

C J E I

Report

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CJJI President becomes Permanent Judge of the International Criminal Tribunal in Rwanda

Chief Justice of the OECS Sir Dennis Byron, President of CJJI (Fellow 1997), left St. Lucia on June 7, 2004 to take up an appointment as a Permanent Judge of the International Criminal Tribunal for Rwanda, which operates from Arusha, Tanzania.

In 1990, Sir Dennis was appointed to the Court of Appeal of the Eastern Caribbean Supreme Court. Before that he served as a High Court Judge of the Eastern Caribbean Supreme Court in Antigua, Montserrat, Dominica and St. Lucia from 1982. Sir Dennis was acting Chief Justice of the Supreme Court of Grenada in 1986 and presided over the Maurice Bishop murder trial.

In the past decade, Sir Dennis' career has attracted international recognition. He was a member of a team of prominent jurists selected by the International Bar Association to investigate and report on issues affecting the independence of the judiciary in Zimbabwe.

In March 1999, he was invited by the Commonwealth of Learning to address The Pan Commonwealth Forum on Open Learning held in Brunei on the subject of Distance Learning in Judicial Education. Later the same year, he was appointed Coordinator of the Conference of Commonwealth Chief Justices at the 12th Commonwealth Law Conference held in Malaysia.

His appointment to the International Criminal Tribunal for Rwanda, fulfills a life-long dream of serving in the African continent, Sir Dennis said before leaving the region.



CJJI President Honourable Chief Justice Sir Dennis Byron

The International Criminal Tribunal for Rwanda was appointed by the United Nations to try cases of genocide in the African country. The Tribunal issued its first indictment in November 1995. Since then, it has made steady progress towards the fulfillment of its mandate and has made a notable contribution to the development of international criminal justice.

Those convicted included Jean Kambanda, the Prime Minister of Rwanda during the genocide, who became the first Head of Government to be indicted and convicted of genocide. Fourteen Ministers of the 1994 Interim Government in Rwanda are also in the Tribunal's

custody as well as senior military commanders, high-ranking central and regional government officials, prominent businessmen, church leaders, journalists, intellectuals and other influential figures.

United Nations Secretary General Kofi Annan has expressed the hope that the work of the Tribunal will contribute to the long-term process of national reconciliation in Rwanda.

Last week, members of the Judiciary and staff of the Eastern Caribbean Supreme Court honoured Sir Dennis for the work he had accomplished in reforming the Eastern Caribbean Supreme Court since his appointment as Chief Justice.

Sir Dennis was knighted by the Queen four years ago. Last November he was elected as an Honorary Bencher of the Society of Inner Temple. ■

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News & Notes

Botswana

◆ **Mr. Goemekgabo L. Tobogo-Maruping** (CJEI, 2000) has become Registrar at the Industrial Court of Botswana (Labour Court). As a result he will attend this year's annual ILO meeting in Geneva, Switzerland for 3 weeks starting on 30 May, 2004.

Mr. Tobogo-Maruping is also proud to announce the birth of his new son, Rotlhe, which means "we are all together now." This is his fifth child.

Trinidad & Tobago

◆ The **Honourable Justice Ivor Archie** (CJEI, 2003) has been elevated to the Court of Appeal in Trinidad and Tobago effective April 2004.

Papua New Guinea

◆ In August last year the **Honourable Chief Justice Sir Arnold Amet** retired from the bench after serving nearly 20 years as a Judge of the PNG Supreme & National Courts. As a result, the former **Honourable Deputy Chief Justice Sir Mari Kapi** (CJEI, 1995) was appointed as the new Chief Justice of the Supreme & National Courts. Sir Mari served as Deputy Chief Justice since April 1982. His new ten-year appointment began in August 2003.

India

◆ On June 1, 2004 the **Honourable Justice Ramesh Chandra Lahoti** assumed the office of The Chief Justice of India. Known for his humane approach to cases, he is India's 35th Chief Justice. He succeeded Chief Justice S. Rajendra Babu.

Uganda

◆ The **Honourable Justice David Wangutusi** (CJEI, 1999) has just been appointed to head the newly established Judicial College as Director.

The Uganda Judicial College was established in January 2004 in Kampala. Initially the College will handle the training of Ugandan judicial and non-judicial staff. In the future the College hopes to expand training to other legal Officers in the Ministry of Justice Crown Counsel, Advocates, Prosecutors and eventually train Officers from the Africa region in judicial disciplines.

◆ May 9-13, 2004, the **Honourable Judge Sandra Oxner**, Chairperson of CJEI, attended the Women Judges Conference in Entebbe, Uganda. She presented a paper during a session on judicial integrity. The conference was hosted by the International Association of Women Judges.

◆ Last December the **Honourable Justice Joseph Nyamihana Mulenga** (CJEI, 2002) became the Acting President of the East African Court of Justice in Arusha, Tanzania.

Please send us news for our next edition of "News and Notes"

See contact information on the last page

Malta Judicial Studies Committee Launched

The Judicial Studies Committee (JSC) was officially launched during a ceremony held on the 17th of October, 2003. Besides the members of the Maltese Judiciary, present for the occasion were the Minister of Justice and Home Affairs, and various members of the diplomatic corps. The keynote speaker was H.H. Judge William Rose, the Director of Studies of the Judicial Studies Board of England and Wales.

Since that date, the JSC has held two seminars. The first was held on the February 26-28, 2004 on the theme "Advancing Judicial Approaches to Mediation in Civil and Commercial Matters". The keynote speakers were Mr. M. Appel from the U.S.A., Mr. J. Claus from the Council of Europe, Honourable Judge D. Cooke (U.K.), Honourable Judges M.A. Spliet and H. Steenberghe (The Netherlands) and Honourable Judge A. Zalar (Slovenia). The second seminar was held between the March 8-9, 2004 in collaboration with The Lord Slynn of Hedley European Law Foundation. The theme was "Applying E.U. Law in Malta". The keynote speakers were Lord Slynn of Hedley, Mr. David Vaughan CBE, Q.C. and Mr. David Lloyd Jones Q.C.

As Malta became a member of the European Union on May 1, 2004, the JSC is planning to organize a follow-up seminar on EU Law next October under the auspices of the Lord Slynn Foundation.

CJEI is in frequent correspondence with the Malta Judicial Studies Committee and looks forward to their participation in CJEI.



St. Lucia

◆ Upon the secondment of Chief Justice Sir Dennis Byron to Arusha, the **Honourable Justice Adrian Saunders** (CJEl, 1998) became Acting Chief Justice for OECS.

◆ The Eastern Caribbean Supreme Court (ECSC) has embarked upon a Criminal Division Pilot project in St. Lucia. The project is in response to a criminal justice system that has been for many years beset with unacceptable delays in the hearing of both summary and indictable cases. The goals of the project are to modernize trial court infrastructure, improve access to justice, upgrade the delivery of justice, and strengthen the rule of law. The Criminal Division project is being headed by retired Justice of Appeal Honourable Albert Redhead. The pilot is scheduled to run for a period of two periods after which time it is the intention to replicate it in the other territories that comprise the ECSC.



CALL FOR PAPERS

2005 NACM Annual Conference theme: The Court Management Profession: Issues and Relationships

Papers will be considered for presentation and distribution at the 2005 Annual and publication in the NACM **Court Manager** and **Court Communiqué**. The deadline for papers in draft or final form and workshop proposals is **July 19, 2004**. Papers, workshop proposals and comments can be sent to Geoff Gallas, NACM Consultant, 444 Harvey St., Philadelphia, PA 19144, or preferably by email to gsgallas@aol.com

For more information and a listing of possible topics, visit the **National Association for Court Management**
Website: <http://www.nacmnet.org>

Family Court of Australia Introduces New Rules



by Honourable Justice Neil Buckley (CJEl, 1999), Family Court of Australia, 4th June 2004



On March 29, 2004, the Family Court of Australia introduced new Rules of Court which will significantly improve access to justice in the family law jurisdiction in Australia.

Apart from obvious practical improvements such as the use of easily understood words and the reduction in the number of chapters from 41 to 25 and the number of forms from 84 to 25, the Family Law Rules 2004 set out all of the court's existing practice, procedure and case management principles in a better way and introduce a number of innovative provisions relating to areas such as expert witnesses and disclosure.

The Rules adopt a number of modern drafting techniques such that

- ◆ the audience is told the purpose of rules of court and is given an insight into why the court will manage a case in a certain way—for example the principle of proportionality which requires that cases are conducted in a manner, at a cost and within a time that is appropriate, taking into account the issues involved and the financial means of the parties.
- ◆ parties are better informed of their obligations to the court and of the consequences of non-compliance with orders and rules.
- ◆ the chapters flow sensibly from the start of the case to the end of a case.
- ◆ there is a focus on ensuring that a person using the Rules is fully informed for example there are notes, cross references, explanatory guide, rules setting out factors which the court will consider on an application, and rules setting out matters to be included in affidavits.
- ◆ the forms are specifically designed having regard to research as to what people find easier to understand and complete.
- ◆ the rules and forms are electronically

compatible and pave the way for electronic filing in the future.

Some of the new provisions specifically aimed at improving access to justice include:

- ◆ Pre-action procedures (Rule 1.05 and Schedule 1)

The pre-action procedures provide that before starting a case, parties are required to attempt to resolve their dispute. This is intended to discourage a combative adversarial approach, which can and does increase costs. Parties are encouraged to cooperate, make appropriate disclosure, behave reasonably, and make an early offer of settlement and negotiate sensibly to try to avoid litigation. Even if litigation is subsequently necessary, parties will benefit from following the pre-action procedures because it will have helped to clarify what is actually in dispute.

- ◆ Expert evidence (Part 15.5)

There is a significant change to the rules about expert witnesses aimed at controlling unnecessary cost and delay and eliminating problems of a lack of objectivity of some experts. The provisions will assist the court to ensure that the evidence given is relevant to an issue in dispute, given by a person with expertise in the area and clear and useful to the trial judge in deciding the case.

- ◆ Disclosure (Chapter 13)

The provisions about disclosure are aimed at assisting in the control of costs and delay by eliminating problems of over discovery and ensuring that the disclosure is relevant to an issue in dispute and proportionate to the case.

The Court believes that based on the success of similar initiatives in the United Kingdom the changes in these areas will be of significant benefit to all involved in the family law jurisdiction. ■

Should you wish to contact Justice Buckley for more information, his email address is

justice.buckley@familycourt.gov.au

Message from the Chair



Sandra E. Oxner, O.C.
Chair of CJEI

I am delighted to advise you that Dr. N.R. Madhava Menon, Director of the National Judicial Academy of India, has joined our Advisory Board. As will be seen in his biography in our profile section, Dr. Menon brings out-

standing experience to the Advisory Board and we are honoured to have him with us. We look forward to India assuming a leadership position in Commonwealth judicial education.

This *Report* combines the first two issues of 2004 and includes a report of the December 2003 Second Biennial Meeting of Commonwealth Judicial Educators held at the Sandals Grande Hotel, St. Lucia. I wish to express our gratitude to the Honourable Chief Justice Sir Dennis Byron of OECS, the Honourable Justice Adrian Saunders of the OECS Court of Appeal, the Chair of both the OECS Judicial Education Committee and the Biennial Meeting Program Committee, the OECS judges and the court administrative staff for their warm hospitality and outstanding organization. Special thanks to the dedicated Lilith Dalphinis, the adult educator at the OECS Judicial Education Institute and Alana Simmons, the Executive Officer of the OECS Judicial Education Institute.

I am most grateful to have had the opportunity of visiting India this winter where I had the pleasure of meeting Dr. Menon, the new director of the Indian National Judicial Academy. It was a great honour to be invited to visit the Judicial Academy complex in Bhopal and to attend the first-ever meeting of judicial educators. This meeting

was attended by the judges who chair and the judges who are the executive directors of the state and regional education bodies. The newly finished \$10 million Judicial Academy in Bhopal is extremely impressive, can accommodate 200 and resembles a large Taj Mahal.

There are many state academies in India. The Supreme Court of India ordered their establishment ten years ago, but with the opening of the National Judicial Academy of India in Bhopal, state academies are no longer mandatory. I had the opportunity in Delhi of spending time with the Honourable Justice Jain, Chair of the Delhi Judicial Academy, and Dr. Jain, the Executive Director.

We are grateful to the Honourable Justice Madan B. Lokur, Judge of the High Court of Delhi, for allowing us to reprint his report in the December 2003 *DJA Journal*.

In May I participated in a panel on judicial ethics at the biennial conference of the International Association of Women Judges (IAWJ) held in Entebbe, Kampala. Our patron, the Honourable Chief Justice of Uganda, Benjamin Odoki, hosted the meeting, made a keynote address and participated in the judicial ethics panel.

We had a CJEI Fellows reunion dinner following the conference with Ugandan Fellows, including the Honourable Justice John W.N. Tsekooko (CJEI, 1997), Honourable Justice Joseph Nyamihana Mulenga (CJEI, 2002), Honourable Lady Justice Stella Arach Amoko (CJEI, 1999) and Mr. Lawrence Gidudu (CJEI, 1996). We were delighted to have in our midst the Honourable Justice Fred M.S. Egonda-Ntende (CJEI, 1996), who chanced to be home on a visit from his international judicial post. Our Fellow and Director the Honourable Justice Sophia Akuffo of the Supreme Court of Ghana also joined us, accompanied by her sister, who lives in Kampala.



TOP: On this famous wall the phrase "Constitutional Court" is written in the eleven official languages of South Africa. Each is in a different colour, to represent diversity.

MIDDLE: Inside the Constitutional Court, where all twelve judges sit.

BOTTOM: The Constitutional Court Building
LEFT: The Bhopal National Judicial Academy residence.



In Memoriam

The conversation centered largely on contemporary concerns relating to the independence of the Ugandan judiciary. The Ugandan ombudsman had suggested at the IAWJ conference that the judicial term of office should be limited to ten years. As may be expected, this recommendation was badly received by the judges, who perceived it as a threat to judicial independence.

From Uganda I went to South Africa to visit with retired Constitutional Court judge Johann Kriegler, head of the judicial education body recently established in South Africa. Judge Kriegler, in addition to bringing me up to date on judicial education issues in South Africa, also took me on a never-to-be-forgotten tour of the new Constitutional Court premises. I met with our regional Chief Magistrate Joe Raulinga, (CJEI, 1995) and Chief Magistrate Valerie Gqiba. All three have endorsed a CJEI pan-Commonwealth program on "The Subordinate Court" to be held in South Africa as part of our 10th anniversary celebration.

Before returning home I visited Pakistan to meet with Judge Chaudhry Hasan Nawaz, Director General of the Federal Judicial Academy, to discuss a jointly organized CIDA-funded program on "roll out" judicial education programming. Our new patron, the new Chief Justice of Pakistan, Nazim Hussain Siddiqui, kindly received me and gave great personal support not only to our joint project, but also to forthcoming regional and international CJEI programming.

I must close this note now as this year's participants in the Intensive Study Programme are arriving in Halifax and I must go to meet them. We are very pleased this year to have participants from Barbados, Lesotho, Nigeria, OECS, Philippines, Solomon Islands, Trinidad and Vanuatu. I will give you a full report of this year's Intensive Study Programme in our next issue. Also in the next *Report* we will have special sections on judicial education in India and the planning and opening of the outstanding new South African Constitutional Court building in Constitutional Square in Johannesburg.

—Halifax, June 22, 2004

Justice Dixon Kwame Afreh 1933 to 2004 CJEI Fellow 2003



Honourable Justice Afreh was born on 25th March 1933 in Kumasi, Ashanti Region, Ghana. Because his father was a royal courtier, his naming ceremony was personally performed by the then King of Ashanti, Nana Sir Osei Agyeman-Prempeh II. He was brought up in the palace with the royal children of the King.

He graduated the University of Birmingham, England with honours in 1958 with a Bachelor of Law (LL.B.) degree and received a Master of Laws (LL.M.) from the University of London in 1960. He was called to the bar at Lincoln's Inn, London, in 1960.

In 1962, he was appointed a lecturer at the then newly established Faculty of Law, at the University of Ghana and rose to the rank of Senior Lecturer in 1978. He also taught Press Law at the School of Mass Communication at the University of Ghana.

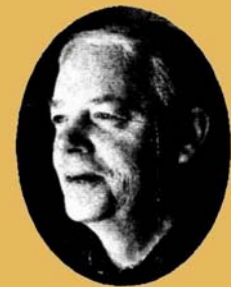
From 1975 to 1978 he was, in addition to his academic functions, a Chief State Attorney at the Office of the Attorney General. From 1978 to 1980 he was the Director of Legal Education of the Ghana School of Law, in addition to functioning as the Commissioner of Information between 1978 and 1979.

In 1993, he was appointed the Deputy Commissioner for Administration and Finance at the Electoral Commission and in 1994, he was elevated to the Bench as a Justice of the Court of Appeal. In 2002, he was appointed a Justice of the Supreme Court of Ghana. Having turned 70

(the compulsory retiring age for Superior Court Justices) in March 2003, he retired from the Bench. However, because of his vast experience as an educator, in September 2003, he was appointed the Director of the Institute of Continuing Judicial Studies, Ghana.

He is survived by his wife Rosalind, five children and numerous grandchildren. He will be much missed by his family, colleagues and large circle of friends.

William Matheson Lewis 1934 to 2003 CJEI Director



William Matheson "Bill" Lewis passed away on December 6, 2003. He resided in Upper Canard, Kings County with his wife Susan. He is also survived by his sons John, Stephen and Paul, his daughter Megan, sister Mora Donald, and three grandchildren.

He was born in Louisbourg, Cape Breton and was the only son of the late William and Catherine Lewis. He received his Bachelor of Commerce, LL.B., and certification as a chartered accountant. After graduating Dalhousie University he practiced as a lawyer, a chartered accountant and judge in the Annapolis Valley before moving to Ottawa, where he was Assistant Legal Counsel for the Export Development Corporation.

Mr. Lewis was a CJEI Director from the time of its founding in 1994 until his passing. He acted as the CJEI lawyer until illness forced his retirement in 2003. All of us at CJEI will miss his support, his innovative thinking and his determination for CJEI to succeed at improving the administration of justice throughout the Commonwealth.

Second Biennial Meeting of Commonwealth Judicial Educators a Time For Reflection and Cross-Fertilization

They came from all places. They came with their own stories, languages and cultural histories. At first glance it may have appeared that there was little that tied this group together. Each came with concerns gathered from personal experience; each carried the hope that inspires reform. Yet these individuals were unified in one vital respect: their commitment to judicial education.

In early December 2003 judicial educators from fourteen countries gathered in St. Lucia to discuss the need for and appropriate type of judicial education in a world where the demands placed on the judiciary is in flux. The theme “Training the Trainers” provided a forum to explore both effective pedagogy and the deeper issues facing the judiciary today.

Although the conference was structured so that voices from a variety of regions could be heard, it became clear over the course of the three-day conference that many of the issues affecting these regions were the same. Therefore speakers from regions as diverse as India, South Africa and the Caribbean discussed both the universal themes that concern all judiciaries, while specifically addressing the needs of their given region.

Identified in all three keynote addresses was the need amongst judicial officers to be more open-minded regarding judicial education. The Honourable Mr. Justice K.G. Balakrishnan of the Supreme Court of India stated in his keynote address that most Superior Court judges in India have little or no judicial training and are not receptive to the idea. Similarly, the Honourable Judge Johann Kriegler of the Constitutional Court of South Africa said in his keynote address that the majority of judicial officers resist change and regard the very notion of judicial education as anathema. Many judicial officers regard this education

as “camouflaged brainwashing, inter-fer[ing] with judicial independence, and,

circumvent[ing] the separation of powers.” Both speakers stressed that these attitudes must change before judicial education can create substantive improvement.

The image that society has of the judiciary must also change. The Honourable Chief Justice Anthony Smellie from Cayman asserted in his keynote address that the

public often perceives judges as biased, condescending and aloof. The public sees the judicial system as one that readily imprisons vulnerable offenders. It matters not so much that this belief is true, but that it is sincerely held by the majority of society. A challenge for judicial education and training, Honourable Justice Smellie argued, must therefore be to dispel the criticism that the judicial system, as part of the social

“...judicial education [in South Africa]...can and must bring to the older generation of white judicial officers a fresh perspective on society and at the same time rapidly enhance the legal knowledge...of a new generation...of previously disadvantaged practitioners”.

-Honourable Judge Johann Kriegler

hierarchy, is bent on preserving the status quo. The conviction that an individual, regardless of social status, has access to justice must be firmly entrenched. During her workshop presentation the Honourable Judge Nancy Flatters of Canada argued that the courthouse should ideally be seen as a place of community support and not as a place of last resort.

Keynote speakers also spoke of the need for judicial education to go beyond the basics and tackle specialized topics. Honourable Mr. Justice Balakrishnan advocated judicial training in developing fields such as biodiversity, biotechnology, information technology and environmental science. Similarly, Chief Justice Smellie identified the need for Caribbean judges to move beyond a generalist’s knowledge and explore areas such as the law and practice of trusts, intellectual property, alternative dispute resolution and anti-money laundering.

The potential for education through cross-cultural sharing was also a common suggestion. Ms. Maria Dakolias, acting Chief Counsel of the Legal and Judicial Reform Practice Group of the World Bank, suggested in her keynote address that one way to strengthen judicial efficiency is greater cooperation amongst judiciaries, networking, sharing knowledge and know-how and developing databases for judicial statistics—some of the very tasks with which CJEI is concerned. Similarly, Honourable Justice Smellie stressed that judicial training must not be theoretical or classroom oriented, but that intra-regional exchanges of judges afford practical observation of procedure. Intra-regional exchanges are also more cost-effective than more expensive attachments to the UK and Canada.

The common concerns identified in the four keynote addresses are vividly illustrated by the experience of the South African judiciary, as described in the Honourable Judge Johann Kriegler’s keynote address. South Africa is in a unique position in that its entire society has embarked on a process of reform and reorganization in the post-apartheid era. Inevitably, the judiciary is in flux along with the society. This judiciary needs not only to heal the scars of disempowerment, racial, gender and material inequality inherited from the former undemocratic social and economic structure of South African society under apartheid, but needs also to redeem itself from a past of isolationism and positivism.

The law in South Africa had fallen into disrepute, Honourable Justice Kriegler argued, because it had previously been used as a ‘tool of oppression’. The judiciary must seek to restore and build public confidence in the administration of justice in general, and in the judiciary in particular, said Honourable Justice Kriegler.

However, the task becomes more difficult because of the existing judiciary’s resistance to education and the need to train previously disadvantaged legal practitioners for judicial roles. The irony is that in order to make the transition to real democracy, judicial education—the very thing that is resisted—is paramount. Therefore the challenge is two-fold: to introduce reform to judicial officers steeped in the mindset of South Africa’s conservative