



Enhancing the Administration of Justice

The Right Honourable Sir Dennis Byron,
President of the Caribbean Court of Justice

The Barbados Bar Association Annual Dinner

Hilton Resort
St Michael Barbados
7 December 2012

The **Barbados Bar Association** was incorporated by the Barbados Bar Association Act of 1940. This Act stipulates the rules for the election of a Council which currently consists of 17 members, 5 of whom sit as the Executive. Currently, the Association comprises of approximately 1000 members. The Association was established for the following purposes are but not limited to, to support and protect the character, status and interest of the Legal Profession, generally and particularly attorneys-at-law practicing in Barbados; To promote honourable practice, and settle disputed points in practice; To maintain the honour and independence of the Bar and the defence of the Bar in relation to the judiciary and the executive; To improve the administration of justice and procedure and trial by jury; To establish and maintain a system of prompt and efficient legal advice and legal aid.

Presentation

By

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on the occasion of

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Introduction

Protocols.

Your Excellencies:

It is an honour and a pleasure for me to accept the invitation of Bar President Mr. Andrew Pilgrim to be the Guest Speaker at your Annual Dinner. This is certainly a wonderful time particularly as you are honouring three of your outstanding luminaries, all of whom I have had the privilege to interact with during their long and shining careers. So allow me to personally express my sincere congratulations to, Sir David Simmonds, K.A., B.C.H., Sir Henry Forde, K.A., QC, and Lady Beverley Walrond QC. These honourees have exemplified brilliance and integrity throughout their careers and undoubtedly deserve to be recognized for their respective contributions to the law and to the legal profession. I cannot steal the thunder of those assigned to pay special tributes but I wish to join in expressing my congratulations to them and to wish them well in their future endeavours. It is fitting for the Bar to honour people who have set high standards because these beacons will light the way for others and how wonderful it would be for Barbados if the general standards of legal practitioners could approach those set by our distinguished and learned group of honourees.

Like these honourees, I want to applaud the nation of Barbados for its leadership within CARICOM in acceding to the appellate jurisdiction of the CCJ. It is true that all Member States did sign on to the Treaty of Chaguaramas and made the financial and other institutional arrangements to facilitate the operation of the Court. All Member States have accepted the original jurisdiction of the Court for the implementation of the CSME. These are important matters which in my view have supported the vision of CARICOM; a vision that if fully realised will undoubtedly drive economic development and support social stability throughout our region and empower our ability to compete more favourably on the global market. The vision for the justice sector, however, needs the full realisation of sovereignty in the judicial field by having the CCJ as the apex Court, not only in the original jurisdiction but also in the appellate field, replacing the Privy Council.

I think that Barbados has already benefitted from the full implementation of its obligation to accede to the full jurisdiction of the CCJ in many ways, and its experience should encourage other States. Tonight, since my audience is the Bar I need only address the important element of access to justice, as the higher appellate level has already increased considerably. In the last five years before Barbados abolished appeals to the Privy Council, a total of eight appeals went from Barbados to the Privy Council. In the seven years since Barbados joined the appellate jurisdiction of the CCJ, there have been twenty-five appeals. In other words, there has been an increase of just about 120% in the number of citizens gaining the benefit of a second or final appeal. Ordinary folk have additional scope and opportunity to be heard and to obtain justice. An interesting trend is the fact that the number of civil cases filed, exceeds the combined total of criminal and constitutional cases. In other words, there are more cases filed in which the State is not a party than cases in which the State is. This is an important fact and change from the pattern in the countries which do not have access to the CCJ. One of my favourite examples of this principle is the case of **Elizabeth Ross v**

Coreen Sinclair [2008] CCJ 4 (AJ) from Guyana. Two very poor ladies (one quite aged) had a dispute between them about the right to occupy a condominium. It was a matter very important to them. They could never previously have had that matter litigated by a second tier appellate court. The CCJ heard it *in forma pauperis*. Members of the Guyanese Bar agreed to represent both ladies *pro bono*. The ladies were able to have most hearings done by teleconferencing. With videoconferencing which the CCJ has now installed in the courts of all Member States even more can be done.

The fact is also clear that the civil litigants at the level of the CCJ are not limited to corporate or wealthy people. The facility provided under Rule 10.6 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules to impoverished parties to apply to the Court for special leave to appeal as a poor person has been utilized. Court statistics reveal that 25 such applications have been filed. It is clear then that indigent persons have been accessing the Court.

Of special interest to the legal profession is the fact that a lot more lawyers are gaining exposure to the highest court in the land than in those countries that have not acceded to the final appellate jurisdiction of the CCJ. At the time I checked a few months ago, the number of senior counsel appearing before the CCJ was 27 and the number of junior counsel 102. While these statistics speak for themselves I would just like to emphasize that this benefits the lawyers, the Court and most importantly the development of Caribbean jurisprudence.

The Strategic Plan of the CCJ

During most of this year, the CCJ has been reviewing its roles, purpose, and methods of operations with inputs from regional stakeholders in justice delivery including meaningful contributions from

Barbados. Sir Marston Gibson, Chief Justice, was an influential member of the group of CARCIOM judicial leaders who played a significant role in the exercise. Your Bar was also instrumental. Learned Counsel Sir Fred Gollop as a senior member of the RJLSC has contributed from the beginning. Learned counsel Wilfred Abrahams, who as the OCCBA representative on the CCJ Trust Fund has also been very closely involved in the strategic planning exercise. All of this work culminated on 6th December 2012, when the 5-year Strategic Plan was launched and it is now in the public domain. I pay special tribute to learned counsel who took the trouble to travel to Trinidad to participate in the launch and I take this opportunity to express appreciation for the important role he played in the process. For those of you who might be interested, the plan is accessible on the CCJ's website.¹

On behalf of the Caribbean Court of Justice, I am pleased to present to you through your President ***“Responsive, Innovative, Inspirational: The Caribbean Court of Justice Strategic Plan, 2013-2017”***. This Plan defines a strategic direction for the Court over the next five years. It will guide court decision-making over that time to ensure that our resources are applied in the most effective manner in achieving our Mission and Vision. The plan identifies seven strategic issues upon which the Court will focus. These issues reflect important problems and opportunities that must be addressed if we are to successfully accomplish our mission to provide the people of the region with *“accessibility, fairness, efficiency, transparency and authoritative judicial decisions”* while promoting the rule of law in the Caribbean Community.

I single out our outreach commitment. The seventh area of the Strategic Plan is entitled “Enhancing Regional Justice System Performance”. The CCJ accepts that it has a special role in strengthening

¹ For perusal, the Strategic Plan can be easily accessed via the CCJ's website: www.caribbeancourtjustice.org.

the rule of law and must serve as a model of effective justice delivery and best practices and provide leadership to courts in the region. We are committed to play a guiding role in the improvement of justice delivery in the region. Bearing in mind the Court's resources and, in keeping with requests of national judiciaries, the Court will develop and adopt effective practices and procedures to strengthen judicial reform and enhance justice delivery. As and when requested, the CCJ stands ready to assist in any way it can with the development and strengthening of court administration capacity in Member States of the region.

The role of the Bar

Perhaps the number one complaint in the region is that cases stay in the Court system for far too long. While I firmly believe that the key to an effective administration of justice is a strong and effective judiciary, tonight the legal profession is in the limelight, and we must focus some attention on the role of the Bar in maintaining the effective administration of justice.

The phrase that immediately comes to mind is that we must change the culture of litigation. There are two ideas I would like to address. Whenever one speaks of delay, there is the inevitable cry that the lawyers ask for unnecessary adjournments, complicate the process and use other tactics to protract the cases. On the criminal side, the situation is often much worse as the prosecution services have no urgency in disposing of matters, even when people are in prison for long periods without trial. These reflect attitudes which must end. This is not good for our society, and I wonder how it could be good for the lawyers as a commercial matter. Certainly one should earn more by the number of cases that you dispose of than the number of open cases on your desk. I do know that the Civil Procedure Rules of the Supreme Court have prescribed a system for the award of costs

that should prevent lawyers from profiting from delay. The culture of the Bar needs to change in these areas and support should be given to the changes of culture that the Judiciary is trying to initiate.

Then there is the perception of the lawyer as the paramount gladiator and warrior in an adversarial system. This perception has been terribly archaic for centuries! This is made plain from advice given almost 200 years ago by President Abraham Lincoln, himself a lawyer by trade. He recommended that lawyers should ***“discourage litigation. Persuade your neighbours to compromise whenever you can. As a peacemaker the lawyer has superior opportunity of being a good man [or woman]. There will still be business enough.”***

It is high time that the legal culture evolves to one that assists clients to avoid conflict wherever possible. When conflict is unavoidable, the out-dated view of the courtroom as a battleground must change. There should be more emphasis on ADR and the current efforts to introduce court annexed mediation should be supported. The primary goal is the just and swift resolution of disputes. The Bar must adopt a spirit of cooperation for the good of their clients and the promotion of a just society. They must cooperate with the court and the registry and ensure that procedural efficiency is improved. The Rules of Court state explicitly that their overriding objective is to deal with cases justly and the legal profession needs to embrace this approach wholeheartedly for the good of preserving the effective administration of justice.

At this time let me congratulate you on the great strides you have made as an Association. However, I would like to suggest that one of the prime responsibilities that a Bar Association should assume is the obligation to cooperate with and fight for a strong and well-resourced Judiciary. In this context resources are not limited to financial because the judiciary has other needs including for example

quick amendments to legislation, and I understand that is the case with the attempts to introduce court annexed mediation. There is also the issue of improving the quality of financial and administrative independence, very important tools in achieving the laudable objectives of delivering justice fairly and expeditiously.

But of course financial resources are also an issue. My enquiries suggest that during the 2012 Budget of Barbados the total budget was BDS \$3,646,459,147.00 while the amount devoted to the administration of justice was BDS \$16,416,491.00. This represents an investment of a mere 0.45% in our justice system. I wonder if that is an adequate investment or should the administration of justice be granted a greater share of the national budget?

When one is addressing the issue of delay reduction, it is reasonable to ask whether there are enough Judges and Magistrates, and whether they have adequate and trained support staff and other resources to assist them in doing the important work of justice delivery. Tonight I do not propose any answers, but I suggest that the Bar Association is well-placed to interrogate issues of this nature in support of your Judiciary.

I read the transcript of a recent interview of the Bar President Mr. Pilgrim in UWI Vibes. I thought I should express my support for compulsory membership of the Bar Association and an aggressive approach to the regular payment of dues. Bar Associations require sufficient funding, whether from this source or from the public purse or a mixture of both to allow them the freedom to carry out their various activities effectively. It is a tribute to the public spirit of the lawyers that the work being done depends largely on their voluntary service. But as the Bar gets more sophisticated and the association offers an increasing array of social service for its members and the public, it may be time for the Association to consider supporting them by including a larger full time professional

staff who would be obligated by their terms of engagement to carry out the work and realise the lofty goals of the organisation.

I particularly noted the concerns expressed by Mr Pilgrim about the problems associated with the operation of the Disciplinary Committee, and the difficulty of keeping abreast with the increasing workload that its small and voluntary body of officers encounter. The assurance that there is constant monitoring of your Code of Ethics and the enforcement of high standards of conduct by lawyers is critically important to the rule of law and to the citizens of the nation. I was impressed with his call for legislative adjustments to improve the ability of the Disciplinary Committee to discharge its functions effectively. The public perception of justice delivery will be enhanced if complaints against lawyers are dealt with fairly and speedily.

In closing I make a point about the future, and the importance of lending assistance to the regional Law Faculties and Schools. I have a particular interest in promoting the idea that in addition your work in providing guest lectures, mentoring students, and other forms of *pro bono* tutelage your firms could consider offering scholarships to outstanding students and recent graduates to do internships at the CCJ. I think that this would help to mould prospective lawyers and assure the continued strength of the Bar in the future.

I thank the Bar Association for inviting me to speak this evening, and I wish you success in your endeavours and I wish Barbados a healthy and vibrant justice sector.

Thank you.