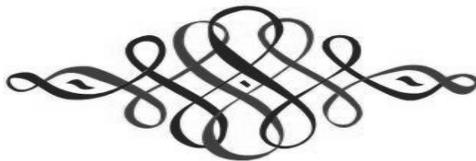


The Preservation of a Just Society: The Roles of the CCJ and the Press*

by

**THE RIGHT HONOURABLE SIR DENNIS BYRON
PRESIDENT
CARIBBEAN COURT OF JUSTICE**



**WINN FM 98.9's 10th Anniversary Buffet and Ball
Marriott Resort
Frigate Bay, St. Kitts**

Date: Friday, 21st December, 2012

* This Paper was presented by the Right Honourable Sir Dennis Byron, President of the Caribbean Court of Justice at WINN FM 98.9's 10th Anniversary Buffet and Dinner on Friday, 21st December, 2012 at the Marriott Hotel, St. Kitts.

Introduction

Protocols.

I am indeed honoured and pleased to have been invited as the Guest Speaker here this evening. I am grateful to WINN FM for the invitation. It always feels good to be on home soil, especially at this time of year, and I take the opportunity to extend best wishes for the Christmas Season to the management and staff all in attendance.

A 10th Anniversary is a pivotal milestone for any organisation. I congratulate the WINN FM 98.9. Although I recall the days when ZIZ was pioneered in the early 1960s, and I suppose that I should also mention VON radio, the establishment and successful operation of private media house must be commended. Some of the qualities that must be commended are innovation, vision and dedication. Moreover it is important to recognise that in this sector that there is an underlying element of social service and benefit to society. The importance of a free Press has long been recognised. Since the 18th century, the Press has been known as the Fourth Estate. The term “Fourth Estate” signifies both the independence of the Press from other State institutions and the power of the Press to influence the direction of society. Thomas Carlyle in his book *On Heroes, Hero Worship and the Heroic in History* remarked: *“Burke said that there were Three Estates in Parliament; but, in the Reporters’ Gallery yonder, there sat a Fourth Estate more important far than they all.”*

There are several similarities between the best journalists and the best Judges. They share qualities of fair-mindedness, honesty, balance and impartiality. They carry out their duties diligently and without fear or favour. They demand accountability, and attack injustice and abuse of power. Like the Judiciary, the Press serves society best when it is completely independent of political control or alliance. The Judiciary and the Press seek to maintain good governance and the rule of law. I note with pleasure that WINN FM has garnered a regional reputation as a balanced, independent news source. It is indeed a testament to WINN FM’s first class journalism that its own Senior Broadcast Journalist Ms. Toni Frederick was one of only fifty journalists from across the world invited by the U.S. State Department to cover the 2012 Presidential Elections. I commend WINN FM as it continues to serve with distinction.

The CCJ now and beyond: “Responsive, Innovative, Inspirational”

The Caribbean Court of Justice is younger than your institution. The Court was inaugurated in April 2005, just over 7 years ago. During the course of this year we engaged the Court’s stakeholders and spent several months in a highly participatory process involving the judiciary and civil society from across the Caribbean as well as the CCJ staff.

At the beginning of this December month the CCJ launched a five year Strategic Plan “*Responsive, Innovative, Inspirational, 2013-2017*”. We had a major media event to inform the public. But you are the first media house to invite us to feature at an event such as your 10th Anniversary Banquet. So I say thanks again and only hope that your good example will be followed by others. Without further ado, I now present a copy of the plan to your management. For the rest of you, the plan can be accessed on the website of the Court.

It sets out the mission and vision of the Court. Our mission guarantees accessibility, fairness, efficiency and transparency and delivering clear and just decisions in a timely manner. The plan also identifies the values by which the Court and its staff are guided in carrying out our mission. The plan then sets out seven strategic themes for the next five years. These themes include “Access to Justice”, “Independence and Accountability”, “High Performance Work Environment”, “Equality, Fairness, Integrity and Promoting the Rule of Law”, “Organisational Capacity for Caseload Growth”, “Attaining and Preserving Public Trust and Confidence” and “Enhancing Regional Justice System Performance”.

Tonight with the fourth estate captive, it is the perfect setting to look more closely at Strategic Issue VI – “Attaining and Preserving Public Trust and Confidence”. The goal of this issue is to enhance our public education thrust to inform and engage the regional and global community about the role and work of the Court and promote public trust and confidence. What better partner could there be in such an endeavour than the Fourth Estate? Tonight I would challenge you to address three important areas of public information; reporting on the performance record of the Court and reemphasising the institutional arrangements that have guaranteed the independence and competence of the Court; the accession by St. Kitts and Nevis to the final appellate jurisdiction of the court;

The CCJ is fully operational and productive

As a brief background I should remind you that the CCJ sits in two distinct jurisdictions.

It has been established to be the only court to settle disputes arising from the CARICOM Single Market and Economy. We call this its Original Jurisdiction. It is original in the sense that persons with disputes can come directly to the Court without having to go to any other court first. This part of its work is crucial to the realisation of the vision for economic development and social stability that has been driving regional politics. Many cases have already been settled by the Court in its original jurisdiction. The Court has protected the rights of cement manufacturers in Trinidad by ordering the government of Guyana to impose tariffs on cement imported from the Dominican Republic, and orders have been made against the government of Suriname to impose tariffs on wheat imports from the Netherlands. The Court has addressed other important matters. Pending before the Court is an important issue relating to the freedom of movement of CARICOM citizens within the region. This matter filed by a Jamaican national against the government of Barbados has attracted media attention and will come on for hearing in the first quarter of 2013. And just last week, a new matter raising issues on environmental law was filed by entities from Suriname.

The other jurisdiction of the Court is the final appeal court in the Commonwealth Caribbean replacing the Privy Council (“the Appellate Jurisdiction”). Three countries have already completed the process and the CCJ is hearing final appeals from Guyana, Barbados and Belize. I gather that it is not well known how many matters the Court has actually adjudicated during the last seven years. In fact the numbers exceed seventy (70). There have been a wide range of matters adjudicated. Each time we issue a final judgment we issue a press release and a summary of the judgment. This is seldom reported however. I would like to invite you to report to the public on the work of the Court. Our strategic issue VI is based on the assumption that where court performance is good and public communications are accurate, trust and confidence is likely to be high.

One of the important advantages that the countries using the CCJ as their final appeal court enjoy is a significant increase in the access to justice. 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, with others pending. In other words, there has been an increase of about 120% in the number of Barbadian citizens now gaining the benefit of a second or final appeal. This trend will increase. Litigation has already become easier because a large number of our hearings are now conducted by video conferencing. We have also noted that the type of litigant who access the final court is changing. It is no longer limited to state parties and big corporations, but ordinary folk have been availing themselves of the new process and accessibility of the CCJ.

An Independent Court

The institutional arrangements for the Court guarantee its independence and competence. There is absolutely no political interference in the selection and appointment of judges which is managed by an independent Regional Judicial and Legal Service Commission. The members are appointed by the Bar Associations, the Deans of the Law Schools and the Council of Legal Education, the Secretary-General of CARICOM and the Director-General of the OECS, there are *ex officio* members – the Chair of constituent Judicial Services Commission – and the Chair of constituent Public Service Commission. All appointments serve on three year rotations. It is interesting that St. Kitts has featured in this commission significantly and in this context I can mention that Mr. Emile Ferdinand QC, a member of this media house as an appointee of the Regional Bar Associations is a long standing member. Ambassador Wendell Lawrence has just completed his tour of duty as an appointee of CARICOM and the OECS. The Chair of a constituent Public Service Commission rotates alphabetically and St. Lucia having just completed its tour, St. Kitts and Nevis is due to come on board. The selection process is merit-based and competitive. Academic commentators have hailed it as model system for international courts. I can also report that there is general consensus that the Court is well staffed and benefits from the highest levels of integrity and scholarship.

The financial arrangements are also completely independent of governments. All CARICOM governments have already established a Trust Fund calculated to provide an income which should fund the Court *in perpetuity*. Of course there is provision for topping up the Fund if and

when that may be required. This Fund is managed by an independent Board whose members are not appointed by the governments, but by institutions like the Caribbean Associations of Bankers, Insurers, Accountants, the Labour Congress and so on. I cannot understand why in the face of these arrangements some people still ask about independence and the potential for political interference. I can assure you that the CCJ is completely independent.

On this note, in an era when everyone is worrying about money, the point should be made that St. Kitts has already fully paid up its contribution to the Court. I think that it is full time that it gets the full benefit of its investment. Acceding to the final appellate jurisdiction of the Court will not cost one penny more to St. Kitts.

Media must encourage accession

And this brings me to my final thought for the evening. There was a time when it was believed that the OECS should delink from the Privy Council and accede to the final appellate jurisdiction of the CCJ as one unit. However, the constitutional arrangements for the process differed from country to country, and such a plan would mean that things could only happen at the pace of the slowest. Earlier this year the OECS Heads of Government published an agreement that those countries that could, should proceed as soon as practicable. It turns out that the two countries who could proceed immediately are St. Kitts and Nevis and Dominica. They have identical constitutional requirements. In fact, there are only two steps that are required: Parliament must pass a bill to amend the constitution with the support of at least two-thirds of all Parliamentary Representatives; and a bilateral agreement with the UK must be signed. The UK has already given assurances that it will cooperate fully when requested, and in St. Kitts and Nevis there is need to suspend adversarial politics on this issue, and cooperate on a matter that will benefit the nation.

Although in a democratic system there will be political conflict from time to time, certainly there is also value in the concept that the national interest is more important than short term political advantages. It would demonstrate wisdom and political maturity if St. Kitts and Nevis could

move forward with fully empowering the CCJ. There is no institutional impediment for it to be immediately placed on the legislative agenda.

I encourage WINN FM and the other local media to seek this of the leaders. The media must encourage the leaders to declare support for the CCJ so that a Bill can be put on the Parliamentary agenda at the beginning of 2013. St. Kitts and Nevis can demonstrate its leadership in the OECS by blazing the trail toward full independence.

Conclusion

Now that I have demonstrated the strategic objectives of the CCJ are linked with the objectives of the press, I can only hope that in the future the work of the CCJ will feature in your media releases. You can help to create a just society by helping the CCJ in the realising of its strategic goals including that of attaining and preserving public trust and confidence. I thank you for having me here and I wish you many more years of successful operations.

Thank you.

The Right Honourable Sir Dennis Byron

Date: Friday, 21st December, 2012

