



GOVERNMENT OF JAMAICA

Attorney General's Sectoral Presentation 2017



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Attorney General of Jamaica



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GORDON HOUSE

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TABLE OF CONTENTS

Title	Page
1. Acknowledgements	4
2. The Role of the Attorney General	4
3. Centralization of Legal Services	7
4. The Constitutional and Legislative Affairs Division	10
5. The International Affairs Division	12
6. The Commercial Affairs Division	14
7. The Litigation Division	15
8. The Judgement Debt	19
9. The General Legal Advice Division	21
10. Concluding Comments	22

Acknowledgements:

1. **Mr Speaker-** As the representative of the people of the St James West Central Constituency in this Honourable House, entrusted with the additional role of principal legal adviser to the Government of Jamaica, I remain humbled by the votes of confidence and the trust reposed in me by my constituents and by our Party Leader and Prime Minister -the Most Honourable Andrew Holness, ON, MP.
2. I am deeply indebted to all my companions on this amazing journey. To my friends and family, especially my husband - Ian, I say thank you for your love, support and understanding. To my constituency team, I say thank you for helping me to better serve the constituents. To the staff of the Attorney General's Chambers, headed by the Solicitor General, and especially my secretary and personal assistant, I also say thank you. Although our workload at the Chambers is very heavy and our resources are inadequate, our collective commitment is without question.
3. The Honourable Delroy Chuck, QC, MP, Minister of Justice is most congenial and collegiate. It is a delight to have him as my Minister. Within the Cabinet, I appreciate his fierce defence of the people who work within the various departments of the Ministry of Justice. It is a real pleasure to work alongside him.
4. I also want to express my gratitude to the Close Protection Officers (CPOs) assigned to me. I commend them for the high level of professionalism with which they discharge their duties, and for going beyond those duties, to ensure my safety and comfort on our regular commutes between the constituency in St James and the Chambers and Parliament here in the Corporate Area.
5. **Mr Speaker-** My last presentation gave rise to numerous questions in the court of public opinion about the role of the Attorney General and in particular, how I, as current holder of the office, discharge my duties. I was even depicted in cartoon-land as the gun-wielding vigilante, on the verge of shredding the Constitution to pieces. Those who harbour doubt about my personal unwavering commitment to ensure that the machinery of Government acts lawfully and legitimately really should get to know me better.
6. Admittedly, as a non-minister, the Attorney General is in a somewhat anomalous place in these debates. Notwithstanding, I welcome the opportunity to speak to pertinent issues relating to the Chambers. I should very much like to use it to shed further light on the role of the Attorney General, beyond what is generally accepted and readily understood.

The Role of the Attorney General:

7. The role of Attorneys General was specifically addressed at a meeting of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions, which I attended, in September 2016, in London, England. The Commonwealth Secretariat

clarified and reiterated that within the British Commonwealth tradition, the work of Attorneys General cross-cuts all of Government, with very special responsibilities for the promotion and preservation of the rule of law. While definitions of the “rule of law” remain contested, I favour the one offered by the Secretary-General of the United Nations, who describes it as:

“a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”¹

8. This definition places emphasis on the accountability of all individuals and institutions to the law. It reveals two key functions of the rule of law. Firstly, the rule of law protects citizens from the State by curbing the arbitrary and inequitable use of State power, as law also binds the sovereign. Secondly, the rule of law protects the lives and property of citizens from infringements or assaults by fellow citizens.

9. The promotion of the rule of law at the national and international levels is also identified as one of the targets by which Sustainable Development Goal 16 on Peace, Justice and Strong Institutions is to be measured.² From this, the Commonwealth Secretariat has articulated the view that the rule of law serves the dual role of:

- (i) an end of development, in that the 2030 Agenda recognizes its importance as one of the economic, social and environmental aspects of sustainable development; and
- (ii) an enabler in the achievement of the Sustainable Development Goals.³

10. Goal 16, of the Sustainable Development Goals (SDGs) adopted by the United Nations (UN) General Assembly on September 25, 2015, commits States to:

‘Promote peaceful and inclusive societies for sustainable development, provide access to Justice for all and build effective, accountable and inclusive institutions at all levels.’

Target 16.3 of Goal 16 provides that States aim to:

‘Promote the rule of law at the national and international levels and ensure equal access to justice for all.’

¹Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies, UN Doc. S/2004/616, para 6.

²United Nations General Assembly Resolution 70/1, Transforming our World: the 2030 Agenda for Sustainable Development, UN Doc. A/RES/70/1 (21 October 2015), page 25.

³Commonwealth Secretariat, Background Papers Background Paper SOLM(16)5 and LMSCJ(16)5, The rule of law and sustainable development; Meeting of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions (2016), Outcome Statement, para 2 <<http://thecommonwealth.org/sites/default/files/press-release/documents/FINALLMSCJOutcomestatement.pdf>>

11. It is also recognized that the rule of law requires “measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”⁴
12. **Mr Speaker-** With the commitment of this Holness Administration to work to move our people from poverty to prosperity and with a laser-like focus on economic growth and job creation, I have been examining the relationship between the rule of law and sustainable development from this perspective of the rule of law as a development end, as well as a means to sustainable development.
13. The relationship between the rule of law and sustainable development may be analyzed through the lens of the three rule of law components of legal frameworks, institutional capacity and legal empowerment. Each of these three components intersects with the economic, social and environmental dimensions of sustainable development.
14. Legal frameworks must be supported by institutional capacity, and therefore investment in institutions such as court systems, commercial dispute resolution mechanisms, justice and security institutions, and the capacity of individuals to understand and consistently and fairly apply the law, is required.
15. The development of effective legal institutions must be supported by the promotion of open and inclusive legal empowerment. Individuals require access to information about procedural rules, governance standards, and market information in order to make use of legal institutions, and they must not face obstacles to dispute resolution systems, such as prohibitively high user fees or complex administrative arrangements.
16. Where individuals benefit from legal empowerment, they are more easily able to protect and advance their rights and interests as economic actors in development processes.
17. It is against this backdrop and within this context that I aim to guide the actions of the Holness Administration. This update focuses on some of the critically important work done by the Chambers in support of the wider work of the Government, over the past year.
18. It is important to remember that lawyer/client privilege attaches to most of what we do. As such, I am constrained in how much detail I can disclose on some matters.

⁴Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies, UN Doc. S/2004/616, para 6.

Centralization of Legal Services:

- 19. Mr Speaker-** In my last sectoral presentation, in July 2016, I disclosed that the centralization of legal services was a plank in the Public Sector Modernization Programme of the Government. In January 2016 the Cabinet of the previous Administration had approved the proposed framework for the centralization of legal services. The implementation of this framework was included in the Government of Jamaica's November 2015 Letter of Intent to the International Monetary Fund (IMF). Our Administration committed in a later Letter of Intent to the IMF, dated August 30, 2016, to centralize legal services within the central Government, by March 2018, under the office of the Attorney General, with support from the Justice Undertaking for Social Transformation Programme (JUST Canada). This commitment to centralize legal services was also recently mentioned in the Government's March 29, 2017 Letter of Intent to the IMF for our precautionary Stand-By Arrangement, which was approved by the Executive Board of the IMF in November 2016.
- 20.** In July 2016 I had also informed this Honourable House that Cabinet would then be shortly reviewing the proposal for centralization of legal services, to determine the way forward. You would recall the stated goals of centralization of legal services include:
- a. Increased Efficiencies;
 - b. Consistent and Quality Legal Advice and Services Throughout Government;
 - c. Timely Delivery of Legal Services;
 - d. Shared Knowledge and Openness;
 - e. Rewarding Career Paths and Opportunities;
 - f. Achieving Long Term Economies of Scale;
 - g. Operational Flexibility.
- 21.** I am pleased to advise that in September 2016, experts, provided by the kind assistance of the Government of Canada, through the JUST Canada Programme, completed and presented to the Chambers and the Ministry of Justice a detailed and comprehensive proposed phased implementation plan, which was eventually approved by Cabinet in January 2017. The Government of Jamaica once again expresses its thanks to the Government of Canada for their commitment and continued support for the reform of our justice sector.
- 22.** The Phased Implementation Plan for the Centralization of Legal Services, as approved, will involve a reorganized and expanded organizational structure for the Chambers. One important aspect of the new structure is the creation of an additional three Deputy Solicitor General (DSG) posts, moving the total to five, from the current two. Going forward, each Deputy Solicitor General will head a specialist Division and manage a number of the Legal Service Units of the line Ministries. Legal Officers in those Ministries and their Departments and Agencies will become a part of the Chambers, although they will remain physically located in the Ministries.

- 23.** The intention is to give the Legal Officers within the Ministries the authority to address certain matters, without the need for them to refer to the Chambers, as the Head Office. Standards and Protocols will be put in place to ensure consistency and quality of legal advice. This will facilitate speedier turnover and assist in giving the Head Office the capability to focus on reducing the backlog of matters within the Chambers.
- 24.** In approving the implementation plan, the Cabinet made it clear that the new arrangements are not to result in the diminution of services currently provided in the Ministries. From our end, we will work to ensure that services are strengthened and improved all-round.
- 25.** The Implementation Plan is to be pursued through the use of a temporary full time Project Transition Team, comprising a Project and Change Management Executive, a Project Manager-Information Technology, a Project Manager-Human Resources and a Project Manager-Legal. Together with the team, we will build the foundation for the successful integration of the Legal Service Units (LSUs) into the Chambers.
- 26.** I am further pleased to inform this Honourable House that funding has been secured from the Inter-American Development Bank (IDB) for the emoluments of members of the Project Transition Team. We thank the Public Sector Modernisation Programme Implementation Unit of the Cabinet Office for its support and assistance in this regard. The Terms of Reference for the members of the Transition Team are being finalized with the Cabinet Office and recruitment is expected to commence quickly thereafter.
- 27.** The JUST Canada Programme continues to support the process of centralization by drafting new job descriptions for the critical positions of the Deputy Solicitors General and the Solicitor General, Terms of Reference for the Project Transition Team and a Frequently Asked Questions (FAQ) Document to address common queries. They are also assisting with the framework for the proposed Inter Ministry Transition Advisory Committee and a draft template to govern the relationship between the Ministries and the Chambers. A program of visit is scheduled for later in 2017 and the Chambers looks forward to continue to work with the dedicated Canadians with whom we have established enduring and fruitful working relationships.
- 28.** Last year I disclosed to this Honourable House the urgent need of the Chambers for additional resources, to enable us to successfully tackle the very heavy workload. I said at that time that I would be pressing for a special initiative to provide additional administrative and legal human resources for the Chambers generally and the Litigation Division in particular. The Chambers is extremely grateful and happy that Cabinet, at the same time as it approved the Plan for Phased Implementation of the Centralization of Legal Services, also approved the establishment of six (6) additional positions for the Litigation Division with these positions to be provided

as a matter of urgency. On April 25, 2017, the Ministry of Finance and the Public Service advised the Solicitor General that its Post Operations Committee gave approval for the operation of the three additional Deputy Solicitors General posts, plus three Executive Secretaries, with effect from 1st May 2017 (subject to the availability of funds and pending inclusion in the Civil Service Establishment Order.

29. The approval of the Ministry of Finance is for the operation of a total of fourteen (14) new posts within the Chambers, including six (6) additional positions for the Litigation Division. The other eight (8) are in response to the new organizational structure being put in place for the centralization of legal services. Three (3) positions were also upgraded.
30. Earlier this year, in March 2017, the Chambers welcomed a Director of Documentation, Information & Access whose responsibility includes handling the records management and access to information requirements of the Chambers. This was a new post created at the request of the Chambers, to put ourselves in a better position to manage and handle our duties. The Chambers has not had its human resource needs addressed in several years and so I am very pleased that at last some positive movement has taken place in this regard. We look forward to providing speedier assistance to the Government of Jamaica.
31. A part of the role of the Transition Team supporting the implementation of centralization, is also to examine the specific immediate and long-term reporting relationships, transition, staffing and post requirements for the Chambers. We expect the need for additional staff will be justified by this exercise.
32. Subsequent to my last presentation, the Chambers has also benefited from improved ICT resources. With the support of JUST Canada, laptops, desktops, a projector, a dedicated internet line and other ICT resources were obtained and are in use by a grateful staff. This has improved the work experience for a number of staff members who were struggling with malfunctioning equipment for some time.
33. The improvement of our ICT resources is scheduled to continue this year as we anticipate implementation of a new File Manager system for the Chambers. A contract was signed with a contractor in December 2016 and the development of the File Manager system is now in its advanced stages with a demonstration of the system set to take place shortly. The Chambers is grateful to JUST Canada and the Ministry of Justice for their support in respect of this critical need of the Chambers.
34. **Mr Speaker-** Our website has been constructed and is being populated. It will be officially launched in very short order. When it is launch I invite everyone to pay us a visit there.

- 35. Accommodation:** While the plans to refurbish and restore Justice Square are still being pursued, in light of the fact that such plans will require long term planning, the Chambers has secured additional space at its current location at the NCB North Tower with a view to accommodating the expected additional staff. A measured survey of the space has already been completed, drawings are being done and other work is taking place with a view to refurbishing the space and having it ready for occupation in the shortest possible time.
- 36. Mr Speaker-** Exciting days are indeed ahead for the Chamber, as we strive to better serve the people. However, this move towards the implementation of centralization of legal service under the aegis of the Attorney General seems to be retraversing the path of a Ministry of Legal Affairs. I have already signalled to both the Most Honourable Prime Minister and the Minister of Justice that the Administration may have to seriously consider re-establishing such a Ministry, in order to fully achieve the gains of the Public Sector Modernization Programme, in this regard.
- 37.** I now turn to the work of the various Divisions of the Chambers, over the period in question.

The Constitutional and Legislative Affairs Division:

- 38. *The Constitutional and Legislative Division*** is responsible for assisting the Government in implementing its Legislative Agenda and ensuring that laws enacted are consistent with the Constitution of Jamaica. The work includes vetting and commenting on Cabinet Submissions, Bills, draft Regulations and giving legal advice to Cabinet and generally, to the staff and members of Parliament on proposed legislation and matters relating to Parliamentary procedure. The Division is also primarily responsible for advising generally on matters relating to the Access to Information Act and representing the Government on appeals before the Access to Information Tribunal.
- 39. *Access to Information Appeal*** – The Division handled two appeals before the Access to Information Appeal Tribunal during the period- one against the Ministry of Justice and the other against the Attorney General's Chambers. The Tribunal handed down decisions on both appeals. With respect to the first appeal the decision was in favour of the Ministry of Justice. With respect to the second appeal the Chambers did not dispute that the information should be given and so the Tribunal indicated the method by and format in which the information should be released.
- 40. *Further Role of the Attorney General in the Legislative Process:*** The legislative process of enacting a new or an amended Act does not end with passage of a Bill through both Houses of Parliament. When the Houses of Parliament approve a Bill, the Bill is reprinted and vetted by the Clerk and staff to the Houses of Parliament.

If no errors are found, the Bill is then sent to the Attorney General's Chambers with the aim of obtaining the 'Interim Report' of the Attorney General. The Interim Report is a document signed by the Attorney General which states that the provisions of the Bill are consistent with the provisions of the Constitution of Jamaica. Once the Interim Report is signed it is submitted to the Governor-General along with the vellum copy of the Bill, with the aim of obtaining the Governor-General's assent to the Bill. The Governor-General does not assent to a Bill unless the Attorney General certifies that the provisions of the Bill accord with the Constitution of Jamaica. This practice, which developed prior to Independence, continues to this day.

41. *Ascertaining the Intention of Parliament:* The issuance of the Interim Report fortifies the presumption that all laws passed by the legislative branch are constitutional, unless and until set aside by a court of competent jurisdiction. When the judicial branch is called upon to interpret the laws, the judges seek to ascertain the intention of Parliament.

42. In *R v Secretary of State for the Environment, Transport and the Regions, ex p Spath Holmes Ltd [2001] 1 All ER 195 at 216*, Lord Nicholls of Birkenhead explained what is involved in ascertaining the intention of Parliament, in this way:

"The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and maybe helpful, so long as it is remembered that the 'intention of Parliament' is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of the individual members or even of a majority of individual members of either House. These individuals will often have widely varying intentions. Their understanding of the legislation and the words used may be impressively complete or woefully inadequate. Thus, when courts say that such-and-such a meaning "cannot be what Parliament intended" they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning. As Lord Reid said in Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1975] 1 All ER 810 at 814, [1975] AC 591 at 613: "We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words used."

43. Clarifying the intention of Parliament, in the law making process, ahead of the court having to do so, is a matter of utmost importance. Over the past year I have picked up too many lacuna in various pieces of legislation, which could have been corrected through more meticulous and conscientious clause-by-clause review of the Bills. Let us not view our lawmaking task as too labourious and consequently

short-cut the process. Good laws will make better laws and bad laws will certainly make worse laws.

The International Affairs Division:

44. The work of International Affairs Division in advising the Government on all matters involving public and private international law, spans a wide array of matters, on and off the island.
45. **International Agreements/Treaties:** Before the Government of Jamaica (GOJ) signs or accedes to any international treaty the agreement is sent to the Chambers for review. This is to ensure that there are no impediments to implementing the agreement within the existing legal framework. Where legal impediments exist Cabinet must approve the necessary legislative amendments or changes in administrative practices before Jamaica adheres to the agreement. This year we have examined a number of environmental matters, the most notable being the Paris Agreement.
46. Jamaica was able to proceed with the ratification of the Paris Agreement, as its binding obligations are procedural in nature and relate to submission of Nationally Determined Contributions (NDCs) and other information to be used in tracking Jamaica's progress in mitigation of and adaptation to climate change. The Climate Change Division, Climate Change Advisory Board, and entities within the Climate Change Focal Point Network all have responsibilities in fulfilling these obligations.
47. The commitments made by Parties to the Paris Agreement in respect of reducing emissions are, strictly speaking, of a non-binding nature. This allowed for the consensus but also represents a weakness of the Paris Agreement. In reviewing the text, we have recommended certain legislative and policy measures that may be considered in implementing the Agreement that will demonstrate our commitment to addressing Climate Change.
48. **Mutual Legal Assistance:** The Chambers has provided and continues to provide advice and engage in consultations on mutual legal assistance and asset recovery in conjunction with various Ministries, Departments and Agencies such as the Financial Investigation Division (FID), the Office of the Director of Public Prosecutions, the Ministry of Justice and the National Land Agency (NLA). We recently participated in the negotiation of an agreement for mutual administrative assistance in relation to customs matters with a key partner country and the Jamaica Customs Agency (JCA). In addition, we have provided advice to JCA on other bilateral and multi-lateral arrangements with countries such as the United Kingdom, the Kingdom of the Netherlands and members states of the Caribbean Customs Enforcement Council.

49. In the area of asset recovery the Chambers reviews requests for the sharing of assets between Jamaica and other partners such as the USA and the United Kingdom. Over the last year, the Chambers has received a number of requests for the sharing of assets, which are under review. In addition, we have collaborated with the FID and NLA towards developing a policy for sharing of assets with partner countries. Notably, last year the Sharing of Forfeited Property Act Order for the United States of America was passed in Parliament, paving the way for asset sharing with the USA.
50. **Anti-Corruption Efforts:** Jamaica is Party to the Inter-American Convention against Corruption and the United Nations Convention against Corruption (UNCAC). The Chambers plays a vital role in providing expertise on Jamaica's implementation of the provisions of the Conventions and Jamaica's anti-corruption initiatives. Representatives of the Chambers have been and continue to participate in the review mechanisms under both treaties, which include reviewing the actions of other State Parties such as Mexico and Honduras in following their obligations under the Conventions. Since last year, on behalf of the Government of Jamaica, the Chambers has been engaged in the review of Panama pursuant to the UNCAC. In conducting its review and providing advice we work with key stakeholders, including the Office of the Contractor General and the Office of the Director of Public Prosecutions, to improve Jamaica's fight against corruption from a legislative and policy perspective.
51. The Chambers has also been providing information for the Working Group on Prevention under the UNCAC and to the Committee of Experts under the Mechanism for Follow Up on the Implementation of the Inter-American Convention against Corruption (MESICIC). Currently, Jamaica is undergoing its fifth round of review under the MESICIC.
52. **The CCJ & Enforcement of Judgments:** The President of the Caribbean Court of Justice (CCJ) wrote to CARICOM Attorneys-General in March of this year, addressing the concerns of the Bar and litigants from across the Caribbean on the challenges faced in enforcing judgments. Improving the enforcement of judgments is a "Cinderella" topic that the CCJ has now taken up.
53. The right to due process which includes an entitlement to a fair hearing within a reasonable time (section 16(2) of the Constitution), is recognized as extending beyond trial and a final judgment to the full satisfaction of a money judgment or a judgment for possession or specific performance.
54. The enforcement of the rights and benefits conferred by or under the Revised Treaty is a national and regional concern. The efficiency and effectiveness of the CCJ and the degree to which mechanisms are established to ensure the enforcement of CCJ judgements is a matter that both the Court and CARICOM Attorneys-General must address.

55. The CCJ has observed that the Court's coercive powers must be "*adapted to take account of the fact that States are the defendants and cannot be imprisoned, and that regional international courts, such as this Court, have no tipstaff or goals except where treaties so provide.*"⁵
56. The matter of the Government's payments of judgment debts is one that I have sought to address during the past year and will treat with separately later in this presentation. The President of the CCJ in his communication to CARICOM Attorneys-General observes that the perception across the Caribbean that money judgments are not enforced undermines the rule of law and discourages investment. I would add that as regards the CCJ's Original Jurisdiction it also contributes to the diminishing levels of enthusiasm for the regional project that we call the CSME (Caribbean Single Market and Economy). Many Jamaicans do not believe that the rights they are entitled to under the Revised Treaty are being respected by many governments in the region.
57. The delays in the payment of sums awarded to Miss Shanique Myrie in her claim before the CCJ created much disquiet here at home, particularly following statements reportedly made by one of the Court's Judges, Justice Ralston Nelson⁶, that there was no order to implement the CCJ's ruling in that case.
58. The CCJ Agreement requires Member States and all persons to whom a CCJ judgment applies, to comply with that judgment (CCJ Agreement, Article XV); and enjoins all Member States to ensure that all relevant authorities act in aid of the Court and that any judgment, decree, order, or sentence of the Court given in exercise of its jurisdiction shall be enforced by all courts and authorities in any Member State as if it were a judgment, decree, order or sentence of a superior court of that State (CCJ Agreement, Article XXVI).
59. The regional obligations we have undertaken must be implemented and enforced if we are to reap tangible benefits from the CSME. I am committed to engaging with my colleague Attorneys-General across the region and the CCJ on how we may improve the court systems and processes that support regional integration.

The Commercial Affairs Division:

60. **The Commercial Task Force:** Last time I spoke about the Commercial Task Force that was established within the Chambers to assist the Commercial Division to provide urgent legal advice on important strategic investment projects, privatizations and divestments. At that time the Task Force consisted of one senior Legal Consultant. I indicated that an additional Legal Consultant was to be hired, as well as secretarial and administrative support acquired. I am again pleased to update that the additional senior Legal Consultant joined the Task Force in December 2016, while the administrative assistant joined the Chambers at the end of February 2017.

⁵TCL, *TCL Guyana v Guyana*, [2010] CCJ 1 at [40].

⁶Reported at a workshop for regional broadcasters on regional integration and the CSME.

61. We continue to be grateful to the Planning Institute of Jamaica (PIOJ) and the Development Bank of Jamaica (DBJ) for their support of this important initiative (through the Foundations for Competitiveness and Growth Project (FGCP), which is intended to assist in the speedy implementation of the Government's growth agenda. The DBJ and the PIOJ have further committed that the support provided will also be extended to the provision of technological, research and other needs of the members of the Commercial Task Force. This puts the Chambers in a better position to support the Government's growth agenda.

The Litigation Division:

62. The Litigation Division has had a very busy year in the conduct of civil proceedings instituted against and by the Government.
63. **Armadale Claims:** The Chambers took a decision during the course of last year to settle the Armadale claims. These are the claims brought by the former wards of the State who were housed at the Armadale Correctional Centre in St. Ann. I am happy to report that over the last 12 months we paid out over \$18,000,000.00 in settlement. Although there are more claims to be finally settled, we are making commendable progress in this regard.
64. **Police Federation et al v The Independent Commission of Investigations & the Attorney General:** This is a matter in which the Court of Appeal has reserved its decision. As such not too much will be said about it; save that the appeal raised the very important issues of whether the Independent Commission of Investigations has the power of arrest and the power to prosecute. We participated fully in the appeal and provided the court with several authorities and very detailed submissions to assist it in its deliberations.
65. **Symbiote Investments v Spectrum Management Authority (SMA), Office of Utilities Regulation (OUR) and the Minister of Science, Energy & Technology:** The Chambers successfully represented the SMA and the Minister in Symbiote Investment's application for leave for judicial review, challenging letters written by the SMA and the OUR notifying the company that investigations under the Telecommunications Act were being conducted. Leave for judicial review was denied at first instance and, after filing an application for leave to appeal, Symbiote withdrew its application on the 2nd day of the hearing before the Court of Appeal.
66. **Difficulties in Defending Claims:** The Chamber's biggest challenge continues to be the volume of work and limited human resources. A difficulty in obtaining timely instructions also continues to plague us. We constantly have to make applications to the court for extensions of time within which to file defences, because Crown Servants/State Agencies continue to be dilatory in providing adequate, timely instructions. The court has become unsympathetic with our citing a lack of instructions as a reason for not filing defences on time.

67. When the court rejects our applications for an extension of time to file a defence, the result is that default judgments are entered against the Government, leaving the Chambers unable to challenge liability and many times with only the option of submitting on quantum of damages and costs.
68. ***Homeway Foods v Commissioner of Lands***: The much publicised decision of the Court of Appeal in *Homeway Foods v Commissioner of Lands* highlights some of the challenges we face due to the sheer volume of work and limited human resources. In this appeal, which we filed on behalf of the Commissioner of Lands, we did not fully comply with all the timelines set by the Rules of Court. The reasons we advanced before the Court of Appeal for our non-compliance were the heavy work load of the Chambers and the significant human resource challenges we experienced due in part to the high rate of staff turnover between 2014 – 2015, which resulted in increased work pressure on the Chambers and on counsel with conduct of the matter.
69. The court summed up these reasons as “administrative inefficiency”. It expressed the view that the State must take full responsibility for the fact that the inefficiency flowed from a lack of resources and a heavy workload.
70. ***The Jamaican Bar Association v The Attorney General and the General Legal Council [2017] JMFC Full 02 (May 4, 2017)***: Several international instruments have been promulgated relating to measures to combat money laundering and the financing of terrorism. In accordance with these instruments, international standards have been developed to ensure global compliance with anti-money laundering and the countering of the financing of terrorism- (AML/CFT) regime. The primary international standards are contained in the Financial Action Task Force’s (FATF) International Standards on Combating Money Laundering and Financing Terrorism and Proliferation (FATF Recommendations). Jamaica has international obligations in this regard.
71. Research has shown that persons who launder money and finance terrorism primarily use professionals who carry out certain activities in order to facilitate their illegal pursuits. These activities include:
- a. Purchasing or selling real estate;
 - b. Managing money, securities or other assets;
 - c. Managing bank accounts or savings accounts of any kind, or securities accounts;
 - d. Organizing contributions for the creation, operation or management of companies;
 - e. Creating, operating or managing a legal person or legal arrangement (such as a trust or settlement); or
 - f. Purchasing or selling a business entity.

- 72.** For some time now banks and other financial institutions have been required to implement significant systems, procedures and safeguards in the efforts to combat money laundering and the financing of terrorism. This has been found to be inadequate, however, in light of the role and impact of the activities which I identified earlier as being primarily used by those with illegal intent.
- 73.** It was therefore determined that professionals who carry out these activities as a part of their professional pursuits, and who in so doing may wittingly or unwittingly assist persons with ill-gotten gain and illegal intent, would also need to be subject to certain aspects of the AML/CFT regime. Accordingly, the FATF Recommendations require that legislation be passed so as to cover these professionals in the AML/CFT Regime.
- 74.** The main professionals identified in this regard (termed Designated Non Financial Institutions- DNFI) include public accountants, real estate dealers, casino operators, gaming machine operators and attorneys-at-law. In 2013, legislation was therefore passed in Jamaica requiring these professionals to comply with the AML/CFT regime in respect of the facilitation of the specific activities identified.
- 75.** The Jamaican Bar Association, on behalf of its members (attorneys-at-law), challenged the constitutionality of aspects of the Proceeds of Crime (AML) Regime as extended to attorneys-at-law carrying out the identified activities on behalf of any client. The claim was filed against the Attorney General and the General Legal Council. The Attorney General was sued due to the claim that the Regime breached constitutional rights. The General Legal Council was sued due to the role the statute required it to play as a Competent Authority with responsibility to ensure that members of the legal profession implemented the required systems and procedures.
- 76.** Among the arguments made by the attorneys were the following, the Regime:
- a. undermines the principles of legal professional privilege and client confidentiality;
 - b. subjects attorneys to unconstitutional searches and seizures;
 - c. breaches the constitutional right to privacy;
 - d. infringes on the right to liberty of attorneys and their clients;
 - e. infringes the independence of the Bar;
 - f. in so far as it infringes constitutional rights is not demonstrably justified in a free and democratic society.
- 77.** On April 21, 2017 the Full Court advised of its decision refusing the declarations sought by the Jamaican Bar Association and provided its written reasons on May 4, 2017. The main bases for the decision of the court are as follows:
- a. the application of the regime to attorneys is not inconsistent with their position and role in the proper administration of justice and the maintenance of the rule

of law. The role of attorneys in the administration of justice and the maintenance of the rule of law relates to giving legal advice or providing representation in relation to actual or contemplated litigation. The obligations of attorneys under the regime do not usually engage such roles. Attorneys only have to comply with the systems and processes where they carry out the specific activities identified which are activities also carried out by the other professionals in respect of whom similar legislation has been passed.

- b. The regime, by statute, preserves legal professional privilege in the event that the essential role of attorneys-at-law in the administration of justice come into play.
- c. While client confidentiality and the right to privacy are impacted, the interference with such rights is demonstrably justified in a free and democratic society.
- d. The regime does not allow or provide for searches and seizures.
- e. Any deprivation of the liberty of an attorney (or his/her client) may only take place after due process in a court of law resulting in a conviction, as is provided for by the Constitution of Jamaica.
- f. The concept of the independence of the Bar is not to be elevated to a constitutional principle in Jamaica. In any event such independence would mainly relate to the core functions of attorneys in providing legal advice and representation and legal professional privilege is expressly preserved in recognition of these functions.
- g. In the circumstances where constitutional rights have been impacted, the impact is demonstrably justified in a free and democratic society because – the interference is: not substantial and is proportionate given the objectives of the Regime to combat money laundering and terrorist financing. In addition, the regime includes sufficient safeguards to ensure only minimal impairment of rights in the pursuit of the important objectives.

78. The Jamaican Bar Association has filed an appeal in respect of the decision and the appeal is set for hearing by the Court of Appeal in the week of June 19, 2017.

79. The Regime requires attorneys who carry out the specific activities, which are targeted to establish and implement programmes, policies, procedures and controls for the purpose of preventing or detecting money laundering. This includes the implementation of Know Your Client (KYC) policies and procedures with which many of us will probably be familiar due to our interaction with banks and financial institutions.

- 80.** These policies include requiring proper identification of parties, verification of the nature of business being carried out by clients, retention of customer information and assessment of the risk of business with certain persons.
- 81.** Enhanced due diligence is required when attorneys are handling these types of transactions for persons in a high risk category. The high risk category includes: Heads of State, Members of any House of Parliament, Ministers of Government, members of the Judiciary, military officials above captain, Assistant Commissioners of Police or above, Permanent Secretaries, Chief Technical Directors, chief officers in charge of Ministries or Departments of Government, Executive Agencies or statutory bodies, directors/CEOs of Government Companies, officials of political parties, individuals with senior management positions in international organizations, relatives/close associates of the above persons. This enhanced due diligence will require a number of processes including:
- Obtaining senior management approval for the transaction;
 - Verification of the source of funds or wealth held by the applicant;
 - More frequent updating of customer information;
 - More detailed information in respect of business relationships;
 - Requirement for the first payment in the transaction to be carried out through an account in the name of the applicant for the business, etc.
- 82.** I congratulate the learned Solicitor General, Mrs Nicole Foster-Pusey who led the team that argued the case on behalf of the Chambers.

Judgment Debts:

- 83.** At the time of my last sectoral presentation to this House in July 2016 I indicated that the amount outstanding as at June 27, 2016 was approximately \$512,006,489.52. Nine months later, the amount that remains outstanding as at March 31, 2017 is \$443,584,097.69, excluding judgment debt interest. This figure does not, at first glance, reflect the significant progress which was made over this period.
- 84.** I had advised the Honourable House on the last occasion of a special submission to Cabinet for additional funds to settle Government liability. I am pleased to advise that the Government responded favourably by providing additional funds in the amount of \$81.427 million in the supplementary budget. It should be noted however that for the financial year 2016/2017 the Government had originally allocated a budget of \$342,177,000 towards the payment of judgment debts. At the end of the financial year the amount of \$423,604,000 was received as budgetary support for this expenditure. However, in the end the amount actually paid towards awards for the financial year was \$426,456,942.68.

85. In July 2016 I had indicated that by the end of July 2016 the Chambers and the Ministry of Justice expected that we would have completed all payments due for the year 2014. Although the progress seems slow, my information is that as at the end of April 2017, the Ministry expected to commence making payments due with effect from June 2015. It must be recalled that every week additional judgments and settlements are added to the obligations of the Government.
86. I will continue to press for additional funds so that we can pay the judgment debts and settlements more quickly. I thank the Minister of Justice for his support as we continue dialogue with the Ministry of Finance for increased allocations. I am very sympathetic to the plight of successful litigants who have to wait for extended periods before getting paid.
87. **System for payment of judgments and settlements:** Many members of the public do not understand the system in place for the payment of judgment debts. Vexed litigants often attend upon the Chambers, boisterously and abusively demanding payments. The Ministry of Justice makes payments for the Chambers on our instructions. However, only limited funds are provided for this purpose on a monthly basis out of the funds allocated for the year. Please take note that when judgment is entered by the court or a matter is settled without the court's intervention, the attorneys must submit the relevant documentation to the Chambers (including proof of the judgment or settlement and the litigants' instructions to whom the monies are to be paid) with a request for payment. This information is then provided by the Chambers to the Ministry of Justice.
88. The Chambers and the Ministry of Justice have agreed on a system of payment of Judgment Debts and Settlements on a "First In First Out" Basis. However, we recognize that there are times when exceptional circumstances arise requiring special treatment. Over the last financial year approximately twenty (20) claims were treated specially primarily on the bases: the need for urgent medical treatment, the special needs of the claimants, severe financial hardship and the need to comply with court orders.
89. **Upcoming Privy Council Appeals:** There are currently two upcoming matters before the Privy Council. One is JPS v All Island Electricity Tribunal, scheduled for next month (June). The other is the well publicised JPS Licence case brought by Dennis Meadows, Betty-Ann Blaine and Cyrus Rosseau challenging the legality of the JPS exclusive licence, scheduled to be heard in July of this year.
90. **Role of the Attorney General vis-à-vis the Industrial Dispute Tribunal (IDT):** The IDT is an autonomous quasi-judicial body which falls under the remit of the Ministry of Labour and Social Security. For many years, the Chambers has generally

represented the IDT **as counsel** in judicial review claims brought in the Supreme Court, by either employers or aggrieved workers seeking to challenge awards made by the IDT in the exercise of its statutory functions under the Labour Relations and Industrial Disputes Act (LRIDA).

- 91.** Recently, it has been contended by some lawyers and others, including trade unionists, that the Attorney General has taken the decision not to represent the IDT at the Privy Council, to defend IDT awards, which have been favourable to aggrieved workers. This is not an accurate statement. Indeed, as with all our clients, the Chambers acts on instructions. The fact of the matter is that in each of the cases to which this comment refers, it was the IDT that instructed us that it did not wish to participate in the appeal before the Privy Council. This is the IDT's prerogative and, as we understand it, the IDT makes these decisions on a case by case basis.

The General Legal Advice Division:

- 92.** Since July 2016 the General Legal Advice Division has, among other things, continued its work in providing legal advice to statutory bodies, to ensure good administration, fairness and natural justice. The Division has assisted the Ministry of Economic Growth and Job Creation with the National Profile for the Management of Chemical in Jamaica, for the national project to increase the endogenous capacity of Jamaica to manage chemicals and hazardous wastes in an environmentally sound manner.
- 93.** It has collaborated with the National Works Agency (NWA) by providing training to its employees, including legal officers, parish managers and investigators, to develop personnel capacity to handle claims relating to, inter alia, the powers and duties of the Chief Executive Officer under the Main Roads Act.
- 94.** The Chambers completed aspects of the LNG project relating to (i) the Government's narrow role in relation to the obligations of the South Jamaica Power Company Limited (SJPC) (a subsidiary of the JPS) to, inter alia, finance, develop, operate and maintain the 192 .6MW power-generation facility located in Old Harbour, St. Catherine and matters relating to SJPCs Generation Licence issued by the Minister and (ii) the equity investment of the Petrocaribe Development Fund in SJPC and related matters involving the Development Bank of Jamaica Limited and the Accountant-General.

Concluding Comments:

- 95. Mr Speaker-** Time does not permit, in the confines of this Debate, to provide as full an update as I would like. However, much progress has been made in less than a year on many longstanding issues. I assure the people of my commitment to ensure that the machinery of Government acts legally and in their best interest.
- 96.** May God continue to grant us the wisdom to discover the right, the will to choose it and the strength to make it endure.

