5 Recommended Best Practices

Reference has been made throughout this book to the Commonwealth meetings that occurred between 2003 and 2007. The considered outcomes have, therefore, been the culmination of these meetings and visits, as well as interaction and exchanges among delegates. The final delivery of recommendations occurred at the July 2007 Commonwealth meetings. It is believed that given the wealth of experience and seniority of the delegates, these outcomes of determination for best practices are invaluable.

Appellate jurisdiction[85]

The role of the appellate jurisdiction in the provision of justice has to be recognised and respected. This jurisdiction is at the end of the road of appeals for justice undertaken by litigants. Recommendations for specific and general best practices are provided on reaching a position to provide as best an appellate jurisdiction as possible.

General recommendations

Judicial appointments

There should be ad hoc judicial appointments from the Judicial Committee of the Privy Council (JCPC) and other common law/Commonwealth jurisdictions by courts within the Commonwealth. This approach enhances exchanges and allows for comparative assessments of the development of jurisprudence.

Library and research facilities

A fundamental tool for granting assurance to maintain standards and equipping the judiciary with appropriate instruments, is the provision of adequate funding for instituting and maintaining library resources, including technological innovations in such libraries. Working with law schools to secure assistance from students will also bolster research facilities, while simultaneously granting future members of the legal profession an opportunity to make a contribution and become familiar with processes.

Amicus curiae

Arrangements should be made with bar associations and the courts to be able to create a list of potential *amicus curiae* (advisers to the court).

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85 The members of the July 2007 Commonwealth meeting who determined recommendations for the 'appellate jurisdiction' comprised: Judge R Silberman Abella, Judge of the Supreme Court of Canada; Judge B Alleyne, Acting Chief Justice of the Eastern Caribbean Supreme Court; Judge S Crennan, Judge of the High Court of Australia; and Judge C Singh, Chief Justice of the Court of Appeal of Guyana. For the unedited and unmodified text of the recommendations, the report of the July 2007 meeting may be obtained upon request from the Commonwealth Secretariat.

Translation and interpretation services

Where courts have to work in different languages, qualified translators and interpreters are necessary. Their training in legal language is appropriate to ensure that the translations and interpretations produce, as accurately as possible, the proceedings and statements of the court. This aspect is also further canvassed in the recommendations from the registry.

Adequate security

Judges, members of the court and witnesses need to be able to function in a physical situation devoid of fear and intimidation. Consequently, there should be the necessary measures in place to ensure that there is adequate security for all.

Specific recommendations

Public confidence/appointment and independence of judges

The fostering of public confidence in the appeals process will give the life blood to the court to ensure its functioning and, in particular for newly-established courts, will provide the wherewithal for its very existence.

Recommendations:

- The continued independence of the judiciary from the legislative and executive arms of government must be safeguarded at all times.
- Dissents at all appellate levels should be permitted.
- The code of conduct of the judiciary must be adhered to and respected.
- Administrative independence for the court's functioning should be a priority.
- An independent mechanism for regular review of judicial remuneration should be established.
- A judicial services commission or similarly established body indicates the approach of transparency and fairness in appointments of the judiciary.
- Where and as far as possible, gender balance must be a consideration in the guiding then selection processes for judges.

Backlog and modernisation

An instrumental approach towards an efficient functioning appellate jurisdiction of a court has to factor in both its approach to eliminate backlog while simultaneously seeking to effect modernisation and innovation to meet that court's needs.

Recommendations:

- Computers for all judges along with support services are deemed to assist the ability to reduce the causes of backlog and delay. The judiciary is encouraged to become highly conversant with the use and consequent advantages of a computer and technology more generally.

- Computers for research in libraries are imperative, as this again reduces delay and allows for internet sources to satisfy research demand with alacrity. Courts are also encouraged to subscribe to credible providers of online cases and other associated legal research sources.
- The foregoing will be made possible if there is, in tandem, the provision of independent and adequate legal, clerical and administrative assistance for judges.
- Time limits need to be set and respected for procedural steps and timetables for hearings. Time limits again have to be maintained for:
  - filing and responding to written submissions;
  - filing intervenor applications and responses; and
  - oral argument.
- In equal measure, written submissions need to be of limited length and that length adhered to.
- With regard to applications for leave, this should be carried out in writing. Leave, in particular, is to be granted on issues of fundamental importance, to settle inconsistent jurisprudence, or if a miscarriage of justice is involved.
- The delivery of judgments in a timely manner is paramount. To ensure that judges honour this approach, measures should be employed to achieve this end. These methods may include circulation of a periodic list of outstanding judgments, and/or naming the judge responsible. Regular meetings of judges are to be maintained in order to monitor the progress of judgment writing.

Continuing judicial education

To be able to deliver a consistently-updated judiciary, one that is familiar with the evolving judicial demands of the various courts, education for the judiciary has to be continuous.

Recommendations:

- Judgment-writing courses need to be factored into the budgets and activities of the courts on a regular basis.
- The judiciary should pursue substantive and comparative law courses.
- Creation of a judicial institute for educating judges at all levels may be a long-term approach within a regional arrangement and is noteworthy. It may also be approached from the point of view of inter-action and collaboration with other regions and jurisdictions. Further, this approach may involve existing bodies and associations.

The regional and international law jurisdiction[86]

For recommendations of best practices in a regional court, observing the principles of international law, increasing the judiciary's knowledge and appreciation of same in the evolution of jurisprudence, along with ensuring that the citizenry can avail itself of the court, the suggested approaches are examined under the following arrangements:

- General recommendations;
- Specific recommendations relating to:
  - Scope of Jurisdiction
  - Access or *locus standi*
  - Development of jurisprudence
  - Training and continuing legal education

General recommendations

Library facilities

Having stressed the importance of research to the development of regional community law, the improvement of library facilities and equipment, as well as materials such as periodicals, textbooks and access to legal databases, should be addressed as a matter of immediate priority. The publication of the law reports of regional courts must be done in a timely manner. It is also necessary for the courts to update their websites in order to provide the public with relevant information.

Infrastructure

It is crucial for the proper functioning of any court that appropriate infrastructure should be made available. The designated host country should ensure that adequate infrastructure provision is made in accordance with standard international practice.

Funding

Member sates must ensure regular and adequate funding of the courts to guarantee their smooth functioning and independence. Regional courts should not be made to continually beg for funds from member states. Member states of various regions should be encouraged to adopt the CARICOM trust fund model, which is both sustainable and ensures the autonomy of the CCJ. In this case, the Heads of State and Government of the Caribbean Community authorised the Caribbean Development Bank (CDB) to negotiate a loan of one hundred million United States dollars ($100,000,000) on the international capital markets. This amount was then lent to the member states of the Caribbean Community in amounts corresponding to their liability to contribute to the budget of the CCJ. The loan was repayable to the CDB over ten years. This amount was, however, not

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86 Delegates of the July 2007 Commonwealth meeting who produced these considered recommendations for 'regional and international law jurisdiction' comprised: Judge N Kitonga, President of the COMESA Court of Justice; Judge L Mondlane, President of the SADC Tribunal; Judge A Benin, Vice President of the ECOWAS Court of Justice; Judge D Pollard, Judge of the CCJ; and Judge S Rugege, Judge of the COMESA Court of Justice. For the unedited and unmodified text of the recommendations, the report of the July 2007 meeting may be obtained upon request from the Commonwealth Secretariat.

handed over to the member states, but was deposited with trustees who were mandated to administer the fund on behalf of the member states pursuant to a trust fund agreement concluded by the member states. Income accruing from the trust fund is employed to defray the expenses of the CCJ on a sustainable basis.

Periodic meetings

Periodic meetings of regional courts should be arranged to enable them to share experiences on the operation of their courts and how to improve them.

Specific recommendations

Jurisdiction

The usual question asked in terms of a regional court's jurisdiction revolves around a determination of its appropriate role and the extent of its jurisdiction. The answer would be that the court's primary purpose is the resolution of disputes arising between member states of the community, member states and individuals, legal persons and institutions in respect of the interpretation and/or application of the community treaty and other legal instruments relating to the community.

Recommendation:
In the exercise of this core function, the regional courts should set out principles through case law that guide the member states and other actors in their interaction and furtherance of the integration project. In order to achieve this, there should be one authoritative voice as to what is the proper interpretation of any provision of community law, and that voice should be the regional court.

Jurisdiction of interpretation

However, it is also recognised that in some regional arrangements the community law does not grant exclusive jurisdiction to the regional court, but rather allows the national courts to have concurrent jurisdiction with the regional court on the interpretation of the treaty. On this basis, different domestic courts may give different interpretations to the same provision of the treaty, leading to uncertainty as to the meaning of a particular provision. One example is Article 10(f) of the Protocol establishing the ECOWAS Community Court of Justice, as amended, which enables the domestic courts to decide, in their discretion, whether to refer any issue of interpretation to the regional court. A similar provision is found in Article 16 of the Protocol on the SADC Tribunal. On the other hand, Article 30 of the COMESA Treaty states that:

> *'Where a question is raised before any Court or tribunal of a Member State concerning the application or interpretation of this treaty or validity of the regulations, directives and decisions of the Common Market, such Court or tribunal shall, if it considers that a ruling on the question is necessary to enable it give judgment, request the Court to give a preliminary ruling thereon.'*

Recommendation
This provision makes it obligatory for domestic or national courts, in specified circumstances, to refer the question of interpretation of a treaty provision to the regional

court for a preliminary ruling. A similar provision exists in the CARICOM Treaty. This is also the practice in the EU court system. This practice should be followed by other regional courts in order to ensure consistency and certainty in community law.

Access or *locus standi*

Regional courts should serve not only member states of the communities, but also those who reside in them – whether individuals or legal persons. However, some community instruments permit individuals and legal persons to submit their disputes involving integration matters to the regional court only after exhausting domestic remedies in the national courts. This is usually a long process that discourages litigants, since the disputes have to follow the queue as all other domestic cases.

Recommendation:
Given that for development to take place there is the need to fast track commercial and especially foreign investment disputes, the relevant instruments have to be amended to allow private individuals and other legal persons to access the regional courts without first having to exhaust local remedies.

Jurisprudence and exchange among regional courts

Since the constituent instruments of the communities are treaties between states, their interpretation should primarily be based on principles of international law in accordance with the 1969 Vienna Convention on the Law of Treaties. In equal measure, regard has to be given to the development of comparative jurisprudence of international and regional tribunals and the general principles of law to buttress such interpretation.

Recommendations:
Judges of regional courts should keep themselves updated with international law and comparative jurisprudence developments. As a means towards this end, and in the realm of development of jurisprudence of community law of regions, regional courts should continually exchange judicial decisions by them.

Jurisprudence and research facilities and support

The fundamental role of appropriate research and library facilities and support has been addressed in another context. This constitutes a recurring theme, underlining its crucial contribution to jurisprudence as well as the ability of a court to stand in confidence on the quality of its judgments, based on sound reasoning gained from proper research.

Recommendations:
The courts should establish research departments, where none exist, whose duty it will be to help judges conduct research into aspects of international and community laws. These measures should improve the quality of judgments produced by regional courts and enhance the uniformity of applicable laws, and inspire the confidence of investors, both local and international in the common markets. The research departments will also help in harmonising different aspects of law that are common to the community and which are necessary in the integration process, for example, laws on taxation and customs.

Training and continuing legal education

It is recognised that the development of a regional body of jurisprudence has to have a contribution at all levels of stakeholders in the jurisprudential landscape. This has an even greater urgency within new regional arrangements, where the practice of international law and community law is in somewhat of an infancy stage. To move the process forward, creating informed legal discourse and representation, training and updating is recommended as outlined above.

Recommendations:
In order to further develop regional community laws and the harmonisation of national laws for greater integration in the common market, there is need for inclusion of regional community law in the curricula of universities and especially law schools. This should be in addition to the usual international law courses. The study of regional community law should be made obligatory at law schools for would-be legal practitioners. Judges and lawyers already in practice should undergo continuous legal education in international, and more particularly, regional community law.

Law students should be given attachments to regional courts to encourage the practice and popularisation of community law, a practice already being undertaken by the ECOWAS Court of Justice.

The registry

It must be remembered that the registry is at the heart of any court's operations, yet is so often overlooked in the court's functioning. The blend of distinguished delegates who gave contemplation to the recommendations herein, hailed both from final courts of appeal as well as regional courts[87]. Further, while obviously final courts of appeal, the Supreme Court of Canada and the High Court of Australia, by virtue of their provincial and federal span, do share some features that may apply to any regional arrangement. These reflections indicate perhaps the most comprehensive determinations of registry functions and guides.

Communication between registries in regional/federal arrangements – sub-registries

The sub-registry system is a useful means of providing access to justice in situations where potential users of the court reside in locations which are geographically distant from the seat of the court. However, where a sub-registry system is employed, communication and transfer of information and documentation between the registry and the sub-registries assumes vital importance. The registrars examined among other things:

- The agency system that operates in the Supreme Court of Canada, where there are no sub-registries and applications and appeals are filed in the registry with parties employing an agent for these purposes.
- The High Court of Australia, where the work of the central registry is facilitated by a series of sub-registries throughout the country. Offices of the registry have access to the centralised computer system.
- The system employed by the Eastern Caribbean Supreme Court, where the work of the Court of Appeal Registry in Saint Lucia is facilitated through filing of applications and appeals at sub-registries located in each of the nine member states and territories, and where there is no formal agency system in use nor a centralised database.
- The system employed by the Caribbean Court of Justice, where documents may be filed in the sub-registries or at the CCJ Registry; however, there is no requirement for agents to act on behalf of attorneys nor a centralised computer system;
- The ECOWAS Community Court of Justice, where there is a centralised registry only located at the seat of the court in Abuja, Nigeria. However, it is noted that member states have been clamouring for the introduction of sub-registries to facilitate access to the court in their countries.

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87 Delegates of the 2007 Commonwealth meeting in July who submitted these considered recommendations for the 'registry' comprised: Mr C Doogan, Chief Executive and Principal Registrar of the High Court of Australia; Ms A Roland, Registrar of the Supreme Court of Canada; Mr T Anene-Maidoh, Chief Registrar of the Court of Justice of ECOWAS; Ms P Pierre, Registrar of the CCJ; Justice MCC Mkandawire, Registrar, SADC Tribunal; Mrs K Cenac-Phulgence, Chief Registrar, Eastern Caribbean Supreme Court; Ms S Ramlal, Deputy Registrar of the CCJ and Registrar of the Court of Appeal of Guyana; and Mrs M Crane-Scott, Deputy Registrar of the CCJ and Registrar of the Supreme Court of Barbados. For the unedited and unmodified text of the recommendations, the report of the July 2007 meetings may be obtained upon request from the Commonwealth Secretariat.

- The SADC Tribunal, which at the time of writing is in the process of establishing its registry. It will initially utilise a centralised registry located at the seat of the court in Windhoek, Namibia, as is provided for in the Protocol establishing the Rules of Procedure.
- The COMESA Court of Justice, where there is a centralised registry only located at the seat of the court in Lusaka, Zambia.

Recommendations:

- Wherever appropriate, a system of sub-registries with a centralised computer database should be adopted with the ability for each sub-registry to access and input data.
- Each sub-registry should, in addition to the sub-registrar, have an officer dedicated to deal with applications and appeals to the final appellate/regional courts.
- Feedback mechanisms should be introduced to ensure that sub-registries are officially notified by the registrar of the court of the outcome of any applications or appeals before the court.
- Quarterly status reports on pending matters should be generated by the registry of final appellate/regional courts for each sub-registry.

Interaction with judges, legal profession, the general public and among registrars

Interaction between the court's registrar and other key actors is thus critical for the efficient administration of a court. Different practices prevail in the various jurisdictions of the Commonwealth, for example: Agent/Registrar Committee and Court/Bar Liaison Committee at the Supreme Court of Canada; rules committee meetings in Trinidad and Tobago, Barbados and Guyana; meetings with bar associations, continuing judicial education programmes and court user committees.

Recommendations – judges and the legal profession

- Judges and registrars should collaborate on a common approach to the application of the rules in relation to time limits, filing requirements and so forth.
- Committees comprising representatives of the judges, registrars, bar associations and civil society groups should be convened on a periodic basis to discuss administration of the registry.
- All courts, and in particular newly-established courts, should have sensitisation missions in member states/territories/provinces with attorneys on the role and function of the court.
- There should be a bi-annual survey/evaluation of the performance of the registry conducted by an independent survey consultant.
- Intended changes to administrative practices in the registry should be communicated to the bar associations and feedback invited before implementation.

- In recognition of the pivotal role that registrars play in the administration of justice, registrars should be included as participants in meetings of judicial officers nationally, regionally and internationally.

Recommendations – interaction with the general public

- There should be the development of informative and user-friendly websites, flow charts and pamphlets for the use of the public and, in particular, for self-represented applicants.
- All courts, and in particular newly-established courts, should have sensitisation missions in member states/territories/provinces with the public and law faculties on the role and function of the court.

Recommendations – interaction amongst registrars

- A permanent international forum should be established for registrars of final appellate/regional courts in Commonwealth countries to discuss issues and exchange information about best practices in the registries.

Case management systems, statistics and electronic filing

In the thrust to modernise the court, as well as maintain the ability to deliver services in as timely a manner as possible, the use of case management systems statistics and electronic filing has become increasingly valuable.

Recommendations – case management systems

- Courts need to consider the implementation of an electronic case management system tailored to the specific needs of courts so as to facilitate the effective management of cases.
- In choosing an electronic system, courts should draw from the experiences of and systems used by other registries, including the Supreme Court of Canada, the ECSC and the High Court of Australia.
- The electronic system adopted should have features that assist in the following:
  - identification of the status of cases;
  - identification of various categories of matters;
  - generation of reports such as statistics and reasons for adjournments;
  - generation of standard forms, such as letters, orders and notices;
  - identification and tracking of reserved judgments;
  - minimising of multiple entries;
  - posting of case notes for internal use only; and
  - allowing lawyers and the general public to access case information via the internet.

Recommendations – statistics

- Statistics should be generated periodically for the internal use of the court to ensure the efficient and timely disposition of cases in keeping with applicable standards.
- Statistics should be used to identify caseload trends, time lines, revenue collection, and financial and human resource needs.
- General statistics should be made available to the public annually.

Recommendations – electronic filing

- Electronic filing needs to be recognised as the way of the future, but should be introduced as the last step in the modernisation of courts. In particular, caution should be exercised to ensure that the introduction of electronic filing does not cause a transfer of workload and cost from the litigants to the court.
- Electronic filing should only be considered after the courts below have been fully computerised (thereby allowing documents to be electronically transferred between courts and/or lawyers/litigants).

Dealing with frivolous, vexatious and abuse of process procedures

Registrars believe that with the growth of self-represented litigants, so there has also been an increase in the number of attempts to file documents involving an abuse of process of the court or which constitutes frivolous or vexatious proceedings.

Recommendations – specific rules

- Every court should have a rule that provides for the registrar to seek directions from a judge not to allow process to issue on the basis that the proposed litigation is frivolous, vexatious or an abuse of process.
- Every court should have a rule that provides for nominated persons (for example, a registrar, attorney-general or solicitor-general, as the case may be) to apply to have particular persons declared vexatious and thereby requiring leave to commence proceedings.

Rules of Court

Recommendations – user friendly rules

- Rules of Court should be user-friendly, written in plain language and easily understood by all users.
- Flow charts have to be made available by the registry showing the court processes and filing deadlines.

Recommendation – exercise of discretion by registrars in giving directions

- The Rules of Court should be designed to provide for registrars to have discretion to issue directions as they see fit in order to ensure that the requirements of the rules are met.

Recommendations – time limits for hearing within a reasonable time and the 'deemed abandoned' rule

- The Rules of Court should provide time limits from filing to the point where the case is ready for hearing (preferably a maximum of three months or, if this is considered to be too short a period, six months).
- There should consequently be a 'deemed abandoned' rule to give effect to the above.

Translation

Final appellate/regional courts that operate in more than one working language are encountering problems in translating documents due the difficulty in recruiting qualified translators with adequate legal knowledge. This causes delay in the administration of justice.

Recommendations – networking

- Multi-lingual courts are encouraged to seek assistance among themselves and with older jurisdictions to access the required translation and interpretation services of legally-trained persons.
- Multi-lingual courts should, in conjunction with relevant institutions including the Commonwealth Secretariat, develop an appropriate training module, which will assist in overcoming the problems identified above.
- Multi-lingual courts should seek technical assistance in facilitating short-term attachments of translators to relevant established organisations.

Public awareness and access to justice[88]

Public awareness

Courts have a responsibility to promote accountability and transparency in their functions. Since courts exist in the interests of the public, it is appropriate that the public should be aware of the work they do and their methods of work.

Historically, the attitude of the judiciary has been one of reticence, keeping its distance from the press and avoiding entanglement in controversial issues. This attitude has changed in the last 15 years. It is now recognised and accepted in many courts of the Commonwealth that the judiciary should be pro-active in providing accurate information to the public and in facilitating accountability.

Recommendations:

Public Relations Unit

- As far as practicable, a unit specifically responsible for providing information to the public should be established. The objective of the unit should be the development of appropriate strategies to ensure that the public is provided with relevant information. The head of the judiciary and the head of the unit should work in close harmony to provide programmes and a methodology for building public awareness.

Use of Existing Facilities

- In some Commonwealth states, a government information service or similar department already exists. Use should be made of these facilities, for example, by requesting that an officer of the service be assigned to the judiciary. There should be regular meetings between the head of the judiciary, so that the latter may be properly briefed.

Annual Press Conferences

- The head of judiciary should hold an annual press conference to inform the public of the work of the courts, and to respond appropriately to concerns that the press may wish to raise on aspects of the court's operations.

Publication of Reports

- Whether required by legislation or not, the judiciary, including its institutional organs, should publish an annual report of the work of the court and its departments to enable the public to assess the efficiency and effectiveness of the courts.

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88 Delegates of the July 2007 Commonwealth meeting who submitted these considered recommendations for 'public awareness and access to justice' comprised: Sir D Simmons, President and Chief Justice of the Supreme Court of Barbados; Judge N Anderson, Judge of the Supreme Court of New Zealand; Judge A Saunders, Judge of the CCJ; Mrs Z McCalla, Chief Justice of the Supreme Court of Jamaica; and Mr A Davis, Retired Judge. For the unedited and unmodified text of the recommendations, the report of the July 2007 meetings may be obtained upon request from the Commonwealth Secretariat.

Promoting Open Justice

- It would reduce some of the mystique surrounding courts if, for example, there were an annual open day when members of the public would be encouraged to visit the courts and interact with judicial officers and court staff.

Participation by the Judiciary in Public Discussion

- Whereas it is acknowledged that judges should not engage in discussion of matters of public controversy or about cases, save in an academic context, nevertheless, support should be given to the participation of the judiciary in public discussion relevant to the business of the court and on legal issues.

Use of Modern Technology

- Courts should make the best possible use of modern information technology to build public awareness of the business of the courts. There should be a website on which relevant information about the court is posted. The public should be invited to read the full judgments of courts to ensure that they are not given a jaundiced view of a judgment because of inept reporting. However, courts should seek also to create and publish executive summaries of all important judgments with an appropriate disclaimer that these summaries are not and form no part of the relevant judgment. There is much public value in the creation, sale and distribution of DVDs on the courts and the administration of justice.

The Caribbean Court of Justice

- With specific reference to the CCJ, the following is recommended:

  Publication of reports

  The court, the Regional Judicial and Legal Services Commission and the trust fund should publish annual reports and ensure that they have the widest possible regional distribution. The heads of these respective institutions should consider holding a joint press conference annually to provide the setting for the release of the reports.

  Special attention to Jamaica and Trinidad and Tobago

  Jamaica and Trinidad and Tobago are potentially the major contributors of litigation to the CCJ. They are also the major contributors to the fund of the court, but neither state has acceded to the jurisdiction of the CCJ. It is understood that both political parties in Jamaica have committed themselves to holding a referendum on the issue of joining the CCJ after the next general elections. The position in Trinidad and Tobago is unclear at the time of writing. It is important that accurate information about the court be made available to the public throughout the Caribbean and, in these countries in particular, in order to ensure that the public are in a position to make an informed and considered judgment on the matter. In particular, these efforts could be directed at the business community, the bar associations and the wider public. Emphasis could properly be placed on:

  - the fact that Jamaica and Trinidad and Tobago are making annual financial contributions to the court, but are receiving no services from the court in return;
  - the fact that some previous opponents of the court have come to understand and

appreciate its role and worth;

- the speed in having a case heard in the CCJ compared with the JCPC and the great savings in costs achieved in pursuing an appeal before the CCJ; and
- the fact that, unlike the case with England, no visa is required for a CARICOM national to travel to Trinidad & Tobago to access the CCJ.

The Supreme Court of New Zealand

- New Zealand, which recently severed ties with the Privy Council, has demonstrated that its jurisprudence has developed significantly in several areas of the law as a direct result of the greater accessibility than was possible with appeals to the Privy Council. That jurisdiction's jurisprudence has developed significantly, because cases raising interesting and novel issues of law that would have stopped at the Court of Appeal level are now argued before the new Supreme Court. The decisions of that court have advanced the common law significantly.

Access to justice

Access to justice is a human right. However, the historical experience of the common law has been that, in reality, too many barriers have continued to deny citizens access to the courts. These barriers have been systemic, procedural, financial, physical and cultural. They include the related problems of delay and backlog, antiquated court facilities, outdated approaches to litigation by judges and lawyers, and an insufficiency of funding.

It has to be said that the judiciary, as the third arm of government, has generally been under-resourced. It is the view that access to justice can be enhanced and public confidence in the integrity of an indigenous court bolstered by the adoption of the following recommendations:

Change of Culture of Practice

- Courts should adopt those practices that are being used in many Commonwealth countries to ensure that litigation is more judge-driven and less party-driven. This change in culture requires adequate training for all those involved in the administration of justice, *viz.* judges, court staff, lawyers and administrators. Courts should specifically earmark funds for continuing training and education.

Legal Aid

- In many countries, the categories of persons entitled to legal aid are very narrow. They need to be expanded in criminal cases as well as civil actions. In particular, there should be liberal access to legal aid in family law matters. It is recognised that increases in legal aid benefits are related to countries' fiscal capabilities, but expansion of legal aid should be seen as a crucial access-to-justice issue to which all states should be committed.

Improving Physical Access

- The traditional under-resourcing of the administration of justice has resulted in court buildings being inadequate, dilapidated and unsuitable for the dispensation of justice

in contemporary times. The courts are liable to be seen in negative and derogatory terms, because of the environment in which judicial officers function. There should be planned, systemic and sustained programmes for the modernisation of court infrastructure over a defined period. The infusion of resources should have as its objective the improvement of existing facilities and the creation of new ones. Such facilities should ensure adequate security for all court users and make provision for persons with disabilities. It requires no amplification to say that courts should be equipped with public address systems to improve audibility in the courtrooms.

Procedural Improvements

- Rules of procedure in the 20th century have had a negative impact on access to justice. They have allowed lawyers to manipulate the administration of justice to the disadvantage of the parties. Their language has not been readily intelligible to the non-lawyer. Courts should therefore adopt rules of procedure that are written in simple English and are readily intelligible to the ordinary citizen. They should provide for case management by judges, to ensure that the process of litigation is driven judicially in an efficient and expeditious manner.

Use of Information Technology (IT)

- New rules of procedure and the new culture of litigation require adequate support by appropriate information technology. It is important to appreciate that relevant IT is essential for effective functioning of new rules of procedure. As far as possible, courts should seek to integrate the software they use with software being used by ancillary government agencies such as the prisons, probations, police and immigration departments, so that efficiency in the entire justice sector is maximised. Similarly, national courts within a region and regional and appellate courts should seek to harmonise technology with a view to streamlining practice and procedure and creating efficiencies. The ultimate objective of the installation of modern IT should be the maximising of the efficiency of the courts and the enhancement of access to justice.

- Video systems should be installed to facilitate appearance from long-distance for special leave applications or directions.

Alternative Dispute Resolution ('ADR')

- Rules of procedure should make ample provision for non-litigious methods of resolving disputes. The parties should be encouraged to utilise the most appropriate method of resolving disputes including, in particular, mediation. However, having regard to the natural scepticism of litigants when advised to settle litigation, it is recommended that intensive outreach programmes be undertaken to sensitise the public to ADR. It is also recommended that bar associations be intimately involved in programmes promoting ADR, not only as conduits for litigants but also to be better informed in their own right.

Information Centres and Customer Service Charters

- Courts should be encouraged to be more customer-friendly. Some jurisdictions have developed customer service charters in which the public are given information as to the manner and time in which the various departments of the court will deliver various

services. Other jurisdictions publish and disseminate brochures and leaflets that indicate the services that are offered by the court and how they can be accessed. This is of particular use in the registries of courts. Another useful innovation would be the establishment of a help desk or information centre to which court users could go for information about the services provided by the court.

Department of Court Administration

- Historically, the administration of courts has been the function of legally-trained persons employed on the basis of their legal training. However, modern best practice is for the administration of courts to be run by specialised departments and by persons specifically trained in court administration, but under the control of the judiciary. The author and delegates to the July 2007 Commonwealth meeting recommend that courts seek to create departments of court administration, preferably headed by a lawyer trained in the area. The hiving-off of administrative functions into a separate department would allow the registrar and the head of judiciary to devote their energies to other areas.

Codes of Conduct

- Many courts throughout the world have developed and published codes of judicial conduct or guidelines for such conduct. These are useful tools. They assist judges in understanding the constraints of judicial office and serve to inform the public of the standards to which judges should be held accountable. Equally, they give the public an appreciation of the nature and responsibilities of judicial office. Codes or guidelines should be made easily available to the public at places in which the public often has access, for example, post offices.

Complaints Procedure

- It is recognised that in some jurisdictions there exist mechanisms for dealing with complaints against the judiciary. Where such mechanisms do not exist, their establishment is recommended. Crucial to any such system is public awareness of its existence and its procedures. Publication of these, including on the court's website, is necessary. Such measures encourage judicial accountability and enhance public confidence in the administration of justice.