Developments in Judicial Protection of Human Rights in the Commonwealth Caribbean

The Right Honourable Mr Justice Michael de la Bastide, President of the Caribbean Court of Justice

The Caribbean Law Institute Inaugural Symposium: "Current Developments in Caribbean Community Law"

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Keynote Address

by

The Right Honourable Mr Justice Michael de la Bastide, President of the Caribbean Court of Justice,

on the occasion of

The Inaugural Syposium: "Current Developments in Caribbean Community Law"

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[1] May I begin by saying how pleased the Caribbean Court of Justice is to be associated with The Caribbean Law Institute Centre and the CARICOM Secretariat in hosting this symposium. We value very highly the ties we have established between the judges of the Caribbean Court of Justice and the members of the Law Faculty of the University of the West Indies at Cave Hill. We have participated in their workshops at Cave Hill and we spent a day together at the Court exchanging views on a variety of legal issues of importance to the region. I notice that this symposium has been designated. The Inaugural Symposium" and I am confident that the promise which is inherent in that designation, of similar symposia to come, will be kept. I too would like to thank the Honourable Prime Minister of Barbados for having honoured us with his presence at this Opening Ceremony and for his address. It is heartening to know that despite his many other commitments he has today given this function priority over them. Thank you Mr. Prime Minister.

[2] I have been given the opportunity of addressing you briefly on developments in judicial protection of fundamental rights in the Commonwealth Caribbean. Given the time

constraints I have selected quite arbitrarily a few areas in which these developments have occurred. The first of these areas is that of remedies for constitutional breach and the development here is the emergence of 'vindicatory damages', a relatively new addition to these remedies.

VINDICTORY DAMAGES

[3] What exactly are 'vindicatory damages'? This question can perhaps be best answered by reference to the purpose which they are intended to serve. Every time a constitutionally protected right or freedom is contravened without an effective response from the courts, the right or freedom breached suffers diminishment. For the court's response to be effective, it must serve to vindicate the right or freedom infringed by countering the negative effect of its breach. This objective may be achieved at least to some extent, by the award of compensatory damages to the person affected. But there are times when compensatory damages are an inadequate response to the breach. It is in those cases that an additional award of vindicatory or constitutional damages should be made. According to the Privy Council in *Attorney General of Trinidad and Tobago v. Ramanoop*,[1] this additional award should be made if it is needed "to reflect the sense of public outrage, to emphasise the importance of the constitutional right and the gravity of the breach, and to deter further breaches."

[1] [2006] 1 AC 328

[4] I think I should place on record what led up to the Privy Council in 2005 placing its seal of approval on the new head of damages described as vindicatory. In 1979, in the case of *Attorney-General of St. Christopher, Nevis and Anguilla v. Reynolds*[2] the Privy Council held that exemplary damages (the form of non-compensatory damages available in the field of tort) were not recoverable for breach of a constitutional right or freedom. This was reflective of the more conservative judicial culture that prevailed at that time. The possibility of awarding non-compensatory damages in constitutional cases was nevertheless broached by the Court of Appeal of Trinidad and Tobago in 1997 in *Jorsingh v. The Attorney General*.[3] It was raised in obiter dicta by two judges, Sharma JA (as he then was) and myself as the then Chief Justice. I invited the Privy Council when the opportunity next arose, to recognise that damages for constitutional breach could, and should, be used for a wider purpose than simply to compensate a successful claimant. I drew attention to the wide jurisdiction given to the High Court by section 14(2) of the Trinidad and Tobago Constitution to "make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter…". I suggested that the power given to the court to award damages for constitutional breach was neither limited to providing compensation nor constrained by the rules governing the assessment of damages at common law.[4][5] Sharma JA went even further and said:

[2] [1979] 43 WIR 108
[3] [1997] 52 WIR 501
[4] [1997] 52 WIR 501 at 505
[5] Supra at 512

> **"Not only can the court enlarge old remedies; it can invent new ones as well, if that is what it takes or is necessary in an appropriate case to secure and vindicate the rights breached. Anything less would mean that the court itself, instead of being the protector, and defender and generator of the constitutional rights, would be guilty of the most serious betrayal".**

[5] There followed the case of *Ramanoop* in which the trial judge had rejected the claim for exemplary damages for constitutional breach. The Court of Appeal held that he was wrong to have confined himself to compensation. It was in his judgment in that case that Sharma CJ (as he by then was) coined the phrase "vindicatory damages", which was widely adopted (without attribution) by other judges. The Privy Council endorsed the recognition given by the Court of Appeal to the new head of damages in claims for breach of constitutionally protected rights and freedoms.

[6] In fact, the Privy Council was so receptive to this new remedy that in two cases in 2008, one from St. Lucia (*Fraser v Judicial & Legal Services Commission*)[6] and the other from St. Kitts and Nevis (*Inniss v Attorney General*)[7], it held that vindicatory damages could be awarded for breach of constitutional provisions other than those which embodied and protected fundamental rights and freedoms. Both these cases involved magistrates whose removal from office was effected in a manner not authorised by the Constitution. In both cases the action was brought pursuant to a provision contained in both of the relevant

[6] [2008] 73 WIR 175
[7] [2008] 73 WIR 187

Constitutions, which gives the High Court jurisdiction to entertain complaints by persons with a relevant interest, that a provision of the Constitution, other than one contained in the Chapter on Fundamental Rights and Freedoms, had been contravened, and to grant relief both by way of a declaration or by an award of damages. In both cases, the Privy Council held that the dismissed magistrate was entitled, not only to compensatory damages for breach of contract, but also to an award of vindicatory damages. The provision which gave the High Court jurisdiction is found in the Constitutions of the six OECS States but nowhere else in the Commonwealth Caribbean.

[7] One may well ask what then is the position in the absence of such a provision of a person who is adversely affected by the action of some public official or authority which contravenes a provision of the Constitution other than one contained in the Chapter on Fundamental Rights and Freedoms? It would seem that in such a case the aggrieved party would have to proceed by way of judicial review to challenge the action in question. Depending on the local legislation governing judicial review, damages limited to compensation might be recoverable, but nothing beyond that.

[8] The question whether, and if so, how, vindicatory damages are distinguishable from exemplary damages, has provoked a good deal of discussion both by judges and academics. Initially, the tendency was to identify and highlight perceived differences between the two types of damages. For example, the point was made that while exemplary damages are punitive, vindicatory are not. It was also suggested that exemplary damages focus more on the offender while vindicatory damages focus on the right infringed. The differences

between them in my view are not all that clear-cut. They are differences more of emphasis than of substance. There is clearly a great deal of overlap between the two. The Privy Council has itself come around to accepting that both forms of damages have a good deal in common. In the recent case of *Takitota v The Attorney General*[8] from The Bahamas the Board held that to award both exemplary and vindicatory damages would result in a duplication. In delivering the judgment of the Board Lord Carswell said at paragraph [13]:

> **"The award of damages for breach of constitutional rights has much the same object as the common law award of exemplary damages".**

[9] My final word on this topic is that I would not like to see the award of vindicatory damages so hedged around with rules and restrictions that its usefulness as a tool for the enforcement of constitutionally protected rights and freedoms, would be impaired.

DISCRIMINATION AND MALA FIDES

[10] The more robust approach adopted by the Privy Council in recent times towards the protection of fundamental rights and freedoms, is evidenced also by the indication it has given that it will at the first opportunity abolish the requirement that an allegation of unequal treatment by a public authority must be supported by proof of mala fides. The right to equality of treatment is enshrined in Trinidad and Tobago in section 4(d) of the Constitution. In what was probably the first case in the region based on an alleged

[8] [2009] UK PC 11

infringement of this right i.e. *Smith v. LJ Williams Limited,*[9] it was held that the presumption of constitutionality with which official acts are clothed, had the effect of casting on the aggrieved party the burden of proving mala fides on the part of the person against whom the allegation of discrimination was made.

[11] A qualification of this rule was introduced, however, by Persaud JA in the Trinidad and Tobago Court of Appeal in *Attorney General v. KC Confectionery Limited.*[10] Persaud JA held that as an alternative to alleging and proving mala fides, a party complaining of unequal treatment could succeed by proving "the deliberate and intentional exercise of power not in accordance with law which results in the erosion of the complainant's rights". The scope of this alternative has proved somewhat elusive as it has been interpreted and applied to different effect by different judges.

[12] The other two judges in the Court of Appeal (Kelsick CJ and Bernard JA) did not dissent from Persaud JA's judgment (in fact Kelsick CJ expressly concurred with "the findings of fact and conclusions of law" of both his colleagues) but neither acknowledged any exception to the rule that mala fides must be proved when discrimination is alleged.

[13] It was in the case of *Mohanlal Bhagwandeen v. The Attorney General of Trinidad and Tobago*[11] that Lord Carswell in delivering the judgment of the Privy Council gave a pretty clear indication that the Privy Council was leaning towards the view that proof of mala

[9] (1980) 32 W.I.R. 395
[10] (1985) 34 W.I.R. 387
[11] [2004] 64 WIR 402 at 410

fides was not necessary in order to support a claim of unequal treatment. The Board however, stopped short of ruling on that point saying that they would require "detailed argument on the issue before attempting to express any definite conclusion on the correctness of the proposition accepted by the Court of Appeal i.e. that mala fides was an essential ingredient of actionable discrimination". The thinking of the Board, however, was clearly signalled in a number of ways. Firstly, Lord Carswell suggested that there "may have been a degree of confusion between two distinct concepts, the presumption of regularity and the necessity for proof of deliberate intention to discriminate". Secondly, Lord Carswell pointed out that mala fides was no longer required in discrimination cases in the United Kingdom since the decision of the House of Lords in *James v. Eastleigh Borough Council*[12] in 1990. Thirdly, Lord Carswell described Deyalsingh J as having "cogently reasoned" at first instance in the *KC Confectionery* case that both the presumption of regularity and the necessity for proof of mala fides rested on unsatisfactory foundations and should not be accepted as correct.

[14] The rather unsatisfactory state of the law is further illustrated by the divergent judgments in the Trinidad and Tobago Court of Appeal in the case of *Central Broadcasting Services Limited & Anor. v. The Attorney General*.[13] In that case the complainants had applied to the Telecommunications Authority for a broadcasting license. For a number of years their application was neither refused nor granted but while it was pending, a broadcasting license was granted to a company, Citadel Limited, which had applied for a licence several months

[12] (1990) 2 AC 751
[13] (unreported) Civil Appeal No. 16 of 2004

after the applicants. The Minister had recommended to the Authority that it expedite the application of Citadel Limited and the license to that company was granted at a time when the Authority had decided to suspend the grant of licenses pending the settling of a broadcasting policy. In these circumstances, the applicants claimed that they were the victims of unequal treatment at the hands of the Authority. In the Court of Appeal Mendonça JA held that proof of malice was essential if the applicants were to succeed. He held, however, that mala fides could, and should, be inferred from the intentional and irresponsible act of the Telecommunications Authority in giving preferential treatment to Citadel Limited in the circumstances just mentioned. He held that since no law was broken in this case, it fell outside of the category of case in which Persaud JA's held that proof of mala fides was not required. Warner JA on the other hand was of the view that mala fides had not been proved but yet upheld the finding of unconstitutionality on the basis that there had been proof of intentional and purposeful discrimination and (it would seem) that this served to bring the case within Persaud JA's second category of case. Hamel-Smith JA did not think that proof of mala fides was necessary and was prepared to rely on the second limb of Persaud JA's judgment in *KC Confectionery*. In any case he agreed with Mendonça JA that mala fides could be inferred from the facts of the case.

[15] When the matter came before the Privy Council, junior counsel for the applicant, Mr. Anand Ramlogan, wished to argue that in order to establish actionable discrimination it was sufficient to prove that the party aggrieved had been treated differently from others who were similarly circumstanced. The Board, however, would not allow him to do so as

the Court of Appeal's finding of unconstitutionality had not been challenged by a cross-appeal by the State.

[16] There is an obvious need for a clear and unambiguous statement of what is necessary to establish a breach of the constitutional right to equality of treatment and the sooner that it is provided, the better. Hamel-Smith JA has pointed out that the requirement of proof of mala fides can be regarded as a fetter on the right to equality of treatment, particularly as those who practise discrimination are often at pains to conceal their motive. This lends weight to the argument that it should be sufficient for an aggrieved party to prove that he was less favourably treated than other persons who were similarly circumstanced, or that someone similarly circumstanced was more favourably treated than him. This argument could be accepted without abandoning the presumption of regularity if it was accepted that the burden on the aggrieved party is not only to prove difference in treatment, but also at least to negative on a prima facie basis the existence of any reasonable or legitimate reason for the difference. This could be regarded as necessarily involved in proving that the persons who were differently treated were similarly circumstanced. Until a final court has spoken authoritatively and decisively on this issue, the law will remain in an uncertain and unsatisfactory state.

PROPORTIONALITY

[17] Another important and relatively recent development in the protection of constitutional rights in this region has been the introduction of the concept of proportionality into our jurisprudence. This concept is used to assist in determining whether a law that derogates

from a constitutionally protected right or freedom is permissible and constitutional or impermissible and unconstitutional. It is generally recognised that fundamental human rights and freedoms are not absolute but qualified. It is usual for constitutions to make provision for derogation from the fundamental rights and freedoms which they enshrine.

[18] In the case of the OECS States, provisions which impinge on the rights and freedoms of the individual are subjected by the terms of their Constitutions to two tests. Firstly, such provisions must be "reasonably required" for certain broad purposes linked to the public interest e.g. defence, public safety, public health, etc., or for the protection of the rights of others. The onus of proof here is on the party supporting the impinging law. The second requirement imposed by these Constitutions is that the impinging law must not be shown to be "not reasonably justifiable in a democratic society". Here the onus of proof lies on the party challenging the impinging law.

[19] The Constitutions of the other Commonwealth Caribbean States with the exception of Trinidad and Tobago, impose the first only of these two requirements. Finally, in the case of Trinidad and Tobago the fundamental rights and freedoms are stated in absolute terms and there is no provision which saves from invalidity Acts of Parliament passed by a simple majority which are inconsistent with the fundamental rights and freedoms of the individual. There is, however, in the Constitution of Trinidad and Tobago a section (section 13), which preserves the validity of an Act which is inconsistent with a fundamental right guaranteed by the Constitution if that Act has been passed by a threefifths majority of all the members of each House, declares itself to be inconsistent with the fundamental human rights sections

of the Constitution and is not shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual. A similar exemption from compliance with fundamental human rights and freedoms is conferred by section 50 of the Jamaican Constitution on Acts passed by an enhanced majority.

[20] What I will refer to loosely as the proportionality test was first applied by the Privy Council in an appeal from the Caribbean in *de Freitas v. Permanent Secretary of Ministry of Agriculture, Fisheries Lands and Housing,*[14] an appeal from Antigua and Barbuda. The issue in that case was whether a blanket prohibition of all civil servants from expressing opinions on controversial political issues was a limitation on the right of the applicant's freedom of expression which satisfied the two requirements imposed by the Constitution. For the purposes of the first requirement, the question was whether the prohibition was "reasonably required for the proper performance [by civil servants] of their functions". The second requirement was that the ban should not be shown not to be "reasonably justifiable in a democratic society".

[21] It was in relation to the second of these requirements that the Privy Council adopted an approach borrowed from a judgment of Chief Justice Gubbay of Zimbabwe in *Nyambirai v National Social Security Authority*[15] which involves the Court asking itself and answering the following questions: "whether (i) the legislative objective is sufficiently important to justify limiting a fundamental right; (ii) the measures designed to meet the legislative objectives are rationally connected to it; and (iii) the means used to impair the right or

[14] [1999] 1 AC 69
[15] [1996] 1 LRC 64

freedom are no more than is necessary to accomplish the objective".[16] Although the issue of proportionality is strictly speaking raised only by the third of these questions I shall refer to the whole formulation as the proportionality test.

[22] The Board held that the blanket prohibition failed the proportionality test because it answered the third question in the negative. Accordingly, the Privy Council restored the finding of unconstitutionality made by the trial judge.

[23] The proportionality test was applied by the Privy Council in *Worme and Anor. v. Commissioner of Police of Grenada*,[17] for the purpose of determining whether a law creating the offence of criminal libel was a permissible derogation from the right of freedom of expression under the Grenadian Constitution. In this case, however, it was applied for the purpose of determining whether both requirements of the Grenadian Constitution for impinging laws were satisfied. The first issue to be determined was whether the offence of criminal libel was reasonably required for the purpose of protecting the reputations of other persons, and the second was whether the maintenance of that offence on the statute book was reasonably justifiable in a democratic society. The result of applying the proportionality test was that the law making criminal libel an offence was held to satisfy both these requirements.

[16] Supra at 75
[17] [2004] 63 WIR 79

[24] In *Surratt v. The Attorney General of Trinidad and Tobago*[18] the constitutionality of the Equal Opportunity Act[19] was in issue. One of the grounds on which the Act was challenged and held by the Court of Appeal to be unconstitutional, was because of the inconsistency of some of its provisions with some of the fundamental rights and freedoms enshrined in the Trinidad and Tobago Constitution including the right to enjoyment of property and to freedom of thought and expression. This Act had been passed by a simple majority and so Section 13 of the Constitution did not apply. Consequently there was nothing in the constitution to indicate what criteria should be used in order to determine whether the offending sections of the Act should be held to be constitutional notwithstanding their inconsistency with certain of the rights and freedoms guaranteed by the Constitution. As a result there was so to speak no peg on which to hang the proportionality test. That did not deter the Board, however, from applying it in a simplified form.

[25] It was reduced in Baroness Hales formulation to two questions viz: (1) did the infringing provisions have a legitimate objective, and (2) were the means used to achieve that objective proportionate to it? Baroness Hales (who delivered the majority judgment) dealt with the said absence of any provision in the Trinidad and Tobago Constitution which sanctioned the abridgment of a fundamental right or freedom by an ordinary Act passed by a simple majority, in the following way:

> **"It cannot be the case that every Act of Parliament which impinges in any way upon the rights protected in sections 4 and 5 of the Constitution**

[18] [2008] 1AC 655
[19] No. 69 of 2000

is for that reason alone unconstitutional. Legislation frequently affects rights such as freedom of thought and expression and the enjoyment of property. These are both qualified rights which may be limited either by general legislation or in the particular case, provided that the limitation pursues a legitimate aim and is proportionate to it. It is for Parliament in the first instance to strike the balance between individual rights and the general interest. The courts may on occasion have to decide whether Parliament has achieved the right balance."[20]

[26] I digress to call attention to the rather odd situation which still obtains for most of the Commonwealth Caribbean. It is that there is such a huge distance, both geographically and culturally, between the Parliament which initially strikes the balance between public interest and individual right and the final court which reviews and may alter the balance which the Parliament has struck.

[27] I would like also in the same context to quote a passage from the minority judgment delivered by Lord Bingham in the same case of *Surratt*. He said:

"To the extent that the answer to the present problem is doubtful, weight should be given to the judgment of the Trinidad and Tobago courts. A judge sitting in a local constitutional environment, in which

[20] Supra at paragraph [58]

he has grown up and with which he is familiar, is likely to have a surer sense of what falls within the purview of the Constitution and what falls beyond than a court sitting many miles away. For this reason alone, in the absence of manifest error, the Board should be slow to disturb the unanimous conclusion of the local courts on a question of this kind, involving as it does a question of judgment and degree."[21]

[28] Let me make it clear that the issue to which these remarks of Lord Bingham were directed is a totally different issue to the one with which I have been dealing but I think that his words of the senior Law Lord have a validity which extends far beyond the particular issue with which he had been dealing.

[29] It is to be noted that in the Court of Appeal in *Surratt,*[22] Archie JA (as he then was) considered that because the Act had been passed by a simple majority and section 13 of the Constitution therefore did not apply the question of whether Parliament had struck the right balance in the Act between the public interest in eliminating discrimination and the protection of the rights and freedoms of the individual, did not and could not arise. This view was rejected, at least impliedly, by the Privy Council.

[30] To complete the picture, I would point out that what I have referred to as the proportionality test was applied by Jamadar J in *Northern Construction Ltd. v. Attorney General*[23] for the

[21] Supra at paragraph [28]

[22] Civil Appeal No. 64 of 2004 (unreported)
[23] HCA No.733 of 2002

purpose of determining whether certain provisions in the Proceeds of Crime Act[24] an Act which had been passed by a three-fifths majority and declared its own inconsistency with the Chapter on Fundamental Human Rights and Freedoms was reasonably justifiable in a society which had a proper respect for the rights and freedoms of the individual. The Court of Appeal while differing from the trial judge's conclusion, found no fault with his use of the proportionality test.

[31] The pervasiveness which the proportionality test has achieved in our constitutional law prompts me to ask one or two questions. If the test applies to Acts of the Trinidad and Tobago Parliament whether or not they have been passed by an enhanced majority, what added protection is given to an Act which is passed by a three-fifths majority and declares its inconsistency with sections 4 and 5 of the Constitution? If the validity of every Act which infringes a fundamental right or freedom is to be determined by the same simple test of whether: (a) it has a legitimate objective and (b) it uses means to secure that objective which are proportionate to it, then what purpose is served by the lengthy statements of permitted limitations of, and derogations from, constitutionally protected rights and freedoms that are to be found in all of our Constitutions except one? How do we reconcile the existence of two requirements for an impinging law to be valid as provided for in the Constitutions of the OECS States in relation to which the burden of proof is on different parties, with the application of a single proportionality test?

[24] No. 55 of 2000

[32] I raise these questions not because of any dissatisfaction with the proportionality test per se but out of a concern whether an imported test is supplanting rather than supplementing, the tests which have been expressly ordained by our own written Constitutions.

INDEPENDENCE OF MAGISTRATES

[33] I have referred to the cases of *Fraser v. JLSC* (2008) 73 WIR 175 and *Inniss v. The Attorney General* (2009) 2LRC 546 in connection with the award of vindicatory damages. These two cases are important, for another reason, in that they serve to reinforce the independence of the magistracy.

[34] In both these cases the issue was whether termination by the State of a fixed term contract of employment of a magistrate before the natural expiration of the term, was unconstitutional, when the termination was effected in accordance with a provision for termination contained in the contract, but not in accordance with the procedure for termination prescribed by the Constitution.

[35] The facts of these cases were very similar. In *Fraser*, the claimant was employed under contract for a period of one year. The contract was terminable before its expiration by the Government giving three months notice or paying one month's salary in lieu of notice. There was an allegation of corruption made against the claimant. The complaint was investigated by a Judge appointed for that purpose by the Judicial and Legal Service Commission ("the Commission"). Arising out of the Judge's report and at the suggestion of the Commission, a letter was sent to the claimant by the Permanent Secretary in the

Ministry of Public Service terminating the claimant's employment. Under section 91(3) of the Constitution of St. Lucia the power to exercise disciplinary control and to remove magistrates from office, is vested in the Commission.

[36] The claimant having challenged his termination by constitutional motion, the trial Judge held that there had been a contravention of the Constitution by both the Commission and the Government and awarded damages against them. The Court of Appeal allowing the respondent's appeal, held that there had been no constitutional breach but only a breach of contract and on that basis substituted a much smaller award.

[37] The Privy Council restored the trial Judge's judgment holding that when there was a conflict between a constitutional provision protecting the independence of the Judiciary and the terms of a contract entered into with a member of that protected class, the constitutional provision must prevail.

[38] The facts of *Inniss* were very similar and the case followed a similar course. The claimant had been appointed Registrar of the High Court of St. Kitts and Nevis and additional magistrate. Under section 83 (3) of the St. Kitts and Nevis Constitution the power to exercise disciplinary control over, and to remove, someone who held the offices that the claimant held, was vested in the Governor General acting in accordance with the recommendation of the Judicial and Legal Service Commission. The claimant was employed under a contract with the Governor General for a period of two years but subject to termination according to its terms by three months notice or one month's salary in lieu

of notice. In this case a Permanent Secretary from the Establishment Division wrote to the claimant purporting to terminate her employment. The trial Judge held that the letter was a contravention of section 83 (3). Here too the Court of Appeal reversed the trial Judge's decision and held that there was no breach of a constitutional right, but only a breach of contract. Before the appeal was heard by the Privy Council, the Privy Council delivered its judgment in *Fraser* and therefore the respondents did not attempt to support the Court of Appeal's judgment. The Privy Council following *Fraser*, held that contractual right must give way to the constitutional protection afforded to the lower judiciary by section 83.

[39] It is possible for a person to contract out of the protection afforded him by the human rights provisions in a Constitution. In fact the statement of several of the rights in Commonwealth Caribbean constitutions begins with the phrase Except with his own consent. The importance of *Fraser* and *Inniss* is that they demonstrate that where there is a public interest in the maintenance of the protection afforded by the Constitution, as there is in the case of those provisions which serve to preserve the independence of the judiciary, the person protected cannot by contract surrender that protection. He cannot effectively grant permission to anyone to depart from the regime which the Constitution has in the public interest ordained for his protection. These two cases are crucial to the maintenance of the security of tenure of magistrates which is one of the pillars on which their independence is founded.

[40] I have chosen not to deal with any of the cases that the Caribbean Court of Justice has heard and delivered judgment in. I thought that I would leave that for someone who could assess

the merits or demerits of our contribution to the regional jurisprudence with complete objectivity. I have preferred in this paper to look out rather than in, but that is not to be taken as an indication that the Court has not made an input in the field of human rights. I leave it to others to assess that input.