Launch of the Sexual Offences Model Court

Antigua and Barbuda
21 January 2019

The Honourable Mr. Justice Wit

REMARKS AT THE LAUNCH OF THE SEXUAL OFFENCES MODEL COURT IN ANTIGUA

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Yesterday, I met somebody who wanted to know why I, a Judge of the Caribbean Court of Justice, was on the programme of this auspicious event. "I thought they voted you guys down in Antigua", he said with a somewhat mysterious smile. I answered him that it had not escaped me that recently there had been a referendum in Antigua and that its result was that Antigua had not, or some would say not yet, accepted the Court as its final appellate court, although it had since long accepted the Court in its original jurisdiction for matters concerning the Revised Treaty of Chaguaramas. As I will explain, however, all of this is not relevant for the question why I am addressing you today, even though it is a fact that the CCJ is the only final appellate (and in that sense the highest) court in the English-speaking Caribbean and the only functioning international court in the region as a whole.

The point is this: almost from its inception but certainly from the time Sir Dennis Byron became President of the Court, the CCJ has accepted that it should play a leading role in taking the region's justice systems to a higher level and that it has the obligation to be an exemplar for other courts in the region. As early as 2012, this idea was reflected in the Court's first

Strategic Plan and it has been further highlighted in the new Strategic Plan 2019-2024 which carries the attractive title "Unlocking Potential, Strengthening Caribbean jurisprudence." This means, among many other things, and I quote here the current President of the CCJ, the Hon Adrian Saunders, that it is the Court's intention "to work more meaningfully with partners and justice sector bodies in the region; to strengthen our bonds with the Caribbean people and to advance the rule of law." And this commitment to support the judiciaries in the region is certainly not limited to those that directly fall under the Court's appellate jurisdiction; on the contrary, it extends to all judiciaries within CARICOM.

As is stated in the new strategic plan, the CCJ has since long made serious efforts to promote judicial reform and improve the quality of regional judges through a variety of vehicles: the Caribbean Association of Judicial Officers (CAJO), which organises biennial conferences for judges and magistrates in the region and is (still) led by Justice (now President) Saunders of the CCJ, the Caribbean Academy of Law (CAL), which organises conferences, seminars and workshops for judicial officers, attorneys and other legal practitioners and is led by Justice Anderson of the CCJ, and, of course, the JURIST Project.

In our new strategic plan, you will see that the CCJ promotes things like "effectively managed judicial systems", seeks to support "region-wide efforts on judicial transformation" and proclaims that "caseflow processes and judicial management are key to guaranteeing the efficient resolution of cases" and that "necessary infrastructure needs to be provided."

The Court's sixth Strategic Issue is called "Enhanced regional Justice System Capacity and Performance" and it entails *inter alia* the following points: "The CCJ will organise its management and processes, and collaborate with judiciaries and other key stakeholders to play a guiding role in the improvement of justice delivery, work with judiciaries in the region to develop and/or strengthen their judicial and court administration capacity, collaborate with these courts on matters that would enable or facilitate the effective delivery of Court services, support the work of regional bodies that contribute to the building of Caribbean jurisprudence."

Here am I getting to the point why I am here today.

I already mentioned the JURIST project. JURIST stands for Judicial Reform and Institutional Strengthening. This project is a regional judicial reform initiative funded under an arrangement with the Government of Canada and implemented by the CCJ at the request of the Heads of Judiciary of CARICOM. The ultimate goal of that project is "to establish a judicial system that is more responsive to the needs of women, men, youth and the poor." In order to achieve this goal, the project supports the judiciaries in their "efforts to improve court governance and administration including the introduction of technology to expedite the management of cases from filing to disposition". As you can see, this is very much in line with the CCJ's vision on its own mission, so to speak.

There can only be public confidence in the justice system if cases are resolved fairly, efficiently and in a timely manner. It is as simple as that.

As long as there are enormous backlogs and delays, it will be difficult if not impossible to do justice. It must be realised, however, that many of those awful delays in our region are caused by the way the work of adjudication is organised or, maybe more accurately described, disorganised. Technology and proper case management are tools that will most certainly improve that important aspect of the work substantially. The CCJ has taken the lead in this respect and has shown that it works. Leading by example is still the best method. Clearly, the tools that I mentioned will not be a panacea for all the problems in the justice system, but it will go a long way to achieve visible improvements.

Although all of this applies to every area of the law, it is especially obvious in the field of criminal law and even more so where sexual offences are concerned.

Harking from the civil law jurisdictions of the Dutch Caribbean where criminal procedures are so much simpler and, I daresay, efficient (no juries, with the thoroughly trained judge in full control of the questioning of defendants and witnesses), I have always been amazed about the puzzling if not self-imposed complexities of the English criminal law system. It is popular among common law jurists to assume, mistakenly by the way, that the inquisitorial criminal law procedure does not acknowledge the presumption of innocence but in Aruba, Curacao and St Maarten a prisoner on remand must, as a rule, be brought to trial within three to four months after arrest. That is the law. In our (this) part of the region, however, it happens that cases are being tried which are

sometimes more than ten years old even though the defendant has spent those ten years (or even more) on remand. If that is the case, what then is left of this beloved principle of the presumption of innocence, one wonders? Clearly, these delays violate the prisoner's fundamental right to a trial within a reasonable time. But that is not all, these delays also violate the fundamental rights of the victims of crime. If, for example, a 15-year-old girl has been raped and she must wait ten or more years before the perpetrator, especially one who is free on bail, will be tried and then, now a respected woman and mother of 25 or 30 years old, is asked to give evidence at trial, is that not cruel and inhuman treatment by the State? In fact, also the fundamental rights of society itself will often be infringed by these delays as evidence, once available, tends to disappear or fade away in the course of time, resulting in unnecessary and unjust acquittals. On the other hand, if after such a long time the perpetrator is convicted, it will be equally difficult to do justice: is the 16-year-old sex offender, being free on bail, ten years later still the same person even though he showed remorse, changed his life, became a hard-working citizen and is now married with two children? Is it in such circumstances still possible to give a proper sentence and to do justice? I think the answer is clear. The answer is no.

This brings me to the launch of the Sexual Offences Model Court. It is not really a separate court: it is the regular criminal trial court with a separate procedure for sexual offences, albeit with important additional facilities and equipment. Although it is true that much emphasis is placed on care

for the victims of these offences and the rights of these, what is called, complainants, I do not consider this court as a "#Metoo" court, in the sense of a court that has been established to unhesitatingly believe every female and to mercilessly go after every man. The idea is, it seems to me, that for very good reasons the resolution of a sexual offences charge should be achieved with deliberate speed, which could result in either a conviction or an acquittal. Nobody, neither the defendant, the victim nor the witnesses, should have to wait too long for the resolution of such a case. To achieve this, new case management techniques have been designed which in practice, to a great extent, have already been tested in Justice Morley's court. It is to be hoped that these techniques, when proven successful (as they no doubt will be), will then be extended to every other area of criminal law.

The main issue here is, however, not the new case management techniques or the new rules that will govern that new case management; the main challenge is, with all due respect, how to achieve a fundamental change in judicial attitude, and that of the lawyers, required properly to guide the new approach. It requires, in fact, a new and fresh look at the role of the criminal trial judge, a role that must be more pro-active, if not – and I know I am in hot waters now – inquisitorial (in the sense of judge-driven). This has nothing to do with judges descending into the arena (an often and superficially used expression). It goes directly to the core of the trial judge's task and constitutional duty: to ensure that trials will be fair, efficient and *within a reasonable time*.

I also believe that the new model court may ensure a more thorough search for the truth. The main purpose of the criminal trial, I have always thought, is to find out and establish what really happened. My impression is that in our region police investigations are more often than not minimalistic or superficial. Clearly, factfinding must take place in a fair and even-handed manner. Fairness of the trial is doubtlessly an important requirement. However, I must make the point that the truth finding function of the court should not be ignored. And let this be clear: the truth does not always hurt the defendant. As the saying goes, the truth may set you free.

Of course, the Model Court has many more features that are important and worth mentioning, but I wanted to concentrate on the points I made.

Let me emphasise that the model court did not come about just like that. It is the fruit of a lot of work by many. It is not the intellectual baby of a few wine-sipping elitist feminists, but it is the result of broad consultations among many stakeholders from the region. It is based on our own realities. A lot of that work was done by the JURIST Sexual Offences Advisory Committee, chaired by my colleague, Justice Maureen Rajnauth-Lee with valuable input from Sir Dennis Byron and Justice Adrian Saunders (among many others), which Committee produced a very valuable and useful document, the "Model Guidelines for Sexual Offence Cases in the Caribbean Region", and was instrumental in helping to bring this model court into fruition.

I congratulate JURIST, its Advisory Committee and all those who have worked tirelessly to reach this momentous point in time. Above all, I congratulate the Eastern Caribbean Court of Justice and especially Antigua and Barbuda with this new court. It is a great step into the future.

Justice Jacob Wit
Caribbean Court of Justice