



News

CARIBBEAN ASSOCIATION OF JUDICIAL OFFICERS

JULY 2013 • ISSUE 2

Courts of Appeal celebrate 50



THE COURT OF APPEAL OF JAMAICA

Front Row (L to R) The Hon Mrs Justice Hazel Harris JA; The Hon Mr Justice Seymour Panton P; The Hon Mr Justice C. Dennis Morrison JA

Back Row (L to R) The Hon Mr Justice Mahadev Dukharan JA; The Hon Miss Justice Hilary Phillips JA; The Hon Mrs Justice Norma McIntosh JA; The Hon Mr Justice Patrick Brooks JA

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

(L to R) The Hon Mr Justice Stollmeyer; The Hon Mr Justice Mendonça; The Hon Mr Justice Bereaux; Chief Justice The Hon Mr Justice Ivor Archie; The Hon Mr Justice Narine; The Hon Mme Justice Weekes; The Hon Mr Justice Smith; The Hon Mme Justice Yorke-Soo Hon, The Hon Mme Justice Rajnauth-Lee



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EDITOR Notes

This second edition of CAJO NEWS celebrates the Golden Anniversary of the establishment of the Courts of Appeal of Trinidad and Tobago and Jamaica. Each of these courts was inaugurated in the same year (1962) that those countries initiated the dismantling of colonial rule in the English speaking Caribbean by becoming independent States. Prior to 1962 Courts of Appeal throughout the Anglophone Caribbean were all regional courts. The court that serviced both Jamaica and Trinidad and Tobago immediately before 1962 was the Federal Supreme Court which existed between 1958 and 1962. The Federal Supreme Court itself succeeded the West Indian Court of Appeal, which was established in 1919.

In this issue CAJO NEWS hears from the Heads of Judiciary of both States. A fascinating interview is done with Hon Justice Ivor Archie, who is in the unenviable position of being not only the Chief Justice of Trinidad and Tobago but also the President of that country's Court of Appeal. The interview gives us an insight into how Justice Archie is able to juggle his enormous judicial and administrative responsibilities.

Justice Archie's Chief Justice counterpart in Jamaica is Hon Zaila McCalla OJ, one of the growing number of female Chief Justices in the region. In her interview with CAJO NEWS Chief Justice McCalla provides an insightful assessment of the role Jamaica's judiciary has played over the last 50 years and she details some of the challenges the administration of justice faces in Jamaica.

In his interview with CAJO NEWS, the President of the Jamaica Court of Appeal, Hon Mr Justice Seymour Panton OJ, CD searches his memory to list a few of the stand-out cases that have occupied the attention of that court over the decades. Justice Panton also has some interesting remarks on the use of ADR which he fully endorses.

The Trinidad and Tobago Judicial Education Institute had invited Justice Adrian Saunders to deliver its Distinguished Jurist Lecture on The Role of the Court of Appeal in developing and Preserving an Independent and Just Society. The full text of Justice Saunders' lecture will soon be published by the JEI but the topic is so apposite that CAJO NEWS has reproduced excerpts of his address in this edition.

The issue is rounded out with a farewell to Justice Humphrey Stollmeyer who recently retired from the Trinidad and Tobago Court of Appeal and an article on The Sexual Offences Act and Regulations in Jamaica.

Finally, CAJO NEWS continues to wish Justice Wendell Kangaloo every hope for a full recovery from the horrific injuries he sustained in an awful motor vehicle accident on May 20 2012 in which four lives were lost. CAJO NEWS salutes Justice Kangaloo who is now back in Trinidad and Tobago and extends best wishes to him.

Adrian Saunders
Editor

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The Honourable Mr Justice Humphrey Stollmeyer

CAJO Profile

A special sitting of the Court of Appeal in Trinidad and Tobago was convened on the 19th December in recognition of the service of Honourable Mr Justice Stollmeyer.

Justice Humphrey Stollmeyer was born on the 22nd December 1947 and attended Queens Royal College, Port of Spain. He was admitted to the practice of law in Trinidad and Tobago and England and Wales in 1976 and 1980, respectively. From 1976 to 1996 he practiced with the firm of JD Sellier & Co and became a partner in 1978. Among his many certifications, Justice Stollmeyer is also a member of the Chartered Institute of Arbitrators and a Registered Certified Mediator (civil and non-family matters) in this jurisdiction.

The following is an excerpt of his reply during the special sitting of the Court of Appeal.

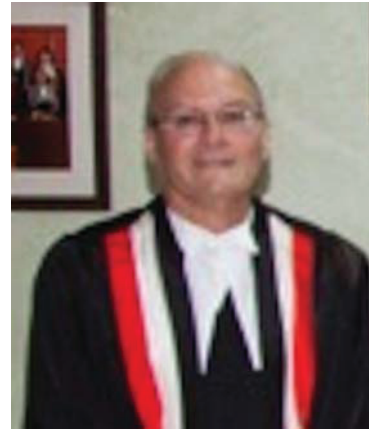
As a former Chief Justice of Ontario, the Honourable Roy McMurtry said some years ago:

"Civility among those entrusted with the administration of justice is central to its effectiveness and to the public's confidence in the system. Civility ensures matters before the court are resolved in an orderly way, and helps to preserve the role of counsel in the justice system as an honourable one."

If you stray from those principles, what happens, really, is that you end up doing your client a disservice simply because the judge ends up spending time trying to sort out what you are trying to do, rather than paying regard to the merits of your client's case. Remember that it's a disservice.

I came here in November, 1996, on what might be called "the leading edge of a wave." Chief Justice, Michael de la Bastide had a firm and unremitting commitment to improving the system of justice, the administration of justice, and I have been there from the beginning of it all. Consultation, some funded by the World Bank in 1996/1997, led to the Greenslade Report of 1998, and then to the Family Proceedings Rules in 1998, and the Civil Proceedings Rules of the same year. It's a matter of regret for me and many others, those rules took another six and seven years, respectively, to come into force. But when they did, together with the docket system, they brought about the proverbial sea change. We all, all the practicing attorneys, all the judges know what the sea change is; but for those who are less initiated, I'll give you an example.

The docket system meant that a case went to a judge and not to a court. It meant that that judge was, to use an expression, "stuck with the case until it was finished." So you have to get on with it. From the practitioner's point of view it meant that they could no longer give the same excuse to a series of judges, and they soon came to learn that, so they also got on with it. As a measure of where we progressed: In 2008, I think it was, the judges of the High Court introduced a very informal system of judicial settlement conference. That progressed, you might



say, to a mediation pilot project in 2010 and, as has been remarked this afternoon, court annexed mediation and a judicial settlement conferencing is to become a big item in the new year. Now, what Chief Justice de la Bastide started, gained momentum, and that momentum was maintained by his successors in office, each in their own way: Chief Justice Sharma Chief Justice Hamel Smith, well, that's what he was, in fact; and now Chief Justice Archie. The judges, including myself, were all part of that change and of that evolution, if I might call it that. But there has been one constant in all of this change and all of this evolution. It is that there has always been a strong, perhaps on occasion a strong willed, independent, impartial body of judges at all levels in our Judiciary, and it is my hope and prayer that that will continue always. A strong, independent, impartial Judiciary is essential to preserving and strengthening the rule of law; and the rule of law underpins a democracy and a democracy is what we must all continue to have, always, and we all have a role to play in that.

In mentioning the change and the evolution during my time here, there is one person to whom I really ought to make mention of: It's my brother judge, Mr Justice Kangaloo, whose commitment to the system of justice goes back at least 20 years when he was a member of the committee that produced what we refer to now as the Gurley Report. His contribution to the judiciary, to my learning process, and all that has taken place is, in great measure, unremarked. But since his tragic accident, his absence has been felt in many ways by just about all of us. He is sorely missed. And if there is a silver lining to a cloud, as they say, in this instance, it is my understanding that his return to Trinidad is not far off. And that, I think, would be very, very welcome. I am grateful to have been a part of the change. And if my contribution has been as good and as meaningful as the speakers have made out this afternoon, then I am also proud to have been a part of it.

Intervention in an Attorney's Legal Practice and Continuing Education (Part 1 of 2)

Contributed by: The Hon Mr Justice David Batts QC
Puisne Judge, Supreme Court of Jamaica

On December 17, 2012, The Legal Profession (Amendment) Act 2012 (LPAA) came into force in Jamaica. The LPAA does several things. Firstly it introduces mandatory minimum requirements for continuing legal professional development by stipulating that the practising certificate, (which is issued annually to each practitioner), will only be issued by the Council (The General Legal Council) where:

- a) The prescribed fee is paid, and
- b) The Council is satisfied the attorney has complied with the requirements for mandatory continuing legal education.

This approach is a significant departure from existing regulatory imperatives, in respect of which, a failure to comply does not directly impact the right to obtain a practising certificate. Currently, those who are not in compliance face disciplinary procedures in the first instance.

The LPAA stipulates that where an attorney is not in compliance with the minimum continuing legal educational requirements the Council can give the attorney time to produce evidence of satisfaction of same, or if the person is unable to do so, can direct the attorney to attend and complete specified courses of training. A failure to comply with such directives would amount to professional misconduct.

The Legal Education Authority, (The Council or any other body designated by the relevant Minister as such), is to be given the power to determine the requirements of continuing legal education. It is conceivable that this may involve enrolment in a particular course at the Norman Manley Law School or participation in legal education seminars put on by the Bar Association or both. Consideration may also have to be given to whether or not continuing legal education obtained in other jurisdictions will qualify as contributing to fulfilling the requirements. Additionally it remains to be seen if any lessening of continuing legal education requirements would be stipulated for practitioners who practice above a certain number of days each year in other jurisdictions.

Secondly, the LPAA confers upon the Disciplinary Committee of the Council, an additional remedial tool, that being the power to order attorneys to attend prescribed courses of training. An attorney who has been found guilty of inexcusable or deplorable negligence or neglect could, in addition to other forms of punishment, be ordered to attend refresher courses in the particular field.

The third feature of the LPAA relates to the Council being empowered to intervene in an attorney's practice in certain defined circumstances. These are summarised as being where:

- a) The attorney has been convicted of an offence involving dishonesty or improper conduct in relation to money or property.
- b) The attorney is of unsound mind or due to ill health his clients' accounts are not being properly handled.

c) An employee or agent of the attorney has stolen client's property and client's property is at risk

d) The attorney has ceased to practice or to reside in Jamaica but has not wound up the practice.

The Council is mandated to apply to the court for permission to intervene prior to acting in the manner described above. Interestingly, the LPAA does not say that the application is to be ex parte.

The Council may however act without the permission of the Court where no satisfactory arrangements are in place to protect the interests of the client and,

- a) A court has made an absolute order for bankruptcy against the attorney or
- b) The attorney is suspended from practice.

The Council may apply ex parte to the Court if the attorney has been struck from the roll or has been suspended for in excess of 6 months and there are no satisfactory arrangements in place for protecting the interests of the clients. The LPAA contains provisions detailing the Court's power once intervention commences, to direct that money be paid over to the Council or to the account of the Council. These provisions suggest that intervention will not be achieved by the Council delegating an Attorney or attorneys to act on its behalf but rather that it will be directly done by the Council. The Council will need to ensure its administrative capacity is sufficient to support the adequate performance of this new role.

The fourth major feature of the LPAA is that it amends Section 35 of the Legal Profession Act to allow the Council to make accounting regulations requiring attorneys to keep accounting records and furnish reports. Accounting regulations have been in force since the 31st March, 1999. The Council would now be able to make new regulations as deemed necessary.

Finally the LPAA establishes a Compensation Fund. The Disciplinary Committee often orders fines and directs that all or some part of it go to the client by way of compensation. If the attorney happened to be impecunious, had fled the jurisdiction or failed to pay the fine the client would remain out of pocket. This Compensation Fund is clearly an effort to redress that imbalance. The Council is given the power by regulation to determine the source of funding for the fund, the circumstances in which the fund may be accessed and the relevant procedures. Insofar as the source of funding may involve an additional levy on the practitioner, one view is that such regulations ought to be subject to an affirmative resolution by the Parliament of Jamaica. If properly implemented, the LPAA should enhance regulation of and increase public confidence in Jamaica's legal profession.

Sexual Offences Act and Regulations in Jamaica

Contributed by: Mrs Justice Vivienne Harris
- Puisne Judge (Ag), Supreme Court of Jamaica



Above: Inside layout of the Jamaican parliament

On Wednesday September 26, 2012, Jamaicans both at home and in the Diaspora awoke to the Jamaica Daily Observer's front page headlines, "Horror in St. James! 8 y-o among five females brutally raped by gunmen". Two young girls aged fourteen and sixteen years old were also victims. This incident caused such a national outcry that Parliament was propelled to table the necessary regulations that would awaken from its three year slumber, Part VII of the Sexual Offences Act of 2009 which makes provisions for a Sex Offender Register and a Sex Offender Registry. That portion of the legislation was in abeyance as it was the consensus of our law makers that the two could not operate without regulations to guide their operations. Parliament approved these regulations on December 11, 2012 even in the face of opposition that the proposed regulations offered more protection to rapists than victims. In this issue the Sexual Offences Act will be briefly reviewed and in the next issue The Sexual Offences (Registration of Sex Offenders) Regulations, 2012 will be discussed.

Overview of the Sexual Offences Act

In July 2009 the Sexual Offences Act (Act 12 of 2009) was passed but only Parts One to Six and Part Eight of the legislation were brought into effect in June of 2011. This piece of legislation was as 'an Act to repeal the Incest Punishment Act and certain provisions of the Offences Against the Person Act; to make new provision for the prosecution of rape and other sexual offences; to provide for the establishment of a Sex Offender Registry; and for connected matters.' It cannot be debated that the legislation was long overdue and welcomed, as Jamaica over the years had seen a sharp increase in the number of sexual offences that were being committed and the penalties for some of these offences, especially for incest and those committed against children, were viewed by most members of the society as grossly inadequate.

CAJO Commentaries

The legislation is innovative in nature. A few novelties of the legislation include:

- a statutory definition for rape (section 3)
 - creates new offences such as grievous sexual assault (section 4), sexual touching and interference of a child (section 8), sexual grooming of a child (section 9)
 - codification of the common law offence of marital rape (section 5)
 - widens the relationship for the offence of incest (now includes uncle, aunt, nieces and nephews (section 7)
 - increases the penalties for incest (now life imprisonment – section 4) and for having sexual intercourse with a child under the age of sixteen years (also life imprisonment – section 36 and the Second Schedule of the legislation) subject to cases where the perpetrator is an adult in authority (minimum sentence of fifteen years and the court is required to impose a period that this offender must serve before becoming eligible for parole being not less than ten years – sections 10 (4) and 10 (5))
 - the language of the legislation is for the most part gender neutral
- c) An employee or agent of the attorney has stolen client's property

The Sex Offender Registry and Register

The most significant innovation of the Act, in my view, is Part VII which makes provision for a Sex Offender Registry and Sex Offender Register. While these are not new to other jurisdictions such as the United States of America, Canada and the United Kingdom certainly these are entirely new concepts to the Jamaican legal tapestry. A person who commits a specified offence may be registered as a sex offender. These specified offences are:

- rape
- grievous sexual assault
- marital rape
- incest
- sexual touching and interference of a child
- sexual grooming of a child
- sexual intercourse with a person under the age of sixteen years old
- householder or occupier of premises inducing or encouraging the violation of a child under the age of sixteen years old
- indecent assault
- abduction of a child under sixteen years old
- violation of a person suffering from a mental disorder or physical disability
- forcible abduction
- procuration
- procuring the violation of persons by threats or fraud or administering drugs
- abduction of a child with intent to have sexual intercourse or other sexual offences
- unlawful detention with intention to have sexual intercourse or any of



the sexual offences

- living on the earnings of prostitution
- buggery, attempted buggery and gross indecency
- trafficking in persons
- selling and trafficking of children

The Registry will be managed by the office of the Commissioner of Corrections and the Register maintained therein. This Register will contain information about the name of the sex offender and the particulars of his or her conviction that is required to be supplied by the Registrar of the Supreme Court, the Clerk of the Circuit Court and the Registrar of the Court of Appeal. The Minister of Justice is empowered to make regulations prescribing the procedure for entry of information into the Register and the establishment and location of the Sex Offender Registry Registration Centres (sections 29 and 30 (1)).

A judge of the Supreme Court may direct that a person who has been convicted of a specified offence be exempt from any or all of the registration and reporting requirement in certain circumstances (section 30 (3)). However, after the expiration of the original period (ten years) a judge in chambers is empowered by section 30 (6) to make an order determining whether the registration and reporting conditions imposed on a sex offender are to be determined or continued for a further period not exceeding ten years. This same procedure is applicable where the further period of registration and reporting expires (section 30 (7)). A sex offender may also apply to a judge in chambers for an order terminating his or her registration and reporting conditions (section 30 (8)).

The legislation requires that the Superintendent of every correctional institution is to notify the Sex Offender Registry and the police of the release of every person who was convicted of a specified offence and who is subject the registration and reporting requirements and also to inform these persons of their duty to report (section 31).

Such offenders are required to report to the Sex Offender Registry Registration Centres that serves the respective areas in which they reside within three days of the first occasion that they are to be categorized as a registered sex offender (section 32 (1)).

The Act imposes a number of restrictions on registered sex offenders. These restrictions are:

- A sex offender cannot leave the island without first reporting his intention to leave the country to the Registry (section 32 (2)). (Interestingly there are no provisions for notification of authorities outside of the jurisdiction.)

- The sex offender must report to the Registration Centre that serves the area in which he/she lives, any change of his or her name, main or secondary residence within fourteen days of these changes. He/she is also required to report at any time between eleven months and one year after he has last reported to a registration centre (section 33).

- He/she must also give the addresses and locations at which he intends to stay and his actual and estimated departure from and return to his main, secondary and every other residence no later than fourteen days after departure providing he is in Jamaica but is absent from his main residence or other residences for a period of at least fourteen consecutive days. If he or she has left the island, this must reported no later than fourteen days after his departure. His/her actual return must also be reported within fourteen days (section 34).

If a sex offender contravenes the reporting or notification requirements commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding \$1 million or to imprisonment not exceeding a term of twelve months or to both such fine and imprisonment (section 35).

In the next issue this article will conclude with a review of The Sexual Offences (Registration of Sex Offenders) Regulations, 2012. [CAJO]

Interview with The Hon Mrs Justice Zaila McCalla OJ
Chief Justice of the Supreme Court of Jamaica

CAJO Contributor: The Hon Mr Justice David Fraser
Judge, Supreme Court of Jamaica

How would you assess the role the Judiciary has played in national development during the first 50 years of Jamaica's independence?

Since 1962, the Judiciary has played a seminal role in Jamaica's national development. The courts have provided a dependable and accessible avenue for the resolution of disputes and the declaration of rights, both [among] citizens and between citizens and the State. [Four areas of impact are noteworthy:]

Leaders in the legal sphere in the Caribbean region - The Jamaican Judiciary has produced advocates of international renown and the high regard in which [we are] held has led to Jamaican judges sitting in other Caribbean Jurisdictions in High Courts and Courts of Appeal. In many instances, those judges have been appointed to head [the] Courts.

Fostering gender equality in the legal profession - The Judiciary has been an area in which the equal role of women in society has been demonstrated. Women are well represented within the Judiciary and the Magistracy.

Guardians of the Constitution and laws of Jamaica - At independence, Jamaica was the first of the former British Caribbean colonies to adopt a written constitution, providing the opportunity for Jamaican judges to become trailblazers in interpreting our Constitution. Judges have ensured that the constitutional provisions intended for the protection of our citizens are safeguarded. One early example was the case of *R v Trevor Jackson* (1974) 22 WIR 425 [which] addressed the necessity of the separation of powers and was ultimately consolidated in the celebrated case of *Hinds and others v R* (1975) 25 WIR 326. On the other hand, the support of legislative efforts to promote good governance, within a framework of appropriate safeguards, led the Court of Appeal, in *Steven Grant's* case, to uphold the constitutionality of the amendment to the Evidence Act, which permits so called "paper trials." This decision was affirmed by the Judicial Committee of the Privy Council (*Grant (Steven) v R* (2006) 68 WIR 354). It should be noted that [with] the inclusion in April 2011 of a new Charter of Rights in our Constitution, the Judiciary [has been] charged with the responsibility of interpreting and safeguarding the application of this new aspect of the Constitution.

Apart from constitutional cases, we have continued the rich common law tradition of providing certainty in the law while ensuring sufficient flexibility to adequately deal with new situations.

Establishing trust and confidence in the formal Justice system - Over the past 50 years, the Judiciary has earned the respect and trust of citizens and remains one of the institutions in which great



confidence is reposed. This confidence has been earned through maintaining high levels of integrity and performance. Certainly, there have been challenges and some weaknesses do exist; however, overall the Jamaican Judiciary has consistently maintained the delivery of a high standard of justice for all.

What are some of the challenges currently facing the administration of justice in Jamaica?

Undoubtedly the main challenges include:

- the low 'clear-up' rate for crimes;
- inadequate forensic capacity to handle the volume of criminal cases;
- high levels of crime which place a strain on limited resources. If a custodial sentence [is] imposed, challenges are experienced by the correctional services due to inadequate space to house prisoners;
- inadequate number of judges, Resident Magistrates, court staff and courtrooms;
- insufficient judicial clerks to assist judges with research and preparation of judgments;
- a culture of adjournments and delay [due] to several factors including, delay in the completion of case files; over-commitment of lawyers to different courts in a particular day; and reluctant witnesses and jurors due to fear and economic difficulties; and
- ageing infrastructure.

Given the ongoing realities in Jamaica it is important to single out the insidious and pernicious effects of the high levels of crime. [A]t a fundamental level it must be recognised that successfully tackling crime and meaningfully addressing the other challenges that confront the administration of justice, will require the allocation of more resources to the justice system. It would promote social cohesion, improved quality of life and the economic growth and development sorely needed in our nation. [T]he critical need for this increased investment in, and commitment to, our system of justice should be acknowledged and relevant measures taken expeditiously to address this issue.

How have the new developments in technology impacted the work of the courts? In what ways can additional technological innovations enhance access to and the efficiency of the courts?

The use of technology is making a significant impact on the work of the courts. The Judicial Enforcement Management System (JEMS), which is a case data management software system, now makes it easier to file, retrieve and view documents. Date fixing is made more efficient in terms of the reduced time to set dates as well as reducing instances of double booking. It also minimises the chance of matters being inadvertently omitted from lists.

The Civil Procedure Rules provide for civil hearings by telephone conference, video-conference or other form of electronic communication. By these means, the Supreme Court is able to receive evidence from witnesses based locally or overseas. [V]ideo-conferencing, will soon be available in criminal matters when the Evidence (Special Measures) Bill comes into force.

Submissions and authorities can now be provided electronically and judges can deliver judgments by email. [P]rojected digital photographs are routinely utilised in trials, while, on occasion, other types of evidence such as mobile phone cell site analysis are presented in this manner.

While the use of technology has positively impacted the entire court system, the implementation of technological solutions in [Resident Magistrates'] Courts await the application of the Rules relevant to the procedures in those courts.

The Supreme Court's website (www.supremecourt.gov.jm/) provides legal practitioners and the general public with access to useful information about the history of the courts, current court personnel, Rules, documents, listings, fees, judgments and other critical material. It also provides links to other Superior Courts in the CARICOM region.

Apart from the increasing use of technology, what are some of the key initiatives currently being undertaken that will positively impact the work of the courts going forward?

There are several initiatives which will enhance the work of the courts:

- the creation of the Court Management Services (CMS) in 2009. The CMS functions as the administrative arm of the courts and [i]s intended to increase the efficiency and autonomy of the court system including the critical area of budgetary priorities. Legislation is scheduled to be put before Parliament this year to place CMS on a statutory footing;
- the 'Justice Undertakings for Social Transformation Programme' (JUST), [i]s a four year justice reform initiative which is being funded by the Canadian Government [with] three strategic components: institutional strengthening, technical legal assistance and enhancing social order;

- a building is being refurbished [to] provide more courtrooms, chambers, [and] improved facilities for staff, attorneys and the public;
- the Commercial Court has been expanding and will further reduce the waiting time for commercial matters to be heard;
- the full implementation of Criminal Case Management [which] will assist in reducing backlog and delays in the system;
- continued improvements in the Civil Case Management regime;
- increased rates of settlement through Mediation;
- Real Time reporting in both civil [and] criminal courts [which] will assist with more efficient disposal of cases; and
- the development of a Judicial Training Institute. Continuing judicial training will keep judges fully apprised of new thinking and practices concerning the law and the justice system.

Consequently as we move beyond our jubilee year, the Judiciary will continue to play our critical role in nation building. [CAJO]



Above: Homepage of the website of the Supreme Court of Jamaica

CAJO News Highlights

Judiciaries celebrate 50th anniversaries

In honour of the 50th anniversaries of the Courts of Appeal of Jamaica and Trinidad and Tobago, CAJO News presents interviews with President of Court of Appeal Panton, Chief Justice McCalla and Chief Justice Archie.

Interview with His Lordship the Hon Mr Justice Seymour Panton OJ CD
President of the Court of Appeal of Jamaica

CAJO Contributor: The Hon Mr Justice David Fraser
Judge, Supreme Court of Jamaica

Over the past 50 years of the Court of Appeal's existence which judgments stand out in your view and, briefly, why?

Several judgments stand out in my mind even though purists may not regard them as outstanding. I trust I will be forgiven for my choices if they are not shared by readers.

R v. Baker et. al. (1972) 12 JLR 903 [was an] appeal from a controversial criminal trial before one of the most controversial judge[s] of our time, Parnell, J. The judgment of the Court of Appeal dealt with important points of law and practice: the conduct of a trial, treatment of counsel, use of depositions, credibility, unsworn statement[s], inconsistent verdicts and application of the proviso among other matters. An appeal by Baker et al. to the Privy Council was dismissed (1975) 13 JLR 169.

Hinds et. Ors. v. R (1975) 13 JLR 262 arose from the creation of the Gun Court, the first of its kind in the region. The consolidated appeals from the judgment of the Court of Appeal were dismissed. However certain modifications resulted therefrom in respect of the composition of the court and the nature of the sentence.

In **The Jamaican Bar Assoc. Et. Ors. v A.G., The Director of Public Prosecutions et. Ors.** (SCCA 96, 102 & 108/2003 (14.12.2007)), some of the finest legal [counsel] ever assembled in one case in Jamaica participated.

The panel was presided over by then President of the Court, the Honourable Mr Justice Forte [and comprised] the present Chief Justice, the Honourable Mrs Justice McCalla and myself. I had the honour of writing the judgment.

The case is of great constitutional importance as it deals with a raid on the offices of attorneys where there was no allegation of criminal conduct by the attorneys, their staff or anyone on the premises.

The Court held that there had been constitutional breaches by agents of the state who had been armed with unlawful warrants. Significantly, the State did not appeal our decision.



As President of the Court of Appeal what would you say are the biggest challenges the court faces?

The delivery of written judgments on a timely basis. We suffer from the handicap of an insufficient number of judges to handle the continuous increase in the workload of the Court of Appeal.

The number of appellate judges including the President is now seven although the establishment has been increased to thirteen including the President. Given the liberal rights of appeal from trial courts to the Court of Appeal how has the Court of Appeal managed to absorb the volume of cases and are there any justifiable concerns about delay or the quality of output from the Court?

In 1967 the number of Judges of Appeal was seven. In 2007, it was still seven. In the meantime, the number of Magistrates has tripled and Puisne Judges doubled. [I]n 2008 new legislation provided for an increase to thirteen but this increase has not taken effect as no space has been provided to accommodate new judges. My efforts to get the Executive to prioritise the provision of the necessary space will continue until I retire.

I have seen the need to afford each judge a week out of court each term to write judgments. From the Easter term of this year, each judge will have two or three weeks out whether our number is increased or not.

I wish to assure readers that we will always be conscious of the need to list, hear and bring finality to appeals as quickly as possible. I must thank the Judges of Appeal for their dedication and care in executing their duties.

I do not think that there are justifiable concerns in relation to the quality of output from the Court of Appeal. There has been a fairly decent tradition of scholarship associated with our Court.

We are very proud of the fact that the Court delivers in the region of three hundred judgments each year; the reporting system is not as prompt as one would like. We give many oral decisions and in recent times have been reducing them to writing and placing them on our website.

It is absolutely untrue that most appeals to the Privy Council have been allowed. Last year only one of ten appeals was allowed! Those who criticise fail to acknowledge that the Supreme Court of England allows appeals from the Court of Appeal of England: [no one] even harbour[s] the thought that the judges of [that] Court of Appeal are not "up to mark". Unfortunately after years of British rule, the minds of some of our people continue to be enslaved.

On the question of the cases processed each year in the Court of Appeal?

On the question of the cases processed each year in the Court of Appeal we do have a high completion rate given the population and the number of Judges but necessary increases in resources based on demographic trends ought to be a factor for serious and continuous consideration by the Executive branch of government.

Currently all appellate judges hear both criminal and civil matters. Do you believe, especially when the number of sitting judges of appeal is increased, there could be benefit from having members of the Court specialise?

I do not think that that is a necessity at this time. In any event, the number of judges does not give confidence in the practicality of such a move.

Does the Court of Appeal encourage ADR in matters before it and is it a mechanism that you consider useful or appropriate at the appellate stage?

ADR should be encouraged at all levels of the judicial system. Quite often a mediated outcome is more pleasing as parties have agreed on it. An outcome dictated by strict rules of law is given to further litigation, even hostility. The Court has no policy to encourage ADR but we welcome any process that relieves the pressure of formal adjudication. Last year, [for example], we referred a part-heard matter to the Dispute Resolution Foundation.

Across the region accession to the CCJ in its appellate jurisdiction has been much debated. Do you think such accession will make a difference to the quality of justice dispensed in the region?

There can be no doubt that accession to the CCJ will enhance the quality of justice in the region. Persons who have never experienced our lives and history, cannot understand what is 'just' to us. There is no Englishman who would tolerate a Jamaican sitting in the Caribbean, dishing out justice to him in the British Isles. It is nonsensical to say that distance makes for independent judgments: would twelve jurors sitting in London trying cases arising in Falmouth be a trial by peers?

In 2007 I was seated next to Lord Hoffman, retired Privy Council judge, at a conference in Montego Bay. He said he had been judging Jamaican cases for fifteen years but had never before then, set foot on Jamaican soil. He could not understand the reluctance to join the CCJ when there was such talent and ability in the region.

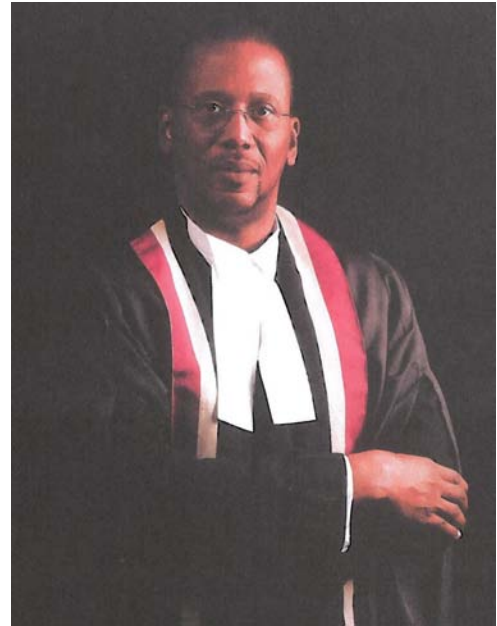
It is high time that we loosen ourselves from the mental slavery that continues to engulf us. I strongly support the philosophy of Marcus Mosiah Garvey, that we ought not to be subject to the mind of anyone. We need to say goodbye to Britain. That will go a far way to build[ing] nationhood all over the region. [CAJO]



Above: The Caribbean Court of Justice headquarters in Port of Spain, Trinidad

Interview with The Hon Mr Justice Ivor Archie
Chief Justice of the Judiciary of Trinidad and Tobago

CAJO Contributor: Marissa Robertson
Registrar, Judiciary of Trinidad and Tobago



Tell us about your journey...how did you get to this point?

My legal professional experience began at Clarke and Company, then to the Central Bank, then to the Solicitor General's Department. I moved overseas to the Turks and Caicos Islands in 1989 to become Senior Crown Counsel, then in 1992, Cayman Islands where I began as Crown Counsel, Criminal. Then I became Senior Crown Counsel, then the Solicitor General before being appointed on the High Court bench by then Chief Justice, de la Bastide.

What do you consider to be the role of the Chief Justice in the context of professional court administration? How do you and other judges cope with the administrative responsibilities?

Well, I think the development of court administration has certainly taken some of the load off the principal judicial officers or Presidents of Courts. But ultimately, the buck stops with the Chief Justice or the President of the Court. The challenge is that most attorneys aren't trained managers, so unless you happened to have followed a particular career path which would have afforded you some kind of managerial experience, it is unlikely that you would come to the job with a full suite of competencies that are required to manage an organization of this size. Even if you were managing your office it is likely that the issue of scale will be very different and you are required to grapple with all the intricacies of public service regulations, budgets, public sector budgeting processes, planning and all of that. But you do get assistance from the professional Court Managers. However, there are ways of exposing other judicial officers to courses, and short training seminars which would, at least, give a sufficient background to be able to speak the language, and to give sufficient directions to senior court management staff. It has always been a feature of Courts that judges, especially at the appellate level, are expected to get involved in what we called community work, because at the end of the day, the business of the judicial branch must be subject to judicial oversight although we are not expected to do all the detailed work.

In your perfect world, what should the Judiciary of Trinidad and Tobago look like?

It is a place where efficiency really must be the hallmark. I mean we have it as part of our vision and for me those are not mere words. I think that for too long people have come to associate public sector institutions and state institutions as being necessarily inefficiently run and so my vision for the Judiciary is not just as a place where we dispense justice but that also we do so in a manner which makes it easily accessible to every citizen. The court must be a place where we do not feel intimidated to come for a solution to our problems. Timeliness and efficiency, of course, are very important. Being a judicial officer requires a lot more than just legal

knowledge. It requires an understanding of the society in which we live. It requires compassion. It requires the ability to craft creative solutions and not just the blind application of precedent. So I want to see a Judiciary where every judicial officer exhibits these values.

What do you see as the biggest challenge as President of the Court of Appeal?

Well there are practical challenges that, for example, have to do with resources in terms of the volume of Appeals. I will still like to see a better level of assistance from the Attorneys who appear before the Courts. I think one of our challenges is that we still have an over reliance on oral submissions. I also think this is the case in all of our courts, not just the Appellate Court. I think that we give too many written judgments. I think that most of the appeals can be disposed of without lengthy reasons but that is something that we still need to work on. One of the challenges of the intermediate Appellate Courts is that you hear a lot of matters which really involve no novel difficult points of law. But you are there because litigants dis-satisfied with a first instance decision may wish to have it reviewed. I think one of our challenges at the moment is that we are inundated with a number of procedural appeals. One of the reasons for the New Rules was to try to get away from the culture of persons using tactical ploys by exploiting the rules rather than getting to the determination of the matter on the merit. I am concerned that a whole new area of CPR jurisprudence is now developing, so that is something that I think we need to watch. From the other direction, it is a little bit frustrating at times being subject to a final appellate court that is not resident in the jurisdiction. Their Lordships at the Privy Council are all very able and learned jurists but I think there is no substitute for a familiarity with the environment in respect of which one is judging.

You spoke about a possible disconnect between the Appellate Court in foreign jurisdictions and our local society. How integrated into the society are our appellate judges?

Yes we have, in a sense, to live with conflicting expectations from our public. People expect judges to somehow be different and to stand removed from society and yet simultaneously demonstrate an understanding and appreciation of the society in which they live. So it is a delicate balance. I think that the background of the modern bench tends to be a little more varied than it would have been in the past and one of the ways we seek to address that gap is by consistently including in our judicial education programme a sensitization to what we call social context education to remind ourselves to always engage in a process of self-monitoring in an effort to eliminate the sort of unconscious bias that inevitably creeps in as a result of one's particular upbringing and exposure.

Alternative Dispute Resolution (ADR), Is that something which you have embraced at a Court of Appeal level?

We have now embraced ADR. We are now piloting a formal programme at the High Court level. I think it has always been the case that judges at the level of Court of Appeal, in appropriate cases, have encouraged parties to settle. In recent times, there have been one or two cases, a very small number, in which the Court would have expressly suggested to the parties that they might want to seek a formal alternative dispute resolution procedure. But I certainly see it as growing to become a regular and viable part of, how should I put it, the suite of solutions that may be available before the Court.

Tell me about the volume. Does the quantity of cases before the Court of Appeal affect the quality of decisions?

I think the quantity is a lot but manageable. I think in terms of efficiency it would probably help if we wrote slightly fewer fully reasoned decisions. I don't think that, at least so far, that the quality of the output has suffered. I think that perhaps I should not be the one to judge that. But I think where we do have a matter that is of general importance or complex we would devote the appropriate attention to it. My own view is that the wide and varied backgrounds of the present Court of Appeal bench has resulted in a very high quality of jurisprudence being generated in recent years.

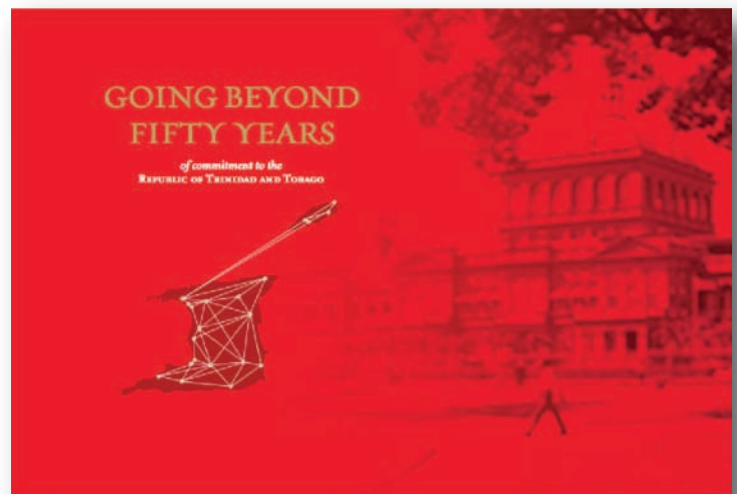
Looking back over the past fifty (50) years of Court Appeal's existence are there any particular judgments or decisions which stand out in your mind.

I mean there are a few which I think are of general interest because they may have broken new ground or addressed issues that were of general social interest so for example, the Trinity Cross judgment may have been one that may have explored a historical background. Justice Sharma's famous judgment that exploded the rights of the common law partner would also have been a break from tradition. There was the judgment of a full court that is a five (5) member court that had addressed the role of the DPP vis-à-vis the AG. Those would have been the more recent. I have not researched your question but I'm sure that if one were to look one would locate quite a few landmark

decisions in the Wooding era, dealing for example, with prescriptive rights to land. In recent times there has been a tendency for the Court to explore public policy and those factors which are relevant to our culture and our history.

My final question is... what specific flavor have you brought to the Judiciary of Trinidad and Tobago.

I think what was different about me on the administrative side is the intention to use a business model for the management of the Courts, in approaching case flow management and approaching the delivery of services. Perhaps, I have stressed that approach more than my predecessors. On the jurisprudential side I think that I have made a conscious attempt to locate the jurisprudence within a social cultural and historical context and to attempt to repatriate and own our jurisprudence rather than to seek to find answers in external precedent only. [CAJO]



Above: Page 2 of the Judiciary of Trinidad and Tobago Annual Report 2011/2012

The Role of the Court of Appeal

The Trinidad and Tobago Judicial Education Institute invited the Hon Mr Justice Adrian Saunders, JCCJ, Chairperson of the CAJO Management Team, to deliver its Distinguished Jurist Lecture 2012. Below is an abridged version of Mr Justice Saunders' presentation.

This evening I wish to look at the court of appeal as a body having a responsibility to society that goes beyond merely deciding cases, a body that must meet the needs of the social order. As befitting a member of a Caribbean court I wish to look at the role of the court of appeal more from a regional or Commonwealth Caribbean perspective.

The United States National Center for State Courts has published an excellent reference point that identifies the central goals of state appellate courts. Those goals are divided into four performance standards, namely: (1) protecting the rule of law, (2) promoting the rule of law, (3) preserving the public trust, and (4) using public resources efficiently. This gives us more than a sense of what is the role of courts of appeal in the Caribbean. The output of such courts should be geared at correcting errors, unifying and clarifying the law, developing the law in a sound and coherent manner, and furnishing guidance to judges, attorneys, and the public in the application of the law.

Factors conditioning the role of Courts of appeal in the Caribbean

In the first case, Caribbean Courts of Appeal are all intermediate courts in the sense that in the hierarchy of courts they are positioned between the apex court and trial courts. But this formally intermediate position is to some extent artificial, given that Caribbean judicial systems outsource their final appeals. Those States that still send their final appeals to the Privy Council must confront a situation where the role of the apex court is relegated to deciding the extremely small number of cases that manage to reach it. My basic point is that the Privy Council is consumed only with determining cases and outside of that remit it is unconcerned with the range of judicial policy questions and judicial education and judicial reform issues that face the local judicial branch of government. Those matters must be addressed by the local judiciary of which the Court of Appeal is in effect the highest rung on the ladder. The second circumstance that affects the role of local courts relates, naturally, to the context in which they carry out their work. Courts are dynamic institutions. To be truly effective they must be responsive to the social and economic realities and to the democratic and rule of law imperatives of the day.

Responding to the challenges

I believe if courts of appeal are properly to fulfill their role the judges need to take a little time to examine our societies so as to discover appropriate reference points from which to approach their role. How do I begin to conceive of my role, however modest, in the building of society if I have little or indeed a poor understanding of society? Understanding of society is a critical source of the elements that inform the exercise of judicial discretion! In light of the court of appeal's position, in effect, as the highest indigenous court, there is a heavy responsibility on that court to interest itself in and to assist the Chief Justice with the entire range of matters that are ancillary to the adjudication of disputes, such as for example, formulating and guiding appropriate judicial policy, structuring relevant judicial education, identifying and executing much needed judicial reform and ensuring that the interest of the judicial branch is not encroached upon by the other branches of government.

Interpretation and Application of the law

The law serves interests, and judges must seek to discover precisely what those interests are in order to inform themselves better about the manner in which effect should be given to the law. The interpretive function should always consider the history of the law, the purposes it served when it was made and the interests it currently serves. The social order that existed during colonialism has not entirely been dismantled and re-fashioned to serve an independent people. Practices and prejudices developed during those days have lingered on. In the construction of an independent and just society, courts and law enforcement agencies alike must be mindful of this and be careful to focus their energies on safeguarding the interests of the citizenry as a whole.

Criminal justice reform

It is essential that, along with the other branches of government, the judiciary should play a leadership role in guiding a holistic approach to criminal justice reform; an approach that integrates programs that simultaneously improve and coordinate the functioning of the various actors and institutions within the criminal justice system. If the judiciary is not fully involved in conceptualizing and overseeing at least those aspects of the reforms that affect the work of the courts, the reforms will fail or else they will never realize their full potential.

The Court of Appeal and the lower courts

The efficiency and workload of the court of appeal are, to some extent, contingent upon trial court performance. The relationship between appeal courts and trial courts is pivotal to the way in which each level performs its judicial function. The manner in which this relationship is publicly expressed may bolster or damage the confidence of trial judges and severely affect their work. Appellate and trial judges alike are colleagues engaged in a joint, a collaborative search for justice. Appellate court decisions that overturn trial judgments should clearly advise the lower court, the litigants and the public of the nature of the perceived error made by the first instance court and the reasons why the judgment of the court below is being reversed. The appellate judgment is a judicial education tool. It is part of the role of appellate courts to nurture trial judges, to boost their confidence and to defend and promote their right to exercise discretion within the permitted parameters. This is one reason why due deference is usually accorded to trial judges in their role as finders of fact.

The responsibility of the Court of Appeal to build public confidence in the justice system

In the Caribbean a noticeable gap exists between judicial performance - even where the same is characterized by excellence - and public trust. The Caribbean public exhibits an appalling lack of trust in their judges. Courts of appeal have a duty to strive to re-build trust and confidence. Obviously, care must be taken to ensure that judicial officers conform to the highest standards of conduct and that ethical infractions among judicial officers are immediately and adequately addressed. Beyond these measures, courts must engage with the public in meaningful ways. A comprehensive communication and public education outreach would help to inform the public better about the methods of work of



Above: Collage of the Courts of Appeal of the Caribbean

the courts. Court staff must demonstrate the highest levels of courtesy and efficiency. Court processes should be user friendly and court of appeal decisions should be readily accessible. Courts can periodically survey their stakeholders to discover so as to address promptly those areas in which the latter wish to see improvement. In their dealings with the other branches of government, courts must insist on treatment which respects the judiciary as a co-equal branch of government. If the public is to respect the judiciary it is important that they see respect being demonstrated by the other branches of the State.

The responsibility of the Court of Appeal to protect democracy and advance the rule of law

As this country's Court of Appeal instructs us in Collymore, the courts are the guardians of the Constitution. This guardianship role is central to the broad role of the court of appeal in protecting democracy and advancing the rule of law. The advancing of good governance and the rule of law is central to the role of Courts of Appeal in our developing democracies. It creates the conditions for the optimal social and economic development of our societies quite apart from producing justice for the citizenry.

Law must be certain and predictable, but it must also be just and evolve with the times. I do not agree that humanizing the law is a task that should always be left to the legislature. On deeply divisive and emotive social questions that impact on the enjoyment of human rights, on those issues that are fed by homophobia or other prejudice but which appear to have popular support, it is to the courts that society often must turn for fair, just and decisive answers. Court of appeal judges are uniquely equipped to perform this role. The independence of the judges is constitutionally protected and their fidelity to the law and the Constitution is not compromised by any need to please a particular constituency as their tenure is not dependent upon votes obtained at an election. Judges must be sober, cautious, deliberate, but they must also be self-confident, courageous, strong, willing to go where no judge has gone before if after mature consideration that is the path one thinks is right.

The common law provides us with a legal heritage that is hailed throughout the world, but the law is a living instrument. In the building of a just and independent society I think our judges have an obligation to interrogate the common law to discover those features of it that have been constructed for a different time and a different society. Appellate courts should subject the common law to a rigorous analysis to ensure that, in being faithful to precedent, we are not inadvertently retarding the progress of our societies.

The treaty establishing the Caribbean Court of Justice states in its preamble that the member States of CARICOM are convinced that the CCJ would play a determinative role in the further development of Caribbean Jurisprudence. Undoubtedly, part of the role of the Court of Appeal is to partner with the CCJ in discharging this responsibility. This does not mean that in reflecting local values Caribbean judges are free to ignore international norms and standards. That would be a serious error. The very independence of Caribbean mini-States and the fundamental law that governs these States, the national Constitution, draw their life blood from international law. In the promotion of Caribbean jurisprudence judges must therefore pay close regard to the judgments of the courts established by the international community.

Final Words

The region continues to produce judges of great distinction. The cream of the judiciary of this region can stand shoulder to shoulder with the finest judges anywhere, a fact readily recognized outside the region. The problem that we face in the Caribbean is the herculean one of closing the gap between this demonstration of excellence and our people's recognition and affirmation of it. But I am confident that, as the courts of appeal in the region continue to demonstrate excellence, in time that gap will be closed.



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