

Operationalising courts in Dominica after hurricane Maria

Courts serve a central role in our constitutional democracy. Under the rule of law, people rely heavily on the courts and on court houses, all of which are subject to various natural, technological, or humanly caused disasters or catastrophes. Preparedness for such events is a vital government function, but it is particularly important for the courts because they must remain open to the extent possible to ensure that all people's legal rights are protected.

This was the view of Mrs. Gloria Richards-Johnson, JURIST Project Director. She was speaking at the Judicial Reform and Institutional Strengthening (JURIST) Project's official hand over of equipment to support the Eastern Caribbean Supreme Court's (ECSC) recovery efforts to make the court offices in the Commonwealth of Dominica functional. Following the passage of hurricane Maria in September, 2017 the court offices in Dominica were ruined which led to judicial business in Dominica being inactive. The JURIST Project, following discussions with the Honourable Dame Janice Pereira, Chief Justice, ECSC offered to assist the Dominican courts in resuming its operations. The hand-over ceremony took place at the Dominica High Court on Tuesday, February 12, 2019.



The Honourable Dame Janice Pereira (centre), Chief Justice, Eastern Caribbean Supreme Court (ECSC) chats with Mrs. Gloria Richards-Johnson (left), Director and Mr. John Furlonge, Regional Project Coordinator and Capacity Building Specialist, both of the JURIST Project

Mrs. Richards-Johnson, who was representing Her Excellency Marie Legault, High Commissioner of Canada to Barbados and the Eastern Caribbean, said regardless of the nature of the hazard, disasters will continue to challenge court personnel for many years to come. "Court staff must consider a range of complex issues from physical design of courthouses, to the physical safety of its employees and to the structure of data and communications systems and their ability to function in a disaster, to policies that balance public access with security needs. Planning

and training needs will require greater specialisation and urgency," she advised.

She explained that while disaster preparedness might seem a daunting task it was imperative for business continuity. Mrs. Richards-Johnson said that court's leaders set the tone for effective emergency management. The type of leadership structure in place at the time of a crisis can influence the performance of an organisation during a period when its regular mode of operation is disrupted.

She continued: "Courts must look at their priorities. A key feature of leadership is setting priorities. The courts must prioritise their emergency management needs based on the most likely and most injurious events that could influence the administration of justice."

The Director added that the Government of Canada has been a long-time supporter for justice sector initiatives in the Caribbean and reiterated Canada's commitment to working with Dominica and other Caribbean countries to remove the barriers that prevent traditionally marginalised groups from participating equally in society.

Dame Janice stated that the refurbished high court building will result in an improved standard of service as it relates to the dispensation of justice in Dominica. "This is a historic day for the court in Dominica in the handing over ceremony of the state-of-the art equipment. No one will forget the ravages of hurricane Maria. It was a time of despair because all activities at the court had to be cancelled," she lamented.

The Chief Justice continued: "Your rights to justice was gone for months but I am pleased to see your remarkable spirit of resilience for as fierce as hurricane Maria was, you moved into a sense of normalcy as the nature isle. We left no stones unturned to have the courts reopened with modern state-of-the-art equipment with Information Communications Technology (ICT) from the JURIST Project."

She also commended the government and people of Dominica for their hard work in recovering from the ravages of hurricane Maria and thanked the Government of Canada for their assistance.

At the ceremony, the Chief Justice was presented a recovery plan, which was developed by the JURIST Project, to aid in the restoration of court proceeding in the event of any future disasters.

In this Issue

Dear Reader,

Issue 12 of *JURIST News* is presented for your reading pleasure.

In this issue, we feature some of the activities that we, at the JURIST Project, have been actively pursuing from February – May, 2019.

Following the devastation cause by hurricane Maria in 2017, the court offices in the Commonwealth of Dominica were rendered non-operational. The JURIST Project and the Eastern Caribbean Supreme Court (ECSC) recognising the important role that courts play in the lives of citizens, thought it necessary to accelerate the recovery process to facilitate business continuity. It is in this regard, that the Project supported the operationalisation of the court offices.

Barbados is set to refer all civil matters to mediation. A date is yet to be announced as to

when all civil matters filed will be submitted for mediation, but in the meantime the judiciary has increased its roster of mediators and is undertaking sensitisation sessions to educate persons on its benefits.

In Antigua and Barbuda, following the establishment of the Sexual Offences Model Court (SOMC), the government and the ECSC are supporting the passage of legislation to support the work of the SOMC.

These and other interesting stories of judicial reform around the region are included in this issue. We hope you enjoy reading the articles in this issue. As always, we take this opportunity to remind you that we welcome and appreciate feedback from our readers. We encourage contributions, information or material that we can include in future issues of the Newsletter.

Civil matters in Barbados to be referred to mediation

Persons filing civil matters in the law courts in Barbados may now ask for the matter to be sent straight to mediation for resolution, as a first option and a date will soon be announced when all civil matters filed, will be submitted for mediation.

This was the announcement made by the Honourable Sir Marston Gibson, Chief Justice, Barbados during the closing ceremony of a two-day sensitisation workshop on Court Connected Mediation. The workshop, which was supported by the Judicial Reform and Institutional Strengthening (JURIST) Project was conducted from May 14-15, 2019 at the Radisson Aquatica Resort Barbados.

The objective of the workshop was to sensitise the bench - court of appeal, high court, magistracy and the Barbados Bar Association about the role of Alternative Dispute Resolution (ADR), in particular, mediation in the delivery of civil justice in Barbados. The workshop was conducted by the Honourable Mme. Justice Charmaine Pemberton, Justice of Appeal from the Trinidad and Tobago judiciary.

Sir Marston explained that he signed a new Practice Direction into law on February 8, 2019 for the supreme and magistrates' courts. "The first new aspect of the Practice Direction is that on filing a civil action in the court, the party filing the action is able at that point to ask for mediation. In the old Practice Direction, the situation was that mediation was considered to be a part of case management. In the new Practice Direction the public can come in and file and say that I am starting this action today, but before it goes to a judge, I want it to go to mediation," he said. He added that the Practice Direction also indicated that "a judge or master shall send a matter assigned to him or her to mediation unless there was a good and substantial reason for not doing so." This, he said, was made possible after 43 mediators were added to the court roster. Ten more mediators are expected to be added soon to the roster.



Participants from the two-day sensitisation workshop together with the Honourable Sir Marston Gibson (seated, middle), Chief Justice, Barbados and Mr. George Wieringa (seated, right) Deputy Director, Caribbean Regional Program, Global Affairs Canada

There will also be a means assessment form to determine a person's ability to pay for mediation. "We are so intent on making mediation a part of the justice programme that where people come in and say that we cannot afford to pay the mediator's fee we are going to ask them to complete a means assessment form. Once we are persuaded that they are truly unable to pay for the mediation, we are going to set up a situation where they can have mediation pro bono. If a person cannot afford to pay the mediator's fees, that litigant will still be able to be afforded the benefit of a mediator," Sir Marston explained.

Mr. George Wieringa, Deputy Director, Caribbean Regional Program, Global Affairs Canada said mediation is now a proven highly effective tool for achieving harmonious resolution of conflicts arising in different sectors.

However, he lamented that there were still many in the legal profession who were skeptical about mediation. "Some frankly admit they don't believe in it at all. At both the client and lawyer levels, some may think taking the initiative to mediate is an acknowledgement of

weakness and may undermine the ultimate position on the final settlement. Some are concerned that if mediation fails, another set of costs would be incurred. So when it comes to 'changing the mindset,' it is important that some of these commonly held misconceptions and misgivings are specifically identified and addressed," he urged.

Mr. Wieringa added that while many persons have been singing the advantages of mediation, educating the public on the theories and principles is one thing but, showing them the clear evidence is another.

"While experience from other jurisdictions sounds very good indeed, we do need local experience as evidence. We need concrete figures and statistics. How much time and money can be saved? We need the local users of mediation to declare their satisfaction. We need real cases to feature in the media and promoted throughout the country," he noted.

He advised that Barbados should consider building an archive of successful mediation cases and statistics maintained to demonstrate the effectiveness of mediation.

Global Affairs Canada hosts Partners Forum

Global Affairs Canada held a Caribbean Regional Development Program's Partners Forum for its implementing agencies across the region from March 12-13, 2019 in Kingston, Jamaica. The JURIST Project, which is funded by Global Affairs Canada and being implemented by the Caribbean Court of Justice (CCJ) on behalf of the Heads of Judiciary of CARICOM, was one of the partners attending the Forum, which presented a unique opportunity to learn more about Canada's ongoing work in the region and explore opportunities for future collaboration.

Canada has a longstanding relationship with the Caribbean region based on a shared Commonwealth history and decades of people-to-people ties that are maintained through travel, work, studies and immigration.

Canada's Caribbean Development Program comprises six island states (Antigua and Barbuda, Dominica, Grenada, Jamaica, St. Lucia and St. Vincent and the Grenadines and three continental states (Belize, Guyana and Suriname), eligible for official development assistance (ODA). The Program also covers four high-income states (Bahamas, Barbados, Trinidad and Tobago and St. Kitts and Nevis) that are not ODA-eligible but may benefit from Canada's assistance through regional initiatives and collaboration.

The objectives of the Forum were to:

- advance Canada's Caribbean Regional Development Program country-focused approach, and ensure that partner executing agencies are aligning the implementation of initiatives with Canada's new approach;
- engage partners and staff in a Gender Based Analysis Plus (GBA+) workshop to enhance the integration of gender equality in programming and to contribute to the implementation of Canada's Feminist International Assistance Policy (FIAP);
- improve communication, awareness and coordination among implementing partners and within the Action Areas of Canada's international assistance; and
- strengthen the Caribbean Regional Development Program's implementation of Canada's new approach including country-level knowledge and the promotion of development results and Canada's contributions in countries in the region.

The GBA+ workshop aimed to increase awareness and practical understanding of how GBA+ can be applied to development initiatives and organisations at the operational, program and policy levels. GBA+ considers the different impacts on men, women, boys and girls, based on their life situations along a range of variables including socio-economic conditions, impacts of climate change and even such everyday issues as access to health and justice.

JURIST Project assists CCJ in development of 5-year strategic plan

The Judicial Reform and Institutional Strengthening (JURIST) Project assisted the Caribbean Court of Justice (CCJ) in the development of its Strategic Plan 2019-2024. Launched in March, under the theme “Unlocking Potential, the plan will chart the court’s direction over the next five years.

The Honourable Mr. Justice Adrian Saunders, President, CCJ and Chairman of the Strategic Planning Committee, asserted that the implementation of the strategic plan will help to move the CCJ forward. The CCJ President stated: “our intention is to take bolder strides and to be more innovative; to better empower decision makers; to communicate more effectively both internally and with all our stakeholders; to work more meaningfully with partners and justice sector bodies in the region; to strengthen our bonds with the Caribbean people and to advance the rule of law.”

Lessons learned from the court’s first strategic plan period, which ran from 2012 – 2017, served the court well in the design and execution of its new strategic agenda.

The CCJ’s Strategic Plan 2019-2024 is available in hard copy at the CCJ’s headquarters and can be downloaded from the Court’s website at www.ccj.org. The CCJ’s strategic plan contains six strategic issues, which are further broken down into 14 goals and 41 strategies that will be used to effectively fulfil the CCJ’s aim of unlocking the potential of the organisation.

The six strategic issues include: communication; independence and accountability; high performance environment; equality, fairness and integrity in promoting the rule of law, organisational capacity for



The Strategic Plan was launched at the CCJ’s headquarters recently when members of staff received their hard copies. The plan is one of the deliverables of a wider project to develop and implement a new strategic agenda for the CCJ. This project has received funding assistance from the JURIST Project

caseload growth and enhanced regional system capacity and performance. The new strategic plan also includes a new mission, vision and values for the court, which was developed by the judges and staff.

The plan is already guiding the CCJ’s operations as each of the units of the court has used it to develop their work plans for 2019. The process of implementing the strategic plan will be iterative, each unit will assess the results of their efforts on an ongoing basis and will adjust their work plans to ensure that results are aligned with the stated goals.

The development of the strategic plan, the second in the organisation’s history, was made possible with support from the JURIST Project, a judicial reform initiative funded by the Government of Canada and being implemented by the CCJ.

Dr. Daniel Straub, Dean of the Fellows Programme of the Institute of Court Managers (ICM) of the National Centre for State Courts (NCSC), helped to

steer the process which will direct how the court will assess its performance and direct its resources over the next five years.

The strategic plan was developed using a collaborative process with input from representatives of the Caribbean Community (CARICOM), the Regional Judicial and Legal Services Commission (RJLSC), the CCJ Trust Fund, regional judiciaries, bar associations, law schools and faculties of law. The judges and the staff of the court were also integral in identifying issues and providing recommendations that informed the plan.

Mrs. Jacqueline Graham, Registrar and Chief Marshal, stated in the plan’s opening statement that the theme of “unlocking potential through the implementation of this Strategic Plan will also encourage a more streamlined monitoring and review of our systems. These systems must, at all times, be characterized by high levels of accountability, transparency, efficiency and fairness, and they must be harnessed by the court’s governance principles.”



CCJ hosts UN Women delegation

The Caribbean Court of Justice (CCJ) on Monday, May 20, 2019 hosted a delegation from the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women).

The delegation was led by Her Excellency Ms. Katalin Annamária Bogvay, Permanent Representative of Hungary to the United Nations and Vice-President of the UN Women Executive Board. The UN Women delegation also included other representatives of the

Executive Board as well as representatives from the UN Women’s Multi-Country Office in Barbados.

The purpose of the visit, and the stakeholders’ meeting, was to explore and review the collaboration that has taken place between the Court, the Caribbean Association of Judicial Officers (CAJO) and the JURIST Project on the one hand and UN Women on the other, on issues of mainstreaming gender and gender equality in the justice sector.

The Honourable Mr. Justice Adrian Saunders (front row, middle) President, CCJ together with delegation from UN Women. To his left is Her Excellency Ms. Katalin Annamária Bogvay, Permanent Representative of Hungary to the United Nations and Vice-President of the UN Women Executive Board and his right is Mrs. Pennelope Beckles-Robinson, Permanent Representative to the United Nations for Trinidad and Tobago in New York

(Photo by: UN Women/Ryan Brown)

JURIST Project supports ECSC Annual Judicial Conference 2019



Participants at the Annual Conference

The Eastern Caribbean Supreme Court (ECSC) through the Judicial Education Institute (JEI) and in partnership with the Judicial Reform and Institutional Strengthening (JURIST) Project; the Pan Caribbean Partnership Against HIV and AIDS (PANCAP); UNICEF and the British High Commission hosted judges and magistrates of the Organisation of Eastern Caribbean States (OECS) during its signature Annual Judicial Conference in St. Kitts and Nevis. The judges met from May 27 – 29, while the Magistrates' conference ran concurrently from May 28-31.

The Annual Judicial Conference aims to broaden, sharpen and further enhance the skills of its judicial officers through continuous training in pertinent areas which impact the court's work and the lives of citizens of the Eastern Caribbean. It presents an opportunity for networking, sharing of ideas and benefitting from collegial advice.

The first day of the conference saw high court judges exploring the many roles of the Civil Proceedings Rules (CPR) 1998 under the tutorship of the learned Honorable Mr. Justice Peter Jamadar, Justice of Appeal of Trinidad and Tobago who coached the jurists on distinguishing between judicial leadership and management and the importance for both under the CPR.

His Lordship Mr. Mario Michel, ECSC's Justice of Appeal addressed issues related to costs in judicial review applications while Dr. Diane Douglas, Clinical Psychologist assisted participants with tapping into their emotional intelligence.

The opening ceremony was held on day two and was attended by His Excellency Sir Tapley Seaton, Governor General, St. Kitts and Nevis and the Honourable Timothy Harris, Prime Minister of St. Kitts and Nevis who delivered opening remarks. Also attending the function were Dr. Denzil Douglas, Leader of the Opposition; Honourable Vincent Byron, Attorney General; and Mr. Valston Graham, Director of Public Prosecutions, all from St. Kitts and Nevis.

Her Ladyship, the Honourable Mme. Gertel Thom, Chairman, ECSC JEI, in her welcome remarks urged participants to take the opportunity to network and foster stronger working relationships and thanked the conference partners for their contribution to the event. Her Ladyship, the Honourable Dame Janice Pereira, Chief Justice, ECSC, highlighted the context of training and her expectations of the two conferences.

The opening ceremony was followed by a joint session of judges and magistrates for presentations by UWI's Rights Advocacy Project (U-RAP) team which dealt with issues of bias, trust and fairness in the administration of justice; equality and social inclusion; and vulnerability in OECS courts which addressed matters dealing with witnesses, children and unrepresented litigants.

Days two and three of the magistrates' conference were facilitated by the Honourable Mme. Justice Alice Yorke-Soo Hon and the Honourable Mr. Justice Mark Mohammed, Justices of Appeal of Trinidad and Tobago, who used hypothetical scenarios to illustrate topics such as the writing of reasons, managing Goodyear Hearings in the magistrates' court, considering and applying evidence of good and bad character, evidence via video link, expert evidence in the paper committal process and dismissals for want of prosecution.

Their presentations focused on the *Criminal Bench Book for Magistrates and Parish Court Judges in the Caribbean Region*, which is a compilation of rules of procedure distilled from primary legislation, case law, policy, and significantly, the contributions and experience of judicial officers practicing in the summary jurisdiction. It includes guidance on judgment writing and giving of reasons, procedures for dealing with vulnerable defendants and witnesses, sentencing options and methodology, and extradition proceedings, among others. When completed, it will serve as an important reference tool to help magistrates discharge their judicial functions efficiently.

UPDATE ON SOMC

At the launch of the Sexual Offences Model Court (SOMC) in Antigua and Barbuda in January 2019, the Honourable Dame Janice Pereira, Chief Justice, Eastern Caribbean Supreme Court (ECSC) and the Honourable Steadroy Benjamin, Attorney General of Antigua and Barbuda, announced their intention to pass legislation to support the work of the SOMC. To date, the government and the ECSC have made good on their promise.

The ECSC's Sexual Offences Case Management Procedure Rules, which came into effect in February 2019, will govern case management for sexual offence cases in the courts. The Project worked with the Multi-Sector Stakeholder Committee (MSSC) for the SOMC to develop the draft rules, which the ECSC and the Antigua and Barbuda government later finalised and approved.

The Rules make provision for the completion of all sexual assault cases within 18 months from the time of first hearing in the magistrate's court to final disposition in the high court. However, cases involving children must be completed within 12 months. The Rules also outline case management powers of the judge, provides guidance for dealing with adjournments and stipulates the duties of counsels, including the duty to complete a case management form.

The Rules, and in particular the inclusion of timelines for the completion of sexual offences, will serve to provide predictability for complainants, increase efficiency in the court process and discourage undue delays. Delays have proved a significant deterrent for complainants wishing to engage with the justice system.

Another important development is Antigua and Barbuda's decision to revise its Sexual Offences Act. This decision was prompted in part by recommendations from the Project, the MSSC and the Directorate of Gender Affairs in Antigua and Barbuda. The Project will be working along with its sister project IMPACT Justice to support the government to make the revisions. One of the recommendations made by the Project is for the revised Sexual Offences Act to legislate the SOMC's specialised procedures.