



Advancing Caribbean Jurisprudence, Securing Sustainable Development

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

**The Bar Association of Guyana's Inaugural Law Week Formal Dinner at
the Culmination of the Law Week Activities**

Guyana Marriott Hotel, Georgetown, Guyana

9 April 2022

The Bar Association of Guyana, founded in 1980, is a voluntary, unregistered body comprising of Attorneys-at-Law duly admitted to practice law in Guyana. It is the recognized body representing Attorneys-at-Law in Guyana. The Association is governed by a twelve member Bar Council, elected annually, comprising of a President, two Vice-Presidents, Secretary, Assistant Secretary and Treasurer being the Executive and six Council Members.

*Remarks by
The Honourable Mr Justice Adrian Saunders
President of the Caribbean Court of Justice
On the occasion of
The Bar Association of Guyana's Inaugural 'Law Week' 2022 Formal Dinner
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First of all, let me express thanks to the Guyana Bar Association for extending the invitation to be here and for facilitating my presence in Guyana this evening. The pandemic cast such a long dark shadow on the ability to convene convivial gatherings like these that I am thrilled to be able to join you in person on the occasion of your commemoration of Law Week. During the time here in Guyana, I was also pleased to have been able to pay courtesy calls on His Excellency the President of the Republic, the Honourable Attorney General and Her Excellency the Secretary General of the Caribbean Community (CARICOM). Hopefully, after a Leader of the Opposition is installed, I shall be able also to meet with that official sometime soon.

This evening I wish to reflect on and applaud Guyana for the choice this country made to accede, from inception, to the appellate jurisdiction of the Caribbean Court of Justice (CCJ). I believe that was a choice that has advanced Guyanese and indeed our entire Caribbean jurisprudence. I believe that it was a choice that created better conditions for securing the rule of law in Guyana. I also want to say a little about the path that the CCJ is on at this time in our effort to serve the region better.

Over the last 17 years I have had the immense privilege to serve as a judge of this country's final court of appeal. For over three of those years, I've been honoured to serve as President of that court. These are roles of profound responsibility. I speak for all my judicial colleagues and as well the staff of the CCJ when I say that we all take seriously and value highly the great trust the people of Guyana have reposed in us. Our solemn pledge to you is that we shall always do everything within our power to continue earning that trust.

Our role as your final court of appeal is particularly humbling because this country is truly special. Your land space can easily swallow up all of the rest of CARICOM. You are one of a

few States in the region with a hybrid legal system. Interestingly, you have the most advanced Constitution in the Anglophone Caribbean; the only one of its kind that takes care to set out in such clear and express terms the fundamental Principles and Bases undergirding the political, economic and social order. It is the only CARICOM Constitution expressly to pay regard to international instruments to which the country has acceded and the only one that goes out of its way to pay specific and due regard to the aspirations of young people and, importantly, to the status of women. Women, of course, constitute one half of the population. Any barrier placed in the way of the realization of their full potentialities naturally retards the society as a whole. Importantly, Guyana's is also the only CARICOM Constitution that so fulsomely assures its citizens of what some refer to as 'second generation' human rights. And today, while many developing States may only aspire to the full satisfaction by the State of those economic and social rights, Guyana is now blessed with the wherewithal to realise them.

When we adjudicated the case of *Richardson*¹ (the so called 'Third Term' case), in our judgment we paid tremendous credit to the Guyana Constitution Reform exercise that was completed in 2001 under the able leadership of then Speaker of the National Assembly Hari Ramkaran. Many CARICOM States have commissioned Constitution Reform exercises, but Guyana is one of the few States where such an exercise was carried right through to a successful conclusion. So, yes, we are proud to be of service to Guyana; a country that wasted no time acceding to the CCJ's appellate jurisdiction as a commendable demonstration of faith in the region's ability to establish a court and produce judges that are equal to the task.

Every journalist in the region who interviews a CCJ judge inevitably asks us about those States that have not yet demonstrated the same faith, or that, for whatever other reason, have not yet acceded to our appellate jurisdiction. 'How do you feel about that?', they would ask. 'Why do the most populous CARICOM States still send their final appeals to London?' 'Do you regard that as a snub?' 'Does that hurt the image of the court?'

Whether a State chooses to continue having Her Majesty's Privy Council adjudicate its final appeals is of course a fundamental constitutional question for that Government and its people.

¹ *Attorney General of Guyana v Richardson* (2018) 92 WIR 416, [\[2018\] CCJ 17 \(AJ\)](#).

It is disappointing, however, that any Caribbean country should renege on its treaty responsibilities preferring instead to have British judges continue to interpret its Constitution and laws. But, that is a choice a State makes. It is a choice that has consequences. One of the consequences is that this choice deprives people of ordinary means of the ability to avail themselves of a level of access to justice that they could and should enjoy. Another unfortunate consequence is that it impacts negatively on the full development of Caribbean jurisprudence.

The Governments and Parliaments of Guyana, Barbados, Belize and Dominica (and hopefully soon Saint Lucia) made a wise decision. And in this connection, it is only fair also to record the courage, the principle, the conviction of the present Governments and Parliaments of Antigua and Barbuda and especially Grenada. The Independence constitutional arrangements with which these latter two States have been saddled have effectively frustrated their deep desire to do that which I believe is proper and noble.

In a healthy democracy, the citizenry has access to a range of courts and judicial officers, mostly judges and magistrates, to resolve their disputes in a civilized fashion. Invariably, in a fraction of those cases the losing litigant may lodge an appeal because it might be thought that the judicial officer has made an error, whether by mis-applying the law or by inaccurately finding or not finding certain facts, or by a combination of both. The Court of Appeal is available to correct any such errors. That is the fundamental role of the Court of Appeal.

An appeal from the Court of Appeal's judgment to a second appellate tier is warranted and pursued invariably in the hard cases; in cases where the law might be uncertain; where interpretation of the law might admit of two or more rational answers; or in the case where prevailing interpretation of the law is possibly out of step with the ongoing march of an advancing society.

In a healthy democracy, about 10% - 15% of the judgments of the Court of Appeal are appealed to the apex court and most of these cases might fall into this category where the law is in need of clarification by an apex court or the common law needs to keep pace with the society.

If access to a second tier appellate court is compromised, a country's jurisprudence is harmed because uncertainties in the law never get authoritatively resolved. The country's jurisprudence is stultified and the gap between law and society widens. The point is that the final court of appeal is best placed to clarify the law and, interstitially, in partnership with the Legislature, to close the gap between law and society.

I vividly recall when we heard our first appeal from Guyana. My colleague The Honourable Mr Justice Barrow recently reminded us in his excellent Address earlier this week² that that first appeal was brought by Mr Benjamin Gibson, now of blessed memory. He had with him Ms Mandisa Breedy. The respondents were represented by Mr Vashist Maharaj and Mr Anil Nandlall.

More than any other of his time, Mr Gibson had a knack for spotting points of law that could possibly give rise to constitutional issues. Procedure was not his strong suit and sometimes he could be somewhat over optimistic about the chances of success, but in those early years we were starved of work and so we were always very grateful each time Mr Gibson lodged an appeal to us, even if we were constrained ultimately to tell his client sometimes that the appeal could not succeed.

In those days, the cases coming to us from Guyana were usually cases that had been in the system for many years. For too long. The Guyanese rules of court in force then harked back to the 19th and early part of the 20th century. Those rules did not encourage modern, effective case and caseload management.

I think that, and I say this with great respect, during the years that Guyana had a single appellate tier, the justice system in this country did not flourish as well as it could otherwise have. Unsurprisingly, by the time the CCJ was launched in 2005 the Guyana judicial system had not

² Denys Barrow, Judge of the Caribbean Court of Justice, 'Guyana's Contribution to the CCJ's Jurisprudence' (The Guyana Bar Association's Inaugural Law Week 2022 Virtual Law Conference, Online, 6 April 2022) available at <https://ccj.org/wp-content/uploads/2022/04/Presentation-by-Mr-Justice-Denys-Barrow-at-the-Guyana-bar-Association-Inaugural-Law-Week-2022_20220406.pdf>.

kept abreast of all the reform initiatives that had swept through much of the region in the '90s and early part of this century.

Fast forward two decades later to the 2020's and Guyana's justice system is now dynamic, responsive and innovative. It is currently ably led, for a few years now, by two forward looking and progressive judges in the persons of the Acting Chancellor and the Acting Chief Justice. The length of time the cases that reach us have been in the system has grown considerably shorter. So far as I can tell, the judgments are being delivered in a far more timely fashion. Many cases are disposed of via mediation, as they should be. You have a sexual offences court and you also have or will soon have juvenile and drug treatment courts; not long ago new civil procedure rules were introduced under Acting Chancellor Carl Singh; and you have embraced the marriage of modern Information and Communications Technology to case management. It is a fact that over the last ten or so years we have been witnessing a series of steady reforms in the administration of justice of this country. The trajectory is certainly trending in an excellent direction.

These reforms have benefited from increased allocations of funds from the State. Last week my attention was drawn, for example, to the impressive new building that will house the Kwakwani Magistrate's Court and I am aware that it won't be long before the judiciary installs its electronic case management system. The judicial reform initiatives have received substantial assistance from various donor and other agencies including the United Nations Children's Fund (UNICEF), the British High Commission, the National Center for State Courts (NCSC) of the United States, the Canadian funded Judicial Reform and Institutional Strengthening (JURIST) Project and of course the CCJ. And I can promise you, Madame Chancellor, that as long as you and your team maintain that progressive and proactive approach to judicial reform, donor funds and ready assistance will continue to come your way.

It is imperative that these reforms should keep pace with or better yet even outstrip the remarkable developments taking place in the economy. Attention must be placed on ensuring that the system of judicial appointments and promotions is highly competitive, transparent and merit-based and that ongoing, relevant and systematic judicial education is available for judges and magistrates. Now more than ever, Guyana's judiciary must be and be seen to be impartial,

independent, competent, efficient and effective. The judiciary must also be accountable to the people of Guyana. We can only earn the public's trust if we demonstrate humility and accountability. How do we do that? The judiciary must, for example, establish and publish performance standards and live up to them. On the other hand, the Executive needs to provide the judiciary with its reasonable needs. So, for example, having three judges of the Court of Appeal is simply not enough for that court to perform effectively.

Similarly, at the level of the Bar, every effort must be made to professionalise the Law Society; to ensure that the Association develops fair and effective processes to address complaints by the public and that, among the legal fraternity, there is also ongoing and systematic legal education.

Naturally, we at the CCJ have a deep interest in initiatives that advance those objectives. We are prepared to render all the support we can muster and we have fashioned institutions with this in mind. In 2009, we established the Caribbean Association of Judicial Officers (CAJO) which, under the chairmanship of my colleague, The Honourable Mr Justice Peter Jamadar, has brought together judges and magistrates in the region and supported judicial education in different ways. And we have also established the CCJ Academy for Law which, led by The Honourable Mr Justice Winston Anderson, has partnered with Bar Associations in the region to support legal education. The Academy recently celebrated the exploits of 34 pioneering Caribbean women jurists.

There is one significant blot on an otherwise impressive Guyanese legal and judicial landscape. For the country to have not appointed a Chancellor for 17 long years is very disappointing; likewise, to be without an appointed Chief Justice for several years. As the President of your final court, I believe I have a right and a duty publicly to express the view that Guyana should not let this year pass and not remedy this regrettable situation.

Over the years, the CCJ has had to address a wide range of cases, some of them involving delicate issues of great national and public importance. Always we have executed our responsibilities and will continue to do so without regard to race, colour, creed, class, political affiliation or other such matter. Naturally, in an adversarial system, there always will be an unsuccessful side, a party that is unhappy with the manner in which we have resolved an

uncertainty, especially as I have stated, some uncertainties admit of more than one rational answer. I am nevertheless satisfied that we have always passed judgment with sensitivity, with care and with due regard for our honest understanding of the Constitution and the laws of this magnificent country.

At the end of the day, the CCJ has no power to compel the deployment of a single cent of Guyana's revenue. Nor are we in any position to command the coercive arms of the State. We have no bailiffs, no police force, no militia to enforce our judgments.

The Supreme Court of the United States ruled in 1954³ that separate schools for whites and blacks were unconstitutional and inherently unequal and a year later the court ruled that integration should occur "with all deliberate speed"⁴. They had the National Guard to enforce that judgment.

The only asset we possess to enforce our judgments is the trust and confidence, the faith, reposed in us by the Guyanese people. Public trust and confidence. It is an asset that can take time to build and it is one that can be squandered away entirely in an instant. We are only too well aware of this. It therefore gives us great satisfaction to note that every judgment of the Court has been voluntarily complied with, even when some of these judgments must have been a bitter pill for the losing side to swallow. But they have all been obeyed. I believe your democracy, the rule of law in this country, is all the stronger for this.

Guyana is on the cusp of unimaginable economic transformation. This country that has survived slavery, indentureship, colonialism and civil strife fully deserves such blessings. We all know, however, that while material wealth could yield expansive physical infrastructure (nice highways, tall buildings, fantastic gated communities), for the country to be really progressive, attention has to be paid to promoting a sustainable environment and to looking after the interests of the ordinary man, woman, girl and boy – investing in their education, their health, their working and living spaces, their sporting and recreational endeavours, and in all the

³ *Brown v Board of Education of Topeka* 347 US 483 (1954).

⁴ *Brown v Board of Education of Topeka* 349 US 294 (1955).

infrastructure that improves their way of life not just materially but also spiritually as reflected in sports and arts, literature and theatre.

Most of all, it is important to strengthen the institutions that promote the rule of law. The rule of law does not mean rule by law. Chattel Slavery, Hitler's Third Reich, South Africa's Apartheid, these were all states in which rule by law prevailed. But the rule of law means more than simply the promulgation and enforcement of laws. The rule of law implies legal accountability, fairness, respect for minorities, the observance of human rights, judicial independence, the separation of powers, equality before the law and the absence of corruption and arbitrariness. It is in the observance of these fundamental principles that the roles of the courts and of lawyers are most relevant. All of us here have a special responsibility to promote the rule of law.

The CCJ, acutely conscious of our responsibilities to advance the rule of law in the Caribbean has embraced a methodology, a framework, to assist us in our pursuit of excellence. As you may have heard in the Press, earlier this year we were admitted into membership of the prestigious International Consortium for Court Excellence (ICCE). The Consortium is a network of courts and other organisations with expertise in court and judicial administration, dedicated to ensuring high-quality judicial service delivery. It was established in 2007 by founding members with expertise in court and judicial administration.

The goal of the Consortium is to continually develop, apply and advocate the use of a framework of values, concepts, benchmarks and performance enhancement tools for courts and tribunals, with the ultimate aim of continually improving the quality of justice and judicial administration. That framework, the International Framework for Court Excellence (IFCE), takes a holistic approach to assessing a court's performance.

It was a distinct honour to be accepted into membership of the International Consortium because, in order to be accepted, the CCJ had to demonstrate significant use of the International Framework. Acceptance into membership, therefore, serves as external recognition of the correctness of the path we are on and validation of our effective use and application of the Framework. Faithful adherence to that Framework places us on a non-stop revolving cycle of

improvement. It's a four- step cycle of self-assessment, planning, implementation and evaluation. April 2022 is self-assessment month. During the course of this month all the staff, all the judges of the Court shall be diligently, honestly and hopefully accurately assessing the court's performance under seven critical heads, namely: Court Leadership; Strategic Management; our Workforce; Court Infrastructure, Proceedings and Processes; our Engagement with court users; our provision of court Services; and Public Trust and Confidence. The results of the self-assessment will inform our planning going forward.

Distinguished guests, colleagues, ladies and gentlemen, I wish to assure you that the CCJ is in a good place. I am optimistic about the future. I can confidently say to Guyana, to the judiciary of Guyana and in relation to the administration of justice in this country, we all have this in common. The road ahead looks bright. Our best years are ahead of us. I thank you for your attention.