



# The CCJ and its Integral Role in Development of Caribbean Jurisprudence

The Right Honourable Sir Dennis Byron,  
President of the Caribbean Court of Justice

**Paper Presented at the “Eminent Speakers” Lecture of the  
UWI Law Society**

Moot Court Room,  
Faculty of Law, University of the West Indies  
Cave Hill Campus Barbados  
9 November 2011

The University of the West Indies (UWI) is a multi-campus regional university serving the English-speaking Caribbean, the UWI campuses include: The Mona and Western Campus located in Jamaica, St Augustine and Penal Campus located in Trinidad and Tobago, the UWI- Open Campus with campus sites throughout the Caribbean region and the Cave Hill Campus in Barbados. **The Cave Hill Campus** is characterized by its quaint and historic legacy. The campus was originally designed to accommodate approximately 500 students. However, the demand for quality education coupled with the Campus' growing tradition of excellence has seen an exponential growth in student number, ranging from 7,000 – 9000 students per annum. This regional campus' great legacy has witnessed the ever-growing international student population, and as such the Campus is now home to a vibrant and diverse student from over 35 countries, China, Brazil, USA, UK and Italy.

**Remarks**

**By**

**The Right Honourable Sir Dennis Byron, President of the Caribbean Court of Justice,**

**on the occasion of**

**The “Eminent Speakers” Lecture of the UWI Law Society Cave Hill Campus**

**9 November 2011**

**Defining Caribbean Jurisprudence**

I recently attended a function of a regional JEI where there was a discussion about what was Caribbean jurisprudence. Most of those participating in the discussion had had a legal education at UWI and at Hugh Wooding. When I was in England in the 1960s many of us who were there as students at the time had a clear idea of what was being aimed at when we spoke of Caribbean jurisprudence. We thought of the opportunity to build our own principles in accordance with our historical and social experiences, and to meet social changes, to give effect to regional standards and values as the laws of the region are interpreted and applied.

In the 1960s an important element of the development of Caribbean jurisprudence was the fact that there was no institution for learning the law in the Caribbean and run by Caribbean jurists. Today there are at least three law faculties and three law schools run under the auspices of the Council of Legal Education.

In the 1960s all of the dispute resolution mechanisms provided by the State including the high courts and the magistracy were under the colonial administration. Today, all the courts except the final court of appeal are part of the structure of the national governments of the Caribbean.

Today, a significant body of the judicial work in the region that reflects jurisprudence is made by Caribbean judicial officers. But in those countries that still retain the Privy Council as the final court of appeal, with the binding nature of precedent the regional courts are in a position of subordination to the Privy Council.

In the context of all this therefore, when one speaks of the CCJ and the development of a Caribbean jurisprudence, the discussion must perforce include the development and modification of the law of precedent. The CCJ has already commenced addressing this issue. In the Barbadian case of **Boyce & Joseph v The Attorney General**, at paragraph [18] of the main judgment of the Court, it was stated that:

*“[18] The main purpose in establishing this court is to promote the development of a Caribbean jurisprudence, a goal which Caribbean courts are best equipped to pursue. In the promotion of such jurisprudence, we shall naturally consider very carefully and respectfully the opinions of the final courts of other Commonwealth countries and particularly, the judgments of the JCPC which determine the law for those Caribbean states that accept the Judicial Committee as their final appellate court. In this connection we accept that decisions made by the JCPC*

*while it was still the final Court of Appeal for Barbados, in appeals from other Caribbean countries, were binding in Barbados in the absence of any material difference between the written law of the respective countries from which the appeals came and the written law of Barbados. Furthermore, they continue to be binding in Barbados, notwithstanding the replacement of the JCPC, until and unless they are overruled by this court. Accordingly we reject the submission of counsel for the appellants that such decisions were and are not binding in Barbados.”*

The policy of the CCJ, in other words, is that a) it is fully prepared, as and when it sees it fit to overrule decisions of the JCPC; b) judgments of the JCPC remain binding until and unless they are so overruled; and c) in assessing a legal issue, the opinion of the JCPC is weighed in the same scales as the opinions of other distinguished courts the world over.

### **Another view of Caribbean Jurisprudence**

There is another notion of what is meant by “Caribbean jurisprudence”. This alternative notion suggests that we do indeed have and have always had, in full measure, a Caribbean jurisprudence; that the presence of the JCPC at the top tier, driving such jurisprudence, is not to be regarded as detracting from the existence, vitality or legitimacy of this *Caribbean jurisprudence*; that, indeed, this Caribbean jurisprudence has already made a huge contribution to Commonwealth jurisprudence in a variety of ways, for example, in areas of human rights; that we should be careful not to deny or disown this rich body of jurisprudence or to regard it as something other than

“Caribbean” merely because of the circumstances of the location or composition of our Caribbean’s out-sourced final court at the time this jurisprudence was developed.

In this context, perhaps when those who harbour this notion speak of the development of a Caribbean jurisprudence in the same breath as the establishment of the CCJ, what they mean is that, at the level of the top judicial tier, the CCJ affords the opportunity, by its judgments, more closely to align the trajectory of Caribbean jurisprudence with the mores, values, goals, needs and aspirations of Caribbean people; that although the CCJ will not *create* a Caribbean jurisprudence, it will certainly be better positioned to bring that jurisprudence closer to the people of the Caribbean since the final appellate court will now comprise Caribbean nationals and judges who reside in the Caribbean.

### **Important and Ancillary adjuncts to Caribbean Jurisprudence**

Regardless of our definition, it must be noted that Caribbean jurisprudence cannot be divorced from Caribbean legal education; from the publication of Caribbean legal texts and other legal materials; from the expansion of access to justice in the region; from the opportunities that exist for Caribbean judicial officers (including court administrators and court technology users) to meet together and discuss common issues and share best practices; from a consistent dialogue among Caribbean legal academics, Caribbean judges and lawyers in the public service of Caribbean States and from judicial education generally.

In examining the role of the CCJ in developing Caribbean jurisprudence therefore, it may be interesting to consider what role the CCJ is actually playing currently and can play in supporting some of these vital adjuncts to the development of our jurisprudence.

### **Contribution made by CCJ to developing Caribbean Jurisprudence**

The CCJ is without doubt the premier judicial institution in the region. By reason of its regional character, by dint of its enhanced judicial and administrative resources, the CCJ is called upon to play and it is already playing a substantial role in developing these ancillary adjuncts to Caribbean Jurisprudence. The other courts in the region rightly look to the CCJ to fulfill this role quite apart from merely hearing appeals.

In addition to its work as an appellate final court, the CCJ strengthens the hub around which regional bodies such as CACTUS, CAJO, and CALCA operate. CACTUS is the acronym for Caribbean Court Technology Users. CACTUS is made up of court technology users at all levels of the administration of justice. These officers come together annually to share information about their organisations, discuss issues that affect them and suggest solutions that they can incorporate, that other courts in the region may already be using to better and more efficiently manage their processes.

CAJO is the recently formed Caribbean Association of Judicial Officers. CAJO has held two biennial Conferences bringing together the judicial officers in the region. The latter of the two was held in The Bahamas just over a month ago and The Association is actually headed currently by a

Judge of the CCJ. CAJO is a prime vehicle for judicial education in the region and is currently considering online judicial education programmes for Caribbean judges.

The Caribbean Academy for Law and Court Administration (“CALCA”) is integral to the work of the Caribbean Court of Justice and has as its main objective the advancing of knowledge, education, learning, research, and practical application of Law and the Administration of Justice in the Caribbean context. Its two main functions are to provide a forum for discussing legal concepts and rules in the areas particularly of, general international law, international trade law, regional integration law, and comparative law and to facilitate training and evaluation and to develop problem-solving capability in order to enhance all areas of court administration.

In spawning or at least vigorously supporting these initiatives, the CCJ develops Caribbean Jurisprudence in a manner that only it can.

The emergence, growth and development of these bodies help to strengthen Caribbean jurisprudence. There has been a peculiar point of view expressed from time to time that we are not ready for the CCJ. It has been said that it has become quite the fashionable thing for us to speak in glowing terms about acceding to the jurisdiction of the CCJ but before we can get to that stage we need to sufficiently develop our institutions. They single out the lack of many things, including technology, acceptable courtrooms, stenographers and other matters and argue that we have yet to meaningfully improve our infrastructure, in terms of courtroom facilities and in terms of administrative services.

In my view there is something wrong with this logic. Assuming that there is a need to enhance the quality of justice administration in the region, how does this need impact on the issue of the final court of appeal? If it does then the court that should be criticized is the Privy Council because this unsatisfactory state of affairs is occurring while it is the final court of appeal. I would have thought that a change is necessary and as I have shown, the CCJ is engaged in capacity development, in a way that the Privy Council has never been and is not likely to be. The argument, which has been put forth by some, that, the prevalence of kinks in the national justice system suggests that this is not a good time to join the appellate jurisdiction of the CCJ, seems seriously flawed to me. It is precisely because these kinks are endemic that a body like the CCJ is necessary to improve, build upon and truly develop Caribbean jurisprudence.

### **Expanding access to justice**

As a judicial body, the CCJ has already embarked upon the task of developing Caribbean jurisprudence by expanding access to it.

Forty-six (46) appeals and forty (40) applications have already been filed at the CCJ between August 2005 and October 2011. Thirty-eight (38) appeals and thirty-nine (39) applications have been determined: Between August 2005 and October 2011: From Barbados there have been sixteen (16) appeals: ten civil, six criminal. There have also been fourteen applications. From Guyana there have been twenty-five (25) appeals: twenty-four civil and one criminal. There have also been twenty (20) applications. Between August 2010 and October 2011: From Belize there have been five (5) civil appeals and six (6) applications.

The number of appeals indicates that ordinary folk have additional scope and opportunity to be heard and to obtain justice. An interesting trend is the fact that the number of civil cases filed, exceeds the combined total of criminal and constitutional cases. In other words, there are more cases filed in which the State is not a party than cases in which the State is. This is an important fact and change from the pattern in the countries which do not have access to the CCJ.

The fact is also clear that the civil litigants at the level of the CCJ are not limited to corporate or wealthy people because a number of civil appeals have been heard *in forma pauperis* showing that the ordinary citizen has been benefiting from the existence of the CCJ. The facility provided under Rule 10.6 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules to impoverished parties to apply to the Court for special leave to appeal as a poor person has been utilized. Court statistics reveal that 25 such applications have been filed. It is clear then that indigent persons have been accessing the Court.

Take for example the case of **Elizabeth Ross v Coreen Sinclair [2008] CCJ 4 (AJ)**. Two very poor ladies (one quite aged) from Guyana had a dispute between them about the right to occupy a condominium. It was a matter very important to them. They could never previously have had that matter litigated by a second tier appellate court. The CCJ heard it *in forma pauperis* (even in civil matters, the CCJ will hear matters *in forma pauperis*). Two members of the Guyanese Bar agreed to represent both ladies *pro bono*. The ladies were able to have most hearings done by teleconferencing. With videoconferencing which the CCJ has now installed in the courts of Member States which did not already have the facility, even more can be done.

Accessibility of the CCJ is further enhanced by the technology that is used especially in interlocutory proceedings where the lawyers can make submissions from their offices and receive decisions and judgments without leaving their offices. The Court has improved its audio conferencing facilities and has been hearing interlocutory matters via audio, and more recently, by video. I would imagine that if necessary and desirable, the Court may even be disposed to hear full appeals by way of video conference. To help cope with the access to justice issue, currently an audio of the day's proceedings of an appeal heard at the Seat of the Court is on the Court's website within four hours and a video of the day's proceedings is usually available on the website within twelve hours. Both are also available to individuals at a minimal cost.

### **Impact on the Caribbean Lawyer**

The number of senior counsel appearing before the CCJ in the matters heard to date has been 27 and the number of junior counsel 102. There are various aspects to the impact of this on the development of Caribbean jurisprudence. First, there is the benefit to the lawyers who now have opportunity to appear before the highest court with a number of ancillary advantages. The quality of the output of the Court is to a large extent affected by the legal submissions and presentations made by counsel appearing before the Court, so the Court itself is benefitting from the range of counsel appearing before it bringing perspectives of the Caribbean legal reasoning to its attention. Of course from a perspective of high quality, and without discriminatory practices it is also of interest to the Court that the best lawyers in the region should appear before it.

### The case law of the CCJ

So far as the case law is concerned, the CCJ has already given judgment on a wide variety of cases that has had a significant impact on the course of the domestic law of those States whose final appeals are heard by it. For example, in a trilogy of cases from Barbados - **Hope v Rodney [2009] CCJ 12 (AJ)**; **Colby v Felix Enterprises Ltd. [2011] CCJ 10 (AJ)** and **Sea Havens Inc. v Dyrud [2011] CCJ 13 (AJ)**, the Court has expounded on the law of Barbados in relation to the purchase and sale of real estate. In the latter two cases the Court has been pro-active in advocating for “a small committee of experienced conveyancers [to] produce a set of standard conditions that could be incorporated into options and contracts to purchase land (subject to any specific modifications required in a particular case)”.

I can also readily point to a number of other areas in which the Court has had a substantial impact on Caribbean jurisprudence:

#### *Promoting Good Governance and Accountability*

In Caribbean Countries the ordinary citizens are expecting that the universally accepted principles of good governance will be observed. In particular they want to see that the political leadership are corruption free. There has been some scepticism as to whether Caribbean Courts would be sufficiently independent of political leaders to enforce this.

The CCJ has addressed this issue in **Florencio Marin and Jose Cove v The Attorney General of Belize [2011] CCJ 9 (AJ)** an appeal from Belize. Two former ministers of government were alleged to have transferred 56 parcels of publicly owned land to a

company beneficially owned by one of them for consideration well below the market value. The DPP decided not to prosecute them. But the attorney general decided to bring civil proceedings on behalf of the State in tort for misfeasance in public office. The defendants contended that such a process was unknown to the law and challenged the validity of the proceedings. In the presentation of the case Counsel on both sides submitted that there were no judicial precedents. In a very important world leading judgment the CCJ declared that the case should proceed. Thus already in its short lifetime, the CCJ has helped in validating a Caribbean solution on a subject that is troubling every nation, demonstrating its role in Caribbean jurisprudence as the regions grapples with the issue of public integrity and corruption.

### ***Developing the land law of Guyana***

Guyana, like Trinidad and Tobago is blessed with a diverse people characterized by different cultures, religions and ethnicities but who all share a common history of struggle and triumph. Having a rich and diverse colonial past, Guyana has a hybrid land law system, a mixture of Roman-Dutch law and English common law which is unique and complex in its own right. This mixed land law system has for many years existed with several jurisprudential problems. It is probably arguable that the situation is ripe for legislative reform. But in the meantime the ordinary folk have disputes which required resolution by the judicial system. It is perhaps in situations like this that there is a cry for leadership in Caribbean jurisprudence. While the court must respect the separation of powers and refrain from usurping the role of Parliament there is much it can do to bring the resolution of disputes over land into conformity with universally accepted principles.

The Caribbean Court of Justice, as Guyana's final appellate court has offered clarity, legal certainty and stability to the Guyanese community on many of these land issues.

*Equitable interests in immovable property in Guyana*

To those students of land law under the British system with its mixture of common law and principles of equity, the absence of the ability to acquire equitable interests in immovable property in Guyana may have seemed to be a lacuna. But the Roman Dutch system knows no such interest. In Guyana the courts and the legal profession had been plagued with controversy on the issue as judicial authorities had not been consistent in their rulings. So in highlighting some of the Court's land law judgments that have enhanced the Guyanese legal landscape, my starting point shall be the case of **Ramdass v Jairam and Others** (2008) 72 WIR 270. The Court had to determine the much debated issue of whether equitable interests in land in Guyana were recognized or could be acquired. The Court clarified this murky situation; it definitively stated that equitable interests in immovable property are not recognized and cannot be acquired in Guyana. The Court explained that where a purchaser acquired no equitable interest in the land which he bought, he merely had a right to sue for specific performance before title was conveyed to a third party for value. The Court cautioned that where such a purchaser did not sue, the third party purchaser would obtain an indefeasible title which could only be declared void by a court upon proof of fraud.

In *Jassoda Ramkishun v Conrad Ashford Fung-Kee-Fung and Others* (2010) 76 WIR 328 the Court built on the foundation laid in *Ramdass v Jairam* and answered an array of other issues. In this

case a vendor agreed to sell to a purchaser a parcel of land but died without having conveyed the property to the purchaser. The vendor's wife who was appointed administratrix thereafter transferred the land to the deceased vendor's heirs. The transfer to the heirs was duly registered so the question arose as to whether an order of specific performance to transfer the land to the purchaser could be made against the heirs on the basis that they were volunteers, not having provided any consideration for the land. This issue was of particular challenge because whilst the Civil Law of Guyana Act provided that specific performance is available as a remedy in cases involving the sale of land; the purchaser did not have any interests in land as affirmed in **Ramdass v Jairam**. The Court discovered and applied a Roman Dutch doctrine that "*volunteers who acquire a real right, in whatever form, are bound by an undertaking of their predecessor with regard to the thing to which the real right adheres whether they have knowledge of that undertaking or not*" and ruled that in Guyana a purchaser for value of land can obtain an order for specific performance against a volunteer who is not a party to a contract.

### ***Adverse Possession***

In one of the Court's early cases, **Toolsie Persaud Ltd v Andrew James Investments Ltd and Others** (2008) 72 WIR 292, the Court clarified the Guyanese law of adverse possession. This case concerned an appellant company seeking a declaration that under the relevant prescription statute it had acquired prescriptive title to a tract of land by undisturbed adverse possession for over 12 years by the company and its predecessor in title the Republic of Guyana. The appellant had purchased from the State, who had previously attempted to compulsorily acquire the land, by a process which was subsequently declared invalid. The sale to the appellant had taken place before the

compulsory acquisition was challenged. The Court in its ruling identified the criteria for establishing a claim of adverse possession. A claimant had to show that for the requisite period he (and any necessary predecessor) had: a sufficient degree of physical custody and control of the claimed land in the light of the land's circumstances; and an intention to exercise such custody and control on his own behalf and for his own benefit, independently of anyone else except someone engaged with him in a joint enterprise on the land. In its exposition of the law the Court found that what is required in a claim of adverse possession is the intention to make full use of the land in the way in which an owner would, whether he knew he was not the owner or mistakenly believed himself to be the owner. If a dispossessed landowner wishes to stop time running in favour of the person in undisturbed possession of the land, he must bring proceedings against that person who is in possession of the property. This case further decided that it was possible for the State to acquire land by adverse possession.

***Guaranteeing the protection of Human Rights provided for in unincorporated Treaties and Conventions***

The CCJ has addressed an important issue of International and constitutional law in a manner which has emphasised the human rights of the citizen. The relationship between international law and domestic varies between different legal systems. The monist system is applied by civil law jurisdictions and the dualist system applied by the common law. Monists assume that the act of ratifying the international law immediately incorporates the law into national law. Dualists emphasize the difference between national and international law, and require the translation of the latter into the former. This troubling issue came

before the CCJ in the case of **Attorney General and Others v Joseph and Boyce** [2006] 69 WIR 104. In this case Barbados had become a party to and had ratified a treaty - the Inter American Convention on Human Rights, but had not incorporated it into domestic law. As a dualist country that had implications on the rights of the citizen to benefit from its provisions. The Court considered that although individual citizens derived no rights under treaties concluded between States, the promotion of universal standards of human rights showed a tendency towards a confluence of domestic and international jurisprudence and consequently a ratified but unincorporated treaty could give rise to certain legitimate expectations. In this case the Court rationalised that in balancing the competing interests of the individual convicted of murder and sentenced to death to pursue a petition to the Inter American Human Rights Commission, and that of the State to refuse to await the completion of the process, the principle of legitimate expectation prevailed.

### ***Enforcing the constitutional guarantee of Fair Trials in criminal cases***

Throughout the Caribbean there has been an increase in crime, and the community is looking to the judicial system as one important tool in reducing crime. There are many theories that abound about the best way the judiciary can achieve this. Even though there are many who are impatient to see heavy sentences imposed, there is no one who wishes to see an innocent person convicted for a crime that he or she did not commit. There is general consensus that criminal process must be fair. The constitution of each Caribbean Member State mandates this. However, there is often difficulty in defining the meaning of fairness in the Caribbean context. A very interesting matter came from Barbados and in a form which shows that having the final court close to home and more easily accessible

goes a long way in providing the ordinary citizen with additional opportunities for justice. **Frank Errol Gibson v the Attorney General of Barbados** [2010] CCJ 3(AJ); 76 WIR 137; in this case a man was accused of murder. It seemed that the case against him was entirely circumstantial and the prosecution was relying heavily on the evidence of a dentist who had concluded that a bite mark on the victim had been made by the accused. The accused had pleaded not guilty. The field of expertise is forensic odontology and the accused could not afford to retain an expert. Among the issues that came before the CCJ was whether the obligation in the constitution to provide adequate facilities for the right of the accused to a fair trial required the State to fund the instruction of the expert, and if so whether the accused was obliged to disclose any report obtained from the expert. On these questions the Court ruled that the inequality of arms was so serious that failure to provide the expert investigator could adversely affect the fairness of the trial, and that although an accused did not have any general duty to disclose, if the defence proposed to call the expert to give evidence they would be obliged to share the report with the Crown.

### ***Pre trial detention***

One of the topical human rights issues throughout the world today is the excessive duration of pre-trial detention, as a serious human rights violation, - a violation which must be addressed from many angles. One aspect was addressed by the CCJ in **Romeo Da Costa Hall v The Queen** [2011] CCJ 6 (AJ). The point came up when the State accepted a plea of guilty of causing serious harm with intent and withdrew the indictment for murder. In calculating the sentence the trial court took into account two of the years spent on remand, although it was acknowledged that the appellant had spent four years and five months. The

CCJ emphasised that although a court does have discretion, the primary rule is that full credit should be granted for time spent on remand, but pointed out some of the elements which would justify exceptions to the primary rule, including, where the court concluded that defendant deliberately contrived to expand the time on remand, and the entire or part of the pretrial custody was unconnected with the offence for which he was being sentenced, and where the custody or part of it was also caused by other offences for which he had been convicted or was awaiting trial.

**Civil Society (and the legal profession in particular) must lead in advocating for the CCJ**

Despite the current mood of criticizing the political leadership of CARICOM for the fact that only three Member States have acceded to the final appellate jurisdiction of the CCJ, I think it is important to acknowledge that the regional governments exhibited the vision to create the Court, the commitment to put all the mechanisms in place for it to become operational, the practical good sense to fund it in perpetuity and they have seen to its becoming a fully functional and operational entity. A review of the history of the establishment of the Court will show that the politicians did all this amid much controversy. Yet they persisted. My understanding is that currently, in the OECS, several Prime Ministers and several Opposition Leaders have publicly expressed their support for acceding to the appellate jurisdiction, and in doing so have outlined the technical and political problems that cause delay in taking that final step. At my swearing in ceremony Prime Minister Douglas of St. Kitts explained that the OECS were considering joining as a block, and later in the same month Prime Minister Spencer of Antigua explained the rationale as requiring support in the process of getting the population to vote positively in a referendum. In Trinidad and Tobago the government has provided the buildings, facilities and courtesies that enable the Court

to operate every day. Jamaica actually passed legislation for acceding to the CCJ as the final court of appeal, and this was frustrated by litigation which allowed the Privy Council to overturn the legislation. And as for the Bahamas, although it has not joined the Court, the Government has been making regular financial contribution to the Court since 2006.

I think what would give a further boost to the efforts to have more States accede to the appellate jurisdiction is for the legal profession, the academic community and the press in the region to continue voicing their support of the CCJ. There are complaints about prevailing problems that beset the justice system. But certainly, dissatisfaction with the *status quo* should not be a reason for retaining it. There is still tremendous ignorance in the region about the work of the Court. I have encountered persons in the region who are not even aware that the CCJ has been busy hearing cases for over six years now. It is invidious for the Court itself to be touting its record of achievement and so civil society needs to take up that slack. We should be mounting public awareness programs to inform ordinary folk about the CCJ. Perhaps if there is greater outreach activity on this issue by the judicial, legal and academic leaders as well as by Bar Associations, there will be greater Press coverage and this in turn will empower governments to act more decisively with knowledge that the next steps to acceding to the appellate jurisdiction reflect the wishes and expectations of their constituencies.

### **Assessing the CCJ after 7 years**

Regardless of one's conception of Caribbean jurisprudence, as we look back on seven years of operation of the Court it is possible to make an objective assessment of its achievements and

comment on whether it has lived up to the expectations of those who supported it, and whether it has given cause to those who opposed it to rethink their positions.

Any such assessment will reveal that those countries that have embraced the appellate jurisdiction of the CCJ are experiencing the benefit of having their appeals heard by a body that, when given the opportunity, will ensure that the law is developed and justice is done in a manner which reflects Caribbean values.

### **Caribbean Jurisprudence as embracing Haiti and Suriname**

Earlier I alluded to the Court's Original Jurisdiction. That jurisdiction embodies yet another, a broader view of Caribbean Jurisprudence which I have not touched upon. It is a notion that treats the region as being not confined to the Commonwealth Caribbean. With Suriname and Haiti, both non commonwealth countries, joining the CARICOM family and hence subjecting themselves to the jurisprudence of the CCJ in the interpretation and application of the Revised Treaty of Chaguaramas, the case may be made that in fulfilling its mandate under the Revised Treaty, the CCJ is empowered, in its Original Jurisdiction, to develop a jurisprudence that impacts not only on international economic relations but also on the domestic legal policy of CARICOM States.

Would this then not be a CARICOM jurisprudence? Indeed, when the CCJ pronounces on the interpretation and application of the Revised Treaty, its judgments do give rise to an indigenous jurisprudence unique only to the Caribbean.

It is noteworthy that in its judgment delivered in **TCL v The Caribbean Community**, in claiming for itself a power of judicial review over the acts of the organs of CARICOM, the CCJ stated that the Revised Treaty of Chaguaramas [“the RTC”]:

*“...represented a transformation of the CARICOM Single Market and Economy “into a rule-based system, thus creating and accepting a regional system under the rule of law”:: See: TCL v The Caribbean Community [2009] CCJ 2 (OJ) at [32]. This necessarily means that the Court has the power to scrutinise the acts of the Member States and the Community to determine whether they are in accordance with the rule of law which is a fundamental principle accepted by all the Member States of the Caribbean Community. It would be almost impossible to interpret the RTC and apply it to concrete facts unless the power of judicial review was implicit in that mandate. It is the judgment of the Court that the impugned decisions to authorise suspensions in this case are subject to judicial review by the Court.*

*[39] In carrying out such review the Court must strike a balance. The Court has to be careful not to frustrate or hinder the ability of Community organs and bodies to enjoy the necessary flexibility in their management of a fledgling Community. The decisions of such bodies will invariably be guided by an assessment of economic facts, trends and situations for which no firm standards exist. Only to a limited extent are such assessments susceptible of legal analysis and normative assessment by the Court. But equally, the Community must be accountable. It must operate within the rule of law. It must not trample on rights accorded to private entities by the RTC*

*and, unless an overriding public interest consideration so requires, or the possibility of the adoption of a change in policy by the Community was reasonably foreseeable, it should not disappoint legitimate expectations that it has created.”*

CARICOM jurisprudence therefore confers benefits not only on the Contracting Parties to the Revised Treaty but also on private entities within CARICOM and the CCJ is the “sole and exclusive” tribunal empowered to develop this jurisprudence.

### **Conclusion**

Jurisprudence is the theory and philosophy of law. Whichever yardstick one uses for assessing Caribbean jurisprudence, and whatever conception one has of such jurisprudence, I hope I have said enough to demonstrate that in each case the role of the CCJ is critical to the development of such jurisprudence and that over the last seven years the CCJ has been quietly discharging this role. Yes, there are some who express impatience over the fact that more States have not acceded to the appellate jurisdiction. But this, in my view, is a temporary matter. The JCPC has been our final court of civil and criminal appeal ever since we became British colonies, several centuries ago. The CCJ is an institution that is intended to last for an even longer period of time. When we consider time from that perspective, seven years is not that long. There are some courts that in their first seven years heard only a fraction of the cases the CCJ has already disposed of. The CCJ is here to stay and with the support of the people of the region it is an institution that can only grow stronger and stronger.

