

**IN THE CARIBBEAN COURT OF JUSTICE**  
**Appellate Jurisdiction**

**ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS**

**CCJ Appeal No CV 2 of 2005**  
**BB Civil Appeal No 29 of 2004**

**BETWEEN**

**THE ATTORNEY GENERAL  
SUPERINTENDENT OF PRISONS  
CHIEF MARSHAL**

**FIRST APPELLANT  
SECOND APPELLANT  
THIRD APPELLANT**

**AND**

**JEFFREY JOSEPH  
LENNOX RICARDO BOYCE**

**FIRST RESPONDENT  
SECOND RESPONDENT**

*Before The Rt Honourable  
And The Honourables*

*Mr Justice de la Bastide, President  
Mr Justice Nelson  
Mr Justice Pollard  
Mr Justice Saunders  
Madame Justice Bernard  
Mr Justice Wit  
Mr Justice Hayton*

**SUMMARY**

**of the Judgment of The Honourable Mr Justice Pollard which was delivered  
on November 8<sup>th</sup> 2006**

In finding for the justiciability of the prerogative of mercy exercisable by the Barbados Privy Council (BPC) Pollard J made a distinction between the procedure preceding the exercise of prerogative powers and a substantive determination on the merits. Such a distinction was made by British courts as early as 1969 in **Anisminic Ltd. v Foreign Compensation Commission**. A similar distinction was made by our regional courts in **Yassin v Attorney General of Guyana (1996)**. The Court of Appeal felt constrained by the doctrine of precedent to apply the decision

of the Privy Council in **Neville Lewis v Attorney General of Jamaica (2000)** which made a similar distinction and determined that in the instant case the public law principle of procedural fairness required the BPC to await the recommendation of the competent international human rights body before making a determination on the commutation of the death sentences of the condemned men. Counsel for the appellants were also unable to persuade the Court by weight of authority that the ouster provision set out in section 77(4) of the Barbados Constitution immunized decisions of the BPC from curial scrutiny.

In the premises, the Barbados Court of Appeal was correct in following the decision of the Privy Council in **Neville Lewis v Attorney General of Jamaica** and in commuting the death sentences of the condemned men despite the flawed reasoning which informed the outcome in that case in respect of which serious reservations are entertained by Pollard J. In this particular the Privy Council in the **Neville Lewis** case, by applying *mutatis mutandis* its earlier decision in **Thomas v Baptiste**, assimilated the “due process of law” provisions set out in section 4(a) of the Constitution of Trinidad and Tobago with the “protection of law” provision set out in section 13 of the Jamaican Constitution in order to support incorporation in the Jamaican criminal law system of an international judicial process contrary to historical understanding of dualism, thereby justifying the right of a condemned murderer to see the relevant information before the Jamaican Privy Council (JPC) and to have that body await the relevant recommendation of the competent international human rights body before the exercising the prerogative of mercy.

In the respectful opinion of Pollard J the Privy Council unfortunately declined in **Neville Lewis** to explore in sufficient depth the public law doctrine of legitimate expectation as a more plausible and juridically sustainable basis for guaranteeing the condemned men the primordial right of procedural fairness to which the protection of the law provision set out in section 13 of the Constitution entitled them. Previous decisions of the Privy Council in Caribbean death penalty cases uncritically relied on the decision of the Australian Supreme Court in **Minister of Immigration and Ethnic Affairs v Teoh**. In the opinion of Pollard J, however, the determination in this case was juridically misconceived in as much as it posits that the international act of ratification, *ipso facto*, engendered a legitimate expectation at the municipal plane. Such an expectation was expressed to be procedural and vulnerable to frustration by a

change of official conduct. However, international acts by the executive must be accompanied by treaty-compliant conduct at the municipal plane in dualist jurisdictions of Caricom States in order to engender a legitimate expectation to which municipal courts may accord curial protection in accordance with applicable law. Such a legitimate expectation issuing from executive conduct, legislative or otherwise, implementing treaty provisions purporting to confer rights directly on individuals, should attract a high level of curial protection, being indefeasible for current representees for a reasonable period.

On the issue of whether an unincorporated ratified treaty providing for access to international tribunals could, *ipso facto*, affect the status of private persons in municipal law, the applicable case law clearly established that the relevant determination of the Privy Council was flawed and that its affirmative determination in this particular constituted an impermissible foray into judicial legislation with probable adverse implications for the small vulnerable states of the Commonwealth Caribbean. More damagingly, this determination unwittingly invited third state intervention in the domestic affairs of small states and goes against relevant judgments of various commonwealth courts including the House of Lords and Caribbean Community Courts. The decision of the Barbados Court of Appeal must be upheld.

*This is a brief statement of the main points discussed in the judgment and is not intended to be a substitute for the full text as delivered by The Hon Mr Justice Pollard of the Caribbean Court of Justice on Wednesday 8<sup>th</sup> November 2006.*

Issued by The Court Protocol and Information Officer  
Caribbean Court of Justice  
On November 8<sup>th</sup> 2006

