: The ECSC paving the way to a Modern and Efficient Judiciary for the Eastern Caribbean

rule of law and the proper administration of justice in our region.

To the citizens and residents of the OECS, we work hard every day to ensure you have a justice system you can depend on and feel proud of; we know you place your confidence in us each day to do what is fair and just and to maintain a justice system of the utmost integrity. We will continue to work diligently to ensure that your confidence in your Court never wanes.

For over 50 years this Court has been a model regional Court. Our hope is that as we transition into a more modern Court, we will be able to better serve you. No doubt the Court will continue to exist in an ever-changing environment. New ICT solutions will be developed, new case law will emerge, new rules and processes will be drafted to guide the judiciary; the Court will have to ensure it continuously reviews and makes the necessary changes to remain an institution at the forefront of all the changes the future holds. We ask you the people of the Eastern Caribbean for your continued support as we continue our mission to serve you and to serve you better as we undertake the measures of which I have spoken to improve your access to justice and delivery of justice. I end with an excerpt from the prayer by Reverend Christian: **“We ask God to sustain us in our duties, to grant us humility and sound judgment, to forgive our errors and to inspire us in our service.”**

**I thank you.**