

CHIEF JUSTICE M. TWOMEY'S SPEECH ON THE OCCASION OF THE RE-OPENING OF THE
SUPREME COURT, 10 JAN 2018

A Judiciary you can trust

President of the Court of Appeal, Commissioner of Police, Judges of the Court of Appeal, Judges of the Supreme Court, Magistrates, Ombudsman, Chairman of the Constitutional Appointments Authority [CAA], Chairman of Public Service Appeal Board [PSAB], Secretary of State, Cabinet Affairs, Bishops Fathers, Deputy Attorney General, Superintendent of Prison, Members of the Diplomatic Corps, Chief Executive Office of the Anti-Corruption Commission Chief Executive Officer of the National Council for Children [NCC], President of the BAR Association, Attorneys at law, Distinguished guests, Ladies & Gentlemen

It is a privilege to be here again today, and I welcome you all to Courtroom 1, my home from home. Welcome back to all of you who have been on holiday or overseas. I trust that you are all rested and I would like to take this opportunity to wish you all the very best for 2018.

As we go into a new year, I find that people take one of two approaches, and I am sure that there are both types of people in this room. Some of you are ambitious and introspective. You have spent time planning the personal changes that you will make to your lives in 2018. Contemplating how to improve your quality of life. How to earn more money whilst working less. How to be nicer. You sign up for activities and gyms. You stop smoking. You stop drinking at least until the weekend. Maybe you go to a few personal training sessions. These are the people we will call the hoppers.

And there are some who just accept that they ate and drank too much over December, and buy a bigger belt. These we will call the pragmatists.... I think that the pragmatists often take a very cynical view of the hoppers' ambitions. And each year as I prepare this speech I am aware of the cynics' voice in my head telling me that there are just some things in life that just can't change and so ambitious goals shouldn't be sought at all.

I, too, am a hopper.

I have spent much of 2017 building my own home in the village where I grew up. Construction is an all encompassing process. You spend countless nights worrying about rain, about the planning authority, about foundations and lately whether my walls should be magnolia, cream or brilliant white. Throughout the protracted process, I had to remind myself that it would be worth the pain and expense at the end of it. Even so I was so grateful for the team of people who each brought skills and experience and whose impact on the building had such a tangible effect.

I have still not moved in, and these last stages are possibly the hardest.

As construction analogies flood my mind, I am reminded of Roscoe Pound, the distinguished American legal scholar and self-confessed pragmatist, who said that "in the house of jurisprudence there are many mansions. There is more than enough room for all of us, and more than enough work."

This is certainly true in our profession. At the re-Opening of the Court in 2016 I was weighted by my newly assumed responsibilities, and trying to assess how to set the direction for the Judiciary's efforts. Progress had been made towards modernising the judiciary, but we were still gravely concerned about 'Justice' in Seychelles. We felt that you, the court users, were being harmed by bad habits which were

pervasive within the Judiciary and the Bar. We warned that ‘mediocrity, laziness, avarice and complacency’ prevented ordinary people from accessing justice in some of our courthouses. In my speech I called on judges, magistrates and lawyers to recommit themselves to their oaths, to their commitment to our noble profession. And they did. And so walls were built upon the foundations laid by my predecessor and we committed to completing what had been started.

In 2017, again at the re-Opening of the Court we called for unity in our diversity. We were so aware of the fact that an atmosphere of *kankan* and *harmful gossip* can lead to a disintegration of internal coherency, and a habit of general mistrust. We were minded of the words of Sir James Mancham when he urged for a partnership that comes from “the heart and less from political maneuvering”... for greater “harmony... dialogue and social contacts among the players on the national stage.” The work we had begun could not be secured without this unity. The foundations and walls of our house would have no roof, no windows and no doors without these components. Anyone could come in, and rob us blind, stealing all we had achieved. I asked for a commitment from all judicial officers, staff and lawyers to working together for the greater good and they did.

Now it is time to acknowledge that although we have faced solid criticism for our uncompromising and disciplined approach, it has borne fruit. We are a more confident judiciary, better able to deliver on our promises.

But still, I have noticed that there is an inherent distrust of ‘the system’ by the ordinary man on the Clapham Omnibus, or as we now could say, the anonymous user on Facebook! Everyday people write or come in to complain that their lawyer, or the courts, or the police or the registries are conspiring against them, are holding personal vendettas. That their cases went missing, that their lawyer and the judge are in collusion against them, or that they can't access their files because there is something untoward going on. They suspect, as we say in creole, that *I Annan en nen dan zwe*. An idea so pervasive that each nation has coined its own expression for it: *il y a anguille sous roche* or that there is something fishy going on. The bulk of the changes introduced in the past two years were designed to address the weaknesses in our structure and processes which would allow any room for corrupt or inefficient practices. And we remain vigilant in these endeavours.

So, although I have to take these concerns seriously, I have noticed that more recently, on many occasions there is no nefarious undercurrent, and that the complainant is a victim of the weaknesses in our processes, or a lack of resources and personnel. Our efforts in coming years will aim to meet these challenges too.

We are aware that much of the inefficiency in our system has been caused by wearing too many hats, performing too many tasks, and lacking the critical mass of skilled people to make the system as efficient as other countries may be able to. We live in a small country performing on a big playing field. With a population of 95,000 we cohabitate this world with 7.6 billion other people and we measure ourselves against countries of 10, 100 and 1000 times our population. But that cannot be a reason for complacency. We now have to address further changes necessary to complete the process of the modernization and professionalization of the Judiciary.

To continue my construction analogy, the work is not yet complete, by we can finally move into the space we have created, knowing that its structures are sound and its inhabitants secure. This year, in choosing our theme ‘a Judiciary we can trust’ we feel that the time has come for us to invite both our supporters

and our cynics to scrutinise our work thus far and reassure themselves that we are indeed a Judiciary fit to perform its role. Our theme this year, therefore, reflects our commitment to integrity, transparency and accountability.

Today, we can present to you the Judiciary Report 2016/2017 which contains some of our many achievements in the past two years, which have been years of considerable change and consolidation. The modernisation of our processes, both in the registry and the courtroom are evidence of a shifting atmosphere towards streamlined and efficient dispute resolution. We are constantly trying to find innovative ways of using technology to improve our efficiency and accuracy in court, and in case administration. The improvements to our data management and the introduction of a central, online court diary has enhanced our ability to track progress and monitor the delivery of decisions. The introduction of Case Management Practice Directions streamlines and clarifies matters in the run-up to trial, preventing unnecessary delays and trial by ambush. The publication of our law reports and judgments on the Seylii website has opened a window onto the world and has made transparent our decisions. Court proceedings are quickly prepared, centrally stored and well overseen. The appointment of three dedicated legal researchers to the Judiciary has improved the standard of these decisions and other initiatives have also improved the exchange of ideas between judges. Overall we have seen improvements in the morale and performance of our judicial officers and support staff. With improved processes I have noticed a reduction in the number of complaints received on a daily basis, and an increase in the number of complicated cases completed both in the criminal registry and in the civil and commercial registries.

We are proud to publish results of the hard work that is done on a daily basis by our lawyers and Judges. If compared to previous years, the results speak for themselves. In 2013 the whole judiciary at the time (that is the Court of Appeal, the Supreme Court, Magistrates' Court and Rent Board) completed 2,729 cases. In 2014, this amount decreased to 2565. In 2016, you will see that these same courts cleared 5,335 cases, and up to mid-November 2017, 5149 cases. In other words, more cases are being cleared in a single year than in 2013 and 2014 combined.

We are happy to note as well that the quality of the cases cleared and judgments delivered has improved. There is a significant rise in court usage time and the disposal rate of cases has improved in line with the Delay Reduction Time guidelines introduced by my predecessor, Chief Justice Egonda-Ntende. We will continue to aim for constitutional and commercial cases to be completed in 6 months, criminal cases within a year and civil cases within two years from the filing date. With these improvements in disposal rates we have not seen any reduction in the quality of the decisions delivered, which is self-evident from the judgments on Seylii and would be reflected in successful appeals which statistics have not significantly changed.

Moreover, it must be noted that in 2017 these clearance rates have been achieved with fewer judicial officers at all levels as some positions stood open for some time and there remain vacancies at judicial and magistrates level which have not yet been filled. I need to acknowledge the hard work that our different judicial officers put into the clearance of cases. But I am also so aware of the partnerships which have enabled such successes to be achieved. I am grateful for the assistance of the President, the relevant ministers and the National Assembly in ensuring that we were well supported and resourced enough to begin to achieve our ambitions. Our most important partners are, of course, the esteemed lawyers who attend in our courtrooms. We are aware of the tremendous pressure that has been placed on you by our increased work schedule. I applaud you for rising to the challenges, for your commitment to your clients

and for your nearly miraculous ability to spirit yourselves between our various courtrooms, appearing as if teleported, just in time.

We are also proud of the thankless work done by all of our magistrates, who are also expected to run the Rent Board, Employment Tribunal, Juvenile Court and Family Tribunal. In these tasks they are assisted by dedicated persons who sit on those tribunals and whose efforts are still not adequately financially rewarded. The Family Tribunal has made great improvements under the leadership of Judge Pillay first and then Magistrate Asba assisted by Magistrate Burian and Mrs. Aglae and their hardworking Tribunal members. We acknowledge the high number of sensitive and complicated cases which they take on a daily basis and we owe them a huge debt of gratitude.

Similarly the Employment Tribunal, headed by senior Magistrate Adeline assisted by Ms. Madeleine and long-serving Board members disposes of complicated and emotive hearings. We are also very proud of the recent work to improve the disposal of cases in the Rent Board. We are happy that the stewardship by Magistrate Burian assisted by some of the longest-serving Board members will bring the positive results necessary in this forum. Improvements in hearings in the Juvenile Court headed by Magistrate Ng'hwani assisted by four appointed members of the court continue to ensure that children accused of crimes are adequately and safely progressed through the criminal justice system.

During 2017 we were delighted by the promotion of the beloved Judge Bernadin Renaud, and thorough and tenacious Judge Fiona Robinson to the Court of Appeal and of Judge Laura Pillay to the Supreme Court bench. We welcomed Judge Rony Govinden to our side of the bench and were pleased with the appointment of Mr. Andy Asba and Mrs. Natasha Burian, who were both already assisting on the Family Tribunal, to roles as magistrates. Most recently we welcomed Mr. Vipin Benjamin as a senior magistrate.

2017 was also a year in which we said goodbye to a number of people who have helped to shape the legal system. The Court of Appeal lost both Justice Msoffe and Justice Domah whose contracts expired. Justice Msoffe's thorough understanding of the law and benevolent wisdom and Justice Domah's deep commitment to academic excellence and poetic writings have deeply enriched our jurisprudence. We will miss their input.

At the Supreme Court level, our seconded Judges Crawford McKee and Dan Akiiki-Kiiza have returned to their home countries after the expiration of their extended contracts from the Commonwealth. We feel the absence of both and thank them for their steadfast and unruffled professionalism and for their wealth of knowledge and assistance.

Magistrate Kishnan Labonte returned to his first vocation with his appointment as the head of the NDEA and then to the position as Compol. Whilst we know that he is following his original passion, we will miss him dearly at the Magistrates' courts. Furthermore, Magistrate George Robert has left to pursue his academic career further with a Masters degree in Australia. Magistrate Jessica Kerr also left Seychelles after nearly four years. The legal system in Seychelles owes so much to her particularly for her commitment to the online publication of the egrey book, the publication of the grey book and the enhancements to the SeyLII website. From the Judiciary's point of view, she was an asset first as Executive Legal Assistant to the Chief Justice and then as a magistrate at the Anse Royale and La Digue regional courts. Her clearance rates and unwavering ethics set a high standard for the magistrates who were appointed in her footsteps. She also contributed extensively to the law programme at the University of Seychelles.

We also bade the fondest farewell to Mrs. Josette Thelermont, an absolute pillar of the Family Tribunal after 40 years in the public service. Her thorough knowledge of the Family Tribunal and steadfast consistency even in the face of resource constraints has left its mark and I wish to thank her for her long years of service.

At the end of January my court orderly, Mrs. Yvette Orphee will be retiring from the Supreme Court after a long and illustrious career. Who could count the items and exhibits she has numbered or the cases called? Her affable disposition welcomed lawyers and the public to the Chief Justice's court room over decades. How we shall miss her!

I wish to thank both Mrs. Thelemont and Mrs. Orphee wholeheartedly for their commitment and dedication to the justice system and for leaving such a strong legacy for others. I would like to bring to your attention page 23 of the 2016/2017 report which lists people who have served the Judiciary for more than 15, 20, 25, 30 and 35 years. Please accept my most heartfelt thanks to each of you for your service to Seychelles.

The progress we have made in the last year has been against a backdrop of international turmoil, global security concerns and alongside climate changes and environmental threats.

This has made me remember Annie Proulx's description of the world in November 2017 when she stated:

"We don't live in the best of all possible worlds. This is a Kafkaesque time. The television sparkles with images of despicable political louts and sexual harassment reports. We cannot look away from the pictures of furious elements, hurricanes and fires, from the repetitive crowd murders by gunmen burning with rage. We are made more anxious by flickering threats of nuclear war. We observe social media's manipulation of a credulous population, a population dividing into bitter tribal cultures. We are living through a massive shift from representative democracy to something called viral direct democracy, now cascading over us in a garbage-laden tsunami of raw data. Everything is situational, seesawing between gut-response "likes" or vicious confrontations. For some this is a heady time of brilliant technological innovation that is bringing us into an exciting new world. For others it is the opening of a savagely difficult book without a happy ending¹."

For many in Seychelles they have felt the effects of this savagely difficult time. Locally, discourse raged through the country about victimisation, about corruption, about increased crime. As a judiciary we worked together through trying external circumstances, the ongoing logistical and infrastructural problems and political and social attacks on the system. We saw an unprecedented rise in attacks on our integrity from bodies external to the courts. We saw the publication of unfair and incorrect statements about the justice system, ongoing cases and individual personalities in the Judiciary. Above all, during this year, I encourage the public to seek the truth behind stories they hear. I encourage journalists and those who will comment on matters related to justice to exercise a greater commitment to truth founded in verifiable fact, indeed we demand this.

I said at the beginning of this speech that I was a hoper. I have a hope that in 2018 you will see, despite a milieu of distrust that the improvements and achievements above are to the benefit of each person who comes through our courthouses. I have a hope that people will learn to look through empty rhetoric

¹ All quotes are taken from the speech of Annie Proulx on the receipt of the lifetime achievement Medal for Distinguished Contribution to American Letters at the National Book Award Ceremony on 15 November 2017.

applied against a Judiciary which works tirelessly and cannot speak back. I have a hope that the widows, the dispossessed, the unfairly treated and even the faceless critics on Facebook – can be confident enough to invest their trust in the work carried out in our courthouses. I have a hope that in the end our critics will see that we apply the law equally and fairly, even when the outcomes may not go in their favour.

In the end, all our hopes will translate in the reality of the provisions of our constitution, which is 25 years old this year. This constitution provides the fundamental protection of the dignity, liberty, speech, privacy, property and thought of each person.

It is in the safeguarding of these rights, that the Judiciary finds its purpose and assures that it remains an independent check on the other branches of government. Our transparency and accountability, our unyielding integrity, is a promise of authenticity in a world of fake news. This truth will be the catalyst for change, for the imbuing of trust still lacking.

As Annie Proulx continued:

"We still have tender feelings for such outmoded notions as truth, respect for others, personal honor, justice, equitable sharing. We still hope for a happy ending. ...we discover that the web of life is far more mysteriously complex than we thought and subtly entangled with factors that we cannot even recognize. But we keep on trying, because there's nothing else to do."

And what is our hope for a happy ending? Why do I say that you can place so much trust in our system? I am confident because,

- Our courtrooms are open.
- Our transcripts are available
- Our files can be viewed at the registries but cannot be tampered with
- Our decisions are public and give full reasoning
- We are steadfastly committed to our judicial oaths and are aware that we will be held accountable if we allow our own ambitions to taint our actions

We have created a confident and self-assured judiciary able to dispense justice fairly without fear and favour. Our transparent structures serve to show that there is nothing untoward in the system, and equally our accountability ensures that the system itself cannot be used to hide anything. Therefore I invite you to continue to challenge us and to see that *napa okenn ne dan zwe*.

Annie Proulx quoted the poet Wisława Szymborska, a recipient of the Nobel Prize, another hoper whose poem *Consolation* resonates with our belief when she wrote:

*Darwin.
They say he read novels to relax,
but only certain kinds:
nothing that ended unhappily.
If he happened on something like that,
enraged, he flung the book into the fire.*

*True or not,
I'm ready to believe it.*

*Scanning in his mind so many times and places,
he's had enough with dying species,
the triumphs of the strong over the weak,
the endless struggle to survive,
all doomed sooner or later.
He'd earned the right to happy endings,
at least in fiction,
with its micro-scales.*

*Hence the indispensable
silver lining,
the lovers reunited, the families reconciled,
the doubts dispelled, fidelity rewarded,
fortunes regained, treasures uncovered,
stiff-necked neighbors mending their ways,
good names restored, greed daunted,
old maids married off to worthy parsons,
troublemakers banished to other hemispheres,
forgers of documents tossed down the stairs,
seducers scurried to the altar,
orphans sheltered, widows comforted,
pride humbled, wounds healed over,
prodigal sons summoned home,
cups of sorrow tossed into the ocean,
hankies drenched with tears of reconciliation,
general merriment and celebration,
and the dog Fido,
gone astray in the first chapter,
turns up barking gladly in the last.*

Thank you for your attendance today. Please join us for the ceremonial photographs outside and then refreshments.