

OVERVIEW OF THE RULES OF COURT OF THE CCJ
(APPELLATE JURISDICTION)

INTRODUCTION

By S16 of the Enabling Bill to implement the Agreement Establishing the CCJ the President shall, in consultation with five other judges of the Court, establish rules for the exercise of the jurisdiction of the Court.

There are two sets of Rules of Court. One for the Court in the exercise of its appellate jurisdiction while the other is for the Court in the exercise of its original jurisdiction. There have been meetings of Registrars and Legal Officers and the views of various Bar Associations and legal luminaries have been taken into account in the preparation of the Appellate Rules. You will find that there has been some overlap in both sets of Rules but this is necessary as the Court will be exercising an appellate as well as an Original jurisdiction. This calls for keeping the rules separate and distinct from each other.

The appellate rules have been settled to a point. The draft forms and precedents have been prepared and have been distributed to the Registrars and Legal Officers for their comments which will be considered at the next meeting. There are also a few matters which are square bracketed and which will also be addressed at that meeting.

Overview of the Rules of Court of the CCJ
(Appellate Jurisdiction)

These Rules have been crafted from the Rules relative to the practice and procedure of Appeals to the Privy Council with a few variations to suit our situation. An example of a variation is where the President of the Court appoints a Registry of a Contracting Party a Sub-registry of the Court. The seat of the Court will be in Trinidad where the Registry of the Court will also be but since the Court will be an itinerant court it is necessary to give this authority to the President to appoint another Registry in a Contracting Party to be a Sub-registry of the court.

The appellate rules set out when an appeal will be admitted, namely as of right, with leave of the Court below or by special leave. Appeals are admitted as of right -

(1) When it is an appeal for a Court below from -

(a) judgments in civil proceedings where the matter in dispute on appeal to the Court is of the value of not less than [] or where the appeal involves directly or indirectly a claim or a question respecting property or a right of the aforesaid value;

(b) judgments in proceedings for dissolution or nullity of marriage;

(c) judgments in any civil, criminal or other proceedings which involve a question as to interpretation of the Constitution of a Contracting Party;

(d) judgments given in the exercise of the jurisdiction conferred on a superior Court of a Contracting Party relating to redress for the contravention of the provisions of the Constitution of a Contracting Party for the protection of fundamental rights;

(e) judgments 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 judgments as may be prescribed by any law of the Contracting Party;

(2) Leave to appeal has been granted by the Court below in:

(a) judgments in any civil proceedings where, in its opinion 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

(3) Special leave has been granted by the Court .

An application for leave to appeal may be made to the Court below immediately on the delivery of the Judgment or within 30 days after the date of the judgment.

An application for special leave to appeal may be made to the Court within 42 days of the date of Judgment. An application for special leave to appeal may include a prayer for special leave to appeal as a poor person.

A petitioner who seeks special leave to appeal as a poor person shall file, together with his petition -

(a) an affidavit stating:

(i) that his total assets do not amount to [] excluding his wearing apparel and his tools of the trade;

(ii) his interest in the subject matter of the appeal; and

(iii) that he is unable to provide sureties; and

(b) a certificate of Counsel that the Petitioner has reasonable grounds of appeal.

The Court on granting leave may impose conditions or make orders or give such directions as it considers necessary.

The Registrars and the Legal Officers were of the opinion that we should not follow the Privy Counsel procedure slavishly and where necessary we made changes. One of these changes was to allow for the filing of the notice of appeal earlier.

The appellant shall file his notice of appeal:

(a) within 2 months of the receipt in the Registry of a record that has been reproduced;

(b) Where the record is received in the Registry not having been reproduced within 1 month from the completion of the reproduction thereof.

The appellant may file his notice of appeal prior to the receipt of The record or to completion of the reproduction, if these are special reasons, why in the opinion of the Registrar, it is desirable for him to do so. The order of the Court before granting leave to appeal, or the order must also be filed.

It is important for a Respondent to enter an appearance. A respondent who has not entered an appearance shall not be entitled to receive from the Registrar any notices relating to the appeal, nor be allowed to take any step in the proceedings. Delay in entering an appearance by the Respondent may occasion him being disallowed costs.

The rules regarding the preparation of the record are clearly set out in Appendices. Provision is also made for the withdrawal of appeal and non-prosecution of appeal.

No party to an appeal shall be entitled to be heard by the Court unless he has previously filed his case to the appeal. Skeleton agreements together with a list of authorities to be cited at the hearing shall also be filed.

There are also provisions for the delivery and enforcement of judgment, application to reconsider judgment and for taxation of costs.

The rules of the appellate Jurisdiction of the Court are very comprehensive and the procedures are familiar to most attorneys practising in the various courts of the Contracting Parties. It is therefore envisaged that there would not be many problems in implementing them.

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