

TEN YEARS OF ADJUDICATION IN THE CARIBBEAN COURT OF JUSTICE AND REFLECTIONS ON A DECADE OF CARIBBEAN JURISPRUDENCE¹

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PROLOGUE³

The countries of the Caribbean suffered the brutality of slavery for three and a half centuries with several of the English-speaking territories enduring imperial domination for three centuries. During this period, the supervisory authority of the Crown was manifested by the role played by imperial institutions including

the Privy Council which became the supervisory administrative authority and the final appellate court for what was termed the plantations, primarily in the Western Hemisphere.

It is therefore surprising that against this historical background, when the former British colonies of the Caribbean emerged from their colonial status they elected to retain the Privy Council as their final appellate court. While it is true that in the last century the Privy Council in its reformed judicial manifestation has provided high quality judicial service to the Caribbean members of the Commonwealth, it is remarkable that unlike the vast majority of former colonies, having less historical

justification, we have to a large extent insisted on clinging to its overreaching jurisdiction.

In February 2001, 10 Caribbean States signed the Agreement for the Establishment of the Caribbean Court of Justice ('CCJ') which declared in the Preamble that they were convinced of the Court's "determinative role in the further development of the Caribbean jurisprudence through the judicial process".

There is no rational reason for the repudiation of that declaration particularly in light of 10 years of evidence in the judgments of the Court as to the quality of its jurisprudence.

ACCESS TO APPELLATE JUSTICE

To ordinary citizens, the existence of a third tier jurisdiction assumes practical value if it is accessible, both in terms of the existence of a legal avenue for recourse beyond the first level of appeal as well as it being physically and financially within their reach.

The Court has repeatedly demonstrated a flexible and liberal approach to granting special leave to appeal. In the first case before the Court, the CCJ noted that in determining whether to grant special leave to appeal it would "pay attention to the practice adopted by the Judicial Committee" as well as the "practice and principles adopted by final courts of appeal in other Commonwealth countries" but did not consider itself

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³ The full article with citations is available in the CCJ's upcoming publication *The Caribbean Court of Justice: The First Ten Years* or by requesting it via email: pecu@ccj.org.

bound to strict adherence to those practices and principles. The Court noted its commitment to developing its own jurisprudence incrementally, as needed. It has been established that an applicant, in all cases, must show that the proposed appeal has a realistic chance of success or that, as a matter of public importance, a definitive reasoned judgment on the issue is required by the Court.

The Court will grant special leave to appeal in various circumstances including where:

1. The possibility that a sanction ‘may have been wrongly or unfairly imposed is significant enough to warrant the issue being fully and finally ventilated’;
2. The Court of Appeal wrongly refuses leave or imposes conditions on leave which it is not empowered to impose; or
3. The ineffective conduct of a trial by counsel renders the trial unfair and unsafe.

Notably, the Court has affirmed its independent power to grant special leave to appeal, even where an applicant is unable to avail herself of conditional leave from the Court of Appeal due to financial constraints, taking into account the circumstances of the case including any difficult legal questions raised by the appeal.

The potentiality and reality of the accessibility of appellate justice before the CCJ is further illustrated by its approach to concurrent findings of fact in the courts below. In *Lachana v Arjune* the Court reasoned that its closeness to the region and greater familiarity with its social and cultural dimensions made it easier to delve into the facts of the case, especially where they do not turn on the credibility of witnesses or are the result of inferences from primary facts.

Based on the foregoing, it can be stated with some confidence that the CCJ will provide all reasonable means of access to its appellate jurisdiction.

PROTECTION OF HUMAN RIGHTS

The second area with which average citizens are deeply concerned is the need for confidence that the final appellate court will give effective protection to their constitutionally guaranteed fundamental rights and freedoms. Arguably, the best test of this is where the

person who claims the protection of the rights is morally undeserving or is despised by the society. Not surprisingly, the first test of the Court’s reliability in this area is a capital punishment case.

In *A-G v Joseph and Boyce*, the Court found that the exercise of prerogative mercy is reviewable notwithstanding a Constitutional provision to the contrary and held that it had an implied or inherent jurisdiction to give redress where there has been a breach of the guarantee to due process. In outlining the Court’s approach to death penalty cases, President de la Bastide and Mr. Justice Saunders, while noting the relevance of opinions of final courts in the Commonwealth generally and those of the Judicial Committee of the Privy Council while it was still the final court for Barbados (which it said continued to have binding effect until overruled by the CCJ), reiterated its primary role of developing Caribbean jurisprudence. Further, President de la Bastide and Mr. Justice Saunders held that the death penalty ought not to be carried out “without scrupulous care being taken to ensure that there is procedural propriety and that in the process fundamental human rights are not violated”.

The CCJ has also expressed that in exercising its power of redress or to prevent breaches of constitutionally protected rights, the doctrine of separation of powers does not preclude it from making coercive orders against the Executive, even where that order mandates expenditure of public funds.

10th Anniversary Memories

“ *The highlight of the Court was the Inauguration in 2005, it was immense work pressure but we all worked as a family; we worked together to get it done.* ”



Heather Dyer Thompson
Case Management Officer

CONSTITUTIONAL CONSTRUCTION

Probably the most challenging task presented to a court in the context of a controlled Constitution is that of pronouncing on the validity of laws passed by the democratically elected legislature. The majority in *Zuniga v A-G of Belize* stated that in assessing the validity of a law the Court would not merely compare the Constitution with the impugned legislation to determine whether ‘the latter squares with the former’ but would seek to discover and apply ‘norms and principles that characterise the Constitution’ and, where appropriate, consider the propriety or expediency of the impugned Act. Further, where it is possible to save a law that may contain one or more inconsistent provisions, a scalpel, rather than a machete, is to be used to sever those inconsistencies. The *Zuniga Case* represents the clearest and most comprehensive enunciation of the principles which should guide courts in the exercise of this critical function of the judicial review of the constitutionality of legislation.

COMMERCIAL LAW

The quality of appellate adjudication in the area of commercial law is of particular interest to businessmen, investors and financial institutions whose focus is the clarity and expedition of the resolution of their disputes and the soundness of the reasoning applied in such cases.

The Court has made several key rulings concerning securities including: (1) endorsing the validity of receivers’ powers of sale under debentures duly created and registered under the Companies Act and secured otherwise than by a separate mortgage under the Deeds Registry Act and (2) allowing recovery of a \$10 million guarantee from a company Director with interest despite her contention that she knew nothing of the guarantee having not signed or initialled it.

The Court in *Guyana Furniture Manufacturing v Ramcharan*, which concerned the commission to be paid to a receiver/manager and receiver under two separate debentures, reaffirmed the basic principle that the Court will not lightly reverse the benefits or protection accorded to parties by their commercial agreements.

These cases demonstrate a sound appreciation of the practical realities of business operations as well as an intellectual mastery of the relevant jurisprudence.

PROPERTY LAW

The abolition of slavery in the Caribbean, the phenomenon of absentee landlords and the vast amount of unoccupied Crown lands, has resulted in a culture of squatting on other persons’ land. Consequently, the CCJ has had the inevitable and unenviable task of adjudicating land disputes occasioned by squatting. In dealing with such disputes, the Court’s disposition of these matters has been consistent with the decision of the House of Lords and the Privy Council. Notably, the CCJ in *Toolsie v Persaud* was careful to point out that in effecting entry to the land it was not important whether the intended possessor was aware of his wrongful act or entered the land under the mistaken belief that he had a legitimate right to enter, provided that such entry was not referable to an agreement or permission of the true owner.

Overall, the reasoning of the CCJ with respect to the vexed question of possessory land titles is thorough, refreshing and demonstrative of high judicial analysis.

EPILOGUE

The qualitative assessment of the Court’s judgments is now the single most important factor in any decision as to whether or not to adhere to its appellate jurisdiction. I have been obliged to make a careful study of the CCJ judgments particularly in the appellate jurisdiction. In my view they are thorough and analytically sound, socially relevant, without being insular, learned without being pedantic, progressive while being appreciative of precedent, and culturally sensitive while appreciative of Commonwealth and international learning.



One of the initiatives that is aimed towards a high performing staff complement was the implementation of an Employee Assistance Programme (EAP). The CCJ offers a comprehensive wellness programme for staff and their families, in an environment that is open, confidential and empowering.

CARIBBEAN COURT OF JUSTICE

10 YEARS OF MILESTONES



2005

2006

2007

2008

2009

2010

16 April 2005

Inauguration of the CCJ in Port of Spain, Trinidad and Tobago.

18-22 October 2005

Public Education tour of Jamaica.

26 October 2005

First matter heard in the Appellate Jurisdiction

First appellate case from Barbados: Barbados Rediffusion Services Ltd v Asha Mirchandani, Ram Mirchandani and McDonald Farms Ltd.

13 June 2006

Media Day for local and regional media.

8 November 2006

CCJ's first death penalty matter and a landmark case for human rights: the Attorney General, Superintendent of Prisons and Chief Marshal of Barbados v Jeffrey Joseph and Lennox Ricardo Boyce.



1-2 February 2007

Commonwealth Meeting of Justices and Registrars of Final/Regional Appellate Courts.

2-3 March 2007

Seminar: The CSME and its Legal Implications. Feature speaker: Sir Francis Jacobs, retired Advocate General of the European Court of Justice.

17 August 2007

Signing of a financing agreement between the European Commission and CARIFORUM, under which the European Union (EU) provided 1.3 million euros to aid in the institutional support and capacity building of the CCJ.

23 June 2008

Seminar in partnership with the Supreme Court of Belize: "CCJ and CSME - Vehicles for Regional Unity: What does it mean for you and me?"

22 July 2008

First Original Jurisdiction case: Trinidad Cement Ltd and TCL Guyana Inc v the Co-Operative Republic of Guyana.

13-16 April 2008

The CCJ hosted a study tour of judicial services in Trinidad and Tobago by the Supreme Court of Jamaica.



4-8 January 2009

The CCJ co-hosted the VI Brandeis Institute for International Judges with the International Center for Ethics, Justice, and Public Life of Brandeis University.

15 January 2009

Trinidad Cement Ltd and TCL Guyana Inc v the Co-Operative Republic of Guyana: landmark ruling holding that under Article 222 of the Revised Treaty of Chaguaramas, a company can bring an application for special leave to bring an action against a state.

18 March 2009

1st Annual CCJ International Law Moot Court for students of CARICOM university law faculties and professional law institutions.

25-27 June 2009

Inaugural Conference of the Caribbean Association of Judicial Officers (Trinidad & Tobago).

16 April 2010

Fifth Anniversary of the Caribbean Court of Justice

Caribbean Law Institute Centre / CARICOM Secretariat CCJ 5th Anniversary Symposium.

1 June 2010

Belize accedes to the Appellate Jurisdiction of the CCJ.

1-3 November 2010

CCJ co-hosts Fifth International Conference of the International Association for Court Administration: Access to Justice: Criminal, Commercial and International Courts and Tribunals.

6-10 December 2010

1st International Law Seminar under the auspices of the CCJ's Caribbean Academy for Law and Court Administration (CALCA).



2011	2012	2013	2014	2015
<p>26 June 2011 First appellate case from Belize: Florencio Marin and Jose Coye v the Attorney General of Belize.</p> <p>8-14 May 2011 Public education tour of Grenada.</p> <p>15 July 2011 Special sitting in honour of the Rt. Hon. Mr Justice Michael de la Bastide, outgoing founding President of the CCJ, Trinidad and Tobago.</p> <p>1 September 2011 Installation of the Rt Hon. Sir Charles M. Dennis Byron, second President of the CCJ, St Kitts and Nevis.</p> <p>6-8 October 2011 2nd Biennial Conference of the Caribbean Association of Judicial Officers (CAJO), The Bahamas.</p>	<p>28 June 2012 Visit to the CCJ by Sen. the Hon. Mark Golding, Minister of Justice of Jamaica.</p> <p>14 August 2012 Seminar for the Trinidad and Tobago Manufacturers' Association.</p> <p>29 October 2012 Signing of Memorandum of Understanding among the Conference of Heads of Judiciary and Chief Justices of the Caribbean Community, the Caribbean Court of Justice and the National Center for State Courts (USA).</p> 	<p>4-5 February 2013 Meeting with delegation from the Caribbean Development Bank.</p> <p>5-8 February 2013 Visit of delegation from the State of Qatar, led by His Excellency Chief Justice Masoud Mohamed A. T. Al-Ameri, President of the Court of Cassation and President of the Supreme Judiciary Council.</p> <p>3 March 2013 Landmark Original Jurisdiction case on freedom of movement of CARICOM nationals: Shanique Myrie v the State of Barbados.</p> 	 <p>19 February 2014 Special sitting in honour of the Hon. Mme. Justice Désirée Bernard, Georgetown, Guyana.</p> <p>24 April 2014 Second Colloquium between the Caribbean Court of Justice and the Faculty of Law of the University of the West Indies (Cave Hill).</p> <p>14-15 July 2014 Meeting between CARICOM Heads of Judiciary and the Department of Foreign Affairs, Trade and Development of Canada to discuss the JURIST Project.</p> <p>2-4 December 2014 III Biennial CALCA Seminar on International Law.</p>	<p>21 January 2015 Symposium on the CCJ at the Faculty of Law of the University of the West Indies (St Augustine); contributions from the High Commission of Canada, the Organisation of American States and the International Labour Organisation.</p> <p>6 March 2015 The Commonwealth of Dominica accedes to the Appellate Jurisdiction of the Court.</p> <p>16 April 2015 Tenth Anniversary of the Caribbean Court of Justice; yearlong celebrations.</p> <p>24-26 September 2015 4th Biennial Conference of the Caribbean Association of Judicial Officers (CAJO), Jamaica.</p> <p>30 October 2015 Landmark Appellate Jurisdiction case on the right to property and to protection of the law: the Maya Leaders Alliance et al v the Attorney General of Belize.</p>

OFFICIAL LAUNCH

On March 16, 2016 the Court held a staff meeting to formally launch the Court's milestone 10th Anniversary. During the meeting, the planning committee outlined to staff all the plans to commemorate the anniversary while also revealing the logo and tag-line of the anniversary's campaign.

Though the meeting centered primarily around the Court's anniversary plans, the President of the Court, the Rt. Hon. Sir Dennis Byron, also took the opportunity to display a token from the government of Dominica, a framed copy of the gazetted Act empowering Dominica to accede to the CCJ's appellate jurisdiction, which was formally recognized earlier on March 06, 2016.

Sir Dennis also presented a copy of Dr Francis Alexis' book "Changing Caribbean Constitution" to Mrs. Sheryl Washington-Vialva, Deputy Librarian at the CCJ. Dr. Alexis donated the publication to the Court's library in celebration of the Court's 10th anniversary.

Here are some of the pictorial highlights of the launch of the 10th Anniversary celebrations:



10th Anniversary Memories

*“What drew me to the CCJ?
It is the physical manifestation
of regional integration.”*



Knijah Knowles
Legal Officer

STAFF BRUNCH

An organization is only as strong as its employees, making them its most valuable resource. With this in mind, the Court thought it necessary to celebrate its employees and their contributions to the development of the institution while commemorating its 10th Anniversary.

On the morning of April 16, 2016, the anniversary of the Court, employees were treated to a tour of the Court's 10th Anniversary Photo Exhibition after which they were invited to attend brunch. It was a nostalgic affair which began with a short video of several employees speaking about what it meant to them to work at the Court. The programme also featured a number of memorable performances by employees which included:

- A presentation of the poem "Laments and Trials of CCJ" composed and recited by Security Officer Ms. Erica La Barrie;

- A remixed version of "Like a Boss" by Ms. Sandra Dee Brown, CCJ Secretary;
- A stirring rendition of "We are the Court" the new CCJ song composed by Security Officers Mr. Aaron Alexander, Mr. Howard Marcel, and Mr. Whitfield Pilgrim and performed by the composers as well as Ms. Veronica Brooks, Security Officer, and Ms. Candis Cayona, Secretary.

The President also made a short speech in which he congratulated the staff on the milestone anniversary and encouraged them to keep the spirit of the CCJ alive.

It was certainly an event unlike any other which left many yearning for the Court's next milestone anniversary.



CHEERS TO THE 10TH

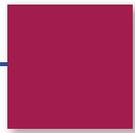


Knowing that without the support of family and friends, employees would never be able to contribute as meaningfully as they do to the Court, the CCJ thought it fitting that both employees and their support systems be given the opportunity to commemorate the Court's milestone anniversary together. With this in mind, the Court hosted its 'Cheers to the 10th' event in July of 2015. It was a night of karaoke and dancing as the CCJ and RJLSC staff, families and friends turned out to celebrate the CCJ and the work of the staff during its ten years in a light-hearted informal setting.

'Cheers' was emceed by Ms. Semone Moore, Public Education & Communications Assistant, who kicked off the celebration with her own karaoke renditions setting the tone for the rest of the evening. After the karaoke session

ended, it was time to open the dance floor which was welcomed by all in attendance.

A good time was had by all that night, with one attendee even remarking "this is the best time I've had in Trinidad so far!" while others expressed their anticipation for the next staff function.



LAUNCH OF PHOTO EXHIBITION

The launch of the CCJ's 10th Anniversary Photo Exhibition was hosted on the afternoon of the Court's anniversary. Various external stakeholders were invited to attend as the Court showcased its development over the ten years since its inauguration in 2005.

Led by Dr. Michael Anthony Lilla, the Court Protocol and Information Officer, the programme for the afternoon began with a presentation by Court President, the Rt. Hon. Sir Dennis Byron, who spoke of the CCJ's role in increasing access to justice for people of the Caribbean, citing as an example the matter of *Ross v Sinclair* in which the parties consisted of "two very poor ladies in Guyana who had a dispute of the right to occupy a condominium... the CCJ heard this case under special rules for poor people. The Guyanese bar agreed to represent both ladies pro bono (free of charge) and they saved the cost of travel and heard submissions by way of teleconferencing."

Sir Dennis' address was followed by a presentation from Dr. Indira Rampersad, Political Science Lecturer at the University of the West Indies, St Augustine, who described the Court as a "breath of fresh air" and encouraged the audience to embrace it. Similarly, Mr. Reginald Armour SC, President of the Law Association of Trinidad and Tobago, expressed full support for Trinidad and Tobago and all CARICOM countries abolishing appeals to the British Privy Council in favour of the CCJ. Mr. Armour stated, "there can be no turning back on the road to maturation of the Caribbean... there will always be stumbles along the way but we will only be able to walk when we try."

During a short intermission, members of the CCJ staff once again performed "We are the Court" to a resounding round of applause just before the feature address by Dr. Francis Alexis, Chairman of the Grenada Constitutional Reform Committee. In his speech, Dr. Alexis lauded the quality of judges produced by the Caribbean over many decades and noted that the "machinery for appointing judges, pivoting on the autonomous RJLSC, is fully insulated against political interference."

Closing off the ceremony was the signing of a Memorandum of Understanding with Caribbean Regional Information and Translation Institute (CRITI). The document was signed by Mr. Hendrik Alimahomed, Director of CRITI and the CCJ President.

Once the formalities for the evening ended, guests were invited to tour the exhibition and participate in a reception hosted by the President.

