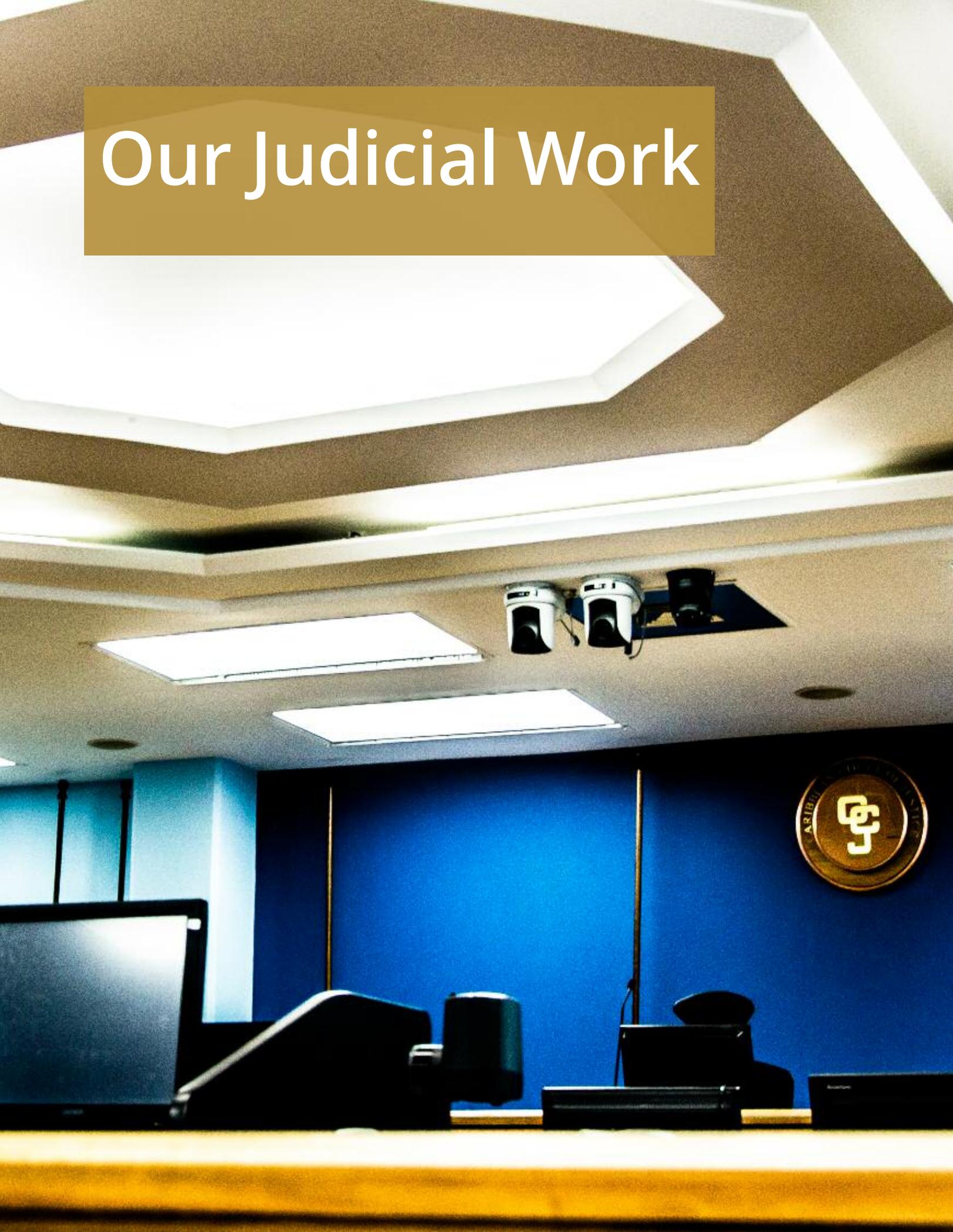


# Our Judicial Work



# COURT PERFORMANCE

## Report from Registry

The registry manages the case flow process - from the initial filing to the final judgment and taxation of costs - for all applications and appeals that are filed in the Court and provides administrative support for all judicial activities of the Court.

The Registry is headed by the Registrar, assisted by the Deputy Registrar, Registry Supervisor, Case Management Officer and Case Support Officer. The registry also includes the Judicial Assistants who provide research, and other support, to the judges of the Court.

During the year under review, the CCJ continued to increase the use of technology in court processes in order to enhance efficiency, improve access to justice and better measure performance standards. The introduction of the Curia court management software, which was launched on 10 January 2017, ushered in a new era for the Registry.

The Registry can now access, file, upload, edit, receive notifications, or otherwise process documents, in a case at any time from any location. To support this development, the 2015 Rules were replaced by the 2017 Rules in order to establish a new framework for filing and serving documents electronically which replaced the previous system of filing by email. The Court's e-Filing portal can be accessed on the CCJ's website.

The benefits to the Registry extend to savings on paper, courier charges, reduced storage requirements and reduced processing time. The Registry's primary responsibility in the filing process is now to review the information and documents supplied by the attorney. If these are in order, the document is filed using a one-step process which entails a staff member from the Registry clicking a button. Immediately the date, file number, electronic stamp, electronic seal and an electronic certificate are all applied to the document. The document is also paginated sequentially and the parties receive an automatic notification advising that a document was filed.

The introduction of the Curia court management software, which was launched on 10 January 2017, ushered in a new era for the Registry.



# COURT PERFORMANCE

## Judicial Workload 2016-2017

### APPELLATE JURISDICTION

#### Applications for Special Leave to Appeal

In keeping with the overriding objective to ensure that the Court is “accessible, fair and efficient”, the CCJ has embraced active case management techniques to reduce the number of hearing dates between the initial filing and disposition of a case. This has resulted in the hearing of a number of Special Leave Applications being treated as the substantive hearing so that one hearing is held instead of two that would normally be held. Of the 20 Applications for Special Leave to Appeal filed in the year under review, 8 were treated as the substantive Hearings of Appeal.

In addition, the Court issues Case Management Checklists, which are completed by both parties. The responses enable the Court to issue a Case Management Order without holding a Case Management hearing.

#### Matters Filed

The 2016 to 2017 judicial year saw a 20% increase in the number of matters filed above the previous year.

**Table 1 Comparison of matters filed in the 2016-2017 and 2015-2016 court years**

Appellate Jurisdiction 2016-2017		Appellate Jurisdiction 2015-2016	
Application for Special Leave	20	Application for Special Leave	15
Notice of Appeal	5	Notice of Appeal	5
<b>Total</b>	<b>25</b>	<b>Total</b>	<b>20</b>

The breakdown of matters filed by country is 1 case from Dominica, 10 cases from Barbados, 7 cases from Belize and 7 cases from Guyana.

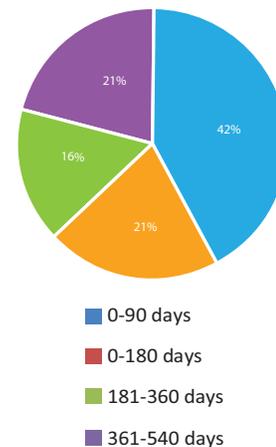
#### Notices of Appeal

It should be noted that while 5 cases were commenced as Notices of Appeal in the judicial year 2016 - 2017, 3 additional Notices of Appeal were filed arising from successful applications for Special Leave to Appeal bringing the total to 8.

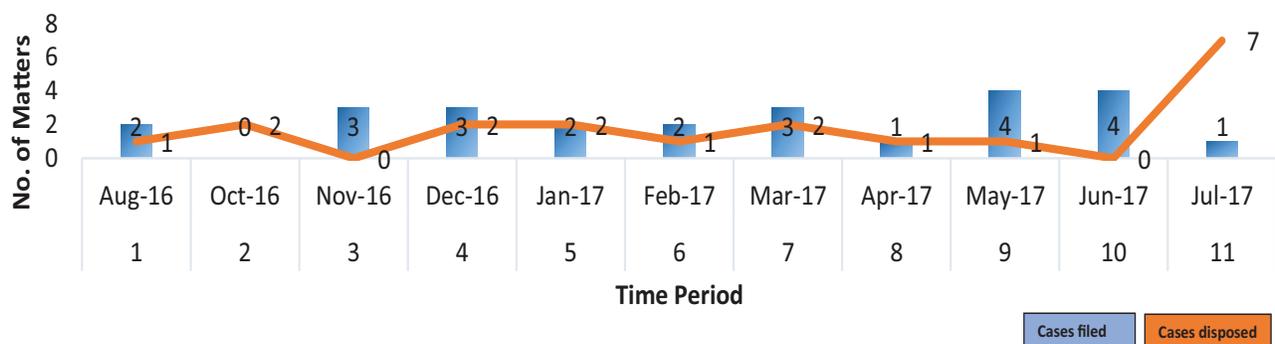
#### Time to Disposition

An analysis of the 2016 to 2017 judicial year, indicates that 42% of cases were disposed within three months of filing while 79% of cases were disposed within one year.

**Figure 1 Length of time to disposition of cases in the court year 2016-2017**



**Figure 2 Clearance rate of matters in the court year 2016 to 2017**



## ■ Judicial Workload Cont'd

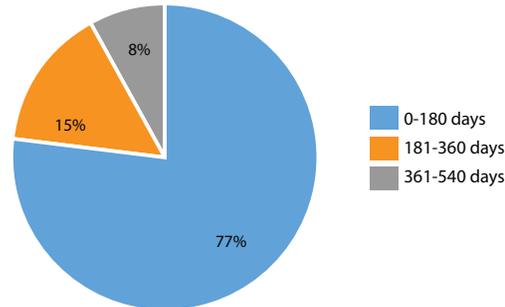
### Clearance Rates

During the period under review, the clearance rate for matters filed reflect a rate of 76% for disposed matters against new matters. In the last three months, 9 matters were filed while the Court disposed of 8 matters. Notably, all matters filed prior to 1 June 2017 were heard before 31 July 2017 and of these, 15 were disposed and judgments were delivered in 10 matters.

### Age of Pending Caseload

As at 31 July 2017, there were 13 pending matters and of this number, 77% were before the court for a period of less than 6 months, while only 1 pending matter was before the Court for over a year. The average age of pending caseload was 124 days.

**Figure 3 Age of Pending Caseload in the court year 2016 to 2017**



### ORIGINAL JURISDICTION

One matter was filed in the Original Jurisdiction during the court year, the matter of *Cabral Douglas v The Commonwealth of Dominica*. This case was filed on 24 August 2016 and judgment was delivered 6 months later on 20 February 2017.

Judgement was also delivered in a second case, *S. M. Jaleel Company Ltd. and Guyana Beverages Inc. v The Co-operative Republic of Guyana* on 9 May 2017.



The Court's Judicial Assistants play an important role in providing judicial, and other, support to the President and Judges of the court. Our current complement of Judicial Assistants include: (from left to right) Ms. Tanya Alexis, Mr. Richard Layne, Ms. Kerine Dobson, Mr. Tyrone Bailey and Ms. Latoya McDowald.

# JUDGMENT SUMMARIES

## Case Summaries for Judicial Year 2016-2017

The judgments delivered by the Court during the period 1 August 2016 to 31 July 2017 are summarized below:

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### **Zarida V Misir [2016] CCJ 19 (AJ)**

This was a procedural appeal made under section 8 of the CCJ Act of Guyana. The CCJ made various orders which, in its view, would lead more expeditiously to the key determination of whether or not Mr. Misir's property rights under a 1999 transport were free from, or overridden by prescriptive rights of Mr. Massabally, now vested after his death in his administratrix, Ms. Zarida. The CCJ held that, whilst, on an application for a stay of execution pending an appeal, the court should not be trying the appeal, it had to take account of the nature of the appeal and make a provisional weighing of the issues. Especially in a case involving possession of land and prescriptive rights, it should not refuse to look into factual matters merely because there were conflicting assertions as it would be surprising if, in such circumstances, there were not conflicting assertions. In the Court's view, a court was obliged to look into the affidavits and supporting exhibits and, in a case like the present, where the status quo at the time the legal proceedings had been initiated was a key consideration, should endeavour, where possible, to take a view as to the status quo in considering the balance of convenience and justice where the issues between the parties could only be resolved by a trial. The CCJ under its inherent power, recognised in r 1.4(2) of the Appellate Jurisdiction Rules, to make such orders as might be necessary to meet the ends of justice or to prevent abuse of the process of the court, stayed the High Court proceedings pending the determination of the prescriptive rights issue by the Land Court. It allowed the appeal and set aside the order of the single judge.

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### **Boyce and Others v The Attorney General of Belize and The Minister of Public Utilities; The Attorney General of Belize and The Minister of Public Utilities v Boyce and Others [2016] CCJ 20 (AJ)**

The Government of Belize and the Appellants entered into a settlement agreement in relation to an arbitral award in favour of the Appellants as compensation for the Government's compulsory acquisition of Belize Telemedia Limited (BTL). After a quantified initial payment in US dollars there were to be two separate payments of 50% of the remainder of the arbitral award, the figures for which remained to be determined. One payment was to be made within ten days of issuance of the final award and the second one twelve months later. The final award was a complex one taking account of the Government's desire to have the second part of the Award to be paid in Belize dollars, taking account of certain liabilities after breaking down the value of BTL shares into a "real value" payable in US dollars and an "enhanced value" payable in Belize dollars. The breakdown turned out very much against the Government's expectations, significantly lessening the value of the second part of the final award so that it did not pay the first 50% payment in full. The Appellants sued for the balance. The Government argued that, upon the proper interpretation of the agreement, it could not be required to pay up this full amount in the light of its overall liability. The CCJ disagreed with the Government, finding that although the parties did not contemplate what had happened in the making of the final award, the agreement must be interpreted based on the circumstances known at the time the agreement was made. Although there could be an argument that the agreement was badly drafted, the Court said it was not in the business of re-writing agreements in an attempt to assist one party or to penalise another. The Court said that in interpreting agreements it would be slow to reject the natural meaning of the terms of the agreement.



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### **Dean v Cynthia [2016] CCJ 21 (AJ)**

The Appellant filed an application in the Court of Appeal for an extension of time within which to file notice to appeal a decision of the Magistrate's Court of Barbados. The Court of Appeal refused the application, holding that the proper interpretation of the Magistrate's Court Act meant that the court had no jurisdiction to extend time to appeal. The CCJ agreed with the Court of Appeal and said that the time limit of 7 days prescribed by the Act could not be extended because of the well-established principle that the powers conferred by a statute must be subject to the limitations and conditions prescribed within the statute. The court therefore does not have power to extend the time unless the statute gives it the power to do so. However, the CCJ cautioned that this does not necessarily mean that court cannot extend the time. The court must give effect to section 18(1) of the Barbados Constitution which gives citizens the right to a fair trial within a reasonable time. The CCJ held that there was no good reason to extend time in this case.

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### **Joseph v Mangal [2016] CCJ 22 (AJ)**

Mr. Mangal held a homestead at 55 Yakusari South, Black Bush Polder on a 25-year lease from the state of Guyana. He agreed to sell all his 'rights, title and interest' in the said homestead to Mr. Joseph for GY\$600,000. In the agreement for sale, there was acknowledgement that GY\$475,000.00 had been paid. The transfer fees and duties were also paid. Although the transfer was not effected, Mr. Joseph entered into possession of the homestead. It thereafter became a 'state policy' for the Land and Surveys Commission of Guyana to issue certificates of title to the last lawful owner of the homesteads. By fraudulent means, Mr. Mangal obtained a certificate of title for the homestead at 55 Yakusari South, knowing that he had already sold the property. The CCJ, exercising the powers under section 61(a) of the Land Registry Act, ordered that the Land Register be rectified to reflect Joseph as the registered proprietor of the homestead and that the certificate of title issued to Mr. Mangal be cancelled. The Court also ordered that the outstanding portion of the purchase price be set off against costs awarded to Mr. Joseph.

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### **Speednet Communications Limited v Public Utilities Commission [2016] CCJ 23 (AJ)**

Telecommunication provider Speednet paid the Commission BZ\$792,500 after successfully applying for frequency authorization for 13 point-to-point links. The Commission charged BZ\$100 for each of the 7,925 'voice' channels within the 'radio frequency' channels in the links, noting that regulations prescribed a fee of BZ\$100 per 'channel' for point-to-point links. Speednet argued that the applicable fee was BZ\$1,300, BZ\$100 for each 'radio frequency' channel in the links, and sought a refund of the excess. The CCJ held that there was genuine ambiguity and, after finding that it was not resolved by other methods, examined the principle against doubtful penalisation which it referred to as the 'principle against ambiguous governmental imposition'. It took the view that 'channel' must be taken to mean 'radio frequency' channel, as the Commission, which had a responsibility to make clear and intelligible Regulations, was not entitled to take advantage of and benefit from the ambiguity. The Commission was accordingly ordered to refund the excess and pay Speednet's costs.

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### **Agard v The Queen [2016] CCJ 24 (AJ)**

Mr. Agard was convicted of manslaughter and sentenced to seven years and two hundred and forty seven days imprisonment in 2012. In arriving at the sentence, the trial judge applied the directions given by the CCJ in *Romeo DaCosta Hall v The Queen* [2010] CCJ 6 (AJ). Mr. Agard appealed to the Court of Appeal on the basis that his sentence was excessive. The Court of Appeal dismissed the appeal and endorsed the sentence of the trial judge. Mr. Agard sought leave to appeal the decision of the Court of Appeal, to extend the time for his application and to apply as a poor person. The Court held that Mr. Agard failed to provide a logical explanation for the delay in his application and did not have an arguable case as he failed to identify a substantive ground of appeal. The Court dismissed the notions that Hall had not been properly applied and that the Superintendent of Prisons failed to correctly calculate Mr. Agard's earliest possible release date. The Court also declined to reconsider its decision in Hall reiterating the dicta in *Jeffrey Burton and Kemar Nurse v The Queen* [2014] CCJ 6 (AJ) that the Court will



## Case Summaries – 2016/2017 Cont'd

only depart from a previous decision in exceptional circumstances or if compelling reasons were provided. In the Court's view, counsel failed to show either in this case and the applications were dismissed.

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### **Leacock v Griffith [2017] CCJ 01 AJ**

This appeal arose out of a family dispute between Ms. Griffith and Ms. Leacock over ownership of a house-spot and a house standing thereon. At the hearing in the Magistrate's Court, Ms. Griffith's counsel, although cognisant that the matter involved larger issues which fell outside the Magistrate's jurisdiction, presented the matter as a simple case of an eviction of Leacock's chattel house from the land. The Magistrate, on that basis, granted the order for possession. When the Marshal tried to execute the ejection warrant, he realised that the house was not a chattel as it was incapable of being removed without being destroyed.

Ms. Leacock appealed to the Court of Appeal, seeking to adduce fresh evidence evincing the Magistrate's lack of jurisdiction pursuant to section 147 (2) of the Magistrate's Court Act. The Court of Appeal dismissed the appeal. The CCJ held that the Magistrate did not have jurisdiction to hear the matter. However, it allowed the appeal under section 243 (h) of the Act, that some other specific error, not mentioned before and substantially affecting the merits of the case had been committed in the course of the proceedings. The Court felt that counsel's misleadingly short presentation before the Magistrate had led her in error to go beyond her jurisdiction by making an order for possession which was unenforceable by a warrant for ejection. The Court emphasised that counsel's duty to the court prevails over his duty to his client.

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### **Marinor Enterprises Limited and Astaphan v First Caribbean International Bank (Barbados) Limited formerly known as Barclays Bank Plc [2017] CCJ 2 (AJ)**

This matter was the first case to be filed in the Appellate Jurisdiction from Dominica. The Applicants, Marinor Enterprise Limited and Mr. Michael Astaphan, applied to the CCJ seeking leave to appeal the decision of the Eastern Caribbean Supreme Court to refuse a further amendment to a notice of appeal. The CCJ dismissed the application

finding that there was no reason to interfere with the discretion exercised by the Court of Appeal. The CCJ considered the overriding objective which discouraged unnecessary disputes over procedural matters and agreed with the Court of Appeal's consideration of Marinor's delay in making the application and the general principles on the reluctance of an appeal court to interfere with the discretion exercised by a trial judge in making interlocutory orders. The CCJ further found that certain issues raised by Marinor were more suitable for the substantive hearing and that the court was not obliged to consider each issue raised. In its view, Marinor would not suffer any detriment to a fair hearing if the amendments were not allowed. In closing, the Court expressed displeasure with the substantial delay in the disposition of the matter, which was filed by First Caribbean in 2006, and reiterated that good case management practices are necessary to ensure the judicial process remains expeditious and fair to parties.

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### **Speednet Communications Limited v Public Utilities Commission [2017] CCJ 3 (AJ)**

Speednet applied for a variation of the Court's previous judgment seeking pre- and post-judgment interest. Speednet contended, among other things, that the law permitted the award of such interest; that the Commission had always been "on notice" that Speednet was demanding the return of its money; and that inadvertence was responsible for interest not to have been claimed earlier. The Commission relied on Speednet's failure to claim interest. The Court denied the application. Concerning the pre-judgment interest, the CCJ held that fairness in the litigation process required that a party against whom interest is claimed had the opportunity to fully understand and address the claim. Additionally, the application could not succeed given the fundamental legal principle that there must be an end to litigation; that after judgment on the merits, parties should not ordinarily be permitted to reopen the proceedings to seek relief which they could, and should have, sought earlier. The CCJ pointed out that its judgment automatically carried interest at 6% per annum from the date it was delivered and entered.



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### **The Bar of Association of Belize v The Attorney General of Belize [2017] CCJ 4 (AJ)**

The Bar Association challenged an amendment to the Constitution which created one-year appointments for justices of appeal on the basis that it violated the principles of judicial independence and security of tenure, as well as the basic structure of the Constitution. The Court held that although reappointments by the Government lend fragility to judicial independence, one-year appointments to the Court of Appeal did not automatically breach the Constitution. In its view, the concept of judicial independence was not uniform and was influenced by the historical and political landscape of a society. In Belize, short term appointments were common and permitted prior to the amendment to the Constitution. A reasonable Belizean would not conclude that a Justice of Appeal with a one-year appointment lacked security of tenure and was not independent and impartial. The Court also found that the Basic Structure doctrine did not apply as the amendment did not purport to alter the Constitution in a way that would limit or destroy any of the unwritten principles that represent the ethos of the Belizean people nor was there any evidence to suggest that any unwritten principles were infringed. The Court also disagreed with the argument that the amendment was a removal provision as it did not remove either of the two judges affected from office. It did however express displeasure with the appointment system for Justices of Appeal and urged the adoption of a system similar to the appointment of Supreme Court judges.

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### **Douglas v The Commonwealth of Dominica [2017] CCJ 1 (OJ)**

Jamaican recording artist and entertainer, Mr. Russell (known professionally as 'Tommy Lee Sparta'), and three other Jamaicans as support staff, were travelling to Dominica for a concert to be headlined by him. All four were denied entry into the country. The organiser of the concert, Mr. Douglas, sought special leave to be permitted to bring an action in the CCJ's original jurisdiction arguing that the refusal of their entry was a breach of his rights under Articles 7, 36, 37 and 45 of the Revised Treaty of Chaguaramas (RTC). He contended that

(a) these provisions contained rights or benefits that were intended for his benefit as in the entertainment business of promoting concerts and so directly contracting with skilled nationals like the Jamaicans; and that (b) these infringements caused him consequential financial, reputational and other losses. The Court explained the meaning of Articles 7, 36, 37 and 45 and held that Mr. Douglas had failed to meet the necessary legal criteria to be granted special leave. While Mr. Russell and his fellow Jamaicans had rights accruing to them directly under the RTC, Mr. Douglas' rights were contingent upon the lawful entry into Dominica of the Jamaican nationals, so that he had not shown an arguable case under Article 222(a) that a right conferred by the RTC enured to the benefit of him directly. It remained open to him to bring a common law claim before the domestic courts of Dominica, which could, perhaps, lead to the later involvement of the CCJ, whether under Article 214 of the RTC or under its appellate jurisdiction.

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### **Mitchell v Wilson [2017] CCJ 5 AJ**

This was a procedural appeal brought by Ms. Mitchell, the duly constituted attorney of the applicants seeking special leave to appeal a decision of the Court of Appeal of Guyana dismissing an application for enlargement of time to file an appeal against the decision of the High Court. The applicants, who were late in filing the application for special leave, did not make an application for an extension of time. The Court noted that, while in the absence of an extension of time it had no jurisdiction to entertain the special leave application, it may in a proper case grant an extension of time for compliance with the Rules or excuse delay to avert a clear miscarriage of justice. The CCJ, after thoroughly reviewing all the material filed, was satisfied that the judge's decision did not result in a miscarriage of justice. The Court noted that while the judge's reasoning may have been flawed, the decision was not manifestly unjust. The CCJ also emphasized that counsel had a paramount duty to apprise the Court fully as to the matter before it so as not to create a misleading scenario. The application for special leave was dismissed for want of jurisdiction and the Applicants were ordered to pay the Respondent's costs.



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### **JJ v Child Care Board and SW [2017] CCJ 6 (AJ)**

JJ, a parent whose name was withheld to protect the confidentiality of a minor child, sought to challenge the Barbados Court of Appeal's reversal of a trial judge's order granting her disclosure of all the Child Care Board's file notes concerning interviews conducted by one of its officers with her and her child's teachers. The Board claimed automatic privilege from disclosure, citing public interest immunity and confidentiality. JJ argued that her constitutional right to a fair hearing would be prejudiced without the disclosure, as the officer's evidence about the interviews was inaccurate. The CCJ held that JJ met the high threshold required in this case, noting that it had never addressed the tension between public interest immunity and the right to a fair trial and that her submissions indicated "a more than negligible risk of a miscarriage of justice". The CCJ took the view that the Board's role in the proceedings were not part of its core functions and that it was the public interest in encouraging open and frank communications between the Board and the public which attracted immunity, not its receipt of confidential information. The Court allowed the appeal holding that the requested disclosure was primarily concerned with JJ's ability to test the officer's credibility and not with the public interest in protecting the Board's informants.

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### **Stanford v The Queen [2017] CCJ 7 (AJ)**

Mr. Stanford was charged with murder and convicted of manslaughter. He appealed to the CCJ on the basis that the evidence at trial supported a direction to the jury on self-defence. After considering the evidence of the main prosecution witness and Mr. Stanford, the Court concluded that the evidence did not raise a prima facie case of self-defence in accordance with the common law principles of self-defence and a direction was not warranted. The Court also reminded the parties that it did not matter whether the direction would have undermined Mr. Stanford's case or was mutually exclusive with another defence. The sole consideration of a trial judge is whether there is sufficient evidence to support the direction. The CCJ was also asked to answer the question - when is a duty placed on a trial judge to give a direction

on self-defence? The Court noted that 'the question was best answered by a trial judge who has heard the evidence, applying common sense in each case and determining whether there was evidence sufficiently strong to raise a prima facie case of self-defence'. The appeal was dismissed.

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### **Bridgelall v Hariprashad (Officer Customs Anti-Narcotics Unit) [2017] CCJ 8 (AJ)**

Mr. Bridgelall applied to the CCJ for special leave to appeal the 2016 decision of the Court of Appeal of Guyana which had overturned the 2009 Full Court's decision that had freed him. The Court of Appeal had restored his 2007 convictions and sentences in relation to two charges of being found in possession of 186.5 kilograms of cocaine for the purpose of trafficking. Mr. Bridgelall was found guilty by a Magistrate and sentenced to two consecutive 5-year prison terms and a cumulative fine of GY\$254.4 million. The CCJ treated the application as the appeal. The Court took the view that Mr. Bridgelall's convictions were safe having regard to the evidence before the Magistrate. It, however, held the sentences should have been concurrent. The CCJ held that Mr. Bridgelall's constitutional right to a fair hearing within a reasonable time had been breached, having been made to live since 2009 with the possibility of being returned to prison after being freed by the Full Court in 2009. The CCJ therefore affirmed the convictions but adjusted the sentences to run concurrently and ordered Bridgelall to pay his fines, if not yet paid. The Court, however, permanently stayed any further proceedings to enforce the remainder of Mr. Bridgelall's sentence as a remedy for the breach of his constitutional right.



### **SM Jaleel & Company Limited and Guyana Beverages Inc v The Co-operative Republic of Guyana [2017] CCJ 2 (OJ)**

SM Jaleel & Co Ltd (SMJ) and Guyana Beverages Inc (GBI) sued Guyana in the Court's original jurisdiction. They sought a declaration that Guyana had breached their rights under the Revised Treaty of Chaguaramas by levying an environmental tax on non-returnable containers in which SMJ's beverages were packaged. They also sought full reimbursement of the taxes paid from 1 January 2006 to 7 August 2015 when the taxes ceased to be levied. Guyana argued that the companies were not entitled to reimbursement, despite the breach, as they would be unjustly enriched as they had likely passed on the tax to their customers, a matter which would require disclosure of the companies' detailed records. Further, the claim should be barred as they did not challenge the tax at the earliest possible time. The CCJ held that Guyana had been unjustly enriched at the companies' expense, having collected an unlawful tax in clear breach of its Treaty obligations, and that there was no basis for any defence as to the companies' passing on of the tax to customers when they had paid composite bills making no reference to any item of tax. Thus, no documents needed to be disclosed. The CCJ further found that the principle of laches, which prevents a state from being indefinitely threatened with international proceedings, was applicable and, after considering several factors, set a CARICOM-wide limitation period in actions for repayment of unlawfully collected taxes. This period was 5 years from the time the claimant first acquired, or reasonably should have first acquired knowledge, of the alleged breach of the Treaty. Accordingly, since proceedings had not been brought until 7 March 2016, the CCJ issued the declaration and ordered reimbursement of the taxes paid from 7 March 2011 to 7 August 2015. Guyana was also ordered to pay 4% interest from the date of judgment and 70% of the proceedings' cost.

### **Commissioner of Police Dottin v Governor General of Barbados & Police Service Commission [2017] CCJ 9 (AJ)**

The former Commissioner of Police of Barbados, Mr. Dottin, applied for judicial review of the decision of the Governor General on two key issues: to send him on administrative leave (alleging no such concept existed) and retire him in the public interest on the recommendation of the Police Service Commission in June 2013. He had also sought interim injunctions or orders pending determination of the substantive case. Although the trial judge substantially granted the interim relief against the PSC, she refused to make an order enabling the Commissioner to return to work and instead urged an expedited hearing. Dissatisfied, he appealed to the Court of Appeal in October 2013 which was not resolved until March 2017 by which time Mr. Dottin had reached the retirement age. In dismissing his application to the CCJ, the Court noted that a substantive case should not be stayed to await the outcome of any appeal concerning some interlocutory application unless a judge orders otherwise. The loss of time in this case was particularly important as it resulted in the Commissioner naturally retiring before the substantive matter could be heard. The Court further held that although *Y'axche Conservation Trust v Sabido* [2014] CCJ 14 (AJ) held that special leave will be granted in academic appeals if there is a significant discrete point of public law likely to arise in future cases, the court will not do so unless the High Court and Court of Appeal has considered those points. As such, Mr. Dottin was warned that he could not avoid due process under the Barbados judicial system and have the CCJ usurp the roles of those Courts on the two above key issues.



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### **Edwards and Haynes v The Queen [2017] CCJ 10 (A)**

Mr. Edwards and Mr. Haynes (the appellants) were convicted of murder and sentenced to death. The only evidence linking them to the murder was alleged oral confessions made by them in separate interviews while in police custody. The police officers who interviewed them said that they made notes of the confessions in their notebooks but the appellants refused to sign them. The appellants had argued that the alleged confessions were fabricated but the trial judge allowed the officers to refresh their memories and to read aloud from their notebooks. The appellants appealed to the CCJ submitting that their convictions should be quashed because the sole evidence against them was too weak and unreliable to ground a conviction in law. The CCJ agreed with them and found that since there was no other independent evidence linking the appellants to the murder, in particular, there was no sound or video recording of the confessions, they were not signed or acknowledged, nor was there any forensic or eyewitness evidence linking the appellants to the crime scene, then the appellants' convictions could not stand. The Court's decision underscored the need for the Barbados police to record interrogations.

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### **Gilharry Sr. d.b.a Gilharry Bus Line v. Transport Board and Others [2017]CCJ 11 (A)**

Mr. Gilharry, who owned a bus transportation business in Belize, filed a notice of appeal against the Transport Board of Belize ("the Board) and others which raised substantively the same issues as those raised in the lower courts concerning new bus schedules in the public transportation field that severely damaged Mr. Gilharry's business. Namely, that the Board: (i) over-stepped its governing primary and subordinate legislation, (ii) had not acted fairly towards Mr. Gilharry and breached basic rules of natural justice and (iii) frustrated Mr. Gilharry's legitimate expectation. The CCJ found that the Board had not abdicated its responsibilities and found that Mr. Gilharry failed to show that the Board had overstepped its powers. The Court was of the view that the Board failed to adopt basic rules of natural justice as the duty to allow Mr. Gilharry the opportunity to make representations that

went beyond group consultation, was encapsulated in Motor Vehicle and Road Traffic Regulation 207 (g). The CCJ disagreed with the lower courts and found that Mr. Gilharry had a legal basis for claiming a legitimate expectation as the Board had made a promise to retroactively renew Mr. Gilharry's permits, which, though irregular, had not reached the threshold of illegality. The Court found that, although there were instances when a public authority can renege on a promise or frustrate a legitimate expectation, no action should be taken without first allowing the representee an opportunity to make representations. The CCJ allowed the appeal and set aside the order of the Court of Appeal. The Court declared that the Transport Board did not lawfully and properly consider the renewal of Mr. Gilharry's application and frustrated his legitimate expectation. No more could be ordered against the Board in the light of the passing of time and inadequately pleaded damages. However, costs on an indemnity basis in the CCJ and the courts below were to be paid by the respondents.

# JUDICIAL COMMITTEES

## Rules

The Rules Committee, in April 2017, finalised the revision of the Original Jurisdiction Rules 2017 and the Appellate Jurisdiction Rules 2017.

This was in keeping with the Court's mandate of revising the Rules every two years and publishing them around the Court's anniversary month of April. The policy was adopted in 2015 after the previous revision of the Rules. The revisions in this period centered largely on incorporating Practice Direction 1 of 2016 to account for the changes related to the introduction of the Curia case management system in 2017.

Other substantive amendments in the 2017 Rules include the:

- ending of the requirement to file multiple print copies of documents;
- introduction of electronic signatures (in a specified format) to remove the requirement for printing and signing specified documents before uploading and filing;
- adoption of a gender-neutral approach in the wording of the Rules;
- shifting away from use of Latin terms in favour of simpler language in the Original and Appellate Jurisdiction rules;
- introduction of express rules to provide for an application for special leave to appeal to be treated as the hearing of the substantive appeal and the basis on which costs should be determined in such cases.

The committee in the next period anticipates significant updates to its regime for the taxation of costs as well as its fees. A pilot has commenced to establish whether the fee structure, which has remained virtually unchanged since 2005 when the Court's operations commenced, is still appropriate given the increases in costs of services. This will be balanced with the Court's efforts to maintain accessibility of its services to litigants, increase its operational efficiency and increase its outreach to stakeholders across the region. If results of the survey dictate a change, the Appellate and Original Jurisdiction Rules will be amended accordingly.

The CCJ's Rules Committee was chaired by the Hon. Mr. Justice Rolston Nelson and composed: the Judges of the Court as well as the Registrar, Mrs. Jacqueline Graham and the Deputy Registrar, Ms. Meisha-Ann Kelly.

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The committee is committed to ensuring that the CCJ remains at the cutting-edge of all recent developments in law and technology

The committee was assisted by Judicial Assistants: Mr. Richard Layne, Ms. Kerine Dobson, Ms. Latoya McDowald, Mr. Tyrone Bailey and Ms. Tanya Alexis.

The committee is committed to ensuring that the CCJ remains at the cutting-edge of all recent developments in law and technology and is adequately equipped to continually improve its processes for justice that is accessible to the people of the Caribbean.

The committee also pays tribute to Mr. Justice Nelson, who has since retired, for the astute direction and yeoman service offered throughout his many years as the chairman of the committee.

# JUDICIAL COMMITTEES

## Judicial Assistants and Court Interns Committee

The Court's complement of Judicial Assistants has increased to five and they have been assigned to support the work of the President and the Judges.

Ms. Latoya McDowald, who holds a first class honours degree from the University of Kent, took up office on 1 September 2016; Mr. Tyrone Bailey, with a first class honours degree from University of West Indies, Mona Campus, joined on 1 November 2016 and Mrs. Tanya Alexis, who was awarded the Most Outstanding Student over two years and the 2014 Valedictorian at the Hugh Wooding Law School, joined the CCJ on 14 November 2016. The new Judicial Assistants joined Mr. Richard Layne and Ms. Kerine Dobson who have been with the Court since 2015.

From June to August 2017, eight law graduates spent two weeks each as unpaid interns at the Court. Each intern was selected by the principal of their respective law schools.

The interns spent time learning about, and assisting in, the work of the various departments within the Court and 'shadowing' and assisting Judicial Assistants in their work for their Judges. The Hon. Mr. Justice Hayton is the Chairman of the committee and worked with the Registrar and HR Manager to refine the summer internship programme.

## Library Collection Development Advisory Committee

Since its first meeting in February 2015, the Committee has finalised a 'Collection Development Policy' and has worked its way through all the subject headings, evaluating the library's holdings and making appropriate recommendations in accordance with the Development Policy.

The Committee currently comprises: the Hon. Mr. Justice Hayton as Chairman, the Hon. Mr. Justice Wit; the Registrar and Chief Marshal, Ms. Jacqueline Graham; the Librarian, Ms. Jacinth Smith; and Ms. Kerine Dobson, one of the Court's Judicial Assistants.

Among the Committee's achievements in the year, was the inclusion of CCJ's cases involving human rights issues in public database of the European Commission on Democracy. Moreover, the CARICOM Secretary General has agreed with the Committee that since the decisions of the Conference of Heads of Government are themselves as much law as the

Revised Treaty of Chaguaramas, steps will be taken to make such decisions publicly accessible.

Next step for the Committee is to ensure that the Library is well-equipped to support the research needs of the Caribbean Community Administrative Tribunal when it is established.