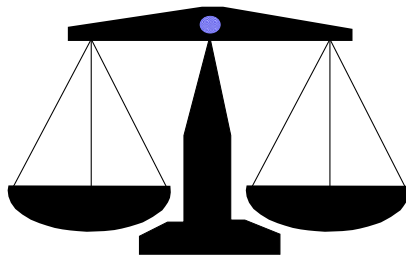


ADDRESS
BY
THE CHIEF JUSTICE
OF
THE EASTERN CARIBBEAN SUPREME COURT
THE HON. SIR DENNIS BYRON
TO MARK
THE OPENING OF THE LAW YEAR 2000/2001



CASTRIES, SAINT LUCIA

MONDAY, 18TH SEPTEMBER 2000

Opening Remarks

Since I started acting as Chief Justice, the Bar Association of the BVI has invited me to present an address to mark the opening of the new Law Year.

This is the first time we have had a special sitting to commemorate the opening of the new Law Year. Traditionally, our jurisdictions have marked the commencement of the Criminal Assizes ceremonially. This is not intended to replace those traditions, but to add to them. Today's sitting responds to the requests of the BVI Bar and more significantly to the imperative of providing information about the status of the Civil Justice Reform Program.

This simultaneous sitting which embraces all of the countries that fall within the jurisdiction of our Court is reflective of two wider considerations: First, it emphasizes our intention to employ every tool to demonstrate the oneness of our judicial system and provides a means by which we can straddle the water, rendering artificial that physical divide which the sea has created between us. And, secondly, it indicates that the employment of Information Technology must play an integral role in the modernization of our judicial process.

Our reform program is motivated by a desire to promote fair, efficient and effective delivery of justice by an independent and competent judiciary. A strong focus relates to

the improvement of our information base and the dissemination of information related to the work of the court.

In keeping with this focus we launched a monthly Newsletter in January this year which is distributed via electronic mail. This publication is intended to provide information on the activities of the Eastern Caribbean Supreme Court, as well as the full text of judgments delivered during the month under review. We are now about to launch the web-site of the Eastern Caribbean Supreme Court which will provide general information about the Eastern Caribbean Supreme Court, the Judiciary, and the schedule of cases to be heard by the High Court and the Court of Appeal.

We are in the final stages of preparation of our first Annual Report which will provide information on the functioning of the Court during the period August 1, 1999, to July 31, 2000.

The Annual Report like the Newsletter will be available free of charge.

In July, 2000 Mr. Kendol Morgan, Communications Officer at the OECS Secretariat was assigned to provide the functions of Press Officer to the Headquarters of the Eastern Caribbean Supreme Court.

The Court has entered into contractual arrangements with Caribbean Law Publishing Company of Jamaica for the publication of OECS Law Reports. Two issues will be published this year covering the period 1996-1998 and 1999.

Rationale for Judicial Reform and A Brief History of Our Efforts

The public has expressed concerns about delay, the excessive costs of litigation, and the quality of the service they have been receiving. They have expressed concern about access to justice – they are concerned that they are unable to get legal representation in relation to certain types of cases and that consequently a number of categories of grievances are not heard by the courts. The public has complained about the lack of a transparent complaints procedure to address incidents of intolerance and rudeness, inefficiency and unethical practices. They have also complained about the inability to get information that is comprehensible to them – this includes basic information about their own litigation which they are financing out of their own pockets.

The Court is not and should not be unaffected by such complaints. The judiciary has the responsibility to find and implement measures to address these and related concerns. As a judiciary, we can give effect to many of the ideals that are enshrined in our Constitutions. Take for example, the Judicial and Legal Services Commission – a body that guarantees the independence of the judiciary. As we enter the new millennium where transparency and accountability are the watchwords for every

sphere of public life, regulations for the operational procedures of the JLSC are crucial, as are proper support and administrative staff.

Mr. Reginald Dumas was commissioned to look into the role of the Judicial and Legal Services Commission and the functioning of the judiciary. He submitted his report in February of this year. The report contained a number of recommendations aimed at increasing the effectiveness, efficiency, responsiveness, accountability and independence of the judiciary. Many of these recommendations require action from the judiciary itself. Others require action from the governments of the Eastern Caribbean. The recommendations have the support of the OECS governments and several have already been implemented. Two important examples are:

- The report recommended an increase in judicial salaries. OECS governments have approved a salary increase.
- The report recommended a Code of Ethics for judges. A Committee comprising members of the judiciary has submitted a Report on this.

I would urge you to support the efforts of the judiciary and our governments in implementing the recommendations which are designed to respond to growing demands of the public and our own demands on ourselves for high standards and an effective and efficient system of justice.

The Rules Reform Project

Brief Overview

The Civil Procedure Rules 2000 are fundamental to the reform process. The rules are designed to reduce delay. They introduce the concepts of case management and mediation. They place control of cases in the hands of the court and create a procedure that is simple to understand. They treat litigants as an integral part of the process.

These Rules 2000 are the fruit of a team effort consisting of

- the judiciary and individual Bar Associations and the OECS Bar Association
- The Judicial Education Institute in which Justice Albert Matthew plays an active role
- The Rules Review Committee, an advisory body appointed by the Chief Justice to advise on the Rules.
- Both the former and present Chief Registrar
- Registrars and registry staff in each court office
- legal counsel to the OECS Secretariat.

- USAID Consultant Robert Lipscher has spent several weeks working on the court administration side of things - getting the court offices ready.
- We have had our 1st case management Master Charmaine Pemberton who has been a part of the team since July 3rd and our 2nd case management Master Hugh Rawlins since the beginning of August.
- CIDA and Canadian Department of Justice Consultant Sharon Walter who has spent the last several weeks on a legal editing and drafting project which had been necessary for the implementation of the Rules.

Honourable Judge Greenslade

You must recall after consultations with the judiciary, each Bar and every Attorney General in the OECS, retired English judge Richard Greenslade who is an international expert on civil procedure rules prepared and presented the first draft of the Civil Procedure Rules in 1998. This draft was widely circulated and discussed. Judge Greenslade remains committed and has continued to assist in evaluating the numerous comments that have been forwarded to the Court.

I take this opportunity to recognize and express appreciation for the British government's funding contribution, through the initiative of the British High Commissioner's Office in Barbados, which substantially facilitated Judge Greenslade's services to the Court.

I should mention that Judge Greenslade did much more than produce the draft Civil Procedure Rules. He was instrumental in the development of reform policy.

Legislative Amendments

Certain necessary amendments were identified by our legal consultant, Sharon Walter to ensure the seamless implementation of the rules. She worked closely with a number of OECS Attorneys General and with OECS Secretariat Legal Counsel. The Supreme Court Acts require amendments so that national legislation contains a provision that addresses the jurisdiction of the Masters. I wrote to all AGs early this year asking that they conduct a review of their legislation with a view to ensuring that there would be no conflict with the new rules.

Ms. Walter has acknowledged the assistance of Mr. Lebrecht Hesse, a very experienced drafter and Solicitor General of Antigua and Barbuda with the production of the initial draft amendments. Amendments to the Interpretation Acts are desirable so that for example, where the words “writ of summons” appear in existing legislation, there is a clear understanding that it includes a reference to “claims” and fixed date claims”.

Model drafts were submitted to the OECS Secretariat for its input and for transmission to Attorneys General in the 9 countries of the OECS. The amendments have already been passed into law in the Commonwealth of Dominica. The other OECS countries

have advised that they will take the amendments to Parliament before the end of September.

Commencement Dates

We have been using our best endeavours to meet the previously announced date of 15th September 2000 for the commencement of the implementation of the new Rules of Civil Procedure.

We have accepted that it is desirable that the Rules be published in hard copy as a condition precedent to their implementation. Therefore, it has been decided that the new Rules of Civil Procedure will be brought into effect on 31st December, 2000.

The later date will also allow governments to enact changes to statutes and regulations to ensure the smooth transition to the new Rules.

Backlog Reduction Programme

You are all aware that the one of the overriding objectives of the New Rules is to promote an efficient system of justice by the expeditious disposal of civil cases. This objective will be stymied if the disposal of pending cases is not specially addressed at this time. The experience of other jurisdictions which have implemented the Case Management approach for civil cases, suggests that a significant reduction of the cases which were filed under the old system is critical to the successful implementation of the

New Rules. The decision has therefore been taken to implement a Backlog Reduction Programme. The first stage is the completion of the inventory, which is being conducted at court offices and registries.

The second stage of the Backlog reduction Programme entails the collection and collation of information with respect to the status of the old cases. This requires the assistance of Counsel and *pro se* litigants in determining the status of the cases and we urge you to assist us in this endeavour.

The third stage of the Backlog Reduction Programme will be status hearings, which will be scheduled between September and December 2000 in each jurisdiction. The purpose of these hearings will be to determine what cases have been or could be disposed of without trial and preparing the others for trial. We urge all concerned to facilitate the efficient and expeditious operation of this Programme.

Restructuring Program

To ensure the efficiency and effectiveness of the justice system, there must be sufficient numbers of qualified personnel to perform necessary tasks. We have our complement of Judges who have worked tirelessly over the years and I take this opportunity to publicly express gratitude for their support and commitment.

As part of the development of the administrative capacity of our Supreme Court, we have employed an Information Technology Manager, a Network Administrator and a Qualified Accountant. Every indication thus far shows promise that these individuals will provide us with strong technical support in their respective areas and we will no doubt be reaping the benefits of their knowledge and experience in the upcoming months.

Our estimates reveal that approximately 25% of judicial time was not spent on final disposition of matters but on what were essentially “case management” issues. These you may recognize as traditional “chamber” applications.

In jurisdictions, such as U.K., Canada, Trinidad and Tobago and Jamaica, the judicial system made accommodation for an officer to deal with these matters by the appointment of Masters of the Court. The Master is vested with “power to transact all such business and exercise all such authority and jurisdiction as may be transacted and exercised by a Judge in Chambers” save for specified matters. Today, I am pleased to share with you that we in the OECS have largely adopted this approach. The office of Master has been or will be created by Amendment to the Supreme Court Acts of all 9 territories and the amendment reads in part as follows, and I quote:

“Masters shall exercise the authority and jurisdiction of a judge of the High Court sitting in chambers and any other authority and jurisdiction as

may from time to time be assigned by Rules of Court made under section 27 of the Courts Order”

The Masters will have charge over a matter begun by Claim Form and certain existing matters commenced by Writ of Summons from the time of filing of the defence up to the time of trial.

The Rules provide for Case Flow Management at Parts 25, 26 and 27 and provide the *raison d’etre* for the existence of the Master to perform this function in our courts.

In addition, the new Rules, while not making Alternative Dispute Resolution compulsory, fixes the Master with the responsibility of ensuring that parties are exposed to mediation before having their matters litigated in Court.

The Bar Associations

The Bar Association of the OECS and each territory under the jurisdiction of the Court are all seen as partners in our efforts at Judicial Reform. We have been in regular contact with the Bar members in order to keep them abreast of developments either directly via formal sessions or indirectly via other officers of the Court. Their input at the different sessions held as well as through the Rules Revision Committee has proven to be most valuable and we would like to thank them for their support and positive comments throughout this process.

We are very aware that with the implementation for change, a need emerges for the Training & Development of the agents undergoing the change process. In light of this fact, we would like to solicit and encourage feedback from the members of the Bar both in areas where concerns exist with the new rules and in areas where training proves to be necessary.

The process of revision of the new rules will be on-going even after implementation and we would take into consideration in this process the comments returned to us either directly, via the Bar Association Presidents, or via the Registrars.

With respect to training and development of the Bar members all efforts will be made to provide the requested support through our Judicial Education Institute and other mechanisms aimed at fulfilling the needs that are identified.

Judicial Commitment & Constitutional Imperatives

The substantive judicial provisions contained in *The West Indies Associated States Supreme Court Order, 1967* are designed to secure the independence of the judiciary and are specially entrenched in our constitutions.

The judiciary is an essential partner within the government. It is, however, an independent body, as it must be, in order to discharge its adjudicating function in a manner that is just.

In my view, the separation of powers is not reflective of tensions between the three branches of government. Rather, it is meant to emphasize the right of the citizen to a system of justice that guarantees a fair trial, as well as the necessity for the judiciary to afford judicial leadership. This in turn fixes us with a duty to commit ourselves to provide impartial, competent, efficient and effective judicial service. It also requires us to continue our emphasis on research, continuing judicial education and to make the use modern technology affords for the purposes of improving the judicial task. These in fact are all in keeping with the objectives of our Judicial Reform Program.

Our system of justice in the Eastern Caribbean has benefited tremendously over the years from the partnership between the Bench, the Bar, our governments and the public. I would like to praise the contributions of my predecessors in office and members of the judiciary who are no longer in active service. I take this opportunity to thank them and also to thank you, one and all, for your unstinting support and cooperation during all the stages of the Reform Process to date. I look forward to your continued support and may God continue to inspire and to guide us.

Thank you and God Bless You.