

### Editor's Desk...



Judicial education is relatively new to many Commonwealth countries, but as all of us know, it is an extremely important component of effective and efficient justice delivery. All of us are proud that the CJEI has played a role, and a considerable one at that, in encouraging judicial education all over the world and not only in the Commonwealth countries. The significant contribution made by the CJEI will be more fully appreciated through a reading of the report of its 14<sup>th</sup> Annual Intensive Study Programme for judicial educators.

Programmes such as the ISP have not only brought many of us together under one umbrella but have also given us the opportunity of sharing our views and experiences on a variety of subjects, including judicial education and better management of the justice delivery system in our respective countries. That all of us belonging to the CJEI family feel enthused about sharing information and exchanging impressions not only about judicial education, but various other issues of interest to members of the legal fraternity, is clear from the prompt responses that I received for contributions for this Newsletter. The contributions came well in time and some contributors sent in their piece while on vacation! Such has been the overwhelming response from so many of us that despite considerably increasing the size of the current issue, it has not been possible to include all the contributions received. For reasons of space, some of the articles had to be left out, but they will most certainly be included in the next issue, which we hope to bring out soon.

We have been rather fortunate to have the thoughts of Honourable Mr. Justice Yeung Sik Yuen, Chief Justice of Mauritius on judicial reforms and an interview with Honourable Mrs. Justice Georgina Wood,

Chief Justice of Ghana. We thank Mrs. Justice Irismay Brown for the trouble she has taken in asking the right questions thereby eliciting meaningful responses from the Honourable Chief Justice. Spend some time reading both the pieces and then contemplate on what has been said. We hope to continue this series of interviews with other Chief Justices of Commonwealth countries and in the next couple of issues, we plan on publishing interviews or discussions with the Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada, Justice Zaila McCalla, Chief Justice of Jamaica and Justice Aloysia Cyanzayire, President, Supreme Court of Rwanda.

#### What's inside:

Message from the Chair	2
The Gateway Project	2
Fourteenth ISP, 2007	3
Interview: Honourable Chief Justice of Ghana	8
Spotlight: Honourable Chief Justice of Mauritius	10
SCE for Realising Equality Rights: Canadian Experience	13
News & Notes	18
Court Reporter	27
Forthcoming Events	28

The purpose of a Newsletter is not merely to disseminate news but also to introduce topics for discussion such as those relating to judicial reform, enhancing judicial performance, and making justice-delivery more timely and responsive. With this in mind, we have introduced in this issue an article on the Canadian model of social context education for improving access to justice. We hope to develop this topic in subsequent issues of the CJEI Report with responses from you in respect of your jurisdictions and also to introduce other topics for

discussion – the idea being the sharing of experiences so that those of us who face similar challenges in our respective jurisdictions can take the benefit of the experiences and learning of other judges and judicial educators.

As always, the CJEI wishes you all the very best and please remember ICEE – *Impartiality, Competency, Efficiency and Effectiveness*.

**Honourable Justice Madan B. Lokur**  
Judge, High Court of Delhi, India

## Message From the Chair . . .

It has been a busy summer. After the Intensive Study Programme which saw us receive new CJEI Fellows, we began to prepare for the Commonwealth Law Conference (CLC) and our Patron Chief Justices' Meeting. As usual, we will be having a CJEI booth to display our work and we hope that any Fellows attending the CLC will come and be a part of this.



With our September 28 deadline fast approaching, we continue to work on our gateway linkage network in which we are extending our electronic linkage of Commonwealth judicial education bodies to include their teaching tools, visual aids, programmes and background materials. On behalf of the CJEI, may I thank all of you who have contributed so richly to this project which will better enable us to exchange material resources and experiences.

Toward the end of the summer, I was invited to visit the Judiciary of Rwanda. At that time, they accepted our invitation to become a part of our network. As you may know, we are expecting Rwanda to become a member of the Commonwealth family before too long. This is a fascinating country with a Francophone civilian law background and will join our Francophone members (Mauritius, Cameroon, and Canada) as well as the Roman Law countries of Southern Africa in developing programmes in support of their particular needs. You will be interested to know that there are three official languages in Rwanda, - Kinyarwanda, French and now English. Their newly established system is a fascinating combination of the investigatorial system with other institutions of the judicial process similar to those of Anglophone jurisdictions.

Looking forward to seeing you at the CLC or elsewhere in the near future.

**Sandra E. Oxner**



### *Commonwealth Countries Judicial Education Database is Online*

Ever since judicial education has come to occupy a central place in strategies for judicial reform and improving access to justice, which in turn is necessary for good governance and poverty alleviation, the need for an online database on judicial education materials has been felt. To achieve this, the “National Judicial Education Body Websites Linkage Project,” a partnership between the CJEI and the Canadian International Development Agency [CIDA] has been initiated for encouraging the sharing of information, human and intellectual resources between the different countries whose legal systems are grounded on the Commonwealth juridical heritage. Under this Project, Commonwealth judicial education bodies join an Internet-based network community thereby fostering the comity that exists amongst the commonwealth nations. The ongoing initial phase is focused on establishing linkage with the judicial education bodies of nearly twenty countries; encouraging them to catalogue and upload their existing judicial education materials to the central web site, [www.cjei.org](http://www.cjei.org). The Gateway presently has web sites for the following countries, namely, the OECS, Belize, Ethiopia, Ghana, Lesotho, Malawi, Mauritius, Namibia, Nigeria, Papua New Guinea, Sierra Leone, South Africa, Sri Lanka, Swaziland, Tonga, Uganda, Tanzania, Vanuatu and Zambia and has links to the judicial education bodies in Australia, Canada, India, Malaysia, Pakistan, Philippines, and United Kingdom.

Eventually, the Project aims to web link the fifty-three Commonwealth countries (*wherever possible their leading regional bodies also*) to create a complete inventory of English language judicial education material - including programmes, background material, print, audio, video and electronic teaching tools for the purpose of strengthening judicial education, facilitating the sharing of resources, finding common solutions to common problems and preventing unnecessary expenditure. All this is sought to be achieved in accordance with a common analytical tool - *impartiality, competency, efficiency and effectiveness*. In this manner, the Gateway would strengthen judicial education initiatives in the Commonwealth for enhancing the quality of justice dispensation.

# Report on the Annual Intensive Study Program for Judicial Educators (June 3 – June 23, 2007)

By Ms. Lekshmi Vijayabalan  
Director for Asian Research & Training, CJEI

Continuing into its fourteenth year, the Annual Intensive Study Program [ISP] for Judicial Educators, the flagship event of the CJEI has over the years supported contemporary judicial reform initiatives through judicial education. It aims to create and support impartial, competent, efficient and effective judiciaries thereby strengthening good governance and providing an environment for economic growth. To achieve this end, the annual ISPs have been designed to transfer information about judicial education resources and state of the art judicial education methodology and pedagogical skills to judges and magistrates identified by their Chief Justices as having a leadership role in building up national judicial education programmes. It also seeks to prepare judicial educators to design and deliver judicial education programmes that respond to the reform needs of their jurisdictions and seeks to establish a network of Commonwealth Judicial educators.

This year's ISP was spread over three-weeks, with activities in the first two weeks at the Dalhousie Law School campus in Halifax. The last week exposed the participants to some of the best Canadian judicial education facilities and successful judicial reform projects in Ottawa and Toronto. The

*"I knew nothing of this before I came here, but now I have something I can suggest to the powers that be."*

- Marilyn L. Meeres  
(Bahamas)

participant group of thirteen represented nine countries. In attendance were: The Honourable Mr. Justice H.K. Sema (India); The Honourable Mr. Justice D.K. Chirwa (Zambia); The Honourable Mr. Asif Saeed Khan Khosa, The Honourable Mr. Justice Mushir Alam, The Honourable Justice Ali Sain Dino Metlo (all from Pakistan); The Honourable Mrs. Justice Irismay Brown, The Honourable Mr. Justice Paul Baffoe-Bonnie (both from Ghana); Mrs. Marilyn L. Meeres (Bahamas); Ms. Lisebo Chaka-Makhooane (Lesotho); His Honour Judge

Herbert Soverall (Trinidad & Tobago); Mrs. Kimberly Cenac-Phulgence, Ms. Alana Simmons (both from St. Lucia); and Atty. David L. Ballesteros (Philippines).

## **Content:**

The ISP opened with an Orientation Session providing an overview of the programme objectives along with expected outcomes and assignments, which the participants would have to complete for a successful graduation. The Honourable Chairperson articulated the overall programme objectives and the specific objectives for each Session. The participants were also asked about their expectations from the programme. The feedback greatly enabled the faculty to understand local issues whereby they could customize their sessions to address specific needs.

The technical sessions began with *Providing Instruction for Adults* led by Mr. Chris Donahoe aimed at enabling the participants to construct



*Some of the group members*

instructional/learning objectives. Stressing on the importance of interactive teaching for adults; more than ten kinds of interactive teaching techniques were identified which participants could employ while delivering training programmes. The Honourable Judge Michael Sherar handled the session on *Using Videos in Judicial Education Programmes*, to demonstrate how best and effectively this technology could be used as a teaching tool for adult educators. With a view to give them hands-on experience, the participants were asked to form groups for a video production based on a topic of their choice.

The Session on *Review of Functions, Objectives, Definition and Levels of Judicial Education* was centered on identifying the structures of judicial education bodies in different countries and the components of National Standards and Objectives. *Judicial Communication* led by Dr. Gordon I. Zimmerman presented specific courtroom events in which communication affected outcomes. Personal communication styles and habits were assessed and the group was exposed to verbal and non-verbal communication techniques which could significantly better courtroom proceedings. The participants were also called upon to incorporate communication principles while delivering judicial education programmes in their respective countries.

Honourable Judge Sandra E. Oxner who chaired the session on *Curricula Development* identified techniques and tools for developing curricula. Thereafter, the group members worked on a needs assessment specific to their country and were supplied with a chart with various topics for judicial education arranged under the four point standard criteria of the CJEI – impartiality, competency, efficiency and effectiveness. They were to rank each of the topics from a one to ten range based on their domestic needs. The Session on *Developing Orientation Programme* was followed by workshops where participants designed their own national orientation programmes. Also was included a Session and Workshop on *Long Range*



*Developing orientation programmes*

*Judicial Education Planning* which enabled them to appreciate the need to develop such plans. All these - needs assessment, long-range plans and orientation programmes - were presented to the whole group for discussion and were modified based on the inputs received to be taken back to their respective countries for further action.

*Judgment Writing* by Dr. James C. Raymond focused on the problems and solutions to improve writing and organize judgments. The Session on *Judicial Education/Judicial Reform* explored threadbare the objectives and scope of judicial education. Analyzing the functions, definition and levels of judicial education, it was concluded that there was always a direct link between judicial education and judicial reform in all jurisdictions and that the focus of educating judges should always be to improve the quality of judges. More importantly, the emphasis was to be on the relationship between judicial decision making and poverty reduction.

*Commonwealth Experiences with Civil Justice Reform* by The Honourable Chief Justice Joseph P. Kennedy, Supreme Court of Nova Scotia and Mr. Robert Musgrove demonstrated how these reforms impacted the justice delivery system in England and Canada and how other countries could benefit from them. *Programme Development* focused on two themes of great relevance - Civil Justice Delay Reduction and Violence against Women. The participants were to develop programmes on any of these topics, which could be carried back



Group B brainstorming on violence against women

home for sharing with their fellow judicial educators. Two groups were formed – the Group A on Civil Justice Delay reduction was led by Honourable Judge Sandra E. Oxner and Mr. Robert Musgrove, Chief Executive, Civil Justice Council, England and Group B was led by Honourable Justice Donna G. Hackett, Ontario and Prof. Richard Devlin, Dalhousie Law School. After a session of intense brain storming, each group developed Programmes, which were suitably modified and adopted in the plenary.

The discussion on *Judicial Independence* by Prof. (Dr.) N.R. Madhava Menon, former Director National Judicial Academy, India focused on a case study of the recent developments in Pakistan and demonstrated how one could design an interactive training programme even on topics of such high sensitivity. *Perspectives on Impartiality* by Prof. Richard Devlin brought home the relevance of including this topic in national judicial education programmes. *Judicial Performance Feedback* by Mr. John Merrick, QC demonstrated a feedback mechanism implemented as a pilot project in Nova Scotia.

For the final week of training, the participants proceeded to Ottawa and Toronto. A visit was arranged to the Ontario Court of Justice with Master Robert Beaudoin to hear about their use of mandatory mediation. The



The Group in Toronto

Office of the Commissioner for Federal Judicial Affairs was also visited to understand key concepts in the Canadian judicial appointment process including the Canadian model for buffering improper political influence on judicial affairs. The participants were also taken to the Canadian Judicial Council, the Parliament and the Supreme Court of Canada to understand how these bodies function. Courts at Old City Hall which included Drug Treatment Court, Mental Health Court, Aboriginal Persons Court and other Specialized Courts (Domestic Violence, Children) were also visited to learn about the remedial therapeutic

approaches adopted by these Courts. Sessions were also organized on *National Judicial Education Issues* by Prof. T. Brettel Dawson, Academic Director of National Judicial Institute and Susan Lightstone, Education Director and on *Development of the Ontario Court of Justice* (Provincial Division) by Honourable Chief Justice Annemarie E. Bonkalo. The group also met with Honourable Mr. Justice Todd Archibald and Master Ronald Dash at Osgoode Hall to hear about their case management project.

***Methodology:***



*Practice Session*

The participants were seeking to learn something more of immediate relevance to their judicial functions even when understanding the organization and management of judicial education, acquisition of skills and innovative teaching techniques and tools. The programme was so designed as to provide the same along with substantive themes like case and court management, judicial independence and accountability, judgment writing, gender bias etc. In introducing the programme sessions, the faculty was mindful to employ diverse pedagogical tools for adult learners like case studies, hypotheticals, small group discussions, PowerPoint presentations, and videos. An important aspect of the methodology employed was that the participants were able to discuss what would or would not be appropriate for their home jurisdiction.



*Lights, Camera, Action*

All sessions were in participatory format to make them more instructive and interesting. To familiarize them with the different adult teaching tools, they were encouraged to make a brief presentation employing the different teaching tools on topics of their choice. The two-week curriculum was also designed to include stress management and skill oriented modules like Yoga and Meditation as well as Computer orientation programmes and researching online using Quicklaw. Opportunities for socializing and gaiety were also organised.



*In a lighter vein*

## Outcomes:

The primary and the most important outcome has been the addition of a new set of trained judicial educators to an already existing nucleus to initiate and support sustainable judicial education capacity building initiatives. All the course graduates were duly certified as CJEI Fellows who would hereafter continuously associate with the activities of the CJEI to share

*“Yes it did provide me with the information on how to provide cost effective education.”*

*- Ms. Lisebo Chaka Makhoane  
(Lesotho)*

information and resources. Other outcomes included development of national judicial education standards and objectives, national long-range judicial education plans as well as curriculum for orientation programmes and judicial education videos all developed by the Graduates themselves for implementation in their respective countries. It is expected that the Graduates would organize/assist similar training programmes in their jurisdictions and impart the skills learnt to their colleagues and others involved in judicial education programmes.



*Graduation ceremony*



*Sitting (left to right):* Honourable Judge Sandra E. Oxner (CJIE); Honourable Mayann E. Francis (Lieutenant Governor, Nova Scotia); Prof. (Dr.) N.R. Madhava Menon (CJIE); Honourable Mr. Justice Asif Saeed Khan Khosa

*Standing (left to right):* Prof. John Yogis (CJIE); Honourable Mr. Justice Mushir Alam; Ms. Lekshmi Vijayabalan (CJIE); Mrs. Marilyn L. Meeres; Ms. Sandra Laing (CJIE); Ms. Lisebo Chaka-Makhoane; Honourable Mrs. Justice Iris May Brown; Honourable Justice Ali Saïm Dino Metlo; Honourable Mr. Justice Paul Baffoe-Bonnie; Honourable Mr. Justice D.K. Chirwa; Ms. Alana Simmons; Mrs. Kimberly Cenac-Phulgence; His Honour Judge Herbert Soverall; and Atty. David L. Ballesteros.

*Participants & Faculty at the reception hosted by  
Honourable Mayann E. Francis, Lieutenant Governor of Nova Scotia  
at Red Chamber, Province House, Halifax*

## *An Interview with Honourable Mrs. Justice Georgina Wood Chief Justice of Ghana*

By Honourable Mrs. Justice Irismay Brown  
Judge, High Court of Ghana  
CJEI Fellow, 2007



**Hon'ble Mrs. Justice Georgina Wood**, the twelfth Chief Justice of Ghana since independence is also the first lady to adorn that position. Born on 8<sup>th</sup> June 1947, Chief Justice Wood pursued the Bachelor of Laws Hons. degree from the University of Ghana, and thereafter joined the Ghana Police Service as a Deputy Superintendent of Police in the Public Prosecutions Unit. After three years in the police service, Mrs Justice Wood left for the Bench as a Magistrate in 1974 and was promoted to the High Court in 1986. In 1991, she was promoted to the Court of Appeal where she remained for eleven years before she was promoted to the Supreme Court on November 12<sup>th</sup> 2002. Other positions which Her Ladyship has held include: Chairperson of the Alternative Dispute Resolution [ADR] and Child Panel Committees; member of the

Board of Governors of the Central University College and external examiner in Advocacy and Ethics at the Ghana School of Law. She has also been on the National Partnership for Children's Trust, an organisation that looks for scholarship for brilliant, needy students and has served as lecturer in Civil Procedure and ADR for the Career Magistrates programme. On July 6, 2007, Mrs. Justice Wood was conferred with the Order of the Star of Ghana, the nation's highest award for distinguished services to the nation.

### **What are your impressions on Judicial Education and what steps do you intend to improve judicial education in Ghana?**

**A** I generally value education immensely and so one can immediately appreciate the weight I do attach to judicial education, it being the vehicle for building the capacity of judges, equipping them with the necessary skills and empowering them for service.

Since quality human resource base is the key to achieving excellence, I will provide massive support to our Judicial Training Institute (JTI) to enable it to perform its role effectively. Indeed, I will continue with the policies initiated by my predecessor and give the institute the much needed support. This will include infrastructural, financial and other logistical support. I do fully endorse the steps being taken to strengthen the board governing its operations, as well as the ongoing restructuring exercise aimed at building up a very strong

faculty. I will not under any circumstances allow the powers of the JTI to be whittled down, undermined or eroded. One effective way of preventing this from happening, is to ensure that all judicial training remains the exclusive preserve of the JTI.

### **Being the First Lady Chief Justice of Ghana, what do you think the judiciary can do to protect women's rights?**

**A** Because our Constitution forbids discriminatory practices based among other things on sex, I really do find it difficult to state authoritatively that hitherto, that is, before my appointment as the first woman Chief Justice; as a rule, women's rights were being trampled upon with impunity or not being protected at all. It could be said that my very appointment itself flies directly in the face of any such argument. I must however admit that the open violation of women's rights is prevalent in certain areas of our country, as for example, in areas where forced marriages and

female genital mutilation are practiced. I would not however be surprised if women rights advocacy groups disagreed with me on the issue. That is the special area they work on and they may have facts and figures, which I may not be in possession of in support of their argument. Even so, I have reason to believe that these aberrations could certainly not have arisen out of a deliberate effort on anybody's part to trample on women's rights, but an unfortunate by product of the weak socio-economic systems that exist in our society, but which happily we are steadily working on to improve. I admit however that women in Ghana have special needs which must be addressed, I believe alongside the needs of children, another well known vulnerable group within our society. I envision a strong juvenile justice system within our judiciary. We do not have permanent, child friendly physical structures for juvenile offenders. This is not good enough. That need must be addressed with minimum delay. Access to justice is one of the key



problems facing our women. So, for example, special weekend court sittings can be introduced to enable them access justice much more readily than they are doing now. But, by and large, we should observe a marked improvement in the protection of women's rights quite soon, when the economic, social and political developments taking place within our country and specifically the Judiciary are realized.

**What are the biggest challenges facing the Ghana judiciary and what reforms do you intend to initiate?**

**A** I believe I have already touched on some of these challenges. The general complaint is about the delays encountered by those who access the courts. It certainly cannot be the fault of our judges given that the increase in litigation-really a by product of development- has not been matched by a corresponding increase in resources, and therefore the

building of more court houses and the appointment and retention of more judges is indeed a priority issue. I will continue to push the ADR agenda forward and encourage its use in civil litigation. At my parliamentary confirmation hearing, I promised to pay close attention to judicial integrity and ethics, (through sustained human resource development and training in particular) the backbone of any credible or trustworthy institution. We need to work extra hard to restore public confidence and trust in the Judiciary, a key governance institution, and that broadly is another major area of concern. I would like to see a marked improvement in the efficiency and effectiveness of justice delivery within the shortest possible time.

**What advice would you give to women who want to opt for a judicial career?**

**A** I will do everything to encourage women to join the Bench. I believe women

are more passionate than our male counterparts and will therefore find a judicial career highly satisfying and rewarding, especially, when you see justice done, never mind the challenges like the low salaries and sometimes unjustified criticisms. The latter in particular is not a regular occurrence. In any event, the satisfaction and joy derived from seeing to it that justice is dispensed fairly, far outweighs the pain arising from such one-off occupational hazards.

**In your opinion, what needs to be done to strengthen the existing comity amongst judiciaries in the Commonwealth?**

**A** Quite apart from the usual conferences, exchange programmes within our judiciaries and training institutions, judges and also faculty members of our respective training institutions should help strengthen the existing comity.



*Glimpses from the Interview*

## Spotlight



**Honourable Chief Justice Yeung Kam John Yeung Sik Yuen**, Grand Officer of the Order of the Star and Key of the Indian Ocean, is a legal scholar par excellence. Having graduated in Law from the Leeds University, he was called to the Bar at Lincoln's Inn, in 1970. His resplendent professional career began as a State Counsel at the Attorney General's Office. Later he joined the Bench as Magistrate/Senior Magistrate during which he also chaired the Prisons Board *de bono*. He has served as Master & Registrar & Judge in Bankruptcy and was also appointed by the President to Chair the Commission of Inquiry on National Handicraft Centre (1990 - 1991) and the Commission of Inquiry on Police and Customs (1997 - 1999). He was elevated to the Supreme Court in 1989 and was promoted to the Office of Senior Puisne Judge in 1995. Finally, on 14 June 2007, he assumed office of the Chief Justice of Mauritius and as the head of the Mauritius Judiciary. He is also the Chairman of the Judicial & Legal Service Commission, the independent body responsible for appointing Judicial and Legal Officers.

A rare combination of a Judge and an academic, many students have benefited from his erudite lectures in

Civil and Commercial Laws delivered at the University of Mauritius and Council of Legal Education where he has also served as the Chairman, Board of Examiners. Chief Justice Yuen's expertise includes diverse areas such as human rights, minority rights, the rights of AIDS victims and issues relating to disarmament. In fact, he has been a Member of the Sub-Commission on Promotion and Protection of Human Rights of the United Nations and of the United Nations Working Group on Minorities of the Sub-Commission. He has been recently elected to the African Commission on Human & Peoples' Rights. He has undertaken working papers on human rights and disarmament for the UN and has delivered lectures and speeches in several international conferences. He is presently actively engaged in judicial reform in Mauritius. A philanthropist, he is coordinator of the Sight First Project 2007 and has done much for the development of an Eye Bank in Mauritius. The Chief Justice enjoys swimming and is also a keen table-tennis player.

The Chief Justice is being conferred the Freedom of the City of Port Louis on the 29<sup>th</sup> August 2007.

Soon after assuming office, His Honour prepared a Preliminary Report on the state of the Judiciary and the necessity of urgent judicial reforms. We are enclosing the same for the benefit of our readers:

### *A Preliminary Report on My First Ten Days as Chief Justice...*

**JUDICIAL REFORM: A Preliminary Report on My First Ten Days** (prepared on 28<sup>th</sup> June, 2007)

What follows is only a Preliminary Report of my first ten days in Office after I proceeded to the various sites round the island for the purpose of taking stock of the "états des lieux" of the courts and their dire needs. I also carried out various informal representations with some credible members of the profession and the public, received the views of my Magistrates and the collaboration of my Judges. Above all, I had a highly encouraging and productive session with the Attorney General, Minister of Justice and Human Rights, Honourable Rama Valayden, whose commitment to assist us in upgrading our Judiciary - hitherto left as it were as an orphan of our national development programmes - is placed on record.

A more elaborate plan is under way, the objective of which is to seriously undertake the major part of the reform long awaited by the country in line with the Mackay Commission Reports. This Preliminary Report is only the trigger.

### 1. Full Time Magistrate for Rodrigues

**PROBLEM:** The island of Rodrigues has been urging for a full time Magistrate for the past 15 years. Even though applications were invited from all Senior District Magistrates and District Magistrates for posting as full time Magistrate of Rodrigues and financial incentives offered, no application was received.

**ACTION TAKEN:** I have personally spoken to a Senior Magistrate and am pleased to report that as from 1<sup>st</sup> October, 2007, we shall have a full time Magistrate posted at Rodrigues for an initial period of 6 months. I shall soon be visiting Rodrigues with the Master & Registrar and the Senior District Magistrate to review on site the facilities offered to the Magistrate of Rodrigues to ensure that they are adequate and are conducive to the perennial maintenance of the service.

### 2. Opening of Cashier's Office at the Supreme Court Beyond 2.30 PM

**PROBLEM:** Court users cannot move papers beyond 2.30 PM and the dead time until the next morning can be prejudicial to them.

**ACTION TAKEN:** In ordinary cases, the Cashier's office is open till 2.45PM, except on Thursday (Master's Court day) when the office is open till 4PM or slightly beyond when the occasion so demands. For exceptional cases, administrative measures have been taken for papers to be moved subject to payments being made the next morning before 9.30 AM.

### 3. Matrimonial Cases

**PROBLEM:** Matrimonial cases need a specialized attention and

since adversarial proceedings are ill suited for such cases there is a need for greater fluidity.

**ACTION TAKEN:** As a "solution d'attente," measures are being taken so that family matters will soon be taken on the fifth floor of the New Courthouse. All family matters, including divorce, custody and rights of access, succession, filiation, adoption and application for authorization for sale of minor's rights will thus be heard everyday of the week before the Family Division which will be manned by two Judges fully assigned with family matters. This will free court and office space at the Supreme Court buildings.

### 4. Cases Awaiting Trial for the Past 10-20 Years

**PROBLEM:** Some cases have been awaiting trial for the past 20 years.

**ACTION TAKEN:** The sympathetic collaboration of all my judges to dispose of some 130 cases (1985-1997) as a matter of priority has been obtained and the files have been distributed. I only hope now that the profession will play according to the rules. Only factors beyond the control of the Judiciary may impair the smooth running of the dedicated team of judges' put in place for the purpose.

### 5. Patch-work and make shift solution need to be replaced by lasting and permanent solutions

**PROBLEM:** The above are measures of prime importance which, I dare say, herald a new era for the Judiciary. However, I must emphasize that they are only patchwork and makeshift solutions. The need for lasting and permanent

solutions to the problems of Judiciary is urgent.

**ACTION PROPOSED:** By addressing issues affecting the Judiciary "and by providing for better infrastructure and dedicated logistics, we hope to be able to bring the Judiciary to deserve its "lettre de noblesse." I mention a few of the urgent priorities below.

### 1. Infrastructure: Need for Court rooms at the Supreme Court

We need urgently space for new courtrooms and offices at the Supreme Court. We are presently operating with nine courtrooms, four of which were originally offices which have been re-converted on a "make shift" basis. For the implementation of the Mackay Report we would need as soon as possible a minimum of five new courtrooms together with offices for the new Judges, their Secretaries and Clerks. I have always believed that any future development of the Supreme Court infrastructure must physically take place around the present old historic Supreme Court Buildings, which must remain the centerpiece.

### 2. Purchase of Land for the Supreme Court

A plot of land next to the old prisons is to be bought for the development of Supreme Court infrastructure.

### 3. Optimisation of Otherwise-Utilized Space at Supreme Court

Pending acquisition of land and eventually erecting a new building, we have to optimize with immediate effect the use of every space available at the Supreme Court. Some minor works worth a maximum of Rupees five million which could convert otherwise -utilized space into Judge's

Chambers could appropriately be undertaken with immediate effect.

#### 4. *Urgent Repairs of Certain District Courts*

There are three District courts viz. Moka, Flacq and Bambous, which have become eyesores. They are in an advanced stage of dilapidation calling for urgent major repairs. All the three buildings have significant wooden structures, which give them a “cachet,” which I believe ought to be preserved for historical reasons. Flacq Court is furthermore classified as a protected monument. We need therefore to move out from these buildings before repairs can be effected.

For Flacq, we may have to move out temporarily into rented premises, which needs to be identified. For Moka, there is the possibility of first erecting a building on a plot of bare land contiguous to the Courthouse and which is vested with the Judiciary. The Court could be transferred into the new building or makeshift premises before repairs are carried out. An alternative is to find a convenient building to house the Moka Court pending completion of the repairs. For Bambous, there is a building vested with the Ministry of Youth & Sports which is not much used and which could house us pending the carrying out of repairs. An alternative is to find rented premises suitable for utilization as a Court of Law.

#### 5. *Need to Recruit Trained and Experienced Personnel to help the judiciary Implement the Mackay Report*

There are some Court officers of exceptional calibre who are about to

leave the Judiciary upon reaching the retiring age. There are also some who have recently left the service on attaining retiring age. The enlistment of a maximum of five of these experienced personnel on a contractual basis to technically and administratively assist the team set up to implement the Mackay Report is considered as a priority. In the same vein, some committees would have to be set up consisting *inter alia* of Judges, Magistrates and State Law Officers to address specific measures of Judicial Reform, including studies and the drawing up of Practice Directions, Guidelines for the Legal Profession, for the Judiciary and support staff. Some financial token will have to be provided to service these Committees.

#### 6. *Legal Practitioners Facing Disciplinary Proceedings*

It is imperative that legal practitioners from the three branches of the legal profession play their proper role as Self-Regulating Organisations. The laws need to be amended to give disciplinary powers to an appropriate body within the professions, with right of appeal to the Supreme Court. Pending legislative amendments, it is suggested that your office looks closely into all the complaints received against members of the profession and that all serious cases of misconduct in stock be sent in bulk to the Supreme court to create the required impact on the legal profession and on the public in general that the constitutional institutions under the law mean business.

#### 7. *Electronic Filing and Electronic Archiving Systems*

The present archiving system of manually storing records on racks is antiquated, takes up enormous storing space and is far from being secure for the court system to operate with. Our archives, found in the underground of the New Courthouse, are already in a dire mess. Modern methods of storage, retrieval and archiving the files, through electronic archiving system (imaging of documents), would be introduced. Electronic filing and archiving have rendered the Courts more productive, simplified work and enhanced revenue collection, brought down costs on government and court user alike while facilitating the task of legal advisers to lodge a case, exchange pleadings and effect searches.

#### 8. *Certain capital projects for the judiciary would be implemented at the earliest.*

#### 9. *Executive and Legislative Commitment For Judicial Reform*

I am pleased to note that the Judiciary’s act of faith in being vigorous, impartial and independent is a prime concern for both the Executive and the Legislature. The setting up of the two Mackay Commissions prompted by the Prime Minister, Honourable Navinchandra Ramgoolam is public evidence of that. I shall continue to rely on your precious collaboration in terms of administrative, legislative and resource support so that we may realize our common aim for a post-modern Judiciary for the betterment of our country.

# *Social Context Education for Realising Equality Rights: Lessons from the Canadian Experience*

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*. . . the Courts, if they are to be relevant  
and responsible, must. . . operate in the real  
world . . . in a manner which furthers  
democratic principles and promotes the  
perceptions and reality of the rule of law.*

*- Justice Beverley McLachlin<sup>1</sup>*

This Note presents the Canadian model of social context education [SCE] and its ten principles for consideration of judicial education bodies in other jurisdictions seeking to improve equal access to justice in their courts. It is a condensed version of a much larger essay entitled *Constitutionalized Law Reform: Equality Rights and Social Context Education for Judges* authored by Justice Donna Hackett & Richard F. Devlin available in the *Journal of Law & Equality* (2005).<sup>2</sup>

## **Social Context Education in Canada:**

With the enactment of the Canadian Charter of Rights and Freedoms in 1982, Canada committed itself to the constitutional norm of equality via sections 15, 27 and 28. Consequently, all courts (from the trial court to the Supreme Court) are being called upon to give effect to this pre-eminent constitutional norm. However, as experience reveals, this task is easier said than done. In many cases, the Supreme Court itself has had to struggle to articulate a cohesive definition of equality. No matter what law is under consideration, whether it be criminal law, family law, tort law, or even contract law, issues of inequality are pervasive and judicial decision makers are to have the ability to recognise and address these issues.

### *The Rationale:*

In a multicultural society, diversity can mean that people with different customs and cultures may not be fully understood or believed because of their differences. So also, without knowing about experiences of disadvantage, it is difficult to anticipate or know how a particular application of the law may affect some individuals differently in some unforeseen or unintended manner, or bar their access to justice. Therefore, in order to deliver equality, judges should know about all forms of inequality, discrimination and the experience of disadvantage; recognise these issues and provide access to justice in their courtrooms and decisions. However, a judge's own life experiences may not include various forms of disadvantage and discrimination. A judge's ability to assess credibility, reliability and the weight to be applied to evidence, interpret and apply laws in circumstances of difference and disadvantage may be limited by what they do not know or have not experienced. What judges may initially see in the people and issues before them may only be the tip of the iceberg, based upon their own limited experiences and legal

<sup>1</sup> Justice B. McLachlin, "The *Charter of Rights and Freedoms: A Judicial Perspective*" (1989) 23 U.B.C.L. Rev. 579 at 584 and 590.

<sup>2</sup> Justice Donna Hackett & Richard F. Devlin, "Constitutionalized Law Reform: Equality Rights and Social Context Education for Judges." (2005) 4 J.L. & Equality 157.

traditions. Consequently, people may unintentionally be denied access to justice. When the experience of others are introduced, it may shift a judge's focus from the tip of the iceberg to the mass below and thereby change the judge's perception of the evidence, issue or law. In fact, infusion of social context into the legal system improves access to justice and provides more equal protection and benefit of law.<sup>3</sup>

Thus, social context education for judges entails the pursuit of at least four broad goals: increasing judges' understanding of equality principles, facilitating enhanced recognition by the judiciary of the pervasiveness of disadvantage and inequality in modern society; challenging judge's assumptions and the impact of such assumptions on judicial decision making; and demonstrating the relevance of the experience of diversity, (in)equality and (dis) advantage to the judicial function. In other words, as Justice McLachlin puts it, it seeks to, "mov[e] judges from the partial vision to the impartial vision."<sup>4</sup>

#### *Operationalising Social Context Education:*

Even though social context education initiatives could be traced way back to 1980, the initial efforts were basically sporadic and ad hoc. A systematic approach to institutionalize SCE came about in 1994 when the Canadian Judicial Education Council of Chief Justices passed a Resolution endorsing judicial education programmes on 'social context issues . . . includ[ing] gender and race.' Consequent to this, the National Judicial Institute [NJI] which was charged with the task of planning SCE programmes initiated the Social Context Education Project [SCEP], the purpose of which to quote Lamer CJ, ". . . is to make those who participate in it better judges . . . by making them more aware of the broader social, economic, cultural and political context within which we as Canadian judges function."<sup>5</sup>

#### Phase I - SCEP (1996-2000)

The guiding principle in Phase I was to ensure that the programmes were credible not only from the judges perspective but also of the community. Full court education programmes were designed and delivered in cooperation with local education committees, judicial leaders, and with the assistance of community and academic experts across Canada in every federal trial court, some provincial and appellate courts. The programmes were of two days duration and were delivered to nearly one thousand judges. Prior to its delivery, a judicial faculty development course was undertaken to enable local judicial leaders to assist the SCEP faculty in the delivery of an effective programme to their colleagues. The agenda for the programmes covered areas like judging and diversity, equality jurisprudence, judicial independence and impartiality and experience of diversity. At the end of Phase I, three important lessons were learnt: *firstly*, the most successful aspect of the programme was the judicial faculty training courses; *secondly*, a significant number of judges were of the view that since they had already attended Phase I, no further initiatives were necessary even though SCE is not an inoculation which a judge need experience only once; and *thirdly*, SCEP realized that approaching these issues at the national level was undermining the ability of local education committees and judges to take responsibility for integrating and sustaining SCE.

#### Phase II - SCEP (2000-2003)

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<sup>3</sup> *R. v. Lavallee* [1990] 1 S.C.R. 852 is a classic illustration of the infusion of the social context into the legal system in a manner that has improved access to justice and provided more equal protection and benefit of the law. For many years, judges interpreted self-defence in very serious cases of partner abuse in terms of the tip of the iceberg, which was the experience of a male-on-male fight where the individual claiming self-defence could only do so in situations of immediate harm. In *Lavallee*, the experience of women caught in life-threatening violent relationships was included in the legal interpretation of self-defence for the first time. This case finally recognised that the traditional experience of self-defence was not meaningful for these women. In *Lavallee*, the meaning of self-defence therefore shifted from the application of the traditional experience or self-defence, or tip of the iceberg, to include the mass of women's experiences. The impact of this case was far reaching. Prior to *Lavallee*, all female homicide offenders who had killed their husbands had been previously assaulted by their victim. Following *Lavallee*, a review of all female federal inmates who had been convicted of murder was undertaken to reassess their cases in light of this new definition of self-defence, and a number of these women were actually pardoned. See also Justice Lynn Ratushny, *Self-Defence Review: Final Report* (Ottawa: Department of Justice, 1997).

<sup>4</sup> Justice Beverly B. McLachlin, "Judicial Neutrality and Equality" Aspects of Justice: Rendering Justice Conference, Hull, Quebec 17-19 November 1995, 25-28 [on file with authors].

<sup>5</sup> "Social Context Education" (1987) 10:1 Nat. Jud. Inst. Bull 1 at 6.

Based on the experience gained in Phase I, Phase II was designed to achieve two goals, namely: to sustain ongoing social context education into the future; and to integrate social context issues into all forms of curriculum planning and judicial education from conceptualisation to delivery. To achieve these objectives, Phase II had four main components; namely, a Judicial Faculty and Program Development Course; development of an integration model and protocol for judicial education at NJI, which could then be modelled for local judicial education committees; continued development of integrated social context programs and resources at the NJI that could then be shared with all courts across the country and finally development of a national network of academic, community and judicial experts to help sustain social context education for judges into the future.

The Faculty and Program development course was the most important element in Phase II. It brought together one hundred judicial leaders and educators from all courts across the country, in groups of twenty-five at a time, to be put through a five-stage programme. Stage I was a skills-development course that lasted three days focussing on connecting social context and the experience of inequality and diversity to substantive law, equality rights and other constitutional rights. In addition, adult learning tools and other programme design principles were taught. Stage II involved an Intersession Project, which required each participant, alone or in groups, to conceptualize and develop their own social context education programme with the assistance of a faculty resource team from Stage I. As part of this task, the Judges had to conduct a needs assessment, assemble a local advisory committee, and develop an education programme in accordance with the principles of social context education which they had been taught in Stage I and in the *Intersession Project Handbook*.<sup>6</sup>

After two to three months, the participants were brought back together with their Project Plans for Stage III. In Stage III, each of the twenty-five participants were required to present their project to one another and to the Stage I faculty members to receive feedback. Accordingly, the Judges were to refine and improve their projects before presentation in their own courts. Stage IV required participants to return to their local advisory committees with the feedback and make adjustments to the programme before delivery. The last and fifth stage involved compilation of this feedback and presentation of a report on their entire experience for the SCEP. This five-stage course was repeated in four separate occasions, resulting in the training of one hundred judges across Canada, who delivered approximately fifty integrated social context projects to all federal and some provincial trial courts.

In Phase II, a number of international judges from Bhutan, Philippines, South Africa, Ukraine and Slovakia attended a faculty and Programme Development Course. To mark the end of Phase II, the NJI hosted an international conference for judicial educators in November, 2004 and devoted two days to social context education. The programme attracted nearly 220 judicial educators from over sixty countries and showcased Canada's SCEP and similar initiatives round the world.

### **The Ten Principles of Social Context Education:**

An outcome of the experience gained was the development of Ten SCE principles; the application of which has been found to be essential for effective judicial social context education.<sup>7</sup> In fact, non-adherence or inability to comply with these principles has resulted in glitches while designing or delivering SCE programmes. Conversely,

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<sup>6</sup> Justice Donna Hackett authored the original version in February 2001. This document was subsequently revised twice and the third edition is entitled, "*Integrated Social Context Education Program Design Handbook*," Justice Hackett and Prof. Dawson, NJI, September 2002.

<sup>7</sup> Justice Donna Hackett and Prof. Brettel Dawson who were primarily responsible for the delivery of Phase II reduced this experience into these ten principles which have been shared with several other countries particularly Philippines. The objective of the Social Context Education Project in Philippines (1994-2004) was to improve the situation of women and children caught in sex trade in Angeles City by building up capacity in local institutions to undertake education initiatives for and about women and children caught in the sex trade, including addressing how they are perceived and treated. The focus of the project was the development of educating and training opportunities for the women and train-the-trainers programmes for police, judges and community groups. Despite the different context of Canada and the Philippines and the different objectives of these two projects, these Ten Principles were nevertheless very important to the success of each project. Since these principles were applied differently in both settings, there are a number of lessons to be learned about judicial social context education by comparing the operation and application of these principles in the Canadian and Philippines projects.

whenever there has been success, it has been primarily due to adherence to these principles. It has also to be noted that these ten principles do not operate in isolation and when applied together they have a synergistic effect.

## **The Principles:**

### *1. Judicial Leadership*

The ongoing commitment of Chief Justices and Chief Judges, education committees and judicial leaders is critical for the development and delivery of successful social context education. The sooner this leadership commitment is secured, the smoother the process of implementation; the better the acceptance and participation, and more likely sustainability will be achieved.

### *2. Local Input*

To be successful, social context education programmes should include local issues, priorities, perspectives and resources right from conceptualisation through to delivery. In fact local input is critical to the successful design and delivery of judicial social context education.

### *3. The Three Pillars of Social Context Judicial Education*

Social Context education is generally about what judges do not know, or have not experienced. While judicial education must always be led by the judiciary, judges alone cannot develop, design and deliver effective social context education programmes. Consequently, experts in issues of diversity, disadvantage and difference must be relied upon to identify these issues and help develop, design and deliver social context programmes. This expertise is best found in well-respected community leaders (pillar one) with direct experience with these issues. Legal academics (pillar two) can then help to translate these

experiences into relevant legal concepts and issues. Finally, judges (pillar three) can mould and focus these experiences and issues into the act of judging. In this interactive way, the three pillars of social context education provides the best foundation for structuring the development, design and delivery of successful integrated social context curriculum and programming. In fact the collaboration of the 'three pillars' is critical to the success of social context education.

### *4. Needs Assessment and Advice*

The education needs of judges should be identified in consultation not only with judges, but also with those affected by the work of judges, particularly in those situations of disadvantage and those with diverse backgrounds and experiences. In this regard, the Three Pillars are important in the initial needs assessment process in order to ensure that relevant social context experiences and related legal issues are recognised and included in curriculum and programme development from the beginning.

### *5. Focus on the Judicial role and tasks*

In order for equality and social context issues to be understood as relevant and important for judicial learning, their presentation, has to be connected to legal and factual issues faced by judges on a daily basis. There are many access to justice issues experienced by disadvantaged groups; however not all these relate to the role of judges. The focus should be on judicial education resources that connect social context to the act of judging. Herein the interaction of the Three Pillars can

help to identify and focus the programme content relating it to the judicial task.

### *6. Trained Planning Committee and Faculty*

Social context education is not like other forms of judicial education and they are more difficult to deliver than most other judicial education topics. These programmes are more effective when they are developed, designed and delivered by individuals who are skilled in equality and social context issues, the pedagogy of adult learning, and effective programme design. Optimally, a pre-programme session to train the programme planners and faculty about these issues is the best way to ensure that the programme objectives are coordinated throughout the design and delivery process. Herein the participation of the three pillars in this training is also essential.

### *7. Effective Programme Design*

While effective programme design techniques are relevant to all forms of education, as far as social context programmes are concerned, the need is more because the education is not traditional and requires skilful balancing of social and legal issues and content. While designing such programmes they should be tailor made to address the experience of the disadvantaged and, at the same time, they should also take into consideration the unique characteristics and responsibilities of judges.

### *8. Adult Learning Principles*

Judges are a unique group of learners. Generally older, they not only have a wealth of experience in



the legal system, but also in life. By using the pedagogy of adult learning, judicial educators can not only enhance a judge's learning experience but can also capitalize on the experience of judges by engaging them in problem based exercises that require them to use their own knowledge and experience as a resource to share with other participants. This mandates a movement away from 'talking head formats' or traditional plenary discussions, to formats that have some plenary discussions, but which also engage the audience in problem-solving in smaller round-table or workshop settings. These opportunities allow judges to independently reflect upon the information delivered in the plenary discussion and apply it as they see fit to a particular problem related to

the judicial task. All this facilitates cross-fertilisation of ideas and provides a broader range of experiences to further enhance learning opportunities.

#### *9. Evaluation and Feedback*

Effective social context education requires ongoing feedback and evaluation to adjust its content to evolving judicial needs and issues. Constant feedback during a programme from the three-pillared planners and faculty is important to making on-site improvements to the quality and relevance of a programme based upon the needs of a particular audience. Even after the completion of the programme, evaluation and feedback from not only the judicial audience, but also from the three-pillared advisors, planners and faculty is valuable for

improving and developing future social context programming.

#### *10. Integration and Sustainability*

Equality and social context issues are so diverse, pervasive and everchanging, that an on-going effort must be made to systematically and continually seek out and identify social context education issues in all judicial education topics and programmes. Social context and equality issues should be identified and integrated throughout the curriculum, in all forms of judicial education, and at all stages of its development, design, and delivery. Structuring this input by means of institutionalising the Three Pillars at each planning stage is the most effective way of achieving integration and sustainability.

#### **Conclusion:**

Social context education for judges is thus an attempt to engage in a form of institutional renovation designed to open up traditionally sclerotic processes to the challenges, demands and responsibilities of diverse contemporary societies that are committed to equality. While individual judges in Canada and abroad have acknowledged the value of this programming to their work, one should not be so naïve as to think that judicial education can be a cure for structural inequality and that SCE has transformed judges resulting in substantive equality for all, or even that all who end up in their courts are treated equally. At best, constitutionally driven social context education can only be an important, 'structure-revising-structure.' Nevertheless, based on the Canadian experience, it can be safely concluded that an effective integrated social context education in all forms and at all stages of judicial education is essential if judges are to be provided with the tools necessary for their challenging tasks. In this regard, formally incorporating the Three Pillars and the Ten SCE Principles into judicial education programmes and processes is the best method to sustain integrated social context education into the future thereby improving equal access to justice.



**ORGANISATION OF  
EASTERN CARIBBEAN  
STATES**



***Eastern Caribbean Supreme Court  
celebrates its 40<sup>th</sup> Anniversary in  
February, 2007***

The Eastern Caribbean Supreme Court is a Superior Court of record for nine Member States, six independent (Antigua and Barbuda, the Commonwealth of Dominica, Grenada, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines) and three British Overseas Territories (Anguilla, British Virgin Islands, and Montserrat); and has unlimited jurisdiction in each Member State. It was established in 1967 by the West Indies Associated States Supreme Court Order No. 223 of 1967. In relation to Grenada, the Court is styled "the Supreme Court of Grenada and the West Indies Associated States".

The Anniversary was marked by a Special Sitting addressed by the Acting Chief Justice, the Honourable Justice Brian Alleyne, SC, KCN, and responses by Attorneys General, Director of Public Prosecutions and members of the Bar of the different islands. The Chief Justice remarked, "The issues of judicial administration and development are complex, and becoming increasingly so as our societies transition in response to historical forces and influences and the demands of an increasingly globalised world. I am confident that the demonstrated commitment

of the Court to the preservation of the rule of law and the independence of the judiciary over the last forty years of dynamic social, economic and political change will continue in the future to characterise the response of the Court to continuing evolutionary change. Our societies demand, and are entitled to expect nothing less from us. We look forward with confidence to a future in which, as in the past, the Court can assert with pride that it has done its duty and has served our sub-region with integrity. The past forty years are just the beginning; the foundation on which to base our commitment to a long-term future of service with integrity, sensitivity, independence and competence in the delivery of judicial services to our several communities within the countries of the OECS."

Activities such as exhibitions, gala dinners, moot trials, essay competitions for school children, debating competitions, public lectures and television programmes were also held in the various islands in January and February to mark the Anniversary.

***Acting Chief Justice Knighted by  
Antigua and Barbuda***

**His Lordship,  
the Honourable  
Justice Brian  
George Keith  
Alleyne, SC,  
Acting Chief**



Justice of the Eastern Caribbean Supreme Court has been appointed Knight Commander of the Most

Distinguished Order of the Nation (Antigua and Barbuda). This Honour came into existence under the National Honours Act of 1998 which sought "... to establish a system of national honours for the purpose of according recognition to citizens of Antigua and Barbuda and other persons for distinguished or meritorious service." The Hon. Acting Chief Justice was knighted during an Investiture Ceremony at the Governor General's Residence on 16<sup>th</sup> July, 2007.

***Judicial Education Institute [JEI]  
Activities***

In May 2007, the JEI of the Eastern Caribbean Supreme Court conducted a programme of customer service awareness training for the support staff of the High Court and Magistrates Court in Antigua and Grenada. A training session for Court bailiffs in Grenada and a Prosecutors workshop for Crown Prosecutors and investigators as part of the Criminal Justice Reform project, in anticipation of the possible creation of a unified Crown Prosecution Service for Antigua was also held.

So also the JEI in partnership with UNICEF and others hosted a Juvenile Justice Seminar for Judges, Magistrates, Child Protection Officers etc. in Saint Lucia from July 28<sup>th</sup>-29<sup>th</sup>, 2007 with the objective to review and critique the recently approved model OECS Bill on Juvenile Justice prior to its enactment.

The Annual Judicial Conference for Judges and Registrars of the Eastern Caribbean Supreme Court was also held in Saint Lucia from July 30<sup>th</sup> – August 2<sup>nd</sup>, 2007. The theme for the Judges’ segment of the Conference was “Civil Procedure Rules 2000-A Critical Review,” the main objective of which was to review the Civil Procedure Rules 2000 in order to propose recommendations for amendments. The Registrars’ segment of the Conference was held under the theme “The Registrar-A New Perspective,” the main objective of which was to appreciate the Registrar’s role in the administration of these Rules. On the third day of the Conference, the Judges and Registrars came together for a joint day of discussion.

*[By Kimberly Cenac-Phulgence, Chief Registrar, Eastern Caribbean Supreme Court, CJEI Fellow 2007]*

**Chief Justice Sir Dennis Byron, President of the International Criminal Tribunal for Rwanda**

The Right Honourable Chief Justice Sir Dennis Byron, former Chief Justice of the Eastern Caribbean Supreme Court was recently selected/promoted to head the Judicial Tribunal enquiring into war crimes in Arusha. Sir Dennis Byron is a native of the Caribbean Island of St.Kitts/Nevis. As Chief Justice of the OECS, he was instrumental in revamping the justice system including the introduction of new civil procedure rules for the High Court and arranging training for Judges, Magistrates and Registrars in Court Administration focussing on court efficiency. The participants who attended this training program have implemented the techniques learnt

like setting firm trial dates, granting less adjournments, setting time standards (time between filing and disposition), making the parties feel more comfortable in the courtroom, rendering the court more litigant friendly – all leading to greater efficiency. Sir Dennis comes from a distinguished family and his uncle His Worship Cecil Byron served as Magistrate in the island of Nevis well into his eighties. His Uncle Cecil Byron recently passed away and will be forever remembered for making young lawyers feel comfortable in court and for using mediation techniques long before we ever heard of mediation in the Caribbean.

*[By Her Worship Mrs. Josephine Mallalieu-Webbe, Senior Magistrate, St. Kitts & Nevis, CJEI Fellow 2006]*

**JAMAICA**



**Honourable Mrs. Justice Zaila R. McCalla, (CJEI Fellow, 2002)**

was sworn in as the 8<sup>th</sup> Chief Justice (7<sup>th</sup> after independence) and the first woman Chief Justice of Jamaica on 27<sup>th</sup> June 2007. Mrs. Justice McCalla has had a long and distinguished career as a lawyer since she was admitted to the Bar in 1976. She has had an equally distinguished career in the Jamaican judiciary, and was appointed as a Puisne Judge in the Supreme Court on 7<sup>th</sup> July 1997 and to the Court of Appeal in April 2004.

*[By The Honourable Ms. Justice Gloria Smith, Judge of the Supreme Court of Jamaica, CJEI Fellow 2003]*



**BERMUDA**



**Honourable Mrs. Justice Wade-Miller** from Bermuda was elected to the post of Regional Vice-President (Caribbean) in the Commonwealth Magistrates’ and Judges’ Association, replacing Mrs. Clover Thompson Gordon, at the Toronto Conference.

**Delay Reduction**

A substantial reduction has been achieved in the number of criminal matters awaiting trial. At 1<sup>st</sup> July there were sixteen cases pending jury trial in the Supreme Court, and thirty-four cases have been disposed of this year. Cases can now be given trial dates within a month of committal (although practical considerations relating to the defense and prosecution often delay hearings longer than that).

*[By Honourable Mrs. Justice Wade-Miller, JP, Pusine Judge, Supreme Court of Bermuda, CJEI Fellow 2005]*

**UGANDA**



**Delay Reduction**

All courts have been urged to establish an efficient and effective case flow management system for eliminating obstacles in the quick disposal of cases. Judicial officers are being encouraged to explore new ways and means to manage the increasing volume of work. Some innovative procedures include keeping track of all cases filed from beginning to end which entails regular update of all documents filed and indication of the next necessary action and when it is due; early resolution of cases which will not go to trial which enables courts to focus resources on cases that will actually be heard;

establish a transparent system of communication, coordination and cooperation between all stakeholders in the justice system; regular training to enable all staff to acquire new skills and be able to deal with changes in the law effectively; consistent use of alternative dispute resolution; zealously guard the independence of the judiciary both as an institution and of individual judicial officers. In fact while encouraging good working relationship with all stakeholders in the system, it has always been emphasized that courts should not take instructions on how to decide cases. The Chain linked Project has developed certain performance standards and guidelines for use in criminal cases, like:

- *Investigating and mentioning practices*

- No minor offences should be mentioned for more than 3 months.

- All investigations of non-capital offences should be completed within 6 months.

- Criminal cases should be heard on separate days from civil cases to avoid sending away witnesses.

- *Arrests and arraignment*

- No person should be held in police cells for more than 48 hours.

- Warrants of arrest and other court documents ended by prosecutors and investigators should be promptly extracted.

- Where possible, investigations should be completed before arrest and charge.

- *Bail and Remand*

- Opposition to bail should be for good reason and all reasons advanced must be recorded.

- All prisons must submit monthly returns to the Commissioner of Prisons, copied to Court and the Resident State Attorney within one week from the end of the month.

- Remand warrants should be strictly adhered to.

- *Hearing and disposal of cases*

- Once inquiries are complete hearing should be from day to day.

- Entire criminal proceedings of a non-capital offence should not take more than 3 months.

- The maximum time for completion of criminal cases should be 12 months after committal.

For civil cases, the Commercial Division has set performance targets, which are regularly evaluated, measured and reported in form of successes and challenges. In fact the Commercial court has become a Multi-door courthouse in that it uses different ways to dispose of cases like mediation, court annexed mediation with CADER, ordinary dispute resolution.

### **Recent Training Activities**

The “Judicial Studies Institute” in conjunction with the Judicial Training Committee conducts training activities for the Judiciary. A Judge of the High Court under the title Executive Director heads the Institute. The Registrar Research and Training, a training officer and other support staff assist him. The institute has been conducting training for at least two years now. At the end of each year, the Institute draws up a training calendar for all staff of the judiciary, judicial and non-judicial. By the end of the financial year 2006/2007, at least thirty-six workshops have been conducted through the Institute (involving 500 staff judicial and non-judicial). Between August to September 2006, twelve grade one Magistrates attended the Law and Justice course at Copenhagen Business School in Denmark. Another batch is expected to attend the same course

this year. In addition, various categories of staff attended courses locally and abroad.

[By Her Worship Flaiva Senoga Anglin, Registrar, High Court of Uganda, CJEI Fellow 2006]

## **NAMIBIA**



### **Computerization**

An exciting event during 2007 was the launch of the Superior Courts web site (<http://www.superiorcourts.org.na>), which carries information and judgments of the Supreme Court and the High Court.

So also the Ministry of Justice in co-operation with foreign donors has embarked on the Namibian Computerised Information System for the magistrates' courts only. The aim at this stage is to create a complete financial administration management system, case management system for criminal cases, admission of guilt cases (mostly traffic offences), maintenance matters and liquor licensing matters. This is being implemented since August, 2007 in one lower court centre in the capital city of Windhoek and would be expanded to other lower court centres as well.

### **Infrastructure**

A High Court, consisting of several court rooms and related facilities, is being constructed at Oshakati, a town in northern Namibia, where more than half of the Namibian population reside. Currently all persons involved in matters in the High Court must travel, sometimes covering distances of 1,000 to 1,500kms one way, to Windhoek which houses the only High Court, apart from a satellite High Court at the Windhoek Central Prison. It is

expected that the Oshakati High Court complex, which is to be completed in 2008, would make the Court more accessible.

### **Judicial Education**

The Ministry of Justice is currently investigating the creation of a judicial education institute, as there is no specific body catering for continuous legal education for judicial officers. The judges of the High Court participate in a weekend retreat once or twice annually during which specific topics are discussed. A guest speaker is usually invited to present one or more legal papers. At the last retreat, retired Judge Robin Marais of the South African Supreme Court of Appeals discussed "Judgment Writing" and "Court Decorum". Other judicial education occurs on an ad hoc basis by the attendance of judges at local and international symposia and conferences. The Judge-President plans to introduce a more structured education programme for High Court judges in the near future.

During 2006, magistrates attended a workshop that covered topics like: ethics and discipline; rule of law and constitutionalism; adversarial procedure and its place in constitutionalism; basic principles in justice administration; criminal procedure in a constitutional dispensation; possibility of an inquisitorial role for a Namibian magistrate; gender and human rights issues in justice administration etc.

In February 2007, a workshop for magistrates covered criminal procedure; civil procedure; sentencing; HIV and AIDS and the law; strategic planning. Again in February, the Prosecutor-General of

Namibia and UNICEF held a weeklong training course on child witness and sexual offenders. In March 2007, the UNEP and the UNDP organised a symposium on environmental law for the officers. The Prosecutor-General's office in April 2007 presented a training course on medical examinations and collecting of forensic evidence in sexual offence cases for Judges, magistrates, prosecutors and doctors.

*[By Honourable Madam Justice Kato van Niekerk, Judge, High Court of Namibia]*

### **GAMBIA**



CJJI Fellow Honourable Mr. Justice G. B. Semega-Janneh, Crg of Gambia has under the Commonwealth Fund for Technical Cooperation scheme been appointed as a Justice of the Supreme Court of Sierra Leone. Justice Semega-Janneh, also has the unique distinction of being honoured by the President of the Republic of Gambia with the insignia of *Commander of the National Order of the Republic of the Gambia*, the second highest national honour "in recognition of his immense contribution to the development of this nation."

Steps to Speeden up Processes:

### **New Rules of Court**

In 2006, new Revised Rules of Court for Magistrates Court and the High Court were validated by all stakeholders (the Bench and Bar of the Gambia) in an attempt to speed up the judicial process of cases.

### **ADR system**

Court Annexed ADR was introduced in the High Court

following the enactment of the ADR Act, 2006. An ADR Registry has been set up staffed by trained personnel with professional mediators rendering services in a planned manner.

### **Technology**

To improve the justice delivery system, a computer-aided transcription system (CATS) is being utilized on a pilot basis in one High Court to record, transcribe and produce court proceedings electronically. So also, an ICT Strategy and Technical Specifications of all High Court processes and procedures for a computerized Case Management Information System (CMIS) have been developed for implementation in a phased manner.

### **Improvements in Court system and structures**

The High Court has been structured into five divisions namely: Criminal; Civil and Land; Miscellaneous and Family; Commercial and Brikama (a Regional Court). So also, a new Children's Court has been established devoted to issues relating to and affecting children and young persons.

### **Court Management**

To safeguard its autonomous status, a Draft Judges Bill and a Draft Judicial Service Act, designed to attract and retain indigenes on the Bench, has been validated by stakeholders.

### **Judicial Training**

The Department for International Development funded *Legal Capacity Building Programme* organized and implemented a series of training activities (workshops, seminars, retreats and formal training) for all levels of staff:

judges, magistrates, registrars, management and court staff.

*[By Honourable Mr. Justice G. B. Semega-Janneh, Crg, Supreme Court of Sierra Leone, CJEI Fellow 2005]*

## CAMEROON:



### *A New Paradigm in Cameroon's Criminal Procedure*

Cameroon's chequered legal history is linked to its historical background having been ruled under diverse regimes administered by the Germans, British and French. The civil law and common law legal regimes of these administrations greatly influenced Cameroon's legal architecture leaving a legacy as marked by Cameroon's present bi-jural system. Upon attaining independence in 1960, the institution of local legislation in substantive and procedural law in criminal matters experienced a gradual process. In consequence, three categories of rules of procedure in criminal matters were obtainable: rules of procedure enacted in the *Criminal Procedure Ordinance* drawn from common law systems and applicable in common law jurisdictions only (English speaking provinces); rules of procedure of the *Code D'Instruction Criminelle* drawn from civil law systems and applicable in the civil law courts only (the French speaking provinces); and pieces of local enactments harmonizing certain procedural matters for national application in all jurisdictions. These rules rendered the nation's criminal justice system ill adapted in facing the challenges of globalization and fragilised Cameroon's commitment to ensuring a justice administration system that guarantees the respect of

human rights and promotes democracy.

The institution of a new Criminal Procedural Code enacted by Law No 2005/007 of 27 July 2005 marks a salutary shift from this multi-procedural regime to a harmonized procedural system in Cameroon's criminal justice system. This Act which became operational from 1<sup>st</sup> January 2007 with a nation-wide jurisdictional competence provides a major shift from obsolete rules of procedure that had been repealed in their legal systems of origin yet continued to be of import in its application in Cameroon. Through the varied innovations of this Act, a new paradigm has emerged in the nation's criminal justice system with a model that is characterized by processes and practices that enable the respect of human rights and liberties within the guarantees of the Constitution and domesticated diverse global conventions ratified. *Innovative options within this model include: the establishment of an equilibrium between the parties in trial processes; the institution of measures to guard against illegalities in cases of searches and arrests and to ensure the right to information; the provision of measures of protection against all forms of torture in cases of detention and the introduction of the right to damages in cases of illegal detentions; a significant shift from juvenile correction to a restorative model that involves all actors in society.*

This new model is the outcome of a consultative/ participatory process undertaken by Government over the last thirty years. Its key players included judicial and legal practitioners of the public and private sector, relevant government

agencies, non-government actors and most significantly, international partners of the Commonwealth and Francophone bodies.

As legal and judicial practitioners set out in January 2007 to apply the adopted procedural model, a major challenge is to ensure an effective and credible performance within this new paradigm for criminal justice. The support of key actors and partners in the development of Cameroon's judicial system will also provide an enormous opportunity to play a catalytic role in promoting peace and security of goods and persons, the respect of the rule of law and democratic progress, all crucial for the growth of this developing nation.

*[By Honourable Justice Prudence Tangham Galega, Ministry of Justice-Cameroon, CJEI Fellow 2005]*

## NIGERIA



It would interest our readers to know that the Kaduna State Judiciary (one of the thirty-six State Judiciaries in Nigeria) has taken some innovative measures with particular emphasis on **delay reduction**. We have received an attention-grabbing report from the Honourable Justice Rahila Hadea Cudjoe, OFR, Chief Judge, Kaduna State, Nigeria. The report says:

1. Our new Legal Reform Complex (an addition to our existing Court Complexes) was commissioned around the end of last year. The Complex contains ten courtrooms, twenty Judges Chambers and thirty-eight offices. It houses some High Court Judges, all the Sharia Court of Appeal Kadis and Customary Court of Appeal Judges and their supporting staff. All the Courtrooms, Judges Chambers and some of the offices are fully air-

conditioned. Every Judge in the High Court now has his own courtroom equipped with a recording machine.

2. We have also installed a KU – Band VSAT Broadband Internet access and routed the access to most of our chambers and administrative offices through our already existing Local Area Network (LAN) while some remote locations were linked via Wi-fi. This enables us have direct and fast access to the internet.

3. Our new High Court (Civil Procedure) Rules, 2007 came into effect on 17<sup>th</sup> April, 2007. The Rules had not been revised for the last twenty years. Some of the main features of these new Rules include the introduction of front loading, whereby all writs have to be filed with a Statement of Claim, Exhibits and a list of witnesses to be called at the trial. Pre-trial conferences were introduced and we have now limited the number of adjournments at the instance of a party in a case. All these are aimed at speedy dispensation of justice.

4. Kaduna State Judiciary is also one of the pilot State Judiciaries involved with the World Bank Alternative Dispute Resolution (ADR) Project and the United Nations Office on Drugs and Crime/National Judicial Institute (UNODC/NJI) Judicial Integrity and Capacity Project. A lot of work has been done and the Implementation Committees for these Projects are working hard towards realizing the desired goals.  
*[By Honourable Justice Rahila Hadea Cudjoe, OFR, Chief Judge, Kaduna State, Nigeria, CJEI Fellow 2006]*

***Judicial Education Initiatives in Kano State, Nigeria:***

***Implementation of Roll out Training to Court Support Staff developed by Judge Sandra E. Oxner***



In April 2006, selected judiciary support staff from Kano and Jigawa states attended a five day training of trainers programme on civil process and procedure, as part of the Justice Sector Reform process being partnered by the Security Justice and Growths programme [SJG] and funded by the British Department for International Development. Judge Sandra E. Oxner, the CJEI Chair, facilitated this training, along with some legal academics from the Law Universities of Nigeria and the staff of SJG. This training was a tremendous success and indeed a corner stone for judicial education in at least these states. The scholarly and judicial erudition of Judge Sandra made a great impact; capacity building was boosted to a level of facilitating judicial education in Kano. Consequently, local training for judiciary support staff was set in motion covering registrars and clerks to bailiffs and messengers in both the High Courts, which included the magistracies, and Sharia Court of Appeal. The first such training also on civil process and procedure started on the 18<sup>th</sup> of June 2007 in batch of fifties. So far two hundred court support staff have been trained. The local training initiatives received a great boost due to the support of the Chief Judge of Kano State,

Honourable Justice Sunusi Chiroma Yusuf (CJIE Fellow 1998) whose insight as judicial educator helped in focusing the training to suit the needs of the participants especially on the issue of confidentiality. Encouragement from the Grand Kadi (The head of Sharia Court) and the Chief Registrar High Court Kabiru Auta (Professional Negotiator and Mediator) who provided all the necessary intellectual and material logistics enhanced the quality of the training. The majority of the support staff having low level of education mostly diploma and its equivalent, were not conversant with enabling laws, relying mainly on the judge or the magistrate in their work as the main reference point. But after attending this local workshop, they understood the relevance of the applicable laws in their daily work.  
*[By Mr. Nasiru Wada Khalil, Senior Registrar Sharia Court of Appeal, Kano State Judiciary, Nigeria].*

**PAKISTAN**



***Rule of Law finally Triumphs!***



The legal community, the civil society and ultimately the Supreme Court of Pakistan have recently added a new chapter to the judicial history of the world. On 9<sup>th</sup> March, 2007 the military ruler (President) of Pakistan suspended Honourable Iftikhar Muhammad Chaudhry, the Chief Justice of Pakistan, put him under virtual house arrest and filed a Reference against him before the Supreme Judicial Council for inquiring into some allegations of misconduct against him. The

Supreme Judicial Council passed a separate order making the Chief Justice non-functional and later on the President also passed an order sending the Chief Justice on forced leave pending the inquiry against him. The Chief Justice contested the Reference before the Supreme Judicial Council on various jurisdictional and other issues and then he filed a constitutional petition in that regard before the Supreme Court of Pakistan. The proceedings before the Supreme Court consumed more than two months and during this while the lawyers in every nook and corner of the country kept on agitating against the President's action, boycotted the courts, took out large processions and virtually brought the whole judicial system to a grinding halt. It was quite significant that millions of people representing the civil society throughout the country also joined the lawyers' struggle and took to streets in support of the Chief Justice. In the background of immense public support for the Chief Justice the thirteen-member bench of the Supreme Court hearing the Chief Justice's petition announced its verdict on 20<sup>th</sup> July. It unanimously restored the Chief Justice in office and with a majority of ten against three it set aside the Reference filed by the President against the Chief Justice. The end result is that the Chief Justice is back in office with a bang, the Constitution and law have prevailed over arbitrary and whimsical action of the military ruler, the civil society has triumphed over the military establishment and a milestone towards rule of law and independence of judiciary has been crossed. There is a lesson in this for the rest of the world and an example to be quoted for times to come.

*[By Honourable Mr. Justice Asif Saeed Khan Khosa, Judge, Lahore High Court, CJEI Fellow 2006 & 2007]*

### ***Judicial Education Activities in Sindh***

Judicial education is making big news in Sindh, Pakistan thanks to our Fellow Justice Mushir Alam. Among the many recent achievements listed by him are:

An impressive graduating ceremony was held on 9<sup>th</sup> July 2007 in the Sindh Judicial Academy (SJA) for twenty-one Civil Judges and Judicial Magistrates. The function was presided over by the Chief Justice of the Sindh High Court and attended by other legal luminaries, including the Honorary Director General of the Academy Justice Saleem Akhter. The judicial officers were the first ever batch of the six month extensive pre-service training. The next batch of Civil Judges and Judicial Magistrates will commence their training in the SJA on 15<sup>th</sup> September 2007.

The SJA has also started three months training of State Counsels. The programme is sponsored by the Advocate General of Sindh, who has now made it compulsory for any lawyer desiring to be on State panel has to undertake the foundation course.

The first ever programme (spread over three days) in "Accounts Management and preparation of annual Budgetary Proposal for the Courts" was conducted in collaboration with the Accountant General of Pakistan at Karachi. Justice Mushir Alam presided over the closing session and distributed the certificates amongst the

participants. More than thirty officers attended the training workshop from accounts department /branches of the five District Courts and High Court of Sindh.

On 14<sup>th</sup> July 2007 a workshop attended by all the twenty-four District and Session Judges was organized and held at the SJA on the District Court Annual Work and Financial Plan and "Evaluation Report Writing". All the District Judges were provided the guideline for the preparation of AW & FP, which they will submit in the annual judicial conference proposed to be held in December.

On 28<sup>th</sup> July, 2007 a workshop on "Identification Parade" was organized at Larkana. The workshop was attended by sixteen Judicial Magistrates from all over the Circuit. Presiding over the Workshop, Justice Mushir Alam made an opening presentation through a PPT presentation, a skill acquired by him at CJEI this year! To make the Workshop more informative and interactive, five senior Prosecution Inspectors responsible for holding Identification Parade or Line-up of suspect/accused attended on invitation. The workshop was a great success, not only the Judicial Magistrates but also the Persecution Inspectors requested to hold such interactive workshop on Confessional Statement, Remands, and Recording of Statement of Witnesses by the Magistrates, and recording of evidence.

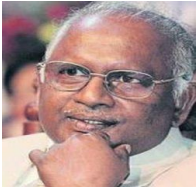
*[By Honourable Mr. Justice Mushir Alam, Judge, High Court of Sindh, CJEI Fellow 2007]*



## INDIA



### Honourable Mr. Justice K.G. Balakrishnan (CJJI Fellow, 2006)



assumed charge as the 37<sup>th</sup> Chief Justice of India on 14<sup>th</sup> January, 2007. Chief

Justice Balakrishnan's story to the top is worthy of examination and emulation. Despite social and economic barriers, Justice Balakrishnan through sheer hard work and dedication rose to become the Chief Justice. The first rank holder for LL.M. from Kerala University, after a short stint of practice, he joined the Subordinate Judicial Service of Kerala State in 1973. Later he resigned from the judicial service to re-join the Bar. But destiny had him as a judge of the High Court of Kerala in 1985. He has also had opportunities later to function as the Chief Justice of the Gujarat and the Madras High Courts. When he was elevated to the Supreme Court in 2000, Justice Balakrishnan thus brought with him rich experience and scholarship leaving an indelible impression in several of the landmark judicial pronouncements which he has handed down some of which have significantly impacted the development of sociological jurisprudence in India.

Justice Balakrishnan will serve as the Chief Justice till May 2010; a period crucial for the development of judicial education and training which now occupies a vital place in the scheme of judicial reforms in India. In an interview to the CJJI Report (2006), he articulated the

need for judicial education in the following words, "[w]ithout judicial education, we cannot improve the quality of our judicial system. Many of the officers appointed may not have the requisite experience or educational background. The experience of a lawyer is not always helpful as a judge, as he probably practices in a particular branch, but as a judge, must see all kinds of cases. Even if the judge is good, he requires continuous training so that he can be a model judge. That would ultimately help the judicial system." Regarding CJJI, Chief Justice Balakrishnan had to say, "[i]t's doing a lot of good things, such as developing teaching modules which will be helpful to Commonwealth countries that are lagging in providing judicial education to their officers (maybe due to economic reasons). In education, sharing of knowledge is very important and can be done only through interaction between countries. The CJJI is providing that link."

**Prof. (Dr.) N.R. Madhava Menon**, advisor to the CJJI has been appointed Member, Commission on Centre-State (Federal) Relations, India.

The issues of balanced regional development and good governance



engage the attention of federal systems everywhere.

India set up recently its Second National

Commission on Centre-State Relations to look into the above issues in the context of sea-changes taking place in the polity and economy of the country. The Commission headed by a former

Chief Justice of India, Mr. Justice M.M. Punchhi, will have four members including Professor N.R. Madhava Menon, Founder Director of the National Judicial Academy at Bhopal.

The Commission will examine and review the working of the existing arrangement between the Union and States as per the Constitution of India in all spheres including legislative, financial and administrative relations, economic and social planning, sharing of resources, devolution of powers and recommend changes and measures needed. The Government of India Notification further said "such recommendations would also need to address the growing challenges of ensuring good governance for promoting the welfare of the people whilst strengthening the unity and integrity of the country, and of availing emerging opportunities for sustained and rapid economic growth for alleviating poverty in the early decades of the new millennium". The Commission has its head-quarters in New Delhi and will have an initial life of two years.

### *Judicial Education*

Under the dynamic leadership of Honourable Mr. Justice K.G. Balakrishnan, the National Judicial Education Strategy has been adopted which provides a blue-print to enhance the delivery of timely and responsive justice through judicial education.

### *Infrastructure*

The National Judicial Infrastructure Plan aims at, "*strengthening judicial infrastructure for timely, consistent and user friendly justice delivery.*" It seeks to establish a user-friendly

court addressing the concerns of all stakeholders.

### **Computerisation:**

The Judiciary in India is the repository of People's faith. But in the recent past, there has been erosion of this trust in the minds of the people primarily for two reasons – (i) delay in disposal of cases, and (ii) backlog of cases. In my view, delay in disposal of cases has resulted in backlog of cases calling for a serious introspection. The herculean task facing the Indian Judiciary today is that the justicing process is in a state of despair because of the mounting arrears and long delays. The data available shows that the Indian Judiciary comprises of nearly 13114 courts situated in 2870 court complexes located in 2259 towns throughout the country. The total pendency of cases in these courts is around 27 million out of which 2,34,82,584 cases are pending before the district and subordinate courts.

Varied reasons could be attributed to the delays and mounting arrears. From my experience, one factor leading to delays and mounting of arrears is granting adjournments in a routine manner by trial judges. Often a witness in criminal trial comes from remote places to find the case adjourned. In our criminal delivery justice system, it has become more or less a fashion to have criminal case adjourned again and again till the witness tires or gives up. Often the material witnesses are lured or won over by money power or coerced by threat or intimidation. By adjourning the case in a routine manner without any valid cause, a judge unwittingly becomes party to miscarriage of justice.

A recent development is the introduction of E-Courts Project. There has been overwhelming realization in the judicial sector to favour the devising of a National Policy and Action Plan with appropriate spread and phasing to implement ICT in the courts of the country and their web-based interlinking. To achieve the said objective, the Chief Justice of India placed a proposal to the Central Government for the constitution of an E-Committee to assist him in formulating a National Policy on computerization of Indian Judiciary and to advise technological, communication and management related changes. The proposal was approved and the Committee was constituted with one Chairman and three other specialist members. The Committee formulated a National Policy on computerization of the justice delivery system and drew up an action plan with appropriate phasing for time bound implementation. The National Policy has proposed to implement ICT in Indian Judiciary in three phases over a period of five years.

Phase I extends over two years and aims to achieve: capacity building of the Judges – primarily, the subordinate court Judges; creation of a National Judicial Data Center to provide litigation trends for all levels and geographical locations supporting better management and policy decisions; make available ICT modules for assessing work performance; ensure instant availability the status of cases, judgments and orders of all Courts through internet, kiosks and Judicial Service Centers; facilitate case flow management, online accessibility of orders, judgments and case related data; make available wireless connectivity to lawyers in and

around Court complexes for accessibility of case status, cause lists, judgments and orders; ensure digital production of under-trial prisoners and distant examination of witnesses through video-conferencing; make available e-filing facilities in the Supreme Court and High Courts.

Phase II extends over a period of two years and aims to: automate registry level (ministerial) processes eradicating delays, harassment and corruption at this level; make available online legal resources to the Judges, lawyers and public at large; make availability e-filing facilities at District and subordinate Courts.

Phase III extends over a period of one year and aims to achieve: availability of online information between the Courts, prosecuting and investigating agencies, prisons, land records and registration offices thereby accelerating disposal of civil and criminal cases; development of bio-metrics and scientific tools which would help in identifying habitual criminals, professional witnesses and litigants and in resolution of complex factual disputes.

It is expected that the use of technology would rejuvenate the Indian Judicial system and accelerate case progression to reach its logical end within a set time frame leading to complete demystification of the adjudicatory process thereby ensuring transparency, accountability and cost-effectiveness.

*[By Honourable Mr. Justice H. K. Sema, Judge, Supreme Court of India, CJEI Fellow 2007]*

## Obituaries



**Lord Chief Justice of Ghana Justice George Kingsley Acquah** passed away on 25<sup>th</sup> March, 2007. Justice Acquah was born on 4<sup>th</sup> March 1942. He completed his LL.B (Hons.) in 1970, and was called to the Bar in 1972. He then went into private legal practice in Cape Coast till 1989 when he was elevated to the High Court. In 1994, he was elevated to the Court of Appeal, and in the following year, he was elevated to the Supreme Court where he was until his appointment as the Chief Justice on 4<sup>th</sup> July 2003. In 2006, he was awarded the Order of the Star of Ghana (Member) - the highest honour of Ghana. Chief Justice Acquah is survived by his wife Mrs Jane Acquah and six children.



**The Honourable Madam Justice Bretha Wilson, C.C., Q.C.**, the first woman to be appointed to the Supreme Court of Canada passed away on 28<sup>th</sup> April, 2007. Born in Scotland, she graduated from the University of Aberdeen and completed her LL.B. from the Dalhousie University. She was called to the Bar of Nova Scotia in 1957 and to the Bar of Ontario in 1959. In 1975, she was appointed to the Ontario Court of Appeal and in 1982 to the Supreme Court of Canada, retiring in 1991. She was also appointed to the Permanent Court of Arbitration in 1984. Her husband Reverend John Wilson and two nephews survive her.

## Court Reporter



### BERMUDA

Two recent decisions rendered by the courts in Bermuda need to be shared with our readers:

In an appeal from the Magistrates' Court, *Cox- v. Parris* [2007] Bda LR 30, Wade-Miller J. held that the courts could suspend a mandatory term of imprisonment mandated for offences relating to bladed weapons, because while Parliament could determine the tariff of punishments, it was for the Courts to determine what sentence should be imposed in individual cases.

In *First Atlantic Commerce Ltd. v. Bank of Bermuda Ltd.* [2007] Bda LR 36, Kawaley J. held that the Court in its inherent jurisdiction could stay an action brought by an insolvent local plaintiff, which was only trading due to its parent company's financial support, until the parent company undertook to pay any costs orders which might be made against the plaintiff.

*[By Honourable Mrs. Justice Wade-Miller, JP, Pusine Judge, Supreme Court, CJEI Fellow 2005]*

### UGANDA

*Law and Advocacy for Women in Uganda v. The Attorney General Constitutional Petition 13/2005 and 05/2006* [unreported] is a path breaking decision by the Constitutional Court of Uganda relating to the constitutional validity of the provision of the Penal Code Act, which punished a woman for committing adultery with any man not her husband, but only punished a man if he had sex with a married woman other than his wife. The law also did not provide compensation for an aggrieved wife while it provided compensation for an aggrieved husband. The Court found the impugned provisions as contrary to the Constitution and struck them out. The decision created a lot of heated discussion in Uganda. A majority of the people interpreted it to mean that the court had legalized adultery, thereby misunderstanding the decision of the court. The court was greatly criticized, even by some religious leaders. In a number of instances even aggrieved husbands, believing that they no longer have a remedy under the law, committed acts of violence.

*[By Her Worship Flaiva Senoga Anglin, Registrar, High Court of Uganda, CJEI Fellow 2006]*

## Forthcoming Events

The 15<sup>th</sup> Commonwealth Law Conference with the central theme, “Governance, Globalisation and the Commonwealth” is to be held from 9<sup>th</sup> -13<sup>th</sup> of September 2007 at Nairobi, Kenya. This is the second ever to be held in Africa in the history of Commonwealth law conferencing. Over 2,000 lawyers representing all 53 Commonwealth countries are expected to attend this prestigious event. For information and registration: [www.commonwealthlaw2007.org](http://www.commonwealthlaw2007.org)

The CJEI Patron Chief Justices’ Meeting is to be held on the 9<sup>th</sup> of September, 2007 in Kenya where we would be presenting our work plan for the coming two years for our Patrons comment. There would also be a discussion on “judicial independence.” Nearly twenty Chief Justices or their representatives are expected to participate.

The Third International Conference on the Training of the Judiciary organized by the International Organization for Judicial Training would be held in Barcelona from 21<sup>st</sup> -25<sup>th</sup> of October, 2007. The theme of the Conference is on “how to train the trainers.” For information and registration: [www.iojt3conference.net](http://www.iojt3conference.net)

*Send us your News. We are eager to share in the CJEI Report news of elevations, honours, or deaths and other news related to the judiciary such as new innovations to tackle arrears and delays, strategies to improve access to justice, landmark judgements etc. We would also be pleased to learn of any recent judicial education initiative in your country.*

*Check out the CJEI Report at <<http://cjei.org/publications.html>>*



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