

Enabling a Caribbean Court of Excellence: Addressing the Challenges of Justice Delivery in the Caribbean - The Role & Responsibility of an Apex Court¹

by

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Protocols.

Introduction

It is truly a pleasure and an honour to participate in this inaugural APEX Stakeholder's Convention. I wish to express profound thanks to all the persons involved in making this event possible. As charity begins at home, I have to thank the CCJ team of Judges, Judicial Assistants and the administrative staff who went way beyond expectations, the APEX team, the CTU team, the reception teams here in the Bahamas with support from the Judiciary, the Ministry of Foreign Affairs and the Office of the Honourable Attorney General and the Atlantis Hotel and Resort team. Also, of course, gratitude to all of you attendees who accepted our invitation to attend at such short notice and have turned out in such impressive and encouraging numbers.

Who are we and why are we here? APEX is an agency established to promote and advance the standards of efficiency of service related to the court and judicial administration processes in the Caribbean Community. It is registered in Barbados as a not-for-profit company. The foundation member is the CCJ. We are satisfied that the Caribbean has the creativity, intellectual capacity and competencies necessary to support and develop the justice sector. In addition, we are convinced that sustainability of programmes for justice improvement requires the involvement, the buy-in and the contribution of all its sectors. The membership of APEX reflects this vision. It includes the judiciaries through the head of their judiciary, the legal academic community, including the Council of Legal Education and its agencies, the private and public bar, through the Presidents of the respective Bar Associations and the Attorney Generals, the head of specialized courts; and the heads of the police and prison services within the region.

As I note the fantastic attendance here, I am happy to observe that our vision has gained such wide acceptance. APEX already has institutional members from the Cayman Islands, Belize, Guyana, Barbados, Grenada, Antigua and Barbuda, Dominica, St. Kitts and Nevis, the OECS and our hosts, the Bahamas. I am hoping that all institutions which are eligible will join and contribute to the goal of improved justice delivery to which we all ascribe. A critical objective of joining forces with the intellectual strengths of the regional stakeholders is the sharing of ideas and views, thereby improving knowledge and assessment of where we are and where and how we should be going forward. I want to encourage you all to be open and to use the

communication opportunities that will be discussed as the day goes on to contribute to the development of justice delivery in our region.

When we consider the pioneers of this movement we will have to go back quite a few decades, and there will come a time when we have the opportunity to remember and honour those whose work preceded what we are doing today. But I must recall that we could not be where we are without the technological support of Mr Bevil Wooding and Mr Richard Wall. Also, the colleagues at the CCJ who have embraced the broad mandate of strengthening the quality of justice delivery in our region, the other support mechanisms of the regional court system - the RJLSC and the Trust Fund - both of which have representatives here today. As mentioned earlier, we must appreciate the CARICOM Heads of Judiciary and, in particular, the Honourable Dean Barrow, the lead Prime Minister for the Judiciary, who carried the motion for our regional technology platforms to the Heads of Government for their approval and support; as well as the governments who have already made financial grants to the work of APEX - Belize, Guyana, Grenada, Antigua and Barbuda, and St, Kitts and Nevis. More importantly, we must celebrate all those who bought into the vision reflected by those who became institutional members. I am sure that during the course of today there will be opportunity for recognition, but there are just too many for me to do it in this presentation.

Global and Regional Court Technology Landscape

Court technology has become the most important element in improving the quality of justice delivery globally and its importance is even greater in countries which do not have unlimited resources. The development of court technology by Caribbean expertise and customised for Caribbean courts is now a reality and the quality and the standard of excellence is equivalent to the best international standards. Just as in other areas of development, the current landscape is suitable for Caribbean courts to use Caribbean-developed technology for improving the quality of justice delivery in our region.

All interested stakeholders have been discussing and applying technology-enabled best practices for the last two or three decades and there is no longer any doubt or ambivalence about the most effective best practices that we need. Topping the list is the e-Filing. I am convinced that this is the most urgent solution that is needed at all levels of the justice delivery services in our region, from the highest appellate courts to all appellate courts, to all high courts,

magistrates' courts, specialised courts and even in our probate registries. It reduces the time, costs and complexity of filing materials, benefiting both the litigant and the court office. Another massive issue is the recording of court processes. It is time for the manual recording of court processes under judicial supervision to be regionally stamped out. The digital record must be made the official court transcript. This is not the time for much detail but I can put the issue to you in this way. It is estimated that the pace of court proceedings is multiplied three times when the process is automated. If that is true, this simple measure alone would have the same effect as hiring three times as many judges and building three times as many courtrooms, etc.

This Convention that we are using to celebrate the launch of APEX presents a tangible and attainable option for advancing coordinated and sustainable regional court modernisation initiatives. APEX is an agency of the CCJ to give effect to our vision that the mandate of the court goes beyond the resolution of the disputes that come to our court and requires us to contribute to the advancement and improvement of the quality of justice delivery throughout the region. We want to make it clear that our position is not restricted by which Member State has acceded to the final appellate jurisdiction of the CCJ. All Member States of CARICOM are part of the CCJ. They signed the institutional arrangements setting up the Court, they have funded the Court and they are a part the court's original jurisdiction. We are committed to an inclusive vision. APEX provides a vehicle to create an entire value chain to support Caribbean jurisprudence and generate greater efficiencies within Caribbean justice systems.

Discussions and activities to improve the quality of justice in our region have been in progress since the last quarter of this century at least. Although it was by no means the first, I am taking the United States-Caribbean Basin Initiative of 1986 as a starting point. Every solution which is currently being considered has received attention during the past 30 years. It is often a point of great frustration how often we have had to revisit solutions that we thought were already in place. Our regional governments have not invested adequately in judicial reform and education nor in the research into these areas nor into the development of systems or technology. Rather, they appear to be content to purchase or rely on the work done in other parts of the world. So, most of the development in this area has come from foreign states or donor agencies. It seems clear that these approaches have not resulted in sustained outcomes that are equivalent to the investments which have been made. It is our view that a regional agency owned and managed by the stakeholders of our justice delivery institutions will make a big difference. The first

activity undertaken by APEX has been the development of technology solutions to support the judicial function. There is no doubt that this is the most urgent intervention that is needed to improve the quality of justice delivery in our region. Today our convention focuses on this issue.

Challenges in the Justice Sector

The challenges faced within and complaints levelled against the justice system over the years are numerous. Many of these complaints focus on inordinate and systemic delays, backlogs of cases, accusations of lack of transparency and predictability in court decisions, limited access to justice and a shortage of staff. I do not want to delve into this discussion in detail because we are all too aware of the complaints.

The last 6 years since I joined the CCJ have been very sobering as I have listened to the voices of our communities on their perception of the quality of justice delivery. As judicial and legal practitioners, we must look at ourselves. I think that one of the underlying problems is that many of us do not fully understand our role as judges and the responsibility of our courts to the communities we serve. If we see ourselves as providing the opportunity for citizens to have their disputes resolved fairly and quickly, it would assist in assuming the changes in our operations to eliminate many of the issues on which complaints are being made and help us to embrace the changes necessary for the welfare of our society. It is amazing how often discussions on cost-saving or revenue-generating opportunities provided by strategic use of the technologies available result in responses of “I did not know” or “I had not thought about it”. Many of the solutions are within the knowledge and availability of our practitioners but we need to present them more consistently and attractively to gain attention.

It is only necessary to comment on a major weakness in the Caribbean – our predilection to foreign solutions. Many of these are not very good and do not satisfy our needs adequately. But somehow, their foreign source seems to give comfort. This goes hand in hand with antipathy to Caribbean solutions. It is very frustrating for me to witness over and over the lack of faith in Caribbean expertise and products, even when all the evidence points our superiority. The time is long past. We must be confident. After all, it is part of our Caribbean dream, our CSME dream, to develop Caribbean business opportunities. The local constraints of lack of funding, human resources and political will, in my view, are just distractions. If we are serious,

we have the capacity to resolve these issues and overcome the hurdles which are always in our paths.

But the real issue is – do we have the appetite for transformation? It is time we do. We will become useless to the legitimate goals of our society if we do not get up to speed and meet the legitimate aspirations. Remember, that everyone sees what is possible. They see it on TV and they use the technology in their daily lives. Why shouldn't we use these systems in the administration of justice? I have had to face the suggestion that judges and lawyers fear technology. If that is so, we must be the last group in society that do. Everyone else is using modern technology for communication, online banking, shopping and so on. There is no one in our society who does not have access to the internet and to the systems that we are advocating. I suggest, therefore, that the issue is leadership and we must assume the role in guiding our systems forward. We all know that economic development and social stability depends on it.

A Caribbean Jurisprudence

So often we speak of the importance of developing a “Caribbean jurisprudence”. We are advocating that a Caribbean jurisprudence is a much more expansive concept which extends well beyond the adjudication of cases and the issuing of judicial decisions. It must also entail the development of institutional mechanisms to support the jurisprudence emanating from the region, including legal literature, legal research tools and indigenous information technology to support the judicial functions and all the other mechanisms that support the work of the courts. This expansive view has had a major influence on the strategic planning activities of our Court. The Strategic Plan has been a living, breathing roadmap for the CCJ's operations which lay a foundation upon which we are able to achieve many things, including the introduction of the CURIA court management system, live broadcasting of court hearings and our ongoing employee engagement programme. These activities have been very successful to where we are at the tail end of the first Strategic Plan from 2012 – 2017. We are currently in the process of developing the new plan for 2018 – 2023. I advocate for similar planning processes to employed by regional courts as a basis for guiding their judicial functions.

Caribbean Regime of Integration & Innovation

The various territories of the Caribbean region have been on a steady and upward trajectory of social, political and economic development in the post-colonial and independence eras. Much of this post-independence success can be attributed to a decades-long dynamic integration movement that continues until today. Regional stakeholders have acknowledged regional integration as a key mechanism in advancing the region's development. As a collection of small states, regional integration in the Caribbean is seen as an important means of improving efficiency and generating economies of scale as well as strengthening the region's negotiating power in relations with other states. This critical connection between integration and development has been recognised by our regional leaders in the past and, I am pleased to say, continues to be recognised today.

When we were in the infant stages of developing the CURIA system, initial discussions were had with representatives from various institutions from across the region. Once we had advanced to the deployment stage of the process, we approached the lead Prime Minister through whom the CCJ communicates in his capacity as the designated representative of the Heads of Government. So, to this end, we presented the relevant information to the Prime Minister of Belize, the Honourable Dean Barrow, who in turn presented it to the CARICOM leaders. In February 2016, the Heads of Government unanimously passed a resolution indicating their support of the CCJ developing an indigenous court management system. This means that we commenced the process of deploying the CURIA court management software with a declaration of unequivocal support from the Heads of Government of CARICOM.

But the political support does not stop there. There is a belief that is widely held in many circles that our regional governments have not demonstrated much interest in investing in and supporting activities of this nature. However, I am pleased to report that five regional governments have financially invested in the development of the CURIA system. These include the governments of Belize, Guyana, Grenada, Antigua and St Kitts and Nevis. While I acknowledge that these investments have been small, they serve as tangible evidence of the political will to see the development of a system of this nature.

The Structure of APEX

The first project that was placed on the table for APEX was the development of the CURIA case management system. Several of the CURIA modules have already been deployed and are actively utilised by the judges and staff of the CCJ, as well as within a few private law offices in the region. In the relatively short period since its deployment, the software has been a resounding success and has had a tremendous impact on the quality of judicial and legal services in the respective environments.

What benefits does e-Filing bring to litigation? It completely transforms the way in which persons access the court. Once a document is electronically filed, a case file is created in the court's computer system. Service of the action on the lawyers representing a defendant can then be effected electronically, as well as all other documents in the litigation process so that no paper needs to be exchanged between attorneys acting for the parties to the litigation. Communications by letter among lawyers and the court registry may also be effected via the system. Judges and registry staff have access to case files from any location, be it the court office or at home. What is critical is that each step of the litigation process and every decision is recorded in the system. Affidavits and documentary evidence are also filed in the system as are transcripts of testimony given in trials. From the point of view of the lawyer, he/she is able to commence proceedings 24 hours a day, 7 days a week and so is not constrained by the opening hours of the court registry. He/she is able to file and serve any document from the office or home or hotel room overseas and so is not constrained by geography or local traffic conditions.

From the perspective of the court, e-Filing transforms the way in which the court operates. The court staff's work is shifted from heavy manual activities to a completely automated system. It also transforms the way in which case information is filed and stored. Even today stories are rampant of cases that are delayed due to files and documentary evidence being misplaced. By filing, storing and managing case files electronically, the probability of such unfortunate occurrences is virtually eliminated. It also removes the need to find storage to physically house voluminous court files. This results in massive savings in paper and printing costs, and the delivery of manual documents either by post or personal delivery.

We at the CCJ have been a beneficiary of such massive savings resulting in a budgetary savings on paper of 73% following the introduction of e-Filing at the Court. Registries also derive significant benefits from the system by acquiring very important management tools to facilitate the timely management of the tasks they have to perform and the ability to have their performance both recorded and monitored. This gives them the ability to generate statistical reports about every aspect of the court's operations and also allows the personnel working within the system to ensure that the standards which have been set are met.

It must be emphasised that the introduction of such technology has to be accompanied by performance measures. A critical component of the process of improving the delivery of justice is that each court must establish measurable performance standards. This is something that we have done at the CCJ, an activity which has been supported by one of the features of the software – sightlines. This is a dedicated tool for performance measurement and generating statistical and other performance-related reports. We have deployed this and I can attest from personal experience that our Court has been able to effectively manage many of the problems that plague courts in the region. As evidence of this, our internal statistics reveal that over 40% of the cases filed are disposed of within 90 days, and another 30% are disposed of within 180 days. During the past two years, there were only two cases that took longer than one year to complete to disposal. As of today, every case filed before 1st November this year has already had a trial date set for hearing, with the latest hearing set down for 9th February 2018. So, I can unequivocally say that no backlog exists at the CCJ. While I do acknowledge that we do not have a large volume of cases, it is also accurate to say that we could not have had such an outstanding performance without an effective and comprehensive case management system. This is precisely what the CURIA court management software offers. I absolutely believe that the adoption of this system by regional judiciaries would have a profound impact on both the timeliness and quality of justice delivery.

The CURIA suite also comprises mobile applications. This gives me, for example, the ability to access the entire court record on my mobile phone. I can read any document which has been filed within minutes of filing since when a document is filed in a case to which I am linked, an alert is generated on my phone. This allows me to review it at once and commence the process of managing it. I should also note that we have designed a kiosk system at the CCJ where stakeholders can physically come to the Court for technical assistance in using the electronic filing system.

The CURIA suite has a number of other modules to support the quality of justice delivery. This includes a module designed specifically for lawyers' offices where law offices in the Caribbean can now have an indigenous tool for managing their litigation, which also includes a section that records expenditure, fees charged and bail. This has already been deployed and, in fact, I can look around the room here and identify persons who have deployed this module in their offices, including in the offices of the DPP as well as the private offices. The APEX suite also possesses a module that can be used by the police. This provides law enforcement personnel with the ability to track reports and records from the time someone makes a report to the police station right through to the close of the case after trial. This system is also now available for deployment and it links to the rest of the CURIA suite that is at the moment deployable to courts of all levels within the region – magistrate, trial, appellate and specialised courts. I have always held the belief that the quality of the criminal justice system would be improved if the police were able to automate the filings of their proceedings and be engaged in dealing with the process electronically. In the discussions that we have had with police officers, they have expressed a willingness to embrace such a process. Similarly, the CURIA suite has a module for the prison systems that would generate statistical information and records accessible to everyone that indicate the duration of time someone is in custody and other relevant facts which have important implications for dealing with human rights issues and issues related to maintaining the rule of law. This also assists in the transparency of the system as a whole.

Fortunately, I can address this topic from our experience at the CCJ and in our audience, there are several attorneys who have used the system in the litigation that has pursued in our Court. We have been using the CURIA case management suite at the CCJ and it has been superb and transformative. We can confidently say that there are now available regionally developed options for e-Filing, case management and related activities in all court systems in the region, in the offices of both the private and public practitioners, in the police and prison systems, a holistic solution to justice delivery addressing the essential problems that need improvement. In the Court, the whole concept of access to justice is transformed with the e-Filing, electronic discovery, service and access to case records, the whole issue of end-to-end case management and the availability of statistical reporting information on the performance standards of our judiciaries.

The strategies for deploying the CURIA case management suite are simple and straightforward. At the CCJ, developers, a group of judges and the registry staff, all engaged with the developers

in refining the customisation to our satisfaction by distance communications. Those sessions were also in effect training sessions. On the day we decided to move forward, we were able to issue a Practice Direction and commence immediately. The attorneys who had to access the system were given assistance by our Court office staff and by the developers who responded rapidly and effectively. In the other cases, the system has been providing access to the system and delivering training to the users. I understand that this is an exercise which is completed quickly and effectively. We hope that those of you who wish to move forward will make contact through the designated channels and there will be efficient follow up as we cannot wait to see the effect on justice delivery in the region by the adoption of the available technologies.

The usual risks and vulnerabilities are the availability of funding and the issue of training and human resource development. As a Caribbean solution owned by the Caribbean stakeholders, APEX is committed to developing innovative and effective solutions to these problems. Part of the incentive is the retention of foreign exchange we have expended in software licencing. One can only imagine where we would have been if only a fraction of the license fees we have expended to foreign entities was retained to invest in Caribbean solutions. I hope that this idea will be influential as we move forward. Having such a rich resource of talent enables continuous attention to reformative initiatives. This is indeed a purpose APEX - a repository of continuous research initiatives and continuous exploration for better ways to do things and achieve results. We have reached quite far without the advantages of operations from overseas, so the only limitation that we really have is our imagination.

Conclusion

It is my hope that coming out of this Convention the institutions which are linked to justice delivery will become members of the APEX family and contribute to its management and development of ideas. I am pleased to say that we have already received expressions of interest from several courts, governmental departments and specialist courts. In this regard, I see the adoption of such technology-based systems as an important issue for our academic institutions. I have observed that our regional law schools in their teaching of civil and criminal procedure have not documented many of the case management solutions that we have introduced in litigation and the employment of technology to support the judicial functions. I expect that the initiatives which are being promoted by us today will soon be exposed to our students so that from the time they come into practice they are already attuned to the various cutting-edge

principles in improving case management which are critical to delay reduction within our region.

We have been working on the introduction of technology to support the judicial function within the region for quite some time. This has been guided by the underlying belief by stakeholders that there should be a single case management and e-Filing platform throughout the CARICOM region. It is important to note that this fundamental belief exists irrespective of whether all regional territories have acceded to the CCJ as their final appellate court. If all territories accede to the appellate jurisdiction of the CCJ, that would be an additional reason as to why it ought to be pursued fully. I wish to make two observations that underscore the importance of the system. First, it is critical to have the ability to generate measurable performance standards within the courts so that citizens in every country will be able to assess the performance of their own courts against past performance and they will be able to assess the performance of their courts in comparison to courts in other parts of the region. This type of information will facilitate actions for improving justice delivery on a regional basis and it would create an informed basis for pursuing these actions.

Secondly, the region has been spending significant sums of foreign exchange to acquire technological solutions from other parts of the world. Over the years, we have all been complaining that the solutions we have been utilising in our court systems have not been adequately satisfying our needs. I believe there are many reasons for this. In keeping with the CARICOM ideal of promoting regional business enterprise, it is important for the development of expertise in this field within the region and to use it to custom-build the software we need for our court systems. It is far different having Caribbean experts develop a case management system for Caribbean courts who will be there at the deployment and also assist to continually research, improve, develop and work with the judiciaries in improving the quality of the support systems that they have. Additionally, it will provide employment opportunities within the region and retain our tax payers' money for further development within our region. The CURIA suite is ready and available for deployment in all the regional judiciaries. I believe that it will be much more effective and cheaper than the systems we have been using from foreign countries.

So, here we are in Bahamas and it is with a great degree of pleasure that I acknowledge that the Chief Justice, the Honourable Sir Hartman Longley, has decided that the Bahamas judiciary will become an institutional member of APEX. I am also pleased to acknowledge that the Acting Chief Justice, the Honourable Mr. Senior Justice Stephen Isaacs, and his able team of judges and registrars have shared in this activity. I wish to make special mention that a demonstration of the CURIA court management system, as well as the modules for police and prison information management, will be demonstrated during the break today from 3.30pm to 6.00pm. For those of you who are interested in further information, the relevant technicians are available at your disposal.

I thank you.