



News

CARIBBEAN ASSOCIATION OF JUDICIAL OFFICERS

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The Gender Equality Issue

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EDITOR'S Notes

By the time some of you read this edition of CAJO NEWS the Referendum results in Grenada would have been known. This is assuming of course that the Referendum does take place on November 24th as scheduled at the time of writing. The vote had earlier been slated for 27th October. This exercise in Constitution re-making holds huge implications not just for the people of Grenada, Carriacou and Petit Martinique but for the entire CARICOM and English speaking Caribbean. In this edition CAJO NEWS lists the choices before the people of our sister isles.

In this issue, CAJO NEWS publishes an interview we conducted with Hon Mr Justice Rolston Nelson, the longest serving judge of the Caribbean Court of Justice. Justice Nelson will be retiring in 2017 and we thank him for his service to the region and wish him all the very best in his future endeavours.

Currently, CAJO is actively partnering with various bodies in different respects. Firstly, we are partnering with UN Women and the JURIST project on a range of initiatives aimed at enhancing the gender sensitivity of judicial officers generally and particularly in relation to domestic violence. On the latter issue the picture is a grim one. In one CARICOM country alone there were over 56,000 new domestic violence matters filed in the year preceding July 2015 and, over the current year, over 14,00 applications were made for protection orders. Secondly, CAJO is partnering with the Judiciaries and Law Associations of Trinidad and Tobago and Belize respectively in organising a Run for Haiti fund raising event. The event takes place on Saturday 3rd December in each country.

CAJO NEWS also comments on the well organised CMJA conference hosted by Chancellor Singh and our colleague judicial officers of Guyana. The conference ended with an enjoyable day outing which was taken advantage of by most participants. After three days of interesting Panels and presentations conference attendees were treated to a sumptuous meal at this outing and made good use of the facilities (whether the pool or the river) and got a glimpse of the history of Guyana with a visit to a Fort. CAJO NEWS extends sincerest congratulations to Chancellor Singh and the Chair of the Local Organising Committee, Justice Brassington Reynolds and his committee for a smoothly executed conference.

Another year is quickly coming to an end. And next year we shall be busy with our 5th Biennial in Curacao. We ask all judicial officers to save the dates – 28th to 30th September – as we hope to see many of you present.

In the mean time CAJO NEWS extends best wishes to all for the coming Holiday Season and the New Year ahead.

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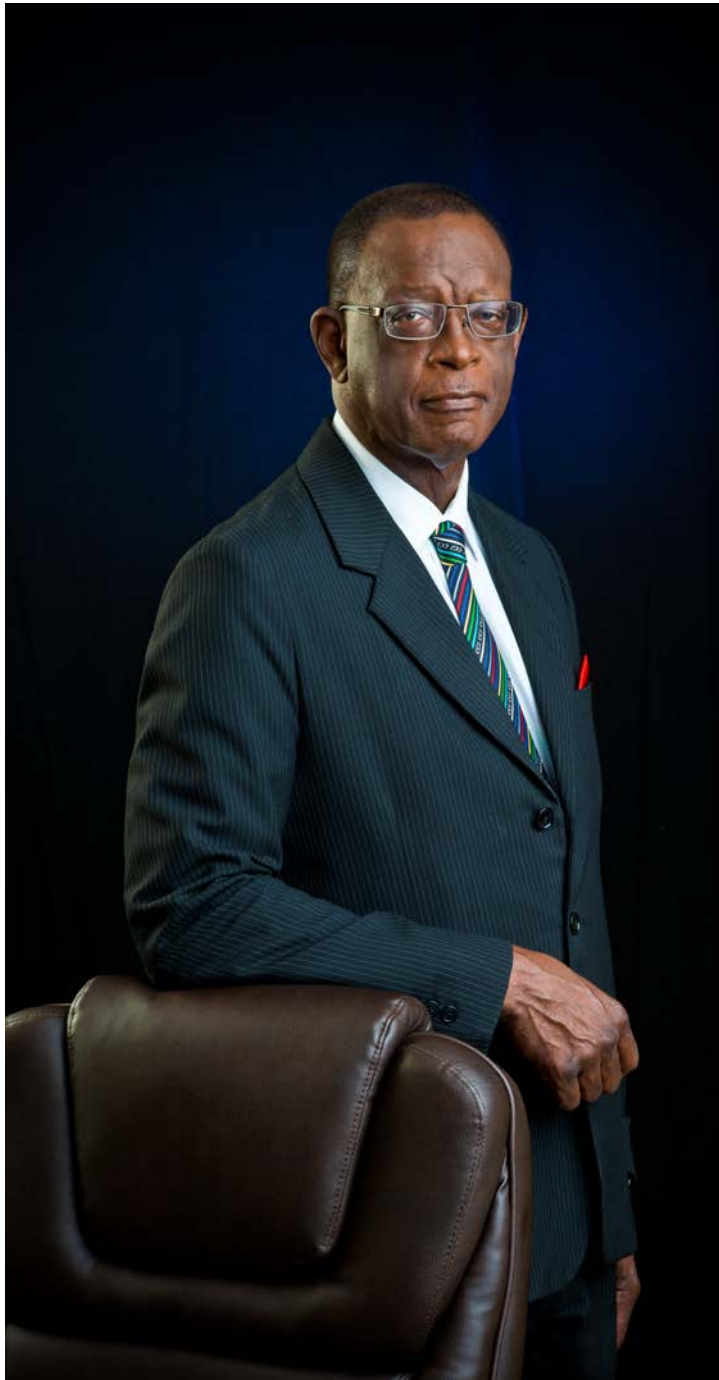
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Officers

The Honourable Mr. Justice Rolston Nelson

CAJO News interviews the longest serving Judge of the Caribbean Court of Justice as he prepares for retirement

CAJO Profile



CAJO NEWS: Justice Nelson, you are the longest serving judge of the CCJ and in light of your impending retirement we are extremely grateful that you have agreed to this interview. First of all we note that you followed a rare path to appellate adjudication. Both Sir Hugh Wooding and Rt Hon Michael de la Bastide were each plucked from private practice to the office of Chief Justice. You also went straight from private practice to being a judge of the Trinidad and Tobago Court of Appeal. Excluding of course the two former Chief Justices, has there been any other precedent for this in Trinidad and Tobago and did you face any personal or professional challenges as a result of it?

Apart from Sir Hugh and the Rt. Hon. Michael de la Bastide, I was the first member of the Inner Bar to go to the Court of Appeal directly from the Inner Bar. No member of the Bar of Trinidad and Tobago has since gone to the Bench or direct to the Court of Appeal. Essentially in my early days in the Court of Appeal, I was the junior judge and all other members of the Court understood that I was to be given time to learn the craft by their example. The presiding judge picked the matters in which I would write the leading judgment. From that stage of apprenticeship, I graduated to writing concurring and sometimes dissenting judgments. I learned much from discussions every day with the senior judges and read extensively.

CAJO NEWS: What would you consider to be the most important attributes of an appellate court judge?

An appellate judge should first master the facts. He must then define the issues in the appeal, the applicable law and any relevant academic writing on those issues. The appellate judge must be sensitive to the limitations of the appellate judge as to findings of fact, the exercise of discretion and the doctrine of precedent. The appellate judge will always consider whether the result is just in all the circumstances.

CAJO NEWS: You served on the CCJ for over eleven years. What kind of impact has the Court in your view made on the Caribbean legal landscape?

I do not think that judges should indulge in self-congratulation about the good their courts are doing. However, I do say that the CCJ is testimony to the fact that there can and does exist a final court in the Caribbean of high quality and that a significant legal foundation has been laid jurisprudentially for a single Caribbean economy and single market.

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CAJO Profile

CAJO NEWS: We're sure that you came to the CCJ with high hopes and dreams, do you think you have accomplished what you originally intended? Any cases in particular that stood out for you?

Again, as a judge of this court I would not like to identify cases, but I think the record speaks for itself both in the appellate and original jurisdictions. I had no personal aspirations other than to contribute to the jurisprudence, where appropriate, and to see both the appellate and the original jurisdictions fully operational. However, the CSME project seems to be limping along and the appellate jurisdiction remains undersubscribed after eleven years.

CAJO NEWS: Throughout your long career you must have mentored other judicial officers. Was this something you enjoyed and do you see mentoring as a practice that should be institutionalized?

I did not specifically mentor other judicial officers in the sense of taking them under my wings. But I think young judges learn by example. I was conscious of mentoring only in that sense. I suppose it is possible to institutionalize mentoring, but would rely on the interaction of senior judges with new judges. I prefer a collegial atmosphere of learning and sharing.

CAJO NEWS: We note that you began your professional career as a lecturer at the Law Schools of the Council of Legal Education and that you have been teaching at the Law School for several decades. Tell us a little about this please. When did you begin? How does your love for teaching compare with your love for judging? Do you have any comments on the teaching of law today as compared with a few decades ago?

I began teaching law in 1973. I was fascinated by the challenge of clear exposition. I was also excited by the insights of students into many of the cases and grey areas of the law. I always felt my practice was part and parcel of my preparation to teach the students. When I ceased private practice, it was my experience on the Bench that informed a lot of my teaching. Certainly in the Law Schools nowadays one has to relate all teaching to a particular outcome in the training of a student for professional practice. In the old days, there was not as much emphasis on the practical process of resolving a legal dispute or attaining a legal objective.

CAJO NEWS: You have worked very hard all your life; do you think it is time to take a rest now? Are you considering full retirement? Do you have any definitive plans for retirement?

I certainly think that one may do the same thing for too long – 17 years – and one should explore different ways of contributing to society. I am still working out how that new phase is going to be fulfilled. In my new endeavours, I will be working and not simply sitting at home.



CAJO News Highlights

Belize and the BVI prepare for Arbitration

The Supreme Court of Belize will soon roll out a Court-connected Arbitration facility. It will be the first of its kind in the Caribbean region.

In preparation for the intended January 2017 implementation, the Supreme Court and The University of the West Indies, Open Campus Belize, recently facilitated a four (4) days training and capacity building programme, which incorporated a Chartered Institute of Arbitrators (CIArb) Accelerated Route to Membership component, from October 3-6 at The UWI Open Campus.

The first cohort of participants, comprising eighteen (18) lawyers drawn from the Magistracy as well as the public and private bars, undertook an intensive training programme after which those who become certified will be included on a Court Roster of Arbitrators. After implementation of the new arbitration facility, persons who file civil claims in the Supreme Court will be able to opt into having their disputes determined by an Arbitrator chosen from the Court Roster.

The Honourable Justice Courtney A. Abel is leading this initiative by the Supreme Court. The new facility will see the addition of a new Part 74 to the Civil Procedure Rules, which will specifically provide for court reference to arbitration as an option available to civil litigants in certain cases. The said Part 74 Arbitration facility will complement the already existing Part 73 mediation facility. Separately and together, they underscore an overall commitment by the Belize Supreme Court to support a culture for dispute management and better community relations where in appropriate cases persons are able to, with assistance from the court, where necessary, resolve their disputes without the need for court trials.

Dr Christopher Malcolm, Fellow of the Chartered Institute of Arbitrators and Chair of the Caribbean Branch as well as Ms Shan Greer, Fellow of the Chartered Institute of Arbitrators and Vice Chair of the Caribbean Branch were the facilitators. Both are practising arbitrators.

Dr Malcolm is also a Senior Lecturer and Deputy Dean in the UWI Faculty of Law at Mona, and Partner in the firm of Malcolm Gordon, Attorneys-at-Law (www.malcolmgordonlaw.com). Ms Greer is also a Legal Consultant with the Firm of Floissiac Flemming, Attorneys-at-Law (www.smgreer.com).



The training programme being undertaken will continue with a cohort of non-lawyers in January 2017. Those who become certified then will also be added to the Court Roster, and will have equal opportunity to serve as Court-connected arbitrators.

Meanwhile, on Thursday, October 6, at the Cutlass Tower in Road Town Members of the BVI's legal fraternity, and other interested parties, assembled to participate in the discussion of the BVI's new International Arbitration Centre (IAC) which was scheduled to be completed on 31st October this year. The IAC consists of 4 large conference rooms, 6 breakout rooms, that can be used for training and mediation, along with a reception and large lounge area. Francois Lassalle, Chief Executive Officer of The IAC has stated that "We are creating a space that is of international standard, completely high tech with state of the art facilities." The IAC in the BVI and that country's Commercial Court cater in particular to the robust off-shore companies business that is so vital to the BVI's economy. Like Mediation, Arbitration in the English speaking Caribbean is likely to become more and more attractive to commercial litigants and investors as a complement to litigation. [CAJO]

CAJO News Highlights

Report on the Conference of the Commonwealth Judges and Magistrates Conference Theme - "The Judiciary as Guarantor of the Rule of Law", Georgetown, Guyana. September 18 - 22 2016

contributed by: Ann-Marie Smith, Chief Magistrate
and Patricia Arana, Senior Magistrate – Belize

INTRODUCTION

A Commonwealth Magistrates' and Judges' Association Conference was held in Georgetown, Guyana, from September 18 to 22, 2016. The theme of this year's conference was "The Judiciary as Guarantors of the Rule of Law". The conference was attended by several CARICOM judicial officers and Chief Justices, Judges, and Magistrates from other parts of the Commonwealth. Ms. Ann Marie Smith, Chief Magistrate of Belize attended the Conference and kindly presented this report to CAJO.

DAY 1

The Opening Ceremony of Conference was chaired by Director of Programmes, Judge Shamim Qureshi (England). After some cultural entertainment the attendees were treated to addresses from His Honor Justice Carl Singh, Chancellor and Head of the Judiciary in Guyana; The President of the Commonwealth Magistrates' and Judges' Association, His Honor Chief Judge John Lowndes; and Guyana Prime Minister Hon Moses Nagamootoo. Also present was President of the Republic of Trinidad and Tobago, His Excellency Anthony Carmona. The keynote speech for the first day was delivered by Mr. William Bailhache, the Chief Justice of Jersey, United Kingdom. He was introduced by Sir Dennis Byron, President of the Caribbean Court of Justice.

The introductory speeches focused on the theme of the conference. The main point put forward by the speakers was that the judiciary/courts should be seen as places that are accessible to all, and judges must ensure that the wider society understands our role as guarantors of the rule of law. Issues such as the independence of the judiciary, judicial conduct and etiquette, and negative media exposure were also addressed. It was proposed that the court should have a press officer to address reports from the media that are inaccurate. It was also noted that it is a common factor to all jurisdictions that the Bar Association needs to play an active role in ensuring that the rule of law is upheld.

The afternoon panel session was chaired by His Honor John Vertes of Canada. The panelists included District Judge Jasbendar Kaur of Singapore, Lord Justice Peter Gross of England and Wales, and Her Honor Justice Stella Mugasha of Tanzania. The topic for the afternoon session was: "Providing sufficient resources for the Courts and Judiciary as a fundamental constitutional obligation – a discussion about the CMJA 2015 Resolution". Lord Justice Gross made the link between the Rule of Law and the Independence of the Judiciary. Addressing the issue of separation of powers he stated that the state has an obligation to ensure that there is a proper, efficient legal system, by providing the necessary resources and that this should be seen as a constitutional obligation. Part of his presentation also focused on the use of Information Technology, for example, the use of video links, not only for efficiency for the judiciary, but also for the wider public who has access to it. Madam Justice Stella Magasha spoke of recent initiatives in Tanzania, including the 14th Constitutional Amendment in 2005 that recognizes the Judiciary "as a pillar of the State", rather than just a government department. District Judge Kaur focused his presentation on the challenges that present themselves when addressing adequate resources for the Judiciary.

The Break-Out Session for the first day focussed on the topic "Upholding the Rule of Law in the courtroom – Elements of unfair trials". The delegates were divided into 5 groups chaired respectively by: Justice Jones Dotse, Ghana; Sheriff Gordon Liddle, Scotland; Chief Magistrate Matankiso Nthunya, Lesotho; Mr. Mark Guthrie, Rule of Law Division, Commonwealth Secretariat, and Chief Magistrate Ann Marie Smith, Belize. A set of questions were addressed in each of the breakout sessions, including the plight of unrepresented defendants, legal representation of the defendant's choice, the right to an interpreter, the presence of parents/guardians at juvenile proceedings, disclosure by the prosecution and the defense, recusal, and trial within a reasonable time.

CAJO News Highlights

Report on the Conference of the Commonwealth Judges and Magistrates

...continued

DAY 2

Day 2 started with an address from the Secretary General of the Commonwealth, Baroness Patricia Scotland of Asthal following which it was announced that the next CMJA Conference will be held in Tanzania, from September 24-28, 2017.

The Keynote Speech for the second morning's session was done by His Excellency Anthony Carmona, President of the Republic of Trinidad and Tobago. President Carmona gave a very captivating presentation addressing several issues relevant to the role of the judiciary as guarantors of the rule of law.

The panel session held after President Carmona's speech explored the issue of balancing Anti-Terrorism legislation with human rights. The speakers for this session were Justice Patrick Kiage of Kenya, Judge Shamim Qureshi, and Judge Tim Workman of England and Wales. The panel was chaired by Justice Z A Bulkachuwa of Nigeria.

The first of the afternoon's sessions was divided in two. One dealt with Environmental Law and Sustainable Development and the second with Changing the Environment in the courtroom in cases of Domestic Abuse and cases of Sexual Violence. The speakers for the former included Lord Carnwath of the UK Supreme Court. The speakers for the latter were Her Worship Lisa Ramsumair-Hinds of Trinidad and Tobago and Judge Martin Picton of England and Wales.

The second of the afternoon sessions was divided into 4 groups that looked at:

- (i) "Cybercrime – the crime of the future". The Moderator was Steven Malby of the Commonwealth Secretariat;
- (ii) "Alternative Dispute Resolution – is it as good as they say?". The Moderators were Justice Ambeng Kandakasi of Papua New Guinea, and District Court Judge David Lim of Singapore;
- (iii) "Tackling Gangs and Serious Organised Crime in Courts". The Moderator was Chief Magistrate Orazio Rinaudo of Australia; and
- (iv) "The Rights of Indigenous People". The moderators were Melinda Janki of Guyana, and Mr. Anthony Ross QC, of Canada

DAY 3

Day 3 included three presentations. The morning Keynote Speech was presented by Dr. Dianne Douglas, Clinical Psychologist of Trinidad and Tobago whose topic was "Understanding the underlying causes of domestic violence". Her presentation brought to light the several underlying issues that may cause domestic violence, from the perspective of both the abuser and the victim. These underlying issues include the cultural being of the person, their social and economic norms, their internal and external environment, gender ideologies, identity and expectations, and the many reasons presented for being in an abusive relationship. The subject of the second presentation was "Capital Punishment – to abolish, or not to abolish, that is the question". The panelists were Justice B. Rajendran of India and Madam Justice Desiree Bernard of Guyana. This session was chaired by Justice Adrian Saunders of the Caribbean Court of Justice and a very robust discussion followed both presentations. The final presentation was done by Regional Employment Judge Barry Clarke of England and Wales. He presented on the topic "Your digital Footprint: A Lesson in Judicial Internet Security". In his presentation, Judge Clarke gave an illustration on how detailed information can be found on a person, just by searching for the name on the internet. He warned the delegates about the type of information we choose to share on the internet, and how cunning hackers can be. He provided tips and guidelines in dealing with internet research, and how to deal with social media.

CONCLUSION

The conference was a very enlightening experience with a wide array of live, pertinent topics. We appreciated both the opportunity to attend and interact with colleagues from the Commonwealth and also gain useful knowledge. We quickly recognized that the issues being faced by judicial officers in our jurisdiction are common throughout the Commonwealth. We were most grateful for the experienced presenters who displayed a wealth of knowledge through their presentations/speeches. We have personally benefitted from the conference and the exposure afforded by our attendance. It is our intention to apply, as far as possible the techniques and learning acquired at this conference in our day to day deliberations and application of the law. [CAJO]

CAJO News Highlights

CAJO and UN Women promoting Gender Protocol for Judicial Officers

Attaining equality between women and men and eliminating all forms of discrimination against women are fundamental human rights. Small wonder that among the 17 Goals the UN has promulgated for global sustainable development, one of them, Goal 5 of the Sustainable Development Goals (SDGs), is Gender Equality.

Judicial officers who have the power and authority to adjudicate disputes, to interpret the law and the Constitution, to protect human rights and advance democracy, to mediate between the plight of the lowly citizen and the might of the state ... judicial officers can play a huge role in advancing Goal 5. And this is why CAJO is fully in step with the promotion of this laudable objective and both organisations - CAJO and UN Women - are currently actively collaborating to promote a draft Gender Protocol for judicial officers in the Caribbean.

The initiative will take the form of the creation of draft Protocols for the States of Trinidad and Tobago and Barbados. With the agreement of Hon Chief Justice Ivor Archie and Chief Justice Sir Marston Gibson, CAJO and UN Women have initiated the process in the States of Trinidad and Tobago and Barbados. The plan is to create a draft protocol which each judiciary can discuss, publish and actively implement.



In an effort to obtain information region wide on the level of gender sensitivity that exists among Caribbean judicial officers, CAJO has prepared a survey form which we ask all our readers to complete. The form takes no more than 10 minutes to complete and can be done anonymously. It can be accessed online here. We urge all judicial officers to fill out the questionnaire as soon as possible. [CAJO]

In other News around the world...

Sections of the British Press go beserk after High Court Brexit Ruling

Indian Supreme Court rules that 'equal pay for equal work' applies to temporary workers

Sign up for HeforShe

Jamaica Government Minister and Opposition Justice Spokesman on Judges and illegal squatting

Jamaica Bar Association weighs in

LORD BINGHAM'S SON DEMANDS THAT LORD CHANCELLOR DEFEND BREXIT JUDGES

Grenada Referendum ALERT!

Grenada is abuzz with excitement as that country prepares to vote on 24th November. The government proposes to amend the island's Constitution with the hope of redefining the country. In order to make the changes a reality eight constitutional amendment Bills have been drafted on which the Grenadian electorate will be asked to give a "yes" or "no" response. The Bills may only be enacted if at least two-thirds of all validly cast ballots are in favour.

The first of the seven Bills concerns the "Caribbean Court of Justice and other justice related issues". The Bill seeks mainly to remove the Judicial Committee of the Privy Council as the country's final appellate court and replace it with the CCJ and to change the name of the Grenadian Supreme Court from the "Supreme Court of Grenada and the West Indies Associated States" to the "Eastern Caribbean Supreme Court" so as to be in uniformity with the rest of the OECS.

The second Bill concerns the creation of an "Election and Boundaries Commission" to oversee the registration of voters and the conduct of general elections. The Commission will essentially fuse and assume the functions of the Constituency Boundaries Commission and the Supervisor of Elections.

The Third Bill appreciates the possibility that one party may win all seats in the House of Representative in a general election. That is currently the case in Grenada. If this happens in the future this Bill purports to give the Governor General the power to appoint a Leader of the Opposition from the party who secured the second highest number of votes.

The fourth Bill purports to give parliament the power to specify a fixed date for general elections by specifying a day of a specific month after a fixed number of years (not exceeding five years) on which a general election must be held. The only exception to this fixed election date would be a case where a motion of "no confidence" was successful upon which Parliament would be dissolved and an election is held at an earlier date.

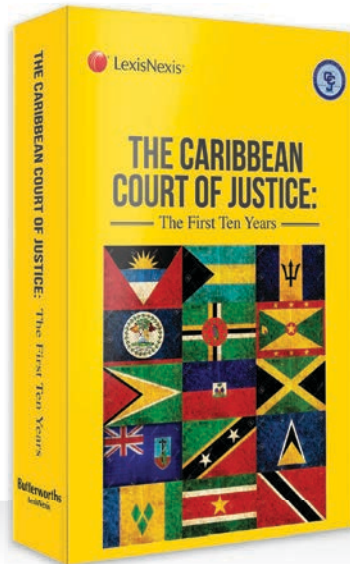


There is also a Bill to change the name of the State from "Grenada" to "Grenada, Carriacou and Petite Martinique". The change of name is intended to give the people of Carriacou and Petite Martinique a sense of international recognition similar to Nevis, Tobago, The Grenadines and Barbuda.

There is also a Bill seeking to expand the scope of fundamental rights and freedoms including rights concerning: (a) persons under arrest; (b) persons suffering from visual, aural and/or mental challenges; (c) general rights of children and in particular, the inclusion of a specific right to public funded education to children; (d) gender equality; (e) intellectual property rights; and (f) the protection of the environment.

Much work has gone into the process of preparing for the referendum. Irrespective of the result and CAJO NEWS salutes constitutional expert, Dr Francis Alexis, for guiding the process and doing so much to enlighten the people of Grenada, Carriacou and Petite Martinique.
[CAJO]

THE CARIBBEAN COURT OF JUSTICE: The First Ten Years



The Caribbean Court of Justice (CCJ) has celebrated ten years since its inauguration on 16 April 2005 and since its first judgment on 26 October 2005. Its President, the Right Honourable Sir Charles Michael Dennis Byron, asked a distinguished group of jurists to provide their perspectives on the CCJ's judgments in that period. Among the contributors are: Sir Shridath Ramphal, Dr Lloyd Barnett, Dr Patrick Antoine, Dr David Berry, Mr Sheldon McDonald and Sir Manuel Sosa.

Also included for those years are summaries of the cases decided in both the regional Original Jurisdiction and the domestic Appellate Jurisdictions. Judgments in a select number of seminal cases published in the West Indian Reports are reproduced in full.

The publication is designed to inform persons of the nature and quality of the work of the Court and highlight its impact on Caribbean peoples.

'THE CARIBBEAN COURT OF JUSTICE: The First Ten Years'
is now available to purchase.

Price: US\$89

To purchase your copy, please contact:

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