I am quite pleased to be a part of this distinguished gathering today to deliberate on a topic which I hold to be fundamental to our role as Judicial Officers: the issue of training. I am intrigued by the choice of our theme: trust and confidence and legitimacy. It neatly encapsulates the image we must foster and maintain in the eyes of our societies if Judges and Judiciaries are to remain relevant as the sustainers of balance and the bulwark against the spread of disorder and anarchy. Today I want to take the time allotted me to explore this notion of ‘legitimacy’.

When persons access the courts, they are not merely seeking a resolution of their disputes. They are in pursuit of a broader notion of ‘justice’, which is located in some general societal consensus about what is fair, right or morally acceptable. To the extent that individual perceptions about rightness differ, our challenge is to demonstrate some standard of legitimacy that is grounded in something more substantial and credible than the caprice of the individual Judge hearing a case, and that attracts public trust and confidence. The objective of judicial training therefore is to locate, articulate, communicate and ultimately to apply those principles of rectitude to which our personal preferences, desires and emotions must be subordinated. We call it the rule of law.

Where do we get this notion of the rule of law?

I come from an Anglophone common-law jurisdiction. Like many similar jurisdictions, we trace our legal roots back to the Magna Carta. We see there the seeds of what we might today call fundamental human rights or ‘charter rights’:

“First, We have granted to God, and by this present Charter have confirmed, for us and our Heirs for ever, That the Church of England shall be free, and shall have her whole rights and liberties inviolable. We have granted also, and given to all the freemen of our realm, for us and our Heirs for ever, these liberties underwritten, to have and to hold them and their Heirs, of us and our Heirs for ever”;


And what were some of those underwritten liberties?

“No Freeman shall be taken, or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer (delay) to any man either Justice or Right”

Some 575 years later in the American Declaration of Independence we see those ideas developing in something closer to their modern form: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —“

By contemporary standards, the England of the Magna Carta was not a particularly ‘just’ society. The rights and freedoms that it spoke of did not extend to all men or to women. Many centuries later, they still bought and sold slaves. Even the notion of what constitutes a crime was different, so one could be prosecuted for committing adultery. And yet, they evolved.

The reason that notions of crime and justice were able to evolve is because we were not so much societies bound by laws as we were societies governed by ideals and principles. And it is we, as interpreters of our constitutions, who give life to those principles. We are not merely reflectors of popular opinion, we must sometimes help to shape it.

We often forget that many of the most important advances in the law that we now regard as self-evident and normative from a moral standpoint were made by court rulings that were widely unpopular at the time, not by Parliaments. Judge-made law is only accepted as legitimate if there is some first order claim to legitimacy. No society would cohere for very long if the only justification we could offer for requiring people to obey laws and rulings of the courts was they fact that they are laws and rulings of the courts.

The point of all this is that, whatever our school of jurisprudential philosophy, there is undeniably a moral component to the task of judging, and one of the tasks of the judicial educator is to sensitize
judges to the danger of assuming that their personal sensibilities or prejudices are normative, to raise their awareness of social and economic realities of fellow citizens that may be outside the scope of their personal experience, to educate them concerning current international norms and best practice and to equip them with the tools of argumentation that would make the articulation of their reasoning processes in their judgments both sound and transparent.

I can do no better at articulating the challenge that faces us than a quote from the distinguished Honourable Chief Justice of Western Australia and Chair of the National Judicial College of Australia, The Honourable Wayne Martin, who is with us today, he has said that “Public confidence depends upon Judges doing our jobs well and efficiently. It also depends upon judicial officers being sensitive to the needs of the communities which we serve and upon our ability to effectively communicate to those communities, what we do and why. It depends on us being sensitive to the social context in which we perform our duties, and it requires us to perform them in a way which is relevant to the communities which we serve. If we do all that, we will enhance the public confidence of the community in the judiciary, and that is ultimately the vital protection of our independence. And of course, the purpose of judicial independence is not to provide a benefit to the judiciary, but to enable the judicial system to function fairly with integrity and imparitality.”

Most of our countries have written constitutions. When we adopted our Constitutions, we did two very profound things. The first was that, by declaring them to be the Supreme Law, we placed all other laws in a context by which their legitimacy is to be judged.

The second and equally important thing was that we tied the legitimacy of our national institutions, including the Courts to their ability to deliver ‘justice’ in that broader sense that includes consideration of social and economic rights [and here I distinguish providing ‘justice’ from providing a ‘legal remedy or procedure’].

Thirdly, the courts as the institutions charged with the responsibility of interpreting and applying the constitutions became the final arbiter of what is just and ‘constitutional’.

And what is this ‘justice’ of which we speak?
I like the Nuremburg definition which hearkens back to the magna carta and states: ‘**Justice**’ is understood as meaning accountability and fairness in the protection and vindication of rights, and the prevention and redress of wrongs. Justice must be administered by institutions and mechanisms that enjoy legitimacy, comply with the rule of law and are consistent with international human rights standards. Justice combines elements of criminal justice, truth-seeking, reparations and institutional reform as well as the fair distribution of, and access to, public goods, and equity within society at large’

Legitimacy, in so far as it is measured by general respect for and compliance with lawfully constituted authority, requires that citizens remain confident that they will be protected from injustice by whomever perpetrated, including organs of the state. That is what, as judges, we are trained, and obliged, to preserve. It goes without saying that the traditional legal education most of us would have received 20 or 30 years ago simply did not equip us to fully discharge that responsibility in a contemporary context.

Dear Colleagues, the lives of the people we serve on a daily basis are affected by never ending and increasingly rapid changes that continue to sweep the entire world. This has been the most fundamental characteristic of the early part of the 21st century. While it can generate promises of hope and of new beginnings, it also presents unprecedented challenges, especially for a profession whose existence and sense of stability and dependence on precedent has relied primarily on an unchanged world order. It is our task to lead the response.

In the words of two Australian legal scholars: “**This process of globalisation is part of an ever more interdependent world, where political, economic, social and cultural relationships are not restricted to territorial boundaries or to state actors, and no state entity is unaffected by activities outside its direct control. Developments in technology and communications, the creation of intricate international organisations...and the changes to international relations and international law since the end of the Cold War have profoundly affected the context within which each person and community lives, as well as the role of the state.**” [and by extension the Courts]

The fact is that new and emerging technologies have spawned litigation in areas of law that did not exist 20 years ago. New social media have dramatically transformed the way in which we interact and altered expectations about everything from how markets work to notions of privacy.
In order to maintain relevance and consequently, legitimacy, we have to keep pace. We must be able to understand the context in which disputes that are brought for our adjudication arise.

As much as we may think it obvious, I do not belive we can overstate the need for us to be prepared to exist and serve in the changing environment. Judicial training and continuing education is at the heart of that preparation. Training and continuing education of our judges and judicial officers must transcend traditional curricula and go further to forge an intimate connection with the social context for which it is to be applied. This connection is what will inspire public trust and confidence, and more than that, truly legitimise our institutions and our practice in the eyes of the communities we serve.

Knowledge of the law is only one item in a judge’s tool kit. The judge of tomorrow must be an efficient manager versed in case management techniques and litigation support technology. He/she must be reasonably knowledgeable about emerging science and technologies.

One of the things that I love about being a Judge is that I am constantly learning. Each new case that pertains to a previously unfamiliar area of human activity forces me to take a crash course in the relevant learning. In recognition of this, I would like to take my few remaining minutes to offer for your consideration, some areas upon which we might focus as we plan our future education programs. For convenience I will refer to the internationally recognised ICEE acronym.

First, Impartiality – the required judicial character and state of mind. This requires not merely an absence of conscious corruption, high moral standards and a desire to be fair. There must be a deeper self-analysis and contextual education to root out unconscious bias. Particular challenges will have to be faced with respect to gender and sexuality issues, hiv aids and discrimination law generally. Only education can bridge that gap.

If we accept the definition of justice that I postulated earlier, competency implies a basic level of understanding of science, economics, sociology and psychology as well as written and procedural law. It is all contextual. We may have studied these subjects at university but that was a long time ago. I doubt you would take your car to a mechanic who has only studied the technology of the 1980’s. With the threat of global warming for example, environmental issues, especially local and international disputes over basic needs like potable water will become frequent subject matter for our courts.
Efficiency in the age of on-line commerce requires quicker response times and more user friendly procedures to meet the expectations of an increasingly sophisticated and demanding clientele, in which the number of self-represented litigants is rising. Mastery of litigation-support technology is a must. Increasingly, the judge is being seen as the manager of a team that co-ordinates all the resources made available through court administrators to ensure the most timely, just and efficient disposition of cases. We cannot assume that all of us come to the bench with the kind of management skills needed for the modern court or court-room.

Finally, on the question of effectiveness: One aspect of judicial effectiveness is the collective responsibility of listening and responding to the community’s legitimate complaints about the justice system and using our influence to effect change. Concerns about effective access to justice and enforcement of judgments are very much our business. I am delighted that one of the major themes of this conference is the role of judiciary-based applied research centers. I am grateful for the opportunity to have co-authored a paper on this subject and I look forward to the discussions that will follow later this week.

I can speak to our own experience in Trinidad and Tobago. All of these considerations that I have mentioned underpin our training efforts. When we set about creating our Judicial Education Institute eight years ago, we undertook the task with the firm understanding that:

- a comprehensive strategy of judicial education provides an essential and viable means to strengthen the Judiciary’s capacity to dispense justice and meet its responsibilities for judicial governance

- the unique nature of Judicial and Court Administration requires special training and skills tailored to provide what is needed to strengthen institutional capacity and administer judicial services;

- judicial education must be led by Judicial Officers and function under judicial control, so as to ensure not only that the independence and impartiality of the Judiciary is preserved, but also that members of the Judiciary are accepting of the relevance and value of programmes;
and the Judiciary must be committed to being a learning organization able to respond to change, embrace new ideas, encourage learning growth, development and innovation, facilitate excellence, value all members and encourage communication and sharing, if it is to discharge its responsibilities to society.

These guiding pillars enabled us to build a solid case for such an establishment. They have inspired the implementation of over 170 specific training and education programmes covering a wide range of topics as part of a high quality of service to the Judiciary of Trinidad and Tobago and its stakeholders. Given the successes we have had, we hold them still highly relevant today, and are eager to share our experiences and exchange lessons learned with all of our international colleagues so that we can help each other to serve our societies better.

Thank you for the courtesy of your attention.

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