

## The Nature of Judicial Leadership

**A presentation to 6<sup>th</sup> Biennial Conference of the Caribbean Association of Judicial Officers, Belize City, Belize October 31 2019 – November 2 , 2019.**

“Judicial leadership” may be described as the essential ability and responsibility of judges to inspire the confidence and belief of citizens in the timely and proper administration of justice.

Thus regarded, it will be clear that judicial Leadership is of crucial importance. As has been famously declared *“A judiciary of undisputed integrity is the bedrock of democracy and the rule of law. Even when all other protections fail, the judiciary provides the bulwark against any encroachments on rights and freedoms under the law”*<sup>1</sup>.

The traditional view of the judicial role – that of decision maker - may not however, be traditionally regarded by most people as including this leadership role. I hope to demonstrate that the traditional view misunderstands the judicial role in the modern world.

In the age of information, transparency and accountability in which we live, it is indisputable that the Judiciary is expected to ensure the trust and confidence of the public in the administration of justice. This demands that the Judiciary must be always vigilant to maintain and exercise their crucial role in democratic society as one of the three co-equal branches of the State.

The role imposes upon the Judiciary an institutional as well as an individual duty, to safeguard the Rule of Law, by enabling effective

---

<sup>1</sup> See the Preface to Commentary on the Bangalore Principles of Judicial Conduct by the Judicial Integrity Group- published by the United Nations Office on Drugs and Crime: [www.undoc.org/res/ji/import/i](http://www.undoc.org/res/ji/import/i)

access to justice. And it is implicit in its leadership role that the Judiciary also appears constantly to be prepared and committed to fulfill these crucial responsibilities. As the adage goes, justice must not only be done but must always appear to be done.

It is also axiomatic that the attributes of judicial leadership are those which also define good judges - integrity, independence, impartiality, propriety, equality and competence and diligence<sup>2</sup> - and it is by their manifestation and fulfillment by the judges that the Judiciary is recognized and regarded as an effective institution of the State.

Experience also shows however, that the institutional challenges presented to the Judiciary for the fulfillment of its responsibilities can often be uniquely difficult. This is especially because, unlike the two other branches of Government, the Judiciary has no direct say in how national budgets are appropriated and allocated.

Throughout the Commonwealth (and indeed in many other States) the result of this lack of representation is appalling such that now, nearly forty years since the United Nations agreed in 1985 upon basic principles which underpin judicial independence<sup>3</sup> and called upon governments to implement them, a vast majority of national judiciaries do not have the necessary fiscal autonomy required for the assurance of their independence in the performance of their responsibilities.

At the extreme, many national judiciaries must also operate in environments of economic austerity and political uncertainty, environments which only exacerbate the challenges they face in the fulfillment of the judicial role.

---

<sup>2</sup> Bangalore Principles of Judicial Conduct

<sup>3</sup> Adopted by the Seventh United Nations Congress held at Milan in September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

Yet, regardless of the circumstances, the judicial institutions and the judges themselves must remain steadfast in maintaining their independence, even while promoting the effective administration of justice and the public trust and confidence in the judiciary.

Citizens around the world have varying impressions of the extent to which their judiciaries are willing and able to fulfill this leadership role.

And there are various published rankings which measure these impressions.

For instance, the World Justice Project recently reported that more than 5.1 billion people- or approximately two thirds of the world's population- are not getting the justice they need for both everyday problems and severe injustices, and approximately 1.4 billion people have unmet civil or administrative justice needs<sup>4</sup>.

The World Justice Project also recently published its Rule of Law Index scoring 126 countries for their effectiveness in ensuring access to justice and the rule of law.

It will come as no surprise that the rich countries, such as Canada, the Scandinavian countries, Japan and Australia ranked highest, while the poorest countries in Africa, Asia and the Americas, ranked lowest.<sup>5</sup>

Our CAJO member countries came within the middle of the rankings.

The correlated impact of course, is that the effectiveness of our judicial leadership will, at best, be perceived according to the perception on how justice is administered. In our case within CAJO therefore, not as world leading, but as middle of the road.

---

<sup>4</sup> World Justice Project. Measuring the Justice Gap: A People-Centered Assessment of Unmet Justice Needs Around the World 2019: <https://worldjusticeproject.org/our-work/research-and-data/access-justice/measuring>

<sup>55</sup> <http://data.worldjusticeproject.org>

Yet this impression would not reflect the historic realities. As I was privileged to have been able to note in a lecture given in 2011<sup>6</sup>, the independent administration of justice by the judicial systems of the Commonwealth Caribbean is a crucial reason why our countries are regarded as politically stable, free from military interference in civilian affairs and relatively respectful of their citizens' civil and political rights. While there are real and justifiable concerns about chronic delay in the administration of justice caused largely by lack of resources, most citizens regard Commonwealth Caribbean judiciaries as very trustworthy.

But this belief may not be taken for granted. Regardless of the means afforded to the judiciary, this trustworthiness is the institutional leadership role that our citizens will always deserve and expect us to fulfill.

It follows that there are clear and distinct implications for the responsibilities of the judicial leadership role within our jurisdictions.

The first, it might be argued, is that as judges we must continue to press and agitate for the resources- the fair share of the national budget- which will allow our judiciaries to fulfill their constitutional mandate, in accordance with the needs and expectations of our citizens.

While our Governments have long since committed to the UN Basic Principles, only a few of our judiciaries<sup>7</sup> are allowed to control their own budgets. Most are required to seek ministerial approval for expenditure even after their budgets are allocated. In practice this

---

<sup>6</sup> "The history, meaning and importance of judicial independence: A Commonwealth Caribbean Perspective 9with emphasis on the Cayman Islands): [www.caymanjudicial-legalinfo.ky/publications/papers](http://www.caymanjudicial-legalinfo.ky/publications/papers).

<sup>7</sup> In the Cayman Islands this is underpinned by section 107 of the Cayman Islands Constitution Order 2009 which provides that : " The Legislature and the Cabinet shall uphold the rule of law and judicial independence, and shall ensure that adequate funds are provided to support the judicial administration of the Cayman Islands".

often results in crass interference by the executive with the operational independence of our judiciaries.

Further, in order to fulfill its leadership role, the judiciary must always nonetheless, strive for improvement in the manner of our dispensation of justice.

This means that, at the organizational level, we must constantly review and scrutinize the way we work. The administration of justice is always a work in progress. We must ask ourselves whether we employ the right procedures and processes, whether we have the right systems which, in today's world, will include the use of technology; and indeed, whether as judges we have the right skills and training to deal with the increasingly complex issues coming before the courts.

This will also mean that the judiciary must possess those attributes of leadership that allow for the building of collaboration, co-operation and collegiality with the other branches of government and with civic society. Effective judicial leadership requires the ability to influence others towards the achievement of the common goal of the timely and effective administration of justice. The ability to work with people is an indispensable attribute of the modern judicial leader.

It is only fitting that I should note that there are, within our Region, lasting and important examples of effective institutional judicial leadership. Take for instance the role of many of our CAJO judiciaries in the spearheading and implementation of legal, procedural and policy reforms. The introduction of the modern civil procedure rules and sentencing guidelines are but two of many such reforms. The introduction of computerized court registries and case management systems are but another example of modernization at the institutional level.

Such initiatives reflect upon the institutional leadership role of the judiciary but what about the individual leadership role of the judges?

It is axiomatic in today's world, that judges, like other public leaders, are expected to demonstrate their professional standards, ethics and integrity. In other words, leadership by example.

The judge must therefore demonstrate the knowledge, competency and proficiency in the resolution of the type of dispute engaged before the court. In this regard, an important benchmark is the delivery of judgments within a reasonable time, suitable to the degree of complexity of the case.

The judicial officer must also show the ability to work with others for the appropriate conduct of proceedings before the court. In this respect especially, it is sometimes forgotten that courtesy and patience – those so-called “soft skills” - can be important attributes of effective judicial leadership.

Finally, speaking as a long-serving Caribbean Chief Justice, there are recognizable leadership attributes or skills which will be expected of a Head of Judiciary:

- The welfare role- a head of judiciary has responsibility for ensuring or protecting the welfare of colleagues and administrative staff within the judicial administration. This can be a most daunting task, especially when one must understand and evaluate the concerns of others with whom one is simply *primus inter pares*- first among equals!
- The delegation role, that which requires the delegation of responsibilities, including for the assignment of cases or even, in our geographically more diverse states, the assignment to courts in other territories away from home base.

- The demonstration of good governance, with all that that implies, not least the ability to be even-handed and fair.
- The demonstration of independence, no matter what the consequences, including the need publicly to criticize the Executive for unwarranted incursion into the independence of the administration of justice, if and when it occurs.

There have been outstanding examples of these aspects of judicial leadership from within the ranks of our CAJO Heads of Judiciaries but one must spare embarrassment by calling names. Instead, I can with more equanimity, point to the example of Justice David Kenani Maraga, Chief Justice of Kenya, for his recent brave and proper stance against executive interference with judicial independence, in relation to decisions on the results of the Kenyan elections. This was of such significance, that a number of our HoJs sent him a strong letter of support.

Hon Anthony Smellie

Chief Justice

The Cayman Islands.

12 October 2019