

**Keynote Address as Chief Guest by the Chief Justice
Mr Justice Anthony Gates at the launch of the Small
Claims Tribunal Effectiveness Study Report, at the
Southern Cross Hotel, Gordon Street, Suva
on Monday 23rd August, 2010**

Hon. Members of the Judiciary
The Chairman of the Board - Mr Narendra Padarath
Mr Raman Dahia

Members of the Board
Ms Premila Kumar the CEO of the Consumer Council
Dr Ganesh Chand, the author of the Report
Solicitor General
Acting Chief Registrar
Acting Chief Magistrate
Referees of the Small Claims Tribunal
(past and present)
Ladies and Gentlemen

My role this morning has variously been described as “Chief Guest”, “maker of a keynote address”, and finally as “person to launch the Consumer Council’s Effectiveness Study Report on the Small Claims Tribunal”. This last role is akin to asking the man who has just been convicted and sentenced of heinous crime to provide the sentencing judge with a vote of thanks for the sentence just dished out. If we have not actually been sentenced to penal servitude on Devil’s Island, perhaps rather we have been ordered to serve lengthy terms of community service.

When legal aid was initially instituted in Fiji very little finance was provided for its set up and operation. For some years the Legal Aid Commission as it was somewhat grandly named, had hardly anything with which to provide service. One or two lawyers or volunteers, a bare office, no methodology or systems. It took many years before it could say it was up and running, and only now has the

Government committed substantially greater funds to its operation. As with the Small Claims Tribunal, I believe the Australian Government through AusAid generously and properly provided Legal Aid with equipment and funding. That role has now been taken over by the Fiji Government, as it should.

That early support by AusAid was significant and greatly appreciated for it helped to create the professionalism that you see from that office. Efficient and fair systems of dispatching business, strict integrity and professionalism also latterly have been crucial to its respected progress.

If overseas missions provide neutral assistance to Fiji's institutions, such as to the Legal Aid Commission or to the Consumer Council, then such assistance is genuinely supportive, creative, and beneficial. After all, the aim is to allow the Iraqis as it were, to be strong and professional and independent, and to perform the function for themselves, not to be mere puppets of a foreign power. The help must be given not to implant little bands of National Liberals, Laborites, Greenies or Independents in our midst, but to provide strength so that the Fiji institution can stand firmly on its own feet. For if Fiji has strong institutions which perform their independent functions according to sound principles, whilst blind to politics, Fiji as a nation will regain a certainty of stability that we appeared to have misplaced in 1987.

The SCT commenced operations in 1996, Referees were appointed to Lautoka only in 2006 and to Labasa in 2008. Funds and growth have been slow.

Dr Ganesh Chand's report was commissioned by the Consumer Council. This was a highly worthwhile idea and project. The Council is to be commended for taking up this field of study. May I pay tribute also to the Council's CEO Ms Premila Kumar for her work in this matter and in many others. Under her leadership the

Consumer Council of Fiji has become much more visible and effective. Consumer protection in Fiji before the Council was set up was almost non-existent. The consumer was at the mercy of shopkeepers and manufacturers. I remember once an interesting discussion with a shopkeeper concerning the difference in his labeling between “real leather” and “genuine leather”. The answers provided were less than illuminating.

Ms Kumar has managed to maintain a watchful and inquiring approach whilst at the same time being mindful of and sympathetic to Fiji’s limitations. My approach as a prosecutor used to be similar. Is the manufacturer in default trying to do the right thing or merely trying to deceive and get away with unfair practices, with no intention of improving? The decision to prosecute often depended on our view on that question. The purpose of prosecution was to get the defaulter to do the right thing. Prosecution and thereby exposure were not always necessary. Co-operation with the authorities to fix the problem was the ideal solution.

Ms Kumar has attended several judicial workshops, training sessions and conferences, and spoken her mind at each. I always felt she was sympathetic but we needed, in the justice system, to hear articulate, fair and reasonable views expressed on our deficiencies. Our joint aim was to try to improve the service and not to make the same mistakes all over again. We stumble, but we must keep trying. Ms Kumar could speak the truth boldly but her approach was never strident, confrontational, or aggressive. She has set high standards at the Council for any successor. I wish her well in her next venture.

I welcome Dr Chand’s 42 page study, and AusAid is to be thanked for funding his valuable work. It is not possible to make detailed comments this morning on the study. However I can say the study will be taken seriously by Judicial Department. It will assist in the making of improvements as and when resources are supplied to

us to do so. Though I or others may make suggestions today, much thought and discussion needs to precede further changes.

The commencement of any review here must be to ask what is the Small Claims Tribunal for. The Decree says its primary function is to attempt to bring the parties to a dispute to an agreed settlement [section 15(1)]. If the parties cannot achieve that, the Tribunal must go on to determine the dispute. In doing so the Tribunal's approach is to "determine the dispute according to the substantial merits and justice of the case, and in doing so the Tribunal is to have regard to the law but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities [section 15(4)]. The Tribunal is not a court therefore where a dispute is to be determined in accordance with the law, at least strictly, as in the Magistrates Court or High Court.

However it is possible for a party to ask a Tribunal to transfer the case to the Magistrates Court [section 22(2)]. Though the claim may be small enough to fit within the jurisdiction of the Small Claims Tribunal, that is a claim of less than F\$5,000, yet at issue may be some legal questions. The referee needs to be satisfied that the proceedings "would more properly be determined in a Magistrates Court" section 22(2)]. It is possible that section 22(2) could be reworked to make it easier for genuine legal disputes to be heard by a qualified lawyer, that is by a Resident Magistrate in a Magistrates Court.

Clearly there is an intended informality in the proceedings which Dr Chand is not alone in thinking a positive plus in terms of access and in providing a non-intimidatory environment. In addition evidence does not have to be given on oath though it may be [section 26(1)] and the Tribunal may on its own initiative seek and receive such other evidence and make such other investigations and inquiries as it thinks fit. Such evidence and information must be disclosed to every party.

Referees in training sessions need to be reminded this section is not intended to be a gossip-gathering session to confirm them in their prejudices against one or other of the parties.

I would like to touch on some of the weaknesses of the Tribunal, identified by Dr Chand in his study.

First he refers to the difficulties of claimants living a long way away from the 3 Tribunal centres of Suva, Lautoka and Labasa. He suggests a mobile service as a possible way out, though he appreciates this could be quite costly. Certainly this would assist some of those living long distances away. The Magistrates Court staff would have to handle the registries for Small Claims. Ideally this should all be computerised so as to be centrally controlled, and planned for frequency of visits and the like. It is an idea not to be lightly discarded, and if funds are extended to the Judicial Department for the Tribunal, this is one area to be considered for expansion.

Some criticism was made of vacancies remaining unfilled in the cadre of referees for the Tribunal. This criticism could equally have been applied to the High Court, and to the staffing of the Lautoka High Court in particular. Bearing in mind all members of the judiciary were dismissed in April 2009, there has been a satisfactory restoration of judicial officers over the last 1 year 4 month period. There are no magic wands available for this process however. Australia and New Zealand have hampered our progress in restoring the judiciary at all levels. In the world, this assault on, and interference with, a neighbouring state's judiciary is unprecedented. Presently there are 4 referees in Suva, 4 in Lautoka and 2 in Labasa, that is 10 in all. Whether more are required for the volume of work in Suva or Lautoka will have to be watched closely. If Government, as it has progressed with the Legal Aid Commission, and as the Consumer Council itself

has grown with funding, sees fit to increase its funding of the Tribunal then we could see an expansion in the number of referees.

The next question is that of whether the opportunity for appeal should be expanded. This is a vexed question. Jurisprudentially, no-one likes the idea of a denial of appeal, or too restrictive a window of appeal. On the other hand there is a need for the swift settlement of minor disputes. We can then say they are over, concluded, finalized, and people can get over matters of social irritation and potential festering. Presently appeals can only be lodged to the Magistrates Court alleging either unfairness in the handling of the Tribunal's hearing or procedure prejudicially affecting the result, or an excess of jurisdiction. An incorrect interpretation of a contract, an incorrect application of contract law could not found an appeal. Should there be a wider basis for appeals? As I said this is a troubled area. Further research needs to be carried out with aggrieved claimants to see how significant are the number of possible mistakes.

Dr Chand refers to inadequacies in training and appointments. Both are valid comments. A Training Session for all referees is presently being organised by the National Judicial Education Committee. This should take place before the end of October. However I believe that two sessions a year of 2 days each would be a more professional approach. Monies available for adequate training of all judicial officers, indeed all public servants is much below what is needed. This is another area, institution building as it is called, which I have already referred to, where genuinely neutral overseas missions could play a most useful role.

Yes there is probably insufficient awareness of the SCT. Though people need to know of the SCT, one has a certain hesitancy to call increasing numbers to use its services unless one is sure of increased funding. Otherwise one is pulling the house down over one's head. In the early days, Legal Aid could not boast about its

services when they barely existed. Some awareness is desirable at this stage. Again this was a project previously handled by an Aid organisation or overseas mission. We shall see. I believe pamphlets could be produced on the work of the Tribunal, visits made to schools, and potential areas of claimants.

It remains for me to thank Dr Chand for his most useful and professional piece of work. In a few years, we may see several changes in the workings of the Tribunal. His study is the likely catalyst for those changes, and the nation has much to be grateful for, to him, to the Council and to AusAid.

23rd August 2010

A.H.C.T. Gates

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