

Introduction

The examination that this book seeks to undertake relates to the manner in which the judicial evolution throughout various parts of the Commonwealth has been occurring over time. It will investigate the concomitant political independence of former British colonies and, in particular, the imperatives that were given expression through the establishment of a final appellate court on their own soil. Further, along with independence, there emerged the awareness of these states to look beyond colonial associations as component entities of regions – regions that often have the legacies of not just the British, but other colonial imperialists as well. Global trends had added to the dictates of seeking regional integration to enable countries to, at the very least, exert more leverage and, at the extreme, survive. This regionalism has heralded the formation of regional court establishment, yet another expression – and a more advanced one – of political and judicial independence.

From 2003 through to 2007, the Commonwealth Secretariat hosted a series of meetings. These meetings emanated from a 2002 mandate of the Commonwealth Law Ministers, which requested that the Secretariat:

- examine the manner in which Commonwealth jurisdictions proposing to sever relations with the Judicial Committee of the Privy Council (JCPC) could effect a smooth transition from the jurisdiction of that court;
- ensure that the high standards set by the JCPC were maintained after severance by such other courts as might replace the Privy Council; and
- make such recommendations as are deemed appropriate and report thereon to the law ministers.

Commencing in 2002, the Commonwealth Secretariat's Law Development Section (LDS), pioneered by its head and adviser, Cheryl Thompson-Barrow of the Legal and Constitutional Affairs Division (LCAD) and the author of this book, pursued a set of activities, synchronising these with the fortuitous and significant developments which were occurring to the jurisprudential landscape in member countries. These activities were as follows:

- In June 2003, an expert group was convened at the Secretariat offices at Marlborough House in London, which culminated in a report setting out detailed conclusions and recommendations. These included:
 - The continuation of information sharing amongst final appellate courts as they removed jurisdiction from the JCPC;
 - That the exchange of information with 'older courts' of the Commonwealth, such as the Supreme Court of Canada and the High Court of Australia, and by newly-established final appellate courts, was perceived as beneficial.
 - The utilisation of LCAD's good offices to arrange and co-ordinate visits of court officials and judges to learn and observe at first hand the practices and procedures of newly-established courts. Court visits also included visits to regional and international courts, such as the Court of Justice of the Common Market for

Eastern and Southern Africa (COMESA) and the International Court of Justice (ICJ), as this was deemed beneficial for regional courts such as the Caribbean Court of Justice (CCJ) and the Court of Justice of the Economic Community of West African States (ECOWAS).

- In 2003-2004, LDS/LCAD established consultative arrangements with the ICJ and the Court of Justice of COMESA. In 2005, it established such arrangements with the Supreme Court of Canada and the Court of Justice of ECOWAS.
- In July 2004, New Zealand, which was represented in the 2003 expert group meeting, removed appellate jurisdiction from the JCPC when the Supreme Court of New Zealand began operation. The court was visited by LDS later that year.
- In April 2005, the CCJ was inaugurated as a court of original jurisdiction with judicial application of the regional arrangements under the (Revised) Treaty of Chaguaramas creating CARICOM (Caribbean Community) as well as a court of final appellate jurisdiction replacing the JCPC.
- In February 2006, meetings were convened in Wellington, New Zealand, and Canberra, Australia, with the newly-established New Zealand Supreme Court and the older High Court of Australia. Visiting delegates included the presidents, justices and registrars of the Courts of Justice of ECOWAS and COMESA, the CCJ and the Supreme Court of Canada.
- The meetings moved to the Caribbean in January-February 2007. They took place in Jamaica – as a country which has signed on to the original jurisdiction of the CCJ and was trying to remove appeals to the JCPC; in Barbados, a party to both original and appellate jurisdictions of the CCJ; and finally in Trinidad, as the seat of the court. The delegation was of a similar composition to that of the 2006 meetings, but now included visiting justices and registrars from the Supreme Court of New Zealand and Australia.
- Both the Pacific and Caribbean meetings, appreciating the enormity of the information gleaned through their taking place, reiterated that the completion of the mandates of law ministers was deemed necessary through collaborative visits and interaction with the Court of Justice of the European Communities (CJEC), the ICJ and the JCPC. Consequently, In July 2007, meetings were held with visits to the courts abovementioned. As before, the regional courts of COMESA, ECOWAS and the CCJ participated. Joining the meeting for the first time was the newly-established Tribunal for the Southern African Development Community (SADC), which came into being in 2006. In order to also grant a ‘wholesomeness’ to the final meeting in terms of arriving at best practices for courts that would be immediately affected by the project, participation in this project included: the Eastern Caribbean Supreme Court (ECSC), a sub-regional court of CARICOM, as well as the Supreme Courts of Barbados and the Court of Appeal of Guyana, countries which had removed jurisdiction from the Privy Council and had acceded to the appellate jurisdiction of the CCJ. New Zealand, which had been actively participating in the series of meetings since 2003, was represented, as were the ‘older’ courts, such as the Supreme Court of Canada and the High Court of Australia. The meetings culminated in an intense session at the headquarters of the Commonwealth Secretariat at Marlborough House in London. All of these sessions enabled the distinguished delegates and the LDS to arrive at suitable recommendations.

What began as a concept, articulated through a project, has evolved into a most meaningful and unique contribution to the debate on removing appellate jurisdiction from the JCPC and the establishment of new final appellate courts. This is particularly because of the level and expertise of the participants, being senior justices and registrars of great and acknowledged repute throughout the Commonwealth. The outcome of these meetings has proved to be beneficial beyond expectations, as the justices and registrars themselves have asserted that this has been the first instance of such a forum – one that facilitates sharing and allows for the continued examination and improvement of best practices – being established.

The purpose of this book is to assist those states and regions that are in the process of, or have in fact already completed, final appellate formations or regional tribunals. It examines the lessons learnt and best practices that emerged from the meetings, which will be further explored below.

