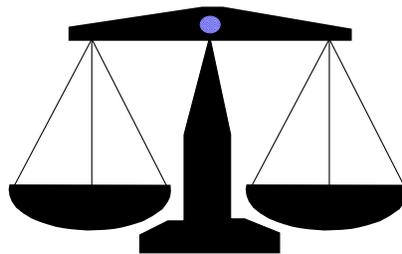


ADDRESS
BY
THE CHIEF JUSTICE
OF
THE EASTERN CARIBBEAN SUPREME COURT
THE HON. SIR DENNIS BYRON
TO MARK
THE OPENING OF THE LAW YEAR 2001/2002



COMMONWEALTH OF DOMINICA

Mr. President, Honourable Minister of Legal Affairs, Honourable Mr. Attorney General, Justice Cenac, other distinguish guests, members of the legal fraternity, citizens of the Eastern Caribbean, ladies and gentleman.

I think it is fitting to express sympathy with those who have lost friends and families in the United States in the incident that occurred there almost a week ago. Our entire sub-region expresses concern for the human tragedy, injury, loss of life, and grief, particularly as nationals of our jurisdictions have been affected. On behalf of the Court, I take this opportunity to extend wishes for the speedy recovery of those who are injured in body or in mind. I also express our very sincere sympathy and heart-felt condolences to those who are bereaved.

At the beginning of the last Law Year, I presented the inaugural address to the First Special Sitting of the Eastern Caribbean Supreme Court to commemorate the opening of the Law Year 2000 - 2001. I indicated that the simultaneous sitting which embraced all of the countries that fall within the jurisdiction of our Court was reflective of two important considerations. First, to emphasize our intention to demonstrate the oneness of our judicial system and to render artificial that physical divide which the sea has created between us. Second, to stress the employment of Information Technology as an integral aspect in the modernization of our judicial system. I think that over the last year we have worked together and utilized Information technology in our endeavours. I want to take this opportunity once again to laud the assistance, which the Bar Associations in all of our jurisdictions had provided with the various reform initiatives of the Court. Our justice system in the OECS has derived great benefits as a result of co-operation between all of the stakeholders in our justice system which includes the Bench, the Bar, our governments and the public.

The completion of a year is always a time of reflection and projection. It is the time to examine the goals we set, evaluate our efforts, re-examine our failures, reflect on our accomplishments and plan for the future. Our achievements over the past year make it reasonable to conclude that we are well on the way to make our judiciary stronger, more efficient, more effective and the process more transparent. This however, is only the beginning.

Eastern Caribbean Civil Procedure Rules

In my view the most significant achievement over the past year has been the implementation of the Eastern Caribbean Civil Procedure Rules which came into force on the 1st day of July 2001. The rationale for this process may be found in the very first provision in the New Rules, which states that the overriding objective of the civil justice reform process is to enable the court to deal with cases justly. In so doing, the court is mandated by the guidelines contained in Part 1.1(2), as far as practicable, to ensure that the parties are on an equal footing, save expense, deal with cases proportionately, ensure that cases are dealt with expeditiously and fairly, and to allot to each case an appropriate share of the Court's resources. In short, to provide justice in a manner that is effective, efficient, and affordable, in order to modernize our justice system and to bring it into the 21st century.

The Supreme Court Masters, a new addition to our judiciary, which took effect towards the end of the 1999-2000 year, came into full throttle during the last year. With just a complement of two, Master Pemberton and Master Rawlins, they have made a tremendous impact on the civil justice reform package throughout the region. Our Judges, the Bar Associations and Lawyers, have worked tirelessly with these officers and with the public. They have contributed significantly to the dramatic reduction of the backlog of inactive cases which clogged our civil justice process. The past year has witnessed a

dramatic decrease in the number of cases that were inactive for long periods of time and an equally dramatic increase in the number of trial ready cases. I would like to pay special tribute to the two Masters. I must also pay special tribute to the support staff of our Court Offices who have enthusiastically maximized all available resources for the implementation of the Rules.

Most of the active cases have been put on track for hearing. Active cases, some of which were filed as long ago as 1980 and many cases, which were filed during the past year, have had a first hearing. Members of the public and commercial interest have voiced great satisfaction with the new legal culture, which is being fostered by the new Rules. We can all be justly proud. The present imperative is to maintain the reform momentum. This requires the institution of a system that monitors and rationalizes the civil justice reform process. For this purpose a Task Force on Civil Justice Reforms has been instituted. The objectives of the Task Force are, primarily, to monitor the performance of the program of Civil Justice Reforms introduced under CPR 2000, and to ensure that the program meets the desired goals and the requirements of each jurisdiction within the OECS.

Computerization

As we reform our system, we are mindful that the quick and accurate retrieval of information and the ability to provide this to the public is an important endeavour. To this end we have added a technological component to our court offices. They have all been computerized and the Judicial Enforcement Management System [JEMS] software has been installed, as an important part of the Reform. This has improved the management of the court office. We must express appreciation to USAID for the assistance given to the computerization of the court offices. It is expected that the jurisdictions of Montserrat and St. Vincent and the Grenadines, the only two not yet computerized, will have their

installation completed soon. This gives us the capacity enjoyed by modern courts to manage our cases, track their progress through the system, readily provide information to practitioners and the public and gather and distribute statistics that can be used to evaluate the effectiveness of our judicial system and help to direct its future. We have not merely installed the system but we have been able train our Court Office staff to use it. Our former system of filing and retrieval was time consuming and the easy displacement of files due to the sheer volume no doubt interfered with the quality of the services rendered. Both at the High Court and Court of Appeal the new technology has already caused our operations to go through significant changes and improvements.

Civil Justice Reform Process

The Civil Justice Reform process which officially commenced in 1997, has had as its hallmark the concept of consultation with the legal community as a whole, the governments of the OECS the public and individuals within and without our sub-region. Too much cannot be said and enough thanks cannot be expressed to those who have supported and continue to support our justice reform programme. We must pay tribute to a large number of individuals, institutions and organizations. This year I must make special mention of the fact that we received inspiration and valuable functional assistance from the Chief Justice and Court Administration Department of the Judiciary of Trinidad and Tobago and express the appreciation of our judiciary to them. Our reform does not end with our civil reform.

Criminal Justice Reform Process

The criminal process is also under review. It must be of grave concern to the judiciary when an inordinate amount of time elapses between the arrest of an accused, the laying of an indictment and the final disposition of the case. We must take note and act when remanded prisoners sit and wait too long for a trial.

Our Constitutions require and our criminal jurisprudence deem that persons accused of crimes must be cloaked in the presumption of innocence. They are entitled to a speedy, fair and public trial. And we cannot tolerate delays that may be deemed unreasonable that could very well have constitutional implications. Our criminal justice reform is aimed at addressing these issues where they exist. We must be prepared to perform our historic duty and be the protectors of the rights of the people. An element of such delays is built in into our system, that is, our assizes. The continued practice of having criminal trials of indictable offences at only specified times of the year may very well have outlived its intended purpose. We must be prepared after wide consultations to change our criminal assizes, as we know it. In our criminal justice review we must be prepared to examine the goals of sentencing and determine whether the goals of sentencing need to shift from merely incapacitation and retribution and instead endorse more efforts aimed at rehabilitation and deterrence, both general and specific. We must continue to reach out to other players in the Criminal Justice System, consult with them, and be prepared to look at alternatives to incarceration in appropriate cases. We must be prepared to honour our traditional role and fashion new sanctions when those that are available shock the judicial conscience. At the same time we must recognize and respect the principle of separation of powers.

Our criminal justice reform also includes a jury management component. Our citizens must be reminded of their civic duty to serve on juries and encouraged to do so. Through public education we intend to impress upon the public the important role they play in the trial process.

The Family Law and Domestic Violence Project is also high on the reform agenda. Improving the process in this area is of vital importance in our jurisdiction. Much work has already been done on this programme and I am

optimistic that the committee will complete its studies and seminars and make recommendations during the course of this law year.

We cannot ignore the exploding incidents of domestic violence that is taking place across our jurisdictions. Legislatures are responding to this behaviour and the Court has its role to play. We recognize that our judiciary needs to be exposed to ways of handling these problems. Certainly it can only benefit our judiciary if our judicial officers understand theories related to this behaviour.

Our juvenile justice system is also on the reform train. It needs no empirical data to show that if we are able to address the delinquent behaviour of our children early and direct and provide identifiable and relevant services we will be able arrest criminal behaviour early.

Court Reporting

It is self-evident that if our civil and criminal practice rules provide efficiency in bringing cases to trial then we must have a mechanism in place to improve the trial process itself. It is with this view in mind that our Court Reporting Project takes center stage. In Dominica a pilot program will commence with the new law year with the assistance of USAID. It is expected that provision will be made to commence training approximately 25 Court Reporters in Computer Aided Transcription (CAT) during the course of this law year. The training should be done in the BVI and will last for 2 academic years. Upon graduation our Certified Court Reports would have attained a speed of 225 strokes per minute. This will speed up the trial process as it will replace the painfully slow record in the judge's longhand by a recording process at conversational speed, and will relieve the judge of the transcription task and allow full concentration on the judicial function. Having trial transcripts

immediately available would facilitate judgment delivery and hasten and improve the preparation of appeal records.

Alternative Dispute Resolution

Our efforts to make access to justice more practical, includes examining alternatives to litigation. To this effect mediation has been identified as an appropriate method of dispute resolution. And we hope soon to embark on a project demonstration activity in one of our islands as a test project before we reproduce it throughout our jurisdiction.

Magistracy

Our Magistrates' Courts are not excluded from the reform program. Our Court reporting system in that Court will allow for the audio recording of the proceedings from which transcripts can be prepared when necessary. To that effect staff will be adequately trained to install, operate and maintain the recording devices.

We are also embarking on a project to regionalize the magistracy. This would effectively place the employment of magistrates under the jurisdiction of the Judicial and Legal Services Commission including the interviewing and selection process. This has already begun with St. Lucia and the channels have already been established with the view of getting the necessary legislative changes so it can be replicated throughout all of our jurisdictions. We are at the consultative stages with the appropriate governmental agencies in the islands.

Judiciary

Our reform would be incomplete if we fail to address the needs of the judiciary. Our Mission Statement requires the delivery of justice independently, by competent officers, in a prompt, fair, efficient and effective manner. Our

resolve is that this will not be a statement that merely points to a utopian ideal. During the last year the terms and conditions of judicial service in our jurisdiction were considerably improved with salary increases. Although the earnings of the more successful members of the legal profession is still much greater, we feel that the new provisions should make judicial service more attractive to successful practitioners. The Judicial and Legal Services Commission has now introduced a new open, transparent, competitive and merit-based judges' selection process. It is axiomatic that if we are to continue to build on the pillars set down by our past and present judicial officers that we must be able to attract the brightest and the best from among our legal fraternity to join our bench. This process is the vehicle to achieve this goal.

Over the past year a large percentage, nearly one-third, of our the complement of our judges reached retirement age at almost the same time. In order to deal with this crisis we had the benefit of two reports which addressed the methodology of selecting new judges. Last year I was able to refer to the Dumas report. This year I need to report that a committee under the Chairmanship of Justice Matthew and supported by the CDB submitted its report on the Judicial selection process. This report is informing the current proceedings. In the meantime as an interim measure a complement of acting justices were engaged on short-term appointment. Although this is not the kind of judiciary we envisioned, and we subscribe to the concept that the tenure of judicial employment is an institutional safeguard for impartiality and judicial independence, I have nonetheless to express appreciation for the leaders of the Bar in the OECS, and to a visitor from Belize who served well in St. Lucia for their response to our crisis. I think that we were very well served. The new approach to recruitment is underway. Advertisements for vacancies on the bench have been distributed around the region. The Selection will be based on fixed objective criteria, which have been widely circulated and published in

advance. A process of consultation with the entire judiciary and the Legal profession will take place, and the leading candidates will have the opportunity to appear before an interview panel. We expect that this process will result in the best choices being made.

Once we can continue to attract and choose quality Judges the result is obvious; the quality of justice delivered must improve.

A very significant step was taken recently by the appointment of Judicial Council, with a view to the democratization of the administration of the Court. Over the past year, we have stressed continuing judicial education.

Judicial Education

Our commitment to ongoing judicial education is one of the means by which effect is being given to the dictates of our Mission Statement. During the past year, our judicial officers have benefited from a number of Judicial Conferences. I would like to single out a Symposium on Intellectual Property Law and Practice for the Judiciary, which was held in St. Lucia in June 2001 under the auspices of The World Intellectual Property Organization (WIPO) and the Government of St. Lucia; and a Workshop on Alternative Disputes Resolution methods which was conducted by the Caribbean Law Institute of the Faculty of Law, University of the West Indies and the Florida State University College of Law with USAID funding.

Information Dissemination

I must tell you that the Eastern Caribbean Law Reports are at the publishers and proofs are now being worked upon. In last year's address, I stressed the importance of the dissemination of information, and the maintenance of communication in the modernization of the Court process. In

furtherance of this, we have maintained the publication of the monthly Newsletter, which provides information on the activities of the Eastern Caribbean Supreme Court. It is available on the Court's Website, which became fully operative during the past year. The Website also provides the full transcripts of the written decisions of our Courts on a monthly basis. We are in the final stages of preparation of our Second Annual Report, which will provide information on various aspects of the Court and its endeavours during the period Law Year 2000 to 2001. The publication of the Eastern Caribbean Law Reports is imminent. The first Report, which will be for the year 1996 has been proof-read and returned to the publishers, and members of the staff of the Court are in the process of reading the proofs for the Report for the year 1997.

I must let you know that during the last year we have published the Judicial Code of Conduct. This code governs the behaviour of our judicial officers both Judges and Magistrates. Our judicial officers have always been governed by an unwritten code. We have decided to reduce those principles to writing so there are no ambiguities. More important so that the citizens of the Eastern Caribbean also know and have access to those principles that our Judges and Magistrates must be adhered to. This we believe can only help in building more public confidence in our judiciary and a greater understanding of how our courts operate.

We believe that it is important that the people served by the court understand its operation, understand its role and understand its purpose.

Conclusion

Despite the volume of our justice reform process it is still my intention to sit from time to time in our High Court once again and hear cases. Last year it was my intention to do so but my inability to do so was not due to any lack of

efforts. This year a more determined effort will be made and you will be able to judge the success of that effort.

So as we go forward we must continue to work towards changing how our court is viewed by some. It is my belief that our court should not be viewed merely as a place where disgrace is brought to person's lives, or pain to families, or associated only with police, prisons and trouble. Our court must be seen as an institution that protects rights, promotes order, advances equality and delivers justice.

So today as we begin yet another year of serving much has been achieved but there is much more to be done. Our efforts however, will be more successful when we have the full complement of the people supporting them. We cannot stop though we may be slowed down, unless and until we are satisfied that the overwhelming majority of the people of the Eastern Caribbean are satisfied that they can get justice in our court.

Our judiciary is committed to deliver justice without fear or favour, efficiently, effectively, fairly, impartially and expeditiously. To that end we will not only let justice be done but we will let justice be seen to be done. May God's blessings be with you. I thank you.