

ADDRESS AT LAUNCH OF JAMAICAN JEI

20th October, 2017

I am pleased and honoured to have been invited to celebrate with you the formal launch of this important Institution. Indeed, it is no secret that I always welcome the opportunity to share and exchange views with the judges of Jamaica. Some of you of course, I know since our time together at Cave Hill. And over the years I have gotten to know well many others who were too young to have had the good fortune of studying law in those halcyon, years of the early 70s when, for the first time, law degrees were being conferred in the Anglophone Caribbean.

The JEI is being launched today, but judicial education is nothing new in Jamaica. Everyone here, I am sure, has participated in judicial education activities promoted or organised by or in collaboration with the Office of the Chief Justice. Indeed, under Madame Chief Justice McCalla's stewardship I can personally attest to the many training sessions that have been held, for Judicial Officers of all stripes, on a wide variety of subject areas. The sessions I have witnessed, have invariably been well attended (unless a major hurricane was threatening) even when they were held at times that ate into your precious weekends, when you should really be enjoying with your

families some respite from the rigours of the daily grind in the courts. That level of commitment and sacrifice has always impressed me and I know I have commented on it time and again, not only because we need to be concerned about fatigue and burn-out, but more importantly because the notion should not be encouraged, whether among judges themselves or in Executive circles, that we judges are paid to sit on the bench and that therefore judicial education is an extra to be undertaken in spare time. Everyone needs to know and respect the fact that ongoing Judicial education is as important and essential a part of the job as sitting on the bench or writing judgments.

In the 21st century, more than ever, the lyrics of Peter Tosh ring true. Throughout the region the people articulate it - We don't want no peace. We need equal rights. And justice. And the people look to us, judicial officers, to satisfy that burning need. I don't believe that most people are very concerned with our competence. By and large they take that for granted. What they want is for their cases to be heard and decided in a timely manner. They want to encounter judges and court staff who are courteous, fair, understanding, mindful, unbiased. They even want judges to have a sense of humour.

[Byron, Kelsick and Daddy]

The problem judges face today is that the public has extraordinary expectations of us at a time when insufficient resources are being made available to us. This is a point that was recently made by President of the Court of Appeal, Justice Dennis Morrison. During a discussion about delays in the delivery of judgments held at the CAJO conference in Curacao just a few weeks ago, Justice Morrison contrasted and compared the workload of the Jamaican Court of Appeal judges today with what existed at the time of Independence. He noted that although there has been a very significant increase in that workload there has not been a commensurate increase in the complement of judges. Some judges, some courts are really stretched. This is an issue that deserves on-going attention and persistent advocacy, especially on the part of the Bar. But none of this should excuse poor individual work habits or our persistence with processes (which we have the power to change) that have outlived their usefulness and which now contribute to delay and backlog.

Increased criminal activity and the fact that more and more of our people are acutely aware of their rights and less and less tolerant of interference with them result in a proliferation of filed cases. The result of this is that

backlog and intolerable delays so haunt some courts in the region that today, some courts are in crisis.

The demand for equal rights and justice and for greater efficiency can only be met by judicial innovation. But the truth is that innovation doesn't come naturally to judges and lawyers. This is partly because of our training and habits of thought associated with law and justice and which have been drilled into us. We are trained to uphold and advance the rule of law and the rule of law places a high value on stability, predictability and certainty. The administration of justice tends naturally towards conservatism. Worse, the common law method we have inherited is essentially backward looking. We look backwards for the law we must apply. We follow precedents established in the past. I did a quick check on Carilaw recently for another speech I had to give ... BTW, when last has any of you done research using Carilaw? I am a huge supporter of Carilaw and I urge you all to make use of that tool in your research. They have been revamping the interface and the difference between Carilaw now and Carilaw six months ago is like chalk and cheese. And they've only just started with their far reaching relationship with JUSTIS.

But I digress. I was making the point about how we look backwards for our law. And I think a small example can be found in this search I made recently on Carilaw, a search that literally took me less than 30 seconds. The search revealed that over the last 3 decades, since 1988, in as many as 83 different cases, Caribbean courts cited and relied on a well-known English statute promulgated over 800 years ago. Who knows what statute is this?

So, we have this natural tendency towards conservatism, towards looking back and to continuing with the *status quo*. This makes us, judges and lawyers alike, slow to embrace change, to apply new technology, to do things differently. In the field of justice, a thing is right because that's how we have always done it. And sometimes we persist in doing what has always been done even if absurd results ensue. I've heard some amazing stories from courts in the region that lead me to shake my head in despair. In one case a court of appeal ruled that a judgment that was delivered orally, audio-recorded and then transcribed, was not in fact a judgment and the appeal should be halted and delayed to enable the judge to write a proper judgment. In another case, a trial judge upheld counsel's objection that submissions that had been emailed to counsel were not properly served.

The public expects better. I think we have a duty continually to interrogate court processes and rules of procedure to ensure that they are customer friendly, effective and designed to enhance efficiency. We must embrace and fully utilize new and appropriate methods of resolving the ever-growing body of cases that are annually filed. Trial judges are well placed to do this, i.e. to test radical solutions by cutting through the cobwebs that impede the fair and expeditious delivery of justice; but as we have seen, courts of appeal also need to support those judges who are willing to innovate.

Some of you were at the judicial education session in Ocho Rios a few years ago when Jamaican psychologist, Dr Leachim Semaj, made a riveting presentation about innovation. In our profession we are fond of referring to colleagues as “learned”. A colleague is “My learned sister”; the lawyer is “learned counsel”. Well, De Semaj reminded us that in today’s world, the definition of “learned” is not necessarily a person who has obtained certification from some tertiary education but rather, one who is able quickly to learn, unlearn and re-learn. Knowledge and its applicability are transient. And the best proof of this to consider the features on the latest cell phone you purchased or the most recent iteration of the same software on your computer.

In recognition of this need to harness new technology, the CCJ has established an Agency aimed at advancing information and communications technology within the justice sector. This agency, called APEX, enables new options for meeting the challenges judiciaries face and for transforming the quality and effectiveness of justice delivery and judicial performance. The software promoted by APEX allows me on my Smart Phone to have instant 24/7 access to all my files. APEX will be holding a Convention next month in The Bahamas and I hope that Jamaica will be represented at that gathering.

It is this burning need to innovate that makes the establishment of the JEI of Jamaica so timely. A well run Judicial Education Institute is well placed to assist and advance the process of innovation; to help fill that wide chasm between where we are at this point in time and where, ideally, we want to be.

There are several immediate and practical challenges I believe the Institute will face. The first and most obvious one is the limits on your capacity. These limits are in turn linked to the availability of the necessary resources to carry out the programmes you regard to be important and urgent. I don't know what the situation is but I can tell you that the CJEI has one solitary dedicated staff member. Judge Sandra Oxner and her Board work with and around that staff member. Similarly, the JEI in the ECSC started without

any paid and dedicated staff before employing one full time staff member which it probably still has today. You do need at least one non-judicial staff member of the JEI who will do or personally oversee the logistical work – organising the meeting room; retaining the caterers; sending out invitations; writing letters to the speakers before and then afterwards to thank them; preparing, distributing and collecting the evaluation forms, etc etc. This is spade work that Justice Graham-Allen and her committee should be freed from. What's important is that the JEI committee should comprise different levels of judicial officers; that they are empowered by the Chief Justice who must have oversight of their efforts and to whom the committee should report; that they receive the assistance and cooperation of the rest of the judiciary (they have to learn how and when to delegate) and that they develop the skills in planning programmes, whether in partnership with donor agencies or otherwise and that they continuously monitor and evaluate the programmes.

Last week I was in a joint meeting of UN Women, JURIST and CAJO. We were conceptualising a programme for Jamaican judges on Gender training that has already been agreed by the Chief Justice (Note: Anika's plea for comments). The programme will be funded by UN Women. Someone suggested in my meeting that UN Women could do the logistical work I just

detailed. Sorry, Vinnette. I had a different view. My position was that the JEI needed to develop the experience and the capacity to handle these matters. And if you do an excellent job, UN Women will be happy to partner with you again in the future on even bigger projects.

(Darby and our Orientation Programme. USAID)

I think this JEI has excellent prospects ahead. And I am certain that you will attract sponsorship from the international donor community for well conceived programmes. What's good is that you already have a solid cadre of trained judicial educators. And, on top of all that, you have a Chef Justice who is not only passionate about judicial education but who has a solid track record to prove it.

In the CCJ, in CAJO and in the CJEI this JEI also has external institutions that are only too willing and able to assist you in every way possible. I congratulate you Mme Chief Justice on the establishment of this body and Justice Graham-Allen congratulate you on your appointment as its first Chair. I wish you both and all Jamaican judicial officers all the very best in the future.

Thank you.