



CARIBBEAN COURT OF JUSTICE

One People, One Region, One Court



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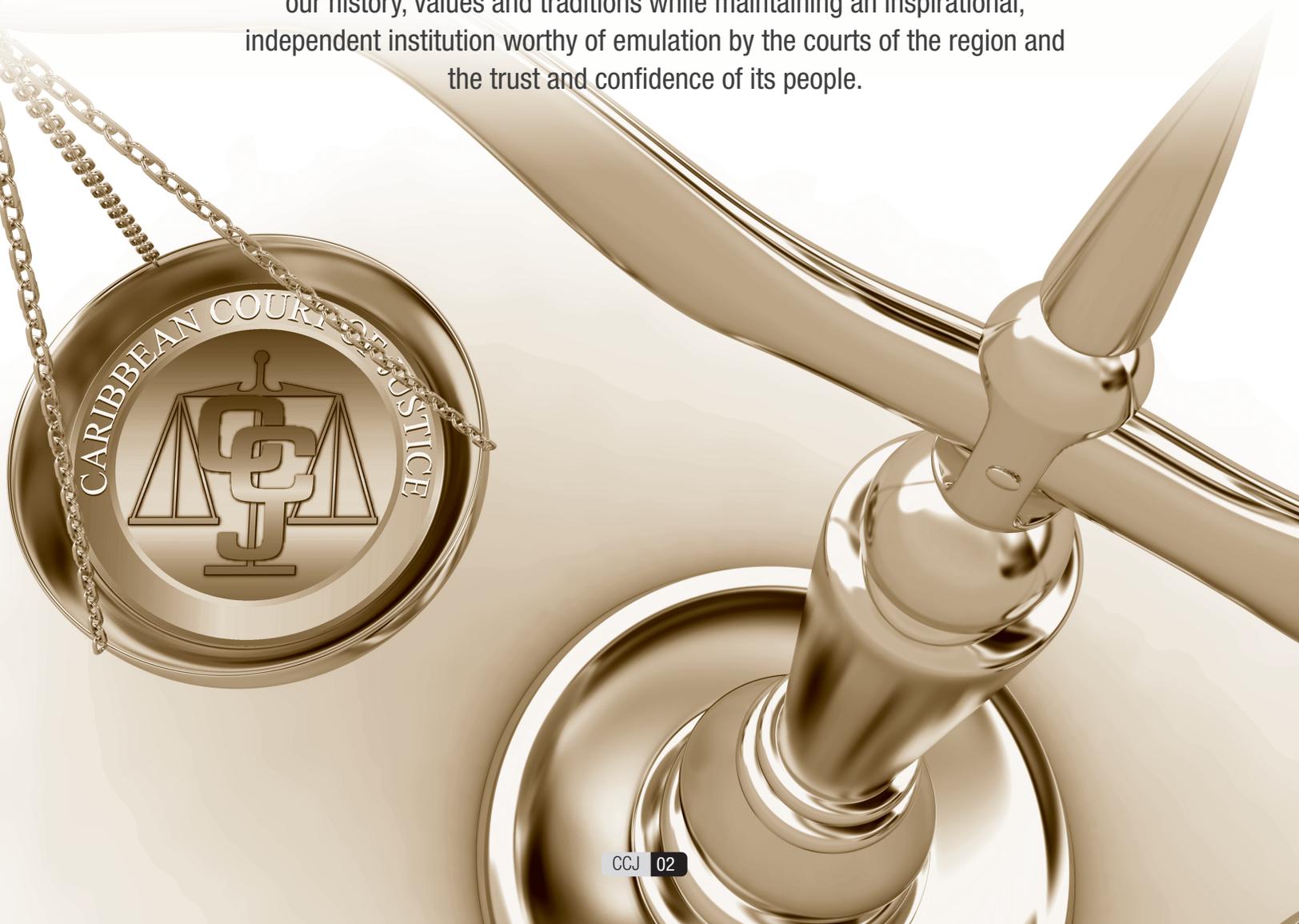
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OUR MISSION

The Caribbean Court of Justice shall perform to the highest standards as the supreme judicial organ in the Caribbean Community. In its original jurisdiction it ensures uniform interpretation and application of the Revised Treaty of Chaguaramas, thereby underpinning and advancing the CARICOM Single Market and Economy. As the final court of appeal for member states of the Caribbean Community it fosters the development of an indigenous Caribbean jurisprudence.

OUR VISION

To provide for the Caribbean Community an accessible, fair, efficient, innovative and impartial justice system built on a jurisprudence reflective of our history, values and traditions while maintaining an inspirational, independent institution worthy of emulation by the courts of the region and the trust and confidence of its people.





The Right Honourable Mr. Justice Michael de la Bastide T.C.

WORDS OF THE PRESIDENT OF THE CARIBBEAN COURT OF JUSTICE

“On 16th April 2010, we mark the fifth anniversary of the inauguration of the Caribbean Court of Justice. It may be appropriate therefore to cast our eyes backwards and consider in very broad outline the work which the Court has done since its inauguration...”

Excerpt from the Message of the President, from the CCJ's publication “The 5th Anniversary of the Caribbean Court of Justice”.

“... I speak on behalf of the Judges of the Court and on my own behalf when I say that we are looking forward with confidence to an increase in the volume of cases coming to us in both jurisdictions of the Court. We are heartened by the recent passage of legislation in Belize as a result of which the Court will on a date to be appointed replace the JCPC as the final court of that country. It also appears from an announcement made by Prime Minister Skerritt of Dominica that that country will before the end of this year also adopt the CCJ as its final court. It remains to be seen whether other CARICOM countries will follow suit. I am optimistic about the future of the Court. My optimism is born of the knowledge I have gained as President of the Court over the last five years of the quality of the people who comprise the Judges of the Court, its management and staff. When as Chairman of the Regional Judicial and Legal Services Commission I had a hand in the selection of the Judges and senior staff of the Court, I had a belief in the competence and commitment of the persons selected. Then, it was a matter of belief. Now, after working closely with them for five years, it is a matter of knowledge. I salute them.”

Excerpt from the Address delivered by the Right Hon. Mr. Justice Michael de la Bastide on the occasion of the Colloquium to mark the 5th Anniversary of the CCJ

“...We look forward to facing the challenges and grasping the opportunities which the future holds and are confident that the Court will continue to serve its intended function of strengthening and solidifying regional integration under the umbrella of CARICOM and the CSME.”

Excerpt from the Message of the President, from the CCJ's publication “The 5th Anniversary of the Caribbean Court of Justice”.

FIVE YEARS OF CCJ'S CONTRIBUTION TO CARIBBEAN JURISPRUDENCE,

Address by the

**Rt. Hon. Mr. Justice Michael de la Bastide T.C., President of the Caribbean Court of Justice,
On the occasion of the Colloquium to mark the 5th Anniversary of the CCJ**

Good Evening ladies and gentlemen. Welcome to this celebration of the 5th Anniversary of the Inauguration of the Caribbean Court of Justice. On behalf of the Court, I thank you for your attendance. According to the programme I am scheduled to review the decisions which the Caribbean Court of Justice has handed down during the first five years of its existence and show how they have contributed to the development of a Caribbean jurisprudence. If I were to attempt such a review in the depth which it deserves, I would exceed the limits of both your endurance and my own. So what I propose to offer you within what I hope will be an acceptable timeframe, is more of a bird's-eye view of the caselaw we have so far produced, identifying the areas in which we might with some justification claim to have clarified, expanded or modified the preexisting body of law in the Caribbean Community both on the international and on the national planes. It would be invidious for me to attempt any assessment of the value or quality of those contributions. That judgment I leave to others.

I shall deal first with the judgments of the Court in the three cases which have been filed, heard and disposed of in the Court's original jurisdiction, and then with the much larger volume of cases that have been determined by the Court in its appellate jurisdiction.

ORIGINAL JURISDICTION

It is noteworthy that of the three cases that have so far come before the Court in its original jurisdiction, one was launched by a company, Trinidad Cement Limited, against the Caribbean Community, another by that same company and a Guyanese subsidiary against the State of Guyana and the third by an individual human person (Doreen Johnson) against the Caribbean Centre for Development Administration (CARICAD), an Institution of CARICOM. In all three cases it was necessary for the applicants to apply for leave to bring the proceedings under Article 222 of the Revised Treaty of Chaguaramas. In the first two cases mentioned above, leave was granted but in the third, it was refused. In the course of its judgments on these applications for leave, the Court had to deal with the multiple issues that may be subsumed in the single question:

"Who can sue whom and for what?" In other words the Court had to start pretty well from scratch in determining the limits of its original jurisdiction. It had no difficulty in holding that Article 222 empowered private entities and individuals to call Member States of CARICOM to account before the Court for breaches of their obligations under the Revised Treaty subject to the conditions for leave imposed by that Article being satisfied. The Court also held that a company which was either incorporated or registered in a Member State of CARICOM was for the purposes of Article 222 to be regarded as a person 'of' that State regardless of whether or not the ownership or control of the company was in the hands of non-nationals.

A much more difficult question with which the Court was faced, was whether a person (including a company) could obtain leave under Article 222 to sue the State to which he (or it) belonged. On what may be argued is the more natural or literal interpretation of Article 222, that Article does not contemplate a person or a private entity suing his or its own State, as one of the conditions for obtaining leave is that the State to which the applicant for leave belongs, must expressly or impliedly indicate that it has no interest in or intention of bringing an action of its own in respect of the breach of which the applicant wishes to complain. Obviously that requirement does not cater to a situation in which the State to which the applicant belongs is the same State against which the applicant wishes to proceed. I must admit that that was an argument which initially I found difficult to resist.

The Court, however, in its judgment rejected that interpretation in favour of a more purposive one which was supported by three lines of argument. Firstly, to prevent a person from suing his own State would tend to frustrate the achievement of the goals of the Revised Treaty and encourage breaches of that Treaty when the only persons affected belonged to the delinquent State. Secondly, there was nothing in the Agreement establishing the CCJ to preclude a private entity that had a substantial interest capable of being affected by a decision of the Court from applying to intervene on the side of the claimant in proceedings before the Court in which his own State was the defendant. It would be illogical and inconsistent if he could join in an action against his own State brought by someone else but could not himself institute such an action. Thirdly, the restrictive interpretation would produce a collision with Article 7 of the Revised Treaty which prohibits discrimination on grounds of nationality only. That discrimination would have been highlighted in the actual case if Trinidad Cement Limited could as a person 'of' Trinidad and Tobago be unaffected by a disability which prevented its Guyanese subsidiary from suing the State of Guyana.

Supported by these arguments, the Court preferred the teleological approach and treated the requirement that the State to which an applicant for leave 'belongs' should manifest an intention not to sue as meant to prevent a duplication of proceedings and as inapplicable and irrelevant in any case in which the applicant belongs to the State which he wishes to sue. This decision of the Court has been criticised in some quarters, but I must confess that the more I reflect upon our decision, the more unrepentant I am about it.

With regard to who can be sued in the Court's original jurisdiction, the short answer provided by the judgment in **Johnson v CARICAD** is only Member States or the Caribbean Community. The Court drew a distinction between entities identified in the Revised Treaty as Organs and Bodies of the Community and those identified as

Institutions and Associate Institutions of the Community. The Community can be sued for the actions of the former but not for those of the latter. The distinction was based on the greater degree of identification of Organs Bodies with the Community and the fact that they have the power which the Institutions and Associate Institutions lack, to bind and represent the Community with the result that the Community may be held legally accountable for their acts and omissions but not for those of Institutions and Associate Institutions. The Court accordingly held that neither CARICAD itself nor the Community could be sued in the Court for the actions or decisions of CARICAD.

The **Johnson** case also assisted in clarifying the jurisdiction of the Court in another respect, that is, with regard to the type of complaints that are justiciable in the Court. It was held, for instance, that the complaints that were made by Ms. Johnson of wrongful dismissal, breach of contract and breach of the constitution and labour laws of Barbados, were not justiciable in the CCJ. In fact, the only matter of complaint raised by her that the Court could have entertained, was the allegation of discrimination on the ground of nationality only, contrary to Article 7 of the Revised Treaty.

There was another respect in which the Court filled what might be regarded as an interstice in Article 222; this was in relation to the standard of proof which an applicant is required to satisfy in order to establish that the conditions prescribed in (a) and (b) of that Article, have been satisfied. These conditions in substance are that the right which is sought to be enforced is one that was intended to enure directly to the benefit of the applicant and that breach of that right has resulted in prejudice to the applicant. Since these are matters which the claimant will have to prove in order to succeed on his substantive claim, assuming that leave is granted, the Court held that on the application for leave, the applicant is only required to show an arguable case that these requirements have been satisfied (**Trinidad Cement Limited & Anor. v Co-operative Republic of Guyana**).

Some very important rulings have been made by the Court with regard to the remedies which it can grant against a Member State or the Community. This is an area in which the Court has had to walk a very fine line and maintain a proper balance between discharging its responsibility to give effect to the Revised Treaty and the rule of law on the one hand and recognising the constraints inherent in granting redress under international law against defendants who are sovereign States on the other. The Court has rejected submissions that the relief which it can grant against Member States of CARICOM and the CARICOM Community is limited to the making of declarations. It has held that it has power to make mandatory orders of a coercive nature against them, and it did make such an order when it ordered Guyana to re-impose the CET on cement imported from non-CARICOM sources. The Court explained the source of this power when it rejected a submission made in the case against the Caribbean Community that to permit a private party to challenge the decision and process of the Community would “constrain the exercise of state sovereignty by Member States Parties to the Revised Treaty.” In response the Court said:

“By signing and ratifying the Revised Treaty and thereby conferring on this Court ipso facto a compulsory and exclusive jurisdiction to hear and determine disputes concerning the interpretation and application of the

Revised Treaty, the member states transformed the erstwhile voluntary arrangements in CARICOM into a rule-based system, thus creating and accepting a regional system under the rule of law. ... The rule of law brings with it legal certainty and protection of the rights of states and individuals alike, but at the same time of necessity it creates legal accountability. Even if such accountability imposes some constraint upon the exercise of sovereign rights of states, the very acceptance of such a constraint in a treaty is in itself an act of sovereignty.” (Paragraph [32] of the judgment in *Trinidad Cement Limited v The Caribbean Community*).

The Court held that the power to make mandatory orders of a coercive nature was essential for the effective performance of the Court’s function and was implicit in the provisions made for enforcement of, and compliance with, judgments and orders of the Court¹¹. See, for example, Article XXVI (a) of the Agreement Establishing the CCJ and Article 215 of the Revised Treaty.

The Court has also held that it has power to award compensatory damages for breach of Treaty obligation provided four conditions are satisfied. Firstly, the provision breached must have been intended to benefit the claimant. Secondly, the breach must be serious. Thirdly, the damage must be substantial and fourthly, there must be a close causal link between the breach and the damage. With regard to exemplary damages, the Court has opined that the award of punitive damages is not a principle accepted by international law.

Enforcement

The failure of the Guyana Government to comply for nearly four months with the mandatory order made for the re-imposition of CET on non-CARICOM cement turned the spotlight on questions related to the enforcement of orders made by the Court in its original jurisdiction. *Trinidad Cement Limited* and its Guyanese subsidiary sought to compel compliance with the Court’s order by bringing contempt proceedings. The relief which they claimed, however, made it unnecessary for the Court to answer definitively some difficult questions concerning the Court’s competence to deal with disobedience of its orders as a contempt of court. The orders which the companies sought in their notice of application were with one exception directed against the Attorney-General of Guyana, and since it was not proved that he had any responsibility for Guyana’s failure to comply with the Court’s order, the Court was able to dismiss the claims against him on that ground alone. There was one claim pleaded against Guyana and that was for a declaration that Guyana was in breach of Article 215 of the Revised Treaty which imposes an obligation on Member States among others to comply promptly with judgments of the Court that apply to them. The Court had no difficulty in making that declaration. At the hearing there was an attempt by counsel for the companies to introduce a claim for a declaration that Guyana was in contempt of court. But the Court did not allow that claim to be introduced at such a late stage.

In the course of its judgment on the contempt application, the Court discussed a number of important issues relating to the power of the Court to deal with disobedience of its orders as a contempt of court in the way in which municipal courts in common law countries deal with it.

The Court did not express a final view on this issue but was clearly not persuaded that under international law such a power could be considered to be part of the Court's inherent jurisdiction or that it could be implied from Article XXVI (b) of the Agreement. In its judgment the Court also pointed to a very fundamental principle which the drafters of legislation in Member States seem on occasion to have forgotten. It is that the Court's powers in its original jurisdiction cannot be either expanded or reduced by domestic legislation. A good example of the local draftsman losing sight of this principle is provided by section 11(3) and (4) of the Caribbean Court of Justice Act of Guyana. These sub-sections purport to define the powers of the Court by reference to those exercised by the Supreme Court on the domestic plane. Another example, this time of a lapse by the drafters of the Agreement, is provided by Article XXVI(b) of that document which seems to anticipate that the Court will be given power by domestic legislation to deal with compelling the production of documents and the attendance of witnesses and the punishment of contempt. In the course of its judgment the Court also expressed the hope that a new protocol would state expressly what powers the Court has in relation to contempt of court and that there would be closer coordination between the drafters respectively of regional instruments and domestic legislation.

There is, perhaps understandably, a tendency which we have noticed for regional lawyers to treat as part of international or community law principles and concepts which are part of the common law and which as in the case of civil contempt of court, may be unknown to the civil law. In this connection, we must always be conscious of the fact that in Suriname and Haiti there are two members of CARICOM who belong to the group of civil law countries. Accordingly, principles and doctrines which are part of the common law do not automatically qualify for inclusion in the community law of CARICOM. The Court has also pointed out that from a practical point of view, there is no coercive order which the Court can effectively make against a Member State which it holds in contempt. The options of imprisonment and sequestration are not available. The imposition of a fine would itself call for some effective machinery for enforcement and would probably require the express sanction of all Member States of CARICOM. What is left then is a simple declaration that a State is in contempt of court and one may question what practical advantage that has over a declaration of breach of Article 215. Accordingly, the question whether the CCJ can deal with disobedience of its orders as a civil contempt, may be intellectually stimulating but is probably of little practical consequence.

One feature of the Court's judgment in the Caribbean Community case is what Dr. Berry has described as the Court's "hands-on approach". This is a reference to the guidelines which the Court offered to the Secretary-General of CARICOM with regard to the manner in which applications for suspension of the CET should be made and processed. These guidelines were informed by the Court's concern that permission to suspend the CET should only be granted when the conditions prescribed by the Treaty for its grant, are satisfied. Basically, these conditions are satisfied if there is not available from a source within CARICOM on a timely basis to the State seeking the suspension, a supply of the commodity which is sufficient to meet its requirements. The Court also drew attention to the requirement of consultations at the national and regional levels imposed by Article 26 of the Revised Treaty and suggested steps

which might be taken to monitor and ensure meaningful consultation in relation to establishing both the demand for, and the available supply of, the relevant commodity.

There is also to be found in the judgments of the Court in its original jurisdiction a recognition that the Court has a responsibility to ensure not only that the substantive provisions of the Revised Treaty are adhered to, but also that the decisions of the Organs and Bodies of CARICOM and of the Secretary-General himself, are made in accordance with standards of procedural fairness which are recognised and accepted by all the Member States of CARICOM. The question whether the Court is entitled to examine and strike down such decisions on the ground of irrationality is one which has been discussed but not finally decided so far.

This concludes my bird's eye view of the judgments given in our original jurisdiction. I apologise for the fact that the role I have adopted is that of a chronicler rather than a commentator, but that is a constraint which judicial propriety imposes on me.

APPELLATE JURISDICTION

I turn now to consider some of the judgments delivered in our appellate jurisdiction. There are at present two adherents to this jurisdiction - Barbados and Guyana. Although there are only these two sources of appeals, the Court in its appellate jurisdiction has delivered judgment in many areas of the law, both civil and criminal. These areas include land law, equity, private international law, contract, public law, interpretation and application of constitutions and statutes and commercial law. The last three volumes of the West Indian Reports (Volumes 72, 73 and 74) report the judgments in a total of 13 cases decided by the CCJ. The best I can do in the circumstances is to give a relatively small sample of judgments which may be considered to have added something of value to the regional jurisprudence.

Undoubtedly the case which has attracted most attention on the appellate side is **The Attorney- General v Joseph & Boyce**, a death penalty case from Barbados. This case has already been the subject of a good deal of academic comment and I propose to draw attention primarily to what may be regarded as some innovative aspects of the judgments delivered by the Court in that matter.

There were, in fact, six judgments delivered. Mr. Justice Saunders and I delivered a joint judgment, which I suppose can be described as the lead judgment as three other judges (Nelson, Bernard and Hayton, JJCCJ) expressed agreement with it. Because of limitations of time, I shall focus on the lead judgment, although the other two judgments delivered respectively by Pollard and Wit JJCCJ, are very interesting to say the least.

The first issue with which the Court had to deal was whether the exercise of the prerogative of mercy and more particularly the way in which the Barbados Privy Council ("the BPC") went about advising the Governor General to carry out the death sentences on the respondent was subject to review by the courts. It was well established that where a prerogative power has been embodied in a statute, the conversion of the prerogative power to a statutory power removes from its exercise any immunity from judicial review. There

was nevertheless authority for the proposition that the prerogative of mercy (like treaty-making) was a special kind of prerogative power which was not subject to scrutiny by the courts. See for example **de Freitas v Benny**. The lead judgment, however, firmly rejected this suggestion and held that particularly in a country where the death penalty is mandatory, the power to decide whether in the circumstances of a particular case, the death penalty should be confirmed or commuted, is far too important to be exempt from judicial scrutiny. In this context, as well as in other parts of the lead judgment, one finds a great deal of emphasis being placed on the uniqueness of the death penalty as compared with other forms of punishment. We also had no difficulty in holding that section 77(4) of the Constitution which provides that the question whether the BPC has validly performed any function vested in it by the Constitution, should not be enquired into in any court, was ineffective to oust the supervisory jurisdiction of the court.

The more difficult question was whether the decision of the BPC confirming the death sentences passed on the respondents, without waiting for their petitions to the Inter-American Commission on Human Rights to be dealt with, was a breach of their constitutional rights. In this connection the Court had to consider two decisions of the Judicial Committee of the Privy Council (“the JCPC”) in **Thomas v Baptiste** and **Lewis v Attorney-General of Jamaica**. In these cases the JCPC held that when a right to petition a foreign tribunal or body such as the Inter-American Commission on Human Rights, was granted to persons sentenced to death by a treaty made by their Government, then those persons were entitled to have the report or decision of the international body considered by the authority which had to make the final decision as to whether the death sentence should be carried out or not. It followed therefore that they were entitled to have that decision delayed until completion of the process before the international body. Failure by the State to respect this entitlement was held to be a breach of due process in **Thomas v Baptiste** and an infringement of the condemned man’s right to the protection of the law in **Lewis v Attorney-General**. The reasoning in both cases was that the effect of the Treaty was to add to what constituted due process domestically, the proceedings before the foreign tribunal. While the extent of the obligation of the State was held in **Thomas v Baptiste** to be to await the results of the foreign process for a reasonable time, it was in the later case of **Lewis** treated as open-ended.

There were two important respects in which the lead judgment disagreed with these two decisions. Firstly, we held that the suggestion that an unincorporated treaty could have the effect of expanding what constituted due process within a country, was inconsistent with the dualist system in force in Barbados (and the rest of the Commonwealth Caribbean). We rejected this therefore as the basis for imposing on the State an obligation to delay execution pending the completion of the foreign process. Secondly, we found that it was unacceptable that on the one hand a State should be required to wait indefinitely for the completion of the foreign process over which it had no control and that on the other, undue delay in completing that process was not catered for by an extension of the five-year time limit or by excluding it in computing that period.

In order to fill the gap which was created by our rejection of the reasoning in **Thomas** and **Lewis**, we invoked the doctrine of

legitimate expectation. We held that if (as happened in this case) a Government had not merely ratified the treaty giving the right of access to a foreign tribunal, but had indicated by statements made through its authorised representatives and by the practice that it had previously followed, that it intended to perform its obligations under the treaty, the effect was to create in a person condemned to death a legitimate expectation that he would be given a reasonable time to exercise his right of access to the international (or regional) forum. We held that the law had so developed that it recognised and enforced legitimate expectations of substantive benefits as well as of those procedural benefits. We also held that the State would not be required to wait beyond a reasonable time for completion of the foreign process. We also indicated that we inclined to the view that if the time taken by the foreign tribunal was more than the eighteen months which had been factored into the five year period established by **Pratt and Morgan**, then the excess time ought not to be taken into account for the purpose of computing that five year period.

Another novel and important conclusion to which we came had to do with those violations of the right to the protection of the law as formulated in section 11 of the Barbados Constitution which did not involve contravention of any of the individual sections 12 to 23. The jurisdiction given by section 24 to the court to provide redress for breach of constitutional rights was expressly limited by the terms of that section to breaches of sections 12 to 23. We held that even though they fell outside the ambit of section 24, the court had an inherent or implied right to grant a remedy for all violations of the right to the protection of the law as enunciated in section 11. Thus, the court was entitled to strike down the decision of the BPC to confirm its advice to carry out the death sentences passed on the respondents on the ground that that decision was violative of their right to the protection of the law guaranteed by section 11.

I should add as a footnote that consistently I suppose with our ‘hands-on’ approach, the lead judgment did make some practical suggestions as to when and how many times the BPC should meet to consider commutation of a death sentence.

Not surprisingly a number of early cases were concerned with defining our own jurisdiction as a final court of appeal. For example, we held that we could grant special leave to appeal in cases in which the Court of Appeal had wrongly refused leave to appeal when the applicant was entitled as of right to appeal to the CCJ. We also held on the other hand that in such a case we retained the right to refuse special leave if we thought the appeal lacked merit.

In a case from Barbados, **The Queen v Mitchell Lewis**, we held that the right to appeal as of right conferred by section 6(c) of the Caribbean Court of Justice Act of Barbados when the case involved an interpretation of the Constitution, extended to the Crown in a criminal case. We did not, however, find it necessary to decide whether the result of such an appeal by the Crown succeeding would be the restoration of the conviction which had been quashed by the Court of Appeal.

One thorny area which spawned a number of appeals, was the land law of Guyana. This consists of a mixture of Roman-Dutch law and the English common law including the principles of equity. The statute

by which this mix was created was the Civil Law of Guyana Act (originally an Ordinance) which has proved a fertile ground for controversy ever since it came into force in 1917. The sort of problems to which this legislation has given rise, is illustrated by the recent case of **Ramkishun v Fung Kee Fung**. In this case the owner of a parcel of land agreed to sell it to a purchaser (P) but died without having conveyed the land to P. The owner's widow and administratrix instead of conveying the land to P, transferred it to the owner's heirs, namely, herself and her five children. The transfer to the heirs was duly registered and the issue was whether the heirs could be compelled by an order of specific performance to transfer the land to P (or rather her estate) on the ground that the heirs were volunteers, not having paid anything or given any other consideration for the land. The Civil Law of Guyana Act contained a provision which specifically made applicable in Guyana, the principles of English law with regard to specific performance in cases involving the sale of land. A court of equity in England would have granted such an order, but it would have been based on the English doctrine that the purchaser of land acquires an equitable interest in it and the Court had earlier held in the case of **Ramdass v Jairam** that equitable interests in land are not recognised in Guyana. An examination of the Roman-Dutch authorities, however, disclosed that in that system of law which knows nothing of equitable interests in land, specific performance would on general equitable principles be granted against a volunteer to whom land, the subject of a sale to someone else, had been transferred, even though he was not a party to the contract of sale. Accordingly, the Court held that the grant of specific performance in similar circumstances in Guyana would not involve any infringement of the prohibition against the recognition of equitable interests in land. We were thus able to avoid the absurdity of refusing specific performance in circumstances in which it would have been granted under both of the systems which in combination, constitute the law of immovables in Guyana.

Secured debentures in the English form have been used in Guyana for many years. They create a charge over the assets of a company, including its land and provide a method of enforcing that charge by means of a sale of the assets charged effected by a receiver appointed by the debenture holder. While the validity of the secured debenture appears to have been widely accepted in Guyana, it became necessary to provide a reasoned justification for that acceptance when the validity of the appointment of a receiver and of the sale of land effected by him, was challenged in the case of **LOP Investments Limited v Demerara Bank Limited**. It was argued in that case that since the debenture created or purported to create what was clearly a mortgage or hypothec, and since section 3(d) (ii) of the Civil Law of Guyana Act applied to conventional mortgages and hypothecs the old cumbersome regime (essentially Roman-Dutch in nature) that governed both the making and enforcement of conventional mortgages and hypothecs, a debenture did not have the effect of creating a valid security over land. The old regime for creating a traditional mortgage or hypothec involved the passing and execution of the mortgage or hypothec before the Registrar of Deeds as prescribed by sections 12, 14 and 16 of the Deeds Registry Act. The Court rejected that argument by pointing to the relevant company legislation consisting initially of the Companies (Consolidation) Ordinance 1913 and subsequently the Companies Act, 1991, which exempted debentures from the necessity of compliance with that regime provided the debenture was duly registered

after notice had been published in the prescribed manner and at the prescribed time.

There were a number of other respects in which the Court has sought to clarify the land law of Guyana. They include the following rulings:

- (a) that the State can acquire land by prescription and in doing so does not violate any constitutionally guaranteed right of the registered owner²⁶.
- (b) that a person in occupation of land may have the intention to possess required for acquiring a prescriptive title even though he mistakenly believes that he is the true owner and is therefore not aware that his possession is adverse.
- (c) that where a person who has contracted to sell the land to another instead of transferring the land to that other, conveys it to a third party who has knowledge of the pre-existing contract of sale, both the vendor and the third party are, *prima facie* guilty of "fraud" within the meaning of section 23 of the Deeds Registry Act.
- (d) that the "indefeasibility" of the title of the registered owner of land under the Deeds Registry Act is not absolute even in the absence of fraud and may have to yield, for instance, to equitable principles.
- (e) that "fraud" in section 23 of the Deeds Registry Act includes equitable as well as common law fraud, and, therefore, every action challenging the registration of a deed on the ground of "fraud" of whatever kind, must be brought within twelve months of the discovery of the fraud.

If the CCJ has added anything by way of certainty and clarity to the land law of Guyana, it is because we have been able to build on the solid foundation laid by generations of distinguished judges and jurists in Guyana. We wish respectfully to acknowledge our debt to them.

The Court has had to consider some intriguing questions as to the availability of administrative law remedies in what is essentially a contract law situation and, conversely, of contract law remedies in what is essentially a public law situation. The first of these situations is typified by **Ross v Sinclair**, a case involving the sale of the same unit in a condominium owned by a public authority to two persons in succession, and the transfer of the unit to the second purchaser.

The question arose as to whether the administrative law doctrine of legitimate expectation could be invoked by the first purchaser in order to annul the transfer to the second purchaser. It was held that there was no sufficient basis for permitting her to do so. The converse situation arose for discussion, if not decision, in the case of **Winton Campbell v Attorney-General of Barbados**, a case in which the office of a public officer was abolished and the question arose of his entitlement to compensation from the Crown. The Court held that on the facts the plaintiff had been adequately compensated by the accelerated payment of his pension so that no question of damages arose. The judgment, however, discusses how the terms of employment of a public officer that are fixed in some respects by

statute or regulation, may be supplemented by terms agreed between him and his employer.

I turn now to consider a few of the criminal law cases which came to us from Barbados.

I would like to think that one of the areas in which we have added something useful to the criminal law of Barbados is in the interpretation and application of new statutes which codify and modernise the law.

One such statute is the Evidence Act. This is modelled on the report of the Australian Law Commission which proposed a new Evidence Act for Australia; the enactment of which was postponed for the purpose of further study, discussion and report. In **R v Gazette** the admissibility of DNA evidence was challenged on the ground that it was not sufficiently proved that the sample of blood containing the DNA which matched that taken from the victim, was in fact taken from the accused. In other words, it was argued that a proper chain of custody had not been established. It was in connection with this issue that the question of the standard of proof arose. The court held that the correct standard of proof applicable was that of proof on a balance of probabilities as that was the standard prescribed by section 135(1) of the Evidence Act for a finding that "the facts necessary for determining (a) a question whether evidence should be admitted or not admitted ... have been proved". The Court held that the stricter standard of proof beyond reasonable doubt which the prosecution was by section 134(1) required to achieve in proving their case, related to the determination of guilt and not the admissibility of evidence.

In another case of **R v Francis** an issue was raised with regard to certain other provisions of the Evidence Act which dealt with the admissibility of a record made by the police of an oral admission by an accused. Section 73(1) of the Act provides that such a record shall not be admissible in evidence unless it has been authenticated by the accused. In Francis a police officer refreshed his memory from such a record for the purpose of giving evidence of an oral admission by the accused. The document from which he refreshed his memory was not put into evidence. The Court held that there was nothing in the Evidence Act to prevent the policeman from refreshing his memory from the unauthenticated note he had made. The Court pointed out that the absence of authentication of the document was not one of the matters which section 30(2) of the Act required the trial judge to take into account when deciding whether or not to permit a witness to refresh his memory from a document. The Court also pointed out that if an unauthenticated record of an oral admission was used to refresh memory, it was incumbent on the judge under section 137(1) and (2) of the Act to warn the jury, *inter alia*, that such evidence may be unreliable.

The provisions of another Act, The Penal System Reform Act were considered by the Court in **Gittens v R**. Those provisions reflect the modern approach to sentencing which involves treating imprisonment as a form of punishment which requires justification on specified grounds as well as an explanation to the accused of why

it is being imposed. This was a case in which the Court of Appeal quashed a conviction for murder and replaced it with a conviction for manslaughter. As a result it became necessary for a new sentence to be passed to replace the mandatory death sentence. Since passing sentence (as opposed to reviewing sentences) is not a usual function of the Court of Appeal, it is perhaps understandable that the Court of Appeal in imposing a sentence of imprisonment on the convicted man, neglected to comply with some of the procedural requirements introduced by the Penal System Reform Act. In fact, the CCJ held that the proper course in the circumstances of the case was for the case to be remitted to the trial judge for sentence and that was the order which it made. The reason for this was that there were a number of unresolved issues of fact relevant to sentence which could be determined by the trial judge on the basis of the evidence given at the trial. The judgment of the CCJ contains a fairly comprehensive review of the provisions of the Penal System Reform Act relating to the imposition of a sentence of imprisonment. It also emphasised a much older principle and that is the importance of offering an accused person or his counsel an opportunity to make a plea in mitigation before passing sentence.

I am very conscious that the selection of cases for inclusion in this review has been somewhat random and that there are several other cases that I could justifiably be criticised for having omitted since reference to them would have served to demonstrate better the variety as well as the importance of the work we have been doing. Hopefully, I have at least given you a sufficient sample of that work to demonstrate that it has produced results that have contributed to the development of a regional jurisprudence.

I speak on behalf of the Judges of the Court and on my own behalf when I say that we are looking forward with confidence to an increase in the volume of cases coming to us in both jurisdictions of the Court. We are heartened by the recent passage of legislation in Belize as a result of which the Court will on a date to be appointed replace the JCPC as the final court of that country. It also appears from an announcement made by Prime Minister Skerrit of Dominica that that country will before the end of this year also adopt the CCJ as its final court. It remains to be seen whether other CARICOM countries will follow suit. I am optimistic about the future of the Court. My optimism is born of the knowledge I have gained as President of the Court over the last five years of the quality of the people who comprise the Judges of the Court, its management and staff. When as Chairman of the Regional Judicial and Legal Services Commission I had a hand in the selection of the Judges and senior staff of the Court, I had a belief in the competence and commitment of the persons selected. Then, it was a matter of belief. Now, after working closely with them for five years, it is a matter of knowledge. I salute them.

Michael de la Bastide
President
Caribbean Court of Justice
16th April, 2010



Christie-Anne Morris-Alleyne
Court Executive Administrator

Message from THE COURT EXECUTIVE ADMINISTRATOR

During the period under review, the Caribbean Court of Justice celebrated its 5th Anniversary. It was a period of both reflection and reinvigoration. A joint symposium with the Caribbean Law Institute Centre (CLIC) in November 2009 brought together regional intellectuals to look at current developments in Caribbean Community Law. This forum, together with the photo exhibition, colloquium and video commemorating the 5th Anniversary of this developing institution, presented an opportunity for review of the work of the court and reflection on its first five years. During this period, the Court's administration also evaluated itself as an organization, examining its business practices. An organizational review of the human resource structure was undertaken and a course for continuous improvement mapped out.

In June 2010, at the start of the Court's sixth year, the CCJ became the final court of appeal for Belize. Belize became the third member state to adopt the CCJ as its final court of appeal. To onboard this new addition, the President and Judges of the CCJ, mounted a coordinated effort to amend the Schedules of the Appellate jurisdiction rules. In addition, the Registrar accompanied Mr. Justice Saunders to Belize to train the local Bar and sub-Registry in the procedural requirements for the handling of CCJ Appeals. With the assistance of a Grant under the 9th EDF, public education videos and print material were prepared and dispensed to further support the Court's public education drive and its ongoing effort to position the Court as accessible and impactful to the Caribbean people. This period also allowed the Court's administration to work with the Caribbean Regional Information and Translation Institute (CRITI) and the European Court of Justice's Legal Terminology Department to see how best the CCJ could prepare itself for the translation of judgments and other material into the languages of the non-Anglophone member states.

This year has also seen the CCJ Bench making its first transition with the retirement of the Honourable Mr. Justice Pollard and the assumption of the Honourable Mr. Justice Anderson. Mr. Justice Pollard will be greatly missed and his immense and exemplary contribution to the Court cannot be over-stated.

Mr. Justice Anderson recently took his oath of office in Jamaica, the country of his birth. This is the first time that a Head of State other than the Head of State of the country of the Seat of the Court has administered the oath of office of a judge of the court. I welcome him on behalf of the management and staff.

It is said that the only thing constant is change, and so, the CCJ is re-energized by the changes we have experienced during this period. Opportunities for development and enhancement of the court continue to be present and the work on behalf of our cherished Caribbean region continues...

Master Christie-Anne Morris-Alleyne
Court Executive Administrator



Message from **THE REGISTRAR**

During the period of this report, two very important events occurred. On April 16, 2010 the Court celebrated the fifth anniversary of its Inauguration. One of the ways in which the Court marked this event was to produce a commemorative magazine which provides information about the Court and its accomplishments in the first five years of its existence. Those accomplishments are the unvarnished testimony of the bona fides of the Caribbean Court of Justice standing firm to respect and honour its commitment to the people of the Caribbean. Moreover, the Court was encouraged and reinforced in its determination to look confidently to the future when on June 1, 2010 Belize acceded to the Court in its appellate jurisdiction and on 23 July 2010, the first application for special leave to appeal a decision of the Court of Appeal of Belize was filed in that sub-Registry.

During this time, as evidence of its confident perception of the future, the Court also conducted training for staff of the sub-Registries of Barbados and Belize and for members of the Bar of those Contracting Parties. In addition, the Registrar of the CARICOM Competition Commission was able to visit the Registry and gain an understanding of the Court and benefit from the systems and policies utilized by the Court.

Looking back five years later, it is difficult to believe that the Court has accomplished so much in the early stages of its development. The statistics of other regional and international courts in their early years had promised few cases. The Caribbean Court of Justice has exceeded those standards and set a different precedent in its early years, a precedent which the Court feels very sanguine about surpassing in the years to come.

Paula Pierre
Registrar and Chief Marshal

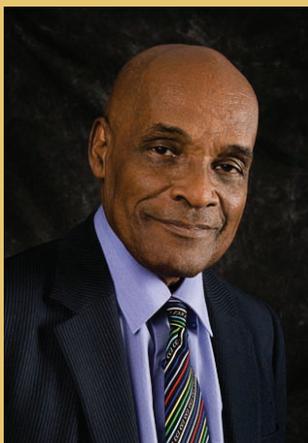
JUDGES OF THE CARIBBEAN COURT OF JUSTICE



The Right Honourable
Mr. Justice Michael de la Bastide T.C.
President



The Honourable
Mr. Justice Rolston Nelson



The Honourable
Mr. Justice Duke Pollard



The Honourable
Mr. Justice Adrian Saunders



The Honourable
Mme. Justice Desiree Bernard

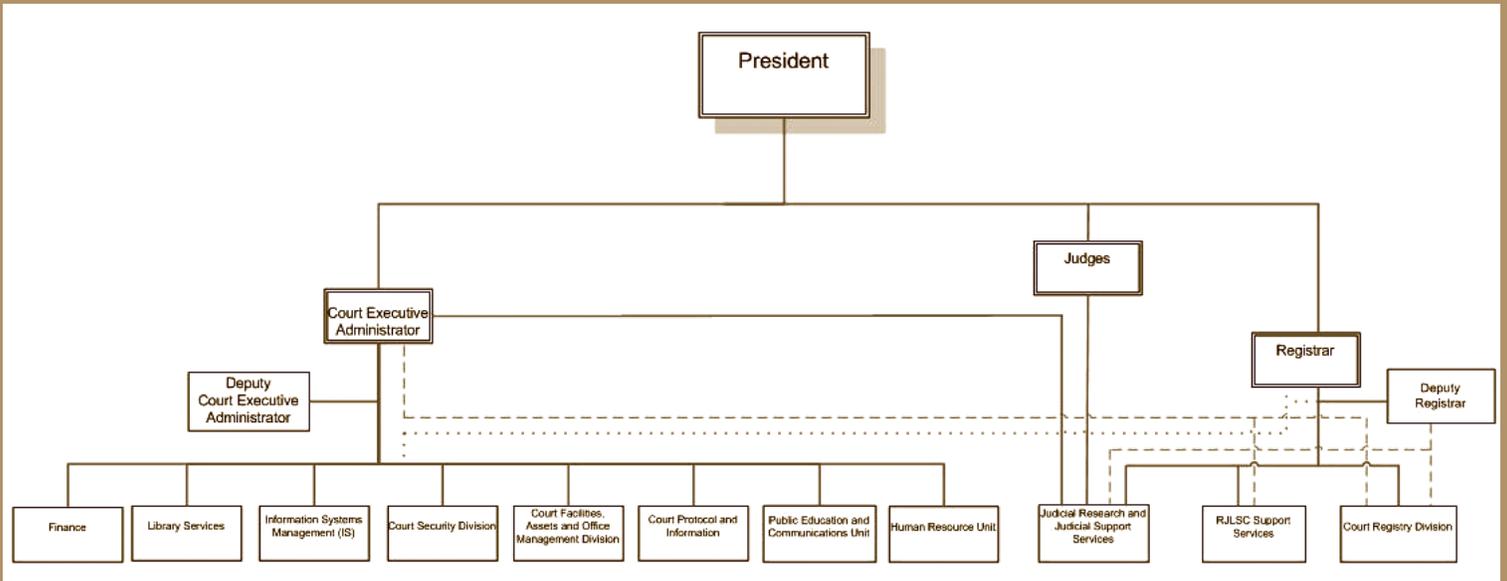


The Honourable
Mr. Justice Jacob Wit



The Honourable
Mr. Justice David Hayton

Caribbean Court of Justice ORGANIZATIONAL CHART



STANDING FIRM: LOOKING TO THE FUTURE

In the period under review, 1 August 2009 to 31 July 2010, the Caribbean Court of Justice (CCJ) marked a significant milestone in its life: the fifth anniversary of its Inauguration. A child growing up in the Caribbean arrives at its fifth year of life with many signs to indicate the rough and tumble of the early years of its existence: skinned knees and healed cuts. The CCJ's first five years of existence did connote some teething difficulties. Nonetheless, the Court feels proud to be able to proclaim the successes of its first five years of operation, five years during which a dream that has been shared by Caribbean people everywhere gelled into the reality first mooted at the Sixth CARICOM Heads of Government Conference in 1970 in Jamaica, where the establishment of a Caribbean Court of Appeal in substitution for the Judicial Committee of the Privy Council was first proposed.

At the Inaugural Meeting of the Caribbean Association of Judicial Officers in June 2009, Sir Shridath Ramphal, former Secretary General of the Commonwealth and of the Caribbean Community opined:

From the time we lost the Federal Supreme Court in 1962, I had dreamed of the creation of this Court as the Court of final jurisdiction in our region, the fountainhead of our jurisprudence. [...] Without the culture and rule of law, our regionalism will wither on the vine

The CCJ is mindful of the responsibility with which it has been tasked. The existence of this regional Court is aware that it gives life

to the dreams and aspirations of people across the Caribbean and among the Caribbean Diaspora. It is this knowledge which allowed it, in the period under review, to draw sustenance confirming not only its ability to stand firm and honour its charge, but also its absolute obligation to do so. In the absence of the rule of law, there is no orderly development, no meaningful social transformation. The CCJ is aware, that given its antecedents, it must be the guarantor of these things.

On the occasion of the Colloquium held in honour of the Court's fifth anniversary in April 2010, Professor Simeon McIntosh, Professor of Jurisprudence of the Faculty of Law of the University of the West Indies, opined that the creation of the Caribbean Court of Justice

is simply a matter of completing the process of constitutional founding and of defining the sovereignty of our sovereign States, left uncompleted at the moment of political independence. The establishment of our regional supreme court is an act of self-realization and the fulfilment of our sovereign will. It is an act of self-definition and an inscription of our nationality and, therefore, of our Caribbean nationhood.

These affirmations by eminent Caribbean jurists serve to underscore the faith of the Caribbean people in the institution that over the course of five years has proven that it does indeed bring to life, an idea whose time had finally come.



STANDING FIRM: LOOKING TO THE FUTURE

It is from these circumstances and sentiments that the Court draws its theme for its 2009-2010 Annual Report: “Standing Firm: Looking to the Future”. Confident in the qualifications and abilities of its personnel, in the integrity of its processes, and secure in the quality of its work, the Court stands firm on its accomplishments, and takes well-deserved pride in having performed as well as it has in spite of adversity. Of course, as indicated by Professor McIntosh, the “fulfilment of the sovereign will” is no easy task. Charged with its mission, the Caribbean Court of Justice, seeks to foster “the development of an indigenous Caribbean jurisprudence” among these many isles and continental territories washed by the blue Caribbean Sea. To undertake such a lofty task requires both a willingness to assess the future in realistic terms, and to gauge its potential by reference to tangible, existing accomplishments.

In the first 5 years of its existence, up to 31 July 2010, the CCJ had delivered 43 judgments, a figure that compares highly favourably against similar statistics from courts with far larger catchment populations and backed by wealthier states. These statistics provide that, in the first five years of its existence, the CCJ has quiteconvincingly confounded its critics by the integrity of its performance.

It does not, however, suffice to simply proclaim the Court’s successes. The Caribbean Court of Justice understands that it also needs to take responsibility for providing public information about its work to the customers which it serves. This ongoing communication indicates that the CCJ is continually and systematically taking steps to build its institutional capacity, hone the skills and abilities of its personnel, establish links in the region and wider world with a view to healthy cross-pollination of ideas, best practices and performance standards.

The future Caribbean ethos in which the Caribbean Court of Justice will be called upon to function will in all likelihood be well and far evolved from the current one. The CCJ must not only be prepared for that itself, but its mission of fostering an indigenous Caribbean jurisprudence means that it must also prepare others both by precept and example, to comfortably assume the mantle of producing and developing the mature Caribbean nation. The Caribbean Court of Justice has no hesitation in embracing this role and inviting the Caribbean people to embark with it upon a shared journey.



THE COURT ADMINISTRATION UNIT

Front L to R: Mr. Larry Ramoutar, Master C.A. Morris-Alleyne, Mrs. Paula Pierre, Ms. Radha Permanand, Ms. Carlene Cross, Ms. Wendy Lewis
Back L to R: Mr. Cyril Bernard, Mr. Vaughn Halliday, Ms. Jacinth Smith, Mr. Ayinde Burgess, Dr. Michael Anthony Lilla



LEARNING FROM
EXPERIENCE TO
INNOVATE FOR THE
FUTURE

BUILDING A STRONG HUMAN RESOURCE BASE

Where are we now?

The CCJ comprises staff members from throughout the Caribbean region who provide judicial, quasi-judicial and administrative services to the Court at its headquarters and in its sub-registries in the CARICOM Member States. In this regard, effective human resources management (HRM) is a key element that will enable the Court to advance its strategic agenda, and provide an accessible and efficient Court system for the people of the region.

The Regional Judicial and Legal Services Commission (RJLSC) is charged with the responsibility of recruiting judges and staff for the Court and setting terms and conditions of staff. The RJLSC began work in 2003 and at that time determined the start up staff complement. It first recruited the President of the Court followed by six of the nine judges allowed by the Treaty and then proceeded to recruit staff.

In determining the initial staff structure and complement and the compensation structure, the RJLSC was required to forecast and envision how the court would actually function both as a court and as a corporate entity. This they were forced to do without the benefit of having HRM professionals as part of their team.

With the assumption of the first members of staff in January, 2005, in the absence of any HRM professionals, the responsibilities and duties in respect of the administration of the HR function fell to the Court Executive Administrator (CEA), with the assistance of one secretary. This broadened the portfolio of the CEA which already included the strategic and operational development and functioning of the organization.

The fifth year of the CCJ's existence was therefore significant as it was an opportune time for the Court to evaluate its operations and determine the approach for the next stage of its development. To that end, during 2009-2010, it was determined with the concurrence of the RJLSC that it was necessary to undertake a job evaluation exercise and an organizational review to enable the organization to take stock and identify any existing gaps affecting the efficiency and effectiveness of its operations. The key objective was to ensure that the organization's processes, structures and systems are robust to facilitate the continued development of the CCJ.

Issues and areas identified for redress included:

- the absence of appropriate job positions to deal with some of the organization's functional areas, including human resource management professionals to deal competently with all the functional human resource systems, processes, and procedures required by the organization;

- the fact that existing post holders who already carried full workloads were overburdened with many additional tasks and responsibilities;
- the fact that some jobs had evolved beyond their initial scopes as a result of the growth and development of the organization;
- the inability of the Court to engage in succession planning because of the lack of human resources;
- the need to reformulate the weak structure of the Facilities, Assets, and Office Management Unit;
- the lack of recognition given to certain jobs in the organization, and the impact of a financial squeeze that led to the development of anomalies and inequities in the pay structure;
- the need to expand the Court's protocol and information functions beyond one office holder;
- the need for support staff to carry out the necessary functions of public education, publications, and the co-ordination of judicial education; and
- the need to re-evaluate the manner in which some tasks were being performed given the needs of the organization

The review also revealed that the:

- lack of financial provisions to enable the Court to educate the regional public about itself posed a challenge.
- Public education remains critical to gaining public trust and confidence and with the coming into being of the court properly became the court's responsibility.
- non-recognition of the Regional Judicial Legal and Services Commission as a separate entity resulting in the CCJ having to share its funding and staff with the Commission.

As a result of the job evaluation and organizational review exercises, staffing and terms and conditions were rationalized by the RJLSC. This exercise also resulted in the creation of new positions by the Commission. Other vacancies arose due to resignations and approvals being granted to fill deferred positions.

Further, with the completion of the job evaluation exercise, a new compensation structure for non-judicial staff was recommended and it was approved by the Commission. It is based on a point-guide system with staff positions characterized as follows:

- Band 4: Professional/Managerial
- Band 3: Administrative and Technical
- Band 2: Junior Administrative, Junior Technical, Secretarial and Clerical
- Band 1: Support Staff
- Band S: Security

BUILDING A STRONG HUMAN RESOURCE BASE

How are we preparing for the Future?

As the Deputy Court Executive Administrator assumed duty in February 2010, the overall responsibility for the functioning of the Court's HR Unit was placed within her purview, in addition to other operational areas. The support staff remained the same, but in the very near future, the Unit will have an HR Officer and HR Assistant with the relevant competencies. In the interim, the Unit has commenced work on developing the necessary HRM framework that will support the CCJ's goals, objectives and performance standards.

In order to become successful, the Unit must build its capacity to a level that facilitates the development and improvement of its operational and strategic HR functions which are necessary to support the growth and development of the CCJ. To this end, the key staff identified above will be recruited in early 2011. As part of its HRM framework, the Unit has developed a mission and vision to support the mission, vision and strategic direction of the organization, as follows:

Mission of the HR Unit:

To provide effective human resources management and co-ordination, leadership and support that enables Court personnel to perform at the highest standards in delivering exceptional services and meeting the needs of the people of the region.

Vision of the HR Unit:

The Human Resources Unit aims to be a dynamic and responsive unit that is committed to attaining people excellence by nurturing and developing the true potential of the Court's human resources, while providing opportunities for individual growth and development.

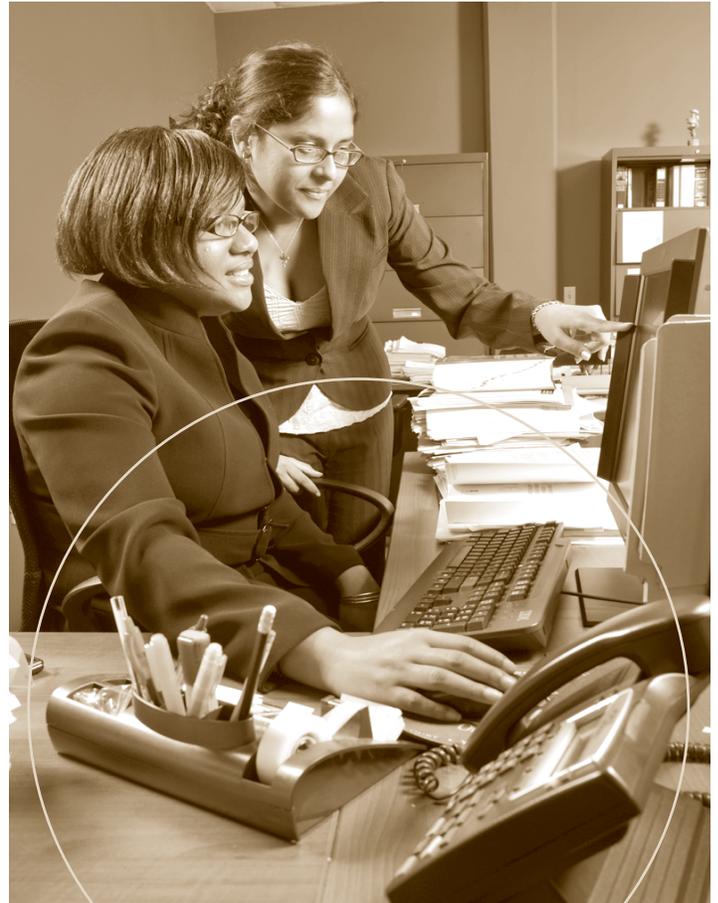
The operations of the HR Unit will also be guided by the CCJ's performance standards which fall within the following performance areas:

- Access to Justice
- Expedition and Timeliness
- Equality, Fairness and Integrity and Promoting the Rule of Law
- Independence and Accountability
- Attaining and Preserving Public Trust and Confidence
- Protecting the Rule of Law

Key Objectives of the HR Unit:

Several key objectives and strategies have been identified for the Unit:

- To develop and sustain a cadre of employees with the ability to support the strategic objectives of the organization;



Judicial Research Assistant, Lindsay Hosein and Natasha George

- To develop and sustain organizational core values;
- To foster and maintain good employee relationships within the organisation;
- To provide opportunities for personal growth and development;
- To encourage and support a spirit of learning, creativity, job enjoyment and high productivity, while addressing challenges in a positive manner;
- To establish an office environment that demonstrates fairness, equality of opportunity and respect for all;
- To facilitate job contentment through empowerment, accountability and responsibility; and
- To promote a better quality of life.

BUILDING A STRONG HUMAN RESOURCE BASE

Key HR Strategies:

- Formulate and implement sound HR policies, procedures, practices and systems.
- Develop, along with employees, career progression plans with an emphasis on training and personal development;
- Create and maintain an extremely open, responsive, and welcoming work environment;
- Institute effective communications processes and systems at all levels of the organization;
- Strengthen the internal human resources customer service system;
- Utilize staff surveys to encourage feedback for service improvement;
- Introduce and utilize HR software to improve service delivery;
- Provide opportunities and scope for creativity; and
- Operate with sensitivity in all situations.

Human Resources Information System (HRIS) Software

To support the work of the HR Unit and provide effective services to the CCJ, automating the human resources functions is of significant importance. HRIS software is necessary in the management of employee records, archives, performance reviews, leave, benefits, compensation, applications, health and safety issues and other issues. A HRIS will also enable the Unit to operate efficiently and provide timely and accurate reports for decision-making. The HR team together with the Information Systems Unit will undertake a needs assessment and conduct research to determine the best HRIS solution for the CCJ. This HRM technology solution will also be integrated with the Finance and Accounting Unit's automated payroll system.

Training and Development Plan

The Unit is committed to delivering HR programmes and services to provide opportunities for employee development, improve employee performance, and facilitate an effective workplace environment. The training and development activities will cover not only those programmes that will improve job performance, but also those that will contribute to individual growth. In this regard, there will be an emphasis on creating a personal development plan for each employee that is geared toward the achievement of critical outcomes in keeping with the strategic goals and objectives of the organization.

Performance Management System

A new performance management system was designed and introduced in April 2010. The system is intended to assist staff achieve their personal and professional goals, and to promote the organization's mission, goals and objectives. Every employee will be encouraged to reach his/her



Court Registry Staff, Nandlal Hardial and
Jacqueline Swaby



CCJ Staff at a meeting of staff

BUILDING A STRONG HUMAN RESOURCE BASE

highest levels of competency and job performance. This process will allow each employee to find his/her own position of equilibrium in the organisation and his/her competency level which will be maximised in attaining the objectives of the organisation.

Employee Assistance Programme (EAP)

Recognizing that employee wellness is of critical importance, the CCJ plans to implement an EAP. Key objectives of the programme will include:

- preventing a decline in the performances of employees with previously satisfactory job performance and the potential for improvement;
- enhancing staff members' well-being by re-invigorating job performance and encouraging staff to strive for their best performance and highest standards;
- improving the quality of life of staff by providing greater support and helping to alleviate the impact of everyday work issues and personal problems; and
- enhancing productivity, as well as social functioning within the CCJ.



CCJ Drivers in training

Staff Regulations

During this period, the process of formulating staff regulations was also undertaken by a joint initiative of the Commission and the Court Administration Unit. The Commission gave its final approval to the regulations in June, 2010.

With an eye on what lies ahead, the emphasis of the HR Unit is on building a strong human resource base that will undoubtedly contribute to the organization's ability to deliver justice to the people of the region in an efficient and effective manner. An organization is as strong as its human resources.

HUMAN RESOURCE MILESTONES:

APPOINTMENTS, RESIGNATIONS AND RETIREMENTS



The Honourable
Mr. Justice Winston Charles Anderson
takes the oath of office

The Honourable
Mr. Justice Winston Charles Anderson
was appointed Judge,
effective 21st June, 2010.



CCJ President bids farewell
to The Honourable Mr. Justice Pollard

The Honourable
Mr. Justice Duke Pollard,
Judge of the Court,
retired effective 10th June, 2010.

Appointments

The Honourable Mr. Justice Winston Charles Anderson was appointed Judge, effective 21st June, 2010.

Mr. Cyril Bernard was appointed Security Manager, effective 2nd November, 2009.

Mrs. Wendy Lewis-Callender was appointed Deputy Court Executive Administrator, effective 22nd February, 2010.

Ms. Sue Lan Chin was appointed Secretary, effective 8th February, 2010

Mrs. Susan Medina was appointed Secretary, effective 25th January, 2010

Retirements and Resignations

The Honourable Mr. Justice Duke Pollard, Judge of the Court, retired effective 10th June, 2010.

Ms. Mary Barrow, Executive Secretary, RJLSC, retired effective 15th December, 2009.

Ms. Seanna Annette, Customer Service Representative, resigned effective 30th October, 2009

Ms. Gina Affonso-Smith, Customer Service Representative, resigned effective 1st November, 2009

Ms. Claudia Belfon-Williams, Security Officer, resigned effective 26th March, 2010.

PROVIDING THE TOOLS TO ENHANCE LEGAL RESEARCH

Providing the Tools to Enhance Legal Research

The methods of conducting legal research and the needs of the Court's customers are forever changing. In 2009-2010, the Court's research facilities therefore continued to focus on building and maintaining a comprehensive library collection to meet the legal and information research needs, especially materials used to research matters relating to the original jurisdiction. Significant development in this area of the collection has been achieved largely through a grant from the European Community; European Development Fund (EDF). A total of 323 bibliographical records were added to the Genie Inmagic database. Included in this figure were 122 titles received through funds provided under the European Community Grant. The Court Library, along with the Judicial Research Unit, utilizes these resources to provide research support to the President and Judges of the Court.

The Library also:

- Continued to develop its archival collection which consists of out of print material, rare books and older material still relevant for the interpretation of law. During the past year, a number of older monographs, Caribbean legislation and practice books were added to this collection.
- Enhanced its non-legal Caribbean Collection which includes titles on prominent leaders, CARICOM, integration, and sustainable development. During the period, about twenty five titles were added to this collection.
- Continued to supplement its print resources by providing access to web based subscription databases which include Lexis-Nexis, Westlaw, Hein Online, Carilaw and Justis
- Continued to develop mutually beneficial relationships with libraries locally, regionally and internationally to deliver resources not held by the library and also to achieve its strategic objectives.
- Added a Bookeye 2 Plus Scanner to bring high end professional scanning to its customers. This overhead scanner easily processes books, files, notes, bound originals and newspapers up to the A2 format in a "face-up" procedure, which preserves the original condition of the originals. With this new technology, documents can now be scanned and sent via e-mail directly to customers. The scanner is also used to digitize books and material which are then added to the Library's catalogue.



LeShaun Salandy, Court Library Assistant,
using the Bookeye Plus 2 Scanner.

- Continued to enhance its "interactive" Current Awareness Bulletin which lists new acquisitions as well as legislation received from throughout the region.

The Library's resources continued to be utilized by the Court's internal customers of judges and staff, as well as its external customers.

- Approximately 251 reference and information queries were received and 97 % were answered. Over 203 items were loaned and 30 interlibrary loans (ILL) were processed. (to be included as a highlighted note off to the side)

Over the next year and continuing, efforts will be concentrated on the indexing of articles, reports and other documents.

The library's ever-developing collection is at the disposal of court users and most specifically forms the operational resource for the Judicial Research Unit, currently comprised of two attorneys at law. The Unit undertakes the task of providing assistance to both the judicial and administrative arms of the Court in the execution of their duties. Aid to the President and Judges of the Court includes the provision of legal research and the preparation of legal opinions for court cases, speeches and papers. As for the Court's administrative arm, the unit assists in the drafting and vetting of legal documents and the provision of general legal advice.

LEARNING FROM EXPERIENCE TO INNOVATE FOR THE FUTURE

• Fact-Finding Missions

Following upon enquiries concerning the Court's production of monolingual judgments, and the possibility of translating, a team from the Court Administrative Unit visited the Supreme Court of England, several international courts and the European Commission in order to develop strategic relationships and cooperation in areas that are of critical importance to the CCJ. This activity was funded by the grant under the European Development Fund intended to assist the Court in developing and strengthening capacity in various areas.

Supreme Court of England – 25th June, 2010

At the Supreme Court of England the team held discussions with the Registrar and the Court Executive Officer's team. The discussions, review and study focused on the issue of referrals to the European Court of Justice and advisory opinions. The procedures utilized by the attorneys-at-law, the bench and Registry were reviewed in detail. Precedents as well as the structure of the orders and applications by which matters are referred by the Supreme Court were also viewed and studied.

Headquarters of the European Court of Justice - Luxembourg – 27th June, 2010

Several meetings were held in Luxembourg. For these meetings the team was joined by the Director of the Caribbean Regional Information and Translation Institute (CRITI) headquartered in Suriname. These meetings focused on the vexing issue of legal and judicial translations. The team met with the heads of the Translation and Terminology Units who were of great assistance in the area of lawyer translators and terminology technology to facilitate translation. As a result, the Court was able to gain good insight and also lay the groundwork for future cooperation and assistance in the use of technologies for translation, terminology and training of lawyer translators and court interpreters.

European Commission – Luxembourg – 28th June, 2010

Persons from the European Commission graciously agreed to meet with the team in Luxembourg. Discussions centred on issues related to

translation, inclusive of legislative translations and the various information technology tools available to support same

International Court of Justice – The Hague – 30th June, 2010

The team met with staff of the International Court of Justice in the Hague. Of particular interest was the meeting with the Head of the English Translation Division who gave additional guidance and shared his experience regarding court translators and interpreters. In particular, the issue of core competencies required for legal and judicial translations were discussed and the use of software to support translators. The groundwork was laid for possible exchanges of lawyer translators in order to assist the Caribbean Region.

International Criminal Tribunal for the former Yugoslavia – The Hague - 30th June, 2010

At the Court, the team met with the President of the Tribunal and had the opportunity to witness a hearing, and to see first-hand, the interpretation systems at work. A meeting was also held with the Head of the Translation Unit who shared her experiences and here too the possibility of exchanges and practical support were discussed.

• Looking at Best Practices

Meeting of Registrars of Final/Appellate, Regional and International Courts
The Commonwealth Secretariat held a meeting of Registrars of Final/Appellate, regional and International Courts in Ottawa, Canada from April 14 – 16, 2010. This meeting was convened pursuant to a recommendation made at the meeting of Registrars and Judges of Final/Appellate Regional and International Courts held in London in July 2007. The meeting was held at the Supreme Court of Canada and followed the format of the presentation of papers by the participants. Registrars of the Supreme Court of Canada, the International Criminal Court, the South African Development Community Tribunal, East African Court of Justice, the Court of Appeal of the Bahamas, the Supreme Court of Trinidad and Tobago and the Eastern Caribbean Supreme Court participated in the Meeting. One of the objectives of the meeting was to develop a comprehensive handbook of Best Practices for Registrars.

PLANNING AHEAD: COURT COMMUNICATIONS REDEFINED

As the work of the Court charged into its 5th operational year, it was necessary to redefine the CCJ's public awareness strategy; taking stock of the Court's achievements and planning for the Court's future.

The CCJ's 5-year history and its work over this period showed the Court's fortitude, competence, and the importance of its existence to the Caribbean region. This great achievement, while acknowledged in international fora, was not yet recognized within the region. The CCJ's response to this was not only to amplify its public awareness initiatives, but to ensure that these activities were well-tailored to suit the various sectors of the regional public.

During this period, with the assistance of the 9th European Development Fund, the CCJ sought to address a number of projects in an effort to increase public awareness. Tenders were requested and submissions were received for the development of various publications and video productions.

To celebrate its five-year anniversary, the Court produced a Commemorative Booklet, which provides a reader-friendly synopsis and pictorial on the Court's activities since its inauguration. A 20-minute video feature was also produced in the same vein, with the added contributions of the President and each Judge, who shared their perspective on the work of the Court, and its contributions to Caribbean jurisprudence and regionalism.

Both publication and video presentation were introduced to audiences at the *Colloquium to commemorate the Fifth Anniversary of the Caribbean*

Court of Justice at the Hyatt Regency Trinidad in April 2010.

The Court's public awareness thrust also took advantage of the unconventional yet effective means of a regional in-flight programme. A 3-minute video production was developed for the Caribbean Airlines In-flight programme Caribbean Essence. This opportunity proved greatly beneficial to the Court's efforts, as its message was broadcasted on all intra and extra regional flights, serviced to local, regional and international customers of varying ages and social backgrounds.

The CCJ also formed linkages with the Government Information Services (GIS) offices and departments throughout the region to air the various video programmes about the role and functions of the Court on local television stations.

Based on the internal monitoring of the regional media, including social media networks (facebook, twitter, blogs, forums, etc.), the Court has observed that new age media outlets are empowering regional citizens to become more expressive and opinionated. Looking ahead, the CCJ plans to encourage this initiative by redesigning its online presence to create a more interactive and modern Court website and creating its own social media presence. This medium will provide the Court with direct feedback on the insights of its customers, while at the same time facilitating a forum for direct communication and the addressing of misconceptions or concerns.

CAPACITY BUILDING: INFORMATION AND COMMUNICATIONS TECHNOLOGY

In keeping with the CCJ's plans, several initiatives were undertaken by the Information Systems (IS) Unit utilizing the 9th European Development Fund (EDF). The aim was to build the Court's capacity to the benefit of both internal and external customers. To support these initiatives the IS Unit engaged in the research and review of the ICT needs of the Court, and the identification of proposed solutions that would support the Court's functions.

The CCJ's external customers come from jurisdictions scattered across the Caribbean region. The Court itself has sub-Registries across the region. One of the major challenges facing the Court is that of easy access to its services due to the physical distance of the various sub-registries from the seat of the Court in Port of Spain, Trinidad. In order to provide the Caribbean Community with justice that is accessible and innovative, the CCJ developed several strategies, including, the application of

technology to improve its communications with its regional customers. The CCJ therefore set out to ensure that most of the territories in the region are equipped with a videoconferencing solution aimed at enhancing communication among the Courts and its customers, and thereby closing this gap.

After preliminary research was conducted in the selected countries, the services of a consultant was engaged to aid in the development of a tender specification document for the acquisition of the equipment. In May 2010, Mr. Ronald Ogeer was contracted to provide these consultancy services for the Implementation of CCJ Videoconferencing Project - 9 ACP RCA 14 – CCJ ICT INT 1 of 2010.

It is envisaged that videoconferencing equipment will be installed in courts throughout the region by the end of 2010.

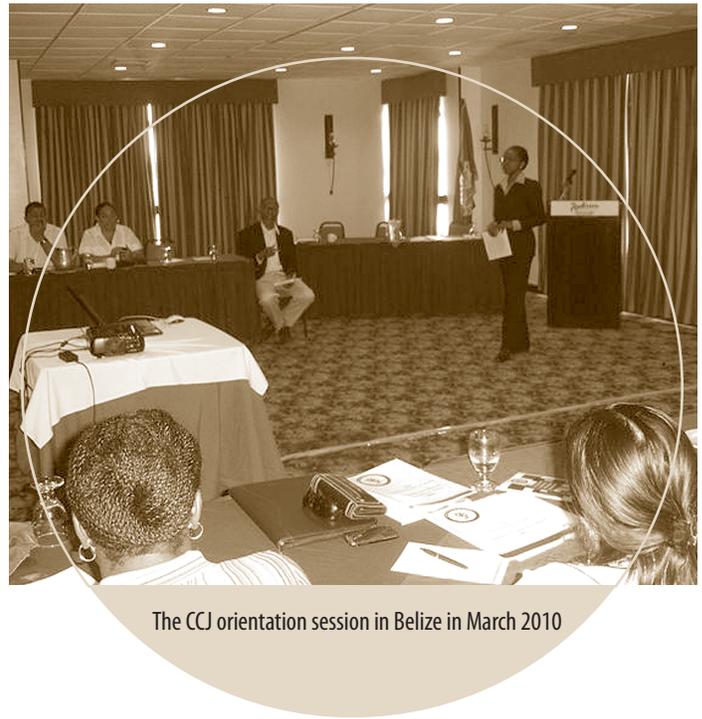
FACILITATING GROWTH

Law is not a stagnant discipline and neither is its administration. The CCJ realises that despite its present good standing and the quality of its Judges and staff, in order to remain relevant and to continue to be a good court, it must remain up to date in its knowledge and study of law and its knowledge and study of the administration of courts. The CCJ places high value on continuous and systematic training and skill and knowledge enhancement of judges and staff. This redounds to the benefit of all concerned as the court is the richer for the professional growth of judges and staff and the court user is well placed to benefit from the greater bank of professional resources available to the Court. To this end, Judges and staff participated in training, led judicial and court and legal education sessions, and attended conferences to inform audiences about the court, to discuss the work of the court, and to bring back to the court lessons learnt.

Training, seminars and conferences in court administration related topics included The Court Executive Development Programme of the National Centre for State Courts from which the Deputy Registrar and the Chief Librarian both graduated in 2010; Training in areas such as court records management, managing records for Courts and Law Applications, Court Security and Emergency Planning, Facilities Management, Court Technology Management, Court Human Resource Management, and Court Library Services business continuity, court reporting, Court Financial Management including the Management of Pension Funds- self administered funds, and proposed new pension legislation; and a UN review of National Perspectives on Rule of Law Assistance.

With the continuing focus on developing Information and Communications Technology in support of access to justice, The President of the CCJ delivered the opening address at the Caribbean Association of Court Technology Users which carried the Theme, "Growing IT in Lean and Green Times". CCJ Judges and staff presented at this conference in areas such as "Open Source Software Another Way to Work Smart", "Future IT Trends and How These May Impact Courts" and "Fundamental Issues in Procurement". Participation in the International Court Technology Conference brought together over 1500 court professionals from around the world to look critically at Court Technology. CCJ representatives participated in sessions which looked at inter alia "Remaining Innovative With Technology in Difficult Economic Times" and "The Role of Social Networking Tools in Judicial Systems"

Training, seminars and conferences in law related topics continued to enhance the knowledge and analytical skills of the judges and legal staff and to keep them up to date on legal developments. Judges and legal staff attended various programmes in Competition Policy and Law, and conferences and seminars in Economic Crime, Trust and Estate Law, Bank Insolvency in the Caribbean, - Law and Best Practice. CCJ Judges presented at conferences including The Commonwealth Magistrates and Judges



The CCJ orientation session in Belize in March 2010

Association Conference, the 27th International Symposium on Economic Crime at Jesus College, Cambridge University, United Kingdom, 27th International Symposium on Economic Crime at Jesus College, Cambridge University, United Kingdom, the Caribbean Conference of the Society of Trust and Estate Practitioners, 25th Annual Transcontinental Trust Conference, The Ninth Annual General Meeting PANCAP Coordinating Unit, 2010 Black Law Students' Association of Canada Conference, the Jamaica Deposit Insurance Corporation Conference and the Caribbean Law Institute Conference

With Belize becoming the third CARICOM member state to send its appeals to the CCJ, in March 2010 the Honourable Mr. Justice Adrian Saunders and the Registrar of the Court visited Belize and conducted orientation sessions with the Bar, the High Court and Court of Appeal Bench and the staff of the Registry in order to familiarize them with the Appellate Jurisdiction of the Caribbean Court of Justice.

The Court Executive Administrator and the Deputy Registrar addressed the Barbados bar on, inter alia, the Appellate Jurisdiction and Original Jurisdiction Rules of Court in March 2010. Ms. Paula Gifford, The Registrar of the CARICOM Competition Commission trained at the CCJ Registry in an Introduction to Court Registry Operations.

FACILITATING GROWTH



The President of the CCJ and the Chief Justice of Trinidad and Tobago present the winning team, Eugene Dupuch Law School, with the Law Moot Challenge Shield.

Each team debated legal points related to the free movement of Caribbean Community (CARICOM) nationals, the right to seek employment throughout the region as a Community national, the impact of previous criminal convictions on the free movement of nationals, and the extent of the jurisdiction of the Revised Treaty of Chaguaramas in the moot case of *Jerry Latour v the Attorney General of Antigua and Barbuda*.

Students from the Faculty of Law at the University of the West Indies St. Augustine performed the functions of the Registry staff. They were instrumental in locating authorities and in preparing bundles of authorities, written submissions and core bundles of documents submitted by the six teams for the three Judges who presided at the moot. They were also responsible for court clerk and in-court registry functions and timekeeping.

The Honourable Mme. Justice Bernard, and Messrs Justice Wit and Hayton presided over the moot. The team from the Eugene Dupuch Law School won the CCJ Shield, with the team from the Norman Manley Law School placing second. The team members and the Moot Registry Staff are set out below.

The teams

University of Technology (Jamaica); Junior Michal Gonzales, Tamsym

Investing in the Future Leaders of the Region:

The CCJ recognizes that the future of the Caribbean region lies in the hands of its youth. With a goal of contributing to the development of the younger generation, the Court continued its internship programme for law students, held its second annual International Law Moot Competition on 5th March 2010 and, for the first time, embarked on a Student Vacation Mentorship and Work Programme during the period June to August 2010.

• Preparing Our Young Attorneys: The Second International Law Moot

Five Universities and Law Schools participated in this event, namely: the Eugene Dupuch Law School (The Bahamas), the Hugh Wooding Law School (Trinidad and Tobago), the Norman Manley Law School (Jamaica), the University of Guyana and the University of Technology of Jamaica. The team from each university or law school comprised three students: a lead advocate, a junior advocate, a reserve advocate and the team advisor.

FACILITATING GROWTH

Latoya Harper, Paula-Sue Garnette-Ferguson, Associate Professor Kent Pantry (Team advisor)

Hugh Wooding Law School (Trinidad and Tobago); Christie Anna-Marie Modeste, Keavon Bess, Nailah Robinson, Cheryl-Ann Jerome-Alexander (team advisor)

University of Guyana; Gemayel Babb, Naomi Christie, Joy Morris, Mrs. Kamadyah Young (team advisor)

Eugene Dupuch Law School; Tecoyo O'Neil Bridgewater, Gwendolyn Sherolyn Brice-Adderley, John Fredrick Minns, Mrs. Carla Card-Stubbs (team advisor)

Norman Manley Law School; Orrett Andre Brown, Marc Spencer Jones, Kellee-Gai Mikela Blake, Professor Stephen Vasciannie (team advisor)

Moot Registry Staff

In 2009 for the first International Law Moot five first year law students from the Faculty of Law of the University of the West Indies, St. Augustine volunteered to perform the functions of the Moot Registry staff. In 2010 the response to the request for volunteers was overwhelming and eventually thirteen students performed the functions of Moot Registry staff during the three sessions of the competition. They are as follows: Arielle Aberdeen, Kateisha Ambrose, Christie Borely, Asante Brathwaite, Cari Chandler, Johanna Daniel, Gabriella Garcia, Liska Hutchinson, Candace Lopez, Khadija Mac Farlane, and Juliet Sargeant.

The Court views the international law moot as part of its commitment to sensitising law students about its Original Jurisdiction in particular and bringing them into a full awareness of the Court's key role in the development and expansion of the Caribbean Single Market and Economy.

• Law Internship Programme

During the 2009- 2010 period, the Judicial Research Unit was ably assisted in the discharge of its duties by Ms. Michelle Hoffman from the University of Western Ontario and Ms. Saskia Carmichael from the Hugh Wooding Law School, who participated in the Court's 2010 Law Internship Programme.

• The CCJ Student Vacation Mentorship and Work Programme

The programme, which was opened to students of advanced, undergraduate and graduate education levels in Trinidad and Tobago, aimed to facilitate learning through insight into the various aspects of the work environment of this regional Court.



The CCJ Registrar and Deputy Registrar bid farewell to Legal Intern Ms. Michelle Hoffman

Fourteen (14) students were selected to be apart of the 10-week programme and were provided with the hands-on experience of operating in a professional, dynamic and modern Court environment. The trainees worked closely with the CCJ's management and staff while receiving meaningful, realistic, and productive work assignments and structured workplace training. Through guided lessons and tasks, the students also gained a greater appreciation for the Caribbean Court of Justice and the Caribbean Community (CARICOM) which it serves.

The success of this programme was evidenced by the hard work and dedication of its participants.

"I learnt a lot more about the region and what CARICOM means as my experience here brought regionalism to life."

Semone Moore – Participant,
Student Vacation Mentorship and Work Programme

"My short stint at the Caribbean Court of Justice gave me the opportunity to develop people skills. My knowledge on how to interact and co-operate with other persons to achieve common goals was increased by doing group projects and working in tandem with other interns as well as staff members."

Nicholas Brown – Participant,
Student Vacation Mentorship and Work Programme



STRENGTHENING
LINKAGES AND
SHARING
KNOWLEDGE

STRENGTHENING REGIONAL LINKAGES AND SHARING KNOWLEDGE

CACTUS 2009

The Caribbean Court of Justice hosted the 5th Annual Caribbean Association of Court Technology Users (CACTUS) Conference at the seat of the Court in Port of Spain, Trinidad from Thursday 20th to Saturday 22nd August 2009. The theme of the conference was "Growing IT in Lean and Green Times". Participants came from Barbados, Belize, Curacao, Jamaica, St. Lucia and the Territory of the British Virgin Islands as well as from Trinidad and Tobago.

The contingent from Trinidad and Tobago included representatives from The Industrial Court, The Judiciary, The Environmental Commission and The Tax Appeal Board.

The group was honoured and privileged to have the opening remarks done by The Right Hon. Mr. Justice de la Bastide, President of the Caribbean Court of Justice. The feature address was done by The Hon. Mr. Justice Saunders on the theme 'CACTUS and the Caribbean Reality'. Participants were invited to make presentations on the status of court information technology in their organisations. Unfortunately the representatives from Guyana were unable to attend the conference but their organisation's presentation which was prepared and sent was shown to the group.

The agenda was geared toward making the participants more aware of the challenges and possible solutions to issues and problems faced by courts in light of recent events such as the economic downturn. The increasing concern of global warming and its effect on the environment



Participants from various courts on
Day One of the Conference
CACTUS Conference

was also addressed. The conference was chaired by Ms. Carlene Cross, Systems Manager at the Caribbean Court of Justice.

Presentations were made by various staff members of the CCJ and as well as external vendors. These included the following:

- The Budgeting Process, presented by Mr. Larry Ramoutar of CCJ
- Green IT, presented by Ms. Sian Cuffy of Solid Waste Management Co. Ltd. (SWMCOL)
- Virtualisation for the Future, presented by Mr. Sanjeev Singh of TSL Group
- CCJ Courtroom Presentation, presented by Ms. Lavaughn Agard of CCJ
- Original Jurisdiction of the CCJ, presented by Ms. Radha Permanand of CCJ
- Open Source Software Another Way to Work Smart, presented by Ms. Sonia Thompson of CCJ
- Procurement – Some Fundamental Issues, presented by Mr. Larry Ramoutar of CCJ
- Justice: Considerations for Court Website in the 21st Century, presented by Mr. Dwayne Villiers of VIRB Ltd.
- Future IT Trends: How These May Impact Courts, presented by Mr. Ayinde Burgess of CCJ



Ms. Carlene Cross - Systems Manager, CCJ
presents at CACTUS

STRENGTHENING REGIONAL LINKAGES AND SHARING KNOWLEDGE

The group visited the Port of Spain Magistrates' Court to view a video conference between that Court and the Tobago Prison. The demonstration showcased the use of videoconferencing to facilitate the court performance standard of access to justice through the use of technology as the prisoner's hearing was done at the prison, in the presence of the prisoner's attorney, instead of physically bringing the parties to the court. This solution helps to alleviate security concerns for the transportation of the inmates and also to reduce the costs associated with bringing prisoners to the court. The group then visited the Industrial Court for a demonstration of their real time court reporting solution. This solution makes it possible for the judges to view transcripts of the court's proceedings on their monitors.

The CACTUS conference is of benefit as it enables court technology users to come together and discuss issues that affect them, share information about their organisations and suggest solutions. CACTUS also fosters camaraderie throughout the region as attendees communicate with each other not only in a formal setting but also in various other activities during the conference thereby building relationships while strengthening regional ties. There is a wealth of knowledge in the region and this conference is seen as a golden opportunity to share experiences and get information about court information technology. It also makes others aware of possible solutions that they can incorporate, that other courts in



Tobago Participants at Day One of the CACTUS Conference

the region may already be using, to better and more efficiently manage their processes. The conference has been deemed a success by all who attended and continues to foster solidarity among technology users in regional territories.



Court Information Technology Specialist from throughout the Caribbean region at the 2009 CACTUS conference

STRENGTHENING REGIONAL LINKAGES AND SHARED KNOWLEDGE

The Inaugural Symposium of the Caribbean Law Institute Centre (CLIC) of the University of the West Indies

The Court's final major final activity for 2009 was the co-hosting of the Inaugural Symposium of the Caribbean Law Institute Centre (CLIC) of the University of the West Indies, held in association with the Caribbean Community (CARICOM) Secretariat, and titled: "Current Developments in Caribbean Community Law. The symposium took place from Monday 9 to Wednesday 11 November 2009 in Port of Spain. Aimed at policymakers, attorneys-at-law, business executives, senior public servants, judicial officers, bankers and entrepreneurs, among others, the symposium was announced to be an "annual high level forum for discussion of current or controversial developments in the law relating to or affecting the Caribbean Community and its Member States."

The CLIC opined that the recent CCJ Original Jurisdiction decisions provided "particular fodder" for the 2009 symposium by emphasizing: the rules-based nature of CARICOM law; the importance of compliance by the Community with administrative law principles; the role of the Common External Tariff (CET); Competition; CCJ Litigation by the Private Sector and the nature of CARICOM institutions. The prestigious symposium was honoured by the attendance of, among others, the Honourable Mr. David Thompson, Prime Minister of Barbados; Dr. Cuthbert Joseph, Ambassador Extraordinary and Plenipotentiary, representing the Prime Minister of Trinidad and Tobago; His Excellency Dr. Edwin Carrington, CARICOM Secretary-General; and Professor Nigel Harris, Vice Chancellor of the University of the West Indies.



Dr. Edwin Carrington, Secretary-General, CARICOM, H.E. Dr. Cuthbert Joseph, Ambassador to CARICOM, Hon. David Thompson, Prime Minister of Barbados and Justice Michael de la Bastide about to enter the conference room

STRENGTHENING LINKAGES AND SHARED KNOWLEDGE – THE COURT'S GUESTS AND VISITORS



H.E. P.J. Patterson special representative of CARICOM on Reconstruction of Haiti greets CCJ staff from his home country of Jamaica

Honourable Ernst Hirsch Ballin, Minister of Justice of the Kingdom of The Netherlands (11.10.09)

H.E. Hans Peter Paul Maria Horbach, Ambassador of the Kingdom of The Netherlands (11.10.09)

Dr Robert K Visser, Director-General, Ministry of Justice of the Kingdom of The Netherlands (11.10.09)

Mr Michael Adamson, Dean, Diego Martin Central Secondary School (12.10.09)

Ms Katia Afheldt, Deputy Head of Development Unit of the European Commission (22.10.09)

Mr Stelios Christopoulos, Minister-Counsellor and Chargé d'Affaires, Delegation of the European Commission to Trinidad & Tobago (22.10.09)



Left: CCJ Judges answer questions from Trinidad and Tobago Magistrates



Right: Magistrates visit the CCJ courtroom

THE COURT'S GUESTS AND VISITORS



Professor Kent Pantry visits the CCJ

Sir George Alleyne, Chancellor of the University of the West Indies (28.10.09)

Honourable Mr Justice Cottle, Judge of the ECSC (24.11.09)

Honourable Mme Justice Jones, Judge of the High Court of Trinidad & Tobago (03.12.09)

Prof. Theodore H Curry II, Associate Vice-President and Associate Provost, Michigan State University (21.01.10)

Mr Roger Gaspard, Director of Public Prosecutions of Trinidad & Tobago (05.03.10)

Prof. Kent Pantry, Associate Professor and Dean, Faculty of Law, University of Technology of Jamaica (05.03.10)

Prof. Geoffrey S. Corn, South Texas College of Law, Texas (USA) (16.03.10)

Prof. Elizabeth Dennis, Assistant Dean, South Texas College of Law, Texas (USA) (16.03.10)

Mr Doug Williams, Director General, CIDA Caribbean Programme (19.03.10)

Mr Zahir Meghji, Senior Analyst, CIDA Caribbean Programme (19.03.10)

Dr Dinah Shelton, Professor of Law, Inter-American Human Rights Commission (03.05.10)

His Honour Vernon Ashby, Member, Industrial Court of Trinidad & Tobago (14.07.10)

Her Honour Sandra Paul, Chairman, Environmental Commission of Trinidad & Tobago (03.05.10)

Judge Mohammed B. Dadda, National Industrial Court of Nigeria (14.07.10)

Judge Faustinah I. Kola-Olalere, National Industrial Court of Nigeria (14.07.10)

Judge Oluseun A. Shogbola, National Industrial Court of Nigeria (14.07.10)

Judge James T. Agbadu-Fishim, National Industrial Court of Nigeria (14.07.10)

Mr John Targema, Deputy Chief Registrar, National Industrial Court of Nigeria (14.07.10)

Mr Aremo Olanrewaju Lawrence, Assistant Director of Administration, National Industrial Court of Nigeria (14.07.10)

H E P. J. Patterson, Special Representative of CARICOM Heads to Haiti (16.07.10)



Members of the Industrial Court of Nigeria being addressed by CCJ Registrar Supervisor Nandlal Hardial

THE COURT'S GUESTS AND VISITORS A VISIT WITH CHILDREN OF TRINITY JUNIOR SCHOOL



DO YOU KNOW?

QUESTIONS AND ANSWERS

Q. What is the Caribbean Court of Justice?

A. The Caribbean Court of Justice (CCJ) is the Caribbean regional judicial tribunal established on 14 February 2001 by the Agreement Establishing the Caribbean Court of Justice. The agreement was signed on that date by the CARICOM states of: Antigua & Barbuda; Barbados; Belize; Grenada; Guyana; Jamaica; St. Kitts & Nevis; St. Lucia; Suriname; and Trinidad & Tobago. Two further states, Dominica and St. Vincent & The Grenadines, signed the agreement on 15 February 2003, bringing the total number of signatories to 12. The Bahamas and Haiti, though full members of CARICOM, are not yet signatories, and because of its status as a British colony, Montserrat must await Instruments of Entrustment from the UK in order to ratify. The Agreement Establishing the Caribbean Court of Justice came into force on 23 July 2003, and the CCJ was inaugurated on 16 April 2005 in Port of Spain, Trinidad & Tobago, the Seat of the Court

Q. Is the CCJ a new idea?

A. No. It had a long gestation period beginning in 1970, when the Jamaican delegation at the Sixth Heads of Government Conference, which convened in Jamaica, proposed the establishment of a Caribbean Court of Appeal in substitution for the Judicial Committee of the Privy Council.

Q. How is the appellate jurisdiction different from the original jurisdiction?

A. In its appellate jurisdiction, the CCJ hears and determines appeals in both civil and criminal matters from common law courts within the jurisdictions of Member States of the Community and which are parties to the Agreement Establishing the CCJ.

In its appellate jurisdiction, the CCJ is the highest municipal court in the region for states which accede to its appellate jurisdiction. In its original jurisdiction, the CCJ discharges the functions of an international tribunal, applying rules of international law in respect of the interpretation and application of the Treaty of Chaguaramas. In this regard, the CCJ functions like the European Court of Justice, the European Court of First Instance, the Andean Court of Justice of COMESA and the International Court of Justice. In short, the CCJ is a hybrid institution – a municipal court of last resort and an international court with compulsory and exclusive jurisdiction in respect of the interpretation and application of the Treaty of Chaguaramas.

The Original Jurisdiction of the Caribbean Court of Justice

Q. What is the relationship between the Caribbean Court of Justice (CCJ) and the CARICOM Single Market and Economy?

A. The CARICOM Single Market and Economy (CSME) is established by the Treaty of Chaguaramas as revised by nine Protocols. The main purpose of the CCJ's original jurisdiction is to interpret and apply the Treaty, (as revised). This is done by

- hearing and deciding on disputes between countries or between persons and countries which involve issues which the treaty deals with, or
- by giving advisory opinions when member states ask for them, or
- by having national courts and tribunals refer issues to the CCJ for interpretation.

Q. But how does this function of the CCJ impact on the CARICOM Single Market and Economy?

A. By interpreting and applying the Treaty which establishes the CSME, the CCJ will determine in a critical way how the CSME functions. The CSME creates an extensive range of rights and obligations for States parties to the Treaty and, through these States parties, for CARICOM nationals.

Q. Why must CARICOM nationals enjoy rights and discharge obligations through their States? Why cannot such nationals enjoy rights and discharge obligations without the intervention of their States of nationality?

A. This is an important question which requires a clear response. Firstly, it must be borne in mind that treaties, like the Treaty of Chaguaramas, are governed by international law. International law is based on rules which are quite different from the legal rules normally applied by judges in our national courts. One important difference is that rules of international law ordinarily apply only to countries which are called subjects of international law. Only in exceptional cases are those rules directly applicable to individuals. Consequently, individuals only enjoy rights set out in international instruments through their country on which those rights are conferred initially. For private entities or individuals to enjoy rights under an international instrument, the instrument would have to be implemented into local law by the country concerned.

Q. What are the exceptional circumstances in which rights and obligations under international law are conferred on individuals directly?

A. One such exceptional circumstance is the example of the European Union created by the Treaty of Rome as amended by the Treaty of Maastricht and which grants rights and creates obligations directly for citizens.

Q. Why can't the Member States of CARICOM agree to have the Treaty of Chaguaramas interpreted and applied in some way other than the CCJ? The Treaty of Chaguaramas has existed for more than twenty-five years without a Court. What is all this fuss now about the need for a Caribbean Court to interpret and apply the Treaty?

A. The old Treaty of Chaguaramas provided for arbitration in the event of disputes concerning the interpretation and application of the Treaty. Unfortunately, however, the arbitral procedure was never used and serious

DO YOU KNOW? QUESTIONS AND ANSWERS

disputes were never settled, thereby causing the integration movement to be hampered. Moreover, the rights and obligations created by the CSME are so important and extensive, relating to the establishment of economic enterprises, the provision of professional services, the movement of capital, the acquisition of land for the operation of businesses, that there is a clear need to have a permanent, central, regional, institution to authoritatively and definitively pronounce on those rights obligations. The Caribbean Court of Justice is that authoritative institution.

Arbitration tribunals reach decisions which are binding only on the parties to a dispute. However, the decisions of the CCJ will create legally binding norms for all Member States which are parties to the Agreement establishing the CCJ.

Q. Would the absence of such a Court adversely affect the development and functioning of the CSME?

A. Definitely! The Caribbean Community is largely a capital importing region. Foreign investors seeking to invest normally prefer a stable macro-economic environment based on predictable laws in order to determine outcomes. The CCJ is necessary for such an environment!

Q. How can the CCJ create a stable macro-economic environment suitable for the attraction of foreign capital?

A. The CCJ has been configured to ensure that the laws of the CSME are uniform and predictable. Firstly, the CCJ has exclusive jurisdiction in respect of the interpretation and application of the Treaty. If it had concurrent jurisdiction with other Courts of the Community, there is a likelihood of conflicting opinions on important economic, commercial and financial issues thereby creating uncertainty and unpredictability in the business climate and macro-economic environment! Stability of expectation is a fundamental requirement for investment decisions.

Q. So what happens where another Court in the Caribbean Community has a case before it with an issue which involves a question concerning the interpretation and application of the Treaty? Must the Court decline to accept jurisdiction and pronounce on the case?

A. No! The Court must accept jurisdiction and refer the particular issue to the CCJ for determination before delivering judgment, which must respect the CCJ's determination of the relevant issue! A similar requirement of referral obtains in the European Union and it has been credited with promoting social and economic cohesion among the Member States.

Q. What happens if a delinquent party to a dispute refuses to submit to the jurisdiction of the CCJ?

A. By signing on to the Agreement Establishing the CCJ, all Member States of the Community have submitted to the jurisdiction of the CCJ in the exercise of its original jurisdiction which is compulsory and exclusive.

The European Court of Justice does not enjoy exclusive jurisdiction but when a court of last resort is hearing a case in which there is an issue concerning the interpretation or application of the Treaty of Rome, the court must refer the issue to the European Court of Justice for determination.

Q. How are decisions of the CCJ enforced?

A. Member States signing on to the agreement Establishing the CCJ agree to enforce its decisions in their respective jurisdictions like decisions of their own superior courts. The CCJ has held that the Revised Treaty of Chaguaramas authorises the Court to make coercive orders against Member States.

Q. Can the CCJ reverse itself as it considers fit thereby creating uncertainty?

A. The Agreement Establishing the CCJ does provide for the revision of decisions in specified circumstances. But such revisions are intended to satisfy the ordinary requirements of justice! Judgments are not to be revised lightly. Indeed, in the ordinary course of events, decisions of the CCJ constitute *stare decisis*.

Q. What does *stare decisis* mean?

A. *Stare decisis* is peculiar to common law jurisdictions but it has been imported into the Agreement Establishing the CCJ to ensure certainty. The doctrine of *stare decisis*, or judicial precedent, requires the Court to pronounce in the same manner provided the circumstances of the case are similar.

Q. What legal principles does the CCJ apply? **A.** Rules of law prescribe the conduct to be observed. The Rules of Law applied by the CCJ in the exercise of its original jurisdiction would normally be rules of international law. In its appellate jurisdiction, the CCJ would apply national laws and rules of common law.

Q. Since Suriname and Haiti have civil law jurisdictions, can they participate in the regime establishing the CCJ?

A. This would depend on the jurisdiction of the CCJ to which access is desired. Both civil law and common law jurisdictions can participate in the CCJ in the exercise of its original jurisdiction. This is so because the CCJ in exercising its original jurisdiction is discharging the functions of an international tribunal applying rules of international law. International law rules are common to both common law and civil law jurisdictions. However, some changes would be required if Suriname or Haiti wished to participate in the appellate jurisdiction of the CCJ where municipal law rules and not international law rules apply.

Q. Can private entities, like enterprises or individuals, appear in proceedings before the CCJ in the original jurisdiction?

A. The simple answer is yes, but only by special leave of the Court in

DO YOU KNOW? QUESTIONS AND ANSWERS

special circumstances where the Court determines that the interest of justice requires it. However, in the ordinary course of events, only States are allowed to espouse a claim in proceedings before the **CCJ in its original jurisdiction**. Consequently, where a private entity is aggrieved, the State of nationality concerned would espouse its cause in proceedings before the CCJ. This is one of the peculiarities of international law.

The CCJ in one of its original jurisdiction decisions, established that there is a qualified right of access by individuals and private entities to the Court's original jurisdiction. The CCJ in that judgment clarified the conditions on which such access may be gained.

The Appellate Jurisdiction of the Caribbean Court of Justice

Q. Why does the region need its own court of last resort for civil and criminal matters?

A. The simple answer is to ensure independent judicial decisions in the region in order to complete the process of independence. However, on a simpler basis, for the laws of the region to inspire confidence and ensure voluntary compliance, they should mirror the collective social ethos of our peoples and, to be relevant and responsive, should be interpreted and applied by Judges who will understand our societies, our culture and our values.

Q. But is it not reasonable to assume that the Judges of the Privy Council being removed from the social environment are likely to be more dispassionate in interpreting and applying the law?

A. Some argue this point. Law however, is not mechanical. It is reflection of what the people in the society want for their society. Law is the normative outcome of the cut and thrust of human interactions based on collectively determined or generally accepted social values. It must continuously adjust to its environment.

Consequently, persons interpreting and applying the law should be attuned to the relevant dynamics of social interaction, which determine the quality and intensity of human intercourse, and the values conditioning such dynamics. And by this is meant the values that make us cry; the values that make us laugh; the values that make us happy or sad; the values that make us responsible, productive, creative, caring, proud people: in short, the values that condition our uniqueness as a people. To be far removed from the immediate environment of social interaction to which the law applies would facilitate a dispassionate analysis of humanevents and judicially objective decisions but only to the detriment of desirable social behaviour and social cohesion. In short, the decisions may tend not to reflect the needs of the society, because the people applying the law would not understand the society. What is an insult in one society is not an insult in another, what is appropriate behaviour

Q. Would the Judges of the CCJ be vulnerable to political manipulation?

A. It is generally accepted in our societies that independence of the judiciary is a vital and essential ingredient of the rule of law, a basic principle of governance in CARICOM Member States. To ensure independence of the members of the Court, there are appropriate provisions in the Agreement Establishing the CCJ to provide for credible institutional arrangements.

Firstly, unlike the situation with the European Court of Justice, where Judges are appointed by the Ministers of Governments, Judges of the CCJ are appointed by a Regional Judicial and Legal Services Commission (RJLSC). The composition of the RJLSC should offer comfort to the citizens of the region. The President of the CCJ chairs the Commission. Of its 11 members, four are to be appointed on the recommendations of the legal fraternity; two are to be chairpersons of national judicial and public service commissions, two are to be appointed by the Secretary General of CARICOM and the Director-General of the OECS jointly after consultation with non-Governmental organisations.

The Agreement also addresses the security of tenure of Judges. Removal of Judges from office requires an affirmative recommendation of a tribunal established for the purpose. The President of the Court is appointed by the Heads of Government of participating States on the recommendation of the commission and may be removed for cause only on the recommendation of the commission acting on the advice of a tribunal established for the purpose. The judges of the European Court of Justice, as indicated above, and the European Court of First Instance, are appointed by the Ministers of Government and those of the Andean Court of Justice are elected by States.

In effect, the Caribbean Community is the only integration movement whose judges are not directly appointed or elected by Member States!

Q. But are the Judges of the Court not paid by Governments which can exert decisive informal pressure on them to deliver self-serving judgments?

A. No, they are not! The Heads of Government have set up a US \$100 m Trust Fund to meet expenses of the Court. The Trust Fund enables the expenditures of the Court to be financed by income from the Fund. In this way, the expenditures of the Court including the remuneration of the Judges are not dependent on the disposition of Governments. The building of the CCJ is being provided by Trinidad and Tobago as part of its responsibility as host country.

Q. Is there any plausible assurance that the judicial pronouncements from the CCJ are of the desired quality?

A. Yes! The Caribbean region has had a strong tradition of erudite judges and sound decision making. Also, candidates for the bench may come not only from the Caribbean, but from any territory of the Commonwealth and from Civil Law countries. In fact, of the first bench, one judge is a Dutch national who has been a judge in the Caribbean for over twenty years and one is British who has once been a temporary judge in the Caribbean.

DO YOU KNOW? QUESTIONS AND ANSWERS

Having cast the net so widely, there is a plausible assurance that judges of the required expertise and legal erudition will continue to come forward for appointment. In any event, critics from the legal community expressing misgivings about the quality of judges should not forget that, the quality of judicial determinations is not unrelated to the quality of submissions by counsel. Indeed, the record would confirm that behind any sound judicial pronouncement in the region, and there are very many of them, the submissions of counsel were very well researched, informed and persuasive in respect of both issues of law and fact. Finally, some comfort must be taken from the fact that most appeals to the Privy Council are dismissed.

It is interesting to note, though, that the present President of the CCJ is a member of the Privy Council and the President-designate is a member of the Privy Council. There are other Caribbean judges who are members of the Privy Council. The President and the President Designate may be invited to sit by the Head of the Supreme Court of England and Wales, but have never been invited to do so.

Q. Does the renewed interest in the establishment of the Caribbean Court of Justice have anything to do with the decision of the Privy Council in “Pratt and Morgan”?

A. The unfortunate coincidence of those events is a matter of grave concern. However, the answer must be NO and should be placed in historical perspective. What is often forgotten by detractors of the Court is that the revived interest in the Caribbean Supreme Court or Caribbean Court of Justice, as it is now called, had its origin in the Report of the West Indian Commission (1992) which predated the landmark decision of the Privy Council in Pratt and Morgan (1993) by one year. Indeed, the recommendation for the establishment of a Caribbean Supreme Court in substitution for the Privy Council and vested with original jurisdiction concerning the interpretation and application of the Treaty of Chaguaramas, even though one of the most seminal determinations of the West Indian Commission, was anticipated twenty years before by the Representative Committee of OCCBA set up to examine the establishment of a Caribbean Court of Appeal in substitution for the Judicial Committee of the Privy Council. In short, if Pratt and Morgan was a watershed in Caribbean jurisprudence, the West Indian Commission's recommendation for a Caribbean Supreme Court was not an innovation in Caribbean judicial institutional development and is largely unrelated to popular perceptions of required sanctions for socially deviant behaviour. In point of fact, one of the most compelling arguments for the establishment of the Caribbean Court of Justice is the need to have an authoritative, regional institution to interpret and apply the Treaty, as amended, in order to create the CARICOM Single Market and Economy. But, unfortunately, the original jurisdiction of the Caribbean Court of Justice and its importance for the success of the CSME is little understood and even less appreciated by many members of the legal fraternity at the present time.

Q. Why does the Agreement Establishing the Caribbean Court of Justice provide for withdrawal from the regime thereby conveying a perception of political convenience and impermanence?

A. It is a rule of international law that treaties must be observed in good faith (*pacta sunt servanda*). However, in exceptional cases, such as a fundamental change of circumstances (*rebus sic stantibus*), a State may, as an attribute to sovereignty and in the national interest, withdraw from a treaty regime with the consent of either contracting parties if no withdrawal permission is set out in the relevant instruments subject to course, to the engagement of any international responsibility that may be involved. To withdraw from the CCJ, a country must give five years notice and does not escape its financial obligations.

Q. Would the retention of appeals to the Privy Council inspire foreign investor confidence, especially in the case of large investments, thereby facilitating a better investment climate?

A. There can be no doubt that credibility of the judicial sector reinforces investor confidence and promotes foreign direct investment. Undoubtedly, the Judicial Committee of the Privy Council has an international reputation for sound judgments and does inspire investor confidence. However, the stark reality is that the process of judicial settlement involving the Privy Council is too tardy to offer much comfort to the foreign investor. Furthermore, the court systems of the Member States are being improved as judicial reform efforts are well underway in most Caribbean jurisdictions. The CCJ is hastening that process. In fact, foreign investors with large sums to invest opt for self-contained instruments which include disputes settlement provisions tending to favour the ICSID route, that is the International Convention for the Settlement of Investment Disputes sponsored by the International Bank for Reconstruction and Development (IBRD).

Q. There are obviously many aspects of the CCJ to be understood. How are the people of the region expected to learn and understand the facts surrounding the CCJ, the benefits that can come with its establishment, and how to access those benefits?

A. The communication component is certainly a very important consideration. That is why, prior to the inauguration of the Court, there was already in progress a regional public education programme, designed to foster understanding in relation to the CCJ, the reasons for its establishment, the rules which will guide it, and especially, implications relating to its original jurisdiction and the critical relationship to the CSME. This public education effort was spearheaded at the national level, by national debate and dialogue, in order to adequately represent various interests, and address any questions or concerns arising within the national context. Many people however continue to express the view that not enough has been done in the way of public education. Now that the Court is in operation, a public education programme is being undertaken by the Court Administrator's department. In fact, the production of this document is part of that programme.

The idea of a Caribbean Court is not new. It has been 30 years in incubation. Now that its time has come – this critical investment in our future viability – the real concern must be how to get it right.

THE REGIONAL JUDICIAL AND LEGAL SERVICES COMMISSION



Members of the
Regional Judicial and Legal Services Commission

The Regional Judicial and Legal Services Commission (the RJLSC) is established by Article V.1 of the Agreement Establishing the Court (The Agreement). Its main functions are set out in Article V.3 (1) of the Agreement. This Article provides that -

“The Commission shall have responsibility for:

- (a) making appointments to the office of Judge of the Court, other than that of President;
- (b) making appointments of those officials and employees referred to in Article XXVII and for determining the salaries and allowances to be paid to such officials and employees;
- (c) the determination of the terms and conditions of service of officials and employees; and

(d) the termination of appointments in accordance with the provisions of the Agreement.”

The Agreement also sets out other functions of the Commission. Such functions include-

- o the exercise of disciplinary control over Judges of the Court, other than the President, and over officials and employees of the Court; Article V.3(2).
- o the making of recommendations to the Heads as to the person to be appointed President and for the removal of the President from office; Article IV.6
- o the determination of the terms and conditions and other benefits of the President and other Judges of the Court with the approval

THE REGIONAL JUDICIAL AND LEGAL SERVICES COMMISSION

- of the Heads of Government; Article XXVIII as amended.
- o the making of Regulations -
 - o to govern the appointment, discipline, termination of appointment and other terms and conditions of service and employment for Judges, other than the President, and officials and employees of the Court,
 - o to prescribe the procedure governing the conduct of such proceedings, and
 - o generally to give effect to the Agreement. Article XXXI.

The Commission is also given the responsibility under Article 172 of the Revised Treaty of Chaguaramas for appointing the members of the Competition Commission.

In order to carry out its functions the Commission met once every six to eight weeks during the period under review and meetings of the Committees of the Commission were held as required.

The Commission comprises a Chairman, who is President of the Court, and ten members. Between August 1, 2009 and July 31, 2010 the Commission was short one member. Sir Vincent Floissac who had resigned with effect from November 24, 2008 was not replaced during the period under review. However the term of office of several members expired and they were replaced in 2009 and 2010.

The term of office of Mr. Rodney Neal, the Chairman of the Judicial and Legal Services Commission of Belize who was sworn in on January 16, 2009 as a member of the RLSC to complete the term begun by Mr.

Anthony Sylvestre, expired on 10th January 2010. Mr. Neal was replaced by Chief Justice Hugh A. Rawlins, the Chairman of the Judicial and Legal Services Commission of the Eastern Caribbean Supreme Court, representing Dominica, the Contracting Party next in line after Belize. The Chief Justice was sworn in as a member of the RLSC on January 28, 2010.

The term of office of Mr. C. A. Blazer Williams, the Chairman of the Public Service Commission of St. Vincent and the Grenadines also expired in September 19, 2009 and he was replaced on the Commission by Mr. Frank Myers, the Chairman of the Public Service Commission of Saint Lucia, Saint Lucia being the Contracting Party next in line after St. Vincent and the Grenadines in reverse English alphabetical order to provide a Chairman of a Public Service Commission. Mr. Myers' term of office as the Chairman of the Public Service Commission of Saint Lucia ended on 28th February 2010 and he was replaced in that capacity by Mr. Egbert Lionel who was sworn in as a member of the RLSC on April 23, 2010.

The term of office of Mrs. Gray and Ms. Robinson expired on August 19, 2009 and they were replaced by Ambassador Wendell Lawrence and Mr. Jefferson Cumberbatch both of whom were sworn in as members of the Commission on September 11, 2009.

THE REGIONAL JUDICIAL AND LEGAL SERVICES COMMISSION

Table 1

Date of Assumption	Name of Commissioner	Basis for Appointment	Relevant paragraph of Article V.1
August 18, 2004	The Rt. Hon. Mr. Justice Michael de la Bastide T.C.	President of the Court	(a)
July 7, 2006 [Both re-appointed from August 20, 2007]	Dr. Joseph Archibald, Q.C.	Nominated jointly by OCCBA & OECS Bar Associations	(b)
September 12, 2003	Dr. the Hon. Lloyd George Barnett, O.J.		
January 16, 2009 [Term expired on January 10, 2010] January 28, 2010	Mr. Rodney Neal, B.Sc., M.Sc. The Honourable Mr. Justice Hugh A. Rawlins	Chairman, Judicial and Legal Services Commission of Belize Chairman, Judicial and Legal Services Commission Eastern Caribbean Supreme Court, representing Dominica	(c)
September 29, 2006 [Term expired September 19, 2009] November 20, 2009 April 23, 2010	Mr. C. A. Blazer Williams B.A., M.Sc., LL.B. Mr. Frank Myers Mr. Egbert Lionel	Chairman of the Public Service Commission of St. Vincent and the Grenadines Chairman of the Public Service Commission of Saint Lucia	(d)
August 21, 2003 [Term ended August 19, 2009] September 11, 2009	Ms. Gloria Gray, B.Sc., M.Sc. Ms. Nelcia Robinson, B.Sc. Ambassador Wendell Lawrence, B.Sc., M.Sc., CPA Mr. Jefferson Cumberbatch, LL.B	Nominated jointly by the Secretary General of the Community and Director General of the OECS	(e)
September 28, 2007 October 10, 2003 [re-appointed from August 19, 2007]	Professor A. Ralph Carnegie, B.A., M.A. Dr. Magda Hoever-Venoaks, M.Sc., Ph.D.	Nominated jointly by the Dean of the Faculty of Law of the University of the West Indies, Deans of the Faculties of Law of the Contracting Parties and Chairman of the Council of Legal Education	(f)
August 21, 2003 [Re-appointed from August 20, 2007]	Mr. Allan Alexander, S.C.	Nominated jointly by the Bar or Law Associations of the Contracting Parties	(g)

THE REGIONAL JUDICIAL AND LEGAL SERVICES COMMISSION

The following table shows the membership of the Commission as at August 1, 2009 and continuing to July 31, 2010, the date of expiration of the term of office of each member and the nationalities of the members.

Table 2

Name of Commissioner	Nationality	Date of Expiration of Term of Office
The Rt. Hon. Mr. Justice Michael de la Bastide T.C.	Trinidad and Tobago	July 18, 2011
Dr. the Hon. Lloyd George Barnett, O.J.	Jamaica	August 19, 2010
Dr. Joseph Archibald, Q.C.	St. Kitts and Nevis	August 19, 2010
Mr. Rodney Neal, B.Sc., M.Sc.	Belize	January 11, 2010
Mr. Justice Hugh A. Rawlins	St. Kitts and Nevis	January 11, 2013
Mr. C. A. Blazer Williams B.A., M.Sc., LL.B.St.	Vincent and the Grenadines	September 19, 2009
Mr. Frank Myers, B.Sc., FCCA	Saint Lucia	November 19, 2012 (Term of office as Chairman Public Service Commission of St. Lucia ended February 28, 2010)
Mr. Egbert Lionel, B.Sc., M.A.	Saint Lucia	November 19, 2012
Ms. Gloria Gray, B.Sc., M.Sc.	Trinidad and Tobago	August 20, 2009
Ms. Nelcia Robinson, B.Sc.	St. Vincent and the Grenadines	August 20, 2009
Ambassador Wendell Lawrence, B.Sc., M.Sc., CPA	St. Kitts and Nevis	August 23, 2012
Mr. Jefferson Cumberbatch, LL.B	Barbados	August 23, 2012
Professor A. Ralph Carnegie, B.A., M.A.	Jamaica	August 19, 2010
Dr. Magda Hoever-Venoaks, M.Sc., Ph.D	Suriname	August 19, 2010
Mr. Allan Alexander, S.C.	Trinidad and Tobago	August 19, 2010



APPENDICES

- Court Filings, Sittings and Judgments
- Papers and Addresses
- Snapshots in Time
- Caribbean Court of Justice – Extract of Expenditure for the period
1 August 2008 to 31 July 2009
- Financial Statements of the Caribbean Court of Justice to
December 31, 2008
- Financial Statements of the Regional Judicial and Legal Services Commission to
December 31, 2008

COURT FILINGS, SITTINGS AND JUDGMENTS



During the period under review, the Court delivered 9 judgments, bringing the total number of judgments delivered from 2005 to July 31, 2010 to 43.

Four civil appeals were filed, one from Barbados and three from Guyana.

Four applications for special leave to appeal to the Caribbean Court of Justice were filed, one from Barbados, two from Guyana and one from Belize.

The first application for special leave to appeal to the CCJ against a decision of the Court of Appeal of Belize was filed on 23rd July 2010.

During this period one application seeking special leave to commence proceedings in the original jurisdiction of the Court was filed. This application was subsequently withdrawn.

The Court sat on 22 occasions in the appellate jurisdiction of the Court and on 12 occasions in the original jurisdiction.

The following judgements were delivered during the period under review

1. *LOP Investments Limited v Demerara Bank Limited, Garrett Ward and Ramon Gaskin* [2009] CCJ 10 (AJ) delivered on 10th August 2009.
2. *Trinidad Cement Limited v The Caribbean Community* [2009] CCJ 4 (OJ) delivered on 10th August 2009.

3. *Trinidad Cement Limited and TCL Guyana Incorporated v The Co-operative Republic of Guyana* [2009] CCJ 5 (OJ) delivered on 20th August 2009.
4. *Elizabeth Ross v Coreen Sinclair* [2009] CCJ 11 (AJ) delivered on 8th October 2009.
5. *Trinidad Cement Limited and TCL Guyana Incorporated v The Co-operative Republic of Guyana* [2009] CCJ 6 (OJ) Reasons issued on 27th October 2009.
6. *Vernon O'Connell Hope v Shaka Wayne Rodney and Portfolio Investments Limited* [2009] CCJ 12 (AJ) delivered on 4th December 2009.
7. *Jeffrey Adolphus Gittens v The Queen* [2010] CCJ 1 (AJ) Full Reasons issued on 11th February 2010.
8. *Trinidad Cement Limited and TCL Guyana Incorporated v The Co-operative Republic of Guyana* [2010] CCJ 1 (OJ) delivered on 29th March 2010.
9. *Jassoda Ramkishun* (Executrix of the Estate of Sukhree, deceased) v *Conrad Ashford Fung-Kee-Fung* (individually and in his capacity as the Administrator Ad Litem of the Estate of Letitia Fung-Kee-Fung, deceased, Michael Fung-Kee-Fung and Elaine Brooker), *Doreen Elizabeth Deane and Leila Glendon* [2010] CCJ 2 (AJ) delivered on 31st March 2010.

PAPERS AND ADDRESSES

The following papers and addresses were delivered by the Judges of the Caribbean Court of Justice during the period 1st August 2009 to 31st July 2010.

- *The Interrelated Liability in Equity of Financial Institutions Used in the Furtherance of Fraud. International Symposium on Economic Crime at Jesus College, Cambridge University, United Kingdom, September 2009.* The Hon. Mr. Justice David Hayton.
- *Address to Graduates of Eugene Dupuch Law School. Graduation Ceremony of Eugene Dupuch Law School, Nassau, Bahamas, September 2009.* The Hon. Mme. Justice Désirée Bernard.
- *Towards Universal Access: Strengthening The Multi-Sectoral Coalition, Acting Responsibly in the Prevention of HIV/AIDS. Ninth Annual General Meeting, Pan Caribbean Partnership Against HIV and AIDS, PANCAP Coordinating Unit, CARICOM Secretariat, Georgetown, Guyana, October 2009.* The Hon. Mme. Justice Désirée Bernard.
- *Key Note Address at The Inaugural Symposium: "Current Developments in Caribbean Community Law", Hyatt Regency, Port of Spain, November 2009.* The Rt. Hon. Mr. Justice Michael de la Bastide T.C.
- *Some Crucial Aspects of Section 21 Limitation Act 1980. The Association of Contentious Trust and Probate Specialists (ACTAPS) Annual Lecture, London, United Kingdom, November 2009.* The Hon. Mr. Justice David Hayton.
- *The fear of cutting the umbilical cord ...the relevance of the Privy Council in Post Independent. West Indian Nation States 2nd Annual Eugene Dupuch Law School Lecture, Nassau, Bahamas, January 2010.* The Hon. Mr. Justice Adrian Saunders
- *Five Years of the CCJ's Contribution to Caribbean Jurisprudence. CCJ 5th Anniversary Colloquium, Hyatt Regency Hotel, Port of Spain, April 2010.* The Rt. Hon. Mr. Justice Michael de la Bastide, T.C.
- *The Role of the Appellate Court. Commonwealth Magistrates and Judges' Association Conference, Brighton, United Kingdom, September 2010.* The Hon. Mme. Justice Désirée Bernard.

SNAPSHOTS IN TIME AS CCJ STAFF CELEBRATE THE COURT'S 5TH ANNIVERSARY





Judiciary Sports Tug of War silver medalist

