



The United States Bureau of International Narcotics and Law Enforcement Affairs' Civil Recovery Live Exercise

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

**International Narcotics and Law Enforcement Affairs' Training Exercise
on Civil Recovery**

Virtual
25 January 2022

The Bureau of International Narcotics Matters (INM) was created in 1978 to reduce drug trafficking into the United States from Latin America. INM's mission soon expanded beyond combating drugs to supporting stabilization efforts in the Balkans, and to fighting corruption and transnational crime around the world. To reflect its expanded mission, INM was re-established as the Bureau of International Narcotics and Law Enforcement Affairs (INL) in 1995. Today, INL uses a wide range of tools to counter crime, illegal drugs, and instability abroad, including foreign assistance, bilateral diplomacy, multilateral engagement, and reporting, sanctions, and rewards. INL has two complementary core competencies: helping partner governments assess, build, reform, and sustain competent and legitimate criminal justice systems, and developing and implementing the architecture necessary for international drug control and cross-border law enforcement cooperation. INL works with partner nations, international and regional organizations, non-governmental organizations, U.S. federal, state, and local criminal justice entities to achieve our mission.

KEYNOTE ADDRESS

by

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

The United States Bureau of International Narcotics and Law Enforcement Affairs' (INL)
Civil Recovery Live Exercise

25 January 2022

(Virtual Event)

Protocols.

Good morning.

I wish first of all to thank the United States Bureau of International Narcotics and Law Enforcement Affairs (INL) and in particular, Mrs Nicola Suter, for inviting me to make these brief remarks today. I also extend commendations to INL and the National Centre for State Courts (NCSC), for their continued work in supporting the region through several initiatives forming part of the Caribbean Anti-Crime Program. These interventions are critical in the development of our capacity regionally to combat the scourge of crime.

I see today's training exercise as part and parcel of a wider objective to enhance the rule of law in the region. My court, the Caribbean Court of Justice (CCJ), is extremely interested and invested in anything that contributes to accomplishing that goal. To this end, a significant portion of our jurisprudence is geared towards the development of constitutional aspects of the rule of law. But there is a wide variety of other respects in which it is important to secure compliance with the rule of law and more importantly to demonstrate to the public that laws are being applied equally.

Permit me to highlight two examples. The first has to do with the approach that is taken to dealing with corruption and financial and other 'white-collar' crimes. Anyone can commit burglary and offences against the person, but offences like embezzlement and corporate fraud have a particularly corrosive effect because they are committed by persons with influence, persons with some level of privilege and access to confidential information. It is not just my own view, but it is the view of many in our societies, that insufficient attention is paid to deterring, identifying, prosecuting and punishing such crime.

The second example is where crime masquerades as a huge or 'respectable' business venture and/or where such great profits are made from illicit activity. That even if and when someone is ultimately caught, it is usually someone at the lowest rung on the ladder, leaving the most culpable, the real masterminds, unscathed and free to continue their criminal enterprise. Alternatively, there are those instances where it may not be possible or feasible to mount a successful criminal prosecution, but the State is aware that an individual or a venture is profiting from the proceeds of unlawful conduct.

In each case, it is of critical importance that every effort is made, as it is often said, to 'take the profit out of crime'. Ensuring that those who engage in criminal activity are unable, whether by themselves or their families or their agents, to profit from their unlawful acts is the surest way to deter and put a dent in their criminal enterprise. If there is a perception that there is not the same zeal to arrest such criminal behaviour as there is in policing burglaries or assaults or 'petty crime' then the citizenry will be justified in thinking that there are differing standards of justice in the society and the rule of law will be imperilled. There is a direct correlation between, on the one hand, laxity in the utilisation of available means under the law against those who engage in

unlawful conduct for economic benefit, and, on the other hand, the overall general level of crime in the society.

That is why training exercises such as this four-module programme are so important. Having looked at the programme overview and this week's agenda, I am heartened to see two things. First, the practical thrust of the programme which builds upon the theoretical component. Most of us learn by doing and so, having an intensive practical workshop will go a long way in cementing the knowledge gained. As I understand it, this week's focus will be a simulation of a civil recovery investigation. In my experience, a diligent and thorough investigation is critical to the successful outcome of a case. I have no doubt that the practical experience you will gain this week will serve you in good stead.

Second, I am quite pleased to see that participants in the programme hail from several different Caribbean Community (CARICOM) States and that you represent a variety of state agencies. Among you I see that there are law enforcement officers, financial investigators, prosecutors and state attorneys. It is also my understanding that you will undertake activities as country teams. I think this is excellent as it recreates the day-to-day environment in which you will work on these types of cases. I have made the point previously that, often we speak of the justice system as if it is a single organism. But the truth is that the justice system is an intricate web of actors and systems. The various stakeholders within this network have their unique roles; each has their distinct and discrete priorities, and each responds to varied command and reporting structures. What unites all is an enduring commitment to justice and the enhancement of the rule of law. But each agency must perform its role well if optimal results are to be achieved, because all it takes is one weak link for the whole chain to be broken with the consequence that the culprits are let off the hook.

I remember several years ago I was invited to address members of the police service in a Caribbean State where I was based as a High Court judge. At the end of the talk there was a Q and A. Coincidentally, the address took place a week or two after I was constrained to uphold a No Case submission in a high-profile criminal case. There had been some bungling in the chain of custody. During the Q and A an officer, who actually I recognised as the lead investigator in the case that was dismissed, raised his hand and asked me, Judge, do you think it's right that you spend long hours building a case against a man, all the evidence points to his guilt and then you see him walk out of court a free man on a technicality? How do you feel when that happens? I looked him straight in the eye and told him, I feel the same way you feel. And if you and your colleagues do your job well and I do mine well, then the likelihood is that we would both feel satisfied.

If, as a region, we are to make inroads into removing the profit from crime, the greatest level of cooperation is necessary among local law enforcement and supporting bodies. But even that is not enough. The criminal element operates in a transnational manner and so law enforcement too must be prepared to share and exchange experiences regionally and internationally with a view to strengthening institutional capacity and learning and adopting new and best practices.

Civil asset recovery, which is this programme's focus, is a vital tool for combatting crime. Its skilful and diligent use strikes at the benefits to be accrued from engaging in unlawful conduct. It provides a direct avenue for pursuing and recovering illicit proceeds, whether or not retained in their original form, or followed into the hands of complicit individuals. On the other hand, civil asset recovery regimes afford a measure of protection to the good faith, or bona fide,

purchaser for value without notice; and also to unsuspecting and non-complicit individuals whose assets become intermingled with illicit proceeds. The Proceeds of Crimes laws therefore go a long way in enhancing public confidence in the rule of law.

Let me close by again commending the organisers of and participants in this programme. It is my hope that by the time this exercise is concluded, you would all be energised to put into practice what has been learned this week. In this way you would all have played a significant role in furthering the rule of law in the region.