



**SPECIAL ISSUE: SYMPOSIUM ON CARIBBEAN COURT OF JUSTICE**

## **Guest Editorial**

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The subject of a regional court for the Commonwealth Caribbean is one that has never truly gone underground and continues to generate much interest. It has occupied the minds of scholars, practitioners, politicians and the general public for well over 50 years. The matter is inextricably bound up with concerns of sovereignty, self-sufficiency and maturity in the political and legal spheres. The evolution of this shared court mirrors the struggle for greater political and economic regional cooperation. In truth, the vibrancy and sometimes emotive character of the debate has much to do with the spectre of colonialism as former subjugated colonies strive to find their way in an often hostile world within the environment of a regionalism which promises a larger footprint for these small nations, an opportunity to maximise talent, resources and confidence, and the promise of an unique legal identity that is consonant with international standards.

The Faculty of Law at The University of the West Indies has been a staunch proponent of this symbolic, but yet pragmatic and necessary initiative towards a final regional court, a topic firmly entrenched in its syllabus. In 2000, the Faculty produced a publication entitled *Caribbean Justice for All – The Case for a Regional Caribbean Court* (by myself, David Berry and Hugh Rawlins), which laid out the arguments toward what is now the Caribbean Court of Justice (the CCJ) firmly and lucidly. Five years later, in 2005, the Caribbean Community (CARICOM) took a big step, in what lead Prime Minister for the CCJ, Dr Kenny D Anthony described as a ‘Leap toward Enlightenment’, when the CCJ was inaugurated in Trinidad and Tobago with both an original

jurisdiction to resolve regional trade disputes under the economic grouping known as the Caribbean Single Market and Economy (CSME), and an appellate jurisdiction to hear appeals from domestic courts. The new Court boasted a unique funding methodology and an independent Judicial Services Commission to appoint judges of unimpeachable calibre.

In 2015, at the 10 year anniversary of the CCJ, while all except one CARICOM country was part of the CCJ's original jurisdiction, only Barbados, Guyana, Belize and Guyana had acceded to the CCJ's appellate jurisdiction, though Dominica was to follow shortly thereafter. There was therefore important work to be done to persuade other CARICOM countries to move in this direction. While some have faltered, the Faculty of Law at St Augustine was encouraged to find newer and just as enthusiastic friends, willing to boldly promote the CCJ, committed to the notion that this is the only way to genuine legal and social development for the Commonwealth Caribbean. These new friends, the Canadian Embassy, the Organization of American States (OAS), the International Labour Organization (ILO) and the United Nations Development Programme (UNDP), came together to host a highly successful Symposium featuring distinguished jurists from the wider Commonwealth region and which produced the collection of papers in this publication. They included Reginald Armour SC, President of the Trinidad and Tobago Law Association, Justice the Hon. Justice Logan RFD of Australia, Professor Benoît Pelletier, OQ, AD of Canada, former judge Mr. Denys Barrow of Belize and myself, Professor Rose-Marie Belle Antoine, Dean of the Faculty of Law, UWI.

This was no ambivalent debate about the usefulness, or lack thereof of the CCJ. Rather, the Symposium members surged ahead with the certainty that the message was true and needed to be clear: that the time is *now* for the full accession to the appellate jurisdiction of the CCJ. The Symposium was therefore entitled, quite aptly: *Advancing the Case for Regionalism and Indigenous Jurisprudence: Positive Dialogue to Promote Accession to the Caribbean Court of Justice*.

The Symposium provided the opportunity, not only to promote the appellate jurisdiction of the Court, but to demonstrate that the region was not alone in its timidity in letting go of the shackles of legal subservience. Thus, the audience benefitted from the similar experiences of other Commonwealth countries such as Canada and Australia, through the presentations of eminent jurists from those

countries in the first half of the Symposium, comparing it with our own, reproduced here as an edited special issue of the *Caribbean Journal of International Relations & Diplomacy* in the order that they presented: Armour, Logan and Pelletier. In the second session the discussion revolved around different aspects of the actual jurisprudence of the CCJ, represented here by the papers by Barrow and Antoine. The event, and in particular, the occasion of the 10<sup>th</sup> anniversary, also presented an important opportunity to assess the jurisprudence of the CCJ, its adherence to sound international legal principles and generally, to demonstrate the competence, independence and indeed viability of this eminent Court.

It was felt that the rich contributions of this Symposium deserved to be preserved. Once again the Faculty of Law was fortunate to have a friend which shared its philosophy and urgency in relation to this topic. The Institute of International Relations at UWI St Augustine provided a home for this important publication and shared its own important vision of the place of the CCJ in the regional political and social framework, examining it within the widening sphere of regional courts globally, as seen in the final paper that centers the volume added post Symposium by Dr Michelle Scobie of the Institute. All are agreed that this is a necessary and significant place that will continue to elevate the development of the Commonwealth Caribbean. The remainder of this guest editorial for the special issue reproduces the opening remarks from the event.

**OPENING REMARKS FROM HIS EXCELLENCY GERARD  
LATULIPPE, HIGH COMMISSIONER FOR CANADA**

I would like to welcome you to this first of its kind symposium in Trinidad and Tobago on regionalism and indigenous jurisprudence. It is my hope that this contribution to the public debate on possible accession to the Caribbean Court of Justice will lead to further serious consideration of the value of such a move in the near future.

At this time, I would like to recognize the invaluable contributions of our partners in organizing and sponsoring this symposium. This includes the University of The West Indies Faculty of Law, the Commonwealth Secretariat, the International Labour Organization, The Organization of American States, and the UN Development Program.

The government of Canada's co-sponsorship of this event demonstrates our continued commitment to a more unified Caribbean Community for the benefit of all who live in the region. The Caribbean Court of Justice is a key part of the architecture of regional integration, which member states have repeatedly stated as their overriding goal.

Canada is also pleased to support strengthening the justice system in the region through the implementation of the judicial reform and institutional strengthening (jurist) project. This is a five-year regional Caribbean project under which c\$19.4 million will be provided through an arrangement with Canada's department of foreign affairs, trade and development. The Caribbean Court of Justice (CCJ) will contribute c\$1.4 million and regional partners will fund c\$2.9 million.

This project seeks to improve court administration and the administration of justice in the Caribbean region by strengthening the ability of the courts and the judiciary to resolve cases efficiently and fairly. Its ultimate goal will be to establish a judicial system that is more responsive to the needs of women, men, youth, business and the impoverished.

And it is projected to ultimately lead to improved quality of justice delivery and inspire public confidence in the justice system. It is also expected to improve gender equality throughout the courts and make the region more attractive to foreign investment.

Although the CCJ and its significance may not be in the forefront of the minds of most people and governments in Trinidad and Tobago or in other countries in the CARICOM region, accession to this regional appellate court is one of the most pivotal and far-reaching decisions that the CARICOM member countries can make, as we will no doubt hear today.

In Canada, an indigenous supreme court has strengthened our identity and given us a greater sense of being arbiters of our own future. Without in any way detracting from the legal expertise of the Privy Council in London, we decided collectively that the time had come to ensure that Canadian legal cases were being heard and determined by Canadians.

The parliament of Canada abolished criminal appeals to the Privy Council in 1933. By the end of 1949, parliament had abolished all appeals to the Privy Council. The termination of appeals to the Privy Council constituted the end of judicial colonialism. Gradually, the supreme court of Canada forged its own

body of jurisprudence and, in so doing, reinforced Canada's sovereignty.

It is always important to listen to public concerns and address them directly and comprehensively. I believe that the more information available, the better the ultimate decision.

In this context, I am pleased we have so many distinguished panelists and moderators here with us today to clarify and enlighten us on relevant aspects of this topic. This covers everything from other jurisdictions' experiences with transition to indigenous final appeal courts, to the specific implications of Trinidad and Tobago and other Caribbean countries acceding to the CCJ. Following the 2001 Revised Treaty of Chaguaramas, the CCJ is intended to be a hybrid institution: a municipal court of last resort and an international court with compulsory and exclusive jurisdiction in respect of the interpretation and application of the treaty of Chaguaramas.

It also exercises an appellate jurisdiction, as a final court of appeal for CARICOM member states, replacing the Judicial Committee of the Privy Council (JCPC) for Anglophone member states. Since the Court's official inauguration in April 2005, almost ten years ago, Guyana, Barbados and Belize have acceded to this body. Grenada is soon slated to hold a referendum on this and other issues, and there are indications that the government of Dominica is preparing to move forward in the near future. The government of St. Lucia announced in its most recent throne speech that it too intends to take positive steps towards accession.

As the seat of the Caribbean Court of Justice and a major financial contributor, Trinidad and Tobago's leadership in the accession process is invaluable. The court's continued progress and legitimacy relies on the backing member states are prepared to provide. As with any other institution, the CCJ will thrive – or not – based on both its performance and the strength of its support from its members.

This is a critical time in the political and constitutional development of Trinidad and Tobago and the Caribbean. This nation and others around it have had substantive discussions on constitutional and institutional reform, to provide greater rights, liberties and security to their people. I feel strongly that accession to the CCJ is an integral part of these ongoing national and regional debates.

In closing, I would like to thank all of you for your presence and participation in today's symposium, and I look forward to hearing your considered views.

**OPENING REMARKS BY PROFESSOR ROSE-MARIE BELLE ANTOINE**

We are hosting this Symposium, auspiciously, at the time of a momentous event, that is, the 10th Anniversary of the establishment of the CCJ. This in fact, was not specifically planned this way, but it is part of a chain of events that makes me pause to reflect.

I am exceedingly happy to be able to host, in collaboration with The Canadian Embassy, OAS, ILO and UNDP, this Symposium, with so many distinguished panelists and partners on a topic, which must surely be one of the most important subjects of our lifetime – the promotion of a final court of appeal to complete the exercise of sovereignty and self-determination, confident in our ability to do so, an initiative that we in the region embarked upon over 50 years ago.

Therefore, when I was approached by His Excellency High Commissioner Latulippe some months ago to re-invigorate a proposal that had lapsed somewhat, I was immediately enthusiastic and indeed happy that once again the Faculty of Law could be championing this worthy cause. However, I confess, that as I stand here today, there is also a sense of sadness that we are still, in 2015, a full 10 years after the establishment of the Court, having to debate this issue.

For as long as I can remember at the UWI (and I have been here a long time), the Faculty of Law, UWI has stood resolutely behind the establishment and effective operationalisation of an indigenous Caribbean court as the final court of appeal for the region. As such we have embraced and continue to enthusiastically endorse the Caribbean Court of Justice without reservation.

We have made this clear by our advocacy throughout the years, such as the many oral presentations that we have made and by placing this topic firmly on our syllabus. In fact, I recall many a debate on this subject in my Law and Legal systems classes, and indeed on our exam questions practically every year. We have also put our considered views in print, through our written works, including entire books on the subject. I myself have seen where some of these arguments that I have presented in my books have

been quoted in Parliaments and in other symposia and the like, so we know that the message has been heard. So you will forgive me if I feel a little sad, a little tired, that we should still be talking about, or trying to persuade anyone about joining the appellate jurisdiction of the CCJ instead of simply gathering here today to celebrate, with great joy, what is, quite coincidentally, the 10<sup>th</sup> Anniversary of the Establishment of the CCJ.

Yet, all is not lost – there is cause for celebration even as I throw my hands up in despair at the slow pace of adoption of the appellate jurisdiction and the irony of a regional court being headquartered in a country which has not yet accepted its jurisdiction, under two successive governments which have flip-flopped on the issue. My glimmer of hope comes from the fact that just last week, while I was beginning to think about what to say to introduce this Symposium, I heard on the news not one, but two separate items about the CCJ:

First, I learnt that in a poll in Jamaica, the large majority of responders said that they were in favour of the CCJ, or at least not opposed to it; Secondly, I received with gladness the news that a new CCJ judge was appointed in the person of Trinidad and Tobago judge Marjorie Rajnauth-Lee, to replace our retiring judge from Guyana, the distinguished Madam Justice Bernard, indicating that unlike the cricket team, the selection of CCJ judges is still being made on merit and not on which country one comes from. This is a very encouraging sign.

In addition to the above, on Monday night, right here in this Auditorium, former Prime Minister of Barbados, Owen Arthur remarked that it was astonishing that Trinidad and Tobago had not accepted the CCJ when it is headquartered right here and that country had asked for it to be located here (as reported in today's newspaper).

As if this were not enough, Dominica's Prime Minister the Honourable Roosevelt Skerritt recently declared his intention to accept the appellate jurisdiction. Further, just a couple of months ago, Lead Prime Minister for the CCJ, Dr. Kenny Anthony of Saint Lucia, who ushered in the new court, successfully sought a declaration from the High Court that there is an error in the Constitution of Saint Lucia, to pave the way for rectification so as to enable ascension to the final appellate jurisdiction. Incidentally, one of the things these Prime Ministers have in common is their UWI affiliation.

It was as if all of the Heavenly Forces were coming together to inspire all of us colleagues collaborating here at the Faculty of Law, UWI in this endeavour, the Canadian Embassy, the ILO, the OAS and the UNDP. It seemed to be a sign to say: 'Do not Give UP'.

By another seemingly divine coincidence I had entitled my own presentation that I will give later on this afternoon, which discusses the actual jurisprudence (decisions of the CCJ) after 10 years - 'Encouraging Signs'.

Ladies and Gentlemen, it seems to me that when the Powers Above have already intervened and have given us such clear signs, there is nothing else for me to say - except: 'Welcome and Spread the Word...'