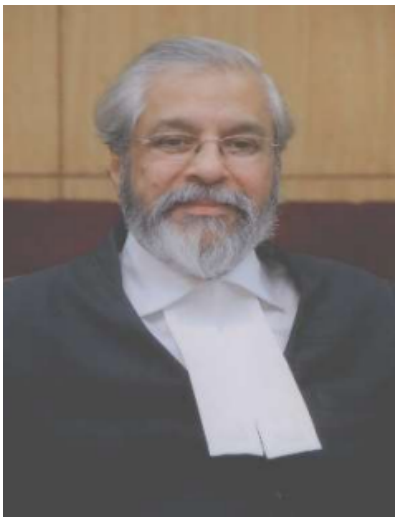
CJEI REPORT
SPRING 2023

Newsletter of the Commonwealth Judicial Education Institute

Message from the President:



Greetings and welcome once again to another informative Newsletter! CJEI is continuing on its path of innovative education techniques.

As a follow up to the virtual dialogue against trafficking in persons, which has been detailed in the Fall 2021 issue of the Newsletter, CJEI has undertaken a study of contemporary slavery and developing core competencies for judicial educators to educate judges to deal with issues arising out of problems caused by this inhuman practice.

In a couple of months, the Commonwealth Lawyers Association will be holding their biennial meeting in March in Goa, India. CJEI will, as is customary, address the participating Chief Justices on "Legal Personhood for Animals". We have been fortunate to have the services of two eminent Professors who have conducted considerable research on this subject.

Later in May, CJEI will be hosting its biennial meeting in Botswana. Due to the COVID-19 pandemic, this could not be held earlier. Now, all of us are looking forward to meeting once again and it would be wonderful to have your presence for discussing ideas and concepts to take judicial education further ahead in our respective jurisdictions. Please do block your dates for the occasion.

June is the month for the flagship ISP - spread the word. We have been receiving messages from Fellows about how their learnings have given a fillip to judicial education in their country. The Delhi Judicial Academy in India, for example, is making full use of music as a tool for judicial education.

Looking forward to seeing you in Botswana in May and then adding to the growing list of Fellows in June.

Madan B. Lokur

Inside this issue:

Message from the Vice President of Programming:

At the heart of the work and mission of the CJEI is teaching, learning, and sharing with judicial officers about the well-established, tried and tested, as well as developing and cutting-edge approaches to, and skills and tools of judicial education. The CJEI remains one of the global leaders in this regard. Being housed at Dalhousie University in Halifax Canada continues to be very advantageous, as the CJEI is able to draw upon faculty expertise and infrastructural support.

Over the last few years and during the height of the COVID-19 pandemic, the CJEIs flagship in-person ISP Judicial Educators Fellowship programme that takes place in Halifax, Ottawa, and Toronto was suspended. However, in 2022 it was resumed and was a resounding success. A record number of participants from the Commonwealth attended, new areas on the use of art in judicial education, human trafficking, and animal rights were included to resounding acclaim, and in Halifax coursework and practicums were all done in a cutting-edge electronic classroom that facilitated the latest modalities of teaching and learning.

In addition, over this period the CJEI continued to participate virtually in educational and training initiatives, including (i) facilitating training on improving judicial skills in coherence and clarity in judgment writing for the Judiciary of the Turks and Caicos Islands in August 2020, (ii) making presentations at a global programme on World Day Against trafficking in Persons in July 2021 (in partnership with the CHRI), and (iii) leading a session at the CJEI Patron Chief Justices' meeting in Bahamas in September 2021. With an abatement in COVID-19 travel restrictions, the CJEI participated at the IOJT NJI-INM conference in Ottawa, Canada in October-November 2022, by hosting a breakout and in-person session on behavioural change education in the context of the Judiciary and human trafficking.

In May 2023 the CJEI will host its 10th Biennial Meeting of judicial educators in Gaborone, Botswana, under the theme 'Contemporary Issues, Innovative Responses and Judicial Education.' And in June 2023, it will host its customary 28th Annual Intensive Study Programme for Judicial Educators in Halifax, Ottawa, and Toronto.

The CJEI continues its work and mission to support Commonwealth Judiciaries in their quests for excellence, by offering innovative, effective and engaging judicial education interventions that support justice sector development and reform. Building on the past and looking towards the future, the CJEI remains committed to transformation through judicial education.

27th Annual Intensive Study Programme for Judicial Educators

The programme was directed by The Honourable Mr. Justice Peter Jamadar, CJEI Vice President (Programming) and Co-Directed by The Honourable Brian Lennox, Former Director of the National Judicial Institute of Canada and Judge (R) Sandra E. Oxner, CJEI Founding President.

It was attended by 22 participants: The Honourable Justice Camille Darville-Gomez, Supreme Court, The Bahamas; The Honourable Mr. Justice Ranier Busang, High Court, Botswana; Mr. Gaseitsewe Tonoki, Chief Magistrate, Botswana; The Honourable Justice Galesiti Robert Baruti, Industrial Court, Botswana; Ms. Anna Mphetlhe, Registrar, Industrial Court, Botswana; The Honourable Chief Justice Roxane George, Chief Justice (Acting), Guyana; The Honourable Mr. Justice Gino Persaud, High Court, Guyana; Chief Magistrate Ann McLennan, Guyana; Mrs. Sueanna Lovell, Registrar, Supreme Court of Judicature, Guyana; The Honourable Mr. Justice Tejinder Singh Dhindsa, Punjab and Haryana High Court, India; The Honourable Mr. Justice Vipin Sanghi, Acting Chief Justice, High Court of Delhi, India; Mr. Manoj Jain, Principal District and Sessions Judge, Delhi, India; Mr. Ravinder Dudeja, Registrar General, High Court of Delhi, India; The Honourable Mrs. Justice Stephane Jackson-Haisley, Supreme Court of Judicature, Jamaica; The Honourable Mrs. Justice Icolin Reid, Supreme Court of Judicature, Jamaica; Her Honour Ms. Sanchia Burrell, Senior Judge of the Parish Court, Jamaica; The Honourable Justice Datuk Vazeer Alam Mydin Meera, Court of Appeal, Malaysia; The Honourable Justice Kashim Zannah, Chief Judge, High Court of Borno State, Nigeria; The Honourable Justice Margaret Price-Findlay, High Court, Saint Lucia; Master Tamara Gill, Eastern Caribbean Supreme Court, Grenada; The Honourable Mr. Justice Dinesh Sewratan, High Court of Justice, Suriname; and The Honourable Mrs. Justice Ingrid Lachitjaran, High Court of Justice, Suriname.

Participants spent the first two weeks completing the study component of the programme at the Schulich School of Law, Dalhousie University in Halifax. The programme topics included: understanding adult learners: learning and teaching styles to achieve behavioural change; introduction to learning outcomes (session objectives); activating active learning and teaching; review of the objectives, standards, functions, targets and reach of judicial education bodies; curricula development including needs assessment; procedural fairness; human trafficking and judicial education; discussion of legal and organizational structures of judicial education bodies; exploring judicial arrogance and judicial humility; unrepresented litigants; judicial education and art; challenges for judicial academies; judgment writing; long range judicial education planning; use of great literature in judicial education programming; process delay; increasing your effectiveness by managing your time; restorative justice; legal personhood for animals; judicial role – a public service; developing and delivering training tools on judicial ethics including use of social media; artificial intelligence and judicial education; and the importance and methodology of programme evaluation.

The final week of the programme was spent in Ottawa and Toronto. In Ottawa, the participants visited the Supreme Court of Canada, the Superior Court of Justice, the Office of the Commissioner for Federal Judicial Affairs, and the National Judicial Institute. In Toronto, they visited the specialized courts at Old City Hall (Drug Treatment Court, Mental Health Court, Aboriginal Persons Court) and Osgoode Hall.

In addition to the rigorous academic sessions, social events included a reception hosted by His Honour The Honourable Arthur J. LeBlanc, ONS, QC, Lieutenant Governor of Nova Scotia at Government House; a reception hosted by The Honourable Brad Johns, Minister of Justice and Attorney General at Province House; and sightseeing trips to Peggy's Cove and Niagara Falls.

The evaluations received from the participants were very positive. Many participants commented on the expertise of the facilitators, expressing a desire to delve further into many of the topics covered. Several commented on the usefulness of the materials and discussions, noting that the experience will serve as a solid resource in their home countries and can be adapted to accommodate their jurisdictions. Specifically, the participants praised the informative and diverse content of the course and felt that their attendance at the Intensive Study Programme would directly improve their ability to plan and execute effective judicial education programming in their home jurisdictions.

2022 Participants

Governance Structure of the CJEI

The governing committee of the Institute consists of the Honourable Madan B. Lokur, President; the Right Honourable Sir Dennis Byron, Chair; the Honourable Justice Abdu Aboki, Vice President (Outreach); the Honourable Justice Peter Jamadar, Vice President (Programming); the Honourable Justice Kashim Zannah, Vice President; the Honourable Sophia Akuffo, Vice President (Special Projects); the Honourable Roshan Dalvi, Vice President; Sandra E. Oxner, O.C., Founding President; the Right Honourable Beverley McLachlin, Canada; the Honourable Chief Justice Ivor Archie, Trinidad and Tobago; the Honourable Justice Adrian D. Saunders, Trinidad and Tobago; the Honourable Justice Leona Theron, South Africa; the Honourable Judge Gertrude Chawatama, Zambia; the Honourable Asif Saeed Khan Khosa, Pakistan; Professor Michael Deturbide, Honourary Treasurer; Professor Phillip Saunders, Canada; and Ms. Sandra J. Hutchings, Secretary.

Chief Justices of the Commonwealth countries are Patrons of the Institute. The Executive Directors of Commonwealth judicial education bodies form an Advisory Board of the Institute.

Judicial Bias and Recusal

Antonio M. Da Roza, Executive Director, Judicial Institute, Hong Kong (CJEI Fellow 2019)

Earlier this month, I was invited by my PhD co-supervisor to participate in an event jointly organised by the Chinese University of Hong Kong and the National Judicial Academy of Nepal. The following article on recusal is based on the materials I prepared for the event.

Judicial independence and impartiality:
The importance of impartiality to the concept of fair trial and the rule of law cannot be overstated. It is trite that natural justice demands that first, under the fair hearing rule, a person faced with charges must be given the opportunity to be heard before any decision can be taken against them, and second, that the rule against bias means nobody can be the judge in their own cause. If a person has an interest in the matter, they should not be judge in it, for the obvious reason that they are likely to be biased. Justice must be done, and be seen to be done, and this is not possible if the person judging is seen to have an interest in the outcome of the case.

The idea or requirement of impartiality can be examined from a number of different perspectives. For example, what human rights jurisprudence requires of a fair trial, or perhaps domestic statutory requirements in respect of fair trials and disclosures by judges in respect of their interests, or the common law principles and judicial ethics.

This article will focus on the development of the common law on recusal in England and Australia, including the most recent case of *Charisteas v Charisteas* [2021] HCA 29 (summarised above). First, the three forms of bias – actual, presumed and apparent – will each be considered in turn, followed by an idea for a new approach towards the situations in which a judge may be required to consider whether or not to recuse themselves.

Actual bias:
The first form of bias is actual bias – where a judge cannot, as a matter of fact, decide a case impartially. As is often noted, cases involving

actual bias tends to be rare, because it requires direct evidence of such bias. The difficulties of proving actual bias thus means most parties will instead focus on situations which give rise to presumed bias, or apparent bias.

Presumed bias in England and Australia – divergence in tests:
Presumed bias gives rise to the automatic disqualification of a judge. It arises directly out of the aforementioned rule of natural justice that no person should be the judge in their own case. Thus, if a judge has a pecuniary or proprietary interest in the outcome of the case, they are presumed biased and automatically disqualified from hearing the case.

In England, the leading authority in this regard is the case of *Dimes v Proprietors of Grand Junction Canal* (1852) 10 ER 301. This rule would stand until the case of *R v Bow Street Magistrate, Ex parte Pinochet (No.2)* [2000] 1 AC 119, which concerned the arrest of the former Chilean dictator. Pinochet sought to have the warrants quashed in court. The House of Lords rejected Pinochet's case, and he appealed on the grounds that a member of the division of the House of Lords that heard the case, Lord Hoffman, was a Director and Chairperson of Amnesty International Charity Limited, which funded the work of Amnesty International Limited. That work included a research publication on Chile voicing concerns about human rights violations. The directors of Amnesty Charity do not receive any remuneration, nor take part in policy-making decisions of Amnesty International itself. The English courts had, until this point, traditionally distinguished between pecuniary and non-pecuniary interests, with only the former giving rise to automatic disqualification. In this case, the House of Lords extended the principle to non-pecuniary interests, identifying Lord Hoffman with the interests of Amnesty International. As a result, the House of Lords found that Lord Hoffman ought to have recused himself, and his failure to do so led to the decision being void.
However, it was stated in *Pinochet No. 2* and subsequently by the Court of Appeal in *Locabail Ltd v Bayfield Properties* [2000] QB 451 that it would be undesirable to extend the classes of case in which disqualification was automatic any further, unless it was plainly required.

In the same year, the High Court of Australia heard the case of *Ebner v Official Trustee* (2000) 205 CLR 337, which concerned judges who had shareholdings either directly or indirectly in Australia and New Zealand Banking Group Ltd who were disqualified from hearing bankruptcy cases brought by the bank. The High Court of Australia noted that the common law in Australia had developed along different lines than that of the UK, noting an issue such as that arising from *Pinochet No 2* would be resolved by asking if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the case. The High Court then went on to state that financial conflicts of interest were likely to be of particular significance, noting that if the question was answered in the affirmative, the judge in question would be disqualified, not 'automatically', but because the fair-minded lay observer might reasonably apprehend a judge might not bring an impartial mind to the case.

This marked a very clear break between English and Australian common law, where in Australia, presumed bias has been subsumed by the apparent bias test. The divergence does not end there.

Apparent bias: England
Turning to apprehended or apparent bias, historically, there had in England been two lines of cases which set out different tests for

apparent bias. The first came from *R v Rand* (1866) LR 1 QB 230), where the test that was applied was 'a real likelihood' of bias on the part of the judge, in contrast with the test that came later in *R v Sussex Justices R v Sussex Justices, ex p McCarthy* [1924] 1 KB 256), which was a 'reasonable suspicion' of bias. It may be worth considering the semantic difference between these two tests - 'real likelihood' suggests something akin to an objective standard, a real possibility of bias which is to be assessed against the evidence. By contrast, 'reasonable suspicion' seems to be a subjective test, but with an objective component – an observer may have a suspicion of bias, and the suspicion is reasonable in the circumstances, which would be appearance driven.

It thus fell to the Court of Appeal in *Gough* [1993] AC 646 to resolve these two lines of authority. First, the Court laid down the principle that there is no distinction between judges, tribunal members, jurors, arbitrators, coroners and so on for the purposes of bias. It was further established that the test was whether there was a real danger of bias – in respect of reasonable suspicion, the Court held that it was unnecessary to formulate the test in terms of the reasonable man, who was personified by the courts.

The next case in the line of authorities is *Re: Medicaments & Related Classes of Goods (No 2)* [2001] 1 WLR 700. Here, the Court of Appeal had to review the test being applied, as there was now European Court of Human Rights jurisprudence in this regard. As the United Kingdom is a signatory to the European Convention on Human Rights, in addition to its domestic hierarchy of courts, the English courts are subject to the jurisdiction of the European Court of Human Rights, which was established under the Convention. Any person who feels their rights under the Convention have been violated by a state party may thus bring a case to the European Court of Human Rights. In the case of *Pullar v UK* (1996) 22 EHRR 391, the European Court of Human Rights found that the relevant test to be applied was whether there was an objective risk of bias. This was acknowledged and incorporated into the test by the Court of Appeal in *Medicaments*, and subsequently in *Porter v Magill* [2002] 2 AC 357, the House of Lords adopted a reformulated test that was compliant with the European Convention on Human Rights: where the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the judge was biased.

From this line of development, it can be seen that this remains relatively true to the origins of the test, which considers a real likelihood or real danger of bias.

Apparent bias: Australia

The *Gough* test was rejected by the High Court of Australia in the case of *Webb v R* (1994) 181 CLR 41. The High Court noted that it was not possible to reconcile the common law as it had developed in Australia with *Gough*, and found that the rejection of the element of public perception was one reason why *Gough* should not be followed, as it tended to emphasise the court's view of the facts rather than public perception. A further reason for rejecting *Gough* was the difficulty in determining objectively whether an incident had or might affect impartiality.

The High Court of Australia in *Ebner* went on to apply the test in two steps: first, it must be identified what may lead to bias; and second, the logical connection between the source of bias and the feared negative impact on the decision must be identified. This is actually a relatively easy test to apply, which emphasises the need to connect the source of bias to a negative impact on the decision. Having reviewed a number of recusal decisions as part

of this research, it could be observed that parties applying for recusal would identify the potential source of bias, but not necessarily logically connect it to the actual outcome of the case. Oftentimes it was almost presumed that once there may be a source of potential bias, that would be sufficient for the purposes of recusal – a connection to a negative outcome was presumed by parties rather than demonstrated.

Following *Ebner*, in *CNY17 v Minister for Immigration and Border Protection* [2019]: HCA 50, the High Court of Australia dealt with apparent bias in an application for a protection visa for an immigrant. The Court's decision was split 3-2 in favour of the application, but it was the minority that mentioned that a third step needed to be taken in the test, which was that the reasonableness of the asserted apprehension of bias must be assessed. The majority in *CNY17* touched upon the point, but it was uncertain whether or not this third step had been adopted by the High Court. This then led to the case of *Charisteas* (summarised above), in which the High Court of Australia confirmed that there is indeed a third step of assessing reasonableness.

Thus, the test that continues to be in use in Australia is whether a fair-minded lay observer might entertain a reasonable apprehension that the judge may not bring an impartial and unprejudiced mind to the case. Reasonable apprehension is the test that is widely applied in other common law jurisdictions, including New Zealand and Canada.

The difference between reasonable apprehension and real possibility was touched upon earlier in the context of the English common law. Having now briefly reviewed the history of the divergent paths of development, it can be seen that in England, one path of real possibility was chosen, whilst in Australia, the other path of reasonable apprehension was instead followed.

Synthesising a practical approach:
In carrying out this research, one of the issues that arose was what the takeaways from this research would be – it is easy to talk about the development of these principles but understanding the history of their development does not make their application easier. The courts in England and Australia have also tried to provide some further guidance on cases of apparent bias.

In *Webb*, the High Court of Australia mentioned that there might be four non-exhaustive categories: "The area covered by the doctrine of disqualification by reason of the appearance of bias encompasses at least four distinct, though sometimes overlapping, main categories of case. The first is disqualification by interest, that is to say, cases where some direct or indirect interest in the proceedings, whether pecuniary or otherwise, gives rise to a reasonable apprehension of prejudice, partiality or prejudgment. The second is disqualification by conduct, including published statements. That category consists of cases in which conduct, either in the course of, or outside, the proceedings, gives rise to such an apprehension of bias. The third category is disqualification by association. It will often overlap the first (e.g., a case where a dependent spouse or child has a direct pecuniary interest in the proceedings.) and consists of cases where the apprehension of prejudgment or other bias results from some direct or indirect relationship, experience or contact with a person or persons interested in, or otherwise involved in, the proceedings. The fourth is disqualification by extraneous information. It will commonly overlap the third… and consists of cases where knowledge of some prejudicial but inadmissible fact or circumstance gives rise to the apprehension of bias."

In the English case of *Locabail*, the Court of Appeal found that whether the test of real possibility or reasonable apprehension was applied, the outcome would be the same in the vast majority of cases. The Court then went on to set out a lengthy list of examples which might give rise to findings of appearance of bias: "It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided. We cannot, however, conceive of circumstances in which an objection could be soundly based on the religion, ethnic or national origin, gender, age, class, means or sexual orientation of the judge. Nor, at any rate ordinarily, could an objection be soundly based on the judge's social or educational or service or employment background or history, nor that of any member of the judge's family; or previous political associations; or membership of social or sporting or charitable bodies; or Masonic associations; or previous judicial decisions; or extra-curricular utterances (whether in text books, lectures, speeches, articles, interviews, reports or responses to consultation papers); or previous receipt of instructions to act for or against any party, solicitor or advocate engaged in a case before him; or membership of the same Inn, circuit, local Law Society or chambers... By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind; or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection."

If the idea that the two tests leading to the same outcome is taken to be true, it would mean that the authorities on apparent bias could be read together. This gave rise to the idea of reading *Webb* and *Locabail* together - not only drawing upon the categories of apparent bias, but also fitting examples into those categories to see what the outcomes of such cases should be.

Conduct:

A category identified in *Webb* is that of the judge's conduct – here, reading *Webb* and *Locabail* together, useful indicators emerge as to when a judge's prior conduct may give rise to apparent bias and when it will not. For example, if the judge had earlier in the same case or a previous case, commented adversely on a party or witness, or found the evidence of the party or witness to be unreliable, this would not give rise to apparent bias unless there was something more to their comments or findings. However, there may be a real danger of bias or reasonable apprehension of it, if the judge's views had been expressed in extreme and unbalanced terms as to throw doubt on his ability to try the case with an objective mind.

Association:
Another category, association, is one in which the examples in *Locabail* may help to delineate what kinds of association may give rise to recusal and those which do not. The court in *Locabail* suggested that accusations of bias could not be brought on the grounds of a judge's family members' social, educational, service or employment histories, nor their previous political associations. Nor could they be brought on the basis of the judge's social, sporting, or charitable body memberships, nor Masonic associations, membership of the same Inns of Court, circuit, local Law Society or chambers as that of a counsel or solicitor appearing before them. Judges also could not be suggested to be biased on the basis that they had, during their practice, received instructions to act for or against any party, or the lawyers engaged in the case before the judge. However, personal friendships or animosity between the judge and any member of the public involved in the case, or close acquaintance with any person involved in the case, could give rise to concerns about bias, especially where that person's credibility may be significant to the decision of the case.

Pre-judgment:
Pre-judgment is mentioned in *Webb* mentioned as a sub-category of association, but there could be situations involving pre-judgment that do not necessarily arise out of association alone. For this reason, it is set out as its own category. Here, the examples in *Locabail*, such as the judge's previous decisions, or views expressed outside of the judicial context, such as texts, lectures, articles etc are useful for suggesting instances of pre-judgment that will not fall foul of the rules against bias. There may be something of an overlap with the category of conduct, in the sense that comments made by a judge in the same or an earlier case may also be thought of as pre-judgment. However, pre-judgment may also be considered to have arisen in a way similar to that in conduct, that the judge had rejected evidence in such outspoken terms as to throw doubt on his ability to approach that person's evidence with an open mind later, or if there were other grounds for doubting the ability of the judge to ignore extraneous considerations and bring objective judgment to bear.

Personal factors:
One category that had to be added to the list in *Webb* are matters that are personal to the judge. This additional category may be necessary as once all the other examples in *Locabail* are categorised, there were still examples left over, including: the religious, ethnic or national background, the age, class, means, sexual orientation, or their social, educational or service backgrounds or employment history. *Locabail* suggests that these are factors which are unlikely to be sound bases for allegations of bias.

The future for judicial bias and recusal?
The regime of judicial bias and recusal is subject to much criticism. The tests are not easy to understand or apply, especially for judges who must apply them against themselves, let alone the lay public, and academics argue the construct of a 'fair-minded observer' merely substitutes the judge's view. It remains to be seen whether reforms such as recusal applications being heard by different judges, or the codification of the recusal regime, or the modification of the common law test will take place in future.

News & Notes

PAPUA NEW GUINEA

Access to Justice Awareness for Lay-Judicial Officers and Community Leaders

The PNG Centre for Judicial Excellence (PNGCJE) is responsible for the facilitation of professional judicial training programs for Papua New Guinea and other Pacific Island countries. Its core function is to design and deliver quality training programs that are focused on improving knowledge, skills and attributes of Judicial officers, Court personnel and officers of the law and justice sector who are involved in the Court process.

PNGCJE Executive Director Dr. John Carey speaking to community leaders inside the Daru National Court building in Western province.

Apart from delivering core competency-based trainings on substantial law and court practice and procedure, the Centre is also pro-active in the delivery of community-based awareness programs on social issues that come before the Courts.

Between 11 October and 1 November 2022, the PNGCJE conducted a community awareness program on Constitutional Rights and Freedoms and Access to Justice in twenty-one (21) communities within the Western and Central Provinces of Papua New Guinea.

Kadawa villagers in Western province listening to presenters of the Access to Justice awareness program.

The purpose of the awareness program was to educate ordinary people in the communities about their constitutional rights and freedoms and how they can access legal assistance through the Courts.

The program was also aimed at informing village court magistrates, peace officers, church elders

and community leaders about their role in their communities, and for them to understand the importance of fundamentals of justice as provided for under the National Constitution of the country.

The awareness program comprised four specific (4) topics:

a) the Laws,
b) Constitutional Rights and Freedoms of Citizens,
c) Children's Rights, and
d) Gender Equity and Social Inclusion.

Copies of the PNG Constitution and information brochures on the work of the PNGCJE, Constitutional Rights and Freedoms, Basic Court User Guide, Gender Equity and Social Inclusion in the Workplace, Rights of the Child, and the National Court Human Rights Enforcement Application Form were distributed to the participants as part of the awareness resource materials.

Executive Director of the PNG Centre for Judicial Excellence, Dr. John Carey and Research and Editorial Assistant Mr. John Lelegi were the key facilitators of the awareness program.

PNGCJE Research and Editorial Assistant, Mr. John Lelegi presenting a session on the topic of Constitutional Rights and Freedoms

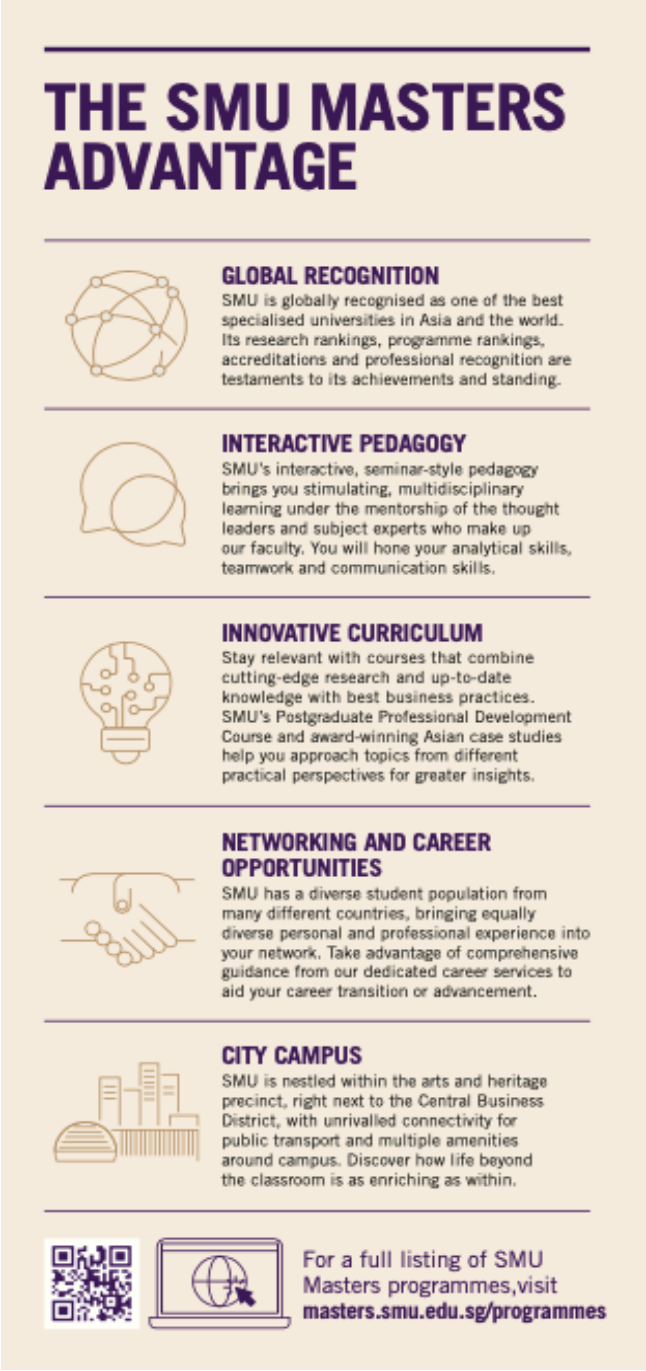
SINGAPORE

Singapore Judicial College: Master of Laws (Judicial Studies) Programme

In the dynamic, cosmopolitan hub that is Singapore, you will find a vibrant city-state that pulses with the diversity of both East and West. Situated at the crossroads of the world, Singapore is home to multinational companies and thousands of small and medium-sized enterprises flourishing in a smart city renowned for its business excellence and connectivity. With its strong infrastructure, political stability and respect for intellectual property rights, this City in a Garden offers you unique opportunities to develop as a global citizen.

Tapping into the energy of the city is a university with a difference – the Singapore Management University. Our six schools: School of Accountancy, Lee Kong Chian School of Business, School of Computing and Information Systems, School of Economics, Yong Pung How School of Law, and School of Social Sciences form the country's only city campus, perfectly sited to foster strategic links with businesses and the community.

SMU generates leading-edge research with global impact and produces broad-based, creative and entrepreneurial leaders for a knowledge-based economy. Discover a multi-faceted lifestyle right here at SMU, in the heart of Singapore.



Enrollment Deadline: May 2023

HONG KONG

Landmark Judgments: HKSAR v Ko Wai-Shing

[2021] 5 HKLRD 724, [2021] HKCA 1803
Macrae VP, Zervos, M Poon JJA
30 November 2021

Trafficking dangerous drugs – guidelines for GHB and GBL

The appellant was convicted of trafficking in a dangerous drug (3.26kg of gamma-butyrolactone, or GBL), possession of dangerous drugs, possession of apparatus and possession of a Part 1 poison. He appealed against his convictions in respect of possession of dangerous drugs and apparatus, and against his sentences in respect of all four charges.

Held:

- At trial, the basis of the possession charges was the appellant's knowledge of the presence and nature of the drugs and apparatus, and he lived in the unit. The conclusion below was the appellant had the ability to control and use them. The Court of Appeal found that without more, there was insufficient basis for finding the appellant in possession of the drugs or apparatus.

- The appellant's sentence had been enhanced by the court below by 6 months for an international element. The Court of Appeal noted the only basis of 'trafficking' was the appellant's act of importing the GBL for his own consumption by ordering it online from overseas.

- On the international element: "Accordingly, it seems to us that in circumstances where, as here, there was no attempt to disguise the fact or nature of the importation, which is the sole basis of conviction for trafficking, and where there is no suggestion that the drug is to be trafficked within Hong Kong, or possessed for that purpose, then there is no warrant for any enhancement of sentence for the international element. That is not to say, however, that where a defendant brings drugs across the border, which by their quantity or circumstances, or by the degree of planning or the involvement of others in smuggling the drugs, are clearly intended for a purpose other than the defendant's own consumption, an enhancement for the international element does not apply."

- On guidelines for gammahydroxybutyric acid (GHB):
    - (i) Up to 500 grammes – as the court thinks fit;
    - (ii) Over 500 grammes – 6 to 12 months' imprisonment;
    - (iii) Over 1,000 grammes – 12 to 24 months' imprisonment;
    - (iv) Over 2,000 grammes – 2-3 years' imprisonment;
    - (v) Over 3,000 grammes – 3 to 4½ years' imprisonment;

- (vi) Over 6,000 grammes – 4½ to 6 years' imprisonment;
- (vii) Over 9,000 grammes – 6 years' imprisonment upwards."

- On the adjustment to the GHB guidelines for GBL (the pro-drug of GHB): "By 'slight upward adjustment', we suggest, subject to other factors affecting the discretion of sentencing judges and magistrates, that the sentence for trafficking in GBL should be increased by one month for every year of sentence applicable under the above guidelines… Quantities which are at the borderline threshold of a particular guideline can safely be left to the discretion of the sentencing court. Moreover, if there is any evidence of either GHB or GBL being used to commit sexual assaults or other offences against the person or his/her property, such evidence would seriously aggravate any sentence under these guidelines."

Appeal allowed, sentence reduced to such term that allowed for the appellant's release.

MALAWI

The Honourable Mr. Justice Rizine R. Mzikamanda (CJEI Fellow 1995) was appointed the 10th Chief Justice of the Republic of Malawi on 7th January 2022. As required by the Constitution of the Republic of Malawi, he was subjected to confirmation by the National Assembly where for the first time, a Chief Justice got a unanimous vote of confirmation beyond the minimum requirement of a two-thirds majority cote in the Malawi National Assembly (South African Chief Justices Forum, 2022).

Upcoming Events:

What:	When:
CJEI Biennial Meeting of Commonwealth Judicial Educators	Gaborone, Botswana May 11th-14th 2023
CJEI Intensive Study Programme for Judicial Educators	Halifax, Ottawa and Toronto, Canada June 4th-23rd 2023

Message from the Editor:

My name is Hayley Lowden, and I am a fourth-year student at Dalhousie University in Halifax, Nova Scotia, studying Law, Social Justice and Philosophy at an undergraduate level. In lieu of an in-class course, I have had the privilege of taking part in placement program, which has allowed me to spend this past semester working with the CJEI.

I am delighted to bring you the latest edition of our newsletter, packed with informative and engaging content to keep you up-to-date with the latest news and insights from the CJEI as a whole.

I hope that you have enjoyed reading this edition of our newsletter and welcome any feedback or suggestions you may have for future insight.

Best Regards,
Hayley Lowden

CJEI Commonwealth Judicial EDUCATION INSTITUTE

Republic of Botswana

SAVE the DATE

10th Biennial Meeting of Commonwealth Judicial Educators

Gaborone, Botswana
May 11 - 14, 2023

A meeting to bring together leaders of judicial education in Commonwealth jurisdictions to facilitate the exchange of information, human and material resources and experiences. The judicial educators will share with each other their successes and failures and, in light of these, analyze causation and solutions. The meeting will be hosted by the Judiciary of Botswana.

The overall theme "**Contemporary Issues, Innovative Responses and Judicial Education**" has the following subcategories:

1. Contemporary Issues facing Judiciaries;
2. The Judicial Role in ensuring fairness to Victims of Human Trafficking;
3. The Rise of Court Adjudicated Animal Rights;
4. Science and Art of Fact Finding; and
5. When and How do Judges Change the Law – the Jurisprudence of Judicial Law Making.

For more information, please contact CJEI at cjei@dal.ca

SAVE the DATE

Justice Peter Jamadar
Course Director

CJEI Commonwealth Judicial EDUCATION INSTITUTE

Judge (R) Sandra E. Oxner
Course Founder &
Programme Consultant

28th Annual Intensive Study Programme for Judicial Educators
Halifax, Ottawa and Toronto, Canada
June 4 - 23, 2023

A programme to teach skills and techniques to produce and present effective judicial education programming that measurably and positively impacts judicial performance.

Topics studied include:

Adult education methodology for judicial education

Importance and Methodology of Programme Evaluation

Review of Functions, Objectives, Definition, Levels and Targets of Judicial Education

National Standards and Objectives

Legal & Organizational Structures of Judicial Education Bodies

Curricula Development

Processes of Programme Development

Long Range Judicial Education Planning

Judgment Writing

Judicial Arrogance

Judicial Ethics

Use of Film Clips in identifying Positive and Negative Judicial Behaviour that affects Public Trust and Confidence

E-programming

Substantive Courses on Behaviour Change Programming, i.e. Human Trafficking; Human Right to Clean Air and Water, Animal Rights

Special topics such as Judicial Wellness, Judicial Education and Art, Dealing with Unrepresented Litigants, Artificial Intelligence, Restorative Justice, Procedural Fairness, Court Management and Process Efficiency

Comments from Previous Graduates

"…the adult learning techniques and the breadth of knowledge gained here will…have a tremendously positive effect in improving judicial education in my jurisdiction." – Justice Adrian Saunders, St. Lucia, West Indies

"I had high expectations when I arrived which were exceeded in all aspects of the course." – Justice Neil Buckley, Australia

"… I am now armed with enough material and knowledge to start our very own judicial education programme – even if it is on a small scale." – Justice Umu Hawa Tejan-Jalloh, Sierra Leone

"The course exceeded my expectations as to the provision of tools, techniques and an enthusiasm for judicial education." – Justice Kenneth A. Benjamin, Grenada

"… as the current chairperson of judicial training in my jurisdiction, I was lacking the necessary knowledge to offer appropriate leadership but that deficiency has been largely addressed in these two weeks." – Justice Dr. Chifundo Kachale, Malawi

"…the teaching tools that we were introduced to are invaluable." -Justice Judith Jones, Trinidad and Tobago

"… effectively and successfully trained us in using different teaching tools resulting in effective learning" – Justice Samia Asad, Pakistan

Without any doubt – the methodology will be the basis for SA's future judicial education institute." – Deputy Chief Justice Dikgang Moseneke, South Africa

"The course was indeed beneficial . . . has highlighted the need for judicial education and it has equipped participants with the skills needed to be teachers of adults." – Magistrate Leron Daly, Guyana

For more information, please contact CJEI at cjei@dal.ca.