

Below is a summary of all the judgments delivered by the court during the period 1 August, 2015 to 31 July, 2016:

Ward v Walsh & Bjerkham [2015] CCJ 14 (AJ)

Walsh entered into a lease agreement with Ward, the owner of the disputed land, and made several improvements to the land over a period of time. Walsh expressed interest in purchasing the land and Ward assured Walsh that he would give Walsh the first opportunity to match any purchase offer. Ward subsequently accepted an offer and deposit from Bjerkham. After learning this, Walsh instituted legal proceedings against both men. The CCJ held that Walsh did not establish the required elements of proprietary estoppel as he did not demonstrate that he was reasonably assured by Ward that he would receive ownership of the land and that he acted on this assurance to his detriment. Any monies invested in the land were in furtherance of Walsh's own business interests. Further, the purported contract between himself and Ward was merely a promise to give Walsh information of the situation so that he could make an offer if he so desired.

Maya Leaders Alliance v AG of Belize [2015] CCJ 15 (AJ)

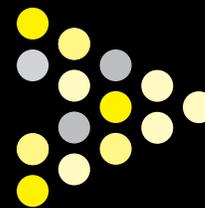
This appeal arose out of an incursion onto farmlands of the Mayan communities in the Golden Stream village in Belize. While this appeal was being heard by the Court, the Appellants and the Belize Government entered into a Consent Order that, inter alia, required the Belize Government to develop a mechanism for protecting Maya land rights. The Consent Order also requested that the CCJ determine whether the Appellants should be granted damages for breach of constitutional rights. The CCJ determined that the Belize Government had breached the Appellants' right to protection of the law in failing to ensure that the existing property regime recognised and protected Maya land rights. The Court also ordered the Government to establish a fund of BZ\$300,000.00 as an initial step towards compliance with the Consent Order.

Canadian Imperial Bank of Commerce v Gypsy Intl Ltd & Royston Beepat [2015] CCJ 16 (AJ)

This appeal focused on a decision by CIBC to appoint Mr Granville Phillips to act as a receiver under a demand debenture following a fire at Gypsy's business premises. After the fire, Gypsy's Managing Director, Mr Beepat, was arrested on suspicion of arson but the charge was eventually dropped. Subsequently, Gypsy's insurance policy was cancelled which triggered CIBC's right to appoint a receiver. After his appointment, Mr. Phillips sold all Gypsy's assets to repay part of the debt. CIBC later sued Gypsy and Mr Beepat, as guarantor of Gypsy's debts, for the remaining money owed. In response, Gypsy and Mr Beepat challenged the appointment of Mr Phillips claiming that no receiver could be appointed without CIBC first making a demand for payment. The CCJ determined that under the debenture CIBC could appoint a receiver without making a prior demand since Gypsy had breached its obligation to ensure that its premises had adequate insurance coverage. Further, it would be unconscionable for the Respondents to challenge the appointment when they had actively co-operated with Mr Phillips during the receivership. The Court dismissed the Respondents' claim for damages and lost profits from CIBC and ordered that Mr Beepat pay the outstanding monies owed to CIBC under the debenture.

Vincent Edwards & Richard Haynes v The Queen [2015] CCJ 17 (AJ)

Edwards and Haynes were convicted of murder in June 2013 and sentenced to death. The Applications to the CCJ were premised on the grounds that (i) the Court of Appeal was wrong to uphold the convictions solely on the basis of oral confessions reduced to writing in a police officer's notebook; and (ii) the mandatory death penalty imposed on them was unconstitutional. As the second issue was not raised in the court below, the CCJ only granted permission to appeal the convictions on the first ground and to appeal as poor persons. The CCJ, in granting permission, acknowledged the case as being one of significant public importance that warranted an appeal before the final court and that the men had demonstrated that there was a realistic possibility of a miscarriage of justice. However, the Court viewed that the issue of the unconstitutionality of the mandatory death penalty should be sent back to the Barbados Court of Appeal for a determination of how that issue should be resolved.



Clarence Sealy v The Queen [2016] CCJ 1 (AJ)

The Appellant was convicted of sexual assault and sentenced to six years' imprisonment. The Court of Appeal, by a majority, substituted his rape conviction for indecent assault and reduced his sentence to five years' imprisonment. He appealed to the CCJ on two grounds: (i) the trial judge had wrongly allowed the police officers to read aloud from their notebooks certain admissions they said Sealy had made at the Police Station when he was being interviewed that were unsigned by him; and (ii) the trial judge had not properly warned the jury on how to deal with the admissions. On the first ground, a majority of the CCJ held that while the trial judge had made some errors in the course of allowing the police witnesses to read aloud the unauthenticated admissions, there was sufficient evidence outside of the police testimonies on which Sealy could have been convicted. As to the second ground, the Court unanimously held that the trial judge's summing-up was adequate. The Court gave extensive guidance on how unsigned statements made by suspects should be approached and also on the directions that must be given to the jury when such statements have been admitted into evidence.

Rambarran v The Queen; Green v The Queen; Persaud v The Queen; Campbell v The Queen [2016] CCJ 2, 3, 4, 5 (AJ)

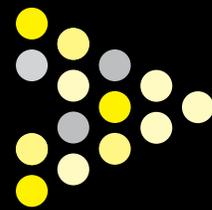
The Appellants were convicted of drug-related offences and sentenced to imprisonment terms that ranged from 15 to 30 years. Their appeals were filed 35 to 215 days after the jury verdict and were subsequently rejected by the Barbados Court of Appeal for being outside the 21-day time limit prescribed by section 19 of the Barbados Criminal Appeal Act. In a majority judgment, the CCJ disagreed with the Court of Appeal's interpretation of the statute and held that, in the context of section 19, the words "21 days after conviction" should be read as "21 days after sentence" as the sentence ultimately entails a judicial determination of guilt. Therefore, the time to appeal against a conviction only expires when 21 days have elapsed from the date of sentence; and, as a result, three of the Appellants' applications for leave to appeal were indeed filed within the prescribed time. With respect to the fourth Appellant, the CCJ held that the Court of Appeal had wrongly refused to extend the time.

Andrew Lovell v The Queen [2016] CCJ 6 (AJ)

The CCJ dismissed three applications made by Andrew Lovell who was charged with murder, convicted of manslaughter and then sentenced to 22 years' imprisonment. Any appeal to the CCJ is to be filed within 42 days of the decision of the Court of Appeal, but Lovell's application for legal aid was not processed within that period for reasons beyond his control. In May 2014, Lovell appealed to the CCJ for special leave to appeal against conviction and sentence and for special leave to appeal as a poor person. However, because they were filed long after the deadline, the applications were dismissed. Lovell now resubmitted these appeals in 2015; this time also making an additional appeal for an extension of the time for applying for special leave to appeal against conviction and sentence. However, the CCJ found that the 2015 application was simply a rehash of the previously rejected application and had failed to show why the issue should be revisited in accordance with the principle of finality of litigation.

Errol Campbell v Janette Narine [2016] CCJ 7(AJ)

This case focused on a purported agreement for the sale of a property in Guyana that was executed in the ICU of a Canadian hospital where the owner of the property, Mrs. Feinmesser, was critically hospitalized. The alleged sale was made to Janette Narine, a long-standing friend of Mrs. Feinmesser. Suspiciously, the property was sold at a price significantly lower than its value. After Mrs. Feinmesser's death, the executor of the estate initiated proceedings to have the agreement be declared null and void. The High Court found that Mrs. Narine exerted undue influence on the deceased to secure a bargain. However, the Court of Appeal determined that sufficient evidence was not provided to demonstrate any undue influence. The CCJ held that there was no basis upon which it could interfere with the findings of the trial judge given the suspicious circumstances surrounding the agreement. The Court ordered that Mrs. Narine give up possession of the property to Mr. Campbell within 6 months of the date of the Court's order.



Christopher Salt et al v Kaupthing Singer & Friedlander Ltd [2016] CCJ 8 (AJ)

The Applicants (borrowers) had ownership interests in a property. The borrowers issued a debenture and mortgaged the property to the Respondents (lenders) as security for the loan. Litigation ensued in which the borrowers contested the validity of the loan agreement. The lenders issued a notice indicating their intention to appoint a receiver over the property. The borrowers sought an injunction restraining the lenders from proceeding which was declined by the trial judge. Proceedings at the Court of Appeal were successively adjourned. The Applicants argued that because of this the Court of Appeal failed to act judicially in the discretion it has to adjourn proceedings. The CCJ dismissed the application for special leave and, by extension, the consequential application to restrain the receiver. The Court determined it would have been superfluous to have granted the injunction since the receiver had already disposed of the entire property; the receivership had come to an end and that there was therefore no longer anything to restrain.

Chee Yiu Kwang & Millicent Murray v Tsui Yokkei [2016] CCJ 9 (AJ)

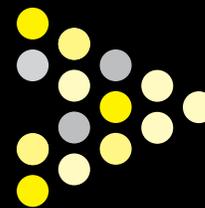
This dispute arose out of successive sales of a property in Bartica, Guyana, which were initially owned by Chee Yiu Kwang (Kwang) and occupied by Tsui Yokkei (Cheekee). Kwang orally agreed to sell the property to Cheekee, who then began making payments. Subsequently, Kwang sold and transferred ownership of the Bartica property to one Millicent Murray. The High Court held that the actions of Kwang and Millicent Murray amounted to fraud under section 22(1) of the Deeds Registry Act and ordered Kwang to transfer ownership of the property to Cheekee upon receipt of the full balance due. The CCJ held that the circumstances of the subsequent sale to Millicent Murray clearly fell within section 22(1). The fact that Kwang sold the property to Millicent Murray and transferred ownership to her when she was fully aware of Kwang's agreement of sale with Cheekee made her a participant in the breach of the agreement and privy to the fraud committed by Kwang. The Court ordered that the ownership of the disputed property be passed to Cheekee.

Aaron Truss v Windsor Plaza Ltd [2016] CCJ 10 (AJ)

Windsor Plaza sued Mr. Truss in trespass seeking, inter alia, damages and injunctive relief alleging that Mr. Truss wrongfully entered upon its property. An interim injunction was granted and Mr. Truss subsequently filed re-amended pleadings asserting a right of way over Windsor's property. The trial judge treated the issue as an application for a summary remedy under CPR 2008 Part 15 and dismissed the application, on the basis that the matter should proceed to trial. The CCJ held that once the judge makes an unconditional order on a Part 15 application to go to trial on an issue, it matters not that the issue arises as part of a claim or a defence to a claim. Section 54(1)(c) bars any appeal against the judge's order. Accordingly, there was no jurisdiction to entertain an appeal against the decision and order of the trial judge.

Keshwar Ramlall v AG of Guyana [2016] CCJ 11 (AJ)

In 1993, Ramlall assumed occupation of State land based on assurances from the Commissioner of Lands and Surveys and the Minister of Agriculture that he would eventually obtain a lease of it. He proceeded to expend sums to clear and prepare the land for rice cultivation. The State subsequently removed Ramlall from the land. A lease was then issued to third parties. The High Court awarded compensatory damages to Ramlall. However, the Court of Appeal ruled that Ramlall, having brought a constitutional motion, could not properly have received damages in public law for the breach of a legitimate expectation. Ramlall applied for leave to appeal to the CCJ and was granted such leave under the condition that he lodge a sum with the Registrar of the Supreme Court within 90 days for security for costs. Unable to lodge this sum, he applied to the CCJ for special leave to appeal and for variation of the conditions accompanying the permission as he desired now to appeal as a poor person. The CCJ ruled that procedurally Ramlall did not comply with the notice requirements. It nonetheless considered the merit of his case and dismissed his appeal.



Suraj Singh v Sichan Harrychan [2016] CCJ 12 (AJ)

Section 8(2) of the Summary Jurisdiction (Appeals) Act of Guyana provides that upon receipt of the Magistrate's Memorandum of Reasons for decision, the Clerk shall forthwith, and at latest within 21 days of the receipt thereof, prepare a copy of the proceedings including the reasons for the decision, and when the copy is ready he shall notify the Appellant in writing and, on payment of the proper fees, deliver the copy to him. Sichan Harrychan had been sentenced to three years' imprisonment and filed an appeal. No grounds of appeal were filed but he applied for an extension of time to submit grounds of appeal arguing that the Clerk's Notice was not sent within the 21 days required by law. The CCJ allowed the appeal and ordered that section 8(2) of the Act should be strictly followed by the Clerk of Court and although there may be non-compliance, that would not invalidate the service of the Notice outside that time period. The substantive appeal by Harrychan was remitted to the Court of Appeal for hearing with directions that the Court of Appeal take into consideration the considerable delay in the matter.

Maurice Tomlinson v Belize & Trinidad & Tobago [2016] CCJ 1 (OJ)

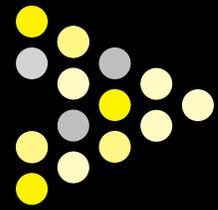
Maurice Tomlinson claimed that the Immigration Acts of Belize and Trinidad and Tobago seek to prohibit homosexuals from entering those countries in breach of the Revised Treaty of Chaguaramas (RTC). While conceding that he had never actually been refused entry into either country, Tomlinson argued that the mere existence of these laws prejudiced the exercise of his right to free movement. The CCJ dismissed Tomlinson's assertions as he was unable to show that he had ever been or would be in danger of being prejudiced by the existence of the challenged provisions of the Immigration Acts of Belize and Trinidad and Tobago. As to Belize, homosexuals – and others – are prohibited from entering the country only where they are seeking financial gain either by offering sexual services themselves or by profiting from those performed by others and, as such, would not be applicable to Tomlinson. In relation to Trinidad, it was demonstrated that Trinidad and Tobago's Immigration Department does not apply this prohibition to homosexual CARICOM nationals. Nevertheless, the Court cautioned that Member States should strive to ensure that national laws and administrative practices are consistent with the right of free movement of all CARICOM nationals.

Shawn Pinder v The Queen [2016] CCJ 13 (AJ)

Shawn Pinder appealed to the CCJ claiming that his sentence of 15 years for a murder conviction was unfair and excessive. He sought special leave to appeal and to appeal as a poor person. Pinder claimed that he had been placed at a disadvantage because of an amendment to his indictment at an advanced stage of the trial and the judge did not discharge the jury after some members were observed conversing with a discharged juror. The CCJ determined that where an Applicant for special leave can point to no genuinely disputable point of law and invites this Court to reject the assessment of facts by the lower courts without pointing to a clear miscarriage of justice, the Court will not treat an application for special leave as arguable. The applications were dismissed.

Medical Council of Guyana v Rama Sahadeo [2016] CCJ 14 (AJ)

Dr Rama Sahadeo was suspended from medical practice in October 1998 until he had satisfactorily answered some allegations of sexual misconduct made by former patients after he had left Guyana to seek medical treatment. The doctor was continually absent from Guyana for over 3 years without earning fees causing his name to be removed from the Medical Register by law. The CCJ held that from 3 June 2000 the doctor could not complain of the lawful absence of his name from the Register. He was informed by the Council that his applications to the Council for renewal of his annual licence could not be dealt with without first having his name restored to the Register by satisfactorily answering the allegations against him. He had not appeared at a hearing before the Council to deal with the allegations. This failure to answer these allegations had led to his inability to practise medicine so that he was not entitled to any damages for loss of earnings.



James Hyles v DPP [2016] CCJ 15 (AJ)

The CCJ clarified that a special leave application exists independently of whether an Applicant has or had an appeal as of right or has sought and been refused leave from the Court of Appeal to appeal to the CCJ. Any litigant who is dissatisfied with a decision of the Court of Appeal is entitled to apply directly to this Court for special leave to appeal that decision, although such leave would only be granted in deserving cases. In this case, the Court viewed that the Applicant was entitled to seek special leave to appeal to the CCJ. Further, since there was no appeal pending before the Court at this time, it declined to consider whether the Applicant should be granted bail.

Mark Williams v DPP [2016] CCJ 16 (AJ)

The CCJ, under similar circumstances as James Hyles v DPP, reiterated that an application to the Court for special leave to appeal exists independently of whether the Applicant enjoys an appeal as of right or has sought and been refused leave from the Court of Appeal. Any litigant who is dissatisfied with a decision of the Court of Appeal is entitled to apply directly to this Court for special leave. As such, the Applicant is entitled to seek special leave to appeal to the CCJ.

Guyana Sugar Corporation v Tulsieram Dukhi [2016] CCJ 17 (AJ)

This appeal arose out of a road traffic accident where Dukhi was struck by a truck driven by an employee of the Guyana Sugar Corporation Inc. (Guysuco). In the High Court, he was awarded G\$850,000.00 in damages, but no reasons were given. Dukhi appealed this award to the Court of Appeal, arguing that it was inadequate. The Court of Appeal increased the damages to G\$5,446,000.00. Guysuco appealed to the CCJ, complaining that the Court of Appeal erred in setting aside the trial judge's award without written reasons from the trial judge. The CCJ stressed the importance of the duty of trial judges to provide written reasons for their decisions but held that given the circumstances of the case the Court of Appeal was correct in re-assessing the award of damages. The CCJ merely adjusted the award for calculation errors, increasing the award to G\$5,743,000.00.

Glen Lall v Walter Ramsahoye [2016] CCJ 18 (AJ)

Between 21 January and 10 February 2000, an article and two caricatures with captions, all referring to Dr Ramsahoye in disparaging terms, were published in the Kaieteur News by the Appellants. Dr Ramsahoye successfully sued the Appellants for defamation and was awarded G\$4.5 million in damages. Both parties appealed to the Court of Appeal and the Appellants paid into court the G\$4.5million awarded in the High Court. The Court of Appeal found that the sum awarded was inadequate and substituted an award of G\$15 million for damages. The CCJ concluded that there was no justification for the Court of Appeal to interfere with the trial judge's award as he had not erred in the application of legal principle nor made an award that was inordinately low. The Court declined to award pre-judgment interest at this stage as the matter had not been argued and there was no guidance from the lower courts on the point. It held, however, that judgment debt interest continued to run from the date of the High Court judgment despite the payment into Court which now had to be paid out to Dr. Ramsahoye.