

IPI/USPTO SYMPOSIUM – SHERBOURNE CONFERENCE

CENTRE – BARBADOS – APRIL 18-20, 2004

ESTABLISHMENT OF THE CCJ, ITS EFFECTS ON INTELLECTUAL PROPERTY RIGHTS AND TRADE LAW

PANEL – ADMISSION TO PRACTICE, ATTORNEY/ JUDICIAL DISCIPLINE, CONTINUING EDUCATION IN CONNECTION WITH THE CCJ.

Distinguished Invitees

I bring you warm greetings for the Law Officers of the Ministry of Legal Affairs and the Attorney General Chambers of Guyana and wish to express our gratitude to the organizers – The International Intellectual Property Institute (IPI) and the United States Patent and Trademark Office (USPTO) to be invited to participate at this forum and speak at this panel.

Allow me to express my thanks to the Government of Barbados for their hospitality during these few days.

I will confine my presentation mainly to Continuing Legal Education in connection with the Establishment of the CCJ in the context of its Effects on Intellectual Property Rights and International trade.

The other two areas ‘Admission to Practice’ and Attorney/Judicial Discipline will be addressed briefly.

We are living in exciting times. I recall many years ago a lecturer in a law class lamented that the CCJ is a utopia, not to be achieved in this lifetime. Today we can say that Caribbean people have demonstrated their optimism. The CCJ is here, and is here to stay. The establishment of this regional court, will impact profoundly on matters such as intellectual property rights, all movable property rights and more importantly on international trade, whereby States or individuals alike can now forward their trade disputes to a final forum within the Region and can walk away feeling justice is better served. This is good for the growth and development of the economies of our region.

However, progress or failure of the CCJ is predicated largely on the quality, competence, and reliability of the personnel who operate the system in all its aspects for the maximum benefits of all. Thus concerns are raised on areas as admission to practice, attorney/judicial discipline and continuing legal education in connection with the CCJ.

ATTORNEY/JUDICIAL DISCIPLINE: A discipline legal profession, of attorneys and the judiciary, rest upon the clear elaboration of principles, Rules and Code of Conduct: and functioning mechanisms to deal with complaints of breach in a timely and fairly manner. The people of the Region would be watchful of the Court for these who practice and adjudicate on matters at the level to set standards for the individual jurisdiction. The expectations are that enforcement of procedures must be simple, fair, equitable, without unreasonable delays and not costly. Additionally to set time limits for written judgments based on merits of evidence presented.

In her preface of the **Code of Conduct for Judges and Magistrates of the Supreme Court of Guyana, Honourable Justice Desree Bernard, OR, CCH, Chancellor of the Judiciary, Nov 2003**. noted that:

“An independent and impartial judiciary is the bulwark of any democracy, and as such those who administer justice must honour the oath on assumption of office – to dispense justice without fear or favors, affection or ill will.”

The Regional Judicial and Legal Services Commission has its Principles, Rules and Code of Conduct formulated utilizing the legal expertise of the Region and the experience of other regional courts of similar nature; conscious that the region’s people economic and social lives, lie in their hands.

Justice Frankfurter of the United States Supreme Court once said:

“The Court has neither the purse nor the sword; its authority rests on substantial public confidence in its moral sanctions”

The idea and proposals for the establishment of an indigenous Caribbean Court came from the Caribbean Bar Association since 1970. It is time that the Caribbean Bar Association be active if it has not done so and to also articulate its Code of Conduct, Rules and Principles, rights and obligations, norms, values and ethics to guide professional conduct of the attorney before the CCJ; on the basic theme, that he conducts

himself at all times in a manner that promotes public confidence in the integrity, efficiency of the legal system and the legal profession. It is opportune too for home-based Bar Associations in various territories to now clean up their acts and adhere to the rules conscious of the watchful eyes of the region.

I believe that the same procedures for disciplinary measures brought against attorneys or the judiciary alike, for acts of misconduct or impropriety would be referred to that jurisdiction's Disciplinary Committee where the alleged wrong would have occurred and will be dealt in the manner along the well established law of natural justice.

ADMISSION TO PRACTICE: Concerns are raised as to quality, professional standards, experience and competence of attorneys/judiciary who should practice at the CCJ. For the Judiciary, the Regional Judicial and Legal Services Commission (RJLSC) has already set out the standards of candidates who are to be selected to adjudicate at the CCJ. With regards to the Attorneys, the general view is that it is a client's democratic right to choose which attorney should represent and defend his matter before the CCJ.

However, Bar Associations equally share the responsibility to ensure that the lofty ideals of the noble legal profession is upheld by securing and preserving for the region's populace, the effective, expeditious, and competent delivery of quality service to the populace. Here comes in the obligations of both the Bar and the Bench and all those others who are connected with the system of dispensation of justice for a planned

strategic programme of Continuing Legal Education to improve the competence of the legal profession as a whole in keeping with the objectives which informed the vision for which the CCJ was established.

CONTINUING EDUCATION: Attorneys and Judiciary alike must be educated and knowledgeable of the local Intellectual property legislation in their respective countries before contracting to defending clients on issues dealing with infringements of intellectual property rights or in violation of an international trade rules.

There is need for the legal profession to also understand the Civil Law of members States as Suriname, Haiti and St. Lucia and the peculiarity of Roman-Dutch, Civil, Common and statutory law influence on Guyana's law of real property.

Chief Justice Smellie of the Cayman Island in his Keynote Address recognized the dire need for a structured continuing legal education for the Judiciary and Magistracy, to improve the quality and competence of the judiciary if the CCJ is to win and maintain the confidence of the region's people.

It is time to reassess, review and retool for the efficient and effective management of human resources in all areas and disciplines as it affects international trade law.

The competence of the attorney is a matter for the Bar. Thirty (30) year of indigenous Caribbean legal education is time enough for a strategic programme for continuing legal education for the whole of the legal profession – for the Bar and Bench alike and for all those connected with the justice system. A programme that is flexible, cost effective, efficient continuing and sustainable.

Such a programme for all those connected with the justice system, a programme that would affect other related discipline such as economics, sociology, management, humanities, computer science, environment, government, law and order, trade, customs and excise, immigration, agriculture and health in light of the onset of the CSME and the Region's relationship with other international trading partners such as FTAA, WTO and WIPO. The time is now, for a structured legal education of which continuing education for the legal profession is immediate and now if we are to meet the needs and aspirations and expectations of the region's people, the Caribbean must act now.

There has been some level of Continuing Legal Education in Guyana but on an adhoc, sporadic basis organized both by the Bar and the Judiciary and international organizations, however the attendance is poor, as there is no compulsion to attend.

The Judicial Administrative Order of The Supreme Court for the Commonwealth of the Northern Mariana Islands and the mandatory order of State of New York are among the many jurisdictions, which have taken steps to make it mandatory/compulsory for

attorneys to pursue legal continuing education. The Region must set up A Standing Committee on Continuing Legal Education to administer CLE rules; and report annually to the RJLSC of the CCJ. The requirement that every Attorney-at-Law in the Caribbean shall complete at least x amount of hours of legal education every year. I am of the opinion that once admitted to the Bar, all Attorney-at-Law must complete the x amount of hours referred to. The requirement may be met by attending courses or completing any other continuing legal education activity approved by the Standing Committee.

Self-Study including viewing video-tapes, teaching, writing for CLE publications, pro bono services in family court and criminal actions, participation in education activities involving of computer-based resources, and in-office law firm continuing legal education efforts may be considered for credit when they meet the conditions set forth in the rules.

The statement of the attorney shall be certified as correct under penalty for perjury. Sanctions should include notice of delinquency, with 90 days to cure with statement of compliance. Failure to file a statement of compliance may result in automatic suspension. Reinstatement of suspended Attorney-at-law that he has complied, must reapply and pay costs associated to his delinquent conduct.

Guyana and WIPO / WTO compliance: Various Caribbean territories are at different levels of development in International trade and Intellectual Property legislations. The effects of CCJ would witness territories clamoring for reform to meet the demands for harmony and uniformity in the law.

In Guyana we have not only embarked on updating our legislations to be WIPO-WTO compliant but have in place a local based technical committee under the aegis of the AG's Chambers to examine on a regular basis various WIPO' recommendations, and have recently submitted a 3-year Action Plan in which training in intellectual property law and for the development of the capacity in drafting are major component so as to benefit from WIPO's development Assistance.

From an IDB-funded project, studies of Movable and immovable Property legislations reviewed for replacement by the proposed new Properties Securities Act which would result in reforms in the administration of intellectual property and other forms of movable properties, Modernisation of the Deeds Registry where intellectual property applications are being administered is presently being implemented and before the end of the year will see Copyright amendments of legislations and regulations being placed before Parliament.

We recognize that legislation is not enough. Another component of that project is human Resources Development in the form of placement, training and retooling and discipline of the support staff for the efficient and effective execution of justice is the vehicle for economic development.

LEGAL RESERCH AND OUTREACH: It is heartening to know that there is an now a public acknowledgement of the need for Continuing Legal Education within Region, more so with the establishment of CCJ.

With a vision for the region conceptualized in proposals, there are Short, Medium and Long term strategies for implementation. Attorneys and economists from a few territories such as Jamaica benefited immensely in the form of pilot programmes to reach us. We can learn from and develop from the continuing Legal Education programmes which have already enjoyed much success in Jamaica, conducted jointly by the Norman Manley Law School and the Jamaican Bar Association. Week-end Seminars conducted monthly provide an opportunity for practitioners to present papers and discuss new developments in the Law. A fully developed system must involve making these programmes compulsory for attorneys-at-law and provide for certification as specialist in specific areas of law.

The region needs to develop its own think-tanks versed on international trade issues and intellectual property matters, conversant with the social, political environment so as to represent their clients from an equal position of knowledge.

The time is now for strengthening the existing capacities for research and academic discourse emanating from the Faculties of Law, the Law schools, the Bar Associations and the Judiciaries on issues such as various aspects of Intellectual Property Rights and

International Trade Law, on issues that would affect both the appellate and original jurisdiction of the CCJ.

The present legal education system in Guyana is in some way reaching out to the demands of the times. The course content caters for presentations of research papers on such areas as the CSME, CCJ and ADR,.

In the thinking of Kieth Sobian “The tertiary education at UWI, UG and at other institutions within the region must now revisit their instructional development plans to ensure that our economists are not trained only in classic economic their but are trained to be practical advisers to investors and entrepreneurs secure in their understanding of the nuances of the region.”

At the level of the law school, there is a proposal for a Masters Programme on International Trade Law and International Environmental Law.

Barbados has over the years offered to the Region a masters programme in Corporate law.

This coming summer, at the LLB level, an eight weeks undergraduate course in Intellectual Property Rights will be offered at University of Guyana. The objective is for both the practicing Attorneys, as well as those connected by their work to be familiar with the present IP legislation, and its weaknesses against the requirements of WIPO to which the Guyana Government is committed to ratify.

However, the methods of teaching and educating remain archaic, mainly in a classroom setting. What happens to Outreach Education by Distance and Tele-Conferencing, or via the Internet or even Correspondence Courses in finance and other courses offered by UWI in Barbados? An attorney with clients would find it difficult to be in a system of continuing education lasting one to two (1-2) years, located outside his jurisdiction without causing loss to his practice, physical and social dislocation of his family and at exorbitant costs. A random examination finds that those young people, who pursue the post graduate courses, but who may not after his return have clients in that particular area of specialty.

We call on those responsible for legal education that the CCJ establishment demands that you act now for a programme of Continuing Legal Education to better the legal practitioners, the Judiciary and those connected with the Courts, with other disciplines such as economics, finance and labour to meet the demands of a changing society.

Guyana's proposal for a School of Legal Studies with the objective; to first examine the department's plans to establish a school of Legal Studies, in the light of consultant Professor Clarke's recommendations on a professional schools and secondly seek their implementation.

The academic structure proposed for the University of Guyana, according to Professor Clarke's Report states as that the schools of professional study or professional schools that will act as the focus for the production and dissemination of useful and relevant

knowledge. That it will concentrate on research and outreach in areas relevant to Guyana's aspirations and needs. There will be international schools seeking to bring students from other countries starting with the Caribbean region but appealing also to wider international catchment areas.

The department of law argued the need for structural change from a department of law to a school and the justification for a direction of the change are similar to those argued in the consultant's report. The recommendations include:

- a. to develop an outreach programme to provide continuing legal education, in collaboration with the Bar Association
 - Legal aid and Advisory service
 - Legal Information Service to be launched in September 2004
- b. to provide better regional cooperation with the Law Faculty, UWI, in areas of undergraduate and graduate studies and international mootings; and extend the collaborative agreement
- c. to extend the LLB course to other Caricom Nationals.

As part of our strategic direction, the UG law department also plans to establish a graduate programme in International Trade and International Environmental Law under the leadership of Visiting Professor, Dr. Winston Anderson, and a Drafting Course for Caricom nationals in collaboration with the Drafting Unit of Caricom.

Legal Education must now equip the new out put of lawyers with the necessary tools to sustain the new thrust, taking into account the presence of both the European Civil Code and the common law tradition of Caricom States.

Some of the short and medium strategies need to be considered in order to meet this new challenge.

1. The development of specialist degree, diploma and certificate programmes
2. The Continuing Legal Education programmes
3. International cross border linkages and exchanges
4. Regional cross-border linkages and exchanges

Some of these initiatives have already been instituted or at various stages of development.

ADVANCED LEGAL EDUCATION: The Faculty of Law has done extensive studies into the establishment of an advanced legal education programme aiming at the initial phase for post graduate teaching in specialist subject areas including International Trade and Finance Law, Intellectual Property law and Constitutional and Administrative Law at the Campus territories (Barbados, Jamaica and Trinidad and Tobago. The programme content and the teaching venues, including education facilities will be expanded in keeping with Regional needs in subsequent years.

In Guyana there is a faculty for cross disciplinary studies whereby for instance non law professional could pursue specific law programmes as for example in Environmental law.

The initiative would make it possible for practicing professional to have ready access to advanced legal training without disruption of their regular work schedules.

The Council of Legal Education has endorsed a programme of international cross-border linkages with law Schools in the United States of America. A pilot programme at Norman Manley law School over the last 3 years involves faculty and student exchanges in areas of international law and includes specialist areas such as intellectual property and environmental law.

It is the task for the Regional Judicial and Legal Services Commission, the Caribbean Bar Association, the Regional Task Force, in collaboration with experiences of this nature to come up with strategies to tackle the immediate task of meeting the needs of the CCJ.

Continuing Legal Education can range from 1-3 days 1-2 weeks to 3 months courses in legal studies in post LEC training. After years of indigenous education means the first batch of students would have had at least 25 years of practical legal education. The time is long overdue for a full post graduate studies beginning firstly with the more crucial areas of law to Caribbean region, that affordable, accessible and to meet the needs of attorneys and judiciary who have their private practice. Today technology, or transfer of technology can make that course possible through the internet, teleconferencing, to

prevent social dislocation, for the judiciary whose country can ill-afford the loss from the bench for a year for a Masters Programme.

Therefore a programme should be drafted that is flexible enough to cater for the daily demands of the practicing attorneys and the bench, located within the jurisdiction and location of the individual states and which caters to share the experiences of other West Indian counterparts at academic conferences of other West Indian counterparts at academic conferences utilizing to the utmost the available technologies within accessible costs.

- To strengthen the indigenous judiciaries through training of judges, magistrates, court officials, attorneys and their clerks.
- A dependable and responsive legal system is the foundation on which economic activity, particularly in the globalised environment in which we live. A solid legal system is an indispensable condition for successful business and economic development. The establishment of the CCJ will impact across the region altering the way we do and how others view the region. International trade, CSME, Intellectual Property Rights are the only viable option for the Caribbean and its people. The era of non compliance to treaty and breach of international law is coming to an end approaching a new beginning.