"CIVIL PROCEDURE RULES AND MEDIATION – MOVING FORWARD IN THE 21ST CENTURY"

A Lecture presented by Sir David A.C. Simmons K.A., B.C.H.
in commemoration of International Conflict Resolution Day 2013
17 October 2013

Let me begin by saying that it is a privilege and indeed an honour to have been invited by the ADR Association of Barbados Inc. (the Association) to give this lecture to commemorate International Conflict Resolution Day. I am humbled to think that the Association believes that an old, retired Chief Justice may still be able to contribute something worthwhile to legal learning.

2. Fortunately, the topic chosen for me is one with which I have had a nodding acquaintance both as Attorney-General and Chief Justice. Unfortunately, much of what I have to say will, I suspect, be familiar to many of you. So, if in the course of my address you feel an urge to yawn or even sleep, please be assured that I shall not be offended if you respond positively to the urge.

3. The topic of my address requires discussion of the Rules of civil procedure currently in force in Barbados and the role of mediation within the context of court Rules. The topic is so vast that it would require more than one lecture adequately to deal with it. In the circumstances, I shall confine myself to a discussion of broad principles without focusing in depth on any particular

aspect of the subject. For the purposes of this address, I am content to adopt the definition of mediation in the brochure of the Association.

> *"Mediation is a voluntary, confidential, non-binding and 'without prejudice' process of intervention in a dispute or negotiation by an impartial third party who has no decision-making power. The third party assists disputing parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute by structuring the negotiation, maintaining the channels of communication, assisting each party to articulate their needs, identifying the issues, and assisting the parties in creating alternative ideas to resolve the dispute."*

Since, however, there are at present no rules governing the procedures for court-connected mediation, I shall not be able to explain to you how mediation will operate in practice.

The Rules of Civil Procedure – *The Supreme Court (Civil Procedure) Rules, 2008* – (SCR) came into force on 1 October 2009. They were modelled upon the English *Civil Procedure Rules 1999* (CPR) and are in line with similar Rules in the OECS, Jamaica, Trinidad and Tobago and Belize. Rules of civil procedure should seek to achieve, at a minimum –

(i) accessibility to justice;

(ii) efficiency in the delivery of justice;

(iii) effectiveness;

(iv) a reduction in the cost of litigation;

(v) intelligibility to the user.

4. The new Rules (the SCR) have introduced to the practice of civil litigation a completely radical, even revolutionary, change in the culture of civil litigation. I shall discuss this cultural change later but first, I shall sketch the historical development of the Rules to explain the context and background that have prompted this radical reform. No innovation or change is easily understood in the absence of a sense of history and an appreciation of the factors that influenced the new direction.

Historical Background

5. In the former Rules of the Supreme Court, 1982, the process of mediation or indeed Alternative Dispute Resolution (ADR) was not provided for. There is an *Arbitration Act, Cap.110*, but the Rules of civil procedure did not incorporate any specific notion of mediation. The old Rules assumed and provided for government-sponsored adjudication through the courts with the legal profession controlling the management of disputes.

6. Although from the days of Plato and Cicero, societies have developed mechanisms outside of the courts for the resolution of conflicts and disputes, the law gave no formal recognition to these mechanisms within the justice system.

7. In *Plato's Laws*, there is this dictum:

> *"Whenever someone makes a contract and fails to perform it, a case may be brought in the tribal courts if the parties have been unable to settle it in the presence of arbitrators or neighbours."*

8. Cicero wrote of arbitration and one can confidently assert that alternative processes to litigation were in vogue in ancient Greece and Rome notwithstanding the existence of courts. More than that, the literature on ADR is replete with examples of societies in Africa and Asia which have traditional practices similar to ADR.

9. During the last century, a conversation started about alternatives to litigation in the common law world. Over time this conversation attracted the label "Alternative Dispute Resolution" with its universal acronym ADR. The conversation began because of dissatisfaction with the delivery of civil justice. Thus Roscoe Pound called for reform of civil justice in 1906 and, after 1945, there has been continuous scrutiny of civil justice in England. Indeed, since 1851, there were approximately 60 reports on aspects of civil procedure and the organisation of the courts in England prior to 1995.

10. Unsurprisingly, that conversation reached the Commonwealth Caribbean. In this region our procedural rules for civil justice were copies of the English Rules of the Supreme Court. Whatever mistakes the English made, we

followed suit! So, I need not emphasise that when dissatisfaction was expressed about the operation of the Rules in England, similar dissatisfaction was expressed in Barbados and the region generally.

11. By 1994 the wheels of English civil justice were screeching to a halt. There was what was commonly referred to as a "litigation crisis". Urgent reform was now an inescapable imperative. The Lord Chancellor appointed Lord Woolf, the then Master of the Rolls, to examine the system of civil procedure in order –

- to improve access to justice and reduce the cost of litigation;
- to reduce the complexity of the Rules and modernise terminology;
- to remove unnecessary distinctions of practice and procedure.

Why was Woolf necessary?

12. The first and pre-eminent problem with the old Rules was the nature of the system. The English system and our system both functioned in an adversarial culture. The court played a passive role and the parties to a case dominated its preparation and conduct. It was assumed that the disputes were a private matter between the parties. The parties and their lawyers had control

of the cases and the role of the court was non-interventionist – very much like an umpire in a cricket match.

13. In his 1986 Hamlyn Lecture "*The Fabric of English Civil Justice*", Sir Jack Jacob writes at p.12:

> *"In short, the English court takes no active part in the initiation, conduct, preparation or presentation of a civil case before or at the trial or on appeal."*

14. I pause to interject here that Sir Jack Jacob taught me "*The Principles of Civil Litigation*" in 1964/65 when I was reading for the LL.M. at L.S.E. He, I think, more than anyone else, was the strongest campaigner for reform of the civil justice system. Sir Jack was, for years, the senior Master of the Supreme Court of England and Wales and Visiting Professor of English Law at University College, London. For more than 30 years he was articulating the urgent need for reform of the civil justice system in lectures and articles. His Hamlyn Lectures in 1986 – 8 years before Lord Woolf – were both an incisive critique of the existing procedural rules and a blueprint for remedial action. It is very evident to me that the Woolf Report and the new Rules were greatly influenced by the work of Sir Jack Jacob.

15. Returning to the failings of the adversarial system and, in particular, the control vested in the parties, Sir Jack says at p.15:

> *"By exalting the role of the parties and their lawyers, the English adversary system has the effect of setting the parties against each other as opponents or antagonists, or even as foes or enemies, who must be vanquished in the forensic combat."*

Other Problems with the Old Rules

16. There were many other problems with the Old Rules. In this address, time will only permit a random sample of some of the problems. For example:

(i) The old Rules were written in arcane legalese and not easily intelligible to the average person of reasonable intellect, far less the Litigant in Person (LIP).

(ii) Their mysticism made them a playground for lawyers.

(iii) At the pre-trial stage, the Rules admitted of a variety of interlocutory applications and procedures which were manipulated by lawyers. There were requests for further and better particulars; applications for interrogatories and discovery of documents. All of these procedures were recognised by the Rules. If, of course, a lawyer was acting for a defendant with a bad case, he would use these procedures often with a view to frustrating the Plaintiff. Inevitably, however, the case was interminably delayed and costs were accumulating at an astonishing rate. When the case finally came on for trial, the litigants were the primary sufferers.

(iv) The problems of high costs and delay – the bane of the civil justice system – were largely due to the excessive abuse of the procedural tools. Lawyers, on behalf of the parties, exploited the procedural rules for their parties' advantage. Cases would be spun out and costs would escalate while the lawyers litigated on technical points or peripheral issues.

(v) In addition to those four examples, there was no requirement that the parties should disclose their cases beyond what appeared in the pleadings. It was an easy thing to conduct a case in a manner in which the other side could virtually be ambushed.

(vi) Under the old Rules, no provision was made for attempts to settle or compromise cases out of court.

17. All of those deficiencies and more in the old Rules led to delay and the creation of an unsustainable backlog of untried cases. In the common law jurisdictions of the U.S.A., the U.K., and the Commonwealth Caribbean, delay and backlog have been at the heart of calls for reform of the civil justice system. It is not a new or unique problem. It will not go away easily and it must be confronted. I am certain that the rules of procedure themselves and the party-driven approach to civil litigation have contributed greatly to delay and backlog.

The Woolf Reforms

18. In 1995, Lord Woolf published an Interim Report "*Access to Justice"* and in the following year, he published his final report. These reports

provide the most far-reaching reforms of civil procedure for over a century. They paved the way for a new culture. Control and management of cases was to be taken from the parties and their lawyers and vested in the court.

19. At para.4 of the Interim Report, Lord Woolf foreshadowed the radical changes in culture in these words:

> *"Without effective judicial control…….the adversarial process is likely to encourage an adversarial culture and to degenerate into an environment in which the litigation process is too often seen as a battlefield where no rules apply."*

20. He reported that the inefficiencies and ineffectiveness of the system were due to the fact that the conduct, pace and extent of litigation "are left almost completely to the parties".

21. Accordingly, his solution was to transfer ultimate responsibility for the control of litigation from the litigants and their advisers to the court.

22. The objectives of the Woolf reforms were:

(a) to avoid litigation wherever possible;

(b) to make litigation less adversarial and more cooperative;

(c) to make litigation less complex;

(d) to make it more intelligible to average person (more user-friendly);

(e) to make it more affordable.

23. In seeking to achieve the goal of cooperation and reduce trial by ambush, the new watchwords are “cards on deck”. Parties must disclose their cases fully before trial.

CPR 1999

24. On 26 April 1999 new Civil Procedure Rules (CPR) came into force in England. They have provided a template for us in the region. The Barbados Rules and those of the other Commonwealth Caribbean States, Jamaica and Trinidad and Tobago, have closely followed the English CPR.

Fundamental Features of the New Rules

25. For non-lawyers, let me make the distinction between substantive law and procedural law. Substantive law defines, creates and imposes legal rights and duties; procedural law, on the other hand, provides the machinery or means by which legal rights and duties may be enforced or recognised.

26. Adrian Saunders JCCJ, encapsulated the underlying intention of the introduction of the new rules at para.[60] of the judgment of the Caribbean Court of Justice (CCJ) in *Knox v. Deane 80 WIR 71*. He said –

> *"The intention of the introduction of the new rules is to produce fairness, a level of predictability of outcome, transparency, less expensive justice, the ready enforceability of judgments and an efficient and effective judicially managed system of litigation."*

27. Let me now show how the new Rules broadly seek to achieve those various objectives.

(a) CARDS ON THE TABLE - TRANSPARENCY

The new Rules cast on the parties a duty to set out their cases fully. Thus, a claimant must include in his claim form or in the statement of claim, *all* of the facts on which he relies. It must be as short as practicable and identify or have annexed to it, a copy of any document which the claimant considers is necessary to his case – R.8.5. A similar duty is imposed on a defendant – R.10.5. In addition to those duties on the parties, there is now a requirement for the parties to exchange *witness statements*. In the case of *East Caribbean Flour Mills Ltd. V. Ormiston Ken Boyea (ECSC Civil Appeal No.12/2006*, Barrow JA said -

> *"To let the other side know the case it has to meet and, therefore, to prevent surprise at the trial, the pleading must contain the particulars necessary to serve that purpose. There is no longer a need for extensive pleadings, which I understand to mean pleadings with an extensive amount of particulars, because witness statements are intended to serve the requirement of providing details."*

(b) INCREASING ACCESSIBILITY TO JUSTICE AND INTELLIGIBILITY

For a start, the Rules are written in simple English. The use of legalese is reduced to a minimum. There are 70 Parts. Each Part deals with a particular aspect of procedure and contains a summary of the contents of the Part. Then each step to be followed is set out in Rules and sub-Rules and, where appropriate, the consequences of failing to follow the Rules are enshrined in the relevant Part.

28. As a result of the new format, the use of simple English and the guidance provided in the various Parts, the new Rules are far more intelligible and user-friendly than their predecessors. Moreover, there is now one way to commence litigation i.e. file a Claim Form. Under the old Rules, there were at least 4 ways viz. file a Writ of Summons, an Originating Summons, a Notice of Motion, even a Petition depending on the type of case!

(c) EFFICIENCY AND EFFECTIVENESS

Efficiency and effectiveness will depend largely upon the attitudes of judges. The strict time limits imposed by the Rules are meant to be observed. They provide a timetable for the progress of an action with a view to having litigation move forward reasonably swiftly. The discretionary sanction of striking out the whole or part of an action is a powerful tool in the armoury of the judiciary. But let me hasten to add, however, that it should be exercised having

regard to the Overriding Objective of the Rules and the court's general powers of management, There are no hard and fast theoretical circumstances in which the court will strike out a claim or decline to do so.

(d) REDUCING THE COST OF LITIGATION

29. I return to *Knox v. Deane* and the judgment of Adrian Saunders JCCJ. At para.[61] he observed –

> *"A change of culture is particularly required for the effective administration of the costs regime embodied in the new rules. The general approach to costs outlined by the new rules is characterised by flexibility, intolerance of abuse and waste, economy, fairness and a proactive role of the judge. The rules stipulate that the costs awarded for any claim or proceeding must fall under one of the four different heads, namely, (a) fixed costs; (b) prescribed costs; (c) assessed costs; and (d) budgeted costs."*

30. And he goes on to explain that one can determine with mathematical precision, fixed and prescribed costs "well in advance of a hearing" so that a litigant will know, at an early date, the extent of his/her liability for costs. Saunders JCCJ said:

> *"'Budgeted costs' refers to a formula applied for and sanctioned by the court where a party is permitted to establish a budget for the litigation. Assessed costs are relevant to interlocutory or procedural applications that could not reasonably have been made at a case management conference. The assessment is done by the court."*

I think that budgeted costs may well be appropriate in heavy cases which began under the old rules and are continued under the new Rules.

31. I have spent a little time on the matter of costs because, under the old Rules, the incidence of costs was quite burdensome, if not crippling. Because of the new formulae for quantifying costs, I think that the new Rules will have the effect of driving down the level of costs. So too, will resort to mediation since the costs of mediation are eminently more reasonable and affordable than the costs of litigation.

32. It should be some consolation to know that, in the twenty-first century, curial and extra-curial devices for the attainment of civil justice will make civil justice less expensive than hitherto.

Key Components of the New Rules

33. I turn now to discuss two key components of the new Rules. These are: The Overriding Objective set out in Part I and the provision for case management set out in Parts 25 and 26.

The Overriding Objective

34. Rule 1.1(1) provides:

> *"The overriding objective of these Rules is to enable the court to deal with cases justly.*

(2) Dealing justly with a case includes, so far as is practicable,

(a) Ensuring that the parties are on an equal footing;

(b) Saving expense;

(c) Dealing with a case in ways which are proportionate to

(i) the amount of money involved;
(ii) the importance of the case;
(iii) the complexity of the issues; and
(iv) the financial position of each party;

(d) Ensuring that it is dealt with expeditiously and fairly; and

(e) Allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases."

35. And Rule 1.2. is most important. It states:

"1.2. The court must seek to give effect to the overriding objective when interpreting these Rules or exercising any powers under these Rules."

36. The Overriding Objective is a statement of intent of the aims and purposes of the Rules. The Rules are to be interpreted and applied so as to achieve the overriding objective. In other words, the Overriding Objective is the benchmark against which applications and orders must be tested.

Case Management

37. The concept of case management was at the centre of the Woolf reports and underpins the whole structure of the new Rules. Although the

adversarial culture of litigation is not abandoned, lawyers will now perform their adversarial roles "in a managed environment governed by the courts and the rules….."

38. Part 25 sets out the objective of Case Management. It is headed "Court's duty to manage cases actively" and provides, in part, two new and important concepts –

> *"25.1(1) The Court must further the overriding objective by actively managing cases.*
>
> *(2) The active management of cases includes –*
>
> ***(a) Encouraging the parties to use any appropriate form of dispute resolution including, in particular, mediation, if the court considers it appropriate, and facilitating the use of such procedures;***
>
> ***(b) Actively encouraging and assisting parties to settle the whole or part of their case on terms that are fair to each party…."***

39. In Part 26 the court is given 21 powers to assist in its management of cases. The new Rules go on to provide in Part 27 for a case management conference to be arranged by the Registrar after a Defence has been filed. It is at this conference that the logistical arrangements for trial are hammered out, an agreed statement of the issues is produced, and a timetable for the progress of the case is set.

40. The essential point which I wish to make is that, for the very first time in the development of rules of civil procedure, the courts are empowered by legislation to take control of litigation. The cultural change away from party-control towards a judge-driven system is now embedded in law. This paradigm shift casts a heavy burden on judges who, as I said, were accustomed to be passive players in the justice game. But it is a burden which can be properly discharged if judges make a conscious effort to become proactive and really take control of litigation. It requires a cultural shift on the part of the judiciary. I think that if we can institute a system under which, as far as practicable, one judge is responsible for a case from start to finish, we will go a long way towards making case management efficient and effective. I daresay that a judge's familiarity with a case should enable him/her to deal with pre-trial issues more efficiently. Energetic case management may well cause lawyers to do more work, more quickly, under judicial scrutiny!

41. In my last address to a full sitting of the Supreme Court on 5 October 2009, I warned then that the days for blaming the failure of the civil justice system on lawyers were over. If the system continues to fail, the judges will have to accept the blame.

42. The second point which I wish to make is that whereas, prior to 2009, courts were not involved in promoting the settlement of cases, the new Rules now oblige them to encourage the settlement of cases. Let me say a few

words about settlement. Settlement is a healthy process. It enables the system to be freed of unnecessary and often hopeless litigation. It reduces the impact of heavy costs and it reduces delay and backlog.

43. But I am well aware that in promoting the settlement of a case, lawyers must be conscious of the psychology of litigants. The instinctive reaction of a Barbadian client to his lawyer's recommendation of settlement is that the lawyer is "selling out". The client will insist on his day in court. Accordingly, it requires skill, tenacity and tact on the part of the lawyer to convince the client that a good settlement is better than a bad lawsuit. Over and above all that, it is a truism that the vast majority of cases are in fact settled out of court. Just think of the number of personal injury cases that occur each year but do not reach the courts! But it is equally true that there is still a large number of cases in the system which could and should be settled.

The Immediate Challenges

44. I have explained to you where we are in the system of civil procedure and how and why we got to this point; to a point where the law authorises the court to manage litigation and promote settlement and ADR. The immediate challenge is to make the new Rules work in the best interests of the administration of justice. I wish to share some thoughts with you.

1. THE NEED FOR PRACTICE DIRECTIONS

45. The new Rules provide the bare bones of civil procedure. They will not function optimally unless they are complemented by relevant Practice Directions providing the details for their operation. Practice Directions are the flesh on the bare bones of the Rules. After I introduced the new Rules in October 2009 I discussed with the Master, Keith Roberts, the systematic preparation of Practice Directions. Ample precedents exist in the English CPR and it would have been an easy, if time-consuming exercise, to have adapted the English Practice Directions. Well, you all know what happened. Within two months after the Rules came into force, I was gone!

2. THE NEED FOR STATUTORY SUPPORT FOR MEDIATION

46. Parts 25 and 26 of the new Rules provide for Mediation but the process of mediation needs statutory support. There are two ways in which this may be achieved. First, in the same way as arbitration is given its own statutory regime in Cap.110, separate legislation should be enacted to cover the administration and practice of mediation. In November 2009, I dared to draft a Mediation Bill using the Trinidad and Tobago legislation as a model. I went through the draft with Mr. Hathiramani, President of the Association, and Mrs. Dawn Shields-Searle. We made amendments to my draft and sent it to the Attorney-General and the Chief Parliamentary Counsel by hand. I never received

an acknowledgement from either person. But I know that there is still no mediation legislation in Barbados four years later.

47. My draft Bill provided for, inter alia, a Mediation Board to regulate mediation and mediators, accreditation, confidentiality, court-annexed mediation, community mediation, a Code of Ethics, and disciplinary matters. I am totally opposed to unregulated mediation. All kinds of imposters will invade the market posing as mediators. The public will suffer. In the draft Bill, I envisaged a central role for the Association.

48. The second, and an alternative method of lending statutory support to the process of mediation, is to adopt and adapt Part 74 of the Jamaica Rules in relation to court-connected mediation. Part 74 establishes automatic referral to mediation in the civil jurisdiction of the Supreme Court. The aims of the Rules in Part 74 are to improve the pace of litigation, promote the early and fair resolution of disputes, reduce the costs of litigation, and improve access to justice through a mediation referral agency. Part 74 contains the essential matters and procedures to be followed upon automatic referral to mediation. The Jamaica model is well worth examination if it is considered that full-blown legislation will be a protracted exercise. Having said that, I am absolutely sure of one thing. Whether the Rules Committee makes relevant rules or a Practice Direction is issued, there must be rules to govern the operation of mediation.

3. MEDIATION IN FAMILY LAW

49. I believe that the introduction of court-connected mediation in family law matters will repay handsome dividends. The disputes which invariably bedevil family law cases are those involving the custody, care and control of and access to children of the marriage and the disposition of matrimonial property. These disputes overload the court lists and conduce to delay and backlog. But it has been my experience, both at the Bar and on the Bench, that these ancillary matters are well-suited to mediation by a neutral third party. Let the experience of the Family Court in Trinidad and Tobago be our guide.

50. When I visited that court some years ago, Archie CJ boasted to me of the success of the court. I was astonished. Quite simply, before the introduction of mediation in the Family Court, 75% of cases were litigated. After the introduction of mediation, 75% of cases were settled. That is a compelling statistic. I have heard recently (and unofficially) that 90% of cases are now being settled. Whether it is 75% or 90%, the statistic suggests that we in Barbados must delay no longer in bringing to bear on family justice the valuable process of mediation. I suggest that a Working Party of Bench and Bar, under the aegis of the Rules Committee, be put together to draft an appropriate set of mediation Rules for family law.

4. THE PILOT PROJECT

51. I have seen in newspaper reports that Sir Marston Gibson CJ is forging ahead to commence a Pilot Project for court-connected mediation. And I know that about 12 persons recently undertook training under the guidance of experts from Jamaica to be accredited as mediators when the project gets underway. The pilot project is a welcome and important initiative and I trust that it will be successful.

5. CONTINUING EDUCATION, TRAINING AND PUBLIC OUTREACH

52. It is critical to the success of the new Rules that there be continuing education and training for the judiciary, the Bar and court staff. During my tenure as Chief Justice, the Judicial Council sponsored and supported lectures, seminars and workshops for the Bench and the Bar over a three year period prior to 2009 to ensure that, when the new Rules were introduced, the principal operatives of the Rules would be conversant with the new regime that would eventuate.

53. Archie CJ advised me that we should allow three years for the new Rules to 'bed down'. It might be a useful and fulfilling experience if, next year, there could be a Retreat between the Bench, the Bar and the Registrar and her senior staff to discuss and evaluate the operation of the new Rules.

54. Speaking of the Bar, I wish to appeal to the lawyers to embrace ADR. I am well aware that, in the early years of the debate about ADR's utility in the court system, there was strong resistance by the Bars in other jurisdictions. ADR was seen as an attack on the incomes of lawyers. Time and experience have shown that those early apprehensions were groundless. In fact, in the developed world, ADR has had a positive impact on the income of lawyers. Apart from the representation of clients in a mediation, there is a role to be played as mediators. In that regard, let me congratulate Mr. Hathiramani, the President of the Association, and his members on their excellent and pioneering work in spreading the word about ADR and training mediators with the assistance of Kennesaw University.

55. While I am discussing mediation and mediators, it may be salutary to mention a recent decision of the English Court of Appeal – *Frost v. Wake Smith and Tofields [2013] EWCA Civ 1960*. That Court of Appeal, per Tomlinson LJ, said at para.[1]:

> *".....The mediator performed a small miracle in producing an agreement in principle which ultimately matured into a perfected agreement pursuant to which the brothers were able to disentangle their interests, albeit they are still in dispute over some of the tax implications of the terms upon which they severed their business relationship. So this unhappy story ultimately bears testimony to the ability of a skilled negotiator to resolve even the most apparently intractable dispute attended by the inevitable animosity of a fractured family relationship."*

In this case, the mediator was a surveyor, not a lawyer!

Later, at para.[37], in respect of the use of mediattion,Tomlinson LJ observed –

> *"Mediation has proved a flexible and immensely valuable process of dispute resolution."*

6. ADR IN THE MAGISTRATES' COURTS

56. There is, of course, a place for ADR in the Magistrates' Courts, especially in the civil, domestic and juvenile jurisdictions. I suspect that it is not well known that, when the *Penal System Reform Act* was enacted in 1998, as part of a suite of policies and initiatives to keep young offenders out of prison, s.20 was deliberately included to provide for the use of mediation in certain criminal cases in the Magistrates' Courts where the offender was under 21 and a first offender.

57. Prof. Albert Fiadjoe, in his book "*Alternative Dispute Resolution: A Developing World Perspective*", welcomed the introduction of ADR principles into the criminal justice system. However, he was critical of the age limit imposed by the Act and the restriction to first time offenders. I was responsible for bringing that legislation and, on reflection, I readily agree that Prof. Fiadjoe is right. I was wrong. The Act should be amended.

58. I have discussed the need for introducing ADR in the Magistrates' Courts generally for two reasons. First, my experience at the private Bar told me that a large proportion of cases in the jurisdictions of the Magistrates' Courts

were ideal candidates for mediation. Secondly, unless we have a comprehensive system of mediation in all courts, we run the risk of being properly accused of perpetuating an elitist system of justice where only those who can afford to go to the High Court obtain the benefits of ADR.

CONCLUSIONS

59. This evening's lecture has afforded me the opportunity to reflect upon the inadequacies of the civil justice system prior to 2009 and to demonstrate how new initiatives of reform have set a platform for remedial action. Outside of arbitration, we were accustomed to one method of dispute resolution only; adjudication through the courts. In the twenty-first century, however, there are alternative processes for resolving disputes, outside the courts and, even within the procedural law itself. In our desire to move forward in the twenty-first century, we can improve the administration of justice by making the fullest use of the new initiatives.

60. If I may use a cricketing metaphor, the pitch is well-rolled and prepared. It is now up to the players to perform. Our Barbadian society has changed. It is becoming increasingly intolerant, impatient, aggressive and violent. Conflicts will not abate. They will get worse. The basic legal and non-legal infrastructure is in place to assist in the resolution of those conflicts.

61. It behoves all of us to do what is necessary to build upon that infrastructure and ensure that the administration of justice responds effectively to the challenges of contemporary society.

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