



CONFERENCE ON ACCESS TO JUSTICE FOR PERSONS WITH DISABILITIES

The Hon. Mme. Justice Maureen Rajnauth-Lee

Hilton Trinidad and Conference Centre
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This Conference is a collaborative effort of IMPACT JUSTICE, Jurist PROJECT, Government of Canada, the University of the West Indies and the Caribbean Court of Justice.

Improved Access to Justice in the Caribbean (IMPACT Justice) is an eight-year regional civil society justice sector reform project funded by the Government of Canada. It is being implemented from within the Caribbean Law Institute Centre, Faculty of Law, The University of the West Indies (UWI), Cave Hill Campus since 2014.

The Judicial Reform and Institutional Strengthening (JURIST) Project is a multi-year (2014-2023) regional Caribbean judicial reform initiative funded under an arrangement with the Government of Canada. The Project is being implemented on behalf of Global Affairs Canada (GAC) and the Conference of Heads of Judiciary of CARICOM (the Conference), by the Caribbean Court of Justice (CCJ), which was appointed by the Conference as its Regional Executing Agency (REA).

Welcome and Opening Remarks

by

The Honourable Mme Justice Maureen Rajnauth-Lee, Judge of the Caribbean Court of

Justice

on the occasion of

The Conference on Access to Justice with Persons with Disabilities

21 June 2022

Good morning everyone and a special welcome to all, especially to those who have come from other Caribbean countries. Kindly permit me to adopt the protocols which have been established.

I wish to express special thanks to the organizers of this event – IMPACT JUSTICE, JURIST, the Government of Canada, the University of the West Indies, and the Caribbean Court of Justice. I am pleased and privileged to have been invited to deliver some brief Opening Remarks on behalf of the Honourable Mr Justice Adrian Saunders, President of the Caribbean Court of Justice. He has asked me to convey his regrets as he is not able to join us today.

As I prepared these remarks, my thoughts went back many, many years to the days when I was a young Attorney in private practice.

First, I recalled acting for a young mother who had tripped on a staircase when the heel of her shoe got caught in the carpet which had been improperly laid. She fell to the bottom of the stairs, sustaining terrible injuries to her spine. This was her first day on that job, and so she did not know what every other employee did. Be careful on those stairs!! She came to our chambers in a wheelchair and in constant pain. Whenever she had to attend court, I had to make special arrangements with the Registrar of the Supreme Court to afford her access to the Hall of Justice through the Judges' entrance. There was no other access at that time for persons who had to attend court in a wheelchair.

Second, I recalled acting for a middle-aged woman who had lost her sight. She was the plaintiff. In those days where all evidence had to be given *orally*, the challenge was how to elicit

evidence from her about significant documents which she had signed prior to losing her sight. Unlike sighted witnesses, she could not look at the documents, recognize them and have them tendered into evidence. This was of course long before case management played a critical role in the preparation of trials. I had spoken to many persons in practice, but no one could advise me how to proceed. Thankfully, through research, I found a way forward, and we had an understanding Judge who co-operated in getting the necessary evidence from the witness.

In addition, a matter that had been filed in Trinidad and Tobago some time ago, came to mind. In 2005, Mr George Daniel, then President of the Trinidad and Tobago Chapter of Disabled Peoples International, filed a constitutional motion against the Attorney General of Trinidad and Tobago, alleging that he had been denied certain constitutional rights by the State in relation to access to the Hall of Justice and the services therein. Mr Daniel had lost both legs and used a wheelchair. In the affidavit in support of his constitutional motion, Mr Daniel deposed that the absence of facilities for persons with disabilities to enter the court adversely affected this community in many ways. People with disabilities could not attend court to listen to or observe the proceedings in a case. They could not access the court to file a case in the event they wished to act for themselves. It was very rare to see a person with a disability serving as a juror in the criminal justice system, because of the lack of infrastructure and facilities to accommodate such persons on the jury. The witness box in the courtroom was also not accessible to persons in wheelchairs. The public toilets in the Hall of Justice did not cater for persons in wheelchairs.

In a highly esteemed judgment, then High Court Judge, Mr Justice Nolan Breaux, granted to Mr Daniel a declaration that the non-provision by the State of direct public wheelchair access through the public entrance to the Hall of Justice, Knox Street, Port of Spain, was a breach of his right to liberty under section 4(a) of the Constitution. The Judge directed that the State take all immediate steps as were necessary to provide, within eighteen (18) months, direct access through the public entrance of the Hall of Justice, Knox Street, Port of Spain, to the applicant and other persons who used wheelchairs.

It is important for those of us who represent Judiciaries at this Conference, to recognise that Courts are judged on the extent to which they engender public trust and confidence. An essential element of building public trust and confidence is the level of access that courts afford to all stakeholders. Access to justice includes physical access and access to legal and other

court services. Persons with disabilities require pro-active measures by the court to enable them to gain such access. Accordingly, every court has a responsibility: first, to examine its physical layout, its court processes, and its capacity otherwise to afford access to persons with disabilities; second, to identify any gaps in its infrastructure and processes; and third, to plug those gaps in an effective way. In the past this responsibility was overlooked. This cannot now be the case.

The Caribbean Court of Justice in its Mission Statement has committed to providing accessible, fair and efficient justice for the people and states of the Caribbean Community. In its Strategic Plan 2019-2024, among the Strategic Issues identified by the CCJ, is Strategic Issue 4, where the Court draws attention to the importance of Equality, Fairness and Integrity in promoting the Rule of Law. The Goal of the CCJ under this Strategic Issue is to promote and protect the rule of law, by ensuring, among other things, that the Court's processes are accessible, and characterized by competence, equal protection of the law, fairness, efficiency, impartiality and gender sensitivity.

In 2020, the CCJ, after robust and transparent discussions among its Plenary of Judges, updated its Code of Judicial Conduct. Importantly, the Code for the first time included a preamble in which the Judges, among other things:

- (1) Identified the importance of ensuring access to justice and substantive equality for all litigants, Court users and Court staff;
- (2) Resolved to eliminate individual and systemic bias, discrimination, and inequality;
- (3) Had regard to the essentiality of diversity and inclusivity to the legitimacy of the Court and the importance of bringing a perspective to adjudication that respects human dignity and value.

I can continue talking about other CCJ policies and initiatives which seek to enhance the important core value of access to justice, but I don't plan to go past the speaking time allotted to me. Permit me, however, to briefly mention two further policies/guidelines.

In 2019, the Regional and Judicial Legal Services Commission approved a Harassment Policy for the CCJ and the Commission. A training team was appointed. In 2021, this team conducted approximately 16 hours of training for every judge, commissioner, manager and member of staff. The training sought to promote a culture of equality and respect, with zero tolerance for harassment, and an understanding of individual and organizational accountability. The training underscored that all employees and users of the Court and the Commission have a right to a safe, healthy and respectful workplace free from all forms of harassment. This can be described as access to justice in the workplace.

Finally, in 2017, JURIST, one of our hosts, developed and published Model Guidelines for Sexual Offence Cases in the Caribbean Region as part of a comprehensive and multi-sectoral approach to improving the management of sexual offence cases and the treatment of survivors and witnesses in such cases. When the Sexual Offences Advisory Committee consulted with police officers throughout the region, they suggested that the Model Guidelines should contain guidelines to assist police officers to record the best possible account of what had taken place. We therefore included Guidelines for the Police Forensic Interview in Sexual Assault Cases with special focus on interviewing persons with disabilities. For example, the Guidelines for the Police recommend that all witnesses with learning disabilities are eligible for an intermediary where the use of an intermediary would maximise the quality of their evidence. The Model Guidelines also recommend the use of intermediaries to assist persons with disabilities to communicate with the Court.

In closing, I wish to extend heartiest congratulations to the organizers of this important conference. I look forward to productive and creative discussions which will seek to enhance access to justice for persons with disabilities throughout the region.

THANK YOU.