Special Sitting of the Bermuda Supreme Courts

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

The 400th Anniversary of the Bermuda Supreme Courts

Court Room No. 1, Sessions House,
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The Judiciary is established by the constitution as a separate and independent branch of Government. The Judiciary adjudicates charges of criminal conduct, resolves disputes, upholds the rights and freedoms of individual, and preserves the rule of law. The Supreme Court falls under the Department of Judiciary and is divided into criminal, civil, commercial, divorce and probate jurisdictions. The Supreme Court is headed by Chief Justice Narinder Hargun from the year 2018 to present. The Supreme Court extend support to the Justices of Appeal and the Registrar. The Supreme Court Registry is responsible for managing the resources needed for the effective functioning of the courts in Bermuda.

Remarks

By

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

on the occasion of

The Special Sitting of The Bermuda Supreme Court 400th Anniversary

15 June 2016

Introduction

I am honoured to be invited to participate in this important occasion and to make a few remarks on what this anniversary means from a Caribbean perspective. The first requirement is for me to express congratulations. I trust that I will be forgiven if I single out the Honourable and Learned Chief Justice Ian Kawaley and his team. The idea of such a celebration is very important. Even more so was the design and implementation of this excellent program and the other activities to celebrate this historical landmark. His scholarship both as a jurist and a historian, as well as his commitment to the application of all human rights is very evident in the concept and organization, I extend sincere congratulations to him and his team.

As Bermuda observes the 400th anniversary of the permanent establishment of courts, the occasion provides an opportunity to reflect on the development of judicial attitudes and perspectives over the years, and to highlight how newer perspectives can be employed in addressing the challenges that are faced in upholding the rule of law in the modern era. The law is in a constant state of evolution as time progresses and society develops. In essence, the rule of law thrives in an environment where the concept of human equality is fully embraced, applied and upheld. As

society evolves, so do its collective belief and value systems. Consequently, notions of fairness and equality evolve over time.

This has been the story of Judicial evolution in Bermuda over the last 400 years. The notions of fairness, justice and human equality applied in the courts of Bermuda today have evolved. This is a very important story for humanity. As it unfolded the concept of who is a human being, and what does the prevailing value of human equality mean and how it should be applied has been examined, interpreted, developed and implemented through the justice system as well as other organs in the society. This story was clarified in the seminal publication by the Bermuda Centre for Justice entitled *"Justice in Bermuda Today 2014: Human Rights Since Emancipation"*. The essays in this work were fascinating. Spearheaded by the scholarly assessment of equal rights in the courts in post-emancipation Bermuda by CJ Kawaley himself and covering the rights of women in the legal profession, the issues of racial justice, the protection of vulnerable workers, human rights and gender equality, and approaches to deal with drug use interrogating the adoption of public health as opposed to purely criminal approaches.

The essays demonstrated the central role that the courts of justice had on the evolution of the community in Bermuda in particular in eradicating the scourges of slavery and all the various aspects of oppression that went with it and the development of concepts of democracy, and equal rights within a free society. The insightful tracing of that journey showed that the situation today has been transformed, even though the process is not yet completed.

Bermuda located in the northern Atlantic, off the East Coast of the United States is not geographically in the Caribbean, but there is no doubt that a part of the Caribbean has taken root in Bermuda. It is widely believed that the 16th century Spanish sea captain, Juan de Bermudez, discovered the archipelago of seven main islands and more than 170 islets. Colonization began

in July 1612, when sixty British settlers, led by Richard Moore, disembarked. Moore became the first governor. In 1616, the king issued a charter to form the Somers Isles Company, a commercial enterprise. By 1620, the Parliamentary Sessions House began to hold meetings of the colonial legislature. A system of land ownership developed as the territory was divided into parishes named after major stockholders in the Virginia Company. The Virginia Company ruled Bermuda much like a fiefdom and the colonists soon grew tired of the burdensome restrictions placed upon them. In 1684, Bermudian leaders sued to have the charter rescinded, and thereafter Bermuda was ruled as an English colony in a similar fashion to its American counterparts. White population in Bermuda remained the majority until the 18th century despite a continuous influx of Latin American and African blacks, native Americans, Irish and Scots and Portuguese.

At the turn of the 20th Century, West Indian immigrant labour brought here for the second phase of development of the Royal Naval Dockyard hailed to a significant extent from St. Kitts and Nevis where I was born. The first quarter of the 17th century, when Bermuda was permanently settled as a British Colony, is also the time when St. Kitts, Mother Colony of the West Indies, was permanently settled by the British, and the French.

As your law courts and legal system are rooted in the English model, so is the legal system of the Commonwealth Caribbean countries. The history of your court system is closely followed by the history of many in the English-speaking Caribbean, when in the boom days of our strategicallylocated archipelago, the Courts of Chancery, Exchequer, Probate and Bankruptcy to name a few, flourished, even before English mercantile supremacy became a global phenomenon. In these early colonial times, the Sovereign typically oversaw all judicial disputes in the colonies and referred them to the Privy Council. After formal judicial systems were established in the

British colonies in the 16th century, appeals from the colonial territories were heard by the Privy Council.[1]

The British Parliament in 1833 passed the Judicial Committee Act which established the Judicial Committee of the Privy Council (Privy Council).

The main result of that common history is that the judicial system had as its highest court the Judicial Committee of the Privy Council. This meant that there was great similarity in the justice administered by the courts in Bermuda and the courts in the Wider Caribbean. As I reviewed the essays published by your Centre for Justice, the evolution mirrored that in the Caribbean and many of the landmark cases are applicable in our jurisdictions. And we are like Bermuda firmly founded on the English common law and equity jurisprudence.

Today the Caribbean Community (CARICOM) is broader than the Commonwealth Caribbean as it includes Haiti and Suriname. And it should be noted that Suriname is part of the Caribbean Court of Justice (CCJ). I mention this in passing because the legal systems in our region are multifaceted. While many mirror the system here in Bermuda there are the hybrid systems of Guyana and Saint Lucia. The legal code in Saint Lucia is a hybrid of British common law and French civil law consequent on Saint Lucia's history as both a British and a French colony and Guyana's legal code is a hybrid of British common law and Netherland civil law. Suriname once relied on the British common law system, but this was replaced by Netherland civil law in the 1600s when the United Provinces (the Netherlands) defeated England in battle during the Second Anglo-Dutch War.

[1] History, JUD. COMM. OF THE PRIVY COUNCIL, available at https://www.jcpc.uk/about/history.html (last visited June 15, 2016).

This brings me to the main point of divergence. The advent of political independence in the Caribbean Community has led by natural progression to the establishment and operation of the Caribbean Court of Justice, the role of which we see as an outgrowth of human equality, national sovereignty and regional integration.

This progression was consistent with the other countries of the Commonwealth for as the era of colonialism drew to an end the former colonies, once they became independent states, no longer needed or used the services of the Privy Council. This was the pattern in the years following the end of the Second World War. During that period the great majority of the former colonies abolished appeals to the Privy Council and established their own final courts of appeal to replace it. In the Americas, Canada, in Asia, India, Pakistan, Bangladesh, Sri Lanka (Ceylon), Hong Kong, Malaysia, Singapore, in Africa all countries, and so too Australia and New Zealand – all abolishing appeals to the Privy Council and repatriating final judicial adjudication to their own courts. Today, only twelve independent States still send their final appeals to the Judicial Committee for determination. Eight are in the Caribbean, and the others are four small island states in the Indian and Pacific Oceans with populations of 10,000 on the smallest of these, Tuvalu, and on the largest 1.2 million in the case of Mauritius. Despite the fact that this implies that the prestigious and highly respected Privy Council has become anachronistic throughout most of the commonwealth, the commonwealth Caribbean still holds on to its jurisdiction.

In the Caribbean the Privy Council also provides final appellate jurisdiction to its dependent territories of Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Montserrat and the Cayman Islands. So the independent nations of Jamaica and Trinidad are subject to the same final judicial arrangements as the British Dependent Territories such as Anguilla, and Bermuda. This remains to be the case even though the highly respected Privy Council as an institution is growing

anachronistic in the sense that after its glorious history as the final appellate court for the majority of countries in the world, it now provides that service for only 12 independent countries eight of which are in the Caribbean, and the remaining four are small island states in the Indian and Pacific oceans the largest of which, Mauritius, has a population of 1.2 million and the smallest of which Tuvalu has a population of just under 10,000.

So where does or should Bermuda stand, on the issue of the Caribbean Court of Justice? I ask this very quietly of course, and in full remembrance that the last time there was a referendum in Bermuda to consider going independent the idea was defeated by three quarters of those who voted. In my view the two issues go hand in hand with the concept of human equality and the right to self-determination and we will have to see how this develops in our region.

The Caribbean Court of Justice is an innovative and important development in the judicial administration of the region and has made significant differences to the past. The CCJ is itself two courts in one. In its Original Jurisdiction, the Court functions as an international tribunal with the compulsory and exclusive jurisdiction to interpret and apply the provisions of the Revised Treaty of Chaguaramas (RTC). In that capacity the Court exercises a jurisdiction that is completely different from that exercisable by the judicial systems in Bermuda, including the Privy Council. It may be that this jurisdiction is not important for Bermuda because it has not taken the political decision that its economic development and social stability will be enhanced by integrating with the Caribbean Community, as its economic and trading links with the US, and the British colonial traditions are very deep.

However, the Court has already made important contributions to the Caribbean Community on issues of trade ensuring that Caribbean manufacturers have protected markets in the Caribbean Community in accordance with treaty provisions, and enforcing freedom of movement by Community citizens within the region. In that last regard, the Court had to address an issue which featured prominently in the book *"Justice in Bermuda 2014"*. In the case of *Maurice Tomlinson v Belize and Trinidad and Tobago*,[2] a judgment delivered on 10th June 2016, it was confirmed that the right of hassle free travel within the Community applied equally to the LGBT community. The court was able to pronounce as follows:

> *"In essence, therefore, homosexual CARICOM nationals have a right to freedom of movement on the same terms as any other CARICOM national and both Belize and Trinidad and Tobago agree that this is so. This right is consonant with the development of human rights law in the twentieth century alluded to later in this judgment."*[3]

In Bermuda, the gender issue is now being addressed at a different level with the impending referendum on same sex marriages which I understand is due within the next week or so, on the same date as the British People go to the Brexit referendum. In this case, the matter is being resolved not by the judiciary but by the people exercising a right to vote. Although having noted the principled statement of the Hon Chief Justice on the arrangements for the referendum, there still may be judicial questions to be answered before the matter is finally settled. I shall be following the events with interest. In any event, the process of judicial intervention adopted in the *Tomlinson* case, and the democratic process of a referendum adopted in Bermuda show a high

[2] [2016] CCJ 1 (OJ).
[3] Ibid [21].

level of respect for the rule of law and human rights. I mention in passing, and by way of contrast, the topical and terrifying spectacle of the Orlando massacre at a gay club. I trust the Caribbean continues to evince respect for the rule of law in the resolution of issues of this nature.

I suggest that the success of this Original Jurisdiction is essential for the region as an important tool for making the single market and economy work. Already, the Court has begun to flesh out the barebones of the RTC. It has established that persons other than a CARICOM State can bring proceedings before the CCJ if leave is granted by the CCJ. So a company incorporated or registered in a Member State can bring proceedings whether or not control was in the hands of non-nationals[4], as can an individual[5]. The CCJ held it had jurisdiction to review decision-making by the Secretary General and COTED.[6] The CCJ has held States liable in a number of cases, made declarations and mandatory orders,[7] ordered payment of damages (but not exemplary damages)[8] and reimbursement of unlawfully demanded tax[9]. It has held that decisions of the Conference of Heads of Government is a source of CARICOM law, that CARICOM nationals have a right to an automatic stay of six months unless the receiving country can show that they are likely to become a charge on its public purse or they fall within a restrictively interpreted class of "undesirable" persons.[10] This was the most notable case from the CCJ's Original Jurisdiction. However, there is a dimension to the *Shanique Myrie* decision that is often overlooked. Shanique Myrie was a young woman of humble circumstances. This classic "David and Goliath" tale clearly illustrates

[4] *Trinidad Cement Ltd v Guyana* [2009] CCJ 1 (OJ); (2010) 76 WIR 312.
[5] Myrie, supra (n8)
[6] *Trinidad Cement Ltd v The Caribbean Community* [2009] CCJ 4 (OJ); (2009) 75 WIR 194, *Hummingbird Rice Mills Ltd v Suriname and the Caribbean Community* [2012] CCJ 1(OJ); (2012) 79 WIR 448
[7] *TCL v Guyana* [2009] CCJ 5 (OJ)
[8] *Myrie v Barbados* [2013] CCJ 3 (OJ); (2013) 83 WIR 104
[9] *Rudisa Beverages v Guyana* [2014] CCJ 1;(2014) 84 WIR 217
[10] *Myrie (n8).*

that the CCJ can champion the causes of "the man on the street", or woman in this case, and provide a forum to ventilate grievances that would otherwise go unaddressed.

Even in the appellate work of the court, the CCJ has made some differences to the development of the law. In its Appellate Jurisdiction, the CCJ functions as a final appellate court for both civil and criminal matters of municipal regional courts. At present, the territories of Guyana, Barbados, Belize and Dominica have acceded to the Appellate Jurisdiction of the Court. In this vein quoting from the learned and distinguished Judge Desiree Bernard who now sits on the Court of Appeal of Bermuda after retiring from the Caribbean Court of Justice – the Court seeks to *"fulfil two dreams for the Caribbean Region by uniting them in one judicial system – the long-sought need for a final appellate court to replace the Privy Council, a respected tribunal of colonial memory, and the establishment of an international court to ensure effective implementation of the Treaty."*[11]

The Court has been operating for just over one decade. In that short period however it has adjudicated on a wide range of important legal, constitutional and social issues. I doubt that this is the occasion to indulge in an examination of the jurisprudence of the CCJ, and resist the temptation to do so. But I would like to advance the thought that it has already had the opportunity to demonstrate that the repatriation of final judicial function allows the Community to apply legal principles in a manner that meant something to the Community. I limit myself to two oft quoted examples. In *Attorney General and Others v Joseph and Boyce*,[12] a problem had arisen because although Barbados had signed on to the Inter-American Convention for Human Rights which gave its citizens rights of audience before the Human Rights court, the legislature had not passed the

[11] Desiree P. Bernard, "The Caribbean Court of Justice: A New Judicial Experience" (2009) International Journal of Legal Information: Vol. 37: Issue 2, Article 11. [12] [2006] CCJ 3 (AJ), (2006) 69 WIR 104.

legislation necessary for it to be incorporated into domestic law, and the state was intent on observing the letter of the law, or rather the absence of any letters of the law. The CCJ held although individual citizens derived no rights under treaties concluded between States, the promotion of universal standards of human rights showed a tendency towards a confluence of domestic and international jurisprudence and consequently a ratified but unincorporated treaty could give rise to certain legitimate expectations. The *Boyce* decision clarified the intersection of international treaties according human and municipal rights to Caribbean citizens. The Court did not follow prior inconsistent decisions of the Privy Council. The principle of legitimate expectation has since been applied in several courts in the Commonwealth. In *Romeo Da Costa Hall v The Queen*,[12] the CCJ was confronted with the human rights violation of excessive duration of pre-trial detention. The CCJ emphasised that in sentencing the primary rule for courts is that full credit should be granted for time spent on remand while pointing out some of the elements which would justify exceptions to the primary rule. Available information suggests that this is the CCJ case that is most widely followed around the Commonwealth.

Before I end, I wanted to say a few words on diversity. I should start with the composition of the Court itself. Most countries in the world require nationality as a condition of employment in the highest courts. Not the CCJ. On this Caribbean Court, with a complement of seven, there sits nationals of Trinidad and Tobago, Jamaica, St. Vincent and the Grenadines, St. Kitts and Nevis, the United Kingdom and the Netherlands. Besides nationality there are other aspects of diversity that need not be addressed in this forum. I am trying to introduce the idea that judicial history in the western hemisphere is often conceived in the post emancipation efforts to eradicate inequalities based on ethnicity, nationality, gender and religion. Until emancipation in Bermuda, as in the

[12] (2011) 77 WIR 66; [2011] CCJ 6 (AJ).

Commonwealth Caribbean, the English, or White male population held a dominance legitimised by the legal and judicial system. I must hasten to proclaim, that in my view one of the most important advances of civilisation in the 20th century was the Universal Declaration of Human Rights, to which every nation subscribed. This challenged the myth of ethnic, national and gender superiority as it recognised and declared that every human being was entitled to be treated equally and to enjoy equal pride and dignity in a full and meaningful life. Our legal systems have been working to make these laudable concepts a reality in the lives of the people living in these regions, and I believe that the Caribbean Court of Justice is a step in the direction.

It is interesting that in most of the Commonwealth Caribbean the English or white population was not numerically very significant. In Bermuda, however, according to the essay written by Ms.

Lynn Whitfield in 1833 the population of Bermuda was "just over 9000 consisting of just over 4000 white almost 5000 enslaved Africans and Free Blacks". According to her essay in the 2010 census the total population stood at 64,237 individuals, with 54% identifying themselves in the black racial group and 31% as white. Nonetheless the dominance of the white population in terms of governance, finance, business and influence was similarly strong throughout the region.

But throughout the region other issues of ethnic, religious and gender diversity have arisen and played significant roles in the evolution of society and its governance. In Trinidad, Guyana and Suriname, for example, the majority of the population is divided between people of African and Indian descent. In Suriname and Belize, and elsewhere there are various indigenous groups including the Mayan Indian community. I mention this community because there has been

litigation in the Caribbean Court of Justice concerning their rights as an ethnic group within the nation of Belize.[13]

As history unfolds, the issue of diversity is a matter that will continue to evolve and the courts will continue to play an important role. The journey travelled here in Bermuda while different is still similar to the Caribbean. Our courts have to engage in a broader perspective of diversity because the issues in the region are multiple. They are not limited to the racial issues described as white and black, or African and English/European, as there are other groups who have an equal right to enjoy the full benefit of society on an equal footing with each other, including the right to a full life with dignity and pride.

This finally brings me to the issue of self-determination. It is interesting that the British population is now facing the crisis of choosing between self-determination and integration with Europe. In the Caribbean, many have considered the issue of our identity and this has led to a wide variety of opinions and positions. The Brexit referendum which incidentally will take place on the same day as the same sex marriage referendum in Bermuda has revealed a period of politicking which could easily be described as ripping the country apart, as the polls seem unable to declare a leading position. Issues of identity, grappling with nationalism as opposed to regionalism, sovereign rights as opposed to integration have been forcefully discussed. This reminds us that the dilemma facing the independent Caribbean countries who are considering delinking from the Privy Council to adopt the Caribbean Court of Justice as the final appellate court, is not exclusively Caribbean.

And so I congratulate you on the journey and look forward to the next phase with anticipation.

[13] *Maya Leaders Alliance v AG of Belize* [2015] CCJ 15 (AJ).

that complaints will not be hampered by existing case backlogs within the current judicial systems across the region, which unfortunately still cause inordinate delay.

Judicial Attitudes to Adjudication

The just management and adjudication of court cases which touch and concern issues relating to HIV/AIDS rests on a sound understanding of the subject-matter and related issues as well as on sound evidence. It also requires a pragmatic approach to the resolution of disputes before it. In doing so, "prejudice is replaced by knowledge; and stereotyping by the judicial commitment to equal justice under the law…"[14]. In order to ensure that the judicial process is properly positioned to effectively contribute to ending AIDS by 2030, there must be a focus on human rights. The Office of the United Nations High Commissioner for Human Rights, for example, has stated that, "[t]he full realization of all human rights and fundamental freedoms for all is an essential element in the global response to the HIV epidemic, including in areas of prevention, treatment, care and support".[15] The importance of a human rights oriented approach was highlighted ahead of last year's UN High Level Meeting which saw the development of the Political Declaration on HIV and AIDS. In a statement preceding the meeting, a group of independent experts warned that, "the AIDS epidemic is still driven by human rights violations around the world, including discrimination, violence, punitive laws, policies and practices".[16] However, even as we embrace the human rights-based approach, we must heed the admonitions given by several of our regional scholars including Professor Rose-Marie Belle Antoine, that, we must remain cognizant of the "inadequacies of the legal infrastructure in which we operate" and

[14] The Hon Justice Michael Kirby, 'Courts and Justice in the Era of AIDS' (1999), pp 25 and 30.

[15] United Nations High Commissioner for Human Rights, 'HIV/AIDS and Human Rights' < http://www.ohchr.org/EN/Issues/HIV/Pages/HIVIndex.aspx> accessed 10 September 2017.

[16] Office of the High Commissioner for Human Rights, 'AIDS epidemic still being driven by human rights violations – UN experts warn' (3 June 2016) < http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20055&LangID=E> accessed 10 September 2017.

ought not to be lulled into a false sense of security "about our constitutions instead of [thinking] critically about them".[17]

Much progress has been made regionally and internationally by way of the development of jurisprudence in the quest for the full realization of human rights.

In the 2000 decision of the Constitutional Court of South Africa,[18] a man living with HIV sought an order that state-owned South African Airways (SAA) employ him as a cabin attendant after the Airline had refused to hire him under a policy prohibiting the employment of persons living with HIV as cabin attendants. The Constitutional Court ruled that SAA had engaged in unfair discrimination contrary to the right to equality guaranteed by the Constitution and ordered SAA to employ the appellant. The Court commented that each instance of discrimination represented a fresh instance of stigmatization[19] and that persons with HIV "must not be condemned to 'economic death' by the denial of equal opportunity in employment".[20]

Courts, around the world, have played a crucial role in securing adequate, regular and affordable universal treatment for HIV/AIDS. In Venezuela, in a 1999 judgment[2122], the Court ruled in favor of the almost 170 applicants living with HIV who contended that the relevant Ministry, by failing to supply prescribed antiretroviral drugs through the public health care system for persons not covered by the employment-linked national "social-security" scheme, had not satisfied its constitutional obligations[23] to them and other people living with HIV. The judgment

[17] Professor Rose-Marie Belle Antoine, 'Pragmatic Approaches to HIV and Human Rights' in George Alleyne and Rose-Marie Belle Antoine (eds), *HIV & Human Rights: Legal and Policy Perspectives on HIV and Human Rights in the Caribbean* (University of the West Indies Press, 2013) 73.
[18] *Hoffman v South African Airways* (Case CCT 17/00) [2000] ZACC 17.
[19] Ibid at [28].
[20] Hoffman (n 36) at [38].
[21] *Cruz del Valle Bermudez et al. v. Ministerio de Sanidad y Asistencia Social*, Supreme Court of Venezuela, Decision No. 916, Court File No.
[22] .789 (1999).
[23] Grounded in the rights to health, life and benefit from science and technology.

took a holistic approach to the remedy sought and went beyond simply ordering the supply of medication: the Ministry was also ordered to seek the necessary budget allocation to comply with its legal obligations imposed by the judgment.

In another case, the court, finding in favour of 29 persons living with HIV who had complained of failure to supply prescribed antiretroviral medication regularly,[24] observed that the right to health was not merely a state objective but was a fundamental social right and that persons were entitled to the benefits of science and technology and to social security.

A similar dispute in El Salvador engaged the Inter-American Commission on Human Rights[25] where the complaints included failure to provide free antiretroviral drugs and allowing discriminatory treatment on account of HIV status. The Commission found that El Salvador had breached the petitioner's right to equal protection of law by the conduct of authorities including forcing him to use a drinking glass labelled with a row of 3 Xs to denote it belonged to an HIV patient and affirmed that the principle of non-discrimination must be strictly applied. The rulings ultimately prompted the Supreme Court to order the State to comply. And, notably, the

Legislative Assembly also moved to enact legislation to address several of the Commission's concerns.[26]

As regards the availability of affordable treatment, the Central Intellectual Property and International Trade Court of Thailand found in favour of the two plaintiffs who sought access to a lower-cost generic version of a particular antiretroviral medication. The specific order was for

[24] *López et al. v. Instituto Venezolano de los Seguros Sociales*, Supreme Court of Venezuela, Judgment No. 487-060401 (2001)
[25] *Jorge Odir Miranda Cortez v. El Salvador*, Report No. 27/09, Case 12.249, March 20, 2009; OEA/Ser.L/V/II., Doc. 51, corr. 1, 30 December 2009.
[26] See Summary of the Decision and Reasoning in *Jorge Odir Miranda Cortez v. El Salvador* <http://www.globalhealthrights.org/healthtopics/health-care-and-health-services/jorge-odir-miranda-cortez-v-el-salvador/> accessed 11 September 2017.

the multinational pharmaceutical company's patent claim to the relevant drug to be invalidated, at least in part, so as to permit the production and distribution of generic forms of the drug in Thailand.

Courts in the Caribbean have also been called upon to address issues concerning human rights and AIDS. A recent example comes from Belize where the claimant, a homosexual man, successfully challenged the constitutionality of a section of the Criminal Code which criminalized anal sex between two consenting adult males in private.[27] Ultimately, the court held that the impugned law breached the claimant's constitutional right to the recognition of human dignity, privacy and equality before the law and equal protection of the law without discrimination.

The CCJ was engaged in its Original Jurisdiction to determine whether Belize and Trinidad and Tobago had infringed the claimant's rights to free movement under the Revised Treaty of Chaguaramas (RTC) and the 2007 Decision of the Conference of Heads of Government of CARICOM[28] The claimant, a Jamaican homosexual and noted LGBTI rights activist, contended that, although he had never been denied entry to either country, their respective Immigration Acts classified homosexuals as "prohibited immigrants", or prohibited the entry of "homosexuals or persons living on the earnings of…homosexuals" who were not citizens. Each country maintained that the claimant was entitled to hassle-free entry into its territory and to remain there for up to six months. The CCJ held that the state's policy in admitting entry to CARICOM nationals who are homosexuals was not a matter of discretion but was a legal requirement under the RTC and domestic law.

[27] Ibid at [73].
[28] *Tomlinson v The State of Belize; Tomlinson v The State of Trinidad and Tobago* [2016] CCJ 1 (OJ).

Challenge

I wish to end my address by first congratulating those of you who have been selected as "Champions". Your commitment to leveraging your individual and collective influence will play a key role in helping our Region, and the world, end this epidemic.

We can no longer sit back contently in our "rocking-chairs" of indecision and indecisiveness or intention and inertia and observe the undoing of all the advancements we have made. While we must celebrate those achievements, this is a time for A-C-T-I-O-N!

I leave you with the words of Dr. Poonam Khetrapal Singh, WHO Regional Director for South-East Asia, which are equally relevant to us here today:

> "Efforts over the next [few] years will decide whether we will end AIDS by 2030 or face resurgence. In over four decades of the epidemic, science, social mobilization, political commitment and coordinated response among key stakeholders have made it possible to end AIDS. History shall not be kind to us if we become complacent now."[29]

Thank you.

[29] Dr Poonam Khetrapal Singh, 'Renew resolve to end AIDS' < http://www.searo.who.int/mediacentre/releases/2015/world-aids-day-2015/en/> accessed 11 September 2017.