



Guyana's Contribution to the CCJ's Jurisprudence

The Honourable Mr Justice Denys Barrow,
Judge of the Caribbean Court of Justice

The Guyana Bar Association's Inaugural Law Week 2022

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Presentation

By

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on the occasion of

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The hosting of the Bar Association Guyana's Inaugural Law Week 2022 provides a fitting opportunity to fully recognise how greatly the development of an appellate court's jurisprudence depends on the efforts of the officers of the court, its lawyers. The growth of the jurisprudence begins, in each instance and increment, with the decision of the lawyers to bring the appeal; and it encompasses all the work the lawyers put into the appeal to enable the court to adjudicate. At times, it is overlooked that the court does not bring cases before itself; the lawyers and litigants are the ones who decide what cases to bring, what issues to advocate (or agitate).

It takes excellent lawyering to produce excellent judgments. This adage expresses just how dependent a court is on its lawyers. By the quality of their efforts and talent, lawyers enable courts to produce judgments of the highest quality. It is fundamental that this is the process that enables and assists the court to develop its jurisprudence.

Overview

The Court decided its first case from Guyana on 12 May 2006 and it is fitting, in the Inaugural Law Week, to recognise Mr Benjamin Ewart Gibson and Ms Mandisa Adanna Breedy, for the applicant, and Mr Vashist Maharaj and Mr Mohabir Anil Nandlall, for the respondents, as the counsel who obtained the first CCJ judgment from Guyana in *Griffith v Guyana Revenue Authority and another*¹. Since the Court commenced sitting in 2005, the Court has decided a total of 111

¹ [2006] CCJ 2 (AJ)

cases from Guyana. As shown in the table below, this number of judgments in appeals from Guyana compares to 88 from Barbados, 42 from Belize and eight from Dominica.

Cases filed from all appellate jurisdictions 2005 - 2022

	Barbados	Belize	Dominica	Guyana
2005	1			
2006	3			1
2007	1			3
2008	1			10
2009	5			7
2010	2			2
2011	8	1		5
2012	2	3		3
2013	4	2		6
2014	6	4		10
2015	9	3		5
2016	11	2		11
2017	6	7	2	7
2018	8	10	1	13
2019	6	2	2	13
2020	8	5	1	6
2021	4	2	2	5
2022	3	1	-	4
TOTAL	88	42	8	111

The Guyana judgments that will be reviewed are those delivered in the period 2016 to date. The practice areas in which most of these judgments have been given include Land Law, Criminal Law, Constitutional Law, Practice & Procedure, Judicial Review, Company and Commercial Law, and Original Jurisdiction claims. Not all cases will be mentioned; reference will be limited to judgments which better show the growth of the jurisprudence of the Court. For context, the discussion will follow the indicated practice areas.

Land law

It has been remarked that the jurisdiction that has, by thousands of times, the largest land mass and the lowest population density generates the most land law cases. That factor makes it curious that a discernible feature is the concern with title to land and many of these are commonplace.² However, some of these cases attract attention because of the need they demonstrated for the Court, in the particular circumstances, to clarify the operation of established principles contained in the legislation regarding the indefeasibility of registered title.

Thus, in *Singh v Moosai and Alves*³ where a fraudulent transport had been obtained, there was a claim for damages for fraud and for the transport to be set aside. The claim succeeded at trial but was reversed by a majority in the Court of Appeal, on the ground that it was too late to set aside. The CCJ restored the High Court decision, upholding the setting aside for fraud under a court's equitable jurisdiction. Representing an advance in the jurisprudence, the decision marked an important departure from the rule under s 21 of the *Deeds Registry Act*⁴ that imposes a limit of 12 months for setting aside a registered title on the ground of fraud.

The principle of indefeasibility of title in s 21 of the *Deeds Registry Act* operated without exception, in the later case of *Todd v Price*⁵ where a fraudster had sold land completely unbeknownst to the true owner. The effort to set aside the fraudulently executed transfer failed

² For example, see *Campbell v Narine* [2016] CCJ 7 (AJ) in which the CCJ restored the finding of the trial judge that the death bed transfer of property had been procured by undue influence; *Joseph v Mangal* [2016] CCJ N (AJ); CCJ 22 (AJ) where a vendor fraudulently obtained title under a new registration initiative and the Register was ordered rectified under statutory power and the new title ordered cancelled; *Kwang v Murray* [2016] CCJ 9 (AJ) where a vendor fraudulently transferred other than to the contracted purchaser, who had been let into possession and the transfer was set aside for fraud, to which transferee was privy.

³ [2019] CCJ 1 (AJ).

⁴ Cap 5:01.

⁵ [2021] CCJ 2 (AJ).

because the 12-month limitation period had passed and there had been no proof of fraud on the part of the new registered holder. The CCJ upheld the principle of indefeasibility of title on the basis that the alleged gross negligence of the new holder was not fraud; that fraud was not pleaded; and the Court of Appeal erred in making a finding fraud when fraud had not been pleaded. The jurisprudence may be seen as advanced by the Court speaking out on the need for legislative reform to address a situation that could produce such an unfair result to the true owner. It also noted the need to consider this law through constitutional lenses to decide if it passes constitutional muster.

Cases on prescription of title have also received the Court's consideration and in some of these the jurisprudential benefit has been by the Court clarifying rather than extending the law. Thus, in *Narine v Natram, Chan and another*⁶ a purchaser was let into possession without having paid the full price. He later died. The Court determined his status according to the true construction of the purchase agreement, finding, in this case, it was a licence. The licence, therefore, was terminated on the purchaser's death. One son who had helped him, and who continued in occupation after the father's death, was determined to have prescribed, as against another son who had obtained transport.

Another prescription case was *Thakur v Ori*⁷ in which land had been occupied and cultivated by members of a family for over 40 years. The father had remained in occupation despite efforts to remove him. On the death of both parents the daughter, Rajpattie remained in occupation. She filed an action for a Declaration of Title personally and in her capacity as executrix of her mother's estate. The Respondent alleged that there were several instances of non-disclosure and mis-disclosure, and the Court found that those instances could not be described as efforts to mislead the Court, rather they were the unfortunate result of poor legal advice and lack of understanding of the law in relation to acquiring prescriptive title. It was held that there was sufficient evidence to support factual possession and an intention to possess uninterruptedly for the statutorily prescribed period of twelve years. As such, in the words of s 18 of the Constitution, the land must go to the tiller.

⁶ [2018] CCJ 11 (AJ).

⁷ [2018] CCJ 16 (AJ).

The jurisprudence has also been advanced by the Court's consideration of the intersection of Roman Dutch and English land law. A recent notable case was *Prashad v Persaud and others*⁸ in which the appeal was decided on the procedural point that, from the trial at first instance, the defendants should not have been permitted to plead title in a third party, without that title holder having been made a party to the proceedings. Although recognised as not determinative, some judges of the Court went on to consider the operation of the common law concept of equitable interest with the peculiar Roman Dutch land law foundation in Guyana. They stated that a resulting or constructive trust under the English system, which recognises both a legal owner as well as a beneficial owner would be problematic with respect to the law of immovable property in Guyana. Again, this decision may be seen as an example of how the jurisprudence develops.

Criminal law

Criminal law cases from Guyana have contributed significantly to the Court's jurisprudence on sentencing. In *Bridgelall v Hariprashad*⁹ the appellant was convicted of two drug possession charges for cocaine found in a house and also in the yard of the house. In relation to the consecutive five-year terms imposed the CCJ held that the sentences should have been concurrent. The Court applied the rudimentary rule that where multiple offences arise from the same set of facts or the same incident, it will be appropriate for the sentences on those charges to run concurrently. It indicated that consecutive sentences may be given where the offences arise out of unrelated facts or incidents or where the offences are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences. The need for the Court's guidance in this area has been shown to continue.¹⁰

*Pompey v DPP*¹¹ was a major decision on the new approaches and practices that must be adopted by sentencing courts in Guyana and other jurisdictions. The appeal was against consecutive sentences amounting to 37 years imprisonment for three sexual offences including rape. The CCJ reduced the punishment to concurrent terms of imprisonment amounting to 17 years; notably a

⁸ [2022] CCJ 5 (AJ) GY.

⁹ [2017] CCJ 8 (AJ).

¹⁰ A useful part of the decision in this case was the pronouncement that the violation of the appellant's constitutional rights by the excessive delay in the case was to be compensated for by staying the portion of his sentence unserved while he was on bail after Full Court reversal.

¹¹ [2020] CCJ 7 (AJ) (GY).

minority of two judges would have imposed nine years. A seminal observation of the Court was that in deciding on consecutive and concurrent sentences the overall criminality of the offender must be considered, to decide on the maximum sentence for all offences. This case also dwelled considerably on the need for the sentencing court to use and/or consider several factors, namely: 1. overall, the multiple ideological aims of sentencing¹²; 2. the starting point or ranges approach; 3. available precedents; 4. aggravating and mitigating elements; 5. human rights implications; 6. the totality principle and proportionality; 7. evidence of prevalence and seriousness of the offence; and 8. victim impact statements.

In *Ramcharran v DPP*¹³ the Court reduced a sentence of 23 years to 12 years imprisonment (two judges would have imposed 16 years) on the express basis that the Court of Appeal had failed to follow the exhaustive guidelines, practices and approach the Court had stated in *Pompey*. Within the rich material contained in the judgment is the nugget that the jurisprudence has evolved, beyond the disposition expressed in the Court of Appeal that ‘in Guyana we give stiff sentences for rape’, to a recognition that retribution is not always the dominant sentencing objective, which must include others such as: 1. the public interest, in not only punishing, but also in preventing crime (“as first and foremost” and as overarching); 2. the deterrent, in relation to both potential offenders and the particular offender being sentenced; 3. the preventative, aimed at the particular offender; and 4. the rehabilitative, aimed at rehabilitation of the particular offender with a view to re-integration as a law-abiding member of society.

It is appreciated that popular opinion could hardly be strongly in favour of a reduction of a rape sentence almost by half, but it is to be hoped that the wider society will credit the Court with acting on a principled basis and not an arbitrary one. It is suggested that this case and *Pompey* sharply demonstrate how the jurisprudence develops to reach a modern conception of what now amounts to a sentence that is manifestly excessive.

¹² As first explained in *Lashley v Singh* [2014] CCJ 11 (AJ): the public interest; the retributive of denunciatory; the deterrent; the preventative; and the rehabilitative.

¹³ [2022] CCJ 4 (AJ).

Of course, it is not every case that will be regarded on review as notably contributing to the jurisprudence but at a granular level they all do. Mention may be made of *Persaud v The Queen*¹⁴ where two persons pleaded guilty to a homicide and the appellant in this appeal was sentenced to 25 years, before one judge, when the other perpetrator had been sentenced to 16 years, before a different judge. The Court held that the principle of parity in sentences operated as a general consideration of the criminal law and administration of justice, and if the degree of culpability and the personal circumstances of the two offenders are similar, sentences should not vary so dramatically. There were aggravating features in Persaud's case which made a sentence of 18 years appropriate.

While not a new principle, its application in this case marks the availability of the precedent as part of Guyana's and the Court's own jurisprudence. To a similar value was the decision in the two appeals *Hyles v the Director of Public Prosecutions* and *Williams v the Director of Public Prosecutions*¹⁵ which were appeals by the State against acquittals for murder. The Court held that the test was whether, given the evidence and the flaws or errors, it could be said with a substantial degree of certainty that had the judicial errors or procedural flaws not occurred, the jury would have convicted. The Court decided it could not infer that the acquittals were the result of the undoubted errors. Again, while not novel, it is of some value to have the local precedent of *Fraser v The State*¹⁶ in which leave to appeal was refused because there were no grounds for appealing, and the Court made the observation that an appellant who suffers inordinate delay in the trial and appeal of his case may be granted a remedy for breach of his constitutional right to a fair trial within a reasonable time otherwise than by the quashing of his conviction.

Constitutional law

Constitutional law cases from Guyana have attracted particular attention for the development in the jurisprudence on the 'savings law clause', which has bedevilled the full enjoyment of some fundamental rights declared in the constitution itself. The clause, included on the attainment of independence in our various constitutions across the region, served to preserve existing, pre-independence laws and saved them from being declared invalid for being in conflict with the new

¹⁴ [2018] CCJ 10 (AJ).

¹⁵ [2018] CCJ 12 (AJ).

¹⁶ [2019] CCJ 17 (AJ).

constitutions. Intended, at inception, to allow a space for local legislatures to reform existing laws that would be revealed to be unconstitutional, because of there having been no such legislative reform, the clause has been allowed to operate for decades after the attainment of independence to preserve laws that are universally acknowledged to violate basic human rights. Instead of being struck down, such unconstitutional laws have been protected or saved by the savings law clause.

In *McEwan*¹⁷ the Court declared invalid a colonial era law that criminalised cross dressing because it infringed the constitutional right to equality before the law, non-discrimination, and freedom of expression. The CCJ held that the savings law clause was incapable of preserving the law from a declaration of unconstitutionality and being struck down. In arriving at this decision, the CCJ followed its previous decisions in *Nervais v The Queen* and *Severin v The Queen*¹⁸, two cases from Barbados, and elaborated on the principle that the savings clause must not be applied to defeat a fundamental right contained in the constitution except in a case of overriding public interest.

A clear demonstration of the way in which jurisprudence grows is provided in *Bisram v DPP*¹⁹ where the Court, in endorsing *McEwan and others v AG*²⁰, laid to rest the artificial tension between the modification clause contained in the 1980 Constitution Act and the Savings clause contained in the Constitution itself. The court rejected the automatic operation of the savings law clause to save an unconstitutional law and emphatically held that the modification and savings clauses must be read together. It was a major advance when the Court concluded that in applying the savings clause to an existing law that conflicts with a fundamental right a court must first, before saving the inconsistent law, modify it. Thus, the court would be saving the law, as modified by the court itself, with the court being astute to limit its modifying reach to avoid encroaching upon the legislative power. By this method, the court would be giving a new construction to the provision that would otherwise be unconstitutional.

In *Bisram*, the Court modified s 72 of the Criminal Law (Procedure) Act²¹ that gave power to the DPP to direct a magistrate, who had discharged an accused at a preliminary inquiry, to reverse that

¹⁷ [2018] CCJ 30 (AJ).

¹⁸ [2018] CCJ 19 (AJ).

¹⁹ [2022] CCJ 7 AJ (GY).

²⁰ [2018] CCJ 30 (AJ).

²¹ Cap 10:01.

decision and instead to commit the accused to stand trial. The CCJ decided that it was unconstitutional for a law to give such a power to a non-judicial officer, but the Court relied on the specific provision contained in s 7(1) of the Constitution Act to save the law from being simply struck down. Instead, pending legislative intervention, the Court gave the power to reverse the magistrate's decision, to a judge.

In *Bisram* as well, the court identified and expounded upon a unique feature relevant to Guyanese constitutional law and the savings provision contained in the Guyana Constitution. The court noted that, without prejudice to its view that the modification and savings clauses should be read together, Guyana's 1961 colonial Constitution required that all pre-1961 laws must be suitably modified to bring them into conformity with the Bill of Rights contained in the 1961 Constitution and that what was saved of those laws by the 1966 and 1980 Constitutions respectively was the suitably modified version of those said laws.

Elections cases

The justifiable pride the legal profession in Guyana may feel in recognising that these landmark decisions came about because of its advocacy may well be matched by a recognition of the great contribution the profession has made in another area of constitutional law, that is pertaining to national elections. The forensic agitation, in this regard, was presaged in *AG v Richardson*²² which saw a challenge to the constitutionality of the amendment to the constitution limiting a President to two terms. The challenger claimed this amendment diluted his right as an elector to choose who should be President. The Court held, in the context especially of the process that led to the passing of the amendment, that this amendment served to strengthen the democracy and was not inconsistent with the rights of electors.

The legal (and political) ferment reached full fury with *Ram v AG and others*²³ in which the Court was called upon, in three consolidated appeals, to determine along with other questions whether a no confidence motion in the national assembly was validly passed by 33 out of 65 members. As the Court noted, some of the questions implicated constitutional issues of enormous significance

²² [\[2018\] CCJ 17 \(AJ\)](#).

²³ [\[2019\] CCJ 10 \(AJ\)](#).

going to the heart of the philosophical underpinnings of Guyana’s ‘hybrid’ Constitution.²⁴ At the very sensible request of the array of legal talent engaged in the appeals, in delivering its decision the CCJ announced it would consider what consequential orders to make.

In a subsequent decision²⁵ the Court decided there was no need to put any gloss on the interpretation of the clear words of the Constitution which stated that, following the passage of a no-confidence motion, elections were to be called within three months or such longer period as the national assembly may stipulate. It declined to set a date for fresh elections, saying this was the remit of various constitutional actors and it was proper for the Court to trust in the integrity of the constitutional order for the process to be carried out. The comment may be made that it is by such judicial restraint that the legal profession and the body politic are reassured that the Court may be trusted to avoid judicial overreach and political interference.

Those enormous challenges to some fundamental tenets of Guyanese constitutional and election laws, it will be appreciated, rocked the legal and political firmament even before the elections were held and the turmoil resumed even before the results were returned. The proceedings in *Ali and Jagdeo v David and others*²⁶ concerned the challenge to the validity of the recount of votes and produced a judgment by the CCJ that drew a line between the proper operation of Article 177(4) of the Constitution, which excluded jurisdiction in the Court to examine the validity of election returns and a question whether a lower court had correctly interpreted a different legal provision and applied that interpretation to the constitutional provision. The Court held there had been no true challenge under that article in purportedly challenging the validity of the votes counted. Therefore, the decision of the Court of Appeal had not been a final decision and the CCJ had a duty to pronounce on that court’s jurisdiction and proper interpretation of the Constitution.

The tail end of the related election litigation came following the earlier decision in *Mustapha v AG and another*²⁷ that the appointment by the President of the Chairman of the Guyana Elections Commission otherwise than from a list of nominees, of persons ‘not unacceptable’ to the President, submitted by the Leader of the Opposition, was flawed. The CCJ suggested the procedure for operationalising the requirement. The Court made notable statements about its jurisdiction and

²⁴ Ibid [8].

²⁵ [2019] CCJ 14 (AJ).

²⁶ [2020] CCJ 10 (AJ) GY.

²⁷ [2021] CCJ 9 (AJ).

duty generally to interpret the Constitution. A later application²⁸ for consequential orders was overtaken by the chairman's resigning.

Great tribute is due to the Bar Association, and equally to the Guyanese society, for participating in the creation of a court and jurisprudence in which the profession and society could place the confidence to fairly and convincingly adjudicate upon these enormously important matters. That jurisprudence made every difference in choosing the way of peace and not violence.

Practice and Procedure

The discussion in the area of practice and procedure will be limited to judgments concerning the proper route for appealing, extension of time and stays of executions.

The route of appeals

It is a seminal point the Court reaffirmed in *Hyles and Williams*²⁹ that a person has a right to apply to the CCJ itself for special leave to appeal regardless of whether he can appeal as of right, or has a pending appeal, or has been refused leave by the Court of Appeal. In commercial matters where time is money, it may be vital for a litigant to skip the delay in the local court and get before the CCJ in, say, two rather than six months or more.

In *Persaud and Nizamudin v Nizamudin*³⁰ the Court was again required to clarify that jurisdiction over appeals in 'summary proceedings' vests in the Full Court and not the Court of Appeal. It confirmed the interpretation of s 6 of the *Court of Appeal Act*³¹, which directs that only certain appeals can be brought to the Court of Appeal, and Order 12 of the Rules of the High Court, that provides for other appeals to be brought to the Full Court.

²⁸ [2021] CCJ 13 (AJ).

²⁹ [2016] CCJ 15; [2016] CCJ 16 (AJ).

³⁰ [2020] CCJ 4 (AJ) (GY).

³¹ Cap 3:01.

Extending time

The integrity of the rules as to the time for bringing appeals was upheld in *Mitchell and another v Wilson*³² where the appeal was against the refusal of the Court of Appeal to extend time to appeal against the High Court decision. That failure was compounded by the appellant's failure to apply, in time, for special leave to appeal. The CCJ declared it had no power to extend time to appeal where there had been no application for special leave to appeal. The Court did record, however, that it could extend time to apply for special leave, in a case where such exercise of discretion was necessary to prevent a miscarriage of justice but the likelihood of such a result was not demonstrated, in that case.

The integrity of the rules as to time was further vindicated in *AG v Dipcon Engineering*³³ where an appeal purportedly brought as of right was found to have been brought under the wrong section; it needed special leave of the CCJ as it was a procedural appeal. The CCJ stated it could not extend time for appealing against the decision of the Court of Appeal where there had been a failure to apply for special leave. Exceptionally, the CCJ could extend the time for applying for leave. However, there was no justification in that case as the desired appeal had no realistic prospect of success and there was no risk of miscarriage of justice if there was no appeal.

A notable point of practice and jurisdiction was declared in *Singh*³⁴ where the CCJ definitively stated that the Court of Appeal cannot extend time for appealing to the CCJ. The CCJ alone had power to do so.

Stay of execution

It is sufficient to mention cases in this area only in passing, to record the minor but cumulatively appreciable contribution to the jurisprudence. *Zarida v Misir*³⁵ was a procedural appeal for a stay pending appeal in a case of prescriptive rights. The Court clarified that a court considering whether to grant a stay was required to consider the merits of the case, without deciding them. In that case the High Court order refusing a stay was set aside and a stay granted.

³² [2017] CCJ 5 (AJ).

³³ 2017 CCJ 17.

³⁴ Ibid. n 3.

³⁵ [2016] CCJ 19 (AJ).

The same principles were applied to a different result in *Rodriguez Architects Ltd v New Building Society Ltd*³⁶ where the CCJ found a stay of execution should not have been granted. The Court decided that there were low prospects of success for the defendant in appealing the judgment against it. Further, it was likely that the claimant would be able to repay the damages, if it lost the appeal.

Judicial Review

Judicial review cases from Guyana have shown a thematic consistency with attention to procedural fairness. In *Vieira v Guyana Geology and Mines Commission*³⁷ the Court decided the Mines Commissioner had no authority to make an order using the powers conferred by the Mining Act³⁸ for the purpose of enforcing requirements under the Amerindian Act³⁹. The Court ruled, as well, that no absolute necessity had been shown for doing so, that notice of intention to make an order had not been given, and the claimant had been given no opportunity to be heard.

Grounds versus results

*Ogle Airport Inc v Competition and Consumer Affairs Commission*⁴⁰ is a ‘textbook’ decision that affirmed the distinction that a party may appeal against a judgment or result but not against a reason or ground that the court may have decided in arriving at its judgment. In that case the claimant for judicial review obtained an order of the High Court quashing a decision taken by the Commission that it would hear a complaint against the claimant without first hearing the claimant. However, the High Court refused to quash the Commission’s decision to proceed on the additional ground that the Commission had no jurisdiction in the matter. The Court of Appeal upheld the quashing order, but it refused to enhance the High Court judgment by adding a finding that the Commission lacked jurisdiction. The CCJ refused to grant the claimant special leave to appeal against a judgment that the claimant had won; an appeal could have no effect upon the result of the case, which was the quashing of the entire proceedings before the Commission.

³⁶ [2018] CCJ 09 (AJ).

³⁷ [2017] CCJ 20 (AJ).

³⁸ Cap 65:01.

³⁹ Cap 29:01.

⁴⁰ [2020] CCJ 19 (AJ) GY.

The contribution of this case to the jurisprudence will be seen when Reasons for Decision are published in *Ramsahoye v Guyana Revenue Authority*,⁴¹ in which the CCJ has already given judgment in favour of the taxpayer. That was a case in which a High Court order quashing an assessment by the Revenue, against which the Revenue appealed, was upheld by the Court of Appeal. However, the taxpayer was forced to appeal to the CCJ because the formal Order of the Court of Appeal stated that the Revenue's appeal was 'allowed in part'. The issue those Reasons will address is how such an order could have been made when the Revenue lost completely on the matter in dispute – the liability to tax.

An unusual invoking of the supervisory jurisdiction was *Inderjali v DPP*⁴² which began as an application for the High Court to direct the Director of Public Prosecutions to drop a murder charge on the ground that fairness dictated that this be done as the sole evidence against the accused had been retracted. The focus, when the matter reached the CCJ, was the application for an expedited hearing, which had been refused by the Court of Appeal on the basis that there was no justification to have this case 'skipping the queue'. The CCJ made observations on case management and differentiating when and how to decide which cases should be placed on different case tracks such as basic, complex and expedited tracks.

Status

In some cases, the issue arose as to the legal status of public bodies such as in the consolidated appeals in *Guyana Geology and Mines Commission v BK International Inc and Baboolall*⁴³ that questioned whether the body was a procuring entity and so bound by the terms of the Procurement Act. The issue of legal status, but under different legislation, altogether also arose in *Trust Company (Guyana) Ltd v Guyana Securities Council*⁴⁴ where the question was whether the entity was a public company that had a duty to report to the Securities Council. The object of the legislation was stated to be to require reporting by companies having more than 50 shareholders.

⁴¹ Case number GYCV2021/006 (not yet reported).

⁴² [2019] CCJ 4 (AJ).

⁴³ [2021] CCJ 13 (AJ).

⁴⁴ [2021] CCJ 11 (AJ) GY.

Miscellaneous

Passing mention may be made of cases in various other areas. A company law case is *Nabi and others v Sheermohamed and others*⁴⁵, in which the order to wind up a family-owned company was upheld all the way to the CCJ. This was a straight case of applying settled company law principles and is mentioned simply to recognise the benefit of having the decision as part of the local jurisprudence.

For contract law mention may be made of *Blairmont Rice Investment Inc v Kayman Sankar Investments Ltd and others*⁴⁶ which concerned two main issues, firstly whether the Appellant's breach of an instalment payment sub-clause was repudiatory and secondly, whether the Appellant, as a company that had been struck off the register could defend against a legal action brought by the Respondents. The CCJ determined that the payment clause was an innominate term as there was a variety of consequences which could be caused by its breach. However, the consequence of the breach in this case was significant as it deprived the vendors of the whole benefit of the agreements for timely payments to prevent them from losing their properties to the bank. In dissent, Justice Saunders regarded it as a condition. The Court also decided that a company that has been struck off the companies' register is to be treated as if its personality in law is suspended.

Fittingly for present purposes, Justice Jamadar in this case noted that the categorisation of terms as innominate and intermediate was not widely explored in Caribbean jurisprudence and that the jurisprudence would benefit from the flexibility presented by this categorisation.

That observation as to the growth of the jurisprudence easily extends to another contribution by Justice Jamadar, which he made in *Air Services Ltd and others v AG and others*⁴⁷ which was a judicial review case on the duty to consult, in that instance on the proposed Ogle airport name change. The CCJ decided the duty had been satisfied on the facts. For his part, Justice Jamadar added that he regarded the duty to consult as flowing from the constitution and not merely from procedural rights under other legal sources. This may be considered a good example of how the

⁴⁵ [2020] CCJ 15 (AJ) GY.

⁴⁶ [2021] CCJ 7 (AJ) GY.

⁴⁷ [2021] CCJ 3 (AJ).

jurisprudence grows, not so much by leaps and bounds, but by the continuing forensic examination of the law that is the bedrock of the Guyanese and our other societies.

Original Jurisdiction

A final example of how the jurisprudence develops is provided by the Original Jurisdiction case of *SM Jaleel and Co Ltd & Guyana Beverages Inc v Guyana*⁴⁸ which addressed the operation of laches in community law. The claim was to recover a tax that had been unlawfully collected starting some 10 years before. The Court examined whether the defence of laches, known as extinctive prescription in international law, was applicable under the Revised Treaty of Chaguaramas (RTC). It held that in the CARICOM context, even those who are the wholly innocent victims of wrongful conduct by a Member State, need to act reasonably in exercising the right to seek relief against a State. Although no limitation period is prescribed by the RTC for espousing claims, the Court decided that it needed to provide a common limitation period. It determined that actions must be brought within 5 years of the date that the claimant first acquired, or reasonably should have first acquired knowledge, of the alleged breach of the RTC unless special reasons justified an extension. The claimant's recovery was accordingly limited.

The End

And this is how Guyana has contributed to the development of the Court's and Guyana's jurisprudence.

⁴⁸ [2017] CCJ 2 (OJ).