

CAJO NEWS

CARIBBEAN COURTS IN A TIME OF TRANSITION



MESSAGE FROM THE CHAIRMAN

Justice Peter Jamadar



This December 2020 edition of CAJO News is a symbol of our regional judiciaries' great resilience and courage in the face of challenges to innovate in service of the delivery of justice, and to do so in these times of transition that the Covid-19 pandemic has ushered in. Captured in the pages of this publication are ideas, inventions, and ingenuity that continue to propel us further forward as we face this novel moment in our history. Some of what we are sharing in this Issue is our region's capacity to thoughtfully respond in constructive and sustainable ways to crippling calamities. We see these times as transitions of great hope and opportunity.

For the CAJO, one of its biggest shifts has been in its ideologies and methodologies of successful judicial education. No doubt, we have begun charting a path that has already proven to be impactful, profound, and even comforting in these times of profound change and pronounced distance between us. We offer a feature article that explains the CAJO's approaches and experiments in virtual judicial education. The CAJO is happy to share that one of its foci in this Issue has been on mental health which is of particular importance amid the global pandemic. Many in the justice sectors of our region live with and among these conditions. This Issue of CAJO News also welcomes our Caribbean Legal Scholar Series which provides a glimpse into the lives and work of Caribbean legal luminaries. The CAJO is pleased to inform that an exciting prospect is the creation of a virtual classroom, innovated by Elron Elahie (CAJO Research and Programme Coordinator) and Paul Aqui (CCJ Multimedia Officer) and the equipment for which has been funded in large part by the JURIST Project. The CAJO thus hopes that these and all contributions in this Issue provide helpful and relevant insights and information.

I would like to express my sincerest gratitude to the regional judicial legal community for continued support of the CAJO and its initiatives – especially during these times of transition. Of course, the CAJO's work is engineered and supported by its Management Committee which continues to work diligently and with the utmost concern and regard for the development of our regional legal and judicial landscape.

I invite you to enjoy the narratives, photos, videos, and resources in this Issue of CAJO News and welcome your feedback which you can send to us at elrone@thecajo.org.

Happy Reading!

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GUYANA COURTS IN A TIME OF TRANSITION: REMOTE ACCESS TO JUSTICE AND DELIVERY OF JUSTICE

Chancellor Yonette Cummings-Edwards



Undoubtedly the COVID 19 pandemic has severely and adversely impacted our courts. Court operations were disrupted as a result of the pandemic resulting in the adjournment and suspension of trials.

Lord Hamblen and Lord Stephens in Attorney General of Turks and Caicos Islands v. Misick and Others [2020] UKPC 30 recently observed:

The Covid-19 pandemic has presented many challenges to justice systems around the world. Whilst it is essential to ensure that justice can continue to be both administered and accessed, means need to be found to enable this to be done safely and without endangering public health.

For the past seven months or so, we, in Guyana, have had cause to pause, reflect, recover, rebuild and retool in order to carry out our core functions.

The Courts provide an essential service. It is no secret that there were unforeseen challenges which we were not adequately prepared to address. These challenges had potential long-term effects that had to be dealt with quickly. Therefore, rather than sitting in shock in the throes of the pandemic, we resolved to move to recovery mode.

US Federal Judge, Judge Karen Caldwell, said that the work of a US District Judge can seem a lot like "building an airplane while you're flying it" (Federal Judges Re-inventing the Jury Trial During Pandemic August 2020). This can be translated to the Caribbean to explain the resulting work that had to be done in our courts consequent upon the COVID 19 pandemic.

We can add that even though we are still flying, we

are building as we fly. Importantly we are not flying in the dark: we have a flight plan, we know the terrain, the geography; we are in touch with Control Tower with whom we check in quite often; and we have an efficient team of hardworking flight attendants and ground staff.

Process of Recovery

We have had to adapt to new measures, innovations and face new circumstances. In this recovery mode, the end game has been to safely keep open the doors of judiciary to meet the legal needs of the society. However, we cannot say that the recovered state is the same; it a w normal

We recognized that a trial must be a fair forum through which justice is administered. We recognized too that everyone seeking justice in this forum must be convinced that their health, safety and well-being are taken into account. To facilitate such an environment and to ensure access to justice, we in judicial administration, along with other stakeholders, had to re-engineer the way hearings are done and adapt ourselves to the w normal

Innovation is a key item or element in the toolbox of recovery. We have had to be innovative. In this regard, our recovery took into account three important principles:

1. Health and Safety
2. Access to Justice
3. Constitutional Imperatives

Health and Safety

Resumption, COVID Recovery, and Information Technology Teams were established. Meetings were held with stakeholders. Ensuring the safety of staff and court users was and continues to be a priority. This is reflected in all of our protocols. Our first protocol in early March stated:

In response to the corona virus (COVID 19) pandemic, these Practice Directions are intended to:

- (a) protect the safety, health and well-being of Judges, Magistrates, Judicial Officers, staff, attorneys-at-law and court users by maintaining social distancing; and**
- (b) maintain the core functions of the court as far as possible and ensure access to justice.**

As part of this mandate and in recovery mode, plexi-glass was installed in all courtrooms. There was physical rearranging of furniture and of all the courtrooms to accommodate social distancing. Sanitization measures were stepped up. Protocols for health and safety and for remote court hearings were published.

Where in-person hearings must take place, they must be conducted safely. There must be adequate social distancing and a safe experience for judges, prosecutors, defence counsel, accused, jurors, litigants, witnesses,

marshals, police orderlies, registrars, clerks of the court, members of the public and the media who have an interest in the administration of justice.

While it was held in **R v Trevor Stone [1997] 25 WIR 458** that there is no inherent right to a jury trial, in Guyana there is no legislation as yet for Judge Alone Trials, thus resumption of jury trials became an imperative. **Jury trials were cautiously resumed after seven months with the implementation of safety measures.** The jury box and the prisoners dock were removed so as to allow more physical space. Jury selection is done by utilizing the wide corridor of the court rather than in the theatre or stadium as we had envisaged.

Jurors are now seated on individual chairs spaced out in the courtrooms. The accused joins the proceedings remotely from prison. The Court building, for which construction started in 1881 and formally opened in 1887, never anticipated such remodeling and retrofitting. This "gand and truly handsome building with steep pitched roof" saved the day. The "temple of justice" was preserved in all of our re-engineering.



Empanneling corridor, High Court, Georgetown



Courtroom Scene

Access to Justice

"Access to justice is a basic principle of the rule of law. In the absence of access to justice, people are unable to have their voices heard, exercise their rights, challenge discrimination or hold decision makers accountable". (United Nations, www.un.org/ruleoflaw). **Access to justice is a fundamental principle of the rule of law.** Courts have to ensure that this principle is upheld. Our recovery and resumption of hearings operated on this important consideration. As such, we have moved to eliminating the restrictions regarding urgent hearings and to prioritizing cases for hearings.

Since we have courts in remote areas we are mindful that not everyone has access to technology. Therefore, entirely remote hearings, as well as blended hearings involving a combination of in person and remote hearings are conducted. The IT Department was upgraded to assist in the delivery of digital justice – to facilitate remote hearings. Widespread use of technology for hearings was introduced via telephone, WhatsApp, and audio/video conferencing platforms. Zoom licences were purchased to service all the various courts throughout the length and breadth of Guyana.

We considered the right to open justice. We

therefore ensured the sharing of the audio/visual links for trials with the media and members of the public, and the live streaming of cases. Due to restrictions on the amount of persons who can be physically in court, media houses have also been asked to have a representative cover the case(s) and share with others.

Inspired by our sister territory, Trinidad and Tobago, and their judiciary's innovative engineering, we have moved to "container courts". This will accommodate more virtual hearings and ease the pressure on the police and prison – financially, emotionally and from a security standpoint. These courts will allow for hearings to be ramped up and for the more timely and efficient delivery of justice.

There have been challenges to remote hearings. In **Attorney General of the Turks and Caicos Islands v Misick & Ors [2020] UKPC 30** the following was stated:

"It cannot be said that it would be unfair for any part of the trial to be conducted remotely. Covid-19 has necessarily required court procedures in many countries to be adapted so as to enable courts to continue sitting, and the use of audio-visual links has been of great assistance in enabling them to do so."

It was further noted that there may be some cases, or some parts of cases, where it may not be appropriate to use video links, however these are issues for a trial judge to determine. Accordingly, the Board stated that they cannot usurp the role of the trial judge to make such a determination.

Appreciating these circumstances, our courts could not wait for a change in circumstances or for the pandemic to abate before resuming hearings.

Constitutional Imperatives

The mandate of the judiciary is to ensure that the constitutional rights of everyone included in the trial process are not infringed. Oftentimes there is need to balance competing rights. **Article 144 (1) and 8 provide for a fair hearing within a reasonable time for both civil and criminal matters.** However, it has been noted that:

"The right to a fair trial does not mean that all existing rules of procedure and evidence that are directed to a fair trial are constitutional and consequently immutable."- Peter Hogg, Constitutional Law of Canada , 27.21

Balancing competing rights came into focus in **Khalid Gobin v Attorney General 2020 HC-DEM-CIV-FCA-27 [Guy]** applying article 139(g) of the Constitution which provides:

"no person shall be deprived of his personal liberty save as may be authorized by law for the purpose of preventing the spread of an infectious or contagious disease."

and article **148 of the Constitution** which states:

(1)"No person shall be deprived of his or her freedom of movement...." (3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question makes provision...(a) for the imposition of restrictions of movement or residence...that are reasonably required in the interests of ... public safety...or public health..."

The applicant contended that his rights to freedom of movement and not to be deprived of his personal liberty were being infringed when he was ordered to quarantine at a government facility on arrival in Guyana from overseas. The High Court ruling, which was confirmed on appeal, held that rights are not absolute and can be circumscribed by the State's responsibility to take measures that are reasonably justifiable for dealing with the pandemic.



Container Courts

Disadvantages and Advantages

Important lessons have been learnt. There have been disadvantages and advantages of this new normal. We have realized that virtual hearing fatigue is a concern as continuous virtual hearings can be more exhausting than in person hearings.

There was initial push back from some quarters. In civil cases, despite the technology, some prefer in person hearings. Many have decried the loss of face-to-face interaction and the inability to easily see the demeanor of witnesses whose faces are hidden by a mask or obscured by a blurred screen. Long and complex trials with lots of documentary evidence are not well accommodated in virtual hearings. The Bar Association and members of the public wrote letters to the press expressing concern about the resumption of jury trials. Lack of adequate internet bandwidth and connectivity has been a challenge but service providers are promising improvement.

This has truly been a case of experiential learning. Covid 19 or any other pandemic or crisis must not create prolonged or unnecessary interference with the administration of justice. We learnt that we can utilise the resources that we have, as in the case of the corridor to conduct jury selection. Retooling and reengineering can be done without much fuss and without breaking the bank!! The establishment of the task forces and committees ensured implementation of the protocols. Increased participation in decision making has been a good experience for the staff in responding to the pandemic.

Even though many (Bench and Bar) were resistant or hesitant to embrace change, they eventually ran with the program. Working with partners in the administration of justice – Chambers of the Director of Public Prosecutions, police, prisons, and donor agencies has been a necessity.

Importantly, we are now more accommodating of remote hearings. It has been a steep learning

curve in bridging the digital divide. Our IT capacity and infrastructure has been developed exponentially so we now have an enhanced network with better interconnectivity with all courts. The establishment of Website and Facebook accounts is fostering the demystification of the courts. **The website has information on all our protocols, practice directions and email contact information, and provides for an e-filing mechanism, a precursor to the development of our case management system.** There is greater use of emails to contact the court so that court customers do not have to come to court to enquire about matters.

There is increased efficiency in terms of getting work done and conducting hearings. No longer can a lawyer make an excuse for not being present in court, as with virtual hearings and at a press of a button, he/she can attend court. **There have been tremendous cost savings in terms of human resources, time, energy, and transportation for attorneys, litigants, prisoners and other court users and customers.**

We have been sharing our experiences and protocols through online groups, platforms and webinars. We look forward to further training for management in a pandemic and the development of regional pandemic handbook so that we learn from the best practices in each other's territories, and not have to reinvent the wheel. Periodic reviews of procedures, rules and even equipment to ensure usefulness, and functioning should be undertaken, and not to wait on a pandemic or a crisis.

Conclusion

Judicial empathy and adaptability have also been key to managing in the context of the pandemic. The backlog that was feared can be dealt with efficiently. An efficient and effective judiciary that delivers quality justice does not have to wait until the cows come home.

It can be done now, safely and effectively. Lord Hewart CJ's oft quoted dicta that not only must justice be done, it must be seen to be done takes on a new dimension:

"It is not merely of some importance but is of fundamental importance that justice should not only be done, but, should manifestly and undoubtedly be seen to be done". (R v. Sussex Justices, Ex Parte McCarthy (1924) 1 KB 256)

Though this case was dealing with issue of bias, the pronouncement is relevant to show how our re-engineering to meet the challenges the pandemic caused had to be done to ensure justice is served. The direction in which the Covid 19 pandemic has caused us to go has helped us to forge a new road map for judicial administration and the delivery of justice.



Resuming Jury Trials in Guyana - Part 1



Resuming Jury Trials in Guyana - Part 2



Caribbean Legal Scholar Series

PROFESSOR RUDOLPH JAMES: AN INTERNATIONAL LEGAL ARCHITECT

Kurt Da Silva with assistance from Krystal Sukra and Antonio Emmanuel





PROFESSOR RUDOLPH JAMES: AN INTERNATIONAL LEGAL ARCHITECT

'In a way, he developed law schools everywhere [he went]'.

These words from Dr. Adeola James, wife of the late Professor Rudolph William James, give some vital insight into the mind and heart of the legal luminary that is the subject of this edition's focus on eminent Caribbean jurists. His passion was not just for the law, but for everyone to know and be empowered by the law. Professor James hails from the village of Plaisance on the East Coast of Demerara in Guyana, the birthplace of famous Guyanese like former world boxing champion, Wayne 'Big Truck' Braithwaite, musical icon Eddy Grant and the only female among the first Judges of the Caribbean Court of Justice, the Honourable Justice Desiree Bernard. Though his name may not be as well known to the public, his contributions, in Guyana and internationally, are by no means any less significant.

The Early Days

Born 23 November 1933, he began his academic journey in St. Paul's Primary School and Washington High School in Guyana before migrating to the United Kingdom. There he completed his high school education prior to doing his compulsory National Service in the Royal Air Force (RAF). **When he was awarded a British Army Scholarship, he entered the University of London in 1957 intending to study Economics, but his life was about to take the first of two significant detours from his plans.**

While awaiting entry into the Economics program, Professor James took a dip into the sea of legal studies and was immediately drawn into the deep. Three years later he had his LLB with Honours and membership in the Middle Temple. He intended to return home, but once again he

was pulled in a different direction, a path which would come to be characterised by two distinct but symbiotic callings: teaching and writing.

Legacy of Lecturing

Professor James taught wherever he went. From 1963 to 2018, **Professor James consistently found himself in the classroom, playing his part in imparting knowledge and wisdom to those with an interest in the law.** In fact, his wife tells that it was his belief that 'law is a training that everybody should have', and this was a position that he clearly put into practice. That he taught on both sides of the Atlantic, as well as in the Pacific, and across six decades, really speaks of the depth of that belief.

African Chronicles (1963 – 1973)

The death of his father and a lack of finances prevented him from returning to Guyana to practice as an attorney, but the closing of that door opened the way for his journey to Africa. He completed his LLM and had begun his PhD when, in 1963, his Nigerian friend, Professor Dele Kasunmu, invited him to teach at the first Faculty of Law in Nigeria, at the University of Ife (now Obafemi Awolowo University, Ile-Ife). Professor James spent the next three years helping to produce the first crops of lawyers trained in Nigeria. During that time, Barbadian Professor Roy Marshall, who was the Dean of the inaugural Law School, encouraged his young faculty members to do research. This spark ignited Professor James' interest in land law, and he would proceed to shine light on this area wherever he served.



Professor Rudolph James and his wife, Dr Adeola James

From Nigeria, Professor James travelled to Tanzania where he spent seven years assisting in the development of the Faculty of Law (now School of Law) at the University of Dar es Salaam, at the time the only place in East Africa where lawyers were trained. While there, he completed his PhD as an external student of the University of London with a particular focus on traditional ownership of land. This temporarily concluded his time in Africa as, after a brief stint as a visiting Professor at the University of Boston, the Pacific would then come calling.

Splash in the Pacific (1974 – 1978)

In 1974, Professor James took up an invitation to serve on the pre-independence land Commission of Papua New Guinea, the Committee of Inquiry into Land Matters. Of course, he could not be kept out of the classroom and would also spend the next four years as **Professor and then Dean of the inaugural Law Faculty at the University of Papua New Guinea. In addition to his expertise in land law, his diversity was on display during this period in his service as Legal Advisor to the Solomon Islands Government on its Independence Constitution and on Land Reforms, and as a Member of the Papua New Guinea Law Reform Commission Working Party on Succession Laws.**

Return to his Homeland (1978 – 1989)

In 1978 Professor James was finally able to return to Guyana to serve his home country. Forever driven to develop the next generation of legal minds, he joined the Law Department in the Faculty of Social Sciences of the University of

Guyana, and for more than a decade served as either Head of Department of Political Science and Law or Dean of the Faculty. He returned to Nigeria twice to also continue to develop the law in that nation, first as a Visiting Professor at the Nigerian Institute of Advanced Legal Studies and then to set up a new Law Faculty at the University of Ilorin.

Another Splash in the Pacific (1989 – 1995)

Professor James also returned to Papua New Guinea in 1989, where he headed the Faculty of Law once again until 1995. While there, his expertise in land law was also utilised as a member of the Committee to draft National Framework Legislation on Customary Land. His connection to the African continent also remained strong, and in that period he also consulted with Professor Omotola on 'The Reform of the Land Laws of The Gambia'.

'Retirement'

Professor James then retired and returned to Guyana, but this did not look much different for him, as his passion for the development of the law and legal minds had not waned. He served at the University of Guyana again from the later 1990s to the early 2000s, including as Head of Department. The classroom would keep on calling through the years, and Professor James kept on answering, teaching as recently as 2018.

Legacy of Literature

A ubiquitous companion to his teaching, numerous books were churned out by Professor James over his career, covering almost every jurisdiction in which he resided. In Nigeria, where his love for land law was birthed, he published three books on that subject. His first book, **Alienation of Family Property in Southern Nigeria** was written in 1966 with his friend, Professor Kasunmu, and was fuelled by his desire to see people get what was rightfully theirs in the newly developing African States. Before leaving Nigeria on that first stay, he would expand his focus to author **Nigerian Land Law** in 1973. Later, he would write **Nigerian Land Use Act: policy and principles**, which was published in 1987.

In Tanzania, he published **Land Law and Policy in Tanzania** in 1973 but also displayed his versatility and productivity as he joined with G.M. Fimbo to write **Customary Law of Tanzania: A Source Book** and with F.M. Kassam to write **Law & Its Administration in a One Party State: Selected Speeches of Telford Georges**, all in that year. Though it may not be reflected in his writings there, Tanzania was the birthplace of his passion in constitutional law, much like Nigeria was for land law. This was inspired by the liberation movements that were prominent during his time there. While his wife would literally pick up a banner and join the protests, Professor James saw his writings as his best contribution, as would be evidenced by his later emphasis on the laws governing newly developing States.

Though he did not publish anything during his original visit to Papua New Guinea, he made up for it with one book in 1985 and another two in the 1990s. In the first, he continued his coverage of the land law of the territories in which he resided, authoring **Land Law and Policy in Papua New Guinea**. He then joined with I. Fraser to produce **Legal Issues in A Developing Society** before writing **Challenges of Equity in Developing the Underlying Law**.

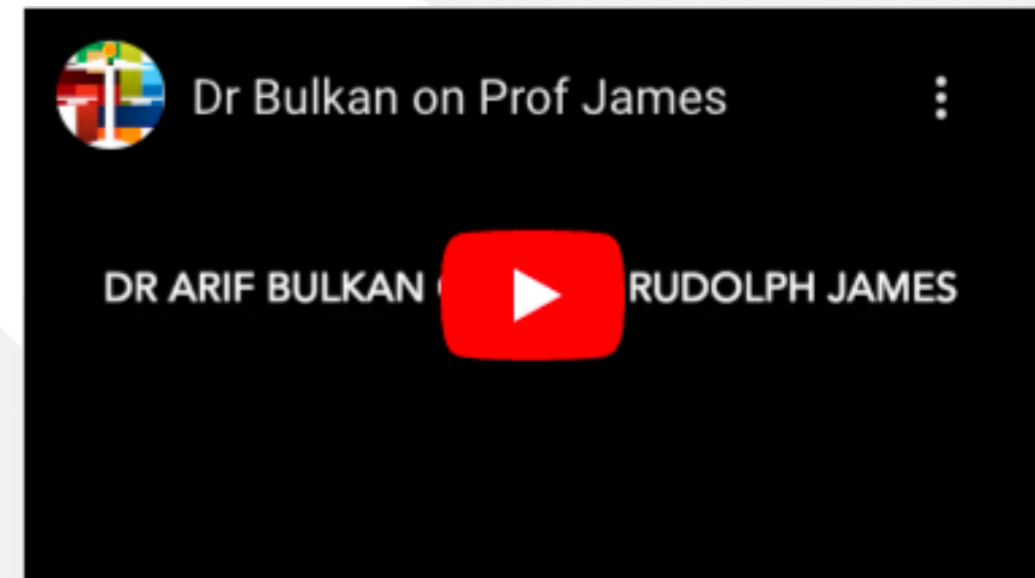
Even after he had long finished his work in Papua New Guinea, he continued to assist in its legal development. First, he consulted with Dr Lawrence Kalinoe to produce a Report on the 'Review of Incorporated Land Groups in Papua New Guinea' and then with Norm Oliver on

'Customary Land Dispute Resolution', both in 2008. He also collaborated with the Open College in 2011, completing four courses along with accompanying texts: **Law of Land Administration and Policies of Papua New Guinea, Law of Land Tenure, Equity and the Law of Trusts in PNG and Introduction to the Legal System of Papua New Guinea**.

Interestingly, Guyana was the only place where Professor James lived and taught but did not write a text on land law. Instead, no doubt driven by the political realities of his homeland, both books he wrote there were focused on governance and the constitution in Guyana. First, he partnered with his friend Professor Harold Lutchman in 1994 to write **Law & the Political Environment in Guyana**. This text was recently described by prominent Guyanese daily columnist and political critic Freddie Kissoon as 'a brilliant description and analysis of the 1980 Constitution', and it was also referenced in the 2017 Issue of the International Journal of Constitutional Law (Volume 1, 1 April 2017). The Preface to this text also highlights his passion for education of the public on their rights and freedoms, where he and Professor Lutchman said:

[W]e would be happy if [the book] contributes to the education of the public on a number of issues of vital importance to them. this is a crying need in a society where, for one reason or the other, severe limits and controls are placed on the dissemination of news and ideas. If nothing more is achieved than we help generate a certain level of consciousness among the populace regarding their rights and freedoms, we will be quite satisfied. For we strongly believe that a well educated and informed public is one of the best ways of guaranteeing such rights and freedoms.

After the constitutional amendments made in 2001, he would add another critical text in 2006, titled **The Constitution of Guyana: Its Dysfunctional Application**.



Interview with Dr Arif Bulkan on Professor Rudolph James

A Humble Man

Quiet, unassuming and very pleasant, Professor James left his mark on many societies in our world without much fuss. He advised Governments at the highest level, most recently being appointed by the President of Guyana to the Land Commission Inquiry in 2017, which he continued to work on even as the illness that eventually claimed his life progressed. He participated in or lead the development of law schools in Africa, the Pacific and also in Guyana, the latter a project which unfortunately did not see its completion before he died, yet he never drew attention to himself in these exploits. **So much so that even his eight children were not made aware of the extent of his achievements. His eldest, Mojirade James, who followed her father into the legal field, describes him as 'humble to a fault'.**

Thankfully, his wife of 53 years was able to connect the dots to help us better understand the life and achievements of her husband. Even when he founded the Phillip Duncan Documentation and Research Centre in the neighbouring village to the one in which he grew up, Sparendaam, he named it after his great-grandfather, from whom he inherited the land.

His good friend, Professor Lutchman, probably summed it up best when he said that 'You have

some people who are so brilliant they project themselves that people are afraid to approach them. Professor James was that brilliant but without any haughtiness, none. His students could always come to him after class and ask, again and again, for explanations'. As a former student of Professor James, I can certainly attest to that. When he taught me, I had absolutely no idea of his immense body of work in the legal field, nor that he even led that Department of Law on multiple occasions. He carried himself as just a regular lecturer and had zero interest in telling you about himself and his work, instead spending his time speaking about the law he loved and encouraging his students in their study of it. His wife and daughter confirm that this was indeed his great love, and that he even went as far as to pay for students to pursue their degrees.

Professor Rudy James, a man who quietly left an indelible imprint in many lives and multiple territories, is truly an eminent Caribbean jurist. And it is a testimony to the type of man he was that it was left for others to tell his story.

ON LIVING WITH DEPRESSION: MENTAL HEALTH MATTERS



Elron Elahie

In April of 2015 I was diagnosed with clinical depression (and generalised anxiety disorder). For context, I was 22 years old and in the 'best years of my life' at university in London. But the 'best years' were nothing like I had imagined them. For months prior to my diagnosis, I struggled to get out of bed. And it wasn't that I just lacked the motivation to slip out from under the blanket and get started on my day. I physically found great distress in lifting any part of my body from its statue position. Night-time would meet me time and time again hidden behind a fortress of pillows with only a bottle of water keeping me company. At least three times a week I depended on my Caribbean shame to get me to class. I was determined to not let my flatmates, who had lives filled with advertised vigour and movement, find out that the only thing I could think of as they walked ahead of me on our way to class was "I really just want to not exist." One afternoon, after class, I had apparently walked past my usual turn off at Tavistock Square and made my way across Waterloo Bridge. It wasn't until I was 41 minutes away from home that it struck me where I was. I couldn't remember the faces that I had lumbered past, the buildings I'd usually peer into and create stories about, nor did I feel the cold wind hit my face as I walked above the Thames.

That April my parents flew me home (back to Trinidad) while I was on a break. The day after I landed my father took me to the psychiatrist for the first of what would be a few visits. It was an evening. It somehow was always an evening, and the darkening skies persistently energised the brooding languish that bubbled over at the vanish of sunlight. I left that office exhausted. Terrified. Clutching the prescription for medication that could "maybe help" because my affliction had no known "cure". But the demon was called out in that room. And, if you've looked

at any good exorcist film, calling its name is the only way to begin to weaken it.

It's now been 5 years since playing house with depression and I've gotten to know it really well. Needless to say, however, that it still surprises me from time to time. But I suppose that's a guaranteed way to keep the relationship fresh! But these 5 years; the tennis tournaments with different medication, the mass consumption of self-help, instructional, and motivational literature, the persistent pull between self-analysis and self-destruction, and the constant slingshot hit or miss with the goliath in my life lead me to create mechanisms I've devised and deployed in my living with depression (I've shifted language from 'coping' to 'living with' because coping created, in my mind, a hierarchical order of being prisoner to depression). None of these, of course, intercept or supersede advice or instruction from a medical professional. In fact, and as I shared earlier, my own journey of living with and managing depression began at that doctor's office. **But I hope to attach to an otherwise difficult conversation (both with self and others) a sense of openness; that my sharing would make it even a little bit easier to be open to living with mental illness: to identify that things may not be okay, that they don't have to be, and that there is always help to be found.**

Some 'Living With' Tools*

For months on end, I sometimes forget that residing in me is a mischievous gnome that has the ability to scare optimal functioning off my garden. And then, as Phil Collins puts it in the reverberated "I can feel it coming in the air tonight," the feelings of despair, listlessness, and dread begin to consume my being.

Waking up becomes hard to do and falling asleep begs for assistance from something in a bottle. Light becomes my worst enemy and sound only adds to its power. I randomly cry while forcing my arm to turn on the coffee machine and the thought of going to work; a space filled with all the elements that will bring me to my demise, causes me to heave while getting ready. Some days I have the luxury of calling in sick and on other days being absent (both in presence and of mind) is not an option. And, especially in our general line of work – the work of justice – we may not have the benefit of generating space between us and the demands of our obligations that allows us to weather the internal tempest.

So, in addition to seeking guidance from a psychiatrist, I've found the following to provide some relief (no matter how little at times) in dealing with depression and I present them as suggestions for contemplation:

- 1. Try to be open with you partner/family members about how you feel.** If you live with someone else, particularly with another or other adults who share responsibilities of managing the household, it may be helpful to express when you feel the ominous clouds begin to roll across your sky. This is helpful in three ways. First, when a depressive episode hits, it may impact on your mood which may make you less responsive, snappy, or irritable. But sharing that this may soon be or is your current reality may prevent any conflict from arising – conflict that would otherwise add to the feeling of despair. Second, when experiencing a depressive episode, you may be unable to function as you usually would. Sharing this with the people you live with enable them to help out and not arbitrarily conclude that you're just not doing what you usually would. This also helps alleviate any pressure you may feel to keep doing as you usually would. And finally, having intimate support may be provide a sense of comfort and work to combat the absolute loneliness that is brought on by depression. Having someone around who understands what you may be going through and treats that reality with due regard can often remove feelings of being a burden or inconvenience.

- 2. In moments in which you aren't struggling with a depressive episode, create a list of things that you can go to for a laugh or entertainment.** I have found it incredibly useful to have a list on my phone of YouTube links to funny videos, performances, and sketches that take me to a place of lightness. This does not mean that these resources will instantly snap you out of a depressive episode. But creating an accessible resource pool that provides solace and familiarity often takes away some of the pain and heaviness of an episode.

- 3. Take time to check-in with yourself.** When the depression gnome finds itself distracted by the flowers, it's easy for forget that there may be a possibility of slipping into a dark moment. It's therefore particularly important that you schedule check-in sessions with yourself to get a sense of how you're feeling, what may be triggering in current or upcoming situations, and how you can mitigate those triggers as best as possible. You may not be able to pre-empt or prevent depression. But if you can feel it in the air before the downpour, then you may protect yourself from being drenched in despair. These check-ins also help with understanding what and how you share with your loved ones as I mentioned in (1) above.

- 4. Take some time off.** We often wait until we're burned out or unwell to take time off. And that results in spending that time off disconnected from meaningful engagement with the world around us. But it's important that we take time off when we feel okay as well. Connecting with people, places, and things that bring us a sense of calm and joy is important in constructing a conscious and sub-conscious sense of contentment that can make living through dark days a little easier. As I write this, I recognise my own hypocrisy as I've only taken time off this year to complete work. But that leads me to my final suggestion below.

- 5. Don't be hard on yourself.** Depression is not your fault. It took me a long while to realise and accept that I can't blame myself for depression. It's a reality that I've been dealt and one which I have to be creative in dealing with.

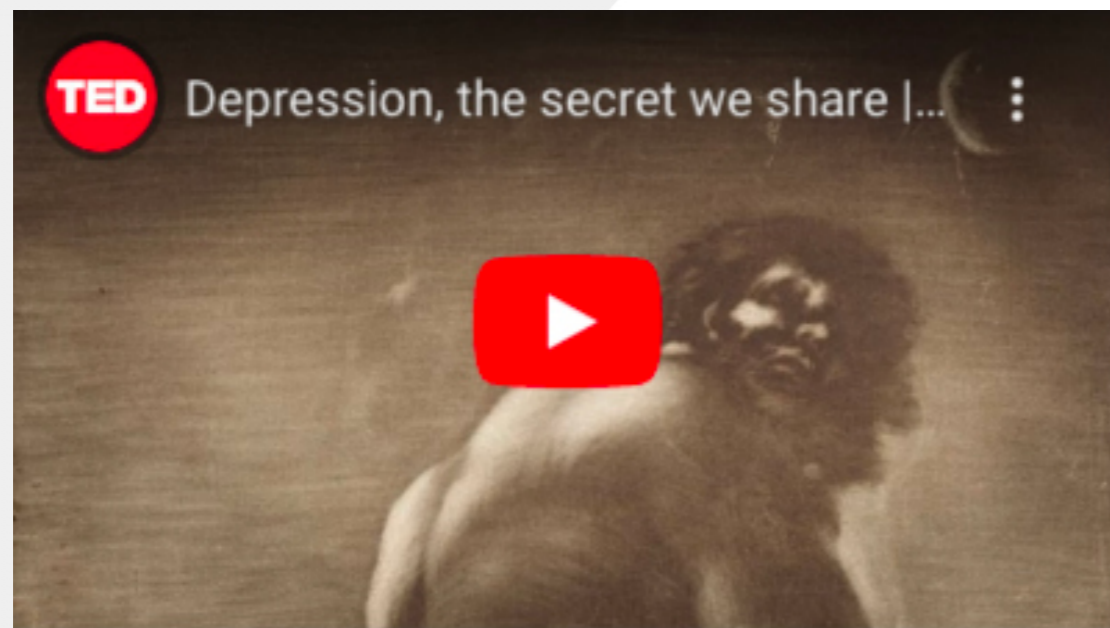
And while it may slow me down, make me lose time, or take me away from myself and loved ones, I ought not blame on myself because there's simply no point in doing so. And when I forget to engage any of my 'living with' mechanisms I understand that to be the reality of a busy life. And I position myself to be more conscious and conscientious with using these tools I've crafted.

There is so much that can be said and shared about depression. But I've set the word limits for the articles in this Issue so it would appear no less than extreme bias if I give myself the space to sing an unending song. But what is important is that help is always available. If you see yourself in any of what I've shared or noted your own experiences of what feels like disproportionate grief, seek the counsel of a medical professional. I guarantee you that as scary as it may seem, it will only serve to help you understand who you are and how you can live as best as you can. **And if you do live with depression, try some of what I've suggested or create your own mechanisms that help you live as peacefully and powerfully as possible.**

I leave you with an extended quote from Andrew Solomon's book "The Noonday Demon: An Atlas of Depression" which continues to impact me:

"The opposite of depression is not happiness, but vitality and my life, as I write this, is vital even when sad. I may wake up sometime next year without my mind again; it is not likely to stick around all the time. Meanwhile, however, I have discovered what I would have to call a soul, a part of myself I could never have imagined until one day, seven years ago, when hell came to pay me a surprise visit. It's a precious discovery. Almost every day I feel momentary flashes of hopelessness and wonder every time whether I am slipping. For a petrifying instant here and there, a lightning-quick flash, I want a car to run me over...I hate these feelings but, but I know that they have driven me to look deeper at life, to find and cling to reasons for living, I cannot find it in me to regret entirely the course my life has taken. Every day, I choose, sometimes gamely, and sometimes against the moment's reason, to be alive. Is that not a rare joy?"

*The suggestions in this article are not intended to replace advice from a licensed professional.



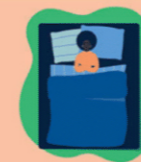
Depression: the secret that we share - Andrew Solomon



What is Depression? - Helen M Farrell

My Mental Health: Do I Need Help?

First, determine how much your symptoms interfere with your daily life.



Do I have mild symptoms that have lasted for less than 2 weeks?

- Feeling a little down
- Feeling down, but still able to do job, schoolwork, or housework
- Some trouble sleeping
- Feeling down, but still able to take care of yourself or take care of others



If so, here are some self-care activities that can help:

- Exercising (e.g., aerobics, yoga)
- Engaging in social contact (virtual or in person)
- Getting adequate sleep on a regular schedule
- Eating healthy
- Talking to a trusted friend or family member
- Practicing meditation, relaxation, and mindfulness

If the symptoms above do not improve or seem to be worsening despite self-care efforts, talk to your health care provider.



Do I have severe symptoms that have lasted 2 weeks or more?

- Difficulty sleeping
- Appetite changes that result in unwanted weight changes
- Struggling to get out of bed in the morning because of mood
- Difficulty concentrating
- Loss of interest in things you usually find enjoyable
- Unable to perform usual daily functions and responsibilities
- Thoughts of death or self-harm



Seek professional help:

- Psychotherapy (talk therapy)—virtual or in person; individual, group, or family
- Medications
- Brain stimulation therapies

For help finding treatment, visit www.nimh.nih.gov/findhelp.

If you are in crisis, call the National Suicide Prevention Lifeline at 1-800-273-TALK (8255), or text the Crisis Text Line (text HELLO to 741741).



www.nimh.nih.gov/findhelp



JUDICIAL WELLNESS AND MENTAL HEALTH

Parish Judge Michele Salmon

Judicial Officers usually swear or affirm to a Judicial Oath before they commence duties. By virtue of this Judicial Oath, they are expected to administer justice. Judicial officers are expected to be competent, independent and impartial as these are essential if courts are to fulfil their role in upholding constitutionalism and the rule of law. Instilling public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society. Therefore, it is essential that Judicial Officers, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system. These words, for the most part, are taken from the beginning of The Bangalore Principles of Judicial Conduct.

The Judicial Oath and Bangalore Principles of Judicial Conduct signal the awesome responsibility Judicial Officers undertake when they enter the Judiciary. Judicial Officers enter the Judiciary coming from varying backgrounds, experiences and expertise; they come from the private bar and from the public bar; they enter some in their thirties, forties and fifties. No matter their experience, expertise, background or age, given the weight that they will bear when they assume this new role, they must go through an induction where they are exposed to training in the Code of Conduct for their countries, the Bangalore Principles of Judicial Conduct, Judgment writing, Sentencing, Stress management, etc. This part of the process is critical to transitioning to being a Judicial Officer.

Preparation and competence, however, do not translate to smooth transition in all instances as some Judicial Officers take time to adjust to the unfamiliar. But, because the individual who chooses this path does so knowing that he or she represents the last bastion of succor for the citizenry, which is important in creating balance and justice in a free and democratic society, he or she remains resolved and committed with grit, to dig deep, and do the

work necessary to provide timely delivery of justice, despite the vicissitudes of life. With time, experience, continued education, and moral support this Judicial Officer with his or her indomitable spirit and character, thrives and blossoms into an excellent public servant, offering service above self with integrity; instilling confidence in the Judiciary par excellence.

As Judicial Officers exemplify stick-to-itiveness in carrying out their tasks, it must never be forgotten that they are humans first. They have feelings, they cry, they laugh, they can sometimes get ill, and they have families and friends too. It is this human that becomes the Judicial Officer and so there is no separation between the two. The Judicial Oath, the title, clothed in a robe, and exposure to training do not separate the human from the Judicial Officer. Judicial Officers are expected to have emotional stability, tolerance, and the ability to engage in constructive activities in emotionally stressed environments. Judicial Officers therefore need support, rest, and good physical and mental health to carry out their tasks and maintain mental acuity.

The Commentary to the Bangalore Principles at Value 6 - COMPETENCE AND DILIGENCE states

"Principle: Competence and diligence are prerequisites to the due performance of judicial office."

Commentary: Relevance of rest, relaxation and family life 194. The importance of a judge's responsibility to his or her family has to be recognized. A judge should have sufficient time to permit the maintenance of physical and mental well-being and reasonable opportunities to enhance the skill and knowledge necessary for the effective performance of judicial functions.

The stress of performing the judicial office is now increasingly recognized. In appropriate cases, facilities of counselling and therapy will need to be afforded to a judge suffering from stress. In the past, judges and legal professionals tended to disparage or dismiss these considerations. In recent times empirical research and notorious cases of judicial breakdown have brought such matters to general attention."

The Commentary to the Bangalore Principles acknowledges that attention must be given to the mental and physical wellbeing of Judicial Officers. Of note, the Commentary to the Bangalore Principles was formulated and adopted in 2007 through the assistance of the United Nations on Drugs and Crime (UNODC), yet fourteen years later there is still the call to address mental health or wellness in the Judiciary in a meaningful way.

The Honourable Justice Michael Kirby AC CMG (Rtd), distinguished Jurist from Australia, is long seen as one of the lone voices on Judicial Stress in Australia and author of the well referred to speech entitled "JUDICIAL STRESS - AN UNMENTIONABLE TOPIC". He states that he recalls in 1994 he was delivering a speech on Judicial Stress and when he started, with just the mention of the words 'Judicial Stress' the audience became visibly stressed.

More than likely the audience was visibly stressed because the topic is, to many individuals, unmentionable, as inherent in Judicial Stress is mental health which has a stigma around it.

In the Merriam-Webster Dictionary mental health is defined as:

"the condition of being sound mentally and emotionally that is characterized by the absence of mental illness and by adequate adjustment especially as reflected in feeling comfortable about oneself, positive feelings about others, and the ability to meet the demands of daily life, also the general condition of one's mental and emotional state."

In the same dictionary stigma is defined as "a mark of shame or discredit – stain."

Given the stigma around Mental Health, Judicial Officers might shy away from introspection, given

the role that they play in the society. They might feel that going there might make them vulnerable, as it can be viewed as a sign of weakness in a society where strength is the order of the day.

If Judicial Officers are expected to fulfill their mandate of upholding the constitution and administering justice with competence and diligence, independence, impartiality, integrity, propriety and equality, then it is incumbent on all Judicial Officers to give attention to their mental and physical health.

Increasingly, different regions have been recognizing the need to focus on Judicial Wellness and Mental Health.

In 2019 the February Issue of the International Consortium for Court Excellence Newsletter in an article written by Chief Judge Han-Marie Doogue of New Zealand "Addressing Judicial Wellbeing – Hauora Kaiwhakawa" she states:

"Times have changed. Judicial stress and attendant well-being issues have emerged as a clear and present phenomenon that demands attention. It is a particularly compelling proposition for our court given the breadth of its jurisdiction and the diversity and size of our bench of nearly 200 judicial officers. So we have determined to make changes, to address judicial stress issues, in response to recent research and publicity. The factors that drive the changed landscape for us are, first, the significant recent international publicity, including academic research, on the subject of stress and well-being in the legal industry. This has related predominantly to practising lawyers, where there are evident high levels of stress and depression, although some United States academic research has over the last decade extended to the judiciary in the United States specifically. Secondly, and more importantly, judicial stress and well-being has been the subject of publicity and academic attention closer to home for us..."

In Australia, there have been personal statements by judges publicly on the existence for them of stress and trauma issues arising on the job. There has been public recognition and acknowledgement of evident suffering on the part of some judicial officers. There have been recently two tragic suicides of magistrates in Victoria. Self-evidently, these are matters of high public interest which demand attention."

CAJO's Response

Some months later in 2019 The Caribbean Association of Judicial Officers (CAJO) listened to the call to examine judicial stress and wellness, acknowledging the mutual connection between addressing mental health and fostering public confidence in the Judiciary. CAJO included a session on Judicial Stress at its 6th Biennial Conference, which was hosted in Belize City, Belize from October 31-November 02, 2019. The theme for the Conference was "Judicial Integrity - the Pathway to Public Trust and Confidence". This session took place on Thursday, 31st day of October 2019 between 3:10 p.m. – 4:30 p.m. and was Chaired by Sir Marston Gibson, Chief Justice of Barbados, (now Retd), and the presenter was Dr. Joseph Sadek, Associate Professor of Psychiatry at Dalhousie University.

This session received the highest overall score from all of the sessions at 4.6/5. All areas of the session, from respondents' overall impressions to the sufficiency of discussion, were scored as being very good (score range 4). All respondents stated that they learned something new from the session and they would recommend it to other Judicial Officers. Respondents' comments heralded the session as "brilliant" and "enlightening" with a recommendation that the CAJO do a two-day session or podcast on stress.

Things noted about this session and CAJO's response:

- It was a small room with chairs seated in theatre style setting with a head table for the panelists. The layout of the room encouraged participation. At the beginning, all seats were taken.

- There was a wide cross-section of participants: Retired Judges, Senior and Junior Judges, Magistrates and Parish Judges, Registrars of different ages, experiences and expertise. The combination of age and youth in that space created a balanced, openness for discussion on such a delicate and unmentionable topic.

- Everyone seemed comfortable, and as the session went on persons shared their views as it felt like a safe space. By the end of the session the room was overfilled to capacity with Judges standing in any space they could find.

- Based on the interactions it was clear that the Session was well received. The response to this session sent a message to CAJO that this was an important area to explore.

- Since this Conference, CAJO in 2020 conducted surveys with Judicial officers across the region and the feedback is that they would benefit from seminars on judicial wellness and mental health.

Stressors in the Judiciary

- Lack or Reduced Income.
- Change in salaries from private practice to being on the Bench.
- Poor state of salaries and trying to balance budgets at home.
- The isolation effect of the post - Impact on lifestyle, not being able to go to many places and interact with many persons.
- The desire of not wanting to fellowship with your peers for a myriad of reasons, including lack of trust.
- Difficulties in finding the right life partners who understand the role of you being on the Bench.
- The high expectations of the post and balancing the personal and professional.
- Your own mental state before coming on the Bench (prone to depression, bi-polar, etc.)

- Your own mental state before coming on the Bench (prone to depression, bi-polar, etc.)

- The competitive work environment for promotion and not feeling comfortable to share certain private information with colleagues.

- The fear of looking weak, because strength is the order of the day.

- The advent of social media carries with it its own issues of persons recording and posting and making comments about Judges, some of which are negative.

- The nature of the work:

- The administrative responsibilities
- The clearing of the backlogs
- The delivery of Judgements, the writing of Judgements and the fears that come with it to write in a specific way.
- The fact that you can be appealed and dealing with that psychologically
- Who to call upon when you want to discuss a matter; who are you most comfortable talking with (because certainly the fear is that you do not want to talk to just anybody because you do not know what they may think of your competence)
- Management of time and how to do it with all the other hundreds of things that you are doing, including family matters
- Reviewing a judgment or sentence and the psychological discourse
- Dealing with rude Attorneys and litigants and trying to balance your temper so as to not be indecorous
- The Media and the sometimes-scathing commentary
- The Chatter of your colleagues and your Seniors when you make a mistake with disparaging comments of destruction (certainly not to your face)
- Non-delegable nature of the role of the Judiciary - The inability to delegate the decision making or judgment writing to someone else and the isolation effect that it carries.

Being in tune with your own body and mind, listening to others and confronting the issues with compassion.

- Stressors may lead to judicial officers feeling burnt out, fatigued, overwhelmed, depressed and may resort to different things like drinking, eating, smoking.

- Identifying the problem and being present – Look out for Warning Signs: Lack of Organization, Unexplained absences, tardiness, sleeping on the bench, Uncharacteristic behaviour, Judicial temperament, difficulty reaching decisions, etc.

- What to do: Listen to others: Family members, Co-workers, Lawyers, Judicial Clerks might express concern.

- Look at the causes: Look at a possible explanation and explore it. Is there a recent trauma? Car troubles; death of a spouse or child; family member seriously ill; sudden change in income and expenses.

Light things that Judicial officers can do to relieve stress:

- Do something physical and fun - exercise, walk, dance; go to the beach, river, cook.
- Do something interesting - Study a foreign language, take up painting, paint and sip.
- Spend more time with Family on trips, board games.

The Call to the Powers

- There is great need to roster Judicial Wellness, Judicial Stress and Mental Health workshops as a part of the training activities for Judicial Officers, yearly. This can be achieved even if there is no Judicial College or Judicial Education Institute and be can be facilitated with a little creativity on Microsoft Teams or Zoom platforms.

- Create wellness websites with interactive exercises so that Judicial Officers can access them at any time (24 hours).

- Introduce Judicial Helpline for Judges and their immediate Family to deal with many issues including death in the family.
- Create Employee Assistant Programs (EAP) such as Counselling. This will assist Judicial Officers who are struggling to cope with issues to understand them and learn how these issues relate to life and work. It will help with the emotional pressure, clearing the way to focus and decide what to do next.
- Introduce Judicial Mentoring at an early stage, at the least the first three years – This exists in other parts of the world and there are great benefits. This should be explored. (See the Judicial Mentoring Scheme in the UK).
- In keeping with the Commonwealth Latimer House Principles – Judges should be paid appropriately and they should be trained, especially in areas such as dealing with mental health.
- Look at what other countries are doing.

In England and Wales, Canada, America and Australia

With the creation of the Constitutional Reform Act 2005 in the UK the Lord Chief Justice of England and Wales has responsibility for “the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary of England and Wales within the resources made available by the Lord Chancellor.” A number of initiatives are in place in the UK to address Judicial wellness and education. There is a Judicial Mentoring Scheme and they have set up a Committee to look at Judicial Wellness.

In 2016, the Rt Hon. Lady Justice Sharp DBE of the Judiciary of England and Wales, Vice President of the Queen’s Bench Division, in her article “In Sickness and in Health” referred to below for your reading, “Judges may not take lightly being told they should think about how much they drink or smoke, or that they should take the stairs rather than the lift. But I suspect they would be pleased

to share the fruits of best practice from other jurisdictions, where judges are facing the same challenges. There is much that we cannot change in these straightened times, but much we can do.” She then went on to speak about the Canadian’ response and their implementation of a specialized counselling service which provides for Judges who are dealing with cases with “toxic evidence” and the Survive and Thrive Program.

Canadians have also implemented initiatives confronting mental health head on. The Canadian Judicial Council, Canadian Institute for the Administration of Justice, The Judges Counselling Program have created workshops, websites, programs, organized lectures and publications that deal with mental health for judicial officers.

The Americans have been forerunners in dealing with Judicial Stress. From in the early 1980s they have included Judicial Stress as a part of their training conferences. The American Bar Association and American Psychiatric Association has provided avenues for dealing with Judicial Stress and mental health.

In Australia and New Zealand there has been considerable attention, research and study in the area. (See reading below)

Final Points:

- Given that Judicial Officers experience stress from safety concerns, secondary traumatic stress which might come as a result of the toxicity of the cases that they manage, and occupational burnout, dealing with Judicial Stress and mental health must be confronted and it does not mean that the information is to be made public.
- We cannot delay as it needs to be understood. It is only through understanding mental health that the fear and stigma will be removed. However, for us to understand it in the Judiciary, research needs to be conducted.

- Covid-19 is here. It comes with its own unique stressors. Given the stressors Judicial Officers have pre-Covid-19, it must be expected that the stressors during Covid-19 will increase by leaps and bounds in the Judiciary and may lead to serious consequences to the administration of Justice. So what are we waiting for. The time to confront this issue is now. The future is now.

I commend for your reading:

o “In our society we isolate judges...All of a sudden a lawyer at 40 goes from fraternizing with friends to becoming a judge. He can’t golf, go to dinner or socialize with his former colleagues. An active man [sic] is now isolated and lonely. It leads to the old expression — if you’re hungry, angry, lonely and tired, you are one step from a drink.” See R Ray, “Help is Available for Addicted Lawyers and Judges” (1991) 18 CBA National 26.

o The Supreme Court of Canada’s The Hon. Mr. Justice Clément Gascon’s statement on the history of struggling with depression and anxiety disorders.

o Judges Counselling Program in Canada Website

o Judicial Mentoring Scheme <https://www.judiciary.uk/about-the-judiciary/judges-career-paths/judicial-mentoring-scheme/case-studies>

o February Issue 2019: International Consortium for Court Excellence Newsletter - Feature Article: Addressing Judicial Wellbeing – Hauora Kaiwhakawa By Chief Judge Jan-Marie Doogue, District Court of New Zealand. http://www.courtexcellence.com/__data/assets/pdf_file/0017/7325/icce-newsletter-no-12-v2-feb-2019.pdf

o “Australian judges and magistrates experience high rates of stress, study finds” <https://about.unimelb.edu.au/newsroom/news/2019/may/australian-judges-and-magistrates-experience-high-rates-of-stress,-study-finds>

o Bree Buchanan, Five ways judges can improve well-being, *Judicature*, Vol. 101, No. 4 (Winter 2017) <https://judicialstudies.duke.edu/wp-content/uploads/2018/01/JUDICATURE101.4-buchanan.pdf>

o Fordham University School of Law From the Selected Works of Hon. Gerald Lebovits June, 2017 *Judicial Wellness: The Ups and Downs of Sitting New York Judges* Gerald Lebovits

o *Judicial Stress – The Unmentionable Topic* by The Hon Justice Michael Kirby AC CMG President, Court of Appeal, Supreme Court of NSW (1984 – 1996)

<http://www.lawfoundation.net.au/ljf/print/E812A4B4C60E3A26CA2571A8002344A5.html>

HARICHA INDIHENA LUMA LIÁRAN LABIHIHARICHA LIDAN LASANSEGU DAN INDIGENOUS RIGHTS AND ACCESS TO JUSTICE IN A TIME OF TRANSITION



Dr Gwen Nunez Gonzalez and Deputy Registrar Patricia Arana



Lidan halurudu Soceda Houndarun Nasiun biama wein sisi ñein lubara lurudu luagua haricha Gürigia indihena. Layanuhaña luagu haricha lun habahüdün keisi lilana fulasu. Arengati katei bürüwati numeru disi nefu lunti lan houndaru gumadi hama indihena lau lubuidu ayumahani luagu habusenrun abihualamuga dumurei hamagien lubaragien lifirumaruniwa lurudu le lunbei lagumadirunian. Larenga numeru widü lau garicha hama indihena lun habagariduni hanichigu sin hafagu gabafutian lun hasansiruni habagari o lun habagaridun keisi hagiá. Luntigien harihi gobiernu lun hichigu lurudu lun madügülan diun lun lanügü hafulasu, hageira o hamegegu. Ruti katei bürüwati numeru unsu ubafu houn indihena lun hafeduhani hanichigu hast lun hafugachagüdüni le luaguhaliabei agumuchaguni. Sun le gadalumuti haricha lun magumuchagula sun luaguti hanichi uguñeti, lidan dan sügühalí, luma amuñegü, keibüri hadünbüri, abürüdüti, abunuti, adügüti lou uhobu, programa, subudi hani, afeduhani luma katei afeindihani le hani.

Sügüdatigien Houndarun Nasiun ubafu li hadunragu furendeitian lun hakutihani luaguti habagari luma haricha indihena lidan hadunragu Soceda lani Haricha Gürigia wein-aban dunguaü. Danguatian Geneva, Italy Nefu lun Tereisi lidan Sedü Hati irumu biama milu dusu. Lidan nasaminiaruni fe úraguati saminaü lübügürü yanu ladüga ñuruti nefu saminaü luagu haricha indihena ladügatima mabahüdüntian lidan hageira. Segun hagarada furendeitian lidan irumu biama milu katorsu, amu halurudu indihena hawei iseri gumadi ladüga fugati lurudun segun hafien luma ida lian lan gunfaranda hami Liáran labihiharicha.

Arufudatigien fe abihiti lou awanserati lan halurudu indihena ladüga buidula hafien, habahüdün houngua luma hayarafa lun aüdü asta gien liyarafa halurudu luma audu le oubei hawinwandan. Lumagien Yübü itara haña lau halurudu sin deneguati haganagua. Aban lasügüragüdü. Anihein múraguni luma halurudu indihena luma halurudu gumaditian ladüga mabahüdühamani gobiernu halurudu ani libidiehoun lau arihamani indihaha habagari gaünguañu luma aüdü. Kei tarenguni hagarada furendeitian "sin

gunfarandaü luagu hafien luma harihini indihena irichaü michuguti inebesei lun aban ti liabi aba lúyeri gumadi michuguti budan lun gunfaranda hamani indihena lun haluahani haricha lidan". Arufudatigien fe lau indihena tima abudun baña ladüga duru, hagiá tumabaña hamulestaha tagüdaha lun hadaünrawagu.

Segun Houndarun Nasiun lunti inebewala haricha indihena memedigia genegeti lau múragula halurudun luma lilurudu ageiraü aban lanügü würibani. Ya Balisi mabahüdü lumuti yebe gobiernu haricha warounu lun hafulasu aba hidi agusera. Chülügüda hamuti Habuti warounu lun gusei le iúntimabei, Caribbean Court of Justice, gañeintian gien. Aban hagumadirun gobiernu lun inebe lani haricha warounu pero ayahagua ageidagua luagu haricha. Mabahüdün hamutigien gobiernu haluruduguanarügü luagu fulasu lidan ageiraü labugía lugumadi aban galidi.



National Garifuna Council Pressing Ereba

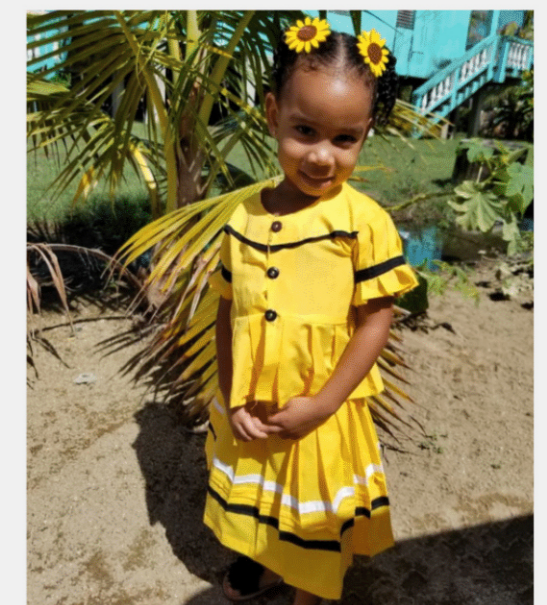
According to the United Nations there are 46 articles on the rights of Indigenous people. They speak of Indigenous People's rights to live as citizens of a land. Article 19 states that the government must meet with the people about their lands so that their views are heard and considered before signing any law that will affect them. Article 8 states the indigenous people have rights to live their cultural beliefs without government attempting to change their cultural practices or attempting to convert the indigenous people to live like them. The government must have laws that will prohibit the acquisition of indigenous lands, community and property. Article 11 empowers indigenous people to celebrate their culture and resurrect aspects of their culture that is becoming extinct. All those rights concern their cultures today, in the past, plus the future like their crafts, plants, written documents, programs, knowledge, cultural celebration, and paintings unique to them.

The United Nations also enacted an expert mechanism to do a study on the life and rights of the indigenous people during their Human Rights Commission twenty-first meeting. They met in Geneva, Italy 9th - 13th July, 2012. These proposals/laws are synchronized because 9 proposals were adopted on the rights of indigenous people because they are not respected in their countries. According to the expert mechanism report 2014, the indigenous laws differ from the laws of the government since the indigenous laws are derived from their belief and how they understand their access to justice.

The information shared also indicated that the indigenous laws prevail because of their good belief system, respect for each other and their closeness to the earth plus their connection to the earth that sustains them. They have lived by their laws for many years without problems. The laws are passed on from generations. There is disconnect between the laws of the indigenous people and the laws of the government because the government does not respect the indigenous laws and do not know that the indigenous people view their existence as one with

the earth. The report from the expert mechanism also expressed that without an understanding of the belief and view of the indigenous rights no respect is given, as a result, laws are enacted that do not allow for indigenous people to understand it enough to seek justice. Their information also showed that the indigenous people are the most arrested for crimes and the most harassed by the police to be sentenced severely.

The rights of the indigenous people, according to the United Nations, must be respected by countries but seemingly some of these rights are not in accordance to the country's law and clashes with modern perspectives of the law. In Belize, for example, The Mayan Land Rights issue was rejected by the government and the courts had to get involved. Maya Leaders Alliance and the Toledo Alcalde Association on behalf of the Maya villages took the case to the Caribbean Court of Justice and won. The government was ordered to recognize the Maya Customary Land Rights but that is still a fight that they have to endure. The Government also has no regards for their own laws regarding the distribution of lands in the villages.



Dressed in traditional garb

HARICHA INDIHENA LUMA LIÁRAN LABIHIHARICHA LIDAN LASANSEGU DAN INDIGENOUS RIGHTS AND ACCESS TO JUSTICE AT A TIME OF TRANSITION

Mamalalitian galidi hama abutinugu Lidan hageira Garinagu luagu lafareinhoun fulasu. Madunraguntian hama labuti fulasu arufudei mabahüdü hamani lurudu biama wein sedü (aban) (b luma c) le ariengubei:

“(b)giarati ladügu Council aba oundaruni lun harihi lau lafareinhou fulasu labugien ubarau katoru aban me hichiguni hasamina lun abuti lidan gobiernu le arihibei lau lichahouniwa fulasu; (c) lubaragien larihi abuti lun fulasu lidan gobiernu lübügürü lichahou fulasu lidan kara ageiräü lunti ladunragu hama labuti fulasu lun laganbu hamagien; anhein mabuserun lun ladügüni le habuserubei gastu labürüha houn ichiga fe kala úagu moundarulubei lau habuserun uligíame dan houn lun hounabuni” (Government of Belize, 2000- Gubiernu Balisi, Biama Milu).

Abangien lagütü hadasi National Garifuna Council lun dareirun lebeha hageira Garinagu. Anihein deneguati habadünagua Maya Mopan (hageira waroun) luma Georgetown (hageira Garinagu) luagu lebeha fulasu. Fadaguati Hopkins (Hageira Garinagu) luma Sidi (hageira giñounu) pero anihein múaraguni luagu lebeha fadaguaü ladüga seinsu. Gastugien hararamu labuti Barangu (hageirga Garinagu) luagu haricha lun lebeha hafulasu hauéi warounu. Asta Seinbei luma Plasensia anihein würibu lebeha luagu fulasu. Mama lirein lamanichu gobiernu.

Barühali COVID-Disi-Nefu aban agagüchüni luagu lisuni wagüribudun lun wachari lun wawinwandun. Mamarügü lun tabunu muna wabusera fulasu kei indihena. Ousera wamuti aüdü lun wachari luma amu Katei lidan wanichigu. Aban yadiwa luma aüdü ligía gastu lubei larihi lun wabihi múa lun wabunagu eigini buidutimati lun wani kuerpu. Lidehaba gien lun gaseinsu wama lun wideragu woungua ladüga magañeinhadiwa eigini areidei waseinsu geigi wagíame. Ayanuhatian Cole, Augustin, Robertson & Manners (irumu Biama Milu Disi Widü) luagu lisuni lareindun eigini haba mutu lidan hagibedaguñala ubouagu. Úhaña fe ida luba lan hamuga ladügu dasi lira. Añahein amu soceda inchaha mutu lun habunagu kei indihena ladüga

magadeirulumuti múa. Aturíaha hamali houseruni indihena hamúa lun hawinwandun ariha hamali lau buidutima lan, lidantima dan le. Aban lariengu Pace (irumu biama milu keinsi) lau “dan le warufudaha abunaguni úaraguati, larisidaguduniwaya múa lidangien le weigibei, liraü räü ichari aranderuti ladüga huya/duna, luma amu lúyeri abunaguni buiti, wafarenhañein hasubudi indiheha lidan abunaguni le houseruba lougien milu irumu”.

Anhein ariengalilubei lilurudun ubou lun inebewala haricha indihena úaligime irichaü houn lun habagariduni hanichigu luma hafien, gastu hamuga hawarun gobiernu anhaña madiunru segun lurudun. Haricha indihena keisi gürigía lun habihini haricha lidan lurudun. Hameteha tagüdaha hama nubuweingian indihena luma mafeni luaguti lurudun biama katei lunti naransehoun reideilamuga hañabilhoun warahüñü hama wabaña lidan lurudun le úabei kariunla lun habagari lidan dan le luma amüñegü.



Exhibit of Garifuna Drums

The Garifuna Communities have no say in how the lands in their communities are distributed. The leaders are not consulted and as a result no regard is given to The Village Council Act section 47 (1) (b and c) which states:

“(b) the council may constitute itself a Lot Committee or may appoint a Lots Committee under section 14 hereof to make recommendations to the said Ministry with regard to the distribution of lots and lands within or affecting the boundaries of the village; (c) before dealing with any lands in the village, the Ministry responsible for lands shall consult the council and take its views into account; and should the said Ministry decide not to follow the advice of the council it shall explain its reasons in writing to the council before effecting that decision, and provide the council further opportunity to present its case to the Ministry” (Government of Belize, 2000)

Another issue the National Garifuna Council is addressing is the demarcation of the Garifuna Communities. The Village of Georgetown (Garifuna Community) is bordered by Maya Mopan village (Maya Community) and there was an issue with land between the two communities. Hopkins Village (Garifuna Community) is bordered by Sittee River Village and the Village leaders in Sittee River are claiming a portion of Hopkins for Economic reasons. Barranco Village (Garifuna Community) Leaders had to take their rightful ownership of the village boundary because the neighbouring Maya community was claiming a portion of the village. Seine Bight (Garifuna Community) and Placencia Village also have issues with boundaries. Government’s intervention was loudly silent.

COVID-19 has brought an awareness of the need to return to our traditional way of farming for food security and economic benefit. Our connection to land as indigenous people is more than just for house lots. The land is used for agriculture and other cultural rituals. We are one with our land and hence the importance of ensuring that land is secured for agricultural use, which will allow indigenous people the right to have healthy organic food planted by their hands. It will also be economically beneficial since they will reduce the purchase of food plus provide food security for their families. Cole, Augustin,

Robertson, & Manners (2018) spoke about the importance of food security for growing population and proposed a framework to deal with this issue with a growing world population. Others organizations are also encouraging the use of indigenous farming because it does not destroy the integrity of the land. They have studied the way Indigenous people use their land to sustain themselves and concluded that their way is the best, especially for these times. Pace (2015) states is best “When we teach companion planting, composting, rain gardening and other sustainable gardening techniques, we are sharing knowledge developed by indigenous food growers over thousands of years”.

If the international laws dictates that the indigenous groups must be respected and given the right to practice their cultural beliefs and practices, then the governments should be held accountable for not adhering to the laws. Access to Justice is not only an indigenous right but a human right. The attack on our indigenous youth by the law enforcement officers and lack of knowledge of the justice system’s function are matters that must be addressed so that our children and grandchildren will stop ‘get caught-up’ in a justice system that is unfriendly to their present and future lives.

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OUR BLUE GREEN ECONOMY: THE CARIBBEAN SEA

Justice Shiraz Aziz



Gran Turk, Turks and Caicos Islands

"All its ingenuity, its resilience, its courage even, humanity has been humbled by a microorganism that has disrupted, even destroyed, many lives around the world. While we are still weathering the storm, we are also equipped with fresh insights on how to focus on resilience and position ourselves for a better and safer future for all."

It may well be a valid argument that this pandemic has reduced demands on mother nature – as in our eco-friendly and biological footprint largely due to travel restrictions on movement via land, air and seas. This in itself is an important concern as the Caribbean territories depend on tourism for the most part to sustain their economies.

What is therefore common to the Caribbean communities and in particular our peoples, are the beautiful mountains, rainforests, seas and waters that surround the breath taking, vibrant, beautiful and ever welcoming islands and territories. It has been said that the sea is at the origin of life on Earth and is what makes the Earth liveable and comfortable for people. This is certainly the case in the wider Caribbean, as it is the seas that provide many with a vital source of water, nourishment, protection, employment and income. This is also true for many other small island states beyond our region. Even better is that fact that it is impossible not to feel a sense of calm, pride, relaxation and homeliness when around, in or on our seas. Our family of islands and the territorial seas share common bonds in that they enhance a sense of family and togetherness, rich in natural resources and they are truly beautiful by nature. This explains in one sense why the Caribbean Sea which is a body of water adjacent to the Atlantic Ocean, southeast of the Gulf of Mexico and other surrounding waters including the islets, reefs and cays are our blue economy which must be safeguarded.

The "blue economy" ideology seeks to promote economic growth, social inclusion, and preservation or improvement of livelihoods while at the same time ensuring environmental sustainability of our waters and seas. There is another element to the blue economy and that is the potential of new pharmaceuticals and opportunities for research and development of new drugs to treat health issues. The blue

economy is a source of sustainable development which naturally implies that economic development embraces the concepts of inclusivity and sustainability. **Although we speak of the 'blue economy' referring to the beautiful seas and beaches, it is only natural to consider territories that have a diverse but just as important extensive and rich sea life such as Guyana. Guyana is a land of many waters, whose indigenous and other peoples depend on those waters in daily life.** The discovery of oil is or has been seen as a blessing, as the potential for employment and wealth has increased, but with that comes a real concern for the environment as there is a need to protect the lands and seas from downstream air and water pollution. In protecting the waters, it has been clearly postulated that the environmental impacts of human development and recent civil engineering projects are becoming increasingly detrimental to its previously nearly untouched portion of the Amazon Rainforest and populous coastal cities. This in and of itself drives us to push for sustainable development in every sense of the term.

The result of sustainable development in our blue economy would be realized in focusing on protection, preservation and conservation of our natural resources, in order that such resources are not damaged and depleted. It is us, each and every one of us, as stakeholders and stewards of the blue [and green] economy who must ensure that it is protected and preserved for the benefit and enjoyment of future generations to come. As stated by the World Bank in its paper 'The Potential of the Blue Economy':

"The need to balance the economic, social, and environmental dimensions of sustainable development in relation to oceans is a key component of the blue economy."

Apart from the industries mentioned earlier, the potential of the Caribbean Sea if properly protected is enormous and this would include having a source of sustainable energy, through adapting policies based on the principles of sustainable development.

Throughout the wider Caribbean, it has become a harsh realization, that urgent emphasis must be placed on the protection, conservation and preservation of our planet Earth and its natural resources. **We are the stewards of the environment that surrounds us because we are a family of people and a family of islands that face similar trials and tribulations.** The urgent emphasis comes after having lived through many months of emergency regulations and tough restrictions as a result of the Coronavirus pandemic. This pandemic has highlighted many problem areas within our countries, but in the same vein has illustrated the wonders of our greenery and by glorious contrast the beautiful, vibrant, exotic sea life and biodiversity that there is in our waters. **In many countries and small island states, the lockdown restrictions are currently ongoing and therefore our focus must turn to health and safety, progress, conservation and sustainability in daily life, through what has been termed the 'new normal'.**

The new normal has come about because of the pandemic and society adapting to changes in the

way we carry out our daily lives. The pandemic will continue to be a constant reminder of the fact that – we are susceptible to greater environmental harm if we continue to abuse or neglect our environment and our natural resources.

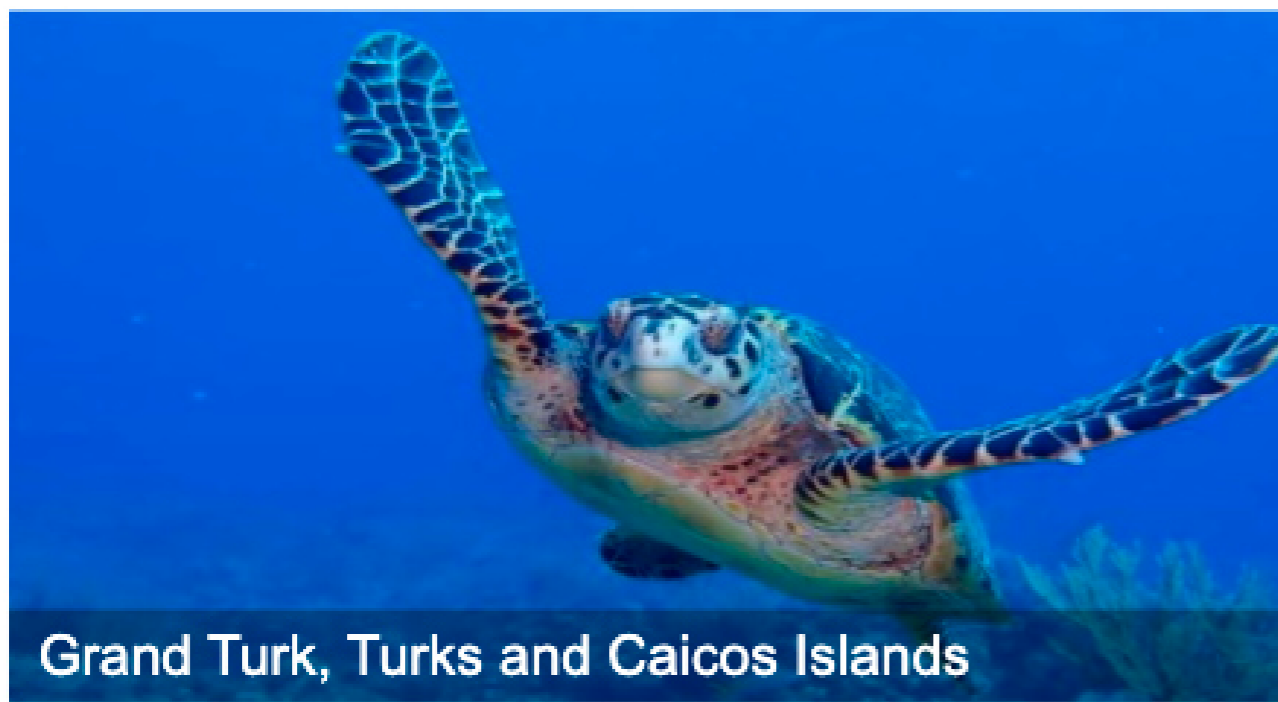
It is quite evident that despite developing sciences and innovative or state of the art technology, we could not deter the coronavirus from unleashing its havoc on mankind, the effects of which have been extremely unfortunate coupled with negative impacts on health and economy throughout the world.

In an article entitled **"Why 'One-Planet Compatibility' Is Essential to Build Resilience in a post-COVID World"** (Blum and Wackernagel 2020) the situation post Covid was assessed and the following statement could not be any more true:

The blue economy visualization is low-carbon, efficient, and clean. It is also an economy that is based on sharing, circularity, collaboration, solidarity, resilience, opportunity, and interdependence (UNEP 2015). Its growth is driven by investments that reduce carbon emissions and pollution, enhance energy efficiency, harnessing the power of natural capital—such as the oceans—and halt the loss of biodiversity and the benefits that ecosystems provide (UNEP 2013).

Blue growth, or environmentally sustainable economic growth based on the seas, is a strategy of sustaining economic growth and job creation necessary to reduce poverty in the face of

worsening resource constraints and climate crisis. In many Caribbean territories the sea and its resources are a part of our common heritage and an important part of many cultures, whose beliefs and practices are closely associated with the marine and coastal environment. It cannot be any truer to state that we have a very special relationship with our sea and the health of our seas is a testament to the health of our wellbeing and economy. In other words, there is a mutually inclusive relationship between the two.



Grand Turk, Turks and Caicos Islands

How wonderful it is to be able to discover and observe the wonders of nature in our seas, to know that our communities can once again thrive on our seas without over exploitation of its resources. **To protect and preserve our seas and the rich life below the surfaces are key to sustaining its critical market. Therefore, a transition must be made towards continuing to blue what is known as our green economy.** Blueing the green economy is of itself a concept of ensuring sustainable development through sustainable activity. We do so by embracing and enhancing our environmental

and coastal management capabilities. We must strive to ensure that we adequately protect our 'blue'. In order to do so we must embark on environmental programs and policies, engage with the youth and support schools and their awareness programs, educate communities to protect and assist with the restoration of ocean ecosystems, raise support for recycling of major ocean pollutants, and re-socialize our people to change current fishing and marine methods and practices.

The governments of the territories must ensure that there are laws, plans and policies in place to prevent pollution and degradation but we must remember that a collaborative approach is needed to protect our beautiful blue economy. Indigenous knowledge about the ocean and its resources must also contribute to this process. Only greater and continued education of all people, complemented by greater public awareness through the media, can change our unsustainable consumption and production patterns. This type of exposure provides people at all levels of education, but in particular the youth of today and leaders of tomorrow, with the knowledge and skills needed to sustainably manage our seas and their resources. We recognize that the judiciary in our territories have an important role to play in the protection and preservation of 'our' environment. There are many instances through delivered decisions of Judges where important environmental issues have been addressed by the Courts. Some of us may recall the world congress on justice, governance and law for environmental sustainability. More than 150 judges, prosecutors, public auditors and enforcement agencies from

some 60 countries, hosted by the UN environment programme (UNEP) quietly got together in Rio. The event marked a decade of progress since the global judges' symposium in Johannesburg in 2002, which spelled out for the first time in unequivocal terms the crucial role that judges have to play in interpreting and enforcing environmental law, nationally and internationally. There is now widespread acknowledgement of an international "common law" of the environment based on principles such as sustainability, and inter-generational equity. There now exists expanded awareness of environmental issues among the judiciary, and the development of specialist courts and tribunals in many countries. One need look no further than the Environmental Commission in Trinidad and Tobago designated to be the premier environmental court in the region setting the trend in environmental decision-making and the utilisation of case management methodology and court information technology.



Last, but certainly not least there are also smaller initiatives and programs that can be developed and promoted to highlight environmental awareness within the courts. These programs can and do include the court environs and the wider community which range from bringing a plant to work, beautification of court gardens and greenery. The volunteer outreach programs around our beaches and coasts and in some territories may include the Courts adopting a part of a road or highway and planting flowers and shrubs to signify a commitment to the environment.

Let's celebrate together the beauty, wealth and the promise of our blue economy. Let us remember that the oceans are the lungs of our planet providing the majority of the oxygen we breathe. We do

acknowledge the right to life as a human right. One may have a hurdle to overcome in arguing, in my view, that the right to life does not include the right to a clean and healthy environment which can be traced back to the 1948 UN Declaration on Human Rights and evolved with the 1972 Stockholm Principle 1, 1992 Rio Principle 1, and the 1998 Aarhus Convention. As Justice Winston Anderson of the Caribbean Court of Justice has noted:

"Without environmental integrity any reference to human rights is largely illusory."

Keeping our marine and coastal environment healthy and pollution-free must therefore be the priority of everyone in this Caribbean family.



HARNESSING SOLAR POWER: ENERGY OF THE EVOLVING CARIBBEAN

Shasta Sankar

With the unlimited supply of sunlight the Caribbean islands are exposed to on a yearly basis, coupled with the advancements in harnessing the Sun's energy, solar power is the preferred energy source for developing Caribbean countries seeking to reduce their dependency on fossil fuels, while moving towards a cleaner, renewable and sustainable energy source.

Trinidad and Tobago - Nelson Island

THE National Trust has successfully made Nelson Island a sustainable eco-development.

The National Trust said the space is now a greater source of heritage pride, symbolising how Trinidad and Tobago can celebrate and harmonise its colourful, sometimes turbulent past with its unlimited potential and an environmentally sustainable future. This project is also in keeping with T&T's commitments to the global community under the Paris Agreement as laid down in our Nationally Determined Contribution (NDC) as well as in the achievement of the national policy target to increase the total amount of electricity generated from renewable energy sources by 2021. A small



Trinidad and Tobago

desalination plant driven by solar power was also installed. It will produce all of the potable water required for use on the island. Previously, a boat would periodically bring freshwater to the island. A solar powered system was installed to provide the electrical needs of the island inclusive of lighting, security systems, data communications, appliances and power outlets.

Jamaica - Paradise Park Solar Farm

Paradise Park, a US\$65-million investment, is the largest solar project in Jamaica, which is projected to significantly decrease the country's dependence on fossil fuels, while helping the island to reach its sustainable development targets. The solar farm is designed to supply 37 megawatts of power to the island. In terms of environmental impact, the project is expected to displace about 107,000 barrels of fuel oil annually, and prevent over 48,000 tons of carbon dioxide from entering the atmosphere. With 156,000 panels installed over an area of 81 hectares, Paradise Park produces enough energy to cover the annual consumption of some 78,000 people.



Jamaica

Barbados - Solar Water Heaters

Barbados is one of the Caribbean islands that has a long history of using renewables, going all the way back to the colonial times when bagasse was used to power sugar cane refinement. With that in mind, Barbados has been extremely successful in its embrace of solar water heating: saving millions of dollars in imported fossil fuel costs and millions of tonnes of carbon dioxide every year, thanks to the expansion of this climate compatible technology. Dating as far back as the 1970's, over 50,000 solar water heaters have been installed on the island, saving consumers an average of US\$137 million over those decades. Government support for the Barbados SWH industry was approximately US \$550,000 in 2002 with estimates suggesting solar water heaters save consumers between US\$11.5 and 16 million per year in fossil fuels.

Guyana - A Glimpse into the Future

The government of Guyana, after reviewing the nation's energy mix, has crafted a strategy which would move Guyana towards energy efficiency by 2025. With adequate and timely investors, an ambitious target of achieving close to 100 per cent renewable energy in the power sector by 2025 has been set. Guyana has committed to develop a mix

of wind, solar, biomass and hydropower to supply both the demand of the national grid and the energy requirements for towns and villages in Guyana's hinterland. This initiative will incrementally almost triple the power supply in Lethem, Region Nine to 3.2 megawatts, of which 2.2 megawatts would come from hydro power and 1 megawatt would come from solar power. The town of Lethem presently has a peak demand of 1.1 megawatts, so this surplus of energy all coming from renewable sources would enable the growth of industrial estates and industrial plants, as well as for residential purposes.

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HET EFFECT VAN COVID-19 OP HET GEMEENSCHAPPELIJK THE IMPACT OF COVID-19 ON THE JOINT COURT OF JUSTICE

Sujata Aswani



Op 11 maart 2020 is het coronavirus, COVID-19, als een pandemie gedeclareerd. Op 13 maart 2020 is het eerste positieve geval van COVID-19 op Curaçao en Aruba gemeld. Vanaf 16 maart 2020 zijn alle internationale vluchten naar Curaçao en Aruba opgeschort. Op 17 maart 2020 is het eerste geval op Sint Maarten gemeld. De door de overheid aangekondigde maatregelen hebben uiteraard ook gevolgen gehad voor de werkzaamheden van het Hof.

Aanhouden zittingen

Gemiddeld wordt een keer per week gereisd tussen de (ei)landen ten behoeve van zittingen. De hoger beroepsrechters moeten vaak reizen tussen de (ei)landen. Dit omdat de hoger beroepsrechters gevestigd zijn op Curaçao, maar zittingen doel op alle (ei)landen. Daarnaast doen de Curaçaose strafrechters in eerste aanleg ook zittingen op Bonaire. De reisbeperkingen hebben uiteraard ook gevolgen gehad voor de werkzaamheden van het Hof. Vanwege de reisbeperkingen konden de rechters niet reizen en daardoor moesten de fysieke zittingen worden aangehouden. De 'lokale' rechters konden hun fysieke zittingen wel blijven doen.

Lockdown

Vanaf eind maart 2020 hebben de Curaçaose, Arubaanse en Sint Maartense overheden een zogeheten lockdown afgekondigd. Het gevolg hiervan is geweest dat de fysieke zittingen aangehouden moesten worden en de medewerkers van het Hof thuis moesten werken. In deze periode is de noodzaak van een goede digitale werkomgeving naar voren gekomen. Stukken werden immers via e-mails door de partijen naar het Gerecht toegestuurd en dit vervolgens door de Griffie-medewerkers naar de betrokken rechter en griffier. Zelfs nieuwe

procedures werden door middel van e-mails opgestart.

Het nieuwe normaal

Vanaf eind april 2020 zijn de overheidsmaatregelen versoepeld. Partijen konden weer naar het loket komen om stukken in te dienen en om procedures te starten en konden de zittingen op alle (ei)landen weer plaatsvinden. Reizen was echter nog niet toegestaan. De zittingszalen zijn aan de hand van de regels van 'social distancing' aangepast. Tussen de rechter en griffier is een afscheiding gecreëerd door middel van plexiglas. Dit was wel even wennen, omdat de communicatie tussen de rechter en de griffier tijdens de zitting soms stroef verliep. De griffier kon de rechter bijvoorbeeld niet zomaar iets fluisteren of hem wijzen op een punt in de pleitnota waarover nader gediscussieerd moest worden. In de publieke ruimte van de zittingszaal zijn stoelen weggehaald zodat er tussen de stoelen minimaal een afstand van anderhalf meter is. Daarnaast zijn medewerkers van het Gerecht, bezoekers en partijen verplicht om een mondkapje te dragen in de publieke ruimtes van het Gerechtsgebouw. Bij alle deuren van het gebouw zijn handreinigingsmiddelen klaargezet. Pas eind juni zijn de grenzen weer opengesteld en kon tussen de (ei)landen weer gereisd worden. In de tussentijd hebben de Hof-rechters door middel van videoverbinding zittingen gehouden wat overigens ook voor uitdagingen heeft gezorgd. Bij een zitting met videoverbinding is men namelijk sterk afhankelijk van de internetverbinding. Daarnaast vergt zo'n zitting ook geduld, vooral als er problemen zijn met het geluid of als de zaal gehorig is. Het komt dan ook vaak voor dat de rechter een vraag moet herhalen of langzamer moet praten.

On March 11, 2020, the coronavirus, COVID-19, was declared a pandemic. On March 13, 2020, the first positive case of COVID-19 was reported in Curaçao and Aruba. All international flights to Curaçao and Aruba were suspended as of March 16, 2020. Sint Maarten reported its first case on March 17, 2020. It goes without saying that the measures announced by the government have also had consequences for the activities of the Court.

Postponement of Hearings

On average people travel once a week between the islands for the purpose of hearings. The appellate judges have to travel frequently between the islands. This is because the appellate judges are based in Curaçao, but conduct hearings on all the islands. In addition, the Curaçao criminal judges also conduct hearings in first instance in Bonaire. Needless to say, the travel restrictions have also had an impact on the Court's operations. Because of the travel restrictions the judges could not travel and therefore the physical hearings had to be postponed. However, the 'local' judges were able to continue to hold their hearings in person.

Lockdown

At the end of March 2020, the Curaçao, Aruban and Sint Maarten governments announced a so-called lockdown. The consequence of this was that the physical/in-person hearings had to be postponed and the Joint Court employees had to work from home. During this period, the need for a good digital working environment came to the forefront. Documents were, after all, sent by the parties to the Court of First Instance by e-mail and subsequently sent by the Registry staff to the concerned Judge and Clerk. Even new proceedings were initiated by e-mail.

The New Normal

From the end of April 2020, government measures have been eased. Parties could once again come to the registry to submit documents and start procedures, and the hearings on all the islands could take place again. Travel, however, was not yet permitted. The courtrooms have been arranged according to the rules of 'social distancing'. A separation has been created between the judge and the clerk by means of plexiglass. This took some getting used to, because communication between the judge and the clerk was sometimes difficult during the hearings. For example, the clerk could not simply whisper something to the judge or draw the judge's attention to a point in the pleading that needed further discussion. Chairs have been removed from the public area of the courtroom so that there is at least a distance of one and a half meters between the chairs. In addition, employees of the Court of First Instance, visitors and litigants are required to wear masks in the public areas of the Court building. Hand sanitizer dispensers are available at all doors of the building. It was not until the end of June that the borders were reopened and it was again possible to travel between the islands. In the meantime, the Joint Court Judges held hearings by means of videoconferencing, which also posed certain challenges. A hearing by videoconference is in fact highly dependent on the internet connection. In addition, it requires patience, in particular where there are sound problems or where the room is noisy. It is therefore often the case that the judge has to repeat a question or speak more slowly.

HET EFFECT VAN COVID-19 OP HET GEMEENSCHAPPELIJK HOF VAN JUSTITIE

THE IMPACT OF COVID-19 ON THE JOINT COURT OF JUSTICE

Bezuiniging

COVID-19 heeft ook een enorme impact gehad op de economie van de wereld. Curaçao, Aruba en Sint Maarten hebben uiteraard ook een enorme economische daling ervaren. Deze landen zijn voornamelijk afhankelijk van toerisme en door de reisbeperkingen wegens de pandemie gaan mensen liever niet op reis.

De overheden van Curaçao, Aruba en Sint Maarten hebben allemaal bezuinigingsmaatregelen ingesteld. Aangezien de wijze van financiering van het Hof in een Rijkswet is vastgesteld, zullen deze maatregelen het Hof niet treffen. Het Hof heeft echter een solidariteitsbijdrage van Naf 2 miljoen geleverd. Voor het jaar 2021 zal kritisch worden gekeken naar de kostenstructuur van het Hof.

Of het Hof op korte termijn zoals oudsher zal kunnen functioneren zal de tijd wijzen, maar het Hof zal zich blijven inzetten voor kwaliteit en waarborging van het vertrouwen van de burger in de rechtspraak. In deze moeilijke tijden heeft het Hof ook belangrijke lessen geleerd. Zo is de noodzaak van een goede digitale werkomgeving naar voren gekomen en is men leren creatiever om te gaan. Ook heeft men ervaren dat het thuiswerken – wat voorheen bij hoge uitzondering gebeurde – ook leuk en soms ook effectief kan zijn.



Outfitted Courtroom and Masked Court Security Officers at the Joint Court



Budget Cuts

COVID-19 has also had a huge impact on the global economy. Curacao, Aruba and Sint Maarten have likewise also experienced an enormous economic decline. These countries are mainly dependent on tourism and because of the travel restrictions due to the pandemic, people prefer not to travel.

The governments of Curaçao, Aruba and Sint Maarten have all introduced austerity measures. Since the method of financing the Court is laid down in a Kingdom Act, these measures will not impact the Court. However, the Court made a solidarity contribution of Naf 2 million. The Court's cost structure will be critically examined for the year 2021.

Time will tell whether the Court will be able to function as it has traditionally done in the short term, but it will continue its efforts to ensure quality and to guarantee citizens' trust in the administration of justice. In these difficult times, the Court has also learned important lessons. For example, the need for a good digital working environment has been highlighted and people have learned to be more creative. They have also experienced that working from home - which used to be very exceptional - can also be fun and sometimes effective.



TRAINING AND EDUCATION: CAJO PROGRAMMES



Elron Elahie and Registrar Camille Darville-Gomez



2020 has proven to be both a difficult and interesting year for the CAJO. As a regional judicial education hub, the CAJO began 2020 with in-person training and education sessions on various themes and topics. Training programmes in various jurisdictions were scheduled to be delivered in the second half of 2020 but the global pandemic required a shift in modes and methods of delivery. Swiftly, with innovation and reengineering of training, the CAJO responded to the emergent needs of judicial officers across the region; issues and areas that were highlighted or exacerbated by COVID-19. **The CAJO is thus happy to report that a number of programmes were developed and executed. The Registrar's Roundtable, Magistrates' and Parish Judges' Roundtable Webinar, Jury Trials in the time of COVID-19 Programme, and Judgment Writing programme were delivered with great success.**

Registrars' Roundtable Webinar

On Thursday 27 August 2020, the CAJO successfully convened the Registrars' Roundtable which saw over twenty-five regional Registrars (including Deputy and Assistant Registrars) gather to discuss key issues which they had been facing in their respective jurisdictions. The Roundtable was designed to include two key sessions.

The first, Preparing the Registry for the New Normal, provided an opportunity for Registrars to share and explore what strategies different courts have adopted to deal with limited or no in-person filings and work arrangements, provide insights into how court users have responded to relevant changes and what more must be done to enable remote use of services, share what training/protocols have been provided for staff and court users, and what training/protocols are needed, and determine which Courts/personnel are positioned to provide training.

The second session, Recognition: Building Staff Morale, included a summary of the findings of the CAJO's Report "Assessing Responses to Caribbean Judiciary Staff" shared by CAJO Chairman Justice Peter Jamadar and its Research and Programme Coordinator, Elron Elahie. The session also gave Registrars the opportunity to explore what can be done to improve and promote staff morale and to interrogate the development of robust recognition schemes.

Before ending the Roundtable, it was agreed that a communication channel via WhatsApp will be created so that regional Registrars can communicate, in real time and with ease, on any issues which they may face. A report on the proceedings of the Webinar was prepared by the Registrar of the CCJ and submitted to the CAJO.

The Bahamas was the happy host of the second Registrars Forum held in November, 2020. It was the first forum after the inaugural one held in August, 2020 which had been hosted by the Registrar of the Caribbean Court of Justice, Mrs Jacqueline Graham. The Honourable Chief Justice Sir Brian M. Moree, Q.C. brought welcome remarks and the forum was moderated by the Registrar of the Supreme Court, Ms. Camille Darville Gomez. The Deputy Registrar of the Court of Appeal; and the Deputies and Assistant Registrars of the Supreme Court were all in attendance. In an effort to "Bahamianize" the event each of the Registrars had a Bahamian flag in the background or wore the national colours. Deputy Registrar Carol Misiewicz delivered the Vote of Thanks. The Forum provides a unique opportunity for sharing and collegiality with counterparts in the region on issues of mutual interest.

More than twenty Registrars participated in the Forum including from the Caribbean Court of Justice, Barbados, Belize, Eastern Caribbean, Guyana, Jamaica, Trinidad and Tobago, and Turks and Caicos Islands. Topics discussed included: the challenges and solutions of a virtual platform and the strategies courts have employed in resolving them, and the types of training and protocols needed in relation to the use of the virtual platforms for staff and court users. The discussions were lively and permitted the Registrars to highlight their respective jurisdictions and how they were addressing these issues. It was agreed that it would be better for the Court Administrators to have their own Forum as their issues would be unique to them. However, it was agreed that where there were issues of mutual interest to both Registrars and Administrators, that they would be invited to join the Registrars Forum on an ad hoc basis. The Registrars Forum continues to attract wide participation amongst the Registrars in the region and it is hoped that it will remain a permanent feature in their court calendar. **The next forum will be hosted by the Eastern Caribbean Court in late January, 2021.**

Magistrates' and Parish Judges' Roundtable Webinar

On Friday 09 October 2020, the CAJO held its first Magistrates' and Parish Judges' Roundtable Webinar which brought together over sixty Magistrates from across the region. Prior to the Forum, the CAJO conducted an assessment of what topics and areas Magistrates would like to focus on at their forum. This information allowed for the CAJO to design a programme that provided two knowledge sharing sessions as well as generate discussion. A third session was designed around ascertaining the needs of Magistracies across the region.

The first session, which was on Remote Hearings,

addressed the challenges faced and solutions implemented around protocols, non-appearance, non-compliance, access to justice, and etiquette as they relate to remote hearings in the Magistrates' and Parish Courts. This session was facilitated by Chief Justice (Ret) of Barbados, Sir Marston Gibson and Parish Judge Michele Salmon delivered a comprehensive and insightful presentation on her experience with remote hearings.

The second session, Safety and Support in the time of COVID-19, was also facilitated by Sir Marston Gibson and included a presentation from His Worship Ian Weekes, Chief Magistrate of Barbados on his experiences with ensuring safety and providing support during pandemic times. The session sought to explore the challenges faced and solutions implemented around the safety of and support provided to judicial officers, the safety of and support provided to staff and litigants, and health protocols in the courtroom/courthouse as well as interrogating present and future needs to ensure safety and support in their courtrooms and courthouses.

The final session, facilitated by Justice Peter Jamadar and Mr Dennis Darby, Consultant to the JURIST Project, provided a space for Magistrates and Parish Judges to share their present and future needs as they relate to ICT equipment and support, access to legislation, case law, databases, protocols, and directions, improvement of physical environment, and continued judicial education and training. Riana Kanhai of the JURIST Project was assigned as rapporteur to collect and collate the information from this session. It is hoped that arising out of the information collected during this session, the JURIST Project will be better positioned to offer support to Magistracies across the region.

TRAINING AND EDUCATION: CAJO PROGRAMMES JULY-DEC 2020

Jury Trials in the time of COVID-19 Programme

The CAJO engaged, for the first time, a multi-prong approach to judicial education and information sharing that utilised pre-recorded information video products instead of only a live webinar presentation. Three Caribbean countries, Barbados, Guyana, and St Lucia provided a series of video products from their regions that highlighted their experiences with resuming jury trials during pandemic times, and shared multiple perspectives as well as feedback received on their policies and protocols. These videos were shared with registered participants on November 13 2020. From then until November 23, participants submitted their questions arising out of the information shared in the videos. These questions were then organised thematically. Then, on Friday 27 November, the CAJO hosted a live Webinar Q&A in which the submitted questions were discussed by a Panel which included Sir Marston Gibson from Barbados, Chief Justice (Ag) Roxane George, Justice Brassington Reynolds, Justice Priya Sewnarine-Beharry, and Justice Nareshwar Harnanan from Guyana, and Justice Vivian Georgis Taylor-Alexander and Registrar Daniel Francis from St Lucia. The Webinar Q&A also included a segment for participants' comments and sharing.

The programme was designed to include video knowledge products in lieu of live webinar presentations as the CAJO has noted the discourse and literature around 'Zoom burnout' and sought to find creative and innovative ways to share as much information as possible and promote critical reflective thinking and learning by not including both extended presentations and discussion in a two to three-hour frame.

Judgment Writing for the Office of Procurement Regulation

Over the period June – October 2020, the CAJO provided a three-module judgment writing training programme to Trinidad and Tobago's Office of Procurement Regulation (OPR). This programme was delivered remotely to over twenty-five officers from the OPR, including their Board of Directors. The programme was designed and developed by

Justice Peter Jamadar, Justice Gregory Smith, Justice of Appeal of Trinidad and Tobago, Ms Lynn-Marie Edwards, Judicial Research Counsel to Justice Smith, and Elron Elahie.

The programme was delivered in three modules. Module One was a self-directed learning engagement. Participants were sent an electronic copy of the Federal Judicial College's Judgment Writing Manual and were asked to provide responses to set questions upon reading the Manual. These questions informed the design of the subsequent modules. Modules Two and Three were taught (Micro and Macro Organisation). These taught modules were delivered using the CAJO's virtual classroom setup, which was designed and implemented by Elron Elahie and Paul Aqui, the CCJ's Multimedia Officer. This innovation allowed for the programme to be delivered remotely and sought to eliminate the impersonal and mundane nature of behind-the-desk delivery and replaced this with a live in-person virtual experience. The virtual classroom, which contained a number of moving parts, afforded the presenters an environment to engage dynamic presentations and brought the participants 'in the space' through the use of television screens, all facilitated through Microsoft Teams.

The CAJO will continue playing a leadership role in innovative regional continuous education and training and looks forward to providing impactful, meaningful, and informative programmes in 2021.

[Take a look at what participants from the training had to say!](#)



CAJO NEWS FEATURE:



THE CAJO'S EXPERIMENTS IN JUDICIAL EDUCATION DURING TIMES OF TRANSITION:

IDEOLOGICAL SHIFTS TO FACILITATE A CULTURE OF LEARNING DURING THE COVID-19 PANDEMIC

Justice Peter Jamadar



THE CAJO'S EXPERIMENTS IN JUDICIAL EDUCATION DURING TIMES OF TRANSITION: IDEOLOGICAL SHIFTS TO FACILITATE A CULTURE OF LEARNING DURING THE COVID-19 PANDEMIC

Adult education recognises that highly specialised adults learn best when they are self-motivated to learn and are engaged in stimulating and meaningful ways in the teaching-learning process. Hence the educational orientation of the CAJO is participant centred and participant focused. Ultimately adult educational initiatives are not to be assessed based on the quality of facilitators or the brilliance of design, but on the satisfaction of participants, and even more importantly on an evaluation of whether there has been significant and sustainable knowledge acquisition as well as behavioural change aligned with programme content and objectives.

Rooted in and influenced by the deepest traditions and practices of the Commonwealth Judicial Education Institute (CJJI), the CAJO values itself as an innovative and aspirational educational institute. The impact of the Covid-19 pandemic in the region has stretched the CAJO to discover, develop, and deploy new approaches to regional judicial education, and to continue sharing sustainable transformational education programmes for regional judicial officers. In this regard, the CAJO is fortunate to have a Management Committee of open minded, creative, and genuinely service oriented persons, as well as a gifted and inventive Research and Programme Coordinator (in Elron Elahie).

What follows is a reflective summary of the CAJO's experiments in judicial education over the last nine or so months – these current times of transition that the C-19 pandemic has invited us all into. What we hope is that by sharing our approaches, others may learn from our insights, our successes, and our challenges. If the result is more effective regional judicial education, then the CAJO's mandate to serve the judiciaries and judicial officers of the region would have been met.

Pre Covid-19, the usual modus operandi of judicial education was by in-person training facilitated using various technological aids, such as powerpoint and Prezi. These programmes could run for a half-day, a full-day, or several days. Typically, there were two to three morning sessions with a break, lunch, and usually two afternoon sessions also with

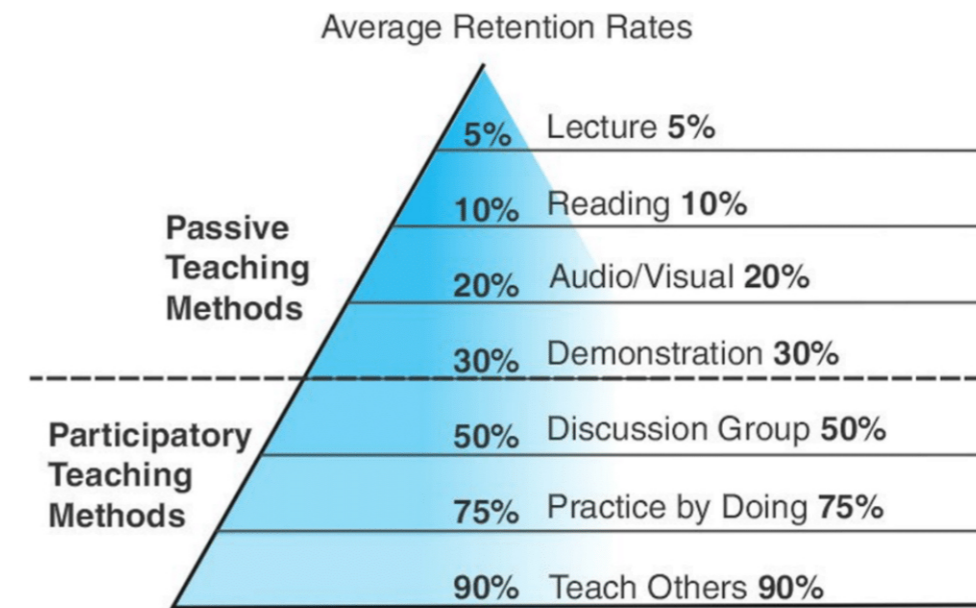
a break (with each session no less than 60-90 mins). Conferences followed this typical pattern, often with multiple parallel subject matter offerings during each of these sessions, and regularly running over a few days. Participants joined in-person, and sessions and breaks, as well as out-of-programme events were all sources of great human interaction and opportunities for 'networking'. The 'buzz' was real and a major source of both motivation and learning.

Covid-19 changed everything about judicial education! Restrictions on travel and social gathering, recommendations for social distancing and self-isolation, and the fears and anxieties over contracting the virus, hospitalization, and death, rightly meant no in-person training, and a loss of all the intimacy and excitement that went with such events. This was a real loss.

Humans are creative by nature. Innovative. Darwin is reported as saying, of species, that: it is neither the strong nor the intelligent who survive, but those that can adapt. Evolution is after all the business of adaptation—evolve or perish, one may say. Covid-19 would test the CAJO in this regard. Has it proven itself to be it worthy of the test? It is certainly too early to say, but I believe that the signs are promising.

Our first response was like mostly everyone else's, simply recreate in virtual space – using Zoom or Microsoft Teams, what was being done in-person. Host a one-day programme virtually, with sessions and breaks as usual. Deploying technology to fill the gaps was considered the necessary innovation, and to a certain extent it was. **However, our learning was that participants were not benefiting optimally. Now we can all more easily understand why this may be so – just being in a day's worth of back-to-back Zoom or Microsoft Teams virtual meetings can teach us a lot about what we need to know about why such 'old-style' virtual training can fall very low on the NTL's Learning Pyramid in a world of only virtual teaching and learning.**

The Pyramid Learning



Adapted from National Training Laboratories. Bethel, Maine

Passive teaching methods are not always the most beneficial, and some may argue are rather ineffective, for retention rates, and for sustainable transformation of behaviour and culture in the context of adults. Generally, more participatory (active) methods are considered most appropriate for effective adult education leading to real behavioural change. I believe, based on our experiences so far, that these tendencies are exaggerated in these times of transition. To compound matters in these times when virtual platforms are trending, is the current insight amongst many educators (*See, Johnstone AH, Percival F. Attention breaks in lectures. Educ Chem 13: 49–50, 1976; Davis BG. Tools for Teaching. San Francisco, CA: Jossey-Bass, 1993; Wankat PC. The Effective Efficient Professor: Scholarship and Service. Boston, MA: Allyn and Bacon, 2002; Svinicki MD, McKeachie WJ. McKeachie's Teaching Tips: Strategies, Research and Theory for College and University Teachers. Boston, MA: Houghton-Mifflin, 2013*) that there is a tendency towards decline in attention after 10-15 minutes (what is referred to in the academic literature as 'the biological set point' of a participant's attention span). (*For a review and critique of this approach, see, 'Attention span during lectures: 8 seconds, 10 minutes, or more?' Neil A. Bradbury, 2016 the American Physiological Society, [*advan.00109.2016.*\) The very popular TED Talks, in which speakers present their ideas on a wide range of matters, have as a stipulation given to all speakers that they have a maximum of 18 minutes to present their material. This 18-minute standard is based on research and the insight that 18 minutes is sufficient to both have a significant presentation and to effectively hold participants' attention.](https://doi.org/10.1152/</i></p>
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This is not to say that the traditional 50-minute lecture (often now an 'enhanced' lecture-presentation - benefitting from technological aids), which has been the bread-and-butter model for decades, is no longer apt. To the extent that one purpose of a lecture is the conveyance of information, it remains an effective method as a knowledge-based tool.

(*However, note that in a study of attention spans of British medical students, it was found that generally attention rose rapidly during the first 10–20 minutes and then slowly and steadily declined until the end of a 50-minute lecture. Stuart J, Rutherford RJ. Medical student concentration during lectures. Lancet 312: 514–516, 1978. 10.1016/S0140-6736(78)92233-X.*)

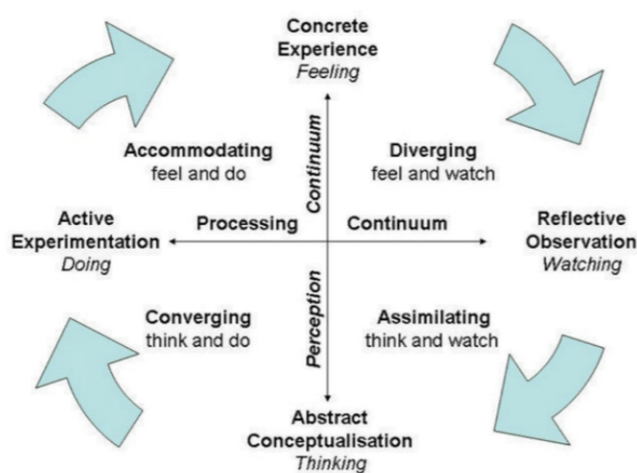
THE CAJO'S EXPERIMENTS IN JUDICIAL EDUCATION DURING TIMES OF TRANSITION: IDEOLOGICAL SHIFTS TO FACILITATE A CULTURE OF LEARNING DURING THE COVID-19 PANDEMIC

One thing that is key, I would suggest, irrespective of whether it is a 15-20 minute or a 50-60 minute lecture/presentation, is doing what is required to hold the attention and interest of adult participants for the duration of the event. **Teaching styles can make a significant difference, and I am certain we have all had experiences of being totally engrossed for 60-90 minutes by a 'spellbinding lecture'. And conversely, being absolutely bored after 5 minutes of an awful one!** In this regard two well recognised components of sustaining attention are: participant arousal and motivation. Adult educators are well advised to have these two factors always at the back of their minds as they design and deliver judicial education programmes.

The research of Bunce et al is also noteworthy, as it shows that attention levels are not consistently engaged or disengaged during a typical lecture but tend to alternate between phases of engagement and disengagement. (Bunce, D.M., Flens EA, Neiles KY. *How long can students pay attention in class? A study of student attention decline using clickers.* J Chem Educ 87: 1438-1443, 2010. 10.1021/ed100409p.) This is something that many of us can confirm from our own experiences, both in formal educational contexts, as well as in everyday activities. **Thus, the value of using a plurality of teaching tools (with an awareness of prevailing target group learning styles and preferences) to help sustain participant attention, interest, and motivation.** In-person judicial education sessions allowed for the dynamic use of engaged teaching-learning tools such as role-plays, skits, dyadic and small-group discussions and work, vignettes, and videos, as well as the creative use of film, art, literature, and music. In our 'new' virtual world, the use of most of these has seemingly been abandoned in the many regional and international educational sessions and workshops that I have attended.

There are also other considerations, maybe best explained by summarising some core theoretical underpinnings of adult education. For adults, as David Kolb explains: **'Learning is the process by which knowledge is created through the transformation of experience.'** (Kolb, D.A., *Experiential Learning: Experience as the source of learning and development.* Vol. 1, 1984, p. 38, Englewood Cliffs, NJ: Prentice-Hall.) For Kolb the

impetus for learning is provided by new experiences, followed by a cyclical process of reflection on those experiences, conceptualisation based on those experiences and reflections, and active experimentation by trying-out what has been learned, which taken all together lead to real learning. (Hence, Kolb's well known learning styles and experiential learning cycle.) Effective learning happens when a person or group of persons move through this four-stage experiential learning cycle. Learning is thus an integrated process with each and all stages supporting and feeding into the others. The entry point can be at any stage in the process, as what is vital is the movement through the entire process. Critically, 'learning is defined as the basic process of human adaptation.' (Kolb, D.A., Kolb A.Y., *Experiential Learning Theory: A Dynamic, Holistic Approach to Management Learning, Education and Development.* 2011, in *The SAGE Handbook of Management Learning, Education and Development, Chapt. 3.*) **Thus, learning is a holistic process of adaptation which involves the entire person, and not just the cognitive function. Knowledge in this model is much, much more than mere information. For adult educators, these insights are also invaluable and help in both the design and evaluation of programmes.**

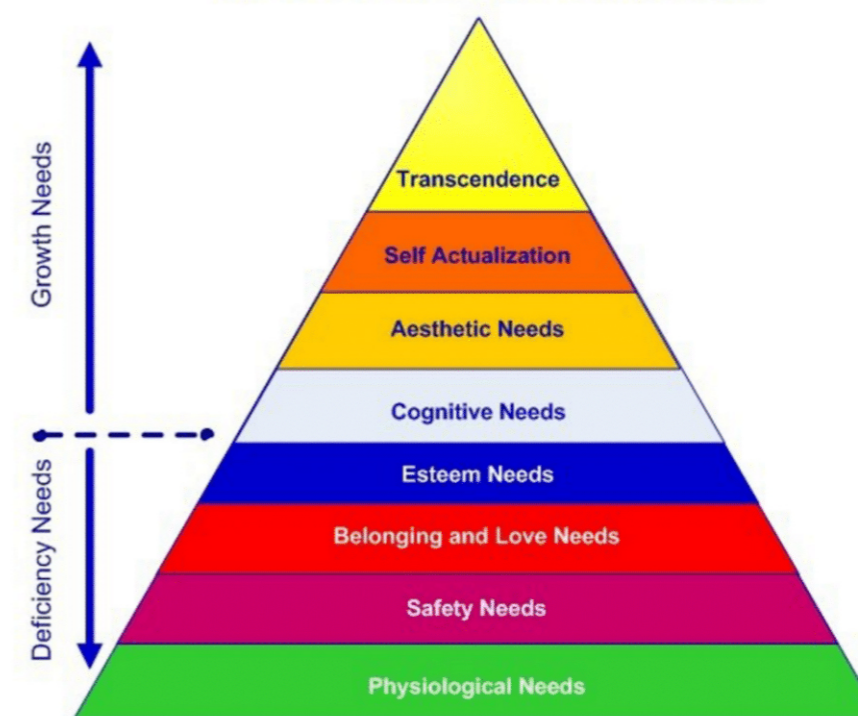


Kolb's Experimental Learning Cycle

Abraham Maslow's Hierarchy of Needs motivational theory ought to be a staple in the discovery, development, and deployment of adult educational initiatives, for the simple reason that unless self-motivated the education of adults is likely to be a futile endeavour. What began as a 5-stage model in the 1940's/50's, expanded into a 7-stage and then an 8-stage model by the 1970's. (See, Maslow, A.H., *A Theory of Human Motivation.* 1943, *Psychological Review*, 50(4), 370-96; Maslow, A.H., *Motivation and Personality.* 1970, New York: Harper & Row; Maslow, A.H., *Religions, Values, and Peak Experiences.* 1970, New York: Penguin - first published in 1966.) **Of special significance are Maslow's so called 'Growth Needs': the cognitive, aesthetic, self-actualization, and transcendence needs of the person.** Which is not to say that Maslow's 'Deficiency Needs' (physiological, safety, belonging, and esteem) are unimportant for adult educators. Indeed, ensuring that participants' feel safe, secure, supported,

respected, included, and valued, and have sufficient sustenance, is necessary for successful training and education. However, once these more basic needs are met, what motivates adults to participate in the teaching-learning process actively and meaningfully, is the initial belief in, leading into the experience of, their growth needs being fulfilled. In short, that they will: a) gain increased knowledge and understanding in an environment of curious exploration (cognitive), b) appreciate more fully overarching and integral balance, harmony, and coherence in the subject matter (aesthetic), c) realize meaningful and sustainable personal and group potential, fulfilment, growth, and development (self-actualization), and d) be motivated and able to move beyond themselves in service of others and of a larger and more valued objective (transcendence).

MASLOW'S MOTIVATION MODEL



Albert Bandura's Social Learning Theory and Benjamin Bloom's Taxonomy of Educational Objectives round off this short survey of underpinning theories. A working knowledge of both is invaluable for judicial educators (Bandura, A., *Social Learning Theory.* 1977. Englewood Cliffs, NJ: Prentice Hall; revised and updated as *Social Cognitive Theory in,* Bandura, A., *Social Foundations of Thought and Action: A Social Cognitive Theory.* 1986.

Prentice-Hall Inc; Bloom, B.S., 1956. *Taxonomy of educational objectives: The classification of educational goals.* New York, NY: Longmans, Green). For Bandura, and for our purposes, behaviour is learned from the environment through a process of observational learning – we learn by example.

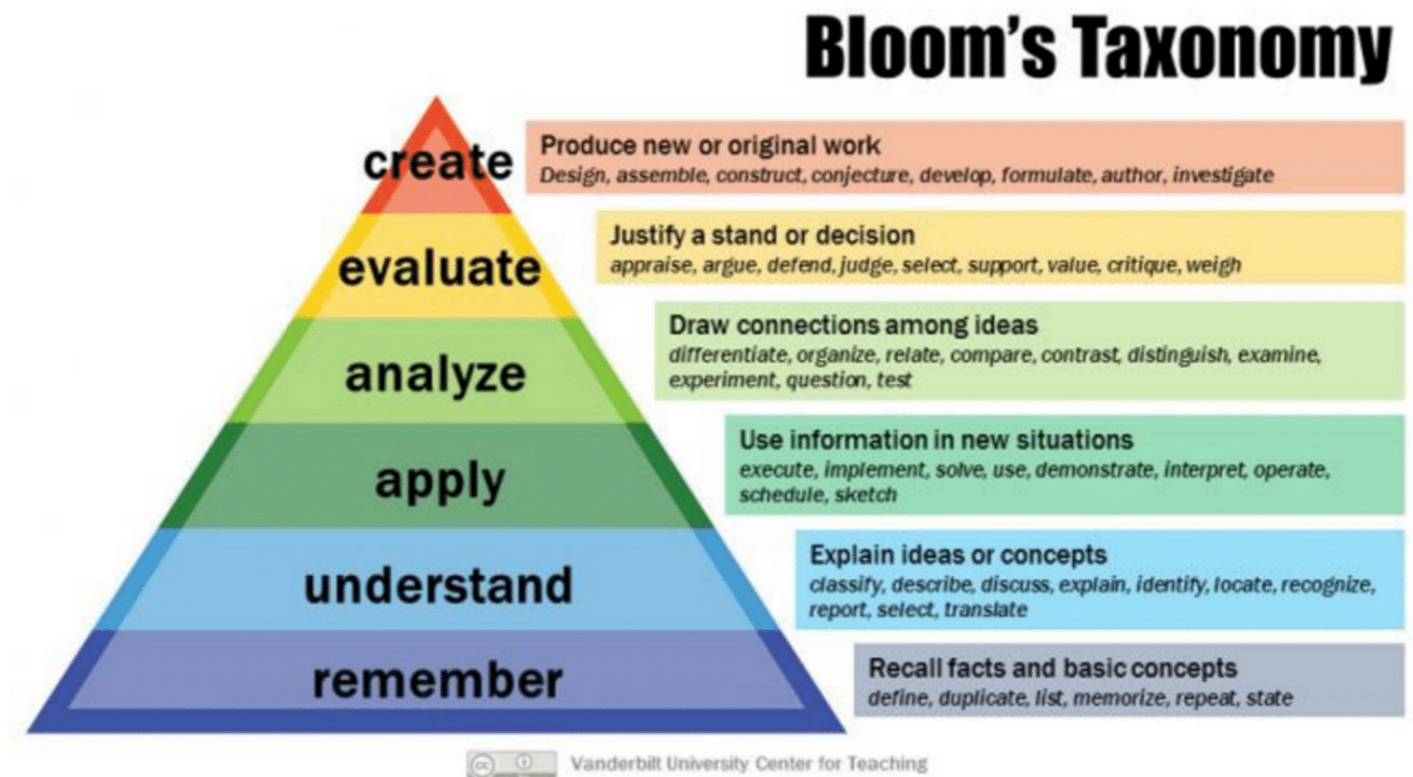
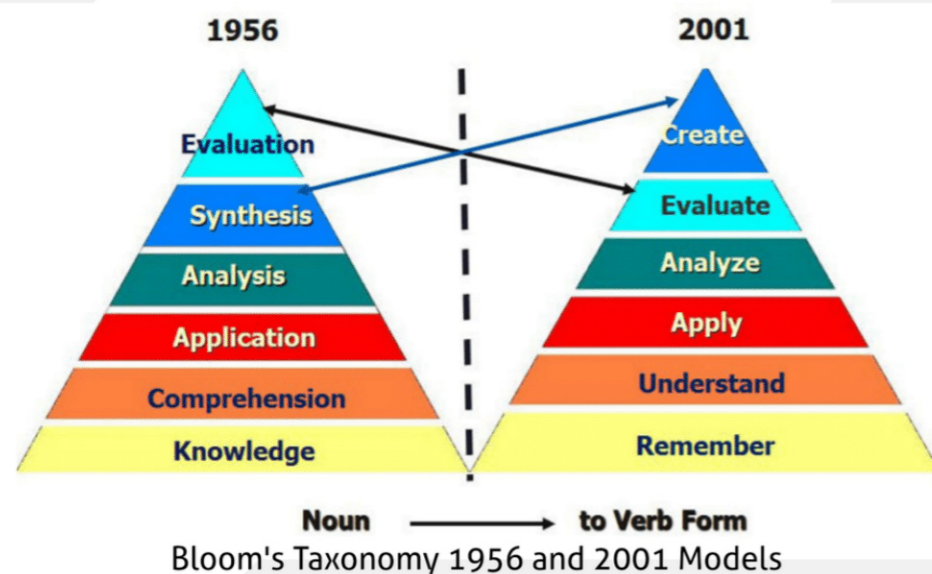
THE CAJO'S EXPERIMENTS IN JUDICIAL EDUCATION DURING TIMES OF TRANSITION: IDEOLOGICAL SHIFTS TO FACILITATE A CULTURE OF LEARNING DURING THE COVID-19 PANDEMIC

Paradoxically, this insight is also captured in the adage, 'do as I say, not as I do!' (Maybe first written down in John Selden's Table-Talk, 1654: "Preachers say, 'Do as I say, not as I do.'") At the heart of SLT/SCT is the thesis that persons are active information processors who can think about the relationships between their behaviours and its consequences – hence learn. Observational learning occurs when cognitive processes mediate in the learning process, determining whether there is learning and what is learned. **Thus, observation can lead to imitation. What is required is the intervention of four mediating processes: a) close attention to the behaviour to be imitated, b) retention (memorization) of the behaviour to be remembered, c) capacity for reproduction of the behaviour observed, and d) motivation as the willingness to perform the behaviour (here the balance between rewards and costs is salient).** Notice the important proximal roles that both attention and motivation play in the process.

Bandura also pioneered the role of self-efficacy in the behavioural change learning process. That is to say, 'the belief in one's capabilities to organize and execute the courses of action required to manage prospective situations.' (Bandura, A., *Self-Efficacy: Toward a Unifying Theory of Behavioural Change*. 1977. *Psychological Review*, 84(2), 191–215.) We all have goals we want to accomplish, things we want to change about ourselves, yet, for many of us, doing so is not always easy. For Bandura and many others, an individual's self-efficacy plays a major factor in achieving success. **There are four main sources of self-efficacy: a) experiences of mastery, of**

performing tasks successfully (mastery experiences), b) witnessing and experiencing others completing tasks successfully (social modelling), c) positive encouragement (social persuasion), and d) positive psychological and emotional states and attitudes (psychological responses).

Bloom's Taxonomy is very much the gold standard for educators in this area. It forms the backbone of many educational approaches and philosophies. It is quintessentially a tool for formulating clear teaching-learning objectives, designing educational sessions, and evaluating learning outcomes. The idea is to move through all the levels and in so doing to broaden and deepen to greater and greater degrees, knowledge about, understanding of, and application malleability in/of any subject matter. It's relevance to judicial education applied to the judicial process and judicial decision making, including the interpretation and application of the law, is also obvious once one reflects on the taxonomy's levels of understanding – remember, understand, apply, analyse, evaluate, and create. First published in 1956, it was revised in 2001 using verbs to replace nouns to give a clearer sense of what is expected of both teachers and learners, and by switching the placement of 'evaluation/synthesis' (1956) with 'create/evaluate' (2001). The revision also makes both teaching and learning goals more accurately and precisely measurable.



The above diagram summarises the levels of learning covered by the taxonomy

Added to all of this, is the recognition that it is the responsibility of adult educators to enhance their teaching and facilitation skills to provide not only meaningful content but also a satisfying and stimulating learning experience for participants. Clearly, the new-normal associated with Covid-19 poses challenges to judicial educators. The central question being: How to facilitate engaging, effective, and transformative teaching-learning that could serve as vehicles for both information dissemination as well as behavioural and cultural change? **The raison d'être Judicial education is after all ultimately tied to sustainable justice sector improvement, development, and reform. The CAJO's interventions included the following approaches, as it attempted to be more responsive to the demands of adult judicial education in these times of transition. The theories and matters discussed above informed these programmes. Three programmes will be discussed as illustrative of the CAJO's experiments in judicial education during times of transition.**

First, teaching judgement writing in a virtual world. Building on and incorporating innovations tested in a CJEI judgment writing course put on for the Turks and

Caicos Judiciary in August 2020 that I co-facilitated with Justice Dennis Morrison, President of the Jamaica Court of Appeal, the CAJO rolled out a course on 'Judgment Writing for the Office of Procurement Regulation in Trinidad and Tobago' over the period June to October 2020. From a design perspective, the course was divided into two main parts: a) a self-directed learning segment, and b) two taught modules. The self-directed component was intended to have participants pre-read an electronic copy of the Federal Judicial College's Judgment Writing Manual and answer specific questions based on it. A period of three weeks was allowed for reading, study, and response. This approach allowed participants to have control over their time, to become familiar with the baseline subject matter content, and to facilitate guided reflection on the materials. For a diverse group of busy adult professionals this was considered optimal. The responses once received were used to inform the taught sessions that followed, thus addressing the target audiences' insights, concerns, and needs. Participants were thus actively involved in and integral to the process from inception.

**THE CAJO'S EXPERIMENTS IN JUDICIAL EDUCATION DURING TIMES OF TRANSITION:
IDEOLOGICAL SHIFTS TO FACILITATE A CULTURE OF LEARNING DURING THE COVID-19 PANDEMIC**

The taught sessions were delivered by Justice Gregory Smith, Judge of the Court of Appeal of Trinidad and Tobago, using a virtual classroom setup, conceptualised, and rolled out by Elron Elahie (CAJO's Research and Programme Coordinator) and Paul Aqui (CCJ's Multimedia ITC Officer). This allowed for a live 'in-person' virtual experience for both facilitators and participants, mirroring as close as possible a real in-person session. Thus, the facilitators were able to stand and move around while presenting; and videos, music, and PowerPoint slides were seamlessly incorporated as and when desired; and real-time questions were received and responded to. All delivered virtually to and engaging each participant in their remote locations. At the end of the first session a written assignment was given for participants to work on based on the pre-reading

and taught materials. These were submitted electronically, and peer reviewed virtually, collectively, dynamically and in real time during the second taught session. Learning by doing the assignments and by active involvement in the reviews ought to facilitate sustainable learning and behavioural change. Certificates of participation were also issued to participants, recognising and affirming participants' efforts.

The CAJO measures and evaluates its performance in judicial education interventions as a necessary quality assurance and learning strategy. The feedback from this initiative suggests that it was successful and that the innovations made a positive impact on participant inclusion, involvement, engagement, and overall learning.

Three regional jurisdictions (Barbados, Guyana, and St. Lucia) volunteered to prepare knowledge products in the form of videos that highlighted their policies, protocols, and experiences pertaining to the resumption of jury trials, which included different perspectives and a variety of feedback on their efforts. This approach was therefore participant inclusive and indigenous from inception; and intended to be regionally empowering. The sharing of the videos facilitated convenient accessibility, and the use of a medium that was engaging and stimulating. Having time to consider, prepare, and submit questions was intended to produce greater depth of reflection and to also allow for more mature and informed responses at the subsequent Webinar Q&A. In fact, the questions received were collated thematically, and the panellists for the live Webinar discussed them and prepared their responses in advance. Having a single live virtual session informed by the

prior sharing of knowledge products and contemplated questions, was intended to enhance the quality of responses, and sharing at this session, as well as the derived learning by all participants. It also met the needs of collegiality, relationality, and regionalism, all of which are vital for Caribbean judiciaries.

The feedback from this initiative suggests that it was also successful and that the innovations made a positive impact on participant inclusion, involvement, engagement, and overall learning. In particular, the advance use of the knowledge products in the stated format (videos), as well as the opportunity to reflect on them prior to the live Webinar, was greatly appreciated by participants. The facilitators also found the overall design conducive to teaching-learning, especially in these times of transition.



The OPR's Delrene Liverpool-Young on the impact of CAJO's Judgment Writing Training

Second, communicating insights and co-creating knowledge through shared collective experiences on the resumption of jury trials during the Covid-19 pandemic. This programme was designed in three main parts, each with a distinct teaching-learning function: a) dissemination of pre-prepared knowledge products, b) receipt and collation of questions arising from viewing and considering these knowledge products, and c) a live Webinar Q&A at which questions submitted were addressed

thematically, and with an additional opportunity for spontaneous participant sharing and discussion. The entire programme ran from the 13th November 2020 (distribution of knowledge products) to the 27th November 2020 (live Webinar) to allow sufficient time for convenient participant access to, and reflection and submission of questions on the knowledge products.

Most useful thing about the format of the programme	Most significant learning arising from the programme	Suggestion(s) to improve the programme
The opportunity to learn from other regions	The need to constantly innovate	Conduct a similar programme for Civil matters
Confidence-building from the different perspectives	How technology can be used to effectively deliver justice	Include perspectives from local Bars and practitioners
The provision of video knowledge products	How to manage multiple defendants in a trial	More time for the Webinar Q&A
The opportunity to reflect and ask directed questions	How to best ensure safety during a jury trial	More interaction from participants
The tiered approach which made sure that a lot was not missed in the first session	Managing anxiety around jury trial	None - the programme was excellent

Jury Trials Feedback
Participant Qualitative Feedback
Fig 5 - Table of responses

THE CAJO'S EXPERIMENTS IN JUDICIAL EDUCATION DURING TIMES OF TRANSITION: IDEOLOGICAL SHIFTS TO FACILITATE A CULTURE OF LEARNING DURING THE COVID-19 PANDEMIC

Third, recognising and giving voice to regional Magistrates and Parish Court Judges. The design of this intervention may appear at first blush to be nothing out of the ordinary, but it was anything but that – given the context of the target audience. Regionally there is a longstanding and historically embedded elitist and hierarchical bias in favour of the so called 'higher' judiciary, and a consequential disregard and devaluing of the magistrates throughout the region. One may even say, and neglect. Regrettably, it persists. Jamaica in an effort to redress this injustice has discontinued the use of the term magistrate, and instead uses the term Parish Court Judges to accord these judicial officers the proper recognition and status due their office. It is a step in the right direction. The CAJO has always been sensitive to this circumstance and has consistently sought to include, value, and promote these judicial officers. This educational intervention was intended to do exactly this.

A single Roundtable Webinar was conceptualised to gather and empower all regional Magistrates and Parish Court Judges around a virtual table. This would be their programme, designed to facilitate their needs, and facilitated principally by their judicial officers. It was held on Friday, 9th October, 2020, at 1:30 pm (AST). **Over sixty judicial officers participated, from over ten different regional jurisdictions. Prior to the Webinar, feedback was sought by an electronic survey on what topics and areas these judicial officers would like to consider and explore.** This information was used to design a three-module programme comprising: a) two knowledge and information sharing and discussion sessions, and b) a third session designed to ascertain the regional and jurisdictional needs of this branch of the Judiciary.

The two knowledge-sharing and discussion sessions were chaired by Sir Marston Gibson (a member of the Management Committee of the CAJO) and comprised formal 10-minute presentations on Remote Hearings by Parish Court Judge Michele Salmon (Jamaica) and on Safety and Support in the time of COVID-19 by Chief Magistrate Ian Weeks (Barbados). These presentations were each followed by open-forum discussions. Both sessions generated

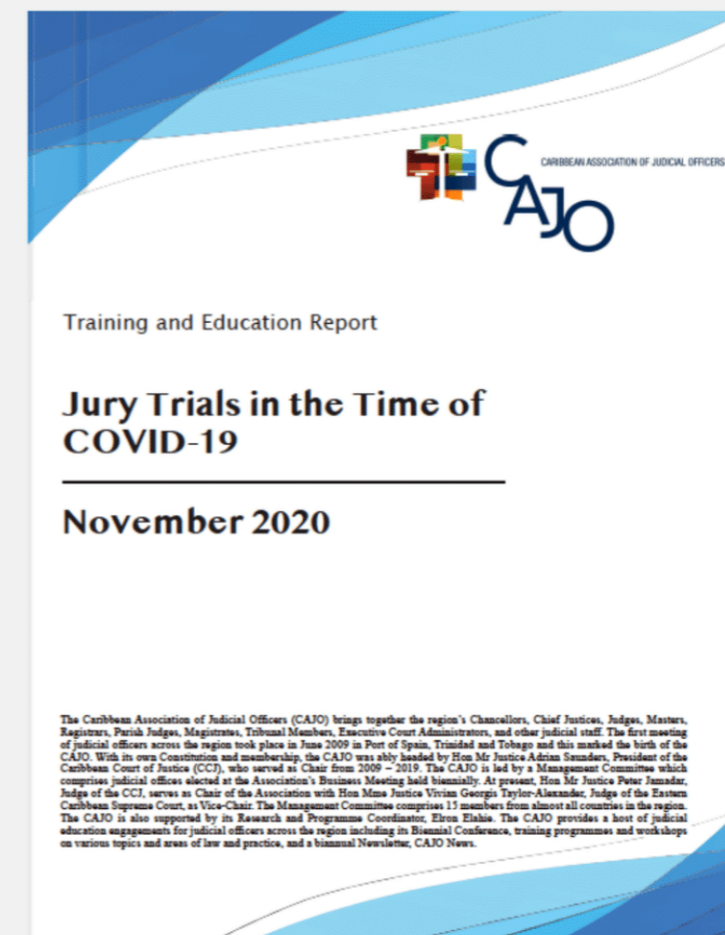
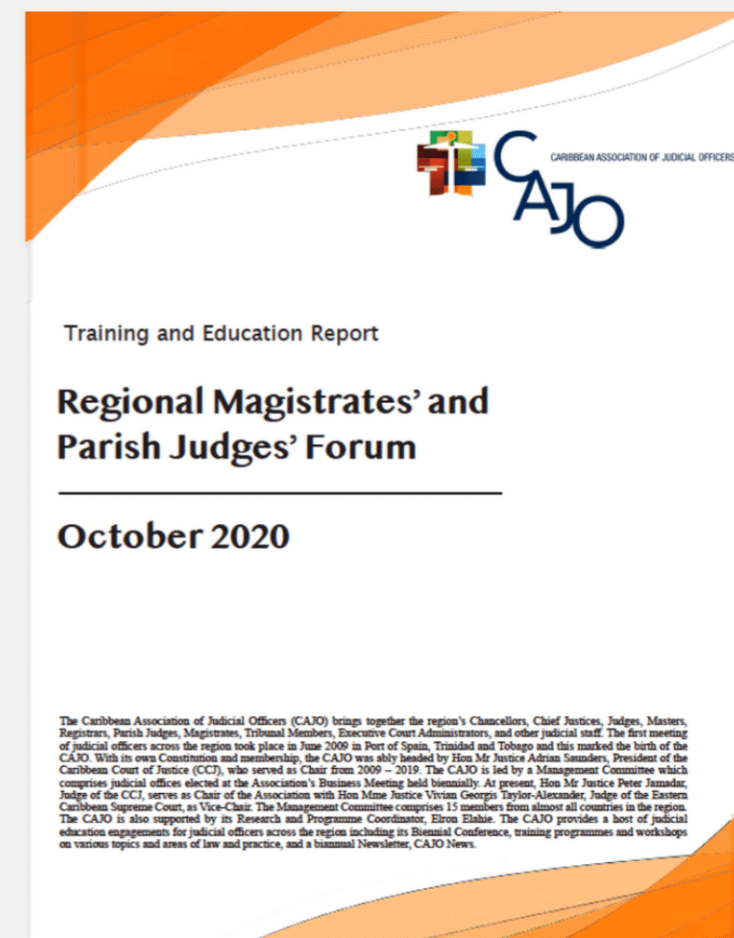
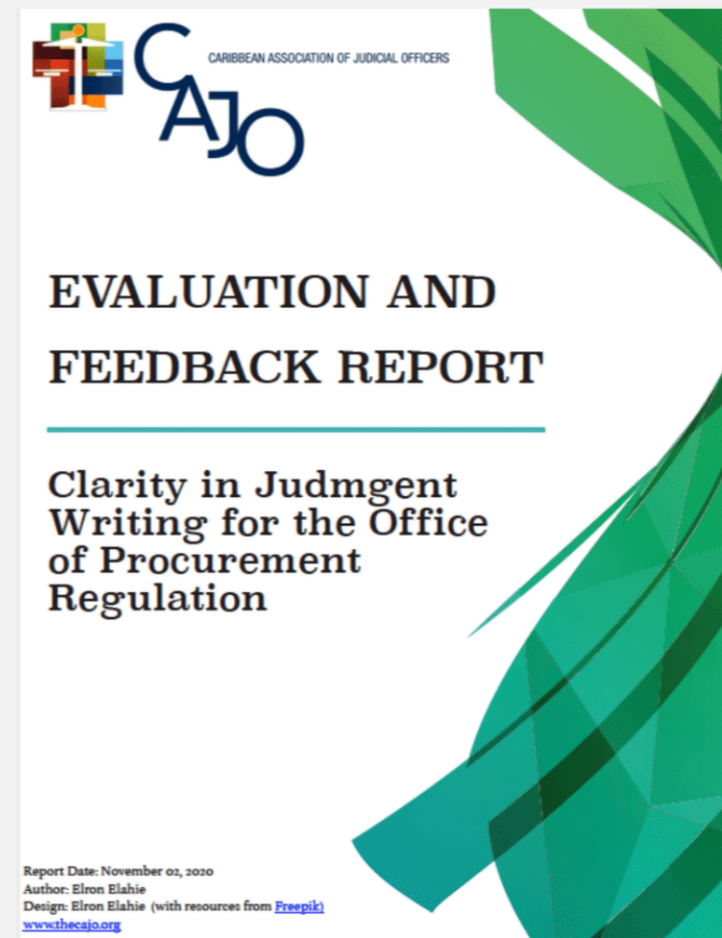
wide and engaged participation. The third session, facilitated by Mr Dennis Darby, Consultant to the JURIST Project and me, provided a space for Magistrates and Parish Judges to share their present and future needs. The intention is that the JURIST Project will take steps regionally to offer support as needed and as it is able to do so, and action in this regard has begun and is ongoing.

Some of the feedback from this initiative included comments such as, **"In a decade as a Magistrate, this is the first time I've been able to hear from colleagues so far afield in the region."**

The objectives of recognition, inclusion, appreciation, and empowerment seem to have been touched in some meaningful ways. Much more still needs to be done.

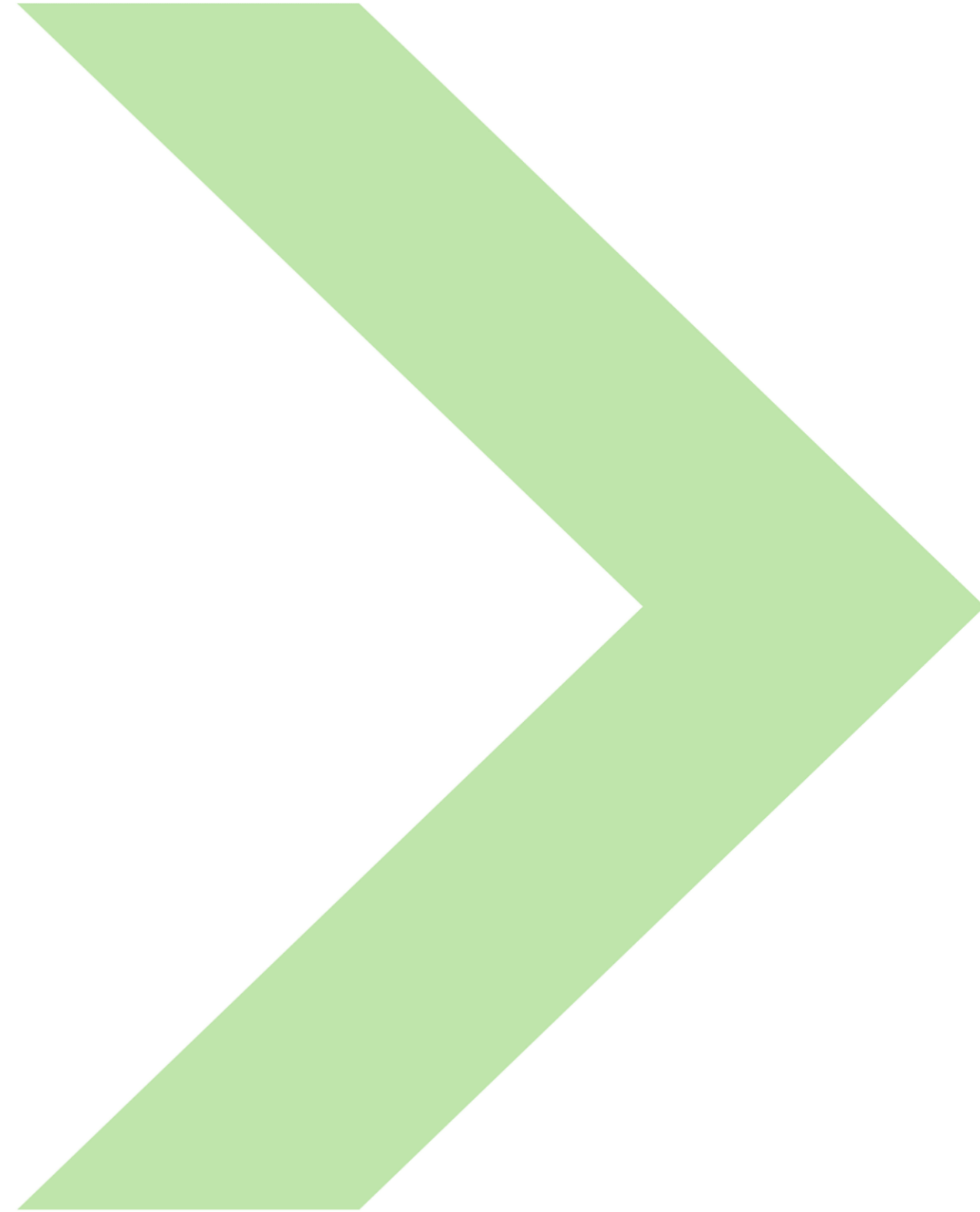
The CAJO is a regional collegiate and educational institution. Its primary purpose lies in service of regional judicial officers and judiciaries. In an area where regional financial, human, and other resources are all too often scarce or unavailable, an ideology of judicial regionalism that shares resources is rational, pragmatic, and wise. The Covid-19 pandemic has brought this into sharp relief, especially as courts have sought to continue functioning effectively, efficiently, and constitutionally. **It may sound like a cliché, and maybe it is, but it is also true: 'Sharing is Caring'. The CAJO has always operated on this premise, regionally, and its educational interventions in these times of transition have also been driven by this intent. It is the CAJO's hope that for all regional JEIs and judicial educators the sharing of this information and these experiences will be of some benefit.**

To view the Feedback Reports from the CAJO's programmes, click on the images to the right.





**REGIONAL UPDATES:
APPOINTMENTS AND
RETIREMENTS**



RETIREMENT OF SIR MARSTON GIBSON

Sir Marston Gibson, K.A., assumed office as the 13th Chief Justice of Barbados on 1 September 2011 and retired on October 31 2020.

Sir Marston Gibson was born on 3 March 1954 and was educated at St. Matthias School, Foundation School and Harrison College. He pursued legal studies at the Cave Hill Campus of the University of the West Indies from 1972 and obtained the Bachelor of Laws (LLB) in 1975. In 1977, he was awarded the Rhodes Scholarship and read for the Bachelor of Civil Law (BCL) at Keble College, Oxford University in England, which he obtained in 1979. From 1979 to 1981, he attended the Hugh Wooding Law School, St. Augustine, Trinidad and Tobago, where he was awarded the Chairman's Special Prize for Evidence and Procedure in 1981.

While attending the Hugh Wooding Law School, he lectured in Criminal Law at the Faculty of Law, St. Augustine Campus, University of the West Indies (UWI). From 1981 to 1987, he was a lecturer at the Faculty of Law, Cave Hill Campus, UWI, where he taught Criminal Law, the Law of Real Property, Law in Society (Jurisprudence), as well as Equity, Doctrines and Remedies.

Sir Marston Gibson emigrated to the United States in 1987. He was admitted to practice law in the State of New York in 1989 and served for 22 years in the New York State Court system. He began in March 1989 as an Appellate Court Attorney from 1989 to 1992, ultimately attaining the position of Principal Appellate Court Attorney.

In 1992, he was appointed a Judicial Referee in the Surrogate's Court, New York County (Manhattan), where he heard cases involving estates and trusts, particularly where there was a need to establish kinship between petitioners and the deceased persons whose estates they were claiming. He served in that Court until

1998, when he transferred to the Supreme Court of New York, Nassau County (Long Island).

At the Supreme Court in Nassau County, whose jurisdiction similar to that of the High Court of Barbados, Sir Marston heard civil cases, and was assigned to the Supreme Court, Matrimonial Center, from 2001 to 2008. He remained there until his appointment as Chief Justice of Barbados in September 2011.

Sir Marston Gibson holds Bar membership in several jurisdictions including Barbados, Antigua and Barbuda, and Trinidad and Tobago. He is also a member of the New York State Bar and is admitted to practise before the United States Supreme Court, as well as the United States Federal Courts for the Eastern and Southern Districts of New York.



APPOINTMENT OF THE HON MR JUSTICE PATTERSON CHELTENHAM QC AS CHIEF JUSTICE

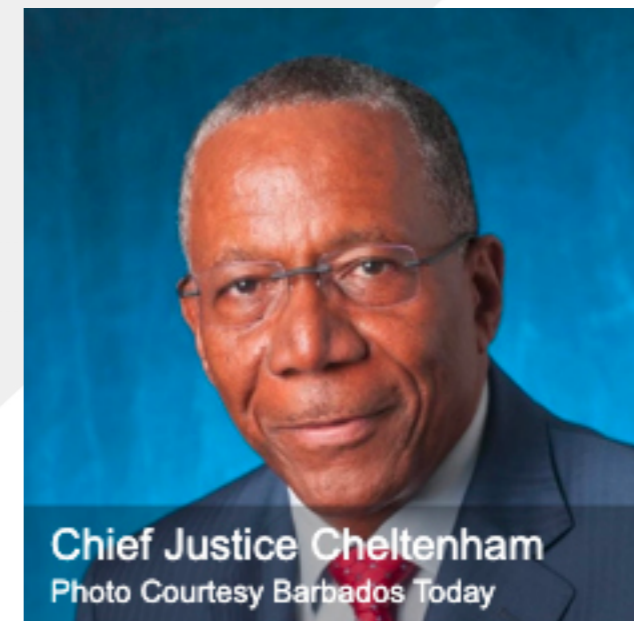
The Hon Mr Justice Patterson Cheltenham, GCM, QC, was the Chief Justice of Barbados on October 31 2020. His appointment will take effect from November 1, 2020.

Governor General Dame Sandra Mason administered the Oaths of Allegiance and of Office at Government House before an audience that included the Chief Justice's family members. Nation News has quoted the Chief Justice's expression of humility and pride serving as Barbados' fifth Chief Justice since Independence. Barbados' Government Information Service shared that the new Chief Justice noted that he already had a "clearly articulated 90-day plan" but stated that it would be discussed with judges first to ensure that it was in sync with what presently exists.

"I have never been to the building other than as a lawyer. I am now going in as the Chief Justice. Those are two completely different roles, and I am assuming nothing. There will be things I will find

once I arrive there. I have to listen...and then I have to ensure that the plans I have go in sync with what I find," he explained, noting that he had a "good reception" from those he met so far.

Chief Justice Cheltenham has over forty years of professional experience as a legal practitioner, after having attained his Bachelor of Laws degree from the University of the West Indies in 1975 and a Master of Laws degree from the University College, London in 1976. He was appointed a Queen's Counsel in 2001 and awarded the Gold Crown of Merit by the Barbados government in 2012 for his contribution to the legal profession and public service. In addition to his bar admission in Barbados, Mr Cheltenham is also called to the bars of Antigua and Barbuda, St. Vincent and the Grenadines, and St. Lucia. He has represented corporate and individual clients, as well as statutory boards and other governmental agencies before several tribunals, the High Court, Court of Appeal, Privy Council and Caribbean Court of Justice.



RETIREMENT OF CHIEF JUSTICE KENNETH BENJAMIN

In May 2020 Hon Justice Kenneth Benjamin retired as Chief Justice of Belize. He was appointed to the post in September 2011. He has led initiatives in criminal justice reform and he has partnered with UNICEF to introduce child friendly family courts in Belize. The civil process has seen the introduction of mediation and is soon to have court-connected arbitration available. The groundwork is being laid for the piloting of a drug treatment court.

Chief Justice (Ret) Kenneth Benjamin was born in Georgetown, Guyana, South America where he attended Queen’s College. In 1972, he was awarded the Guyana Scholarship and proceeded to read law at the University of the West Indies from which he graduated with the Bachelor of Laws degree in 1975. After receiving professional training at the Hugh Wooding Law School in Trinidad and Tobago, he was admitted to practise in Guyana in 1977. He was an associate of the firm of Clarke & Martin, Solicitors until 1980 when he became a sole practitioner. During that time, Chief Justice Benjamin acted as a stipendiary Magistrate and was

appointed Assistant Judge Advocate of the Guyana Defence Force. He moved to Antigua/Barbuda where he served as Magistrate and subsequently Chief Magistrate between 1988 and 1993. Thereafter, he ascended the Bench of the High Court of the Eastern Caribbean Supreme Court and sat as Resident Judge in Antigua/Barbuda, Montserrat, British Virgin Islands and Grenada. Prior to taking up his appointment in Belize, he was the Presiding Judge of the Criminal Division of the High Court of Saint Lucia. He has also sat in the Court of Appeal of the Eastern Caribbean Supreme Court.

He is a member of the Commonwealth Magistrates and Judges Association as well as a Fellow and Patron of the Commonwealth Judicial Education Institute. He has been Chairperson of the Conference of Heads of Judiciary and Chief Justices of the Caribbean Community from May 2014 to May 2017.



RETIREMENT OF JUSTICE DENNIS MORRISON

In December 2020, the Hon Mr Justice Dennis Morrison retired after serving in the Court of Appeal of Jamaica since 2008, having been appointed President in 2016. Justice Morrison was called to the Bar in Jamaica in 1975, and practised at the private bar for 25 years before transitioning to the bench. He also served as a judge of the Court of Appeal of Belize (2004 to 2015) and acted as a judge of the Eastern Caribbean Court of Appeal (January 2015).

On December 4th 2020, the Judiciary of Jamaica held a Special Sitting of the Profession to mark his retirement. President of the Caribbean Court of Justice, the Hon Mr Justice Adrian Saunders delivered a tribute to Justice Morrison which is captured below.

Tribute to a Linguist

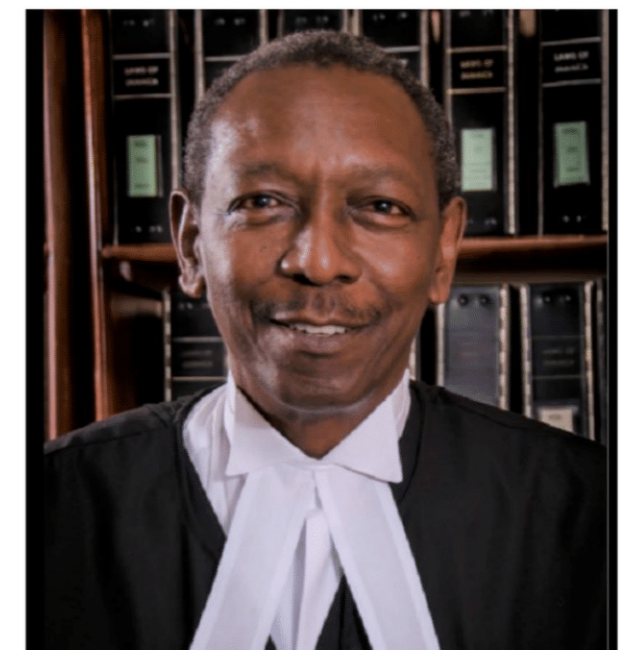
It gives me immense pleasure to pay this brief tribute to Hon Mr Justice Dennis Morrison. I first met him in the early 1970s, when we were students at the Cave Hill Law faculty. He was in the first cohort of Caribbean law students. I was in the third, and so, I began my first year at the faculty as he was embarking on his final year.

It was quickly obvious that Dennis stood out among the student body with character traits that have remained with him down to this day. Affable, generous of his time, easy going, we all looked up to him and envied his beguilingly effortless academic excellence. Everyone called him Linguist. And sometimes I still do; although I’ve never heard him speak anything other than the Queen’s English and Jamaican patois.

Dennis has made an enormous and diversified contribution to the development of our Caribbean jurisprudence. And here, I speak of “Caribbean jurisprudence” in the widest possible sense. I don’t simply mean judicial decision making, although he has done much of that throughout the region. And

done so with great distinction! There aren’t many Caribbean jurists who have sat as an appellate judge in as many different countries of the region as he has.

But even besides the judging, he has made a huge contribution to the promotion of our Caribbean jurisprudence because, for me, the building blocks of “Caribbean jurisprudence” embraces everything that is involved in advancing that mission, from the ground up. He has, for example, been instrumental in the moulding of Caribbean law students. And those former students who were fortunate enough to be taught by him will tell you that, surprise, surprise, he was their favourite lecturer. For many years he was played an influential role in the Council of Legal Education that administers the Law Schools of the region. For some of those years he was at the helm. He also held leadership roles in both the Jamaican and the Caribbean bar associations.



Justice Dennis Morrison - Photo: LoopJamaica

JAMAICA

SURINAME

And, I am so blessed that, at this particular time, he is a member of the Regional Judicial and Legal Services Commission that has critical responsibilities in the administration of the Caribbean Court of Justice and the appointment of judges and staff of that Institution. In each case, Dennis's temperament, his wisdom, his learning, his unimpeachable integrity, his ability to offer solutions to the most intractable problems without undue fuss ... it is these qualities that have helped to consolidate, advance and ennoble our Caribbean jurisprudence. Many years ago, a most distinguished person (who shall remain nameless) inquired of me whether I knew Dennis Morrison. It was in the context of an important assignment. I replied instinctively, yes, of course. He is the finest product of UWI's Faculty of Law. I sincerely meant it then and it remains the case today.

Jamaica has every right to be justly proud of and to celebrate this most distinguished son of the soil. Equally, we in the rest of the Caribbean are also

entitled to claim him as one of ours. His service to the entire region has been immeasurable and profound. In Dennis Morrison is embodied greatness!

I have no doubt that he will be sorely missed as President of the Court of Appeal of Jamaica. But dear Janet, I know only too well what you must be thinking, but let me warn you. Dennis's retirement will only increase the demand, in Jamaica and abroad, even outside the region, for his legal expertise and experience. I know that you will know how to manage that.

Dennis, you and I have worked together on many different endeavours and I am extremely fortunate that for so many decades I have been able to rely on your friendship and wise counsel. It pleases me to know that in the years ahead I will be able to continue to do so. I wish you all the very best in this next phase of life's journey.

December 18th, 2020 was a historic day for the Court of Justice of Suriname. **After 9 years of acting Chief Justices, a Chief Justice was finally sworn in on this day by the President of the Republic of Suriname.** Justice Iwan Rasoelbaks who was acting as Chief Justice for over 6 years, was unanimously nominated by the Court of Justice for this position, which nomination was unanimously supported by the newly elected Government of Suriname, because of his accomplishments in strengthening the judiciary in Suriname during the past years.

On this same day five judges, having proven worthy of becoming a full member of the Court of Justice as experienced (senior) judges, were promoted and sworn in, as such complementing the decision-

making body of the Court. Regrettably the 6th judge who was also supposed to be sworn in, passed away one week before the swearing in ceremony at the very young age of 45. In her honor and memory, one minute of silence was observed during the swearing in ceremony.

On this memorable day of December 18th, 2020, five new judges, after having completed an extensive training as a judge, were also sworn in. One judge, who had retired in August of this year, was willing to return as a judge and was also sworn in. Justice Georgine (Ineke) de Miranda, who retired just last month, will not return as a judge. The formal installations by the Court will take place on December 23th, 2020.



The Special Sitting of the Profession to mark the Retirement of Justice C. Dennis Morrison



The 5 promoted members of the Court of Justice of Suriname (senior judges) from left to right: Justice Alida Johanns, Justice Sabitadevie Nanhoe-Gangadin, Justice Jane Jensen, Justice Ishwerpersad Sonai, Justice Sylvanne Bradley

UPDATE FROM THE JURIST PROJECT

CRIMINAL MAGISTERIAL BENCH BOOK TO PROVIDE GUIDANCE FOR MAGISTRATES

Justice Alice Yorke Soo-Hon and Justice Mark Mohammed



The Criminal Magisterial Bench Book, the first of its kind in the region, is an initiative of the Canadian-funded Judicial Reform and Institutional Strengthening (JURIST) Project.

The Bench Book project, which commenced in 2016, is led by a Criminal Bench Book Committee comprising senior judicial officers and representatives of the Caribbean Court of Justice (CCJ) and the JURIST Project. When completed, it will serve as a practitioner tool for all magistrates across CARICOM and will contribute to region-wide judicial institutional strengthening. On Saturday March 17, 2018 delegates representing the magisterial bench of the Commonwealth Caribbean, gathered at the Judicial Education Institute (JEI) in Port of Spain, Trinidad and Tobago, to review the draft manuscript for the Bench Book. Details of the consultation are available at <http://www.juristproject.org/news-media/news-stories/309-bench-book-can-help-improve-criminal-justice-system>

The Bench Book is a compilation of rules of procedure distilled from primary legislation, case law, policy, and significantly, the contributions and experience of judicial officers practicing in the summary jurisdiction. It includes guidance on judgement writing and giving reasons, procedures

for dealing with vulnerable defendants and witnesses, sentencing options and methodology, and extradition proceedings, among others. At the close of the productive and lively consultations in March, further areas were identified for inclusion in the final publication, including guidance on the sweeping changes contemplated by the juvenile justice reform project in the Organisation of Eastern Caribbean States (OECS) and case law relevant to the nascent regional model guidelines for handling sexual offence cases.

It must be acknowledged that summary criminal procedure varies throughout the English-speaking Caribbean. In some States, rules of procedure are exclusively prescribed in a summary criminal code, and are only developed through legislative intervention. In other States, procedure is interpreted from an assortment of legislation and developed incrementally by judicial precedent. In the space between these traditions, procedural gaps and inconsistencies flourish. An observation drawn from the delegates' contributions at the consultation on the draft manuscript, was that in some instances, judicial officers have proactively developed ad hoc systems and processes to address procedural lacunae.

The Bench Book consolidates these rules of procedure, statutory provisions, recent amendments to primary legislation, and the guidelines set out in appellate judgments from the magisterial courts, into an easily navigable, concise treatise on summary procedure that magistrates can easily refer to, regardless of the territory in which they happen to be sitting. The amalgamation of these sources of law into a single volume, makes it easy for magistrates to rapidly identify the diverse bases of their judicial decision-making powers in individual cases, and simultaneously reference case law guiding the exercise of those powers.

This promotes efficiency, accuracy and consistency in decision making. The corollaries of improvements in these measures are reductions in case backlogs, saving of judicial time, and bolstered public confidence in judicial integrity.

Concurrent with these performance benefits, the compilation of judicial precedents from cases across the region into one Bench Book, contributes to establishing consistent best practice in the summary courts of the Caribbean by presenting judicial officers with relevant authorities that have been tested and are accessible at a glance. In summary, it is expected that this regional Criminal Magisterial Bench Book will supplement the invaluable experience of our CARICOM magistrates and further aid them in disposing of cases justly and efficiently.

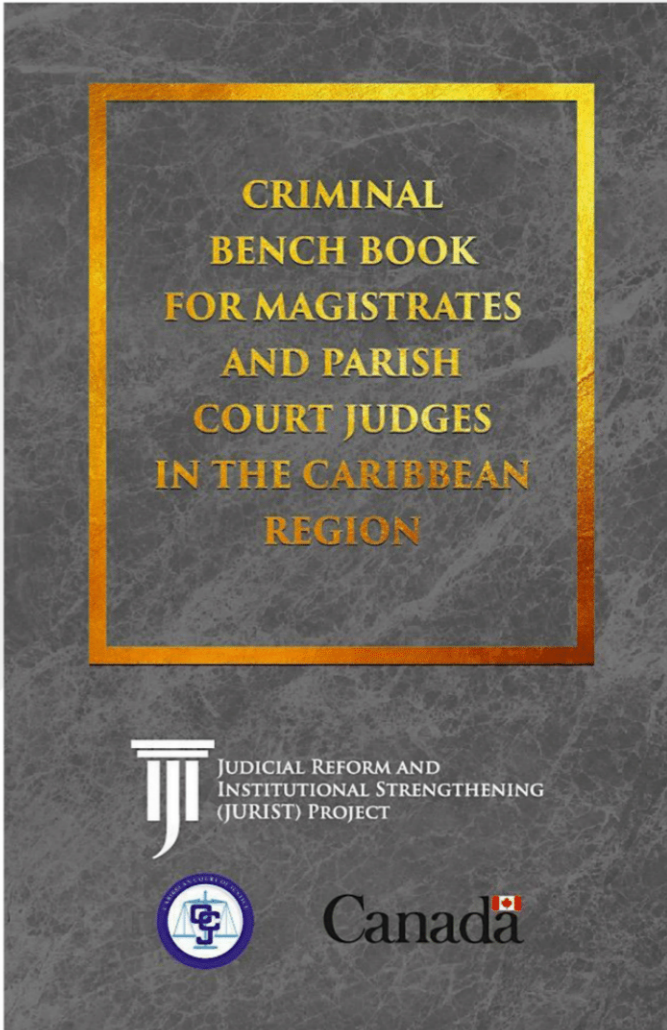
Note: The Honourable Mme. Justice Alice York Soo-Hon serves as Chair of the Criminal Bench Book Committee and the Honourable Mr. Justice Mark Mohammed is a member.

ABOUT THE JURIST PROJECT

The JURIST Project is a multi-year (2014-2023) regional Caribbean judicial reform initiative funded under a CAN\$19 million arrangement with the Government of Canada. The Project is being executed by the Caribbean Court of Justice (CCJ) on behalf of the Conference of Heads of Judiciary of CARICOM. The CCJ and other regional partners are also contributing approximately CAN\$4 million to the Project.

The JURIST Project has been working with judiciaries in the Caribbean to support their own efforts to

improve court administration and strengthen the ability of the courts and the judiciary to resolve cases efficiently and fairly. Its aim is to modernise and strengthen court systems, processes and services; and to equip judicial officers and court staff with the skills and competencies necessary to deliver justice in a fair, predictable, efficient and timely manner. The ultimate goal of the JURIST Project is to develop a regional judicial system that is more responsive to the needs of women, men, youth and the poor.



Cover of the Criminal Bench Book for Magistrates and Parish Court Judges in the Caribbean Region

APPOINTING OUR MOST SENIOR JUDGES AND MAKING NEW POLITICAL PRACTICES



Tracy Robinson

With the recent retirement of the Hon. Mr. Justice C. Dennis Morrison OJ, CD, QC, as President of the Court of Appeal, another distinguished judge, the Hon Mr. Justice Patrick Brooks OJ, whose judgments are reliably hailed as 'impressive' and 'full and careful', has been appointed to succeed him.

The singular contribution of Hon. Mr. Dennis Morrison, President of the Court of the Appeal

I wish to acknowledge the singular contribution made by Justice Morrison as one of the Caribbean's most well respected and eminent jurists. He was one of the region's best civil litigators before joining the Bench. He is one of the longest serving and most beloved legal educators, and many of us owe some of who we are today professionally to his encouragement, guidance, compassion, and wonderful example. Furthermore, his academic writings stretching back to the 1970s on reception of law, land hunger, affiliation proceedings, and the law of evidence, are now an important part of the Caribbean legal canon (See e.g., C. Dennis Morrison, 'Land Hunger, Land Settlement & Land Reform in Jamaica (1834-1984)' (1985) WILJ 1, C. Dennis Morrison, 'Some Notes on the Law and Land Settlement in Jamaica, 1661-1736' (1982) 6 WILJ 219; C. Dennis Morrison, 'Affiliation Proceedings: Aspects of Jamaican Law and Practice' (1981) WILJ 7; C. Dennis Morrison, 'Repudiated Confessions and the Voir Dire' (1979) 43 WILJ 61; C. Dennis Morrison, 'The Reception of English Law in Jamaica' (1979) WILJ 43). Justice Morrison has been described by the CCJ's President, the Hon. Mr. Justice Adrian Saunders, as the best law graduate produced by The UWI in its 50 years, and with good reason. Morrison P who was in that very first class, epitomises the hope of the newly

established Council of Legal Education in 1972, that the lawyer produced by the nascent Caribbean legal education would be 'skilled in the practice of the law; but this he [or she] should be able to do so with compassion and with an acute awareness of the anatomy of his [or her] West Indian condition; and with the vision and hope of the law reformers and most importantly, with a deep sense of service to the law, to his [or her] client and to his [or her] community.'

Time for change

Even a very welcomed appointment, offers us a moment in Jamaica and the wider Caribbean to reflect on how we appoint our most senior judges and the ways we could strengthen our practices in the interest of good governance. Both the Chief Justice and President of the Court of Appeal in Jamaica are appointed by the Governor General on the advice of the Prime Minister, who is required consult the Leader of the Opposition before offering his or her advice (*Jamaica Const 1962, ss 98, 104*). I wish to make three recommendations that are not unique to Jamaica and apply equally to the Bahamas, Belize and the Eastern Caribbean, where the most senior appointments are also made on the advice of Prime Ministers (*Bahamas Const arts.94, 99; Barbados Const s.81; Belize Const ss.97, 101*). Barbados has already made substantial reforms to its process and my hope is that so will Belize, as it appoints a new Chief Justice (*In March 2020, the Hon. Mr Justice Kenneth Benjamin retired as Chief Justice of Belize*). My proposals have the goal of considering the best available persons, transparently filtered based on their suitability, skills and integrity, and reducing politicisation.

I am not arguing here that Caribbean Prime Ministers cannot give due regard to the relevant criteria in the appointment process. Instead, I am suggesting that we should seek to institutionalise safeguards to better guarantee this.

First, I propose that the positions of Chief Justice and President of the Court of Appeal, when available, be publicly advertised, clearly elaborating the criteria for appointment, to ensure equality of opportunity and that all qualified persons can apply. My co-authors and I made this recommendation in our 2015 text, *Fundamentals of Caribbean Constitutional Law*, that where Prime Ministers have the final say in judicial appointments, 'there is an irresistible case that all such judicial posts be duly advertised' (*Tracy Robinson, Arif Bulkan, Adrian Saunders, Fundamentals of Caribbean Constitutional Law (Sweet & Maxwell, 2015) 8-040*). In fact, many less senior judicial positions are advertised in the region. Secondly, I suggest an independent body be created by Prime Ministers and be tasked with reviewing the applications based on the criteria and presenting the Prime Minister with a short list, from which he or she makes his or her selection after due consultation with the Leader of the Opposition. Thirdly, I recommend that the process integrates consultations with the Bar and Bench.

Executive only appointment processes in the Commonwealth

The 2015 Compendium and Analysis of Best Practice in relation to the Appointment, Tenure and Removal of Judges under Commonwealth Principles reports that 22.9% of Commonwealth states have 'executive-only' systems for appointing the Chief Justice, which means that the Prime Minister or President has the final say on who is appointed, and there is no constitutionally required involvement of a public body in selecting candidates (*The Commonwealth, The Appointment, Tenure and Removal of Judges under Commonwealth Principles: A Compendium and Analysis of Best Practice (British Institute of International and Comparative Law, 2015) [1.4.9]*). There has been half a century of debate in the region about judicial appointments that lie 'in the gift of the Prime Minister' (*See Robinson, Bulkan, Saunders, Fundamentals of Caribbean Constitutional Law, 8-038*). In Trinidad and Tobago, the Wooding Constitutional Commission

recommended in 1974 a 'substantial reduction of the area of patronage at the disposal of the Prime Minister' (*Constitutional Commission of Trinidad and Tobago, Report of the Constitutional Commission (22 January 1974, chaired by Rt. Hon. Sir Hugh Wooding, T.C.) [274]*). Uniquely, its 1976 Republican Constitution provides for the Chief Justice to be appointed by the President after consulting the Prime Minister and the Leader of the Opposition, to give the Prime Minister some 'influence', though not 'the final say' (*ibid. [287]*)

I was a member of the seven-person committee, established by the Law Association of Trinidad and Tobago, and chaired by the Hon. Madame Justice Desiree Bernard, former Chancellor of Guyana and former CCJ Judge, to look at the method of judicial appointments in Trinidad and Tobago. In 2018, that Committee recommended the President develop a practice of advertising of the post of Chief Justice and/or the establishment of an advisory committee to shortlist candidates for her consideration. Notably, the CCJ President is appointed by a qualified majority vote of three-quarters of the contracting parties on the recommendation of the Regional Judicial and Legal Services Commission. This represents a significance advance over the unique arrangements for the appointment of the Chief Justice of the Eastern Caribbean Supreme Court in which six Prime Ministers are the ultimate decision-makers, with each, in effect, holding an extraordinary power of veto in the appointment process.

New political practices developing in the Commonwealth

Building on the 1998 Latimer Guidelines on judicial independence, the 2015 Commonwealth Compendium makes the case that 'executive-only' systems 'require a combination of legal safeguards and settled political conventions in order to be a reliable and legitimate means of appointing judges.' (*The Commonwealth Compendium, [1.4]*) The Commonwealth recommends that the process 'should include at least transparency regarding the criteria for appointment and the procedures followed, a requirement of consultation with senior judges and others, and ideally the existence of an independent body to provide oversight and deal with complaints.

In 2016, Canada's Prime Minister, Justin Trudeau, introduced a new policy in the appointment of Supreme Court judges. It includes a comprehensive application form and specific assessment criteria. Applications are reviewed by an 8-member advisory board comprising eminent judges, lawyers and citizens which provides a short list for the consideration of the Prime Minister. The Minister of Justice and the Chair of the Advisory Board appear before Parliament to answer questions about the process.

Barbados since 1974 has had the exceptional constitutional situation of the Prime Minister in effect directing all senior judicial appointments, including High Court and Court of Appeal judges (*Barbados Const s 81*). In 2019, by legislation, Barbados introduced a Judicial Appointments Committee that includes the Chief Justice, a former Chief Justice or Justice of Appeal, two other former judges, a member of civil society and a senior attorney (*Barbados Supreme Court of Judicature (Amendment) Act 2019*). The recent appointment of the Hon. Mr Patterson Cheltenham as Barbados's Chief Justice using this procedure may well be a first in the independent states in the Anglophone Caribbean. The Turks and Caicos Islands, a British Overseas Territory, recently appointed its new Chief Justice after a process of advertisement.

Developing new constitutional conventions in the Caribbean

Jamaica and the rest of the Caribbean need to engage in meaningful constitutional reform but that does not preclude us also strengthening our political practices in relation to the existing Constitutions. The late Professor Ralph Carnegie, warned in 1985 that 'we cannot do without a constitution, even if we can prove that it is theoretically impossible to produce a good one. But since it is indispensable though imperfect, we have to rely on experience and reasonableness

and restraint in its administration for its effective working' (*A. R. Carnegie, 'The Importance of Constitutional Law in Jamaica's Development' October (1985) WILJ 43, 45*). Developing new 'conventions' is one way of strengthening our 'imperfect' Constitutions. Our constitutional law includes, Dr. Lloyd Barnett explains, 'conventional usages which affect the machinery of government and relevant political relationships' (*Lloyd Barnett, The Constitutional Law of Jamaica (OUP, 1977) 26*). Conventions are 'non-legal rules' of the constitution that are respected and generally applied in practice but are not enforceable in the courts.

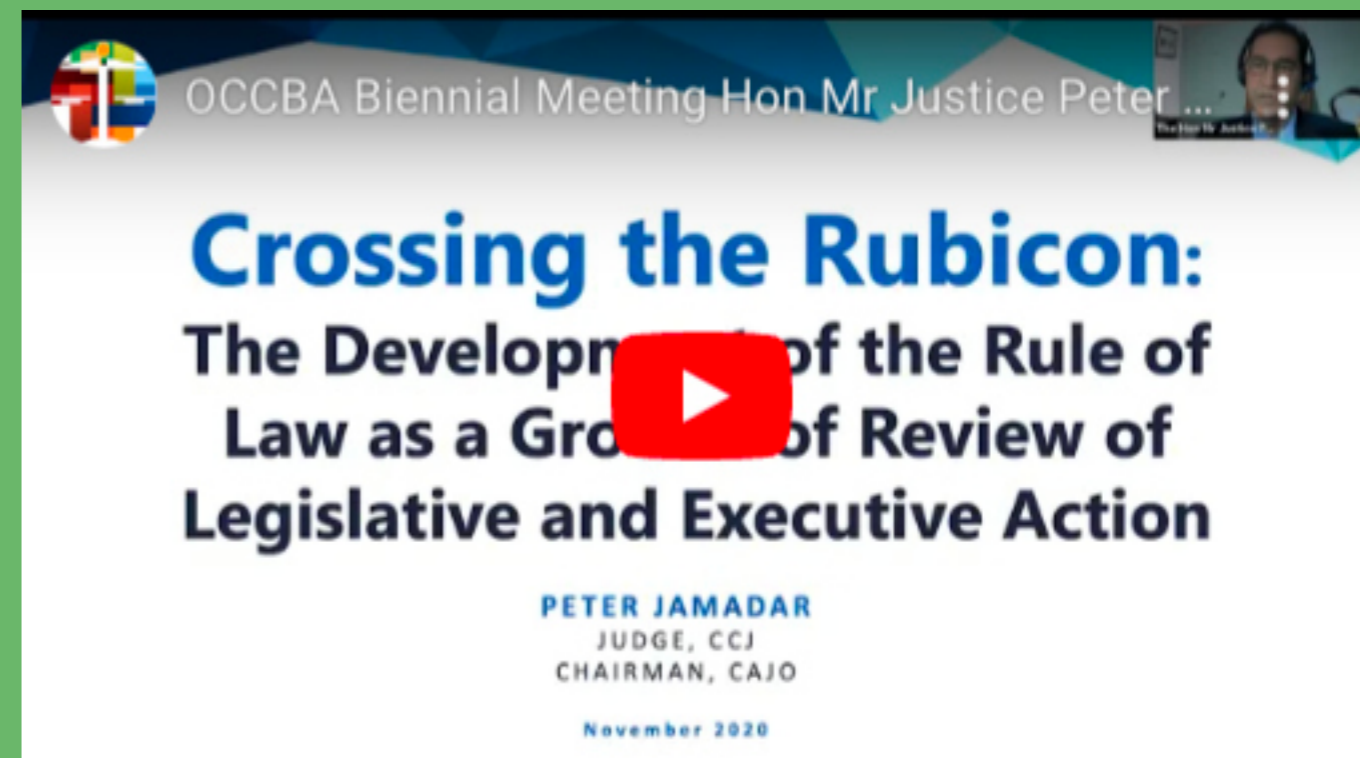
Jamaica's 1962 Constitution and other Caribbean constitutions converted several Westminster conventions into constitutional rules, but we have been slow to develop our own. Professor Emeritus, Albert Fiadjoe, bemoaned that we have not seen much development, post-independence, of new conventions as part of the 'organic growth' of Caribbean Constitutions (*Albert Fiadjoe, Commonwealth Caribbean Public Law, 3rd edn (Routledge-Cavendish, 2008) 183*). The development of new political practices into well-established conventions takes time, political maturity, and bipartisanship. To be clear, I think it is open to a Caribbean Prime Minister, like Canada's, to develop a new practice in which he or she sets up an advisory body that provides him or her with advice on the appointment of the Chief Justice or President of the Court of Appeal, provided he or she ultimately makes their own decision. I do not think this practice, which comports with our notions of limited government, requires either legislative or constitutional reform, though I expect this point will give rise to debate.

Make no mistake, constitutional reform is urgent in our region. But equally, we must do better with the constitutions we have through maturing political practices. Otherwise, we 'down-grow' our imperfect constitutions and ourselves as a polity.

A version of this article was published in the Jamaica Gleaner, 17 December 2020, A4

EXPLORATIONS INTO THE RULE OF LAW

Justice Peter Jamadar



On Saturday 28th November 2020, the Hon Mr Justice Peter Jamadar, Chairman of the CAJO, delivered the feature address at the Organization of Commonwealth Bar Association's (OCCBA) Biennial Conference.

The presentation, **Crossing the Rubicon: The Development of the Rule of Law as a Ground of Review of Legislative and Executive Action**,

sought to explore whether the CCJ's development of the Rule of Law as a basis for review of both legislative and executive action reached a point of no return, crossed the Rubicon? And if so, has it gone too far?

The full video presentation of Justice Jamadar's exploration can be accessed above.

THE CAJO MANAGEMENT COMMITTEE



JUSTICE PETER JAMADAR
Chair

Judge, Caribbean Court of Justice



JUSTICE VIVIAN GEORGIS TAYLOR-ALEXANDER
Vice-Chair

Judge, Eastern Caribbean Supreme Court



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Member

Registrar, Antigua and Barbuda



DEPUTY REGISTRAR PATRICIA ARANA
Member

Deputy Registrar, Belize



JUSTICE ADRIAN SAUNDERS
Member

President, Caribbean Court of Justice



SIR MARSTON GIBSON
Member

Chief Justice (Ret), Barbados



PARISH JUDGE MICHELE SALMON
Member

Parish Court Judge, Jamaica



MAGISTRATE MAXANNE ANDERSON
Member

Magistrate, Bermuda



JUSTICE ROXANE GEORGE
Member

Chief Justice (A.g.), Guyana



JUSTICE MAURITZS DE KORT
Member

Vice President, Joint Court of Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba



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Member

Court Administrator, The Cayman Islands



ELRON ELAHIE
Research and Programme Coordinator



JUSTICE SANDRA NANHOE-GANGADIN
Member

Judge, Suriname



JUSTICE SHIRAZ AZIZ
Member

Judge, Turks and Caicos Islands



JUSTICE AVASON QUINLAN-WILLIAMS
Member

Judge, Trinidad and Tobago



REGISTRAR CAMILLE DARVILLE-GOMEZ
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