

25th Annual Intensive Study Programme for Judicial Educators

The CJIE's twenty-fifth annual Intensive Study Programme for Judicial Educators (ISP) was held from June 3 – 22, 2018. The programme was directed by The Honourable Mr. Justice Adrian Saunders, Former Chief Justice of OECS & Judge of the Caribbean Court of Justice, and future President of the Caribbean Court of Justice, and co-directed by The Honourable Mr. Justice Peter Jamadar, Court of Appeal, Trinidad & Tobago and the Honourable Mr. Justice Brian Lennox, Former Chief Justice of the Ontario Court of Justice and Former Director of National Judicial Institute of Canada. It was attended by 20 participants: The Honourable Justice Diratsagae B. Molomo, Industrial Court, Botswana; The Honourable Mr. Justice Nareshwar Harnanan, High Court, Guyana; The Honourable Mr. Justice Franklin D. Holder, High Court, Guyana; The Honourable Mr. Justice Rajesh Bindal, High Court of Punjab & Haryana, India; The Honourable Shri Justice Sujoy Paul, High Court of Madhya Pradesh, India; Mr. Sunil Kumar Jain, Additional District and Sessions Judge, Madhya Pradesh, India; Mr. Sanjay Kumar, Additional District Judge (West), Tis Hazari Courts, Delhi, India; Ms. Swarana Kanta Sharma, Principal Judge, Family Courts, Rohini North, Delhi, India; Ms. Neena Bansal Krishna, Director (Academics), Delhi Judicial Academy, India; The Honourable Mr. Justice Bertram Morrison, Supreme Court, Jamaica; Her Honour Mrs. Annmarie Lawrence-Grainger, Senior Parish Court Judge, Jamaica; The Honourable Mrs. Justice Opeyemi O. Oke, Chief Judge of Lagos State, Nigeria; The Honourable Mrs. Justice Esohe Frances Ikponmwen, Chief Judge of Edo State, Nigeria; The Honourable Mrs. Justice Sherifat Solebo, High Court of Lagos State, Nigeria; The Honourable Justice Colin Makail, National and Supreme Courts, Papua New Guinea; Mr. John G.F. Carey, Executive Director, Centre for Judicial Excellence, Papua New Guinea; Ms. Roselyn Raga Gwaibo, Deputy Secretary Legal and Policy, Department of Justice and Attorney General, Papua New Guinea; The Honourable Dame Janice M. Pereira, DBE, Chief Justice,

Eastern Caribbean Supreme Court, Saint Lucia; Mrs. Michelle Ann John-Theobalds, Chief Registrar, Eastern Caribbean Supreme Court, Saint Lucia; The Honourable Judge Paul Quan, Executive Director, Singapore Judicial College, Singapore.

Participants spent the first two weeks completing the study component of the programme at the Schulich School of Law, Dalhousie University in Halifax. The programme topics included: providing instruction for adults - understanding adult learners learning and teaching styles, learning outcomes and active learning forms and benefits; review of functions, objectives, definition and levels of judicial education; targets of judicial education; curricula development; judicial ethics and conduct; judicial performance feedback; unrepresented litigants; challenges for judicial academies; judgment writing; long range judicial education planning; increasing your effectiveness by managing your time; impact of developing technologies on the law and court processes – cyberbullying; judicial role – a public service; judicial ethics and the appearance of bias in the world of social media; exploring judicial arrogance and judicial humility; dealing with different capability levels; and the importance and methodology of programme evaluation.

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

In addition to the rigorous academic sessions, social events included a reception hosted by The Honourable Mark Furey, Minister of Justice and Attorney General at the Nova

Scotia Archives; a reception hosted by His Honour The Honourable Arthur J. LeBlanc, ONS, QC, Lieutenant Governor of Nova Scotia at Government House; and sightseeing trips to Peggy's Cove and Niagara Falls.

The evaluations received from the participants were very positive. Many participants commented on the expertise of the facilitators, expressing a desire to delve further into many of the topics covered. Several commented on the

usefulness of the materials and discussions, noting that the experience will serve as a solid resource in their home countries and can be adapted to accommodate different legal systems. Specifically, the participants praised the informative and diverse content of the course and felt that their attendance at the Intensive Study Programme would directly improve their ability to face the challenges of judicial education / judicial reform in their home jurisdictions.



2018 Participants

Sir Dennis Byron's "Retirement"

Sir Charles Michael Dennis Byron, CJEI Chair and Fellow (1997), retired from his position as President of the Caribbean Court of Justice on July 3, 2018. Born in 1943 in St. Kitts, Sir Byron began his legal career by studying Law at Fitzwilliam College, Cambridge University. He then continued his education with a M.A. and LL.M. in 1996, and was called to the Bar of England and Wales by the Honourable Society of the Inner Temple. He began his career in private practice, where he distinguished himself throughout the Leeward Islands, with Chambers in St. Kitts, Nevis and Anguilla from 1966 to 1982.



His judicial career began in 1982 when he was appointed as a High Court Judge of the Eastern Caribbean Court. In 1999 he was appointed Chief Justice of the Eastern Caribbean Supreme Court, and acted in that position for two years, specifically as the supreme judicial officer of the courts of Anguilla, Antigua and Barbuda, Dominica, the British Virgin Islands, Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines.

While serving as President of the Caribbean Court of Justice, Sir Byron has also been serving as the President of CJEI. He is also the former President of the International Criminal Tribunal for Rwanda and a former Chief Justice of the Eastern Caribbean Supreme Court. In 2000, Judge Byron also received the distinct honour of being knighted by Queen Elizabeth II and in 2004 he was appointed a member of Her Majesty's Most Honourable Privy Council.

Justice Saunders - "Rise to Presidency"

The Honourable Mr. Justice Adrian D. Saunders, legal luminary, CJEI Director, Fellow (1998) and Instructor, and St. Vincent and the Grenadines citizen, became President of the Caribbean Court of Justice on July 4, 2018.



Born in January of 1954, Mr. Justice Saunders was the youngest of five children born to the late Thomas Saunders and Theo Saunders. He spent his early years with his family in St. Vincent, later moving to Barbados to receive his Bachelor of Laws (Honours) degree from the University of the West Indies (Cave Hill). In 1977, he continued his education by receiving a Legal Education Certificate at the Hugh Wooding Law School in Trinidad & Tobago, and he was called to the bar of St. Vincent and the Grenadines in the same year. He is married to Marilyn Angela, with whom he has two sons, Yuri and Yanek.

Mr. Justice Saunders started out his career in private practice, where he remained until 1996 when he was appointed as a Judge of the Eastern Caribbean Supreme Court (ESCS). At the time of his appointment, he was the Senior Partner at the firm of Saunders & Huggins. In January 1997 he was confirmed as a High Court Judge and first assigned to the territories of Montserrat and Anguilla, then to St. Lucia in 2001. In 2003, he was confirmed as Justice of Appeal of the ESCS, and one year later he was appointed to Chief Justice of the same court in the absence of Sir Dennis Byron who was on leave to the UN. Mr. Justice Saunders was then appointed to Judge of the Caribbean Court of Justice in 2005.

Throughout his time as a Judge, Mr. Justice Saunders has been deeply involved in judicial reform and education in the Eastern Caribbean. To name a few of his contributions, he served as Chairman of the Judicial Education Institute of the ECSC from 2001 to 2004. From 2000 to 2004, he sat as Chairman of the Ethics Committee of the ECSC, presiding over the development of a code of ethics for Judges of the Eastern Caribbean, and he has been Chairman of the Caribbean Association of Judicial Officers (CAJO) since 2009. Mr. Justice Saunders has also co-authored the book, *Fundamentals of Caribbean Constitutional Law*, and he lectures on Constitutional Law at the UWI, St. Augustine Faculty of Law.

In his spare time, Mr. Justice Saunders acted as President of the National Youth Council of St. Vincent and the Grenadines. He also represented his country at table tennis numerous times, and spent many years acting as the Chairman of the St. Vincent Save the Children and as President of the St. Vincent Guild of Graduates.

Mr. Justice Saunders was selected for the presidential role after a competitive merit-based process, and he replaced Sir Dennis Byron, the current president.

News and Notes

KENYA - HIGHLIGHTS FROM THE KENYA JUDICIARY TRAINING INSTITUTE (JTI)

i. Judicial education programmes

August 2017 was an electioneering period for Kenya and this required that the Judiciary be particularly prepared to handle disputes that would arise after the elections. As such, all Judges and Magistrates who were expected to hear petitions and other cases relating to the process were involved in a series of training and sensitization. The training sessions included but were not limited to sensitization on new legislation, comparative jurisprudence especially in emerging areas such as election technology laws and practical sessions on some of the processes involved in the adjudication of such disputes.

Other trainings and retreats covered a wide range of topics and areas of concern including jurisdiction issues and the overlapping jurisdiction between various courts and quasi-judicial tribunals; reproductive health rights; the Sexual Offences Act; the effect of the new family legislation in Kenya on marriage, divorce and succession; balancing between environmental law protection and national development; case management; the tax regime; economic crimes; sensitization on the new Company and Insolvency legislation; principles of sentencing as well as judicial discretion in sentencing following the reversal of the mandatory death sentence by the Supreme Court of Kenya. The trainings generally allow for reflection and introspection, comparative jurisprudence, discussion on challenges and experiences as well as sensitization on new legislation and emerging jurisprudence.

Further to the trainings, the Annual Judges Colloquium took place in August 2017 and the Annual Magistrates and Kadhis Colloquium took place in June 2018. The colloquiums provide a forum for Judges, Magistrates and Kadhis to interact, introspect and engage each other in a range of topics related to their core mandate of dispensing justice.

ii. Ongoing interventions on delay reduction strategies, use of technology, ADR, infrastructure and access to justice

As part of the Sustaining Judiciary Transformation (SJT) Blueprint launched by the Chief Justice for the 2017-2012 period, strategies that are being employed towards case backlog and delay reduction include building of more High Courts and Magistrates courts, use of mobile courts, decentralization of the Court of Appeal to other counties, service weeks and adoption of individual performance evaluation. In Active Case Management (ACM), rules for use in criminal cases have been published and pilot stations have been applying these in readiness for national roll out. Several trainings have been held to sensitize Judges and Magistrates on ACM.

In order to further ensure access to justice, courts have continued to make use of court annexed mediation as an alternative means of settling disputes and in this regard, Judges and Magistrates have been sensitized on ADR mechanisms including mediation which is currently being applied especially in the family and commercial divisions of the High Court. A Mediation Accreditation Committee (MAC) has been established and mediation rules passed. There is currently a taskforce on Alternative Justice Systems (AJS) that is collecting views on the application of AJS to legal disputes, and whose findings and recommendations will inform the enactment of a policy on how to mainstream AJS into the main justice system.

Interventions on use of technology are ongoing, overseen by a committee on digitization whose members were appointed by the Chief Justice. The committee's activities and areas of intervention include coordinating the acquisition of ICT infrastructure, connectivity of internet to all court stations, digitization of court records, e filing of cases, e diaries, electronic payment of court fees, speech to text technology, transcription of court records and use of electronic technology such as skype and video call in court processes.

iii. Landmark judgments

Historic judgment: A Presidential election annulled:

***Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others* [2017] eKLR Election Petition 1 of 2017**

The Supreme Court annulled the August 2017 elections holding that they had not been conducted in a manner that was consistent to articles 10, 38, 81 and 86 of the Constitution of Kenya, 2010 and in a manner that was consistent with sections 39(1C), 44, 44A and 83 of the Elections Act. It was held that there had been illegalities *inter alia*, in the transmission of results, which affected the integrity of the election and thereby impugned the integrity of the entire Presidential election.

Relooking at mandatory sentences:

Francis Karioko Muruatetu & Wilson Thirimbu Mwangi Vs Republic Petition No. 15 of 2015

The Supreme Court declared unconstitutional the mandatory nature of the death sentence as provided for under Section 204 of the Kenyan Penal Code, but held that the death sentence was still lawful. The Court held that section 204 of the Penal Code deprives the Court of the use of judicial discretion in a matter of life and death and deprives the Courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in appropriate cases. Where a court listens to mitigating circumstances but has, nonetheless, to impose a set sentence, the sentence imposed fails to conform to the tenets of fair trial that accrue to accused persons under Articles 25 of the Constitution which is an absolute right.

Promoting the freedom of expression and liberty of citizens:

Coalition for Reform and Democracy (CORD) & another v Republic of Kenya & another Petition 628, 630 of 2014 & 12 of 2015 (Consolidated)

The Court of Appeal upheld a decision by the High Court suspending eight provisions of a proposed security law, the Security Laws (Amendment Act 2014 which had been declared to be unconstitutional in so far they *inter alia* curtailed the right to freedom of expression and the media provided for under articles 33 and 34 of the 2010 Constitution.

Robert Alai v The Hon Attorney General & another Petition 174 of 2016

The High Court held Section 132 of the Penal Code, Cap 63 Laws of Kenya which provides for the offence of undermining the authority of a Public Officer as unconstitutional and contravenes articles 33, 50 (2) (a), (i), (l) and 25 (c) of the Constitution, in so far as it suppresses freedom of expression, shifts burden to an accused, denies an accused the right to remain silent and derogates the right to fair hearing.

INTENSIVE STUDY PROGRAMME FOR JUDICIAL EDUCATORS HALIFAX, OTTAWA AND TORONTO, CANADA

The next Intensive Study Programme for Judicial Educators (two weeks or three weeks) will be held June 2 - 21, 2019 in Halifax, Ottawa and Toronto, Canada.

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

TRINIDAD AND TOBAGO

The Judicial Education Institute of Trinidad and Tobago (JEITT) has remained true to its core mission and value. It is actively pursuing its goal of engaging with training programs that adhere to international best practices in the field of Judicial Education. The JEITT adopted as its mandate for this term, the humanizing of the law and its implementation. Through the provision of tailored training, Judges and Judicial Officers have been provided with the opportunity to interrogate the complexities of intersectionality, exploring the correlation of various factors that daily impact upon the effecting of justice on our twin isle.

Programmes

ACCESS TO JUSTICE – A FELT SENSE

On Thursday 19th April 2018 at the Jerningham Community Centre in Cunupia, the JEITT hosted its first Community Outreach Program titled “**Access to Justice–A Felt Sense**”. Designed with a ‘town hall’ feel in mind, the programme commenced at 5:50 p.m. and ended at 8:30 p.m.

The panel included three Supreme Court Judges: The Hon. Mr. Justice Peter Jamadar, J.A. The Hon. Mr. Justice Malcolm Holdip, and The Hon Mme. Justice Kathy-Ann Waterman-Latchoo. Their presentations focused on the imaging of Judicial Officers and the experiences of the litigant combined with the tenets of Procedural Fairness. As a critical voice to the discussion, Court Executive Administrator, Master Christie-Anne Morris-Alleyne was the integral fourth member of the panel, ensuring that the systems and process of the courts were thoroughly explained. Her presentation ensured that all the elements and features of the court system were identified and discussed, to the delight of attendees.

Over the course of the evening, the number of attendees grew, and the JEITT was pleased to welcome members of the Cunupia community as well as members of the wider Judiciary. The event aimed to provide an open forum in which perceptions of the judicial system could be explored, with opportunities created for dialogue and the co-creation of knowledge. Panelists’ presentations lasted approximately two and a half hours, after which the floor was opened to the attendees for the Question and Answer segment. Audience members were eager to participate; questions and comments were plentiful, well-researched, and spirited.

As the country’s Judicial Education Institute, this event provided a meaningful opportunity for opening doorways and engaging dialogue with members of the community. The JEITT was especially grateful for the support of Community Councillor Mr. Andy Smith whose active involvement in the planning process contributed significantly to a successful event.

The JEITT is thrilled to have conceptualized and executed such an initiative. As we continue into other communities, we build upon this success to provide an even more impactful and resonant event.

PRISONS VISITS

On Friday 27th April 2018, a Judiciary group including eleven judicial officers (three judges, two masters, and six magistrates) visited the Maximum Security Prison (MSP) at Arouca.

The day began at the JEITT’s Training Centre where the Deputy Commissioner of Prisons, Operations – Mr. Dennis Pulchan, Prison Officer II – Mr. Gill, Prisons Communications Specialist – Ms. Marisa Alexander, and a legal representative met the group. Mr. Pulchan gave a brief insight into the MSP, as well as some housekeeping announcements concerning the dos and don’ts at the prison, to all persons visiting the MSP (judicial officers, judiciary security officers, protocol officers, drivers and JEITT staff). The police then escorted the convoy to the MSP.

Upon arrival, Mr. Pulchan introduced the Judiciary group to his team, including some of the heads who would give brief lectures on different areas. The Superintendent of the MSP – Mr. Jackson, took the lead in briefing the group on the visit. The general tour of the facilities included a viewing of the wings (for foreigners and locals) in the respective yards, the solitary unit, infirmary, gymnasium, music room and prison band, and the kitchen, where the Judiciary group tasted freshly baked bread, academic and vocational training facilities and the NALIS library. Judicial officers were allowed to interact with remanded and convicted prisoners. Questions and answers were accommodated throughout the visit.

To end the visit, the Judiciary group was escorted to Golden Grove to meet with the executive – Commissioner of Prisons – Mr. Gerard Wilson, Mr. Pulchan and Deputy Commissioner of Prisons Administration, Mr. Dane Clarke. Mr. Wilson expressed his delight at having the Judiciary visit the MSP and was open to any questions. The visit ended with a shared meal.

CONTINUING EDUCATION SEMINAR, 2018

To ensure the maintenance of a vibrant and effective Judiciary, it is critical that legal knowledge is continually expanded and explored. Continuing legal education training is thereby critical to ensuring that all judicial officers remain informed of current legal trends and advancements in their respective fields. The JEITT thus serves the Judiciary through its delivery of continuing legal education with an emphasis on leadership, edification, and development.

The Continuing Education Seminar (CES) is featured as the most significant of the JEITT's seminars, bringing all judicial officers together to deliberate and collaborate on issues of importance to their community as judicial officers and administrators of justice in Trinidad and Tobago. The CES is an essential element to the strengthening of professional bonds and by extension the threads of the JEITT's fabric. At this year's CES, two major themes were selected to govern each day's proceedings, namely: **Gender-Sensitive Adjudication** (Day 1) and **Interrogating and Improving Judicial Roles and Functions** (Day 2).

Day One: Throughout the Caribbean region, a mandate was given by Chief Justices to UN Women that Judiciaries initiate the development of a robust Gender Protocol that will serve as a guiding principle in the adjudication of judicial matters. In Trinidad and Tobago, this undertaking was executed by a committee of local judicial officers alongside court administrators. The project was actualized in collaboration with the Judicial Reform and Institutional Strengthening (JURIST) Project, UN Women, the Caribbean Association of Judicial Officers (CAJO) and the JEITT. Having finalized the *Gender Equality Protocol for Judicial Officers*, Day 1 of the CES was dedicated to showcasing the processes involved in the Protocol's development, alongside strategies to be used in its implementation throughout the Judiciary of the Republic of Trinidad and Tobago.

Day Two: The second day of the CES was envisioned as one that would facilitate the multiplicity of training needs that judicial officers articulated as necessary for their professional development. This Programme was specially designed in consultation with the Board of the JEITT alongside senior judicial officers. Three streams of training were earmarked, each tailored toward the Civil, Criminal, and Family disciplines. They were all inclusive of breakout sessions, panel discussions, and plenary sessions. Judicial officers were given the opportunity to select a stream in line with their area of need.

Both days of the CES 2018 were geared toward providing **all** judicial officers with the opportunity for knowledge transfer, relationship cohesion, and overall growth and development. The JEITT's vision for *'Transformation through Education'* continues to be realized in this annual event.

Other Training

Additional training and events include Family Court Training, JRC Training, Gender Sensitive Adjudication Training, Criminal Justice Reform Session (JURIST), Magistrate's Half Day Seminar, Registrar's Half-Day Seminar and Clarity in Judgement Writing/Oral Decisions.

Publications

Procedural Fairness describes the kinds of behaviors and systems that inspire trust in, confer legitimacy on, and bestow authority upon court systems, and internal actors within these systems. It prescribes core, non-negotiable values, and standards that are necessary for the legitimate and trustworthy exercise of legal authority within a community and society.

Procedural Fairness, therefore, demands integrity of actions, behaviors, and systems in relation to its constitutive elements; an integrity that must be consistently experienced and perceived by all stakeholders in the court systems, users of the court systems, potential users of the court systems and the general public.

Proceeding Fairly—Report on the Extent to which Elements of Procedural Fairness Exist in the Court Systems of the Judiciary of the Republic of Trinidad and Tobago sets out the methodology and results of the JEITT’s two-year research project. The fundamental insight of this research in the context of the court systems of the Judiciary of the Republic of Trinidad and Tobago is that process, and in particular, a fair process really matters in Trinidad and Tobago. It matters as much as and even more than outcomes only. What is valued, sought and respected is a process that is perceived and experienced throughout to be fair, attentive, open, trustworthy, impartial, empowering and accountable.

This research shows conclusively, that when Users of the Court Systems of the Judiciary of the Republic of Trinidad and Tobago (JRTT) and the general public perceive and experience Procedural Fairness throughout their engagements with the court systems of the JRTT, they confer increased trust and confidence in the systems’ decision-making process, consider it as legitimate, and possessing the moral weight to exercise its legal authority. Hence, they are more likely to comply with court orders, directions and regulations, and possibly lead to reduced recidivism.

Procedural Fairness A Manual—A guide to the Implementation of Procedural Fairness in the Court Systems of the Judiciary of the Republic of Trinidad and Tobago serves as a guide to the implementation of Procedural Fairness—by setting out practical measures that should be continuously undertaken by JRTT personnel i.e. judicial officers and staff, as the internal actors within the JRTT that interact most with Users of the Court Systems of the JRTT.

Both of these publications are available on the JEITT’s E-book Platform at <http://www.tlawcourts.org/jeibooks/>

Governance Structure of CJEI

The governing committee of the Institute consists of the Honourable Mr. Justice Madan B. Lokur, President; the Right Honourable Sir Dennis Byron, Chair; Judge (R) Sandra E. Oxner, Founding President; the Right Honourable Chief Justice Beverley McLachlin, Canada; the Honourable Chief Justice Ivor Archie, Trinidad & Tobago; the Honourable Chief Justice Irene Mambilima, Zambia; the Honourable Justice Sophia Akuffo, Ghana; the Honourable Dr. Badariah Sahamid, Malaysia; the Honourable Justice Abdu Aboki, Nigeria; the Honourable Justice Kashim Zannah, Nigeria; the Honourable Justice Asif Saeed Khan Khosa, Pakistan; the Honourable Justice Yvonne Mokgoro, South Africa; the Honourable Justice Leona Theron, South Africa; the Honourable Justice Adrian D. Saunders, Trinidad & Tobago; the Honourable Judge Gertrude Chawatama, Zambia; Professor Michael Deturbide, Canada; Professor John A. Yogis, QC, Honourary Treasurer and Ms. Sandra J. Hutchings, Secretary.

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

Upcoming events

CJEI Biennial Meeting of Commonwealth Judicial Educators, Port of Spain, Trinidad and Tobago	15 - 18 November 2018
21 st Commonwealth Law Conference, Livingstone, Zambia	8 - 12 April 2019
CJEI Intensive Study Programme for Judicial Educators, Halifax, Ottawa and Toronto, Canada	2 - 21 June 2019

Editor: Professor N.R. Madhava Menon

We are eager to share in the CJEI Report news on judicial education developments, judicial reforms, elevations, honours, or obituaries and other news related to the judiciary such as new innovations to tackle arrears and delays, strategies to improve access to justice, landmark judgments, or recent judicial education initiatives in your country.



Contact us:

Room 306, 6061 University Avenue
Halifax, Nova Scotia, B3H 4H9 Canada
Tel. +1 902 494 1002
Fax: +1 902 494 1031
cjei@dal.ca

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