



EASTERN CARIBBEAN SUPREME COURT LAW YEAR ADDRESS 2021

‘The ECSC: Managing the COVID QUAKE!’



Address By:

Her Ladyship, The Hon. Dame Janice Pereira, DBE, LL.D

Chief Justice

Date: *Wednesday 13th January 2021*

Broadcast: *UWI TV Global*



LAW YEAR ADDRESS 2021

‘The ECSC: Managing the COVID QUAKE!’

- Justices of Appeal, Judges and Masters of the Eastern Caribbean Supreme Court;
- Their Excellencies, Governors General and Heads of State of each of the OECS Member States and Territories;
- Honourable Heads of Government of each of the OECS Member States and Territories;
- Retired Judges of the Eastern Caribbean Supreme Court;
- Honourable Attorneys General of each of the OECS Member States and Territories;
- Honourable Ministers of Government of each of the OECS Member States and Territories;
- Chief and 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 of the OECS Commission;
- 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 Mr. Carlos Cameron Michel, Deputy Chief Registrar of the Eastern Caribbean Supreme Court;
- Registrars and Deputy and Assistant Registrars of the High Court of each of the OECS Member States and Territories;
- Mr. Gregory Girard, Court Administrator of the Court's Headquarters and Mr. Francis Letang, Deputy Court Administrator of the Court's Headquarters; and Court Administrators of each of the High Court Offices of the OECS Member States and Territories;
- Ms. Jean Dyer, President of the OECS Bar Association;
- Presidents of the constituent Bar Associations of each of the OECS

Member States and Territories;

- Learned Members of the Inner Bar and Utter Bar of each of the OECS

Member States and Territories;

- Members of the Clergy;
- Members of the Diplomatic Corp;
- Commissioners of Police and Police Officers of each of the OECS

Member States and Territories;

- Directors/Heads of Correctional Facilities in each of the OECS Member States and Territories;
- Staff of the Court's Headquarters and Court Offices in each of the OECS Member States and Territories;
- Students;
- Citizens and residents of the Eastern Caribbean;

Good morning.

It is my great honour and pleasure to once again address you, as your Chief Justice, on the occasion of the official opening of the Eastern Caribbean Supreme Court's Law Year - 2021! Allow me to echo the sentiments of our Master of Ceremonies, Justice Cottle, and to welcome you all to this Special Sitting and to also extend best wishes to each and every one of you for a year filled with promise, hope, health and happiness!

At this time last year, we were embracing the commencement of a new decade but the seismic upheaval of all things we considered normal brought on by the COVID-19 pandemic has had the feel and effect of having lived through a decade in one year. The year 2020 will reverberate in the annals of history as the year of unimaginable disruptions, unplanned adjustments and uncertainties all brought about by the COVID-19 pandemic.

Here we are today, with the assistance of UWI-TV, marking the opening of the law year by means of a virtual Special Sitting, which is being streamed via online social media platforms across the Court's 9 Member States and Territories and indeed across the world. Traditionally, each Member State and Territory would host their own Special Sitting after the delivery of the Chief Justice's address with local gatherings in a courtroom in each State or Territory. However, since the coronavirus makes it unsafe to physically gather, we had to reimagine how we would execute the commemoration of our New Law Year. We chose the next best option - gathering virtually - which has in fact provided us with this unique opportunity to join with our brothers and sisters from across our Member States and Territories in a single virtual space, reflective indeed of our Court's single judicial space.

As many of you are aware, but for the COVID-19 pandemic, this Special Sitting of the Court would have been taking place in the beautiful archipelago of Saint Vincent and the Grenadines also known as the “The Gem of the Antilles”. I was looking forward with great anticipation to returning to Saint Vincent and the Grenadines for this occasion, as it was there that I delivered my first address as Chief Justice of the Eastern Caribbean Supreme Court, a little over eight years ago. I never would have imagined then that I would be unable to return for that purpose because of a pandemic.

Just a few years ago, we were managing a different crisis - the crisis brought on by hurricanes Irma and Maria which devastated the Territory of the Virgins Islands, Anguilla, Antigua & Barbuda and the Commonwealth of Dominica in 2017. Arguably, we are now operating under a greater degree of uncertainty. With a hurricane, one can with a reasonable degree of certainty expect when and where it will make landfall, implement measures to minimize its impact on daily life, and estimate the time frame for the return to some level of normalcy; the COVID-19 pandemic, on the other hand has been much like an unpredictable global earthquake which has turned our notions of normalcy and reality upside down, with universal far-reaching social and economic consequences. It has no respect for a person’s place or status. It has impacted every aspect of our lives; our livelihoods; our social interactions. It has forced us to accelerate our lives in a digital world.

This pandemic required the Court, much like many other institutions, to find its way through the maze as the new reality set in. The essential challenge for the Court was: how do you provide and ensure access to justice and the delivery of justice in this new, and in many respects, unfamiliar environment?

We had to wrap our minds around adapting and doing so rapidly. Thankfully, we had already embarked upon our ICT transformation program albeit at a slower pace. Now it called for ramping it up as well as finding new and innovative solutions to weather this crisis. Therefore, in addition to implementing new measures to ensure the continuity of the work of the Court and the dispensation of justice in the COVID-19 era, the Court has also continued to engage in a series of reforms of existing processes and procedures, all aimed at improving the Court's efficiencies and effectiveness in the delivery of justice to the people of the Eastern Caribbean, despite the prevailing circumstances. Through these efforts, the Eastern Caribbean Supreme Court has demonstrated what a truly resilient and progressive Court it has become over the past 50 years. In line with the Court's efforts over the last year, it was felt that a fitting theme for this Law Year Address is **"The ECSC: Managing the COVID QUAKE!"**.

The theme reflects the Court's resilience in the face of an unfamiliar world. Author Gever Tulley once said, "persistence and resilience only come from having been given the chance to work through difficult problems". It is essential that the ECSC remains committed to working through any

challenge by being a Court that is not only responsive to the changes and needs which are taking place in society, but also adaptable to those changes and needs, by devising mechanisms and measures for addressing them, if this institution is to remain effective in maintaining the confidence of the people it serves as the guardian of the rule of law. While the buzz word in the management of COVID is 'quarantine', as judicial officers at whatever level, the realisation quickly penetrates our consciousness that justice cannot be quarantined. Crises do not suspend or end conflicts. They simply give rise to new ones.

In advancing our commitment to the improvement of the administration of justice and our quest to build resilience for coping with life-changing events, it is first necessary to take stock of where we are now by providing you with an update on the work of the ECSC over the last year and the direction being pursued for the future.

I wish to begin by highlighting the volume of work covered by the Court on a yearly basis. In what has become the norm, the Court dealt with an extremely heavy case load. At the Court of Appeal, there were 481 appeals filed in 2019. The Court heard 393 appeal matters in full court sittings and a further 456 matters in chamber hearings. The Court of Appeal delivered 55 written judgments, and 348 oral decisions, amounting to 403 decisions delivered in total. This is by no means insignificant given the relatively small size of our appellate bench. Fortunately, in June 2020 we were able to increase our complement to 7.

At the High Court level throughout the Court's jurisdiction, a total of 7,450 cases were filed and 4,384 were disposed. Antigua and Barbuda and Saint Lucia remain the States with the highest caseload by number. The clearance rates from the High Courts varied between 91% in Saint Lucia and 30% in Grenada. None of the High Courts recorded a clearance rate above 100%. This points to an accumulation of case backlog. Furthermore, on average, the overall clearance rate of Member States and Territories as a grouping continuously declined over the last three years and was at its lowest - at 59% - in 2019. This flags a dire need for continued and more robust measures to be implemented in those Member States and Territories which are falling behind. It requires an "all hands on deck" approach by **all** stakeholders to arrest and reverse this trend. The factors impacting this trend are many, but in large measure, reflects the persistent short comings of physical, human and financial resources at their core. A comprehensive report on the workings of the court can be found in our annual report which will be available on the Court's website.

Unfortunately, over the last year, the COVID-19 pandemic significantly hampered the Court's ability to effectively manage its caseload and has laid bare the weaknesses and challenges faced in an already under-resourced environment. In several of our Member States and Territories, the pandemic grounded the conduct of jury trials; due mostly to our inability to provide the required proper physical distancing protocols in many of our existing courtrooms. The simple truth is that many of our court rooms are too small and, in some cases, not enough. In the COVID-19 environment it

is impossible to have jurors sit elbow to elbow. The question then becomes: what is the solution to this dilemma? In my view, the time is ripe for our governments, in consultation with civil society, to engage in discussions on the implementation of judge-alone criminal trials for specific case types within the context and framework of the constitutional mandate of fair trials within a reasonable time. Judge-alone trials are not new in our region. This move has enjoyed much success in reducing the case backlogs in the neighbouring state of Trinidad and Tobago as well as in Belize. It is also being practised in the Cayman Islands and the Turks & Caicos Islands. I have no doubt that, in this COVID-climate in particular, the implementation of judge-alone criminal trials would go a long way in reducing the backlog of criminal cases in the Eastern Caribbean, with no impact whatsoever on the fairness of such trials.

The COVID 19 pandemic has forced the Court to deepen its reliance on Information and Communications Technology (ICT) tools in order to optimize efficiency of operations.

ICT RELIANCE

Because we were already engaged in ICT transformation, much of the Court's operations on the civil and commercial side saw less disruption with a smoother transition to the use of electronic communication, including videoconferencing using a variety of virtual platforms such as Zoom, for conducting remote hearings from any suitable location. Efforts have also been made in some Member States and Territories to conduct jury trials by a blended approach of partly in-person and partly virtual hearings, using integrated digital technology. As for the Court of Appeal, since the onset of the pandemic, all scheduled sittings have been conducted virtually with only one sitting being missed in mid-March for the entire 2020 year.

This brings me to the Court's E-Litigation Portal. As many of you know, the E-Litigation Portal is a platform providing for the electronic filing of court documents, and it facilitates electronic service, case management and document workflow. The electronic linking of the courts across the 9 Member States and Territories is not some fanciful or obtuse idea. It was vital for the effective operations of the Court if improved access to justice for the citizens of the Eastern Caribbean is to be fully realised in the face of our vulnerabilities to natural disasters and now a pandemic. The E-Litigation Portal is now in place in 6 of our 9 Member States and Territories. It has made a positive difference in so many ways: the ease of filing; the ease of serving; the ease of paying; and the ease of accessing and managing electronic documents - from anywhere, despite natural disasters, and despite

the current pandemic since it requires no social distancing or health protocols in order to make use of it. Of importance also, are the cost savings to the Court and other stakeholders alike. It is the use of this system where it is in place that has enabled the Court of Appeal and other courts to continue to deliver on its work in a timely fashion. Plans are already in progress to link the remaining 3 Member States. Achieving full implementation was slowed due to COVID-19 and the resultant travel restrictions. It is my hope that by July this year all our Member States and Territories will be linked to the E-Litigation Portal. I know that legal practitioners in the remaining states of the Commonwealth of Dominica, Grenada and Saint Vincent and the Grenadines are anxiously awaiting this step. It is fair to say that the E-Litigation Portal has demonstrated in this COVID-19 era, the critical role it plays in keeping the operations of the Court in motion.

In those Member States not yet linked to the Portal we made provisions for 'email filings' and service by email. This was achieved by the passing of Emergency Practice Directions, a practice guide and the adoption of remote hearing protocols all of which are still in effect. These have ensured a measure of continuity of the court's operations even as various levels of lockdown were in place. Indeed, there is no doubt that ICT driven courts are here to stay. COVID-19 has catapulted us here sooner than we had anticipated. I therefore encourage legal practitioners in all our Member States and Territories to become fully ICT proficient to avoid the risk of being left behind.

I extend my appreciation to the team from the Court's Headquarters and the Registrars and Staff of the various High Court Offices for their hard work in facilitating continued ICT training of judicial officers, legal practitioners, and court staff alike as well as in harnessing our ICT resources to keep the wheels of justice turning.

Although last year the Court had to shift much of its focus towards implementing measures to mitigate against the effects of the pandemic on the justice system, this did not stop the Court from continuing reform initiatives which were already in motion, including the work of a number of the Court's review committees. These committees met virtually over the last year, evincing great dedication to achieving their objectives. I wish to briefly share with you the fruits of their labour.

THE CIVIL PROCEDURE RULES 2000 REVIEW COMMITTEE

In last year's address, I announced the formation of a Civil Procedure Rules Review Committee. Today, I am pleased to announce that the Rules Review Committee, co-chaired by Justice of Appeal, Paul Webster and Justice Eddy Ventose, former resident High Court Judge of Saint Kitts and Nevis, have submitted their report and proposed amendments to the Civil Procedure Rules 2000 are being drafted with the assistance of the IMPACT Justice Project. We are grateful to the committee for their dedication and hard work. After another round of post drafting consultations, we are hoping that the amendments will come into effect later this year.

THE CODE OF ETHICS REVIEW COMMITTEE

Also in my last address to you, I also announced the formation of an Ethics Review Committee to overhaul and modernise the Court's Code of Judicial Conduct which was introduced more than 15 years ago. This Committee, chaired by Justice Kimberly Cenac-Phulgence, a High Court Judge resident in Saint Lucia, also carried out extensive work and has produced a comprehensive draft revised code which went out to consultation among judicial officers, including Magistrates and Registrars. I express my deep appreciation to the Chair and the Members of the Committee for undertaking this comprehensive review. It is my hope that the new Code of Ethics will come into effect later this year.

THE SENTENCING GUIDELINES PROJECT

The Sentencing Advisory Committee, co-chaired by Justice of Appeal Gertel Thom and Justice Iain Morley, a resident High Court Judge of Antigua and Barbuda and Montserrat, has also continued apace with its work. We have now rolled out the first and second tranches of Sentencing Guidelines. They now cover, some drugs offences, sexual offences, dishonesty offences and firearm offences with more in the pipeline. Additionally, the Court issued a Practice Direction on Sentencing for the Offence of Murder. This Practice Direction sets out the approach to be taken by a judge in each Member State and Territory when sentencing for the offence of murder and highlights the factors which should be considered by a judge during the sentencing

process.

What gives me, and of course the Committee, a great sense of achievement since the publishing of the first tranche of sentencing guidelines, is the buy-in by legal practitioners, and judicial officers as evidenced by their use and more so by legal practitioners who have been invoking them, even in matters pre-dating their implementation. I place on record my sincere appreciation for the hard and challenging work being done by this Committee. I am also grateful for the judicial research support given by two of our Judicial Research Assistants, Mr. Jordan Jarrett and Ms. Leonnette Headley, for giving of their time and energy to assist the Committee with the relevant research. We are also indebted to Ms. Sirah Abraham for the assistance provided in her capacity as Criminal Justice Advisor to the Eastern Caribbean, and for her continued interest in seeing the project through these formative stages.

THE FAMILY PROCEEDINGS RULES

I am also delighted to report that the Family Proceedings Rules Committee has completed their work on drafting rules to guide the procedure in family proceedings. This task has been underway now for quite some time and it was important that it be finalised so that the long-promised Family Division Pilot Project, earmarked for Antigua and Barbuda, can come fully on stream.

I express my sincere appreciation to the Chair of the Committee, Justice

Marissa Robertson, High Court Judge resident in Antigua and Barbuda, and the committee members for undertaking this significant task. I also wish to thank Mr. Ian McIntyre, the Consultant who assisted with completing the rules, and UNICEF for the financial assistance which they provided for this initiative.

COURT-CONNECTED MEDIATION

Starting in 2019, the Court began its efforts to jump start court-connected mediation in its Member States and Territories with its “Court-Connected Mediation Public Education 2019 and Beyond Programme” involving public outreach and mediation training. Over the last year, the Court made many strides in these efforts and took a focused approach in reforming and promoting court-connected mediation. The ability to use mediation as an alternative dispute resolution tool during the COVID-19 era took on even greater significance. After much work and a wide consultation process, we were able to re-issue a very comprehensive and revamped Mediation Practice Direction in October 2020, replacing our 17-year-old Mediation Practice Direction. These revisions facilitate improved access to justice, particularly for unrepresented parties and litigants. Some noteworthy revisions include the introduction of pre-action mediations, the expanded role of the Registrar of the High Court in referring matters to mediation and the introduction of more user-friendly forms. It has also been tightened by the inclusion of a Code of Ethics and Disciplinary Regulations for mediators. Importantly, the re-issued Practice Direction provides for the conduct of

mediation sessions remotely utilising a digital platform. This development will no doubt provide significant assistance to the Court in reducing the buildup of case backlogs during the COVID-19 pandemic. Additionally, mediation training as well as public education on the availability and benefits of mediation, is ongoing.

Our ultimate goal is to have a regional Roster of mediators which will provide litigants with a greater range and diversity of choices in selecting a mediator. This adds a new dimension, now more feasible, by the use of a virtual platform. The pandemic has brought about some positive results by forcing us to see and engage in the virtual world in ways that have become our new normal - unconstrained by our physical borders. Finally, I once more urge legal practitioners to embrace mediation and be guided by the Practice Direction. Think of it not as a tool which conflicts with your role but instead as one which enhances the delivery of justice.

HALLS OF JUSTICE PROJECT

I now turn to the Halls of Justice Project. There can never be any doubt that our judiciary must always play an integral role in ensuring a stable and progressive Caribbean society or, as some of our imminent Caribbean leaders would say - promoting our Caribbean civilization. A well-functioning and efficient judiciary is a key component for investor confidence needed for fueling economic growth. The people of the OECS deserve a modern and efficient judiciary serving them **in facilities fit for purpose**. ICT can only go

so far and new wine does not always blend adequately in old wine skins. For the past 8 years I, as well as Chief Justices before me, have been beseeching Governments to address the dire need for proper court facilities. The COVID-19 pandemic has exposed how ill-suited most court rooms across our Member States and Territories are. COVID-19 should not have met us still in this state. While the Court is empathetic towards the ongoing economic challenges in our region occasioned by the pandemic, I wish to remind governments of their constitutional duty to ensure that the rights afforded to their citizens thereunder allow for their meaningful engagement and effective enjoyment. It is my fervent hope that, once we have gotten past the pandemic and our economic health has improved, all steps will be taken to address this long outstanding problem.

ATTACKS ON JUDICIARY

Notwithstanding that we have sought to manage the impact of COVID-19 by doing what we can to minimise its effect on access to justice and justice delivery, there is an area of grave concern emanating from certain quarters outside of the judiciary. I would be remiss were I not to raise them. Over this last year, we witnessed unwarranted and vitriolic attacks on the judiciary as an institution and on judges as individuals by members of the public. The frequency of these attacks is becoming alarming with the potential for causing grave harm to the safeguards which are entrenched in our constitutions for preserving and upholding the rule of law. On too many occasions over the past year, our Bar associations and legal practitioners

have had to speak out against such conduct. I wish to remind legal advisers, as officers of the Court, and who seemingly stay silent in the face of these unwarranted attacks that they become enablers and complicit in the undermining of the administration of justice. This behaviour must be publicly and vociferously rebuffed at every turn as silence in the face of these attacks only serves to give them credence. While it is proper to criticise a judicial decision and otherwise engage through the well-recognised process for appeals, it is quite wrong to engage in baseless personal attacks against a judicial officer, and the judiciary as a whole, merely because a decision has gone against you. It is worth reminding that judicial officers take an oath to do justice **according to law - not according to man or woman**. It was Aristotle who said: *“At his best, man is the noblest of all animals; separated from law and justice he is the worst”*. And so, let us seek to abide by the rule of law.

On a related note, I also wish to remind that the judicial branch of government remains an independent and essential check on all forms of power and on all threats of injustice for the protection of every individual's rights and freedoms. We must therefore never allow ourselves to be lulled into a sense of complacency, or invite or encourage a blurring or crossing of boundaries between the judicial branch and other branches of government. Neither should unwarranted attacks on the judiciary be allowed to become an acceptable norm of behavior - irrespective of whose lips the utterances may come. Our judges must therefore remain resolute, confident and vigilant in rendering justice, without fear or favour, in accordance with their oath.

I feel compelled however, to place on record our appreciation for the support of the OECS Bar Association and the constituent Bar Associations of the Eastern Caribbean in vociferously speaking out in defence of the judiciary and our judicial officers in circumstances where the Court cannot speak for itself.

At this juncture, I wish to thank our judicial officers for their hard work over the last year. I also wish to recognise those High Court Judges who retired from the Court last year after several years of sterling service. I recognise Her Ladyship, The Hon. Justice Rosalyn Wilkinson who over her time with the Court served Saint Lucia and Antigua and Barbuda. I also recognise Her Ladyship, the Hon. Justice Lorraine Williams for her service to the people of Saint Kitts and Nevis and Saint Lucia. Mention must also be made of Justice Godfrey Smith who demitted the office of High Court Judge in March 2020 after 3 years of service to Saint Lucia and several other Member States and Territories where he did shorter stints, and also Justice Eddy Ventose who demitted office as a High Court judge on 31st December, 2020. I wish them the very best in their future endeavours and express on behalf of the entire judiciary and on my own behalf sincere thanks and gratitude for their service to the people of the Eastern Caribbean.

It would be remiss of me to not also announce the new judicial appointments made during the last year. I welcome Queen's Counsel, now Justice of Appeal Gerard Farara who was appointed to the Court of Appeal in June 2020. I also welcome His Lordship, the Hon. Justice Rohan Phillip who was

appointed as a High Court Judge assigned to Antigua and Barbuda in September 2020, His Lordship, the Hon. Justice Richard Floyd who was appointed as a High Court Judge assigned to the Territory of the Virgin Islands in October 2020, Her Ladyship, the Hon. Justice Angelica Teelucksingh who was appointed as a High Court Judge assigned to Saint Vincent and the Grenadines in November 2020, and Master Tamara Gill who was appointed as a Master in September 2020. They have provided tremendous assistance to the Court during previous acting appointments over the years and I am pleased to now welcome them as permanent members of the Eastern Caribbean Supreme Court bench. I also wish to extend my gratitude to Mr. Ricardo Sandcroft, who over the last year acted as a Master for the jurisdictions of Anguilla, Saint Lucia and the Territory of the Virgin Islands, as well as to the many other legal practitioners and retired judges who assisted the Court over the last year, offering their time to take up acting appointments to fill voids on the bench during what turned out to be a very turbulent but also busy year.

On a more somber note, last year the Court bade farewell to one of our beloved members of staff, Mr. Irvin Ferdinand, who served the Court's Headquarters as our Accountant since 2003. The judicial officers, management and staff of the Court will forever cherish the memory of his hard work, discipline and good humour.

The Eastern Caribbean Supreme Court has sought to navigate the COVID-19 pandemic as best it can. We continue to learn and draw from the experiences

of others as we continue to review our processes with a view towards improvement. What we have achieved so far could not have been possible without the assistance of our stakeholders, partners and donor agencies. On behalf of the entire judiciary, I express sincere thanks to the Governments of all the Member States and Territories, the JURIST team, the IMPACT Justice team, the United States Embassy and the British High Commission, the University of the West Indies and the UWI-TV team, UNICEF, UN-Women, UNDP as well as all those not specifically mentioned, for their continued support of the Court in our endeavour to provide access to a system of justice that is fair, efficient and accountable.

It would be unforgivable if I were to come to a close without extending my profound gratitude to all those persons who have been instrumental in the Court's continued operation during the last year; in particular, our staff at the Court's Headquarters and in the various High Court Offices, members of the Public and Private Bars, as well as you the people of the Eastern Caribbean. At the risk of sounding cliché, it would not have been possible to weather the COVID-19 pandemic without you. Our commitment and pledge is to continue to serve you the people of the Eastern Caribbean to the best of our ability. I thank you for your support and hope that it will continue, **as we continue** our journey in managing the COVID-quake and beyond. I remain humbled by the honour and privilege of serving you as your Chief Justice over the last 8 years. I pray that as we embark upon this new year, the Almighty will bestow his richest blessings upon each Member State and

Territory and upon us all; and, that we emerge from the fog of this pandemic with a clarity of vision and purpose, **more together and infinitely stronger.**

Thank you.

Dame Janice M. Pereira, DBE,

LL.D

Chief Justice