

# **HIDDEN SYNERGIES\***

by

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## **HIDDEN SYNERGIES**

### **Introduction**

It is apparent that we live in challenging times with many of our economies facing major fiscal deficits. Additional external pressures aggravate the situation as efforts to combat international crime, the drug trade, money laundering, terrorist financing and tax evasion enter a new era. On the other hand, the United Nations World Economic Situation and Prospectus 2014 projects that economic growth in Latin America and the Caribbean is set to increase by 3.6 and 4.1 % in 2014 and 2015 respectively. An important question is the extent to which the projections for economic growth are dependent on the way in which the judiciary and the media function in our societies. These two institutions make an indelible impact on economic development and social stability by promoting the principles of good governance, accountability and respect for the rule of law to the population.

### **Media - the Fourth Estate**

Most Commonwealth Caribbean nations are founded on the Westminster model of constitutionalism wherein the responsibilities of the State are divided into three distinct arms: the Executive, the Legislature and the Judiciary. However, since the 18<sup>th</sup> century with the famous Edmund Burke saying, the media has been recognised as an important player, the fourth estate. The media act as the custodian of the public interest and as watchdogs on the actions of all realms of government. The guarantee of a free press is one of the hallmarks of a modern, democratic society. Media activities directly impact the economy by disseminating information which can even play a significant role in installing or removing governments.

The fourth estate shares many similarities with the judiciary. Journalists and judges should be characterised by the values of fair-mindedness, honesty, balance,

independence and impartiality. They carry out their duties diligently and without fear or favour. They demand accountability and attack injustice and abuse of power. Like the Judiciary, the Press serves society best when it is completely independent of political control or alliance. Both the Judiciary and the Press seek to maintain good governance and the rule of law.

### **Media and CARICOM**

Media as a group and many individual distinguished journalists have made significant contributions to the development of CARICOM and the regional integration movement. But has the media done enough? The CCJ has a policy of disseminating information about its work and is looking to the media to assist in providing the public with more information. I believe that the current delay in some member states in accessing the final appellate jurisdiction of the court could be arrested by civil society expressing itself articulately and consistently to give assurances that the public is more than ready for this inevitable step to occur.

There is an economic aspect of the debate which merits consideration. CARICOM established the CCJ Trust fund with a capital base of US\$100 million to fund the Court in perpetuity to which all Member States have contributed by financing arrangements through the Caribbean Development Bank. Yet some find themselves in the curious position of paying for a court that they are not using. To date, the CCJ stands at the pinnacle of the judicial system in only three CARICOM Member States: Guyana, Belize and Barbados. It also merits contrasting the ease of access to justice for those countries which retain the Privy Council to those which have accepted the CCJ. Regional media are well placed to facilitate these types of debates.

Given the sterling record of consciousness and achievement consistently displayed by the media and individual journalists, I am confident that they will continue to meet their commitment to CARICOM for information and the stimulation and provoking of opinion. It is this free flow of information which is at the heart of development, both human and economic.

## **Overview of the Caribbean Court of Justice**

The Revised Treaty of Chaguarmas (the 'Revised Treaty') lays the foundation for the Caribbean Single Market and Economy (the 'CSME'); the crucial linchpin determined by CARICOM leaders to be at the heart of economic development and integration within the region. The Caribbean Court of Justice (the 'CCJ') is the guardian of the RTC and the CSME. It represents a vital aspect of the movement towards regional unity. In its appellate jurisdiction, the Court replaces the Judicial Committee of the Privy Council as the highest appellate body. There are many aspects to this vision of importance to our region. In particular the whole issue of citizen and national security is affected by quality of the justice system in the region and the ability of the highest court in the system to influence not only the quality of jurisprudence, as exemplified in its judgments but also the quality of justice delivery, as exemplified in its contribution to the efficiency and timeliness of dispute resolutions across the board. The CCJ is well placed to address both aspects of judicial leadership which impact on economic development and social stability.

In its original jurisdiction, the CCJ is the sole arbiter of disputes concerning the interpretation and application of the Revised Treaty. The goal of the Revised Treaty is to deepen the regional integration movement among Member States to "sustained economic development based on international competitiveness, coordinated economic and foreign policies, functional co-operation and enhanced trade and economic relations with third States."<sup>1</sup> In this regard, there are five key components encompassed by the CSME regime namely: free movement of goods, free movement of nationals, free movement of services, the right of establishment and the movement of capital.

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<sup>1</sup> Preamble to the Revised Treaty of Chaguaramas Establishing the Caribbean Community including the Caribbean Single Market and Economy.

### **Key decisions in the Original Jurisdiction**

The CCJ has been delivering quality judgments on regional issues in both its jurisdictions. The jurisprudence of the Court has contributed favourably to the economic climate and to social stability in the region, in three spheres:

- by levelling the playing field in regional trade,
- by ushering in a new era in free movement of CARICOM nationals and
- by creating a culture of accountability and good governance.

In its original jurisdiction the CCJ has promoted regional trade in an open and fair market to ensure that the objectives of the CSME will be realised. Thus in *Trinidad Cement Limited and TCL Guyana Incorporated v The Co-operative Republic of Guyana*<sup>2</sup> and *Hummingbird Rice Mills and Suriname v the Caribbean Community*<sup>3</sup> the Court rulings emphasised that the common external tariff (the CET) is a fundamental pillar of the CSME and must be kept in place to encourage and promote the production of goods within CARICOM, strengthen the productive sector and accelerate the process towards making regional exports internationally competitive. In the *Competition Commission* case<sup>4</sup> the court contributed to the regulatory framework for ensuring that the benefits of competition are not frustrated by anti-competitive conduct. The Court has also expanded the concept of free movement in the *Shanique Myrie* decision.<sup>5</sup> Now all CARICOM nationals are entitled to hassle-free travel and an automatic six month stay upon entry into another CARICOM state.

### **Regional Developments in the Banking Sector**

However, the question remains: has the Original jurisdiction of the court been adequately utilised? I could examine this question by looking at the Relationship between the Revised Treaty and the banking sector. In Article 38 of the Revised Treaty,

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<sup>2</sup> [2009] 75 WIR 327, [2009] CCJ 5 (OJ).

<sup>3</sup> [2012] 79 WIR 448, [2012] CCJ 1 (OJ).

<sup>4</sup> [2012] CCJ 4 (OJ)

<sup>5</sup> [2013] CCJ 3 (OJ).

Member States agreed to remove discriminatory restrictions on banking, insurance and other financial services.

I have been advised that the dominant enterprises in the banking and financial services sectors are non-indigenous. This has been partly attributed to the fact that the footprint of the indigenous institutions have not tended to spread across national boundaries and embrace the vision of regional integration. As a result they have to a large extent remained under-developed without adequate resources to compete in times of financial stress. Such a reality suggests a critical need to re-evaluate the financial framework within which the Community operates. To this end, Member States must play their part in ensuring the harmonization of rules and regulations which govern the various financial sectors within the Community. So far, at the CARICOM level a Financial Institutions Bill and the CARICOM Financial Services Agreement (CFSA) have been drafted.

However, there is a gap between the vision and the implementation. Despite these efforts, the facilitating measures are not currently in place. This failure to push for uniformity in the regulatory environment therefore presents some challenging questions for CARICOM. Until such time, the onus will no doubt lie with the private sector to actively take measures towards the goal of a harmonized economic market. As a result, private entities may well function as the catalyst for change in ensuring that Member States comply with their obligations under the Revised Treaty. With the aim of these obligations directed at improving the economic climate within the region, it is incumbent on private institutions to ensure that they seize the benefits to which they are entitled. This should be self-evident in sectors, where, in addition to the objective benefits to the Community, the profit levels of the relevant institutions will be positively enhanced. In this regard, the media is well placed to call for greater cooperation along with implementation of effective measures by all Member States to realize the goal of an economic union. In the absence of such action, the media becomes complicit in the failure of Member States. This thought also applies to the role of the media in

accelerating the abolition of appeals to the Privy Council and the adoption of the CCJ as the final appellate court.

Now, in the quest for “regional transformation, development and growth”, the Caribbean Court of Justice (“CCJ”), in its original jurisdiction, plays a fundamental part in facilitating the integration scheme envisioned by the CSME. As the sole arbiter of disputes arising from the Revised Treaty regime, the CCJ acts as a mechanism for the enforcement of the rights and obligations created by the Revised Treaty. The Court ensures the uniform interpretation and application of the Revised Treaty, and is therefore crucial for developing the CSME. In light of the theme of this discussion, the CCJ may provide an avenue for empowering economic growth. While it is true that the necessary measures to found a single economic market are yet to be fully implemented, a failure by Member States to take proactive steps in this regard may very well be issues which can attract the court’s jurisdiction.

### **Conclusion**

From what I have said it is clear that the Judiciary and the Media are indivisibly involved in economic and human development and in their separate ways have a responsibility to Caribbean peoples everywhere to carry our independence forward. The both institutions, I submit must engage vigorously their responsibilities in a manner that generations of Caribbean people would benefit from their efforts. The CCJ will do its part.

