



Links Between Business and The Caribbean Court of Justice

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

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Remarks

By

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

at

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I should start I suppose by explaining the title of my talk. I propose to speak of two ways in which business is linked to the Caribbean Court of Justice. The first is that it has come to be recognised within recent years that for a Court to be successful (and all that that entails) it is essential that techniques and systems be employed in its management which are essentially the same as those that would be employed in the running of a successful business. I will seek to show how those who have made the CCJ operational, have done so by setting in place systems and adopting techniques that perhaps you would have previously associated with a business rather than a court.

The other link is of quite a different kind. It is that created by the access which individuals and companies engaged in cross-border business in CARICOM have to the CCJ for obtaining redress when impacted by breaches of the provisions of the Revised Treaty of Chaguaramas.

I have been in the law business now for some 45 years. In my view the changes that have occurred in the practice and administration of law within the last 10 to 15 years, are much greater than those which occurred during the preceding 30 years. I would identify the computer as probably the most important single factor contributing to change. Any lawyer today who is not computer literate is very severely disadvantaged. Within the same period of 10 to 15 years, there has been something

of a revolution locally and regionally in the approach to court administration. In this regard there has been a swing from a traditional and rather ‘vaille qui vaille’ approach to one that is professional and highly pragmatic. Let me illustrate.

When I became Chief Justice in 1995, the responsibility for the administration and management of the Judiciary comprising the Supreme Court and the Magistracy, rested on the Chief Justice, the Registrar and the Chief Magistrate. This was essentially the same situation as existed at the time of Independence. The qualifications required of the holders of these three offices did not include any expertise or training in court administration or any form of management. If any of these officeholders happened to have a knack for management, that was quite fortuitous. The need for professional court administrators had been earlier recognised in the United States and the National Centre for State Courts in Williamsburg, Virginia, had instituted training courses in that field. The person who pioneered court administration in Trinidad and Tobago, and indeed in the region, received training at that Centre in Virginia. She is Christie-Anne Morris-Alleyne, whose career path took an unusual turn when after having served as Registrar of the Supreme Court and as Master of the High Court, her interest in court administration led her to accept an appointment on contract as Court Executive Administrator in July, 1998. In November of the same year, the Court Administration Unit of the Judiciary of Trinidad and Tobago was established. This unit comprised the holders of a number of previously existing posts, such as the Chief Magistrate, the Registrar and the Administrative Secretary to the Chief Justice, as well as the holders of a number of new posts viz the Court Human Resource Manager, the Systems Administrator and Deputy Systems Administrator, The Director of Planning, the Information Technology Specialist and the Information and Protocol Officer. These new posts were initially all contract posts. The Cabinet

at that time had resorted to creating many contract posts as the bureaucratic process involved in creating and classifying a new establishment post could take several years.

But it would be doing a disservice to the new concept of court management to think of it simply in terms of the creation of new posts filled by persons with expertise and skills in fields unrelated to law. What it involved was something revolutionary - a whole new vision of the functions and obligations of a court and of its relationship with its users and with the general public. According to the modern concept a court is there to provide a service and it has an obligation to do so efficiently and in a timely manner. It must ensure that the quality of its service is maintained at a high level and it must win the confidence and trust of the public. There are now internationally accepted performance standards for courts and courts are expected to adopt these with such modifications as may be appropriate in their situation. It may occur to you that there is some affinity here with activities such as marketing, quality control, performance standards and total quality management with which you are familiar. One difference, however, is that in the case of a court the comparable activities must be performed in a way which does not impair the independence of the court or lessen respect for it.

Given the similarities between running a modern court and running a business, it should come as no surprise to you that some of the most efficient courts in the Commonwealth are to be found in Singapore. When I first became Chief Justice, I met the then Chief Justice of Singapore, a very tall and impressive Chinese gentleman. He had been a highly successful lawyer involved I believe in the banking sector when he was plucked from private practice and appointed Chief Justice with a remuneration package which would have made mine look like peanuts. He then set about in a very practical and business-like way to bring the level of efficiency of the Superior Courts of Singapore up to that of other institutions in his country. I received recently the annual report for 2006 of the

Subordinate Courts in Singapore, entitled 'The New Phases of Justice'. The Subordinate Courts correspond roughly to our magistrates' courts. The following passage is taken from the message in the Report from the Senior Judge of the Subordinate Courts:

“2006 also marked the high point of the Subordinate Courts’ journey towards organisational excellence, which has culminated in our winning the prestigious Singapore Quality Award for institutionalising the highest standards of business excellence. In stark contrast to yesteryear, when a crippling backlog of cases plagued the judicial system, the Subordinate Courts today are internationally recognised as a change and thought leader in judicial administration, as well as having one of the world’s most technologically advanced courts. A local public survey also shows very high confidence by the public in the administration of justice by the Subordinate Courts.”

Imagine our Magistrates’ Courts winning an award for ‘business excellence’!

The achievements of the Subordinate Courts are not unrelated to the list of “seminal initiatives” which the senior judge reports were implemented by them. I will not reproduce the list, but will mention two of these initiatives which illustrate the importance placed on making their courts user friendly. One is the “Lay Assistance scheme” which “assists the litigant in person in court by helping the litigant to take notes and organise the papers and provide moral support and advice to the litigant”. The other is “the Court Concierge service” which “provides court users with personal one to one attention to assist them in the use of court services”.

I hope I have said enough to persuade you that to run a court properly you do not just need a judge or two, a registrar and a couple of office staff. Those who blithely suggest that the Judicial Committee of the Privy Council operates with little more than that ignore the fact that the Judicial Committee is supported by all the resources of the House of Lords.

I turn my focus now to the Caribbean Court of Justice.

The CCJ is not only a new court but it is a novel type of court. It is really two courts in one. It is an international court with exclusive jurisdiction to interpret and apply the Revised Treaty of Chaguaramas and it is also the final court of appeal potentially for all the Member States of CARICOM, though so far only for Barbados and Guyana. Another complication is that one of the countries which the Court serves, that is, Suriname, is Dutch speaking and there is the prospect that a French speaking country, Haiti, may soon become a customer of the Court. Given the status and importance of the Court and the need to win the confidence and trust of the peoples of the region, the policy of the Regional Judicial and Legal Services Commission in recruiting both Judges and staff, was to select the best available. At the same time the Commission did all that it could to encourage applications from as many CARICOM countries as possible. While the majority of the non-judicial officers employed by the Court are from Trinidad and Tobago, we have valued members of staff from Barbados, Jamaica and Guyana.

The setting up of the Court involved many parallels with the setting up of a business. Those involved in the planning of the Court determined the corporate structure, the business model and the business procedures, to be followed both internally and in dealing with our customers. The sub-registries of the Court (which are located in the Registries of the individual Member States of CARICOM) are the equivalent of branch offices. The Court Administration Department at the CCJ has been designing the Court's business and point of sale procedures

for receipt of fees and other moneys. The CCJ which as I have said, combines an international court with a final court of appeal, is a new product with which the public is unfamiliar and, therefore, the design and implementation of a public education programme involves tasks which are not dissimilar from those which you would undertake in launching a new product. I refer to the doing of market research and the designing of marketing strategy. We have been interacting in a very direct way with people in somewhat similar ‘businesses’ - I refer here both to national final courts of appeal and to international courts - so that we can learn from their experiences and thus avoid some of the pitfalls.

All businesses have to establish arrangements with a financial institution, usually a bank, in order to obtain financing. At the CCJ our source of finance is the Trust Fund which is vested in and controlled by an independent Board of Trustees. It took us some time to establish a mutually acceptable protocol to govern our interaction with the Trustees, but happily we have succeeded in doing so and there is such a protocol in place at present. Of course, the CCJ, like a business, has external auditors who perform the traditional function of examining and certifying its accounts. We do not have a Board of Directors as such, but there is the Regional Judicial and Legal Services Commission which has certain specific responsibilities, particularly in relation to the creation and filling of posts and the determination of terms and conditions applicable to those posts. Among the vital services which the Commission has rendered to the Court was that of mid-wife at its birth. The Court’s relationships with the Board of Trustees and with the RJLSC has had to be structured in a way which does not impair its independence. Like any new business, the CCJ places great emphasis on efficiency. In order to achieve efficiency, the CCJ employs specific standards throughout the organisation. The CCJ has studied the standards found in the internationally accepted Court Performance Standards and

the Appellate Court Standards and modified them so as to accommodate the dual jurisdiction of the Court. One of the imperatives which these standards impose is that the Court should facilitate access to it by all those entitled to resort to it under either of its twin jurisdictions. The Court has sought to facilitate such access in a number of ways. The Court has made it clear for instance that it intends to use the facility which it has, of sitting in other countries outside Trinidad and Tobago, as and when the sources and volume of its work warrant. In order to avoid attorneys having to make unnecessary trips to Port-of-Spain, the Court has in two appeals so far from Guyana, held case management conferences by teleconference. The Court has also made provision for videoconferencing facilities. The accessibility of the Court has also been heightened by the relatively modest level at which Court fees have been pegged as well as the facility offered litigants of filing documents at the sub-registries located in their own countries. From a technological point of view, the CCJ's court-room is undoubtedly the best equipped in the region. Documents referred to by counsel when addressing the Court can be viewed on screens strategically placed in the court-room and in front of each Judge. Within two hours of the conclusion of a day's hearing, a video and audio recording of that day's proceedings can be accessed on the Court's website. Even the décor of the Court has been chosen with a view to making the building warm and welcoming rather than cold and forbidding, as courts in the past have tended to be. The colour scheme I must admit was a bit of a shock to me at first, but it is nothing if not bright and contemporary. As an indication of the Court's orientation, I would mention that the Court has two Customer Service Officers whose title is self-explanatory. I may say that the emphasis on the psychological effect of décor and customer service was first introduced locally by Court Administration for the new Family Court in Cipriani Boulevard.

Like a well-organised business, the CCJ's administration was structured into a number of units, each headed by a well-trained professional and an expert in his or her field. Some of these units at present comprise no more than two or three persons. The overall head is the Court Executive Administrator who happens to be Christie-Anne Morris-Alleyne, of whom I spoke earlier. I might mention that her expertise has been drawn upon by other Caribbean courts whom she has assisted in the establishment of a court administration system and the implementation of new-style rules of court. The individual units of the CCJ are headed respectively by the Registrar, the Financial Comptroller, the IT Manager, the Chief Librarian, the Court Protocol and Information Officer, the Security Manager and the Facilities Manager.

Strategic planning is an exercise which one normally associates with businesses rather than courts, but the CCJ places a lot of importance on strategic planning. The initial strategic planning cycle was for set up and determination of the Court's basic corporate model and business model. The Court Administration Unit is now moving into its first full strategic planning cycle in which we will engage our stakeholders throughout the region.

I hope I have said enough to persuade you that the establishment and operation of the CCJ have been undertaken in a very professional and competent manner by persons who bring to the task not only the relevant expertise and experience, but also an appreciation of what is expected of a modern-day court. The Court recently published its first annual report. There is a full explanation in that report of the performance standards which the Court has adopted and which it will use to monitor and publicly assess its own performance. So, let it not be said that this Court is not accountable.

So far as the core product of the Court is concerned, this consists of the judgments of its Judges. These speak for themselves. I would wish though for greater interest by lawyers, in particular, in reading and commenting on these judgments. We have already given a number of them, at least one of which is of seminal importance. I refer to the case of *Joseph and Boyce*, an appeal in a capital case from Barbados. If you would like to know whether the Court is a 'hanging court' I would suggest that you disregard what others may say on the subject and instead read what the Judges themselves have said in their judgments in *Joseph and Boyce*. These judgments are available on the Court's website and will soon be published in the West Indian Reports, a series of law reports published by Butterworths in England.

The second link I would like to make between business and the CCJ is perhaps a more critical one for you. It relates to the use which businesses may make of the CCJ in order to obtain redress for damage which they suffer as a result of breaches of the revised Treaty of Chaguaramas by Member States of CARICOM. By now I expect that all of you will have some idea of the obligations undertaken by the CARICOM States which are participating in the CSME. These obligations relate to the removal of restrictions by Member States on the right of establishment, the movement of capital, the movement of people and the provision of services in the single economic space created by the CSME. Most of these obligations (and the corresponding rights) are not absolute, but subject to certain reservations and exceptions. Nevertheless, it is easy to envisage situations in which a failure of one Member State to live up to its Treaty obligations may result in loss to some business based in another Member State. Another potential ground of complaint by business entities is provided by Article 7 of the Revised Treaty which prohibits "any discrimination on ground of nationality only". Now that the provisions of the Revised Treaty have been activated by the Member States of CARICOM,

it is important for businessmen and women to inform themselves of the jurisdiction of the Caribbean Court of Justice with respect to enforcement of the Treaty and more especially, of the circumstances in which they can access that jurisdiction. That could be the subject of a separate talk but on this occasion, I will deal with these matters quite briefly. The basic jurisdiction of the Court as an international institution, is to determine disputes that may arise between Member States of CARICOM or between the Community and a Member State, with respect to the interpretation and application of the Revised Treaty. The Court's jurisdiction therefore does not extend to disputes overfishing or the exploitation of the seabed. These are governed by the international law of the sea, not by the Revised Treaty of Chaguaramas. On the other hand, the jurisdiction of the Court is exclusive, so that if a question concerning the interpretation or application of the Treaty arises in proceedings before a national court, it is the duty of that court to refer the question to the CCJ for decision before giving its judgment in the matter. The purpose of this requirement is to ensure that there is a uniform interpretation and application of the Treaty, not one which varies from one CARICOM country to another.

Another feature of the Court's jurisdiction is that it is compulsory. By signing and ratifying the Treaty and the Agreement establishing the Court, Member States have agreed in advance to submit to the Court's jurisdiction.

The Court's judgments are final in that there is no appeal from them. They are also binding. Article 215 of the Revised Treaty provides that "Member States, Organs, Bodies of the Community, entities or persons to whom a judgment of the Court applies, shall comply with that judgment promptly". Furthermore, Member States have contracted by Article XXVI of the Agreement to take all necessary steps including the enactment of legislation, to ensure that the judgments of the Court are enforced as if they were judgments of a local superior court.

The other question which I suggest may be of special interest to you, is in what circumstances can this jurisdiction be invoked by individuals or companies? Normally, treaties confer rights and impose obligations on States only, not on individuals or companies. The right to bring proceedings in the CCJ, however, has been expressly given to “nationals of a Contracting Party” in the words of the Agreement (Article XXIV) and to “persons, natural or juridical, of a Contracting Party” in the words of the Treaty (Article 222). It is clear that in both documents ‘persons’ is intended to include companies and I shall use the word in that sense. In order to bring proceedings in the Court, a person as opposed to a Member State must satisfy the Court, firstly, that he has been prejudiced in his enjoyment of a right or benefit which though conferred by or under the Treaty on a Member State, was intended to enure to his benefit directly. Secondly, that the Member State in whom that right is vested, is not itself pursuing a claim. And thirdly, that the interest of justice requires that the person be allowed to “espouse the claim”. The first of these conditions will require elucidation by the Court, but that will only come when persons attempt to bring proceedings in the Court.

It is not my purpose to stir up litigation, but I would suggest that it is important for those engaged in business and their legal advisers to be able to recognise when a situation arises in which recourse to the CCJ may be an option. If you are involved in trade in or with other CARICOM countries, you should at least make sure that the attorney on whom you rely for advice, is familiar both with the Agreement and the Revised Treaty as well as the local legislation which these instruments have spawned. I can assure you that the CCJ does treat the business community as potential customers and in accordance with its general policy, will do whatever it can to facilitate their access to the Court whenever such access is sought.

In concluding I want to say something very simply and sincerely. I say this not as President of the CCJ, but as a citizen of Trinidad and Tobago who is deeply committed to two goals. One is the development of an indigenous jurisprudence in the Commonwealth Caribbean and the other is the success of the regional movement towards economic integration. I believe that the Caribbean Court of Justice has an important role to play in the achievement of both these goals. I am also convinced that the regional Court which has been established, is a quality court, well equipped for the role which it has been assigned in pursuit of both these objectives. I think it would be a great tragedy if, for whatever reason, be it competition for political ascendancy or simply the timorous conservatism of a post-colonial mentality, the CCJ should be denied the opportunity of fulfilling its true potential. If that were to happen, it would mean that an opportunity had been lost which might not return for many generations.

Finally, you as businessmen and women, might also wish to ponder on the folly of paying for something (as the Court has been paid for by the establishment of the Trust Fund) and then not using it.

I thank you ladies and gentlemen for your kind attention.