

**MEMORANDUM IN RESPONSE OF COMMISSIONER DR.
LLOYD BARNETT TO CALT MEMORANDA DATED JUNE 6, 2014
AND JUNE 11, 2014**

1. The Memorandum from the body which calls itself “Court Administration Leadership Team (CALT)” dated June 6, 2014 contains serious imputations against the Regional Judicial and Legal Services Commission. As one who played a part in the submissions by the Caribbean legal profession in the shaping of the Court and Commission and who has served as a member of the Commission since its inception, I am particularly taken aback by two statements, namely:

(1) The administration and the operational decision making of and for the Court are now housed for all intents and purposes, and dangerously so, within the:

- RJLSC;
- Financial Oversight Committee (FOC);
- External personnel and agencies.”; and

(2) These binding, foundational documents establish the Court, the RJLSC and the Trust Fund as three distinct entities with independent, specific and limited mandates which do not overlap and were to provide appropriate checks and balances.

I must emphasize however that this response is endorsed by my fellow Commissioners.

2. The imputation is clearly that the RJLSC is acting in an *ultra vires* and unprincipled manner and is compromising the independence of the Court.

3. There are three fallacies inherent in these contentions, namely:

(1) that the RJLSC is not responsible for the establishment arrangements of the Court;

(2) the RJLSC is functionally identical with all other Judicial and Legal Services Commissions in the Region; and

(3) that these institutions have specific mandates and therefore there is to be no overlap, suggesting that they are to be kept in administrative isolation.

4. There is no legal or other basis for these contentions. A second Memorandum dated June 11, 2014 has repeated these allegations but once again has not provided any legal basis for them.

5. The Agreement establishing the Caribbean Court of Justice provides that the Commission shall have responsibility not only for appointing the Judges of the Court but also for the making of appointments of officials and employees of the Court, the determination of the salaries and allowances to be paid to them, the termination of their appointments and most importantly in this context “the terms

and conditions of service of officials and employees”. Art. V, 3(1). It is also specifically provided that the Commission may make Regulations, inter alia:

- “(a) governing the appointment, discipline, termination of employment and other terms and conditions of service and employment for
 - (i) Judges, other than the President; and
 - (ii) Officials and employees of the Court.” Art. XXXI
- (b) prescribing the procedure governing the conduct of disciplinary proceedings;
- (c) generally giving effect to this Agreement.”

The Commission therefore has a wider jurisdiction than is generally vested in the Judicial Services Commissions of this Region.

6. The Court itself is given no jurisdiction to determine the staff complement or its structure, to define the duties or fix the emoluments of officers and employees. The Agreement specifically mentions only the offices of Registrar and Deputy Registrar. The officials and employees of the Court are by virtue of Article XXVII appointed only “as the Commission considers necessary” and their “terms and conditions of service” are “from time to time” to be determined by the Commission.
7. In short the Judges are given jurisdiction over the judicial business of the Court and the Commission over financial and personnel administration.
8. The second constituent instrument and the only one apart from the Agreement Establishing the Caribbean Court of Justice that can be described as “foundational” is the Agreement Establishing the Caribbean Court of Justice Trust Fund to which the Vesting Deed of the Caribbean Court of Justice Trust Deed is an adjunct.
9. The Trust Fund Agreement states that:
 - “Financing from the Fund shall be governed by considerations of economy, efficiency and cost effectiveness and the need to safeguard the independence and sustainability of the Court and the Commission. The Board of Trustees has the function of authorising ‘the provision of resources required for the biennial capital and operating budget of the Court and the Commission submitted by the Executive Officer’ of the Trust Fund.”
10. There is nothing in these documents which circumscribes the functions of the Commission or support the view that the Commission is not responsible for the financial, personnel administration and establishment structure of the staff of the Court and Commission. The first memorandum states that Judges should focus on adjudication while court staff should deal with administrative aspect but does not state who or what body should formulate policy.

11. Furthermore, in practice consistently since the establishment of the Court and Commission senior staff members have made submissions to the Commission regarding the formulation of the budgets, the creation of posts, the determination of salary and emoluments, the making of appointments, the termination of appointments, the classification and re-grading of posts. A notable example of this acceptance of the role of the Commission is that the Staff Orders were prepared under my chairmanship of a sub-committee of the Commission which included senior staff members and reports made to the Commission. Interestingly, the former President brought it to the Commission's attention that it could not legally delegate certain disciplinary functions to the CEA. In fact, there is no other body with the authority to make policy decisions relating to personnel and the establishment and certainly CALT is unknown to the "foundational documents", which do not even mention the offices held by the signatories to the CALT memoranda.
12. The third fallacy is refuted by the principal constituent instrument. The President of the Court is also Chairman of the Commission and there are administrative duties attached to the office of Chairman. In the performance of those administrative duties the President is entitled to ask the Judges to assist him, for example, by serving on Committees where appropriate. It should also be noted that the Registrar of the Court is the Secretary to the Commission. In general terms, it would be expected that the entities within the terms of their respective mandates would co-operate with each other in the performance of their respective duties. In fact, the Commission and the Trust have the duty to ensure that administrative and financial arrangements are maintained to ensure the efficiency of the Court.
13. Although I do not agree with the unqualified self-laudatory statements of CALT and could point to areas of administrative weaknesses and even irregularities, the critical, obvious and immediate need is that there should be a clear understanding of the powers and functions of the Commission.

A handwritten signature in black ink, consisting of a large, stylized loop at the top and a horizontal line extending to the right.

LLOYD BARNETT
DEPUTY CHAIRMAN, RJLSC

JUNE 16, 2014