



# COMMENTARY & PERSPECTIVES: THE FUTURE OF CARIBBEAN COURTS

The Hon. Mr Justice Adrian Saunders

The Future is Now: Innovation, Technology, and Ethics for  
Advancing the Administration of Justice in the Caribbean

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## **ABOUT THE CARIBBEAN ASSOCIATION OF JUDICIAL OFFICERS**

The Caribbean Association of Judicial Officers (CAJO) brings together the region's Chancellors, Chief Justices, Judges, Masters, Registrars, Magistrates, Tribunal Members, Executive Court Administrators, and other judicial staff.

**(Protocols)**

I am grateful to the Caribbean Association of Judicial Officers (CAJO) for bringing us all together in this forum that looks at the future of Courts. In so doing, CAJO has left us with very little choice but to confront where we are now and where we *need* to be.

It is a distinct pleasure to be sharing in this discussion today with my esteemed colleagues and in particular with Professor Richard Susskind who has been for several decades leading the charge in this particular area. His address to us could not come at a more opportune time. Among other things, the pandemic has served to emphasise the prescience of his decades old views on the future of courts. I am also pleased to be sharing this platform with The Honourable Justice Yonette Cummings-Edwards, Chancellor of Guyana, who as you have just heard has been doing much to modernise the courts in Guyana and to demonstrate in a very real sense the service-focused future of courts.

Professor Susskind has touched on two related themes which must infuse the way in which we see, plan for and create the future of our courts – outcome thinking and a service-oriented approach to justice delivery. As he has indicated, technology will play a significant role in driving and facilitating both. Technology of course, no matter how sophisticated, is fundamentally a tool. Simply “throwing” modern technology at a complex problem without more might do little to solve the problem. This is why Professor Susskind’s reference to the mindset with which one approaches the future is so critical.

There is another factor to consider. The judiciary is but one aspect of the entire justice sector. It is an eco-system that includes the activity of attorneys, prosecution and correctional services,

Alternative Dispute Resolution (ADR) service providers, law enforcement, parole and probation officers, the Office of the Attorney General and other agencies of the State, legal academics and law institutions and the list goes on. When we think of and plan for the future of courts, we have also to bear constantly in mind that all of these stakeholders must ideally buy into this future and be prepared to walk in step to realise it.

Outcome thinking, the ability to focus first on our broad goals and to re-imagine how best to achieve them, is particularly appropriate in these times when we inhabit what some experts aptly describe as a VUCA environment, i.e. one that is volatile, uncertain, complex and ambiguous. In meeting the unique challenges posed by these times, I am reminded of the quotation that says:

You cannot create the future using the old strategy tools ... The big challenge in creating the future is not predicting the future; instead the goal is to try to imagine a future that is plausible, that you can create.<sup>1</sup>

Given the dynamic world in which we live, this idea of being able to *create* a desired or preferred future and actually embarking upon such a mission requires courts to engage in a process of continuous learning, unlearning and re-learning. We must do so in relation to the environment; our customers' expectations and needs; our own practices and processes; and naturally modern technology. That engagement has to be focused and systematic. At the CCJ we have tried to embed that approach in our strategic management practices which are guided by a repetitive cycle of assessment, analysis, planning, implementation and evaluation.

As we re-imagine the future of courts and focus on service delivery, and not so much on dispensing justice from a physical courtroom, it will always be necessary for courts to continue

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<sup>1</sup> Maree Conway, Foresight Futures, *Foresight Futures Guides – Foresight: An Introduction* (Australia, 2021).

to guard their independence. As the Bangalore Principles<sup>2</sup> make plain, judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. Courts are invariably astute to safeguard jealously their institutional independence. And rightly so. Especially as we shift to a service-centred approach, however, judges and courts must emphasise transparency and accountability.

It is certainly the case, as I stated in a presentation I gave to the Commonwealth Lawyers Association<sup>3</sup> a few months ago, that in their adjudicative capacity, judges routinely demonstrate a basic level of accountability. Hearings are for the most part conducted in public; judges are obliged to give reasons, usually in writing, for their decisions; and dissatisfied litigants can appeal usually to more experienced judges. These accountability mechanisms are excellent, but they are not enough, particularly if and when we set about to embrace novel practices.

The public is heavily invested in judicial integrity – on and off the Bench – as well as the conduct of court staff. Some courts have accordingly buttressed the production of a code of conduct with Judicial Disciplinary Guidelines as well as Codes of Conduct for non-judicial staff. Some of these codes speak to the use of technology including social media platforms by judges and court staff. Over the last year and a half, we revised our judicial code of conduct, the Regional Judicial and Legal Services Commission (RJLSC) issued Judicial Discipline Regulations for the Judges of the CCJ<sup>4</sup> and our court staff are now in the process of finalising a Code of Conduct for non-judicial staff.

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<sup>2</sup> Judicial Group on Strengthening Judicial Integrity, ‘Bangalore principles of Judicial Conduct’ (2002) <[https://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf)> accessed 25 October 2021.

<sup>3</sup> The Hon Mr Justice Adrian Saunders, ‘Judicial education: from Bar to Bench and beyond’ (Speech delivered at the Commonwealth Law Conference, The Bahamas, 6 September 2021).

<sup>4</sup> Regional Judicial and Legal Services Commission, ‘Judicial Discipline Regulations’ (2021) <<https://ccj.org/wp-content/uploads/2021/09/RJLSC-Judicial-Discipline-Regulations01052021.pdf>> accessed 25 October 2021.

Then there is the issue of training, whether related to judicial, administrative, technical or ethical matters. Re-imagining the future, motivating the workforce to fulfil our customers' needs, utilising new technologies, learning, un-learning and re-learning all demand, among other things, non-stop training. In some areas, training needs are obvious. In other areas, less so. If we are to get the most out of judges and court staff, an enabling culture must be promoted. A key touchpoint must include developing policies and training judges and staff on matters such as harassment and gender, diversity, equity and inclusion.

For our external stakeholders we must optimise access to justice and be especially careful that minorities, marginalised and disadvantaged groups and litigants in person are fully catered for. We must also develop and adhere to well-defined, published accountability and performance standards. Monitoring and evaluating conventional court performance metrics such as time to disposition, clearance rates, reserved judgments and so on can of course be significantly aided by technology. In developing performance standards, we must ask: What does a well-performing court look like to us and to our stakeholders? How should performance be measured? What should guide our notions of excellence?

In this regard, we don't have to reinvent the wheel. The International Consortium for Court Excellence (ICCE) is a good place to start. The ICCE has developed a framework for court excellence<sup>5</sup> which allows courts to engage in iterative assessment and evaluation along seven universal 'core values' of court excellence. In this model, court excellence is not a plateau but a methodology and one of the key enablers will be how we deploy technology in delivering justice services.

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<sup>5</sup> Information about the Framework is available at <<https://www.courtexcellence.com/>>.

There are many more areas that could be touched on in this discussion, but time simply does not permit. One of the ever-present lessons brought home by the pandemic and its implications for our sector is that we cannot afford to be complacent or to stand still; we cannot continue to be reactive or await external interventions to nudge us along. Court leaders must be proactive about the future we need to create if we are to satisfy the needs and expectations of our constituents. We must venture on to the path of both anticipating and creating the future that satisfies those expectations. As I stated elsewhere last week, failure to innovate today doesn't leave us standing still, it carries us backwards.<sup>6</sup>

Thank you for your attention.

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<sup>6</sup> The Hon Mr Justice Adrian Saunders, 'The Internet, Law and Society: The Evolving Impact of Technology on the Judiciary' (Speech delivered at the Inaugural Justice & Technology Series for Judicial Officers, Online, 20 October 2021) available at <<https://ccj.org/wp-content/uploads/2021/10/CCJ-Justice-Saunders-Keynote-The-Evolving-Impact-of-Technology-on-the-Judiciary.pdf>>.