



Farewell Sitting for Sir Dennis Byron in Antigua and Barbuda

The Honourable Mr Justice Adrian
Saunders, Judge of the Caribbean Court of
Justice

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The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Sir Dennis Byron. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica and Guyana.

Remarks

By

The Honourable Mr Justice Adrian Saunders, Judge of the Caribbean Court of Justice,

on the occasion of

The Farewell Sitting for the Honourable Sir Dennis Byron

16 May 2018

Today we celebrate the judicial career of one of this region's outstanding jurists. The occasion is as much a watershed moment for Sir Dennis as it is for me personally because, since 1996 when I was appointed by him to be a judge of the ECSC, I have enjoyed the extraordinary privilege of being able to work closely with him for a significant period of my judicial career. That period covered practically the entire period he was Chief Justice of that court and President of the CCJ. Throughout that time, perhaps more than any other, I have collaborated with him on a range of different judiciary related projects and have benefitted enormously from his insights. It is not by coincidence that in each case I was and am faced with the unenviable task of following in his footsteps.

I have no doubt that over the next hour or two we will hear much about Sir Dennis as the great judicial reformer. Perhaps because his legacy in this sphere was so impactful, some of us tend to overlook the rich vein of jurisprudence he has left us. That would be a serious mistake. As a jurist, Sir Dennis' judgments displayed a first rate mind and a willingness to go where no judge in the region had gone before. In this regard many will readily cite the case of *Spence and Hughes* where he wrote the leading judgment that declared the mandatory death penalty to be unconstitutional.

But there is another judgment that is not so well celebrated but which profoundly impressed me. It is an appeal from St Vincent and the Grenadines. The case of *Gooderidge v R*¹. The appellant was appealing his conviction for indecent assault on a very young girl. The main ground of appeal was that there had been unreasonable delay in the proceedings and that the delay breached the appellant's constitutional right to the protection of the law. There had in fact been a delay of six years between the man's arrest and his trial. And Byron CJ did conclude that this delay was 'presumptively prejudicial'. But, in declining to find for the man, he went on to note that the court should have regard to a 'special factor'. This special factor was the circumstance that the complainant was a six-year-old girl. Sir Dennis then boldly invoked the Convention for the Elimination of Discrimination Against Women (CEDAW). He noted that the international commitments made by St. Vincent and the Grenadines to protect girl children against sexual abuse was a highly relevant factor to take into account. He held that the child was entitled to state protection from violence and that both the society *and the complainant* had an important interest in the prosecution of the case. In light of the strength of the corroborating evidence of the offence from a health worker, he dismissed the man's appeal.

Now, several issues are discernible here. In the first instance, we see a judicial mind here that deftly weighs and balances seriously competing interests. Secondly, we note the Judge's commitment to protecting the rights of women, children and the vulnerable – a commitment that was also manifest in several of his judgments at the ICTR that addressed the issue of rape as a weapon of war. But most significantly, this was the first occasion that I am aware of where a judge of the Eastern Caribbean premised his or her judgment on a country's international commitments in signing on to CEDAW. Even as today, some 20 years after the case was decided, we are still struggling to get

¹ VC 1998 CA 9.

some judges and lawyers to take seriously the implications of international law in domestic decision making, in typical fashion Sir Dennis was leading the way back then in 1998.

During the eight years that he spent as Chief Justice of the ECSC, Sir Dennis transformed that institution in such critical ways that it can never again be what it used to when he assumed the office of Chief Justice. By the time he left for Arusha in 2004, judged against several important indicators, the ECSC was arguably well ahead of its counterparts in the region. The facts are undeniable. It was certainly the first court in the region to adopt new Civil Procedure rules based on the Woolf reforms; the first to promulgate a code of ethics for its judges; the first to embrace court connected mediation; the first to establish an Institute for the training of judicial officers and court staff; the first to put in place a transparent and merit based system for the appointment of judges; unless I am mistaken, the first to embark on the publication of annual reports; and the list of firsts can go on and on.

These initiatives were not simply proclaimed. None of them had any chance of being successful without simultaneously conceiving and implementing a raft of accompanying measures including appropriate rules and physical infrastructure, the employment of new staff or else the re-engineering of existing staff complements, lots of training for court staff and judges alike and of course, public education. Needless to say, the accumulated effect of all of these initiatives revolutionised the administration of justice in the OECS.

The fact is that the ECSC, by reason of its multi-state, federal character, always had a greater potential than the other courts in the region to function institutionally as a truly independent arm of government. Sir Dennis' reforms fully realized that sleeping potential. In 8 short years the capacity of the headquarters of the court was multiplied over and over to handle a range of different functions. Where before there was only a Chief Registrar and a stenographer, when Sir Dennis left

in 2004, there was a library and research department; an accounting unit; a human resources officer; a pool of typists; a team of case managers; a judicial education institute; a court administrator; an IT Unit and a small mediation complex.

Looking back on it now, one is struck by the sheer volume of what was successfully accomplished in so short a period. The key to that success lay in Sir Dennis' boundless enthusiasm and indefatigable zeal, his visioning and careful planning, his bold leadership, his rapid absorption of new ideas and international best practices, and the adoption by him of creative and effective methods of overcoming formidable obstacles. As to the overcoming of obstacles, take for example the adoption of the new rules and the training challenges. It was essential that the judges and lawyers in particular receive training on the rules which were being implemented simultaneously in 9 different territories. But the cost of bringing together judges and lawyers to engage in face to face training was prohibitive. That circumstance did not daunt the Chief Justice. He engaged the UWI's Distance Teaching infrastructure and on successive Saturdays the judges and lawyers of each territory reported to their respective UWI extra mural centre so that we could all utilise that technology to benefit in common from the training on the rules.

Another example, this time from the CCJ. When Sir Dennis arrived at the CCJ, our appeals were paper based. I remember well one appeal from Belize in particular where the record of appeal extended to some 40 volumes each of which contained over 200 pages. Within a few years, under the guidance of Sir Dennis, we had migrated to a paperless system so that today we can all today access all our case files from our Smart Phones. This revolution in IT at the CCJ is a project that is ongoing as we encourage other judiciaries to adopt the APEX solution to their court technology challenges.

But quite apart from his IT successes at the CCJ, within a year of his presence in Trinidad he had the court embark upon a strategic planning exercise. He also introduced several measures to enhance the efficiency of our case processing and case management; our court rules and the judges' code of ethics were revised; several protocols governing court procedures were promulgated; and for the first few years of its operation he personally directed the JURIST project that has impacted positively on so many regional judiciaries. But perhaps the most significant measure implemented had to do with rendering the internal operations of the RJLSC more efficient and productive.

In the short time allotted to me it is impossible to do justice to what has been accomplished. Suffice it so say that Sir Dennis' legacy at the CCJ is one that has placed the court on a path to excellence. Mine is the challenge and the good fortune of inheriting that estate and seeking to turn it to account.

As Sir Dennis demits office, we should not forget to pay tribute as well to Lady Norma Byron who for many years has quietly provided and continues to offer Sir Dennis the special warmth, love and tender companionship so important to one who leads such a fulfilling life. On behalf of all my colleagues at the CCJ and the entire staff of that institution, I wish you both, Sir Dennis and Lady Norma, long life and good health. The joys and successes we shared will always be a source of encouragement for me.