

REMARKS AT LAUNCHING OF
DR. RAJENDRA RAMLOGAN'S BOOK
"JUDICIAL REVIEW IN THE COMMONWEALTH
CARIBBEAN"

By

**The Hon. Mme. Justice Désirée Bernard, O.R., C.C.H.
Judge of the Caribbean Court of Justice**

I wish to extend to Dr. Rajendra Ramlogan my heartfelt congratulations on producing another literary work "*Judicial Review in the Commonwealth Caribbean*", the first being "*Commonwealth Caribbean Business Law*" produced jointly with Natalie Persadie.

These literary works form part of the Commonwealth Caribbean Law Series published by Routledge–Cavendish, and include a range of subjects from Public Law, Tort, Property Law, Civil Procedure, Law and Legal Systems to Criminal Practice and Procedure by outstanding academics and legal scholars within the Caribbean Region. I am informed that collectively they are now required reading for students at the faculties of law and law schools within the Region.

Dr. Ramlogan's "Judicial Review" will, I predict, become required reading not only for students of the law, but also for members of the judiciary and legal practitioners being launched at a time when judicial review constitutes a large portion of the case load of at least two countries of the Region – Guyana and Trinidad & Tobago. Within this jurisdiction such proceedings are regulated by the Judicial Review Act of 2000. Barbados, as far back as 1980 regulated judicial review by the Administrative Justice Act, and may have been the first country within the Region to do so by legislative means. Others, for example, Jamaica and the Eastern Caribbean have made provision in their civil procedure rules for judicial review of administrative actions. Guyana, the jurisdiction with which I am most familiar, is the only one where the old English prerogative writs of certiorari, prohibition and mandamus are utilised for the review of administrative acts. It is hoped that this will soon change when the new civil procedure rules come into force in the near future.

However, whatever form is utilised whether by statute, procedural rules or the prerogative writs, the acts of public administrative bodies are frequently subject to review by the courts. Checks and balances are essential in the realm of public administration to avoid excesses which wittingly or

unwittingly may be committed by those exercising authority. Judicial review ensures that the process by which a decision is arrived at is fair, open and impartial, although not being a review of the actual decision. However, if the process is flawed, it may result in the whole decision being tainted as several legal authorities have decided, and the tribunal or body will be found to have acted outside of its jurisdiction.

Dr. Ramlogan has drawn upon the rich experience of the courts within our Region with a plethora of cases from Trinidad and Tobago, Guyana, Barbados, Jamaica, the Eastern Caribbean and Belize, defining the parameters of judicial review and country perspectives on the subject with a wide range of opinions. In discussing the grounds which give rise to judicial review a reader of this legal literary work will encounter an interesting mix of cases illustrating illegality, irrationality, and procedural impropriety on the part of authorities such as the customs, immigration, medical associations, police and teaching service commissions, and even judicial officers, to name a few. Other grounds discussed include error of law and failure to adhere to the principles of natural justice.

The issue of standing, that is, the right of a person or body of persons to seek prerogative orders, underwent change when judicial review was introduced in England in 1977. A more liberal approach developed moving from someone with a sufficient interest and who is personally aggrieved to one who is adversely affected, or in situations where the application is justifiable in the public interest. This is a far cry from the approach taken by the judiciary in earlier times who were reluctant to extend the parameters of standing for fear of swamping the courts with litigation. Some at present may express the view that that fear has materialized; a perusal of the cases discussed in Dr. Ramlogan's work, however, indicates the range of interests which applicants seek to protect.

Of interest is the brief mention of the recent doctrine of proportionality, which is of European origin and seems to be creeping into English Law via the European Communities Act and the Human Rights Act. It has been adopted by the European Court of Justice, and the European Court of Human Rights; in administrative law the principle underlying it is that administrative measures must not be more drastic than or disproportionate to the mischief it is intended to cure. The doctrine has not as yet found a firm footing in English jurisprudence, but certainly will in the

near future. This was predicted as far back as 1984 when Lord Diplock in the case of **Council of Civil Service Unions -v- Minister for the Civil Service (1985) A.C., 374** while expatiating on his three principles of illegality, irrationality and procedural impropriety as grounds for judicial review, posited that in the course of time further grounds may be added on a case by case basis, and made reference to the possible adoption in the future of the principle of proportionality influenced by the European Economic Community. The House of Lords in 1991 in **R-v-Home Secretary, ex parte Brind (1991) 1 AC, 696** declined to accept Counsel's invitation to apply the doctrine having regard to the circumstances of that case. Later cases, particularly after the Human Rights Act of 1998 have utilised the principle in matters of judicial review as in the case of **Ahmed Saeed Ahmed Murkarkar -v- The Secretary of State for the Home Department (2006) EWCA**, concerning a Yemeni appellant who was a visitor seeking to remain indefinitely in the United Kingdom contrary to the immigration laws at a time when he became ill and wholly dependent on his relatives who had permanent resident status. What was in issue was proportionality which compliance with the immigration laws bore to a deterioration in the appellant's health and personal circumstances necessitating his continued residence with his relatives.

The principle is not restricted solely to review of administrative action, but can be applied in other areas to achieve the goal of fairness in competing claims. In a recent judgment in **Barbados Rediffusion Services Ltd -v- Asha Mirchandani and others CCJ Appeal No. CV 1/2005** which involved failure to comply with the terms of an “unless” order in a civil claim for damages for libel which resulted in the Defence of the appellants being struck out, the President of the Caribbean Court of Justice concluded that neither the judge at first instance nor the Court of Appeal attempted to “carry out any sort of balancing exercise”, and expressed the view that “had they done so, they would inevitably have come to the conclusion that to strike out the whole of the Amended Defence and order judgment to be entered for the respondents for damages and costs, was wholly disproportionate in the circumstances of this case and was not required either by considerations of fairness to the respondents or other litigants as a response to defiance of an order of the Court that was so egregious that it demanded nothing less.” For those reasons, the exercise of the Judge’s discretion was found to be “fatally flawed and plainly wrong”.

I commend this case to you, but as was pointed out in the English immigration case mentioned earlier different approaches to normal

circumstances have to be applied on a case by case, basis and the House of Lords in an earlier immigration decision declined to lay down a more precise legal test. This just indicates the incipient introduction of the principle of proportionality into the English case law. The judgment of the CCJ can be regarded in like manner, and I posit the view that we took a bold step and “tested the waters” in arriving at a decision that was fair and just in the circumstances of that particular case.

In closing I once again wish to congratulate Dr. Ramlogan on his recent literary work “Judicial Review in the Commonwealth Caribbean”, and commend it to all here present and the wider regional legal community, universities and law schools.

Thank you very much, Dr. Ramlogan, for conferring on me the honour of launching your book.

Best wishes for the future.