

Challenges of a Changing Caribbean¹

by

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Protocols.

Introduction

I am deeply honoured to have been invited to share my thoughts with you at this year's Conference which is being held under the theme "Challenges of a Changing Caribbean". Although this is not my maiden appearance before this august body, I must confess, that my presence at this year's Conference holds a special significance for me on a personal level as I demit the office of President of the Caribbean Court of Justice within the next three months. I take this opportunity to announce that I am passing the baton to my brother Judge, Justice Adrian Saunders, whose distinguished record of performance, competence and experience as a jurist make him eminently qualified in every respect to lead the CCJ.

A Son of Saint Kitts & Nevis

As I prepare to demit office, I am overwhelmed by powerful feelings of gratitude. Gratitude not only for the opportunity to serve at the CCJ, but also gratitude for the influence of my upbringing, education and early years of practice in Saint Kitts and Nevis which have played a critical role in preparing me for service to the region. My early academic and professional training, as well as my upbringing in the Methodist Church in Saint Kitts have had a profound influence on my personal and professional life. I attribute much of my professional trajectory to my parents, family and the social structure in Saint Kitts and Nevis of which I am a proud representative.

Before I departed to England to commence my legal studies, I had the opportunity to spend some eighteen months working in the registry of the Supreme Court under the leadership of the Registrar at that time, the late Dr. Joseph Archibald QC. I credit my interest in court management and reform to that experience. I knew what happened from the inside when a case was filed and what steps were to be taken to ultimately get it before a judge for hearing. I knew the tribulations of the litigants. The experience also gave me good insight into other aspects of public life because in those days the registry functioned as an institution for registering nearly everything – births, deaths, marriages, trademarks, deeds, real estate, corporations, etc. So, the experience gave me an overview of the way in which the commercial and social life of the island was organised and recorded. It also gave me even at that early stage an understanding of how litigation worked and the ability to assess the quality of pleadings.

This knowledge gave me a significant advantage when I returned to Saint Kitts and Nevis to practice and thereafter. By the time I entered the judiciary, I had a deep understanding of the issues which affected case management after a decade and a half of advocacy before courts of all levels throughout the Leeward Islands practicing among and before some of the finest lawyers and judicial officers, many of whom had a significant impact on my personal and professional development.

The Vision of Regional Integration

Even during those early professional years, I was inspired by thoughts of and discussions about the ways in which regional integration could be promoted.

I began to wonder whether my view on aspects of international and human rights law is a generational thing. I was born during the second world war. My father was interested in history and world affairs. I knew that Caribbean men and women not yet free and independent being still colonial subjects stood shoulder to shoulder with their colonial masters to defeat the myth of racial superiority that fuelled the Nazi attempt to conquer the world. I grew up with a feeling of pride that Caribbean people contributed to the environment leading to the adoption of the Universal Declaration of Human Rights in 1948 - a monumental transformation of civilization recognising the equality of every human being. I graduated from High School in 1960 – the St. Kitts-Nevis Grammar School – the same year of the adoption by the United Nations of its Declaration on the Granting of Independence to Colonial Countries and Peoples. The Declaration affirming the right of all people to self-determination and proclaiming that even the last vestige of colonialism should be brought to a speedy and unconditional end entered my genes. The powerful opening clause of the declaration proclaims:

“The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.”

The former British Caribbean island colonies developed independent status from Jamaica (1962), to St. Kitts & Nevis (1983) and the other CARICOM countries on the continent from Guyana in 1966 to Suriname in (1975). We were part of a world-wide movement that included the African, Indian and Asian nations, Canada, Australia and New Zealand.

I studied in England from 1962 to 1966. As a student I instinctively dreamt for the day when appeals to the Privy Council would be abolished and we would repatriate the final adjudication of our disputes to our own courts in the Caribbean. I felt that was essential for me to be on an equal footing with my fellow English students and the English people in general. This was simply my right as a human being. I knew that there was no issue of competence. After all I was at Cambridge University with elite of the British student population of that generation and competed with them favourably academically, on the sport fields, in the debating and social skills. So, it is a matter of great distress that in these times, more than half a century later, I have to persuade Caribbean people that they should abolish appeals to the privy council and adopt the CCJ as their final court of appeal. After all, everywhere else in the world has already made the transition. Today only 12 independent countries still send their appeals to the Privy Council. 8 are in the Caribbean and the other 4 are Mauritius an island state in the Indian Ocean with a population of just about 1 million, and 4 small island states in the Pacific with populations of less than 100,000.

The Spirit of Chaguaramas

This spirit of regionalism was fuelled by the belief that the Caribbean region would be stronger together than separately. This belief underpinned the birth of CARICOM through the Treaty of Chaguaramas in 1973. This sentiment was eloquently captured by one of the “Founding Fathers”, Forbes Burnham of Guyana, speaking at the Conference of Officials of the Commonwealth Caribbean Territories in Georgetown, Guyana in August 1967, where he cautioned:

“Either we weld ourselves into a regional grouping serving primarily Caribbean needs or, lacking a common, positive policy, have our various territories and nations drawn hither and thither into, and by, other large groupings where the peculiar problems of the Caribbean are lost and where we become the objects of neo-colonialist exploitation and achieve the pitiable status of international mendicants.”

Today and on previous meetings, I observe that pride of place in your deliberations have been afforded to the Commonwealth, I feel moved to caution that our Caribbean destiny is more dependent on the development of CARICOM than on our association within the Commonwealth as important as it is, and I would encourage greater attention to our regional

institutions. The Revised Treaty of Chaguaramas (RTC) in 2001 dealt with critical issues aimed at ensuring that the basic principles in the Caribbean Charter were adhered to by Member States for an integrated unit that would be beneficial to individuals and the region. The RTC lays the foundation for the CARICOM Single Market and Economy (CSME) and has the potential to enhance economic development and social stability.

I find the RTC to be a very inspirational document. In outlining the CSME it creates a “seamless economic space” which characterised by the four freedoms – freedom of establishment, freedom to provide services, free movement of capital and free movement of CARICOM nationals. This offers widespread economic benefits to the Caribbean region, shelter from the often harsh realities of the global market and the opportunity to invest in human development by expanding access to education, health care, infrastructure, justice administration and technology.

There has been commendable progress made by the region in respect of several aspects of the CSME. Nonetheless, there has been sloth in fully operationalising many of the provisions of the RTC. This was featured in the recently published Golding Report on Jamaica’s relations within the CARICOM and CARIFORUM frameworks. This Report highlighted the fact that several of the decisions and programmes of CARICOM have not resulted in adequate action. It observed that this failure undermined CARICOM to such an extent that it does not see any value in Jamaica continuing to remain a part of the CSME if things do not change.

The Report offers 33 specific recommendations and states: “There needs to be a clear, definitive commitment now from each member state to a specific timebound, measurable and verifiable programme of action to fulfil all its obligations and complete all the requirements for the single market and economy to be fully established and operational within the next five years.”

I have observed many commentators who view this as the beginning of an exit strategy for Jamaica from CARICOM. However, I believe this view is a misrepresentation of the fundamental and very legitimate issues raised in the Report, particularly as it relates to the region’s present malaise in implementing key provisions of the RTC.

At the CCJ we have also experienced the malaise of sloth in a number of initiatives. To mention one that is of particular interest to me, and one of the issues that I have worked on that I will leave office still pending is the establishment of CCAT. One of the rule of law deficiencies in our region has been the lack any of dispute resolution procedures for regional public servants who have employment disputes with CARICOM organs or bodies that have diplomatic immunity for suit in domestic courts. These people are bound to the internal mechanisms provided by the employers with whom they may find themselves in dispute and often feel that they do not get objective justice. The CCJ in collaboration with the ILO has sponsored the establishment of a regional administrative tribunal that would provide the much-needed institution. It has been ready for launching since 8th May 2017. But we are still waiting on the CARICOM bureaucracy.

The Role of the Caribbean Court of Justice

On the other hand, I think that the CCJ has been one of the success stories of CARICOM. The CCJ has been in existence for 13 years now. In its Original Jurisdiction it has already given judgment on several important issues to compel governments to observe their obligations under the RTC. These judgments have provided support for the regional manufacturing sectors: a cement manufacturer in Trinidad obtained an order to compel the Guyanese government to impose the agreed tariffs on extra-regional cement imports from the Dominican Republic; manufacturers of wheat products obtained orders to compel the Suriname Government to impose tariffs on extra-regional imports from the Netherlands; and beverage manufacturers in Suriname obtained orders abolishing an environmental tax imposed by Guyana on imported non-returnable beverage containers with orders for the refund of past payments.

Then there was the famous *Shanique Myrie* case where the Court clarified the rights of freedom of movement of CARICOM nationals within the region. This judgment affected, not only Barbados who was the respondent to the action but all CARICOM nations, many of whom have modified their laws and immigration policies to comply with the order of the court. Ms. Myrie did not have a power base of any sort but she stood up for her rights. But her example has not been followed. Perusal of the press reveal many issues that are within the jurisdiction of the court, which have not resulted in any action, including some important issues affecting some of the states represented here today. I have heard concerns expressed about the enforceability of the decisions of the court. But the short answer is that even with the

unfortunate political rhetoric that sometimes followed decisions, every state has observed the orders of the court. the bottom line is that the original jurisdiction of the CCJ is not being adequately utilised. This applies to the CARICOM and its organs, the Member States, the corporate entities and even in private citizens. Ms. Myrie should inspire and invigorate utilisation of the court systems that are available.

Sitting in its Appellate Jurisdiction, the Court makes a significant contribution to economic growth and social development in the region. The judicial system is one of the key factors considered in foreign direct investment. Investors want the assurance fostered by the existence of an independent and efficient judiciary that is promptly accessible to even those not too wealthy litigants to settle commercial disputes. A fundamental goal of the CCJ is to provide high quality justice that is innovative and responsive to the needs to the Caribbean region and that fosters a jurisprudence that is reflective of our history, values and traditions, and consistent with international legal norms. We have delivered high quality judgments in a very timely manner, and the easy considerate and cost-effective access techniques of accessing our court have led to a significant increase in litigation before our court, providing opportunities for the development of legal principles and policies affecting the rule of law and the relations between citizens in the respective communities. Although I had decided not to fill my comments with statistics or other technical information, I cannot resist commenting that during this year we have already issued 8 judgments compared to 6 from the Privy Council despite the fact that we have a much smaller number population base to serve.

The Court has accepted the mandate to improve the quality of justice administration throughout the region. It has undertaken this in many ways. It has sponsored Caribbean-based institutions. CAJO is the Caribbean Association of Judicial Officers and comprises judicial officers from across the region who routinely meet and participate in judicial education programmes. The Caribbean Academy for Law (formerly CALCA) brings together lawyers and judicial officers from across the region who are interested in benefiting from various technological and judicial education programmes.

It is the implementing agent for the Judicial Reform and Institutional Strengthening (JURIST) Project, a Canadian-funded regional judicial reform programme being undertaken on behalf of the Conference of Caribbean Heads of Judiciaries and Chief Justices. The ultimate objective of

the Project is a judicial system that is more responsive to the needs of women, men, youth, business and the poor. it has offered training to judiciaries and supported reforms.

The court or its agencies has collaborated with a number of institutions. These include the Organization for Harmonization of Business Law in the Caribbean (OHADAC) Project. This body aims to consolidate the economic integration of the entire Caribbean, following similar reforms undertaken in Africa. Associations with CARPHA, PAHO and other regional health organisations regarding the use of law to combat non- communicable diseases, underage drinking among other issues. Associations with the International association of court bailiffs to improve the capacity of regional courts to enforce the judgments of the courts and serve court process. Associations with a range of other bodies.

The cumulative contribution of these bodies ensures that our regional judiciaries exploit a variety of avenues for technological, institutional and educational advancement.

Reforming the Justice Sector in the Region

I think that one of the most serious problems facing our region is the inordinate and systemic delays in the justice systems resulting in backlogs of cases and related inefficiencies which harm the society. As far as I am concerned, this impacts even social instability evidenced by the high crime rates in our communities. One of the anticipated result of the criminal system is to deter crime but the delay between criminal activity and the eventual punishment after trial reduces the impact of this. It has been a sobering experience for me to listen to the voices of our region's citizens about their perception of the quality of justice delivery. I am an advocate for the judiciary to assume responsibility for this and introduce the systems and performance standards to change the landscape. In my Court I do not allow anyone to blame third parties for delay.

This leads to the thought that the concept of developing a "Caribbean jurisprudence", extends beyond the adjudication of cases and the issuing of judicial decisions. It also entails the development of institutional mechanisms to support the jurisprudence emanating from the region, including legal literature, legal research tools and, importantly, indigenous information technology to support the judicial functions and all the other mechanisms that support the work

of the courts. It is now universally accepted that the use of technology systems in the court is fundamentally important to improving the quality of justice delivery.

The development of court technology by Caribbean expertise and customised for Caribbean courts has been a priority for several years. If, I may be permitted to briefly reminisce, it was in the late 1990s when as CJ for the ECSC that I decided that our courts should be computerised, and electronic technology should be used to support its function. We selected a US software product known as JEMS. at that time all the chief justices accepted the idea that it would be beneficial to the region to have a single IT platform for all judiciaries in the region for such obvious reasons that I do not need to repeat, and over the succeeding years they all acquired JEMS; but in time we all realised that it was not producing the results that we wanted. And it became a priority to get something better.

When I returned to the Caribbean to the CCJ, we undertook the development of a system built in the Caribbean, with Caribbean expertise, customised for the Caribbean and funded by the Caribbean. It is a grave disappointment that the current judicial leaders have not seen fit to accept the support we have to offer. The implementation of the software is instantly available on demand and does not depend on expending vast sums of our taxpayers' money. In fact, CARICOM passed a resolution supporting the initiative and 5 states, 4 of which are represented here made the contributions that have funded the development of the software. A state-of-the-art software has been developed. The money invested in this project which we own is a fraction of the money spent in licence fees to external sources.

To ensure that these developments belonged to the region we established a not for profit agency we named APEX. It is owned by the regional judiciaries and the legal profession. It has much broader goals than technology and was established to improve the ecosystems of Caribbean justice administration including capacity development. In November 2017, we held its first convention in the Bahamas and it was a signal success.

The CURIA e-Filing and case management suite is being used in the CCJ. It has transformed the access of litigants to the court and the case management practices of the court. I dare to say that it puts us at the forefront of courts world-wide. Our e-filing systems, our video conferencing systems are being gradually adopted by the Privy Council although our systems

are not getting the publicity. This technology when coupled with appropriate judicial attitudes and industry has supported an outstanding performance record. Our court has no backlog. A high percentage of cases that are filed a fully disposed of within 90 days of filing. The access to the court is so improved that there is little cost and no delay in filing and communicating with the court and its litigants. All of our proceedings are live-streamed and can be viewed by people anywhere, in fact this morning as I received this email:

“Good morning colleagues, this is just a reminder that today the Court will be livestreaming the matter of BZCR2017/005 Japhet Bennett v The Queen from Courtroom 1, beginning at **11:00am** AST. To view the proceedings please follow the link <http://bit.ly/2H9gqDU> using a web browser such as Google Chrome, Microsoft Edge or Mozilla Firefox. No login information is required. It can also be viewed via the link provided on the Live Broadcasts page of the CCJ website: <http://www.ccj.org/judgments-proceedings/courtroom-1-live-stream>.”

Below is a summary of the matter for your convenience:

“Japhet Bennett, who was convicted of murder in 2013, is appealing his conviction. He contends that the prosecution’s case hinged on the account of a sole witness, who told the police that he had seen Mr. Bennett standing over the deceased’s body with a gun. The witness later denied that claim during the trial. Mr. Bennett contends that the witness’ previous inconsistent statement should not have been admitted into evidence and that the judge should have withdrawn the case from the jury.”

The recording of the proceedings is digitized and posted on our website within one hour of the completion of each hearing and remain there. Today any one can access and see and hear every case heard in the CCJ over the last 13 years!!! We have streamlined the processes to the extent that a high percentage of litigation is conducted by video conferencing considering the special needs of litigants, so that we have had cases where the cases were argued by counsel from their homes or chambers. Litigants in the courts we serve are filing more cases. The software takes us further into the realm of the 21st century with a mobile application component which allows the judiciary and senior court staff to now access and manage court information anywhere and at any time. Every time a document is filed in a case that I am involved in, my mobile pings and I can access and read the document within minutes of its being filed. We have had one case

where due to the nature of the issue involved we delivered a judgment of the full court – i.e. every member participated - within 48 hours of the case being filed, and the particular country where that occurred was Belize.

The APEX suite has developed modules for law offices, public and private, the police and the prisons – a holistic service. If fully utilized, we have produced the capacity to track criminal matters from the initial reports to the police station right through to the close of the case through to trial and then detention if convicted and sentenced. This system is also now available for deployment for courts of all levels within the region – magistrate, trial, appellate and specialised courts.

I have had very strong feelings about this. Because the performance of the judiciary will be enhanced by the adoption of the systems we have to offer. Supporting this also is in keeping with the integration movement of CARICOM -- promoting regional enterprise and developing Caribbean expertise and skills in this field. Can you imagine what could be achieved if just a fraction of the millions of dollars on foreign software solutions were invested in the Caribbean programs?

Conclusion

So, as I prepare to close this chapter of my professional life, I am once again filled with feelings of gratitude. I am grateful for my strong faith in God and the ways in which he has guided me and given me a strong sense of belief in my own humanity. My faith has had a profound influence on my life and my desire to serve others.

I am also grateful for all the persons I have encountered along this journey who have had an impact on my life in many different ways, many of who are in this room here today. I immediately think of Sir S.W. Tapley Seaton, whose parents and my parents were very close friends. As a youngster growing up in Saint Kitts, his family was part of the role models of our society. I must also fondly specially recognise Dame Sandra Mason, the Governor-General of Barbados, the baby of the family. I have witnessed and was associated in various ways with her development over the years as an outstanding registrar, judge and fine jurist. I have interacted with each of you in so many and honourable ways. I think that collectively I can say

that you all have set standards for integrity and spirituality to which I have been proud to be associated.

In conclusion, I wish to remind us of the vision and wisdom of our Founding Fathers in Chaguaramas in 1973. Let us use this vision to inspire us to intensify our efforts, in all respects, to achieve the goal of regional integration. These leaders entrusted the prosperity of every single citizen of the Caribbean into our hands. As a trustee of this legacy, I intend to continue my efforts today and beyond to ensure that this vision becomes a reality. I trust you will join me in doing the same.

I thank you.

The Right Honourable Sir Dennis Byron

