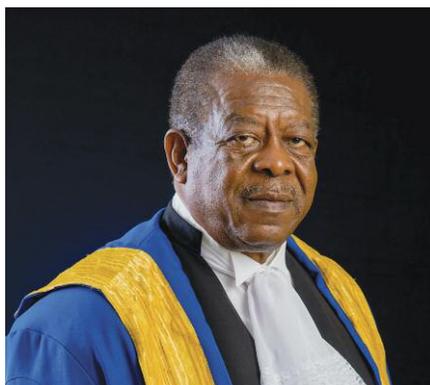


# Judges of the Caribbean Court of Justice



**The Right Honourable  
Sir Dennis Byron  
COURT PRESIDENT**  
*September 1, 2011 to July 3, 2018*



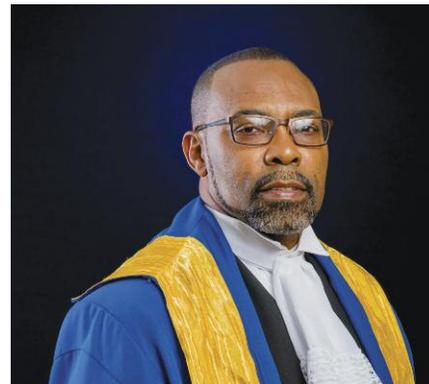
**The Honourable  
Mr. Justice Adrian Saunders  
COURT PRESIDENT**  
*July 4, 2018 to Present*



**The Honourable  
Mr. Justice Jacob Wit**



**The Honourable  
Mr. Justice David Hayton**



**The Honourable  
Mr. Justice Winston Anderson**



**The Honourable Mme.  
Justice Maureen Rajnauth-Lee**



**The Honourable  
Mr. Justice Denys Barrow**

# Court Performance Report from the Registry

The Registry is headed by the Registrar and Chief Marshal, assisted by the Deputy Registrar and Marshal, and three officers. The Department also includes five Judicial Assistants who provide research and other support to the Judges of the Court. The Registry also provides administrative support for all judicial activities of the Court and manages the case-flow process for all applications and appeals filed in the Court from the point of initiation, when the documents are submitted for filing, through to disposition of the matter by court order, judgment or taxation of costs.

The Court's drive to increase access to justice was also boosted with the introduction of a bridging solution that offers additional capabilities to the CCJ's existing video-conferencing equipment. This new technology allows attorneys or litigants to link directly with the Court's video conference system with the use of any device equipped with a microphone and a video camera - including a smart phone. Since the introduction of this video-conference bridging software, a number of attorneys have appeared before the Court by video-conferencing from their chambers. This has improved the scheduling timelines for hearings conducted by video-conferencing as, prior to its introduction, attorneys used the video-conference units located in their local courts and were subject to that court's schedule.

The CURIA court management system continues to be used by the CCJ to assist with the management of the the Registry. The significant benefits of the Curia software were evident in the case of *Eddy Ventose v Chief Electoral Officer* in which the Court was able to convene a hearing on Sunday, 13 May 2018, following the submission of an urgent application on Friday, 11 May 2018. The application was filed by a St. Lucian citizen, Mr. Eddy Ventose, who had lived in Barbados for several years and sought to be included on the Barbados electoral register ahead of a General Election which was scheduled for 24 May 2018. The deadline for publication of the final voters list was May 15th and Mr. Ventose would not have been allowed to vote in the election if his name was not included on this list.

The expeditious processing of this case was possible as Registry staff were able, at short notice, to file and serve documents submitted through the e-filing portal. The judges were able to access, download and read the documents filed in preparation for the hearing, while the attorneys were able to view and download the filed documents, serve documents by email and receive notifications electronically on the progress of the case. Additionally, the hearing was conducted by video-conference so that the parties did not have to travel from Barbados to the Court. The Court Order was also electronically filed, and served by email within an hour, after the hearing ended.



Students engage the Hon. Messrs. Justice Hayton, Wit and Barrow in conversation during a visit to the Court. The judges use these interactions with the students and educate them on the Court.

# Court Performance

## Judicial Workload 2017 - 2018

### APPELLATE JURISDICTION

#### New Matters Filed

The 2017 to 2018 judicial year, saw a 32% increase in the number of matters filed above the previous year, with two cases filed from Dominica, six cases from Belize, seven cases from Barbados and seventeen cases from Guyana. Civil applications and appeals represented the clear majority (88%) of the new matters while the number of appeals filed in this year more than doubled the number filed in the previous judicial year.

#### New Matters filed in the 2017/8 and 2016/7 Judicial Years

Appellate Jurisdiction	2017 - 8	2016 - 7
Application for Special Leave	13	20
Notice of Appeal	19	5
Total	32	25

Figure 1: Cases filed by Country

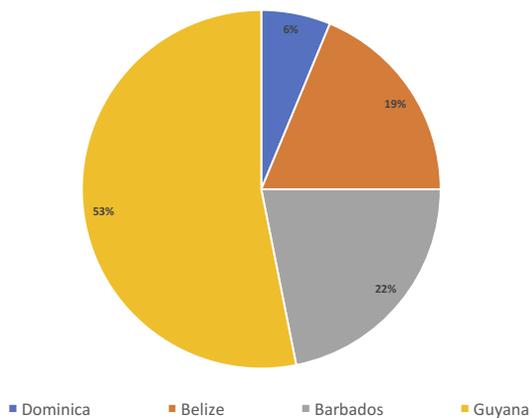
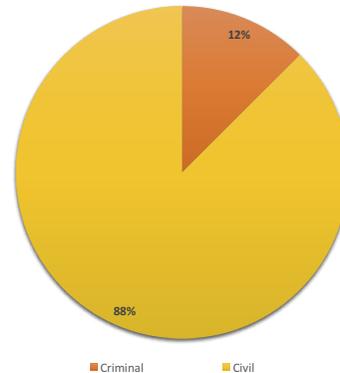


Figure 2: Case types



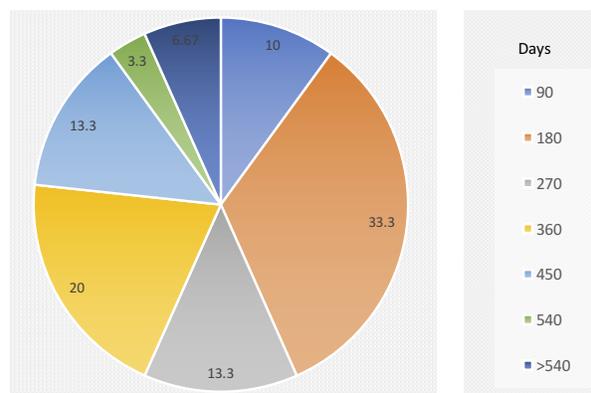
#### Applications for Special Leave to Appeal

As part of the Court's efforts to deal with cases more efficiently, four of the thirteen Applications for Special Leave to Appeal that were filed in the year under review were treated as the substantive hearing of the appeal. This meant that the parties were not required to file a separate Notice of Appeal but filed one set of submissions for the hearing of the Application for Special Leave and the Hearing of Appeal.

#### Time to disposition

In the 2017 to 2018 court year, 43% of cases were disposed within six months of filing, while 76.6% of cases were disposed within one year of filing.

Figure 3: Time to disposition



## Court Performance Continued

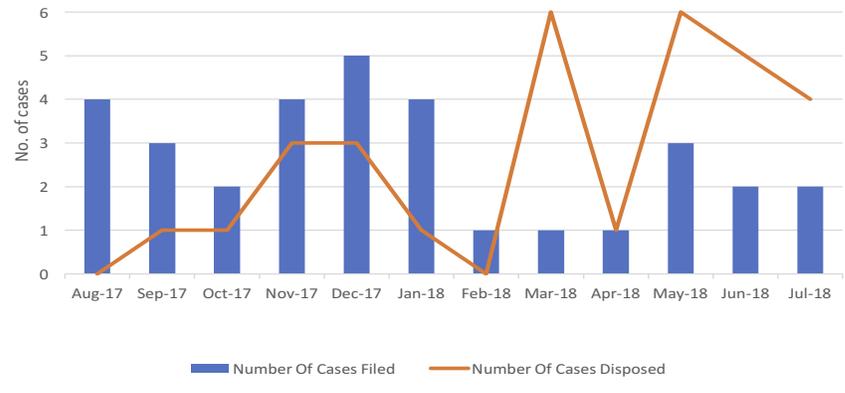
### Clearance Rates

During the period under review, the clearance rate for matters filed reflect a rate of 96% for disposed matters against new matters. This reflects a 20 % increase in the clearance rate above the last judicial year's figure.

### Age of Pending Caseload

As at 31 July 2018, there were eleven pending matters before the Court for the period of 3-9 months.

Figure 4: Clearance rate of matters in the court year 2017 to 2018



## ORIGINAL JURISDICTION

### New Matters Filed

During the 2017 to 2018 court year, three applications were filed in the Court's Original Jurisdiction. The three cases originated from the State of Trinidad and Tobago and were: *Trinidad Cement Limited v The State of Trinidad and Tobago and Rock Hard Distribution Limited and Mootilal Ramhit and Sons Limited*; *Trinidad Cement Limited and Arawak Cement Limited v The State of Barbados*; and *Jason Jones v Council of Legal Education, Council for Human and Social Development and Council for Trade and Economic Development* TTOJ2018/003.

In *Trinidad Cement Limited v The State of Trinidad and Tobago and Rock Hard Distribution Limited and Mootilal Ramhit and Sons Limited*, Special Leave to commence proceeding was granted within one month of the filing of the Application for Special Leave. In *Trinidad Cement Limited and Arawak Cement Limited v The State of Barbados*, the Court held a hearing and made orders in respect of an application for interim measures within three months of the filing of the application to commence proceedings.

# Judgment Summaries

The judgments issued by the Court in the 2017-8 judicial year are summarised below:

## APPELLATE JURISDICTION

### **Progresso Heights Limited v Pitts and Elrington [2017] CCJ 12 (AJ)**

This case concerned a bitter disagreement between Mr. Elrington and Progresso Heights Limited, a company in which Mr. Elrington was a shareholder. Progresso was seeking recovery of land transfer documents sent to Mr. Elrington's law firm stemming from the sale of Progresso's properties. Though the necessary duties and fees were paid, the title certificates were not obtained or not delivered to Progresso which sought to recover the transfer documents or certificates of title. Justice Legall and the Court of Appeal rejected Progresso's claims. The CCJ, however, after a very detailed consideration of the evidence, allowed the appeal and ordered Mr. Elrington and his firm to search for the relevant documents and give them to Progresso within 30 days. Subsequently, Mr. Elrington advised the Court that he could not find the documents. In response, Progresso filed an application asking the Court to declare the documents lost. The Court ruled in their favour.

### **Katrina Smith v Albert Anthony Peter Selby [2017] CCJ 13 (AJ)**

The CCJ was required to interpret Barbados' Succession Act Section 2(3) which provides: "for the purposes of this Act, reference to a 'spouse' includes: a single woman who was living together with a single man as his wife for a period of not less than five (5) years immediately preceding the date of his death". The appellant, Ms. Smith, and the late Mr. Selby had been living together since 2002 until his death in 2008. The late Mr. Selby had no children, was predeceased by his parents, and survived by his siblings including the respondent, Mr. Albert Anthony Selby. The CCJ examined the legislative regime that existed prior to the Act and noted that, prior to its enactment, the law excluded the survivor of a cohabitational relationship from benefiting on the death of the partner who had not left a will. The Court concluded that the natural and ordinary meaning of the words in the Act, considered

in its social and historical context, is that a single woman who has lived with a partner for the statutory period of five years, immediately preceding his death, has the right to inherit from him on his death, provided he is single.

### **Rosemarie Ramdehol v Haimwant Ramdehol [2017] CCJ 14 (AJ)**

After the Ramdehols divorced, they agreed to negotiate a division of their matrimonial and business assets. Mr. Ramdehol said that the parties negotiated this agreement through a series of letters sent by their respective attorneys. He held it was agreed that Mrs. Ramdehol would pay him the sum of US \$262,500 in exchange for transferring his share of the jointly-owned assets to her. Mr. Ramdehol said that the transfer of the assets were made but he was not paid the agreed sum. He submitted the letters as proof of the agreement and sought its enforcement. In her defence, Mrs. Ramdehol was quite inconsistent. On the one hand, she said that the agreement was renegotiated so that Mr. Ramdehol would only receive GY\$25,000,000, which she had paid to him. However, she could not provide correspondence between their attorneys to substantiate this new agreement. She also said that she had no knowledge of the letters being sent by her attorneys. The CCJ, after considering the proceedings in the Court of Appeal and the High Court, decided not to interfere with the finding in those courts and that Mrs. Ramdehol was to pay Mr. Ramdehol the sum of US \$262,500.

### **AG of Belize v Dean Boyce, Dunkeld International Investment Limited and The Trustees of the BTL Employees Trust: Application by Sunshine Holdings Limited to Intervene [2017] CCJ 15 (AJ)**

There was an agreement for the Government of Belize to compensate Dunkeld and the Trust for the nationalisation of the Belize Telemedia Limited and associated companies. The agreement was later made a part of a consent order of the Court and the parties

## Judgment Summaries Continued

were in the course of enforcing the order. Later, Sunshine Holdings Limited sought to intervene and be added as a party to the case. Sunshine Holdings further sought a declaration that it was entitled to receive compensation from the Government for the compulsory acquisition of its shares in the Belize Telemedia Limited. The CCJ refused the application, holding that the company failed to show that it was necessary for it to be added as a party to prevent an injustice. The Court noted that, since the company was never a party to the agreement between Dunkeld, the Trust and the Government, its rights could not be affected by the terms of that agreement.

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### **AG of Belize v Dean Boyce, Dunkeld International Investment Limited and The Trustees of the BTL Employees Trust [2017] CCJ 16 (AJ)**

By a Settlement Agreement made between the parties, which eventually became part of a consent order made by the CCJ in 2015, the Government of Belize agreed to compensate Dunkeld and the Trust in a mixture of Belizean and US dollars for the nationalisation of the Belize Telemedia Limited and associated companies. The Agreement specified that the mixture of US and Belizean dollars should be determined based on the liabilities of Dunkeld and the Trust, however, it was silent as to how those liabilities should be determined. Dunkeld and the Trust unilaterally appointed reputable independent auditors to determine its liabilities.

They then demanded payment based on figures produced by the audit and certified due on 28 June 2017 with interest thereafter. The Government of Belize challenged the demand and instead required Dunkeld and the Trust to provide all documentation and explanations used in the audit so that the Government could “verify” the demanded sum. The CCJ said that ideally, the Agreement should have specified a process for the determination of the liabilities but, in the absence of such a provision, the best way for ascertaining the liabilities would have been for the parties to agree a firm of reputable independent auditors, or, in the absence of agreement, for the Court to appoint independent auditors. As the Government

did not challenge the professional competence and integrity of the international auditing firms and there was nothing to suggest that a fresh independent audit would produce different results, the CCJ said it would serve no useful purpose to quash the existing audits and order a fresh audit. The Government was therefore ordered to honour the demand, but due to delay attributable to Dunkeld and the Trust, interest was not payable till 10 November 2017.

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### **The Attorney General of Guyana v Dipcon Engineering [2017] CCJ 17 (AJ)**

This appeal was premised upon the refusal of the Court of Appeal of Guyana to grant an application to extend the time within which to appeal a judgment of the High Court, made after more than six months had elapsed after the time prescribed by statute. Following that refusal, the Appellant sought and was granted by the Court of Appeal leave to appeal to the CCJ as of right under Section 6(a) of the Caribbean Court of Justice Act. That as-of-right appeal to the CCJ was on the grounds that the Court of Appeal improperly exercised its discretion in not finding that there were good and substantial reasons for its delay in filing the appeal, and the court did not properly weigh the length of time and reasons for the delay against the potential merits of the appeal. The CCJ decided that the appeal was a procedural issue and as such did not fall within the ambit of section 6(a) of the Act but within Section 8. Further, in the absence of acceptable justification for failing to file an application for special leave, the Court concluded that it had no jurisdiction to allow the state to appeal against the Court of Appeal’s decision. Nonetheless, the Court acknowledged that it may, in a proper case, grant an extension of time to comply with the rules to avert a clear miscarriage of justice. The Court observed that, in all the circumstances, the state had failed to satisfy the most basic standard of care in dealing with the case and its reasons for failing to appeal in time were unacceptable. The Court stated that, on an application for extension of time to make an application for special leave, an applicant must show more than a realistic prospect of success and that there would be a miscarriage of justice if the appeal were not heard. The material before the Court did not meet this standard and the appeal was dismissed.

## Judgment Summaries Continued

### **The Belize Bank Limited v The Attorney General of Belize [2017] CCJ 18 (AJ)**

The Bank had initiated arbitration proceedings with the London Court of International Arbitration which had led to an arbitral Award in the sum of BZ\$36,895,509.46 together with compound interest at 17% and arbitration costs of £536,817.71, to be paid by the Belize Government under a loan note. No parliamentary approval had been given for the loan note but, in earlier proceedings, the Privy Council had upheld the validity of the note as a promissory note. The Bank applied to the Supreme Court under Section 28 of the Arbitration Act for an order granting leave to enforce the Award. This was refused by the trial judge and the Court of Appeal upheld that decision, agreeing that enforcement would be contrary to public policy. On appeal, the CCJ noted that a balancing exercise must be conducted where the interest of guaranteeing the finality of an award is weighed against the competing interest of ensuring respect for the legal system's fundamental principles. This Court concluded that an order allowing enforcement of the Award would not be contrary to the public policy of Belize when there was a statutorily prescribed mechanism for enforcement under the Crown Proceedings Act and the Constitution. The Court therefore granted the Bank permission to enforce the Award in the same manner as a judgment or order of the Supreme Court to the same effect and awarded the Bank costs both here and in the courts below.

### **Blairmont Rice v Kayman Sankar Company Limited [2017] CCJ 19 (AJ)**

In a motion filed in the Court of Appeal of Guyana in February 2017, Blairmont alleged that it sought an order for the matter to be returned to the High Court of Guyana for retrial because the trial judge had failed to provide written reasons for his decisions before retiring from office. In its application for special leave filed at the CCJ, the company alleged that the Court of Appeal of Guyana had refused its request and, instead, ordered that the Record of Appeal be settled and that the appeal should proceed. Upon examining the documents filed in the Registry of the CCJ, the Court found that the company did not seek an order for retrial in the motion filed in February 2017 in the

Court of Appeal, but actually sought to progress Blairmont's substantive appeal by having the Court of Appeal hear the appeal in the light of the availability of the pleadings, exhibits, affidavits, the trial judge's notes of evidence, and his detailed order. The CCJ therefore refused the application for special leave, having been satisfied that the documents from the High Court could allow for the conduct of the appeal, albeit no written reasons for the judge's decision were available.

### **Wayne Vieira v Guyana Geology and Mines Commission [2017] CCJ 20 (AJ)**

An officer of the Commission issued a Cease Work Order (CWO), under Regulation 98 of the Mining Regulations directing that Mr. Vieira cease all work under his mining permits. The Commission indicated that the order was issued because of the current absence of an agreement between him and the Village Council as required by Section 48 of the Amerindian Act. However, he had made several overtures to the Village Council, and even sought the Prime Minister's and the Ministry of Amerindian Affairs' intervention, to secure a new agreement with the Village Council. Those attempts proved futile and the CWO was issued without a warning or hearing. Upon review of the Mining Act, this Court determined that the Minister responsible under it could not make regulations under that law with a view to aiding or enforcing the requirements of another law. The Mines Officer was therefore not authorised to issue the order under the Mining Regulations for a violation of the Amerindian Act and that the law required the issuance of the CWO to be "absolutely necessary", which had not been established or even contemplated by the Mines Officer or the Commission. Further, Mr. Vieira was entitled to an opportunity to oppose the order and to challenge whether it was necessary. Accordingly, the Court ordered that the trial judge's decision be restored and awarded costs to Vieira in all three courts.

### **Dean Boyce, Trustees of the BTL Employees Trust and Dunkeld International Investment Limited v AG of Belize and the Minister of Public Utilities [2018] CCJ 1 (AJ)**

Dean Boyce and the Trustees of the BTL Trust sought declarations that a claim pending in the Supreme Court of Belize, instituted by Sunshine Holdings

## Judgment Summaries Continued

Limited against the Trust and the Attorney General of Belize, was an abuse of process and in breach of a Settlement Agreement dated 11 September 2015. They sought an order from the CCJ directing the Attorney General to procure the discontinuance of the claim. The Court refused to grant the order as it was functus officio and did not have jurisdiction to make such an order.

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### **Guyana Stores Limited v Attorney General of Guyana [2018] CCJ 2 (AJ)**

Guyana Stores challenged a demand by the Revenue Authority to pay the sum of \$3,811,346,397 for unpaid taxes on the basis that the Revenue Authority did not comply with provisions of the Income Tax Act. In particular, it was argued that no notice of assessment had been sent to the company prior to the Revenue Authority's demand so that the demand was unconstitutional as it would amount to the compulsory acquisition of the company's property. It was also argued that a 2% minimum corporation tax pursuant to Section 10A of the Corporation Tax Act was a forced loan. The CCJ disagreed with the company on all grounds of appeal. Looking at the correspondence between the company and the Revenue Authority, the Court concluded that the company had been notified of the assessment and that the assessment had not been done in an arbitrary manner. Indeed, even if no notice of assessment had been served, but a demand notice for payment served instead, it would have been perfectly open to the company to notify the Commissioner of its objection and inconceivable that the Commissioner would have rejected the company's objection on the basis that no notice of assessment had been served.

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### **Deorani Singh v Attorney General of Guyana [2018] CCJ 3 (AJ)**

This matter was brought by the estate of the late Mr. Mohan Pirtram Singh, represented by his widow and administratrix, Mrs. Deorani Singh, who claimed that the Attorney General of Guyana and the National Industrial and Commercial Investments Limited owed her compensation for the violation of her, and the estate's, constitutional right to protection of property. The Government had compulsorily acquired a commercial property that had been owned by her husband in 1987

and paid Mrs. Singh compensation in the amount of GY\$578,000. This compulsory acquisition order made by Justice Pompey was never appealed or set aside. Fourteen years later, Mrs. Singh filed a constitutional claim and successfully argued that the estate's fundamental rights and freedoms had been contravened. She was awarded GY\$30 million in compensatory damages for this breach. Dissatisfied, Mrs. Singh appealed to the Court seeking further compensatory damages and a declaration that the property be returned to the deceased's estate. The Court dismissed the appeal noting firstly that Justice Roy, who determined the constitutional matter, could not sit as an appellate court over Justice Pompey, who presided over the acquisition proceedings. The Court also considered that Mrs. Singh had participated in the process of determining compensation in 1987 and should not have been allowed to attack the validity of the acquisition in 1997. Additionally, the Court held that the significant delay in bringing the case should have resulted in the denial of relief and dismissed the appeal.

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### **The Attorney General of Belize v The Belize Bank Limited [2018] CCJ 4 (AJ)**

The Court had previously made an order in [2017] CCJ 18 (AJ), that the Belize Bank was at liberty to enforce an arbitral award in the same manner as a judgment or order of the Supreme Court of Belize. This award was in the amount of BZ\$36,895,509.46, plus compound interest at 17%, made against the appellant. The Bank requested that the Registrar of this Court issue a Certificate under Section 25 of the Crown Proceedings Act containing the particulars of the Court's order. The Registrar issued the Certificate in identical terms as the award. The appellant, relying upon the proper interpretation of Sections 166 and 167 of the Supreme Court of Judicature Act, subsequently applied for an order for the CCJ to declare that the applicable rate of post-judgment interest on the amount payable under the Award was the statutory rate of 6% simple interest, and not the 17% compound interest under the Award, as the issue of interest had been earlier ventilated and the Registrar having automatically followed the terms of the arbitral award. The Court granted the application.

## Judgment Summaries Continued

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### **Sandy Lane Hotel Company Limited v Julianna Cato [2018] CCJ 5 (AJ)**

Sandy Lane challenged the decision of the Barbados Court of Appeal to refuse to hear an appeal on the basis that it was filed outside the seven-day time limit prescribed in Section 240 (2) of the Magistrate's Court Act. Before the CCJ, Sandy Lane argued that its appeal to the Court of Appeal was filed in time as the applicable rules governing appeals to the Court of Appeal are found in Part 62 of the Civil Procedure Rules. These Rules stipulated 28 days and the company had also complied with the seven-day time limit under the Magistrate's Court Act, by making an oral request, and also giving notice in writing. The CCJ found that Sandy Lane had in fact given "immediate, public notice of its intention to appeal" which was subsequently followed by a notice in writing and that both were within the seven-day time limit prescribed by the Magistrate's Court Act. The CCJ also held that the law in Barbados provides two methods of appealing decisions from Magistrates: one in the Magistrate's Court Act and the other in the Civil Procedure Rules. The CCJ recommended that legislative intervention was required to harmonise the two.

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### **Kent Herrera and Others v Supervisor of Insurance and Others [2018] CCJ 6 (AJ)**

The main issue to be decided was whether the respondents could avail themselves of the good faith defence contained in Section 4 (3) of the Insurance Act Cap 251 ("the Act"). The appellants were all Executive Flexible Premium Annuity (EFPA) policyholders of CLICO (Bahamas) Limited (CLICO) who had suffered serious financial loss when the company went into liquidation in 2009 and were unable to recoup their investment in the company. The appellants claimed that they suffered loss because the Supervisor of Insurance ("the Supervisor") was reckless in her conduct of regulating CLICO in accordance with Section 26 of the Act. The CCJ held that public officials should be held to basic standards of performance commensurate to the office that they hold. Where a public official recklessly disregarded those standards, it would be difficult, if not impossible to hold that they were acting in good faith. If, however, the public official

made genuine, honest attempts to meet the standards but failed to achieve them, then the public official could rely on the good faith defence. The defence offered protection to public officials who were not fraudulent or dishonest, or in wrongful collusion with the impugned company, or recklessly indifferent to the occurrence of foreseen risks. The Court concluded that recklessness, in this context, was another way of established a lack of good faith. The Court considered whether the Supervisor was reckless and found that the Act gave her a great degree of discretion in her administration and regulation of the insurance industry. The Court examined the Supervisor's conduct in the regulation of CLICO under three broad headings: i) the treatment of the EFPAs; ii) CLICO's licence renewals and its obligations to provide stipulated financial statements and; iii) CLICO's statutory fund. The CCJ found that in all the circumstances the Supervisor had acted in good faith and the respondents were accordingly protected from suit.

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### **Gregory August and Alwin Gabb v The Queen [2018] CCJ 7 (AJ)**

The appellants were granted special leave to appeal their life sentences and to appeal as poor persons. Mr. August was also granted special leave to challenge his conviction on the ground that it was unsafe and his trial unfair due to the failure of the trial judge to give a good character direction. The Court in assessing this ground of appeal, ultimately concluded that the case against August was sufficiently strong that a guilty verdict by the jury was inevitable. Accordingly, the majority held that the conviction was safe. The Honourable Mr. Justice Wit, in his dissent, considered that "the multitude of weaknesses" in the circumstantial evidence put the safety of August's conviction in serious doubt and the conviction ought to have been quashed. In these consolidated appeals, the Court also considered, inter alia, the constitutionality of the mandatory life sentence for murder in Belize.

The Court held that life sentences are to be imposed at the discretion of the sentencing judge and not as mandatory sentences. This was the interpretation given by the Court to new legislation passed by the Government of Belize mere days before the consolidated appeals were heard. The Court took the view that these legislative changes were made to "correct the constitutional deficiencies identified by the

## Judgment Summaries Continued

Court of Appeal” in relation to the mandatory minimum life sentence for murder.

In relation to Gabb’s appeal, the Court remitted his case for re-sentencing. This decision of the Court also had implications for other prisoners who were serving life sentences for murder under the now-repealed legislation. The CCJ ordered that these sentences be vacated and that such cases be remitted for re-sentencing.

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### **Medical Council of Guyana v Jose Ocampo Trueba [2018] CCJ 8 (AJ)**

The Medical Council had refused Dr. Ocampo’s application for full registration as a medical practitioner. Dr. Ocampo sought to challenge the refusal by seeking certain interim court orders, based on the procedure set out in the Crown Office Rules of 1906. In his application, he concealed the fact that he had been operating in breach of his licence and that the Medical Council had written to him about his breach. The CCJ held that it was highly dishonest of him to have falsely stated that he was never the subject of disciplinary proceedings and unaware of any reasons why the Medical Council could have refused his application. The Court said that this was in breach of his duty to make a full and frank disclosure and, on that basis, the CCJ dismissed his application. The Court noted that even if he had complied with the duty to make full disclosure, the 1906 Rules had been replaced by the new 2017 Civil Procedure Rules and the orders that he sought could not be granted in the same procedural manner as he sought them.

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### **Rodrigues Architects Limited v The New Building Society Limited [2018] CCJ 9 (AJ)**

Rodrigues Architects Limited had been awarded a money judgment together with interest and costs against the respondent, New Building Society Limited. The New Building Society sought a stay of execution of the judgment pending the appeal. Granting the stay, Justice Roy also ordered that the judgment sum due to the appellant be put in an interest-bearing account until the determination of the appeal. Rodrigues Architects Limited unsuccessfully applied to the Court of Appeal to discharge the stay and subsequently appealed to the CCJ. The CCJ, after reviewing the

affidavit evidence, found that the judge in the lower court had erred in making his orders, and the Court of Appeal had erred in reviewing those orders and letting them stand. No stay should have been granted because it had not been shown that there was a good prospect of the appeal succeeding. In addition, there was no reasonable probability that the company would be unable to repay the money received from the building society if the latter’s appeal succeeded. Further to that, Mr. Rodrigues, a director of the company who had been in business for over 35 years, had been prepared to guarantee that he would personally repay the judgment sum if the society’s appeal succeeded and had identified property, of greater value, which could be held as security. The CCJ also issued guidelines to be considered when granting a stay of execution pending an appeal.

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### **Teerath Persaud v The Queen [2018] CCJ 10 (AJ)**

Before two separate judges, Mr. Teerath Persaud and Mr. Christopher McCollin pleaded guilty to manslaughter in relation to the death of a 16-year-old girl. The judge who heard Mr. McCollin’s case sentenced him to 16 years’ imprisonment. Later, the judge who heard Mr. Persaud’s case sentenced him to imprisonment of 25 years. Mr. Persaud appealed his sentence on the basis that there was a great disparity between the sentences. The CCJ held that the concept of parity in sentencing was an important principle in the law of sentencing and that persons whose personal circumstances are similar, and whose legal liability for the offence are relatively the same, should receive comparable sentences. The CCJ was not convinced that the case against Persaud was so dramatically different from that against Mr. McCollin that he should be sentenced to an additional term of 9 years of imprisonment. The Court, however, found that there were aggravating factors in the case against Mr. Persaud which made his actions more culpable. In these circumstances, the Court reduced his sentence to 18 years of imprisonment.

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### **Kowsal Narine v Deonarine Natram [2018] CCJ 11 (AJ)**

This land dispute between brothers, Mr. Narine and Mr. Natram, resulted in the Court closely analysing the

## Judgment Summaries Continued

status of a purchaser who had not paid the full purchase price but who was put into possession of land by the vendor/landowner in Guyana. In 1959, their father, Mr. Nateram, entered into an agreement to purchase the lands from Mr. Ashbourne Chan and Mr. Foster Chan, who were also named as defendants. Payments were made to the Chans but Mr. Nateram never paid the full purchase price, although the Chans permitted him to take possession of the lands. In May 1990, Mr. Nateram made a will giving the lands to Mr. Narine, who had worked on the land with him. Mr. Nateram died on 31 May 1991. In 2002, Mr. Narine filed a writ against his brother, Mr. Natram, who had obtained transport for the land, claiming that their father had been in possession of the lands since 1959 and had therefore acquired prescriptive title to the lands. Mr. Narine also claimed the land in his own right. The Court held that when a purchaser entered into possession but had not paid the full purchase price, the question of whether that purchaser's possession was as of right depended on the construction of the agreement for sale having regard to the circumstances of each case. In this particular case, Mr. Nateram was occupying the land as a licensee of the Chans until his death. At that point, the licence automatically terminated, and the nature of the possession changed. The Court found that Mr. Narine thereafter remained in possession of the lands from 1 June 1991 in his own right, thereby extinguishing any interest of Mr. Natram.

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### **Hyles and Williams v DPP [2018] CCJ 12 (AJ)**

Mr. Hyles and Mr. Williams were indicted on eleven counts of murder for what was dubbed the Lusignan Massacre in Guyana in January 2008. They were found not guilty at trial, but the state appealed under the newly amended Court of Appeal Act which allowed prosecution appeals against acquittals. The state was successful on appeal and the acquittals were overturned. Mr. Hyles and Mr. Williams both appealed to this Court seeking to have the not guilty verdicts restored. Before looking at the allegations of irregularities which occurred at the highly publicised trial, the Court constructed a test specifically for application in prosecution appeals against acquittals. The Court held that in such appeals, the prosecution must satisfy the Court that “given, on the one hand, the nature and weight of the evidence and, on the other

hand, the seriousness of the judicial error(s) or procedural flaw(s) it can with a substantial degree of certainty be inferred that had the error(s) or flaw(s) not occurred, the trial would not have resulted in the acquittal of the accused”. The CCJ then acknowledged that while there were material irregularities at trial, on application of the test, it could not, with the required degree of certainty, infer that the acquittals were the result of the errors and that it was possible that the jury simply did not believe, beyond reasonable doubt, the evidence presented by the state.

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### **Eddy Ventose v Chief Electoral Officer [2018] CCJ 13 (AJ)**

This matter saw the Court arranging an unprecedented hearing on Sunday, 13 May 2018 after it responded with haste to an appeal filed after working hours on 11 May 2018. The appeal was filed by Professor Eddy Ventose, a St Lucian citizen who had lived in Barbados for several years and sought to be included on the Barbados electoral register ahead of the scheduled General Elections on 24 May 2018. Professor Ventose had stated that he was entitled to be registered to vote in Barbados as a Commonwealth citizen, who had been resident for the requisite period. However, his registration was consistently refused by the Chief Electoral Officer, even after being ordered to register him by the lower courts. After considering the oral submissions, the Court declared that it was satisfied that the legal and regulatory conditions for Professor Ventose's registration had been met and ordered the Chief Electoral Officer, who participated in the hearing, to ensure that Professor Ventose was registered before noon on 14 May 2018. She was warned that she could face contempt of court proceedings, which could result in imprisonment and/or fines, for non-compliance.

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### **The Belize Bank Limited v The Attorney General of Belize [2018] CCJ 14 (AJ)**

Belize Bank made a post-judgment application seeking an order from the CCJ declaring that, in failing to satisfy a previous arbitral award, the Minister of Finance failed to comply with the Court's 2017 order. The Bank also sought an order to compel the Minister to pay the judgment debt within ten working days of the order. The Court pointed out that its earlier order merely gave the Bank liberty to enforce the award as if it were a

## Judgment Summaries Continued

judgment of the Supreme Court of Belize. The Court concluded that the Bank's application was premature stating that, absent any evidence to the contrary, courts must presume that Governments will pay due respect to court judgments and will not deprive successful litigants of the fruits of their litigation. The Court further stated that in the event of failure of the Government to enact the Appropriation legislation necessary to satisfy the Award, it is the Supreme Court of Belize that should be approached for the declaration and the order sought. The Court highlighted that enforcement of orders made in the appellate jurisdiction is a matter reserved exclusively to the domestic first instance courts' jurisdiction, subject to any appeals.

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### **James Ifill v The Attorney General of Barbados and The Chief Personnel Officer [2018] CCJ 15 (AJ)**

This appeal arose out of a challenge by Mr. Ifill who was compelled to resign from office as a Transport Inspector in the Ministry of Public Works and Transport when he was found guilty of seven of ten disciplinary charges. This compulsory resignation was invoked after completion of an investigation by a senior officer who was appointed to investigate the charges. The Governor General accepted the advice of the Public Service Commission that Mr. Ifill should be required to compulsorily resign and on two occasions informed him of his right to have his case referred to the local Privy Council. Notwithstanding this, Mr. Ifill took no action, until nearly five years later, when he initiated court proceedings to challenge his removal from office. This Court found that he had received a "full, natural justice hearing". The Court further observed that compulsory resignation was an act of regulatory generosity and "an act of mercy" which left a public officer with his entitlement to pension. The Court dismissed the appeal and made no order as to costs.

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### **Rajpattie Thakur v Deodat Ori [2018] CCJ 16 (AJ)**

Ms. Rajpattie Thakur in her capacity as the executrix of the will of her mother, Mrs. Dolarie Thakur, sought to be declared the rightful owner of land which had been used as a farm by her family for over 40 years. Her father, Mr. Bissoon, occupied the land with the

permission of the then owner for over a decade until it was sold to Mr. Basil Basdeo in 1980. Though Mr. Basdeo threatened Mr. Bissoon with legal action, he remained on the land until it was sold to Mr. Deodat Ori in 1997. After Mr. Ori tried to enter the land, a number of legal proceedings ensued as Ms. Rajpattie desperately sought to remain on the land. The Court disagreed with the Court of Appeal's finding that there were material false or non-disclosures which should have prevented Ms. Rajpattie Thakur from successfully arguing her claim. The Court held that she was able to establish that her father and her mother had occupied the land from 1984, until their respective deaths, and found that there was more than enough evidence on record to support possession of the land at all material times and an intention to hold the land as owner.

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### **Cedric Richardson v The AG of Guyana [2018] CCJ 17 (AJ)**

The National Assembly of Guyana had unanimously amended the Constitution to bar Presidents of the country from serving more than two terms in office. Mr. Cedric Richardson challenged the validity of the amendment on the basis that it diluted his rights, as an elector in Guyana, by restricting who he could choose to be President. The High Court and a majority of the Court of Appeal agreed with him. However, on the Attorney General's appeal to the CCJ, the CCJ found that the amendment was not inconsistent with the rights of members of the electorate. In fact, upon assessing the historical background to the amendment, the Court found that it was clear that it was meant to enhance democracy in Guyana.

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### **Jabari Nervais v The Queen [2018] CCJ 18 (AJ)**

Mr. Nervais was convicted of the murder of Mr. Jason Barton and the mandatory sentence of death by hanging was imposed on him. Mr. Nervais' appeal centered on alleged discrepancies in the trial judge's summation including a misdirection to the jury on corroboration, a failure to direct them on joint enterprise and an unbalanced summation. The Court was satisfied that Mr. Nervais had signed the confession statement in multiple places and there was no need for the prosecution to rely on the testimony of their witness as corroboration. In relation to the direction on

## Judgment Summaries Continued

joint enterprise, the CCJ found that once the jury accepted the truthfulness of the oral and written confession statements, the evidence placed before them was more than sufficient to entitle them to conclude that Mr. Nervais shot and killed the deceased. As such, the Court held that, given the way the case was presented, there was no reason for the judge to direct the jury on joint enterprise and common design. In considering the complaint of imbalance in the summing up the CCJ examined the particular passages and held that the complaint was not made out. The Court recalled that in this case there were no competing versions of occurrences where there was room for the judge to favour one version over the other. This was a case where the jury simply had to decide whether to believe the content of the confession which the judge had ruled Mr. Nervais had voluntarily given. Accordingly, the CCJ dismissed the appeal against conviction.

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### **Severin and Nervais v The Queen [2018] CCJ 19 (AJ)**

The appellants challenged the constitutionality of the mandatory death penalty under Section 2 of the Offences Against the Person Act on the basis that it violated the following sections of the Constitution: Section 11(c), the right to protection of the law; Section 12(1), the right not to be deprived of life save in execution of the sentence of a court in respect of criminal offences; Section 15(1), the right not to be subjected to inhuman and degrading punishment and Section 18(1), the right to a fair trial as guaranteed by the Constitution of Barbados. The CCJ found that the mandatory death penalty breached the right to protection of the law as it deprived a court of the opportunity to exercise the quintessential judicial function of tailoring the punishment to fit the crime. The trial process did not stop at the conviction of the accused but included sentencing and mitigation which were congruent components of a fair trial which was included in the right to protection of the law. The CCJ allowed the appeals and ordered that the appellants be expeditiously brought before the Supreme Court for resentencing.

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### **Dwayne Severin v The Queen [2018] CCJ 20 (AJ)**

Mr. Severin was convicted of the murder of Virgil Barton. His appeal to the Court was centred on the alleged weaknesses in the evidence of the prosecution's key witness, Mr. Judd Barton. Before the CCJ, Mr. Severin's counsel specifically addressed the question of whether there were 'special circumstances' as set out in Section 102(3)(a) of the Evidence Act – that is, that the accused was known to Mr. Barton who made the identification; the possibility of the absence of street lighting impairing the reliability of Mr. Barton's identification which was done at night; as well as the informality of the identification exercise, which made it easier for Mr. Barton to pick Mr. Severin out of the line-up. The CCJ considered Mr. Barton's evidence and was satisfied that Mr. Severin's features would have been "fresh" in his mind on the night of the shooting. The Court agreed with the Court of Appeal that there were special circumstances, in keeping with Section 102(2) and (3)(a) of the Evidence Act, tending to clearly support the reliability of the identification of Mr. Severin. The Court determined that, in all the circumstances, the trial judge adequately put to the jury the possibility that Mr. Barton's recognition of Mr. Severin on the night of the shooting could have been impaired by his consumption of alcohol and that the judge coherently dealt with the specific weaknesses of the prosecution's case which enabled the "cumulative impact of those weaknesses to be fairly placed before the jury". The Court ultimately determined that the conviction was safe and rejected all the grounds of appeal against conviction, stating that it had "no 'lurking' doubt as to whether an injustice has been done to the appellant".

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### **The Queen v Gilbert Henry [2018] CCJ 21 (AJ)**

Mr. Gilbert Henry was convicted of Causing Dangerous Harm for wounding Mr. Ellis Taibo in 2008. Mr. Henry challenged his conviction and sentence before the Court of Appeal of Belize. On 22 March 2017, the Court of Appeal delivered an oral judgment dismissing the appeal and affirming Mr. Henry's conviction and sentence. The court later delivered a written judgment on 16 June 2017 which made no mention of the earlier oral judgment and quashed Mr. Henry's conviction for a breach of Section 21(2) of the Juries Act. The Director of Public Prosecution appealed on the basis that the Court of Appeal became *functus officio* when it delivered its oral judgment so that it had no jurisdiction

## Judgment Summaries Continued

to reverse itself in the written judgment. The Court held that generally an oral decision or order made by a judge is normally binding from the moment it is delivered and parties are entitled to rely upon it. However, the court retains a right to vary its earlier decision until the order of the court is recorded, or otherwise perfected, but that discretion should only be exercised in exceptional circumstances. In this particular case, the Court found that the Court of Appeal had wrongly exercised this jurisdiction because it had erroneously held that the jury were required to deliberate for two hours, such a requirement was only relating to majority verdicts, and the verdict in this case was unanimous. The appeal was allowed and the conviction and sentence of five years for the offence of causing dangerous harm was restored.

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### **Patrick Hill v Sagicor Life Inc. [2018] CCJ 22 (AJ)**

The CCJ had to determine whether by virtue of Section 39 of the Severance Pay Act, and Section 63 of the Supreme Court of Judicature Act, a decision of the Court of Appeal allowing an appeal from the Severance Payments Tribunal was a “final appeal” that the CCJ had jurisdiction to hear. Sagicor argued that in accordance with Section 79D(1)(c) of the Constitution of Barbados which provides: “the CCJ shall be the final Court of appeal from any decision given by the Court of Appeal”, the CCJ had jurisdiction to hear such an appeal from the Court of Appeal of Barbados. The CCJ found that the Court of Appeal was therefore substituted for the High Court as the court exercising the right of final appeal from decisions of the Severance Payments Tribunal. The CCJ found that Section 79D(1)(c) should be read as a general clause that made the CCJ the final court of appeal from any decision given by the Court of Appeal that is appealable. The CCJ concluded that Section 4(3) of the Caribbean Court of Justice Act excluded from the Court’s appellate jurisdiction appeals from the Court of Appeal that were declared to be final by any law. Accordingly, the CCJ had no jurisdiction to hear Mr. Hill’s appeal.

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### **Dean Boyce, British Caribbean Bank Limited, Lord Michael Ashcroft KCMG v The Judicial**

### **and Legal Services Commission [2018] CCJ 23 (AJ)**

The appellants sent a request to the Judicial and Legal Services Commission that Mr. Justice Awich should be investigated by the Belize Advisory Council. This request detailed allegations of lack of judicial ‘acumen’, delays in judgment writing and lack of timeliness in the delivery of judgments during his past tenure as a Justice of the Supreme Court. At the time of the complaint, Mr. Justice Awich was a Judge of the Appeals Court of Belize. When the Commission rejected the complaint, the appellants took the matter to the courts, winning before Mr. Justice Abel, but losing in the Court of Appeal. This Court considered the interpretation and scope of Section 102 of the Constitution of Belize which provides for the removal from office of a Justice of Appeal for “inability to perform the functions of [his] office” or “misbehaviour”. The Court indicated that “inability” referred to the lack of capacity to perform the duties of the office at the requisite level of competence and skill, while “misbehaviour” referenced character flaws involving personal and volitional culpability that render the judge unfit to hold any judicial office. The Court also stated that the Commission’s function in the removal process is neither that of a mere conduit for complaints nor the decider on the merits of the complaints. The CCJ also said that past conduct could, depending on the circumstances, constitute grounds justifying a referral for removal from office. The Court held that the Commission was bound to exercise its constitutional mandate and consider whether there was a basis for referral to the Belize Advisory Council. The Complaint was therefore sent back to the JLSC for its investigation.

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### **Sattie Basdeo v Guyana Sugar Corporation Limited [2018] CCJ 24 (AJ)**

On 8 May 2017, the Government of Guyana announced the closure of the Rose Hall and Enmore Sugar Estates later that year which resulted in the dismissal of thousands of workers. Ms. Sattie Basdeo, trustee of the Guyana Agricultural and General Workers Union, and Ms. Roxanne St. Hill, trustee of the National Association of Agricultural, Commercial and Industrial Employees, challenged the decision on the basis that the unions were not adequately consulted. They also contended that their constitutional right to work was breached.

## Judgment Summaries Continued

The Court found that although the process was not perfect, it satisfied the legal duty to consult in the circumstances. The Court declined to address whether the right to work was breached as this allegation stemmed from the argument that there was a breach of the duty to consult. As there was no such breach, there was no need to make a determination on that issue. Additionally, the Court ruled that the Attorney General could not represent the state-owned Guyana Sugar Corporation but could represent the state in so far as the application sought constitutional relief for the alleged breach of the applicants' constitutional rights. The appeal was dismissed.

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### **Kowsal Narine v Deonarine Natram [2018] CCJ 26 (AJ)**

In June 2018, Mr. Deonarine Natram filed a novel post-judgment application asking that the judgment delivered by the Court on 10 May 2018, be reviewed or the appeal reheard on the basis that the Court's judgment was in error. The application, for the first time, raised Section 22 of the Title of Land (Prescription and Limitation) Act as the basis for alleging that his brother, Mr. Kowsal Narine, could not have been in possession for the statutorily required period of twelve years. He stated that the counterclaim he filed in 2003 would have stopped time from running in his brother's favour. The Court decided to hear the unusual application since the final order had not been issued, relying on its decision in *The Queen v Gilbert Henry* [2018] CCJ 21 (AJ), where it stated that when an order has not been finalised, a court may review its decision in exceptional circumstances. The Court did not, however, find that there were exceptional circumstances to warrant the reopening of the appeal in this matter. The Court held that while there was a counterclaim for damages, there was, as pointed out at the hearing by Mr. Kowsal's attorneys and accepted by Mr. Deonarine's attorneys, no specific claim for possession of the land to which s 22 was alleged to be applicable. The application was dismissed.

## Original Jurisdiction

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### **Trinidad Cement Limited & Arawak Cement Limited v The State of Barbados and Rock Hard Cement Limited [2018] CCJ 1 (OJ)**

The applicants sought urgent interim relief against the State of Barbados pursuant to Article 218 of the Revised Treaty of Chaguaramas and Part 12 of the Caribbean Court of Justice (Original Jurisdiction) Rules 2017 in respect of a shipment of cement classified as "other hydraulic cement" imported by the intervener, Rock Hard Cement Limited, from Turkey which arrived in the Port of Bridgetown, Barbados on 9 July 2018. The CCJ first formulated a test for the grant of interim relief before finding that the applicants had established a *prima facie* case of breach of the Council for Trade and Economic Development-sanctioned tariff on importation of the types of extra-regional cement involved in the dispute. The Court also found that, on a balance of probabilities, the applicants had made out a case that they were likely to suffer irreparable and unquantifiable losses. The Court noted that the applicants had given an undertaking to reimburse Rock Hard Cement and the government for losses sustained if it was proven that the grant of the interim relief was unjustified and that Barbados had not opposed the application. In those circumstances, the CCJ held that it would be unfair and oppressive to order payment of the 60% tariff retroactively. The 5% tariff paid by Rock Hard Cement was consistent with the demand by the government of Barbados and was, presumably, paid in the manner prescribed. In relation to any future shipment into Barbados, the Court found that as an interim measure, the 60% rate should be imposed until the determination of the merits of the case. Further shipments would attract the 60% tariff and the Court noted that, if it was deemed that the 5% tariff was appropriate, then Rock Hard Cement would be reimbursed the overpaid duties. In short, Rock Hard Cement had not persuaded the Court that it would be unjust to grant the interim measures requested. Accordingly, the CCJ granted the applicants interim relief.