



## The Judiciary of GUYANA



#### **CHIEF EDITOR**

Hon. Mr. Justice Adrian Saunders

#### **CONTRIBUTOR**

Hon. Mme. Justice Roxane George

#### **GRAPHIC ARTWORK, LAYOUT**

Ms. Seanna Annisette

#### Photo credits/sources

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Each edition of CAJO NEWS focuses on a particular judiciary in the region. This edition features the judiciary of our great South American sister – Guyana.

Being originally colonised by the Netherlands and later ceded to the British in 1814, Guyana's legal system reflects its historical journey. It is one of the few in the world which can properly be classified as a hybrid legal system; with the common law at the fore and elements of the Roman-Dutch tradition surviving British colonisation. This Roman-Dutch element is preserved in the area of real property law, where for example title is held by a document called a 'transport' which confers absolute title on the holder, subject only to registered encumbrances.

Guyana leads the region in its approach to gender equality and unsurprisingly it produced the first (and to date, the only) female judge of the Caribbean Court of Justice in the person of Madame Justice Desiree Bernard. Before her appointment on the CCJ, Justice Bernard played the major role in the founding of the Guyana Association of Women Lawyers (GAWL), an organisation which was the first of its kind in the region. The GAWL has been a strong contributor to the strengthening of gender equality in the legal system and in the promotion of the rights of the child. Coincidentally, this edition of CAJO NEWS reports an appalling case of child abuse in Guyana.

Among the Anglophone Caribbean Guyana is unique in many other respects. It is the only country with an Executive President. The full panoply of Executive power is vested in the President of Guyana who is the head of State, the supreme executive authority and Commander-in-Chief of the Armed Forces. The President is assisted in his duties by a Prime Minister appointed by the President. The Guyana judiciary is headed by a judicial official unknown in the region outside that State - the Chancellor - who is also the President of the Court of Appeal. There is also a Chief Justice, who heads the High Court and also has responsibility for the Full Court Division. Both the Chancellor and the Chief Justice are appointed by the President in concurrence with the Opposition Leader but, regrettably, the absence of a constitutional mechanism to break a deadlock has resulted in the unsatisfactory situation in which the judges exercising the functions of these most important judicial offices have not been confirmed in their positions for an inordinately lengthy period.

CAJO NEWS uses this occasion to salute the Chancellor, Chief Justice, Chief Magistrate and the entire complement of appellate and trial judges, magistrates and other judicial officers in Guyana. In particular we congratulate Guyana on the impending adoption of new Civil Procedure Rules which will undoubtedly simplify the litigation process and pursue the overriding objective to enable the courts to deal with cases justly, curb delays in the hearing of civil cases and ease the country's backlog of pending cases.

Finally, we wish to thank Justice George of Guyana and all those who assisted in the production of this edition.

Adrian Saunders Editor

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## Chief Magistrate Priya Sewnarine-Beharry

## CAJO Profile



Priya Sewnarine-Beharry was admitted to practice as an Attorney at law on 12th October, 2001 by the Supreme Court of Judicature of Guyana. She was appointed Magistrate on the 4th May, 2005, Senior Magistrate on the 15th July, 2008, Principal Magistrate on 1st September, 2010, the Chief Magistrate (ag) on 8th September, 2010 and confirmed as Chief Magistrate on February 22nd, 2011;

She is a fellow of the Commonwealth Judicial Education Institute, a past Secretary and President of the Magistrates' Association of Guyana and its current Vice-President.

She is married and the mother of two children. She enjoys swimming and cooking.

# **CAJO**Commentaries

In the matter of an application by TWYON THOMAS, a minor suing by his mother and next friend SHIRLEY THOMAS, Applicant and THE ATTORNEY GENERAL of GUYANA, THE COMMISSIONER OF POLICE, SERGEANT LALL – 14526 and CONSTABLE DULAI – 19028, Respondents. Motion 12-M/2010, Demerara

Twyon Thomas filed a constitutional motion for redress for breaches of his constitutional rights not to be deprived of his liberty and not to be subjected to inhuman and degrading treatment.

Thomas was beaten, burnt and suffered severe injuries at the hands of serving members of the Guyana Police Force in whose custody he was placed as a person detained. At the time of his arrest on an allegation of murder, Thomas was 14 yrs old. His parents were not informed of his arrest. He was detained for 4 days being transferred to various police stations. He was repeatedly assaulted by policemen, his hands were tied with a piece of wire, and a jersey was wrapped around his head. He was also choked and stomped on in his abdomen and then set afire in his genital area. With placed over his head, he was interviewed at the station by a person who claimed to be a medical doctor and who prescribed medication. He was eventually taken to hospital where he remained for 14 days.

Assistant Commissioner of Police, Seelall Persaud, denied knowledge of Thomas's allegations of torture. He accepted however that while in custody Thomas was seen by the police surgeon and treated with medication. It was also admitted that as a result of an investigation, members of the Guyana Police Force were charged criminally. It was suggested that in light of the presumption of innocence the motion for constitutional redress was premature as the police officers allegedly involved had been charged. It was contended that while the Attorney-General was properly sued, the other respondents were not proper parties and that the motion should be dismissed against them.

#### It was held that -

- (1) There being no specific denial of the detailed allegations of Thomas his claims of mistreatment are unchallenged.
- (2) The Guyana Police Force is a public institution and art 38B of the Constitution of Guyana, which enshrines the best interests of the child principle, is applicable. The Police Force is therefore specifically mandated to uphold the best interests of children, moreso a child who is in custody.
- (3) Thomas's arrest and detention were unlawful and in violation of art 139 of the Constitution because there was non-compliance with the Judges' Rules and Administrative Directions on Interrogations and the Taking of Statements regarding the arrest and detention of Thomas as a child.
- (4) The mistreatment of Thomas amounted to torture, and inhuman or degrading treatment and was therefore a violation of art 139 and 141 of the Constitution.
- (5) Although the State Liability and Proceedings Act, 1984 provides for proceedings such as these to be brought against the Attorney-General, it is not necessarily the case that only the Attorney-General can be a party. (Baird v PSC & the AG (2001) 63 WIR 134 and Fraser v Judicial and Legal Services Commission & the Attorney General (2008) 73 WIR 175 cited.); however, applying Ramson v Barker and Anor (1982) 33 WIR 183 and Kent Garment Factory v The AG & The Minister of

Trade and Tourism (1991) 46 WIR 177, in the absence of evidence that the Commissioner of Police sanctioned or approved the acts of his subordinates and the police doctor, he was not a proper party to these proceedings.

- (6) The responsibility of the State to investigate and prosecute individuals for wrongdoing, cannot limit the right of an individual to seek personal redress against the State for any perceived wrongdoing by its actors.
- (7) The incorporated international human rights conventions, including the Convention on the Rights of the Child, to which Guyana is a signatory, are not merely persuasive. Article 39(2), which permits the court to pay due regard to international human rights law, does not limit the court's enquiry to the human rights treaties listed in the Fourth Schedule, nor to those to which Guyana is a signatory. The Court may consider not only treaty law, but also the views or recommendations of treaty bodies and decisions of regional human rights bodies such as the Inter-American Court of Human Rights and the European Court of Human Rights as well as those of national jurisdictions. The Court can also look to relevant jurisprudence of other territories and international bodies in aid of interpretation.
- (8) The fundamental rights provisions mirror a number of Guyana's international human rights obligations and therefore they should be interpreted in a way that conforms to these obligations.
- (9) Thomas is awarded compensation pursuant to art 139 (5) for a breach of art 139 which provides for protection of the right to personal liberty; and in addition, pursuant to art 153 (2) an additional sum which can be categorized as exemplary damages is also awarded. Similarly, as regards the violation of art 141, compensatory damages as well as exemplary damages can be and are awarded, though pursuant to art 153 only.
- (10) The following sums are awarded: \$1,500,000 as compensatory damages with an element of aggravated damages pursuant to art 139 (5); \$3,000,000 as compensatory damages for the breach of art 141, which sum also includes an award for the aggravating circumstances found in this case; in respect of both breaches the sum of \$2,000,000 is awarded as exemplary damages "to reflect the sense of public outrage, to emphasise the importance of the constitutional right and the gravity of the breach and deter further breaches." (AG v Ramanoop [2005] 2 LRC 301, paras 18 19 applied.) constituting a total award of \$6,500,000 in damages with Costs. [CAJO]

## CAJO News Highlights

### The Judiciary of Guyana

## Historical context and Judicial Education

The administration of justice system in Guyana has a rich and varied history because of its colonial past. This history of the legal system is recounted in the seminal work of Dr. Mohamed Shahabuddeen, OE, OR, CCH, SC, Former Attorney-General of Guyana and retired Judge of the International Court of Justice, the International Criminal Tribunal for Yugoslavia and the International Criminal Court. It is from this work – 'The Legal System of Guyana' (1973) that most of the following synopsis of the history of Guyana's legal system is taken.

Guyana originally became a Dutch colony when their High Mightinesses of the States-General of the Netherlands granted the Dutch West India Company a charter on June 3, 1621 which formed the basis for the settlement and legal systems of the three original Guiana colonies of Essequibo, Demerara and Berbice. After being surrendered to the British in 1803, the three colonies were united to form British Guiana in 1831. These three original colonies are now the three counties into which Guyana is geographically divided. With the surrender of the three colonies to the British in 1803, the preservation of the Dutch legal system of Roman-Dutch law was specifically provided for and remained intact unto 1917 when by the Civil Law of British Guiana Ordinance, 1916, now the Civil Law of Guyana Act, Chapter 6:01, was enacted, providing in effect for the supremacy of the English common law with Roman-Dutch law being applicable primarily to our land law system.

The unification of the Supreme Court of Civil Justice of Demerara and Essequibo with that of Berbice took place in 1844 and the Supreme Court of Civil Justice of British Guiana was established. Similarly, in 1870, the Supreme Court of Criminal Justice of Demerara and Essequibo was united with that of Berbice to form the Supreme Court of Criminal Justice of British Guiana. Finally, in 1893, the Supreme Courts of Civil Justice and Criminal Justice of British Guiana were united to form the Supreme Court of British Guiana, which became the High Court of Guyana. The jurisdiction of the High Court was confirmed in 1955 and is headed by the Chief Justice with eleven puisne judges, though in February, 2014 the authorized complement of the Court was increased to twenty judges.

The 1893 Ordinance also provided for a Full Court. The Full Court of the High Court, which went into abeyance for a number of years, was re-established in 1922 and is also provided for in the 1955 legislation. This court usually sits composed of two or three judges to hear appeals from decisions of a single judge made in interlocutory proceedings and from decisions of magistrates in summary matters.

On the attainment of independence on May 26, 1966, it was on July 30, 1966 that the Court of Appeal was established by the Constitution of Guyana as the successor to the previous Courts of Appeal, the last being the British Caribbean Court of Appeal. The office of Chancellor was



Above: Judges of the Court of Appeal of the Supreme Court of Judicature, Guyana (L to R: The Hon. Mme. Justice Yonette Cummings-Edwards, The Hon. Mr. Justice Carl Singh; Chancellor (Ag) and Head of Judiciary, The Hon. Mr. Justice B.S. Roy)

created with the office holder becoming the head of judiciary. The Court comprises the Chancellor, the Chief Justice and five Justices of Appeal. The High Court and the Court of Appeal together comprise the Supreme Court of Guyana.

After independence, appeals from the Court of Appeal still lay to the Judicial Committee of the Privy Council. However, on attaining Republican status in 1970, appeals to the Privy Council were abolished, making the Court of Appeal the final appellate court until Guyana, in the spirit of regionalism, acceded to the Caribbean Court of Justice as the final court of appeal with this Court coming into operation in April, 2005.

In relation to land for which Roman-Dutch law still applies, title to land and mortgages must be passed before a Court. In this instance, pursuant to the High Court, Chapter 3:02, while titles to land, called transports, and mortgages can be passed by a High Court Judge, the Registrar of Deeds is authorized to preside over this Court. With the introduction of the Torrens System of Land Registration in 1958, a new Land Court was established presided over by Commissioners of Title. There are two Commissioners of Title who also hear cases for declarations of title by prescription and partition appeals. The Land Court is a court of record with the Commissioner having all the powers of a High Court Judge in respect of matters within the jurisdiction of the Court.

The development of the magistracy also has its genesis in the Roman-Dutch system with officers known as burgher officers having certain magisterial functions which were transferred to newly appointed civil magistrates in 1826. Subsequently, in 1831, inferior courts with both civil and criminal jurisdiction were established. The

#### **CAJO News Highlights**

#### Judiciary of Guyana (continued)



Judges of the High Court of the Supreme Court of Judicature, Guyana

magistracy currently comprises of the Chief Magistrate and an authorized strength of twenty-one magistrates sitting in twenty-one magisterial districts. While some magistrates are resident in their magisterial districts, others such as those assigned to interior and rural courts, travel to these districts to preside on an itinerant basis. A number of enactments over the years concretised the jurisdiction of the magistrates' courts culminating in the Magistrates' Court Ordinance, No. 13 of 1893, now the Summary Jurisdiction (Magistrates) Act, Chapter 3:05. Both the District Courts Ordinance, No. 30 of 1961 and the Administration of Justice Act, 1978 gave the magistrates jurisdiction to try a number of serious offences which were originally heard on indictment only. This jurisdiction which is to be exercised with the consent of the accused, does not involve a preliminary inquiry but the accused is supplied with the statements of the witnesses who are going to be called to testify on behalf of the prosecution. As such, about 90% of criminal matters are dealt with in the magistrates' courts...

#### **Judicial education activities**

In June – July 2012, a series of lectures was presented to judges and magistrates on various topic areas under the aegis of the Modernisation of The Administration of Justice System (MJAS) Project which was funded by the Inter-American Development Bank. Professor Justice Duke Pollard was the consultant coordinator of this judicial education initiative which saw the following topics being covered - The Rule of Law, Criminal Law (Procedure) Act, Mandatory Death Penalty, Judicial Ethics, Plea Bargaining and Plea Agreements and Paper Committals, Fugitive Offenders Act and Judicial Review. The facilitators were The Hon. Justice Adrian Saunders (JCCJ), The Hon. Justice Desiree Bernard, (JCCJ), The Hon. Justice Jacob Wit, (JCCJ), The Hon. Justice Carl Singh, Chancellor (ag), The Hon. Justice lan Chang, Chief Justice (ag), Professor Justice Duke Pollard, Professor Keith Massiah, Mr. Teni Housty, attorney-at-law and Ms. Alexis Downes-Amsterdam, attorney-at-law.

In 2012 and 2013, the judiciary of Guyana in partnership with UNWOMEN hosted two seminars for magistrates and magistrates' courts clerks on the issues of domestic violence and the human rights of women and girls. The seminars were very interactive and well

received. The seminars entailed the training and sensitisation of participants on their role as frontline responders in addressing this scourge. Participants in both seminars were exposed to the role the magistracy plays in promoting gender equality, the social, psychological and cultural dimensions of domestic violence more especially the psychology of a victim of abuse, the constitutional, legal and human rights framework, and case scenarios which entailed the application of what had been learnt, more particularly the provisions of the Domestic Violence Act, 1996. The magistrates were exposed to gender stereotypes in the law and practice and how these impact on the administration of justice and the rule of law. Also in 2013, the judiciary, again in collaboration with UNWOMEN hosted a seminar for non-governmental stakeholders, including faith-based organisations, on domestic violence. Again, the psychological and cultural dimensions of domestic violence, the law and human rights were covered with emphasis on the need for an holistic response by all stakeholders in addressing this issue. Competition Law and Policy with specific reference to the Competition and Fair Trading Act, 2006, Guyana, was the topic for judicial education in November, 2013 when Ms. K L Menns, Competition Policy Adviser, Competition and Consumer Affairs Commission, Guyana made a presentation to the judges.

In April 2014, the members of the judiciary participated in a Judicial Colloquium which had as its theme: 'The Rights to Equality and Non-discrimination: International and Comparative Jurisprudence'. The colloquium was sponsored by The Equal Rights Trust and the Justice Institute Guyana in collaboration with the Supreme Court of Guyana. The main speakers at this seminar were The Rt. Hon. Lord Justice Sedley, retired Court of Appeal Judge of England and Wales, The Hon. Madame Justice Claire L'Heureux-Dubé, retired Supreme Court Judge of Canada, and The Hon. Mr. Justice Adrian Saunders (JCCJ). Topics covered included Constitutional Law and the Right to Equality, Major Trends in Equality Law, Direct and Indirect Discrimination, Harassment and the failure to make reasonable accommodation in the context of discrimination, the Role of the Judiciary in Developing Equality Law, Remedies and Sanctions in Equality Law, and Evidence and Proof in Equality Law. [CAJO]

### Mason v Jagroo, CV 2012-00129 Judgment delivered 23rd May 2014

Contributed by Magistrate Michelle Louis of Saint Lucia





The Magistrates' Court, Port of Spain, Trinidad

#### The Facts

A Magistrate in Trinidad & Tobago, in good faith, considered it necessary to remand the Claimant to the Women's Prison for successive periods of up to 7 months in total. The Magistrate formed this view not because the Claimant had committed a criminal offence but because the Magistrate could find no relative or other fit person to take custody of the Claimant who was deemed to be uncontrollable. The High Court subsequently quashed these committal orders and made an order of habeas corpus releasing the Claimant from the Women's Prison. The Claimant sued the Magistrate personally for damages for false imprisonment.

#### The issues

The main issues arising before the court were

- 1. Whether the Magistrate had jurisdiction under the Children Act of Trinidad and Tobago to commit the Claimant to the Women's Prison?
- 2. Whether the Magistrate was protected by the Magistrate's Protection Act and therefore immune from being sued by the Claimant?
- 3. Whether the Defence of Necessity was available to the Magistrate in the circumstances of the case.

#### Jurisdiction

On the first issue the trial judge found that the Magistrate had no jurisdiction to commit the Claimant to the Women's Prison. The judge restated the principle that a Magistrate obtains his/her jurisdiction from statute and therefore the Magistrate can only make an order if the statute specifically gives the authority to make that order. Section 45 of

the Children Act gives the Magistrate jurisdiction to commit a person "apparently of the age of 14 or 15 years" to the care of a relative or other fit person. In this case, however, the judge stated that the Magistrate was aware that the Claimant was 17 years old when she first appeared before the Magistrate. Further, while section 45 gave jurisdiction to commit a 14 or 15 year old to the care of a fit person or relative it did not give jurisdiction to commit to prison. The judge could find no basis on which the Magistrate could hold that the Women's Prison was a "fit person" within the meaning of the legislation.

#### **Magistrate's Protection**

On the second issue, the judge noted that Magistrates Protection Act of Trinidad and Tobago states in its preamble that it is "an Act to protect Magistrates and Justices from vexatious actions for acts done by them in the execution of their office". Section 5 of the Act, however, gives a person aggrieved by an act of a Magistrate that is not within the Magistrate's jurisdiction, the right to bring a civil action against that Magistrate.

Although the judge specifically found that the Magistrate acted bona fide, without malice and with all good intentions towards the Claimant, the judge held, however, that it was unnecessary for the Claimant to prove malice for an action to succeed against the Magistrate. The judge held that the Magistrate had acted with gross negligence against the Claimant and was not protected by the Act.

#### The Defence of Necessity

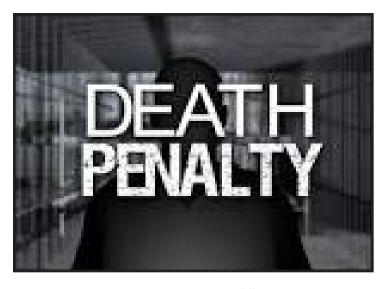
As to the Defence of Necessity, the judge held that such a defence would only arise if, on the facts, there was no alternative available to the Magistrate but to commit the Claimant to prison. The judge considered the alternative accommodation available to the Claimant and found that the Magistrate could have released the Claimant into the society. In all the circumstances, the judge held, the Defence of Necessity was not available to the Defendant and the Claimant was entitled to damages for false imprisonment.

The judgment emphasizes the principle that Magistrates may only make orders that are within their statutory jurisdiction. The idea that a magistrate can successfully be sued personally for official acts done in good faith (as distinct from an action being brought against the state) is, however, one that is naturally of tremendous concern to the Magistracy and the justice system as a whole. [CAJO]

#### The State v Dwayne Jordon

## [High Court of Guyana, December 2012; Indictment No. 72 of 2010]





#### The Facts

Dwayne Jordon was charged with the offence of murder, contrary to Section 100 of the Criminal Law (Offences) Act, Chapter 8:01 of the Laws of Guyana. Following a Preliminary Inquiry, the Accused was committed to stand trial in the High Court of the Supreme Court of Guyana in its Criminal Jurisdiction. Dwayne Jordon was then indicted by the Director of Public Prosecutions to stand trial for the offence of murder, aforementioned. After a trial in the High Court, a jury returned a unanimous verdict of guilty for the offence of murder on December 7th 2012.

Since it was the usual practice of the High Court to sentence all persons convicted of murder to death, Dwayne Jordon's Attorney-at-Law requested to be heard on the following points; Firstly, that the mandatory death sentence in a case of this nature is unconstitutional in so far that the penalty is mandatory since it takes away the discretion of the trial Judge; Secondly, that the Accused is entitled to mitigate before the Court imposes a penalty; Thirdly, the punishment of death is contrary to Article 154A of the Constitution of Guyana; Fourthly, the punishment of death by hanging is cruel, unusual and inhuman treatment contrary to Article 141 of the Constitution of Guyana.

#### The issue

The Court opined that it must first determine whether a proper statutory interpretation of Section 100 of the Criminal Law (Offences) Act does in fact lead to the conclusion that the penalty of death is mandatory for a person convicted of murder.

Section 100 of the Criminal Law (Offences) Act reads "Everyone who commits murder shall be guilty of felony and liable to suffer death as a felon."

#### **Holding**

The penalty of death provided for in Section 100 of the Criminal Law (Offences) Act is not required to be mandatorily imposed upon conviction but rather it is the maximum penalty provided for therein.

#### Reasoning

#### Rules/Law Applied:

Case law determining the meaning of the words "liable to" when used in statutes.

Section 45(a) of the Interpretation and General Clauses Act, Chapter 2:01 of the Laws of Guyana, which was added by amendment by Act 4 of 1972, which reads;

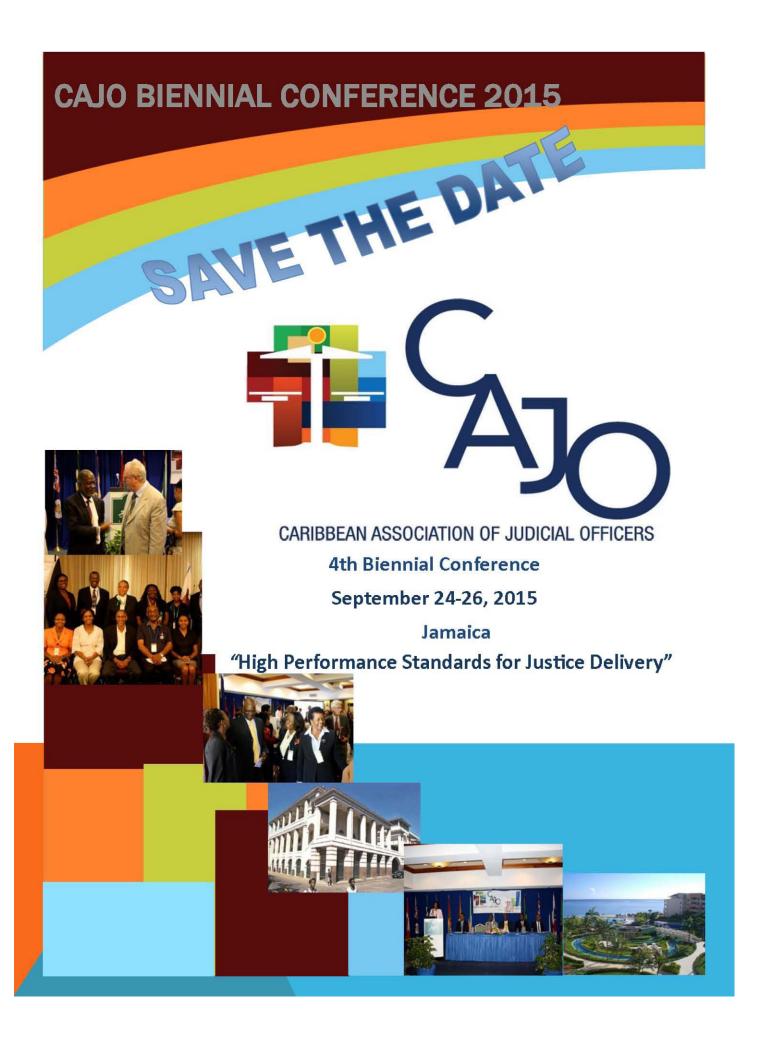
"Where in any written law a penalty is prescribed for an offence, such provision shall imply –

That such offence shall be punishable upon conviction by a penalty not exceeding the penalty prescribed."

Articles 39(2) and 154A (1) and (2) of the Constitution of Guyana which require such a penalty to be imposed reasonably in paying due regard to international law, international conventions, covenants and charters bearing on human rights. In paying regard to those international obligations, it is implicit that the penalty of death cannot be a mandatory penalty.

#### **Application:**

The meaning of the words "liable to" as determined by the case law and more importantly Section 45(a) of the Interpretation and General Clauses Act clearly demonstrates that the penalty of death is a maximum penalty. This is further buttressed by requirements of the Constitution. Several cases from Commonwealth Caribbean courts were distinguished based on those countries peculiar wording of their penalty clauses. [CAJO]





#### MEMBERSHIP APPLICATION

#### WHO CAN BECOME A MEMBER

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- ❖ Associate Membership is extended to retired judicial officers.
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#### **BENEFITS OF MEMBERSHIP**

Networking opportunities, discounted conference fees and access to certain paaaword protected areas of the CAJO website (whenever available).

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