

ADDRESS

**BY
THE CHIEF JUSTICE
OF**

THE EASTERN CARIBBEAN SUPREME COURT

THE HON. MR. JUSTICE HUGH ANTHONY RAWLINS

TO MARK

THE OPENING OF THE LAW YEAR 2011/2012



**ST. JOHN'S
ANTIGUA**

TUESDAY, 20th SEPTEMBER 2011

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

Introduction

- Honourable Heads of State of each of the OECS Member States and Territories;
- Honourable Heads of Government of the OECS Member States and Territories;
- Honourable Judges of the Court of Appeal, Judges of the High Court and Masters of the Eastern Caribbean Supreme Court;
- Honourable Justin Simon, QC, Attorney-General and Hon. Attorneys-General and Ministers of Justice & Legal Affairs of each of the OECS Member States and Territories;
- Honourable Ministers of Government of Antigua and Barbuda and of each of the OECS Member States and Territories;
- Retired Judges of the Eastern Caribbean Supreme Court;
- Honourable Leaders of Opposition of the OECS Member States and Territories;
- Honourable Speakers of the Houses of Representatives, Presidents of Senates and Members of Parliament of each of the OECS Member States and Territories;
- Chief/Senior Magistrates and Magistrates of the OECS;
- Chief Registrar, Deputy Chief Registrar, Registrars, as well as Deputy and Assistant Registrars of the Eastern Caribbean Supreme Court;
- Court Administrator, Mr. Girard and Director of Projects, Mr. Letang;
- President of the OECS Bar Association, Mr. Tapley Seaton CVO, QC, and Presidents of constituent Bars of the Eastern Caribbean;

- Learned members of the Inner Bar of each of the OECS Member States and Territories; and we recognize also sitting with us this morning Sir Richard Cheltenham of the Barbados Bar and in recent years , more and more of the OECS Bar;
- Members of the Utter Bar of each of the OECS Member States and Territories;
- Commissioner of Police Vere Browne of Antigua and Barbuda and other Commissioners of Police of the other OECS Member States and Territories, Police Officers and Heads of Correctional Facilities of Antigua and Barbuda and of each of the OECS Member States and Territories;
- Staff of the various Court Offices in each of the OECS Member States and Territories;
- Distinguished Guests;
- Citizens of the Eastern Caribbean;

Please permit me of course to recognize my better half, Mrs. Claudette Rawlins who sits here this morning. She very rarely attends these gatherings. In fact, this is actually the first time that she has traveled to another island for such an occasion. She attended on only one other occasion in Saint Lucia where we reside.

Good morning everyone.

Another year has rushed by and the time for another address to mark the official opening of the law year 2011-2012 has come in Antigua and Barbuda, the nation of pristine beaches and seas.

We again commend the technical expertise of CABLE & WIRELESS/LIME and the IT Department of the Court's Headquarters for making the live simulcast of this address possible to the nine Member States and Territories of the Eastern Caribbean Supreme Court. We thank Mr. Mark Ernest for leading that Division and for the usual efficient work; an efficiency which we have now come to expect from Cable and Wireless and all affiliates for the opening of the Law Year Address.

Please permit me to place on record my appreciation to the resident judges, registrars and staff of the Court offices of all of our Member States and Territories for organizing the various church services and special sittings to mark this ceremonial opening of the Law Year.

Appointments

I am pleased to announce the following new appointments to the Bench:

- The Honourable Mr. Don Mitchell, CBE, QC, to the Court of Appeal for 2 years from 1st September 2011;
- Her Honour Mrs. Georgis Taylor-Alexander, formerly Solicitor General of Saint Lucia, as a Master of the Eastern Caribbean Supreme Court from 1st September 2011.

Justice Kenneth Benjamin, the Judge in charge of the Criminal Division in Saint Lucia, demitted office with effect from 1st September 2011 to take up an appointment as Chief Justice of Belize with effect from 15th September 2011.

We put on record our appreciation for the services rendered over the past year by the following retired judges , judges and legal practitioners: retired Justices of Appeal Michael Gordon, CBE, QC, Albert Redhead and also Albert Matthew; retired Justices Lyle St. Paul, Ephraim Georges, Ian Donaldson Mitchell, CBE, QC; Henry Moe, Suzie d’Auvergne, Monica Joseph, and Ian Kawaley of the Bermuda Supreme Court; lawyers Tyrone Chong, QC, Paul Webster, QC, Jefferson Cumberbatch, lecturer at the University of the West Indies, Anthony Gonsalves, Jeffrey Nisbett, and Michael Fay. We also recognize the Master of the Rolls of the English Supreme Court, the Rt. Hon. Lord Neuberger and the Rt. Hon. Sir Martin James Moore-Bick, Head of the Civil Division of the English Court of Appeal and His Lordship, the Hon. Justice Edward Bannister, QC, who assisted our Court in a seminal decision concerning the interpretation of the pensions’ legislation for Judges of our Court.

Conferment of Silk

The names of the persons upon whom the rank of Queen’s Counsel is to be conferred should have been announced today. Regrettably, however, I

shall have to make that announcement in the near future as the process is ongoing, but will be completed shortly.

Reports

Happily, it is not necessary to provide departmental reports in today's address. These are detailed in our quarterly newsletters and in our Annual Report which was published in a timely manner, thanks to the coordinating work of Ms. Claudette Valentine and Ms. Myrtene Cenac, our Information Services Manager and Statistician, respectively. You are invited to view this on the Court's website at www.eccourts.org, but you may view it from afar this morning because here is a copy that is ready for circulation

The opportunity is however taken to update the people of the region on a number of initiatives which were undertaken during the past law year.

The Halls of Justice Project

This is the project by which the Court, in conjunction with the governments of the region, intends to construct new state-of-the-art judicial complexes in the islands which the Court serves. A Regional Project Steering Committee, which serves as an advisory Committee to the Chief Justice's Office, convened meetings as the project advanced to near completion of the

feasibility stage. The Committee studied elements of the budget funding strategy and the proposed building sites in all of our Territories.

The consultant for the feasibility stage, ACLA Works, a Trinidad based firm, submitted a Draft Feasibility Report, which details schematic drawings and floor layouts for three types of buildings (small, medium and large court buildings) and the production of full design guide or design brief for the buildings. These, as well as the inception report for the project, can now be accessed on the Court's website. The study also produced an Environmental Impact Assessment and Social Impact Assessment Studies report. The Court is continuing discussions with potential donors and funding agencies and wishes to place on record our appreciation for the unwavering assistance which the Caribbean Development Bank (CDB) has provided throughout our endeavours to date on this project. We also appreciate the leadership role played by Mr. Francis Letang, the Court's Director of Projects, and the work of Mr. Kevin Magill, the Project Director for the work done during the feasibility stage.

The Integration of the Magistracy

On 20th May 2011, at the 53rd Inter Sessional Meeting that was held in St. Vincent and the Grenadines, the Heads of Government of the OECS signed an agreement, which will begin the process of integrating Magistrates into the judiciary. The ensuing steps will include the ratification of these agreements by the Cabinet of each Member State and Territory, followed

by the enactment of the necessary legislation to bring the agreement into effect.

Criminal Division

The Criminal Division in Saint Lucia continued to function successfully. Save for a few administrative issues facing the system, cases are being satisfactorily processed under the Criminal Procedure Rules. The Court is however continuing the process of reviewing and evaluating the Criminal Division and is working closely with those concerned to ensure that issues which arise are effectively addressed.

The Criminal Division rollout is now being introduced in other islands, to wit: Grenada, Dominica, Antigua and Barbuda and St. Vincent and the Grenadines. A presiding judge was appointed in each of these Territories to oversee the activities of implementation at the court level. Sub-committees were formed to support the Project Steering Committee, and new Criminal Procedure Rules are being revised by the Attorney General's office in Grenada.

Civil Procedure Rules Amendments

During the course of the last law year, the Court's Rules Revision Committee concluded discussions and consultations on the amendments to the Civil Procedure Rules.

The initiative to amend the Civil Procedure Rules, 2000 will culminate in the promulgation of the Eastern Caribbean Supreme Court Civil Procedure (Amendment) Rules, 2011, and a number of Practice Directions. The Practice Directions are intended to flesh out the Rules. It is important to note that updating and amending the Rules to facilitate civil practice is a work which will be ongoing even after I have departed from the present Office. The amended Rules and Practice Directions will come into effect in all of the islands on 1st October 2011.

I hereby record the Court's appreciation for the work of Mr. David di Mambro, a member of the Civil Rules Committee of England and Wales and his wife, Mrs. Louise di Mambro, the Registrar of the English Supreme Court and of the Privy Council, and also the work of Mrs. Karen Dalton, formerly Chief Parliamentary Counsel of Saint Lucia, and to the Court's Rules Revision Committee.

The Court is concerned with what seems to be a growing failure to follow the Rules and timelines given in those Rules, particularly for the filing and serving of skeleton arguments and written submissions. We are also concerned that in many countries, the listing questionnaire, which is an essential tool for efficient case management, has fallen into disuse. I hereby call for a return to the effective use of these questionnaires.

Family Division

The Committee, headed by Justice of Appeal Ola Mae Edwards, to advise the Court on the development of the Family Division has completed and submitted its final report, which will soon be available for comments on the Court's website. It concluded that a Family Division of the Court should be established on similar principles, rules and procedures as obtained for the creation of the Criminal Division. However, the rules developed for the Family Division will have to observe the rule-making authority established by legislation, which established the Magistrates Courts in the respective Member States.

In the meantime, the assistance of drafters from the Attorneys General's Chambers in Grenada and other States has been sought to assist with the drafting of the rules, which will be presented to the Member States of the OECS.

Three funding agencies (CIDA, UN-Women and UNICEF) have pledged their joint support to fund the pilot projects for the establishment of the Family Division in Grenada and Antigua and Barbuda.

Technology in the Court's Reform Process

Information technology continues to play a major role in improving the efficiency of the court system. Having made this a significant component in

last year's address, I do not intend to go into details this year. I shall only report that:

The upgrades to JEMS 6.0 should be completed in all Member States by 31st December 2011.

JEMS training continues for users of the Courts throughout the sub-region, now primarily in the management of Criminal and Traffic type cases, and seminars and workshops are being arranged in this regard.

A new Website Administrator, Mr. Demetrius Charles, joined the Court in early 2011.

Video Conferencing facilities have now been installed at all the High Courts of the six independent Member States of the OECS. This was done through a joint venture between our Court and the Caribbean Court of Justice, and funded by the European Union and our Court. Video conferencing facilities have been installed both at the High Court and the Commercial Court in the Virgin Islands.

The Court will work with the authorities in Anguilla and Montserrat to ensure that similar facilities are installed expeditiously.

The Court of Appeal heard matters and delivered judgments by video-conference during the last law year. The facility at the High Court in Saint

Lucia has been utilized to take evidence from witnesses located in the United Kingdom, for example, and it will shortly be used to conduct bail hearings and arraignments.

The Court continues to pursue its electronic filing initiative.

The Appeal Process

We are further rationalizing the appeals process in the face of the increase in cases. We intend to ensure more efficient and effective use of judicial time by case management in a manner which should see only cases that are ripe for hearing listed for any appeal hearing.

The Court

Outstanding judgments are a grave concern. Throughout the Caribbean region, it is known that the High Court and Court of Appeal judges of the Eastern Caribbean Supreme Court are called upon to shoulder workload burdens which judges in no other country bear; burdens that are not even cast upon judges in England. Every day we see evidence of spiraling litigation in our Courts. Through it all, in the main, the judges of our Courts have carried the burden in adverse circumstances; true, in most instances, to the oaths which we took when we embarked on this journey. The vast majority of our judges still manage to remain current in the delivery of judgments, even through illness, which is often brought on by

the stress of the workload and deprivation of family and social life. There are some instances, however, in which judgments are inordinately delayed.

It is not acceptable that judgments should be inordinately delayed in our court system. The Privy Council has said that in various cases. You may recall the case that went to the CCJ in recent times, in which the combined time for delivery of the judgments in the High Court and Court of Appeal was over eight (8) years. This occasioned the Caribbean Court of Justice to state that a judgment should be delivered within certain time-frames, barring extenuating circumstances. The upper limit that was stated by the CCJ was six (6) months and as previously said that was qualified by the term 'barring extenuating circumstances'.

Over the years, inordinate delays by a few of our judicial officers have caused grave difficulties to parties in cases. There are instances in which persons who are affected by decisions of Magistrates are unable to pursue appeals because reasons for decisions are not produced. This is all unacceptable. While I put on record my appreciation for the work of the vast majority of judges for their consistency in this their labour of love, it is incumbent upon me to call upon those who are inconsistent to follow. Let us rededicate ourselves to our tasks in keeping with our oaths. It is not enough to say that it has always been like that or that it is the norm in most other jurisdictions.

The opportunity is taken to thank the masters, registrars magistrates, the staff of the Court's Headquarters, all judges, the High Courts and Magistrates Courts of the Member States and Territories, for your commitment over the past year. My request is that we all recommit ourselves and our services in an even greater measure to the tasks ahead, and I have no doubt that is the path on which we were put this morning by Rev. Greenaway at the service in church. I take the opportunity to thank him for conducting this service for a second occasion during my short time - first in Dominica in 2008 and now in Antigua and Barbuda. Let us carry into the year the charge which he gave from the Prophet Micah as we ponder what is required of us at the end of the day, no matter what else we do in life ... and particularly for us on these benches "... to do justice, to love mercy (that is the old version; in the newer version you will hear, 'to love kindness') "... and to walk humbly with our God."

The opportunity is also taken to express appreciation to all who have assisted the Court in pursuing its mandate in the past year. This includes the Governments of the OECS, Police and Prison Officers. We of course thank in particular Commissioner of Police Mr. Vere Brown and all the members of the Police Force, particularly those who were on parade this morning. I looked very carefully at your regalia and particularly at your shoes and was reminded, particularly, when I was a member of the Cadet Corps, when we dared not be present on parade having not spent many hours during the night before shining, in particular the tips of our shoes. These days there are new inventions so there are no excuses. We used

Nugget polish then, on cotton lint and dipped into water. That assisted us in bringing quite a shine to the tips of our shoes in those very good old days. We may even have lived a year longer for having gone through that exercise. Thank you Commissioner of Police; we express our thanks for the excellent turn out this morning.

May I also commend the Police Band for its musical renditions. It is the first band that I have seen that has incorporated the steel band as a musical instrument. That is extremely commendable and I hope that this will be replicated in all of the jurisdictions in the OECS in due course.

Professionalism

My heart grieves with each complaint from members of the public that they have been hard done by persons of our profession from whom they expected protection. Let me emphasize that this does not involve the majority of our practitioners. If the allegations are true, it appears that only a few in our ranks are involved. It is a breach of our sacred trust if those allegations are in any way true. In this context, I am happy that the legislatures of some of our islands are promulgating Legal Profession Acts. Bar Councils in those islands, which have promulgated these Acts are taking steps to facilitate proceedings in cases which so require. My prayer is that every island will bring these Acts into effect, and that complaints will be effectively dealt with under them.

The public is reminded that complaints should be directed to the secretaries of the Bar Associations or to the offices of Attorneys General, who are the guardians of the public interest. Any communication to the Office of the Chief Justice in any matter is, by practice and protocol, to be addressed to the Chief Registrar, and there is good reason for that. This is particularly to prevent cases which are in the process of litigation from coming to the attention of the Chief Justice who may later have to sit on the same matter. The office of the Chief Registrar will screen correspondence and determine in what instances a matter may be brought to my attention. By our Code of Ethics I cannot comment on matters which are in the litigation process unless those matters are before me formally in that process. Over the past year I have received many such letters asking me to take action against either judges or magistrates for decisions which they have given in Court. I must indicate that this is beyond all practice and protocol in our Courts.

I note a growing incidence of statements which are made concerning our courts, or officers thereof, sometimes on inaccurate information and non-existent facts. The Court welcomes comments and analyses of its work and judgments but does not appreciate the use of inaccurate information or facts which do not exist. A judicial officer who was affected by one such statement recently, and refused to accept it, informed me of a welcome happy ending to the ensuing impasse. My hope is that the lesson has not been lost on us and that we shall all be accordingly guided.

Intellectual Property

I guess that might sound out of the ordinary, but you will understand why I address it this year. Intellectual property covers the gamut of activities which include the registration and protection of trademarks and merchandise marks, trade and business names, patents, copyrights, industrial designs, layout-designs of integrated circuits, geographical indications and new plant varieties. There is a growing recognition that intellectual property is a critical aspect of law and legal practice which has a regulatory regime within which the creativity of our people could be encouraged, and their creative endeavours and works protected.

This is also an area with great potential for the financial and economic returns which would inure to the benefit of designers, musicians, entrepreneurs, playwrights, poets and other creative persons in our society. Enormous returns may accrue to legal practitioners, administrators of legal offices and to our States if our Intellectual Property regimes are well regulated and administered in accordance with the guidelines of the World Intellectual Property Organization (WIPO). Those guidelines afford the framework of internationally recognized standards.

Some legislative and administrative initiatives have been taken, particularly from the turn of this century, which indicate that government departments in the OECS are recognizing the vast potential of a well regulated Intellectual Property system. I encourage those initiatives, and,

in particular, the updating of our legislation as well as the hastening of the process of setting up dedicated IP registries managed along business lines.

The steps recently taken by the Faculty of Law, Cave Hill Campus of the University of the West Indies to set up an Intellectual Property Unit recognizes the present necessity to focus on this area. I laud the vision which perceived it. I particularly commend Principal Sir Hillary Beckles, Dean Senator the Honourable Professor Velma Newton and the Head of the Unit, Dr. Eddy Ventose who conceived that idea. The Unit will be officially opened on 27th September 2011. That is a week from now. We should all benefit from the partnership which the initiative will engender. The University has appointed a Senior Advisory Committee to the Unit, and I am pleased to announce that that Committee includes the Rt. Hon. Sir Dennis Byron, the President of the Caribbean Court of Justice and also Hugh Rawlins the Chief Justice of the Eastern Caribbean Supreme Court.

I take this opportunity to congratulate the Rt. Hon. Sir Dennis Byron on his recent appointment to the presidency of the CCJ. We all wish him well in his new endeavours.

Tributes

Over the past Law Year, we mourned the passing and celebrated the exemplary lives and contributions of former Chief Justice of this Court, the Rt. Honourable Sir Vincent Floissac, CMG, PC; former Judges of our High

Court, Sir Allan Louisy, GCMG and Sir Clement Arrindell, GCMG, QC, who were also Governors-General of Saint Lucia and St. Kitts and Nevis, respectively. We also mourned the passing and celebrated the exemplary lives of Sir Fred Phillips, GCMG, QC, former Governor General of St. Kitts and Nevis; Ms. Agnes Cato, legal practitioner in St Vincent and the Grenadines and, most recently, Dame Bernice Lake, DGCN, QC. We have paid fitting tributes to our fallen colleagues and will observe a minute silence for them all shortly.

Today, I invite tributes to the memory, particularly of the late Dame Bernice Lake, whose life and service we celebrated this past Friday at her funeral service at the St. Peter's Parish Church in Parham. Many tributes have been paid to her outstanding life and work. They have highlighted her academic achievements, strength of character, and dedication to the vindication of the fundamental rights of persons from every walk of life. It would be redundant for me to embark upon an exercise of repetition. I simply leave with you the words of the sermon which we are of the view summarizes her life; the words which were repeated this morning in the sermon by the Rev. Greenaway from the book of the Prophet Micah: "What doth the Lord require of thee but to do justice, to love mercy and to walk humbly with thy God"?

I treasure my unforgettable work experience with Dame Bernice on a case which reflected her extra-ordinary passion for pursuing the right to freedom of speech – the John Benjamin case. I tender to her family and the

legal profession deepest sympathy on behalf of the Court family, knowing that we have the comfort of the legacy of her meaningful life.

May the souls of our fallen colleagues and the souls of the faithful departed rest in eternal peace. May God bless and guide us through this the new Law Year.

Thank you.

Hugh A. Rawlins

Chief Justice, Eastern Caribbean Supreme Court

20th September 2011