



A BRIEF OVERVIEW OF THE APPELLATE JURISDICTION OF THE CARIBBEAN COURT OF JUSTICE

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Visit of Law Students of Coventry University, and the University of the West Indies

Caribbean Court of Justice, Training and Conference Room

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The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica and Guyana.

A Brief Overview of the Appellate Jurisdiction of the Caribbean Court of Justice
By
The Honourable Mme Justice Maureen Rajnauth-Lee, Judge of the Caribbean Court of
Justice
on the occasion of
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About the Caribbean Court of Justice (CCJ)

The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under the RTC. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). The appellate jurisdiction of the CCJ is provided for in the Agreement Establishing the Caribbean Court of Justice. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the CCJ in its Appellate Jurisdiction - Barbados, Belize, Dominica and Guyana. Guyana is a particularly interesting case in point. Guyana became a Republic in 1970 (replacing the Queen as Head of State). In 1973, by the Guyana Court of Appeal Act, Guyana abolished appeals to the Judicial Committee of the Privy Council and made its Court of Appeal its final court of appeal in all matters (a two-tier system). Guyana made the CCJ its final court of appeal in 2005.

The Jurisdiction of the Appellate Jurisdiction of the Court

The Agreement establishing the Court provides at Part III that in the exercise of its appellate jurisdiction, the CCJ is a superior court of record with such jurisdiction and powers as are conferred on it by this Agreement or by the Constitution or any other law of a Contracting Party.

Which Appeals come before the CCJ?

In its appellate jurisdiction, criminal and civil matters come before the CCJ. The Agreement provides for appeals as of right, with leave of the Court of Appeal and with special leave of the CCJ. The Agreement provides that:

2. Appeals shall lie to the Court from decisions of the Court of Appeal of a Contracting Party as of right in the following cases:

- (a) Final decisions in civil proceedings where the matter in dispute on appeal to the Court is of the value of not less than twenty-five thousand dollars Eastern Caribbean currency (EC\$25,000) or where the appeal involves directly or indirectly a claim or a question respecting property or a right of the aforesaid value;
- (b) Final decisions in proceedings for dissolution or nullity of marriage;
- (c) Final decisions in any civil or other proceedings which involve a question as to the interpretation of the Constitution of the Contracting Party;
- (d) Final decisions given in the exercise of the jurisdiction conferred upon a superior court of a Contracting Party relating to redress for contravention of the provisions of the Constitution of a Contracting Party for the protection of fundamental rights;
- (e) Final decisions given in the exercise of the jurisdiction conferred on a superior court of a Contracting Party relating to the determination of any question for which a right of access to the superior court of a Contracting Party is expressly provided by its Constitution;
- (f) Such other cases as may be prescribed by any law of the Contracting Party.

3. An appeal shall lie to the Court with the leave of the Court of Appeal of a Contracting Party from the decisions of the Court of Appeal in the following cases:

- (a) final decisions in any civil proceedings where, in the opinion of the Court of Appeal, the question involved in the appeal is one that by reason of its great general or public importance or otherwise, ought to be submitted to the Court; and

(b) such other cases as may be prescribed by any law of the Contracting Party.

4. Subject to paragraph 2, an appeal shall lie to the Court with the special leave of the Court from any decision of the Court of Appeal of a Contracting Party in any civil or criminal matter.

[For example, special leave is granted by the CCJ in a criminal matter, where to refuse leave would lead to a potential miscarriage of justice or in a civil matter, where there is some issue of public importance and/or a definitive judgment of the Court is required.]

Some General Information About the Appellate Jurisdiction

By way of information, the CCJ has heard over 100 cases in its appellate jurisdiction. Here are some rough statistics: Original Jurisdiction: 19 matters filed and 18 matters determined. Appellate Jurisdiction: applications, which include applications for special leave – 107 determined. Appeals heard - 87 determined and 17 pending, whether for reserved judgments, listed for hearing or pending actions to be taken.

In its appellate jurisdiction, the CCJ has considered a wide range of issues. These include constitutional issues (including the death penalty and the rights of indigenous people); Roman-Dutch land law in Guyana; and the important decision given by the Court that a trial judge when imposing sentence after conviction, ought to grant full credit for the time spent on remand. These are but a few of the many important issues considered by the CCJ. Let us briefly discuss four cases. I should quickly mention that the CCJ normally sits with a panel of five judges to hear a full appeal. The CCJ has wide powers of case management, which it exercises under its appellate jurisdiction rules. These rules are reviewed and revised every two years.

Some Notable Cases in the Appellate Jurisdiction

1. Attorney-General of Barbados v Joseph and Boyce¹, a “death row” case, first brought the CCJ into the public eye. The Privy Council had delivered its judgment in *Pratt and Morgan v Attorney-General of Jamaica*² which required commutation of the

¹ [2006] CCJ 3 (AJ), (2006) 69 WIR 320

² [1994] 2 AC 1

appellants' death sentences to life imprisonment for breach of the fundamental right not to be subjected to inhuman treatment (one appellant had been on death row for over 14 years). In *Joseph and Boyce*, the CCJ established that the exercise of the enacted prerogative of mercy in a country where the death penalty is mandatory was far too important not to be subject to judicial review. Thus such supervisory judicial intervention was not capable of ouster under s 77(4) of the Constitution of Barbados. The CCJ held that the confirmation of the appellants' death sentences, without waiting for reports resulting from their petition to the Inter-American Commission on Human Rights, breached their constitutional rights to the protection of the law under the Constitution of Barbados. The Government of Barbados, by its authorised representatives and practice, had given the appellants a legitimate expectation that a reasonable time would be afforded to them for accessing the international Commission so that it was unlawful to decide not to exercise the prerogative of mercy and confirm the death sentences without affording the appellants such reasonable time.

Significantly, in taking this novel approach, the CCJ refused to follow the approach taken by the Privy Council³ in holding that where a treaty provided for persons sentenced to death to have a right to petition an International Commission for a report to be considered in the exercise of the prerogative of mercy, it became a "mediated" part of a person's right to "due process" under the Constitution. The CCJ considered that the idea that an international treaty not incorporated into the domestic legislation of a State could expand what constituted "due process" within that State's Constitution was wholly inconsistent with the dualist system in force in Barbados and other common law States, namely that international law (entered into by the Executive) existed on one plane and domestic law (created by the Legislature) on another.

2. In *Gibson v Attorney-General of Barbados*⁴, the CCJ was anxious to protect an indigent accused person against an unfair trial. It held that the right to a fair hearing within a reasonable time would be breached where an indigent accused could not afford the crucial services of a specialist forensic odontologist unless such an expert was funded by the State. The case against the accused murderer hinged on bite marks on the murder victim. The Court held that no trial should proceed unless such an expert was provided.

³ *Thomas v Baptiste* (1999) 54 WIR 387

⁴ [2010] CCJ 3 (AJ), (2010) 76 WIR.

The State would have to decide between funding the expert or abandoning the trial. Both sides were given a period of time in which to agree upon what would be the reasonable costs of such an expert and if the State was not prepared to pay such costs, the accused could apply to have the murder charge permanently stayed. A temporary stay was granted, which the State could apply to remove if the accused was unreasonable as to the amount of reasonable costs needed to employ the expert or if the agreed amount of reasonable costs was paid or agreed to be paid by the State.

3. The judgment of the CCJ in *The Maya Leaders Alliance v the Attorney General of Belize*⁵ case was delivered last year. It involved the claim by the Maya people of several villages in the Toledo District of Belize that the failure of the Government of Belize to recognise and protect their customary land rights amounted to breaches of their constitutional rights. The appeal was partially settled on the very first day of the hearing, with the parties entering a consent order which recognised Maya customary land tenure in the Toledo district. The consent order, however, recognised that Maya customary land tenure gave rise to both collective and individual land rights under the Constitution of Belize and that the constitutional authority of the Government of Belize over all lands in Belize was not affected by the consent order. It is interesting to note that all the Judges, the Registrar and many members of staff of the CCJ travelled to Belize and heard the case before a packed courtroom of Maya people. I am sure that it was the first time the people of Belize had seen the Judges of their final court sitting in person. There were some outstanding issues which the Court considered and ruled on. Those who are interested in issues surrounding the protection of the law provisions of their constitutions and the rights of indigenous persons may find the judgment of value. A Commission has been set up in Belize to work out the way forward.
4. In *R v da Costa Hall*⁶ (from the Court of Appeal of Barbados), the CCJ laid down the rule that a convicted person is *prima facie* entitled to full credit for the time spent on remand awaiting trial. The Court gave guidance on the trial judge's proper approach to sentencing. The Court said that the judge should state clearly what he or she considers to be the appropriate sentence taking into account the gravity of the offence and all mitigating and aggravating factors; that being the sentence that the judge would have

⁵ [2015] CCJ 15 (AJ).

⁶ (2011) 77 WIR 66.

passed but for the time spent by the prisoner on remand. The Court emphasised that the primary rule was that the judge should grant substantially full credit for time spent on remand in terms of years or months and must state their reasons for not granting full deduction or no deduction at all.

Closing Comments

As I close, I wish to express my appreciation for the interest which you have shown in the work of the Caribbean Court of Justice functioning in its appellate jurisdiction. I thank you for your kind attention and wish you every success in your studies.