



The Communications Unit

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Feature Address by the Honourable Senator Anand Ramlogan at Civil Law Stakeholders' Conference held by the Ministry of the Attorney General at Ambassador Hotel and Conference Centre, St. James, Trinidad, 24th March, 2011.

Introduction / Acknowledgements / Protocols- (Mr Chairman, Permanent Secretaries , Deputy Permanent Secretaries, Commissioner of Prisons, Deputy Commissioner of Police, Solicitor General, Chief Parliamentary Counsel, Chief Personnel Officer, Director of Personnel Administration, other heads of departments, members of the media, colleagues all etc) ... a pleasant Good morning.

We are here today to discuss an important issue for the State. How can Ministries, departments and Commissions best use the Legal System to ensure that whatever the final outcome the Government, the State has been represented fairly, efficiently and Cost effectively. The former system of civil litigation was regulated by the Orders and Rules of the Supreme Court (as amended), commonly referred to as "the Redbook." For the most part, these rules were similar to the 1975 Rules used by the Royal Courts of Justice in England. While they regulated civil litigation fairly effectively, both here, and in the other Caribbean islands, and even in English Courts, they were found to give rise to many difficulties that encumbered the quick and effective resolution of disputes. For example, the former system was slow, it was very adversarial, it was very expensive in that many times the costs incurred exceeded the value of the claim, and the pace of litigation was controlled by the parties and their attorneys.

In the mid 1990's attempts were made to reform civil practice. In England, a committee was set up under Lord Woolfe, who presented a report entitled "*Access to Justice*" in which he made a number of recommendations, many of which form the basis of the New Civil Rules. On the local front, there were reports done by Gurley, by Rowat, and a 1997 World Bank Report on Judicial Sector Reform, all of which advocated a comprehensive review of the 1975 Supreme Court Rules. Subsequently, Dick Greenslade was retained as a consultant to make recommendations towards reforming the civil litigation process and procedure. After numerous meetings, sessions and ad hoc committees, the **Civil Proceedings Rules 1998** - referred to as the "New Rules" or CPR- were presented.

NEW RULES AND CHALLENGES

The New Rules guiding our civil law practice and procedure were slated to come into force in 1999, but one may recall that at that time there was considerable opposition from the members of the Legal Profession, and after numerous 'adjournments', their implementation was put on an indefinite hold. However about six years later the new rules called the Civil Proceedings Rules or CPR were introduced at the commencement of the 2005 Law Term, thus September 16th, 2005. All stakeholders in the Justice system had by then come to appreciate the need for the system of civil litigation to evolve and improve.

One of the main purposes of the New Rules was to make civil litigation more readily accessible, with speedier resolution including settlement of claims wherever possible and access to alternative methods of resolutions, such as mediation, referee arbitration and the like. There is express provision in the new Rules that their overriding objective is to enable the court to deal with cases

justly and expeditiously. The Court now exercises greater control over the litigation process and from an earlier stage.

The Ministries and Government Departments that the Attorney General or Solicitor General represents in Court need to be onboard with this the new more controlled environment. The Attorneys representing you need access to information, files and relevant witnesses much more quickly and readily. They need to be provided with instructions in a timely manner, so as to best represent your best interest. The Attorneys in this Ministry are committed to serving you, but at the same time, they require a commitment from you to assist them wherever possible. Over the last six years that the CPR have been in existence there have been some unfortunate outcomes, driven by and large by the breakdown in communications between ministries and Attorneys in our civil Chamber (Solicitor General and Chief State Solicitor Office). For this reason we have arranged this, our second Stakeholders Conference today, for it has become pellucidly clear that we cannot go on meandering in the conduct of civil litigation on the State's behalf. It cannot be "business as usual". The first conference was held on September 14th 2005, two days before the commencement of the New Rules. After six years of operation we feel that the time has come for a review of our best practices. There is need for a renaissance as it were in our responses to the Court to accommodate early and prompt filing of court documents and this necessitates earlier access to state documents and witnesses in your employ. This may require, among other things, that your Ministry or Department re-assess how it stores and retrieves its records and files, and which officers are to be accountable for the same. Further, far too often police, prison and other officers who are being sued or are vital witnesses in High Court matters have been allowed to proceed on long leave out of the jurisdiction without any contact information. We hope to identify the function of Permanent Secretaries and Deputy Permanent Secretaries as first responders in the

ministries to take charge and ensure that litigation and Pre- Action protocols filed or served against the State are dealt with promptly and effectively.

The Judiciary has highlighted in judgments that the CPR has changed the landscape of Civil Litigation. Public Officers and Public Officials in Ministries/Departments now have to play a more active role in civil proceedings by or against the State. Instructions have to be sent expeditiously to the Chief State Solicitor. Public Officers and Public Officials must be aware of the part they have to play in Case Management Conferences, Pre-Trial Reviews and Mediation. This applies to requests under the Freedom of Information Act as well. There must be more communication between the Ministries/Departments and the Attorney General's Chambers (the Chief State Solicitor and Solicitor General Departments).

Under the CPR, Public Officers and Public Officials *must* take ownership of the civil proceedings in which they are involved.

A CASE IN POINT

The ministries and the Attorney General's Civil Law Chamber must forge a stronger partnership bolstered by crucial support from the legal advisers attached to these ministries if the State is to improve its record of performance in civil litigation. One case stands out to underscore what can happen when communication breaks down between ministries and the civil law chamber. It is the *Universal Projects Case* where a breakdown in communication between the Ministry of Works and Transport and the Attorney General's chamber resulted in deadlines not being met by the State in filing its court documents, specifically its defence. When the State applied for an extension of time to file its defence the

court was unsympathetic being very critical of the delay and for this reason ruled against the State. The State found itself being penalised for its non-compliance resulting in costs and damages in the vicinity of thirty million dollars being ordered to be paid. The matter is currently under appeal. Cases like these underscore why we now say that it cannot be “business as usual” and a new order and partnership have to be forged between ministries and the Attorney’s General civil law chamber to identify and implement best practices. This has to begin like yesterday.

TODAY’S AGENDA THEREFORE

The focus of today’s sessions will thus be on building this new partnership. It must be a partnership built on the solid foundation of mutual trust and respect so the first presentation will be on the Client/Attorney relationship. State witnesses be they police, prison officers or Ministry of Works’ engineers have to understand that State Attorneys are not the enemy but your attorney, your agent and that there exists a client/attorney privilege where what is revealed to us is confidential and we will use it to draft a witness statement to represent your best interest.

The current relationship is characterised too much by secrecy, cover-up, retreat and distrust. This has to change. We will therefore be discussing with you what assistance our Attorneys will need from you PSs and Deputy PSs along with your legal advisers from the Pre-action protocol stage to the trial or mediation stage under the new rules of the CPR so that we can establish some best practice protocols in how we network together in the future to get fuller co-operation of state witnesses and quicker access to documents in your custody and control but more importantly so that we avoid the costly outcomes highlighted in the Universal Projects Case.

There will be a presentation on the requirements under the Freedom of Information Act and how we can best meet them as well as an introduction to a new thrust under the CPR, that of Alternative Dispute Resolution or ADR, highlighting here the unique challenges this poses to the State in terms of deciding who negotiates for ministries and within what acceptable financial limits. Finally our commercial Law department will give a short overview of what type of brief from you can best equip them to expedite early drafting or vetting of your contracts, your leases and other agreements, notably international loan agreements and agreements for the Ministry of Energy.

FUTURE THRUST

The Attorney General's Chambers is committed to re-engineering itself to meet your highest expectations as well. Staff shortfalls are being catered for by aggressive recruitment of the ideal mix of new and experienced staff at all levels to better serve your interest and the public interest as well. Vacancies will be filled and staff promoted to give incentive to personnel where low morale threatens to derail productivity and a higher, hungrier work ethic. (*here give details of recent or imminent additions to professional staff undertaken by the MoAG*). In this regard long overdue internal reform will also soon take place where the two departments (Solicitor General and Chief State Solicitor) will be merged to give truer meaning to the reality of fusion of the profession. The department will be realigned into units such as the Litigation Unit, the Commercial Law Unit, the Advisory and Debt Recovery Unit etc to fulfil our several obligations and functions. This will result in a leaner more efficient machine.

CONCLUSION

In concluding, the Attorney General's Chambers is repositioning itself to deal with the high expectations of the State held by Trinbagonians. The Civil Proceedings Rules have fundamentally changed the face of litigation in Trinidad & Tobago and we look forward to partnering with you in dealing with this great challenge.