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# THE CJEI REPORT

December, 2008

## NEW KENYAN JUDICIARY TRAINING INSTITUTE



The Kenyan Judiciary and international experts in the field of judicial education gathered in Mombasa, Kenya (June 16-20, 2008) to discuss the establishment of a Judiciary Training Institute for the Kenyan Judiciary to meet the training needs of the expanded East African region and for Southern Sudan.

The primary objective of the meeting was to develop

a model for a new judicial education institute which can draw on international best practices taking into

account the specialized needs and requirements of the Kenyan judiciary. During the workshop, attendees





revised Kenya's draft Judicial Education Policy, determined national judicial education objectives and

The Institute, which will be the first of its kind in Kenya funded by the

standards, re- World Bank through the Judiciary viewed recent Performance Improvement Project, training needs as- will equip judicial officers to deal sessments and dis- with new and emerging branches of cussed the “next law and new methods of judicial steps” for the de- adjudication. development of relevant curricula and the official launch of the Judicial Training Institute as a full functioning training unit.

The construction of the Institute was completed early in 2008. The Institute houses all the required teaching facilities such as lecture rooms, a conference hall, and a well equipped library, in addition to guesthouses and recreational facilities for the officers attending the training programmes.

### Message from the Chair: Sandra E. Oxner



In the period since our Biennial Meeting in Arusha in November, we have been busy repackaging the programmes presented there into total programme modules available on our website for all Commonwealth jurisdictions to use. These programmes are on the topics: “Judgement Writing”, “Judicial Impact on Human Trafficking Issues”, “Judicial Training related to Legal Issues of HIV/AIDS”; and “Judicial Education in an Electronic Age”. These will shortly be uploaded to our website so that they may be downloaded by those interested.

We are presently engaged in developing new programmes on long trials/sensational trials under the guidance of former Chief Justice Patrick LeSage of Ontario, Canada, and environmental issues.

As the quality of judges is determined by the appointment process, the quality and availability of judicial education and the judicial discipline process, we are presently working on an analysis of Commonwealth judicial discipline processes for the purpose of establishing a set of best international practices in this area. A draft of the latter will be available in time for the Patron Chief Justices’ Meeting to be held in Hong Kong April 5, 2009, the day before the Commonwealth Law Conference.

Our work in improving and augmenting the electronic linkage network bringing together on our website all Commonwealth judicial education materials continues.

I am happy to inform you that the next Biennial Meeting will be the third week of March 2010. The place of the meeting will be announced by the beginning of April and it will be held in an Asian country, our second meeting in Asia. As you know, the 2008 Biennial Meeting was held in Tanzania in East Africa.

May I take this opportunity to wish you and yours a very happy and fruitful New Year.

## Message from the President: The Right Honourable Sir Dennis Byron



The Biennial Meeting of Commonwealth Judicial Educators in Arusha was a resounding success. The initial sessions at the ICTR exposed the judicial educators to aspects of the development of international criminal law and international humanitarian law. The participants engaged in vibrant discussions on aspects of humanitarian law.

The facilities of the tribunal were also used to demonstrate the technique of video conferencing as a tool for distance learning. The conference as a whole reinforced the commitment of Commonwealth judiciaries to improve justice delivery. Special attention was paid to improving efficiency and addressing problems of corruption, environmental issues and issues of the impact of HIV/AIDS on human rights.

In this time of the global economy moving into a recession mode and the recent terror attacks in Asia, the Commonwealth judiciaries have to remain focused on applying the Rule of Law to ensure world peace.

The biennial meetings have demonstrated the common fraternal link of Commonwealth judicial education efforts. This meeting recalled the experiences of the last session in India which demonstrated the functioning of their judicial education institute in Bhopal from which we were able to learn and apply. This session emphasized the linkages between improving the quality of domestic justice and the application of international criminal and humanitarian laws as a tool for peace and national reconciliation. We look forward to our next meeting in Asia where we expect to learn from their dynamic judicial reform programmes.

2009 will be a year of opportunities and challenges. In Commonwealth judiciaries, we need to stand together in the cause of justice and world peace as we build on the importance of the judiciary in peace building and economic restoration.

## CJEI INTENSIVE STUDY PROGRAMME 2008



*CJEI Intensive Study Programme Participants, Halifax, Nova Scotia, Canada — June 2008*

The fifteenth annual Intensive Study Programme for judicial educators (ISP) took place from the 8th to the 28th of June 2008. The programme was attended by 23 participants from 13 Commonwealth countries, and was administered by a faculty of Commonwealth experts including the President of the CJEI, The Right Honourable Sir Dennis Byron.

The first two weeks of the programme were spent in Halifax, Nova Scotia. During this time seminars were held on the topics

of: judicial education and judicial reform; adult education – teaching and learning; judicial independence; sentencing; judicial communication; and judgment writing. The seminars were held in a manner which fostered open discussion and collaborative project work that allowed participants to draw on the specific realities of their home countries so as to make every learning outcome as relevant and applicable as possible. Participants were afforded the choice to attend specialized seminars on the topics

most relevant to them. The topics of the elective seminars included: case flow management; violence against women/gender issues; anti-corruption; portrayal of judicial characteristics of judges through films, computer training; LexisNexis training; and training in alternative dispute resolution.

While in Nova Scotia, the participants were given a tour of the Nova Scotia Youth Centre in Waterville, an institution aimed at accommodating young people in conflict with the law. This field trip



*Participants hard at work*

was highly valued by all participants. The Honourable Justices Francis Belle and Frederick Bruce-Lyle, from St. Kitts and St. Vincent and the Grenadines remarked:

*"Among the highlights, we remember the trip to the Young Offenders Center at Waterville Nova Scotia. The drive to get there was a long one but we all enjoyed the opportunity to see a modern state of the art young offenders facility. At the Center, we were given a talk by one of its directors and told of its successes and challenges. After lunch, we were given a tour of the compound which demonstrated how the young inmates were separated according to their behavior*

*and stage on the route to being released into the community after some effort at rehabilitation. We knew that it would be some time before our own jurisdictions would put such a facility in place but it was good to know that the model of such a facility existed on which one's sights could be focused."*

The final week of the programme was spent in Ottawa and Toronto. While in Ottawa participants visited the National Judicial Institute (NJI), Canada's national judicial education body. The objective of visiting the NJI was to provide participants with insight into the Canadian approach to judicial education. This allowed participants to draw comparisons between the challenges facing judicial education in Canada and those of their own countries.

Participants were also invited to visit the Office of the Commissioner for Federal Judicial Affairs where the acting commissioner, Mr. Marc Giroux, discussed the Canadian judicial appointment process and the importance of judicial independence. While in Ottawa, the programme participants also visited the headquarters for the Canadian Judicial Council and the Supreme Court of Canada.

For the final segment of the programme, the participants trav-



*Classroom discussion*

## CJEI FELLOWS, 2008

*Mr. Ernie E. Wallace (Bahamas)*

*Mr. Md. Badrul Alam Bhuiyan  
(Bangladesh)*

*Mr. A.E.M. Ismail Hossain  
(Bangladesh)*

*The Honourable Madam Justice  
Michelle A. Arana (Belize)*

*The Honourable Justice Vida  
Akoto-Bamfo (Ghana)*

*Her Honour Judge Janapare  
Bartels-Kodwo (Ghana)*

*The Honourable Mr. Justice  
Madan B. Lokur (India)*

*Mr. V.K. Jain (India)*

*Mr. Sunil Thomas (India)*

*The Honourable Judge Nthomeng  
Majara (Lesotho)*

*Mrs. Mathato Pelaelo A. Sekoai  
(Lesotho)*

*Chief Magistrate Molefi Evaristus  
Makara (Lesotho)*

*Her Worship Mrs. Naomi N.  
Shivute (Namibia)*

*Mr. Ahmad Muhammad  
Abubakar (Nigeria)*

*The Honourable Mr. Justice M.  
Javed Buttar (Pakistan)*

*The Honourable Mrs. Justice  
Qaiser Iqbal (Pakistan)*

*Mr. Muhammad Amir Munir  
(Pakistan)*

*The Honourable Justice Freder-  
ick V. Bruce-Lyle (St. Vincent  
and the Grenadines)*

*The Honourable Justice Francis  
H.V. Belle (St. Kitts)*

*Magistrate Fikile S. Nhlabatsi  
(Swaziland)*

*Mrs. Lorraine Hlophe  
(Swaziland)*

*Magistrate Avason Quinlan  
(Trinidad and Tobago)*

*Ms. Alyson M. Myers  
(Trinidad and Tobago)*

eled to Toronto to view some of Canada's most innovative specialized courts: The Drug Treatment Court, Aboriginal People's Court, Mental Health Court, Domestic Violence Court, and Children's Court. During these visits, the participants deliberated on the advantages and disadvantages of having a specialized court approach to justice delivery. The Honourable

marked that the courts were "novel and innovative" and although they felt that the debates over the actual usefulness of the courts were "intriguing", in the end they still felt that specialized courts should be "emulated where possible in other Commonwealth countries".

Overall, the CJEI ISP 2008, was received favorably by all those

who participated. Participants left the programme armed with new tools and skills for judicial training, and a wealth of knowledge on the mechanics of establishing new or building upon existing judicial education entities.



*Lieutenant Governor of Nova Scotia, The Honourable Mayann E. Francis (left of middle), accompanied by CJEI ISP 2008 participants at the Province House, Halifax*



*Closing dinner at Halifax Club*



*ISP 2008 attendees outside Judge Sandra Oxner's home at Halifax*

## Professor Gordon I. Zimmerman— The “Fog Index”

### A tool for determining the comprehensibility of your written word.

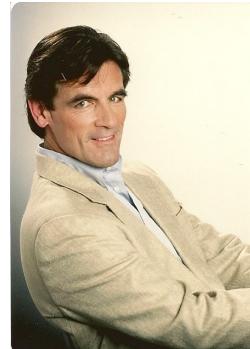
The following is a “readability formula,” a way to assess the complexity of written messages. Can people understand what you’ve written in memos, letters, e-mails, reports? How much time must they spend re-reading what you want them to understand and remember?

The procedure below, called the “Fog Index” by its creator, Robert Gunning, can be easily applied to your writing – and to written information typically used in your organization.

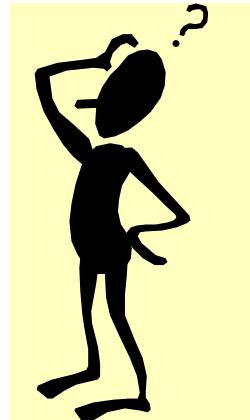
1. Find the average number of **words per sentence**. Use a sample of at least 100 words. Divide the total number of words by the number of sentences. This gives you the average sentence length.
2. Count the number of words of **3 or more syllables**. Do no count:
  - Words that are capitalized
  - Combinations of short easy words such as “bookkeeper,” or
  - Verbs that make 3 syllables by adding “es” or “ed” – such as “created” or “trespasses.”
3. Add the two factors above – **average number of words per sentence** and **number of 3+ syllable words**. Then multiply this sum by **0.4** This is the “fog index”

#### EXAMPLE:

Average sentence length	15 words
No. of 3+ syllable words	24
	39
X .4	
Fog Index	15.6



Gordon Zimmerman  
Professor, Business & Professional Communication, University of Nevada (CJEI ISP Faculty Member).



To avoid confusion cut back on unnecessary wordiness in judgment writing



### Fog Index Key

**Index of 8-12:** Your writing will be read and understood easily – 8<sup>th</sup> grade through high school reading level

**Index of 16:** Comprehension more difficult for most readers

**Index of 20:** Only experienced “insiders” will comprehend, perhaps with careful re-reading

**Index of 25:** “The Fog is rolling in....”

## Employing Results-Based Evaluation in Judicial Education Programmes

*By: Lekshmi Vijayabalan, B.Sc., LL.B, LL.M  
Director for Asian Research and Training, CJEI  
(The opinions expressed in this article are those of the author and not necessarily that of the CJEI)*

With the advent of globalization, there are growing pressures on governments and organizations all over to be more responsive to the demands for good governance, accountability, transparency, and delivery. Governments, parliaments, citizens, private sector, civil society and donors—all are interested in ‘better performance’. Is it time to add the judiciary to this list in the context of increasing amounts of public money and judicial time being invested in judicial education programmes? As demand for greater accountability and tangible results have increased, this note presents a case for the introduction of enhanced results-based evaluation of Judicial Education (JE) policies, programmes, and projects.

### Results-Based Evaluation: The Concept<sup>1</sup>

‘Evaluation’ is an age-old management tool employed by public and private entities to assess the quality of their performance. The traditional evaluation techniques focused more on “did they do it?” or, in other words, “could they deliver the intended outputs?” This “implementation approach” focuses on monitoring and assessing how well a project, programme, or policy is being executed. Often it links the implementation to a particular unit of responsibility. The enquiry however ends there with no concern on its ‘impact’.

Of late, the reasons underlying the process of evaluation is undergoing change. It is now driven by the desire to meet demands of accountability and transparency in order to win public support and credibility. Institutions need to prove to various stakeholders that their activities are more than just learning lessons; rather they are producing *actual intended results*. This new development agenda which emphasizes the need to measure results is what is known as the “results-based evaluation” (RBE).

RBE is a continuous process of collecting and analyzing information to compare how well a project, programme, or policy is being implemented against expected results. This tool to measure performance and track progress is designed to address the “so what” question. So what if outputs have been generated? So what if activities have taken place? So what if outputs from activities have been counted? Thus, the enquiry is taken a step further. In other words, it seeks to examine *outcomes* and *impacts* and not just the *output*. RBE helps to answer the following questions:

- What are the goals of the organization?
- Are they being achieved?
- How can achievement be proven?
- Are development initiatives making a difference and are they having an impact?
- How will institutions know whether they have made progress and have achieved their goals?
- How will they be able to identify success from failure, or progress from setbacks?
- How can obstacles and barriers be identified?
- And at the most elementary level, do the institutions know their starting points and baselines in relation to how far they must go to reach their goals?

### *How can Results be Measured?*

The following are some broad indicators:

- There has to be baseline data that describes the problem or situation before the intervention
- There should be indicators for outcomes
- Data collection on outputs and how and whether they contribute towards achieving outcomes
- Focusing on perceptions of change among stakeholders
- Systemic reporting with more qualitative and quantitative information on the progress toward outcomes
- Collaborate with strategic partners
- Capture information on success or failure of strategy in achieving desired outcomes

### Application in Judicial Education

The main goal of JE in any jurisdiction is to enhance the ‘quality of justice’ to ensure Rule of Law. To this extent, it aims to build the capacity of the judiciary it serves. Thus, it is more than important that the quality of JE that is being imparted be **effective and best**. Unfortunately, the present situation is that JE is yet to gain a firm grounding in many jurisdictions due to the inherent inability of many judiciaries to accept any kind of learning other than their self-acquired knowledge. In places where JE programmes have made inroads, one has to objectively assess the effectiveness or the appropriateness of their education programmes.

Evaluation as a tool for better performance is being ap-

<sup>1</sup> For a detailed analysis of the theoretical basis see generally Jody Zall Kusek & Ray C. Rist, “Ten Steps to a Results-Based Monitoring and Evaluation System” (2004, World Bank). See also J. Clifford Wallace, *Globalization of Judicial Education* 28 Yale J. Int'l L. 355 (2003).

plied in all JE programmes. But the issue here is what purpose does it finally serve? The evaluation process as it happens now in most Judicial Education Institutions (JEI) is conducted as per the understanding of the judicial educator and usually has no scientific basis being based more on 'yes/no' responses or on 1 to 10 scale ratings. Moreover, the focus of the evaluation is more on the implementation aspects of the programme and is not so much on the results or the final goal of ensuring 'quality and responsive justice' which is the ultimate objective of a judiciary. It is in this light that the appropriateness of introducing a results-based evaluation process in JE programmes should be looked into.

### **Why is it useful?**

- As understood, this model allows a continuous flow of information feedback into the system. Thus, it serves to build a knowledge capital enabling the JEIs to develop a database on the type of projects, programmes, and policies that are successful, and, more generally, what works, what does not, and why. Access to information is an essential component of a successful reformation strategy. If we are serious about reducing delays, and reforming the judiciary, then we must liberate access to information and improve its quality. This in turn can be a source for JEIs to develop appropriate programmes to make JE effective. Thereby, JE programmes can travel from generality to specificity.
- RBE is a continuing process and thus does not run the risk of stagnancy rendering it ineffective. It is a challenge more to the trainer as it evolves over a period of time depending on the needs of the judicial officer and the society in which he/she serves. The triumph of a JE programme depends ultimately on how well the judge/trainee could put into practice the lessons learnt thereby enabling the officer to achieve greater satisfaction in his/her work.
- As of now there are not many bridges between JE programmes and justice dispensation. Most times they run parallel and in different directions without enriching each other. With such innovative models, the two can integrate to make it more productive.
- JE will be more contextual thereby facilitating JEIs to cater better to the capacity building of the judiciary.
- The present evaluation tools lack scientific basis and are shallow in terms of results. However, RBE probes into the root causes of problems in order to address and remedy them.

The following **performance indicators** can be included in such an evaluation model for JE:

- Feedback from the litigants, the court staff, peers, lawyers, and all other stakeholders in justice delivery with regard to the performance of the trained judicial officer.

- The case load, backlog, the quality of judgments, the outcome of the judgement when it is appealed, the level of preparedness of the judge to hear the matter, or the time frame within which a matter is concluded, Annual Confidential Reports of a judge, follow up of the trainee with the JEI narrating obstacles which the officer faced and the remedies evolved, the level of comfort which the judge enjoys in relation to his/her daily work, the stress level, self satisfaction in relation to the work, etc.,
- The best practices from the follow-up with the JEI can be documented as valuable data and published as Bench books or manuals for the judiciary. These could be excellent teaching tools/performance aids for the next batch of judges.

As a prelude to the introduction of this tool in JE programmes, it is necessary that the judiciary do certain spade-work:

- The judiciary will have to set for itself a vision as to their goals of justice, which has to be brought to the notice of the public. The JEI can use this goal as a reference point to evaluate the impact or the performance of the trainee officers.
- The JEI is to have a complete understanding of the gap between the goals and the actual performance of the judges. This information regarding the actual performance will have to be made available by the judiciary to the concerned JEI for developing their programmes.
- The JEI is to maintain a communication channel with the trained judge even after the completion of the course. It has to continually assist/track the judicial officer with new strategies to work out his/her judicial task and then monitor the judicial officer over a period of time to assess the progress and then certify the trainee as having the necessary skills sought to be imparted by the training. This facilitates continuous linkage between the programme results and the field results. Constant follow up is the critical parameter. Needless to say that reporting back to the JEI by the trainee is also equally important.
- The existing certification process gives the trainee officers the stamp that they are trained. It is proposed that the certification needs to be implemented over a period of time.
- Even faculty selection is important, as we need to look for people who have experience and insights into the judicial process. Herein, the judiciary will have to ensure that competent and qualified personnel head JEIs.
- The JEI should invest its human and material resources on three areas – design, delivery and follow up to achieve good results.

*(Continued on page 16)*

## GETTING STARTED WITH COURT CONNECTED MEDIATION

*By: Justice Francis Belle, Eastern Caribbean Supreme Court  
(CJEI Fellow, 2008)*

The Eastern Caribbean Supreme Court has successfully implemented a court connected mediation programme throughout the sub-region. From Grenada to the British Virgin Islands persons who file law suits in the High Court can have their matters settled through the mediation process. Court Connected Mediation in the High Court was introduced to the process with the advent of CPR 2000. Indeed, Part 25 of the CPR 2000 states that it is the Court's duty to encourage parties to use any appropriate form of dispute resolution, including, in particular, mediation. Hence matters are referred to mediation by the court with the full sanction of the rules. Subsequently, Practice Direction No.1 of 2003 set clear guidelines for the practice of Court Connected Mediation in the Eastern Caribbean Supreme Court. The practice of mediation is therefore today an integral part of the judicial system and accounts for a significant number of pre-trial settlements in the Eastern Caribbean.

But the Eastern Caribbean is not unique. All over the world, court systems have been introducing mediation as one of the methods of resolving disputes. Such systems thrive in the United States, Canada, and the United Kingdom to name a few of the developed western states which have fully embraced mediation. Among Commonwealth countries in the East, India and Pakistan are also utilizing this mode of dispute resolution as part of the judicial system of conflict resolution. Information from these two countries seem to indicate that India is further ahead than Pakistan in this regard. Thus, the fact is that the practice of mediation as an accepted method of resolving disputes in the court system is being embraced globally.

But there are certain countries within the Commonwealth where a mediation programme is yet to be implemented. For these countries it is up to the relevant authorities to determine their own paths. Indeed the fact that so many other countries have adopted this approach must be some encouragement if not a warning to get their acts together. We note that the attraction at this time appears to be reduction of the backlog of cases. This is not a bad reason for moving towards mediation as an alternative to the more formal mode of dispute resolution in the High Court. But it should not be the only reason.

Statistics can be produced from all over the world to prove the effectiveness of mediation in bringing about early set-

tlement to disputes in and out of court systems. India boasts of 69 % success in arriving at settlement in their three- year old mediation project. In the Eastern Caribbean, data suggests that the settlement rate is about 50%. In both Grenada and St. Kitts and Nevis, where I have headed the Court Connected Mediation Committees, the success rate falls a little below 50%. No wonder then that the reduction of the backlog provides the initial attraction to court systems where mediation has not yet been established!

In this regard, the burning question for many jurisdictions is "how do we get rid of this backlog of cases?" "We have to mediate as many as possible out of the system", would be the answer. No doubt this is important. More difficult to measure however is the wider impact of mediation on society. I would advocate that success or failure in the mediation process should be measured not according to settlements reached but according to the evidence of the acceptance of the methods used in the process itself. Techniques used in mediation if learnt by parties in the process can be applied to various situations in which conflicts arise.

The central message of mediation is that sometimes it is wise to call upon a third party to assist you in resolving the dispute you may have at any level whether with a spouse, children, co-workers, neighbors and of course business partners. Mediation is proven to be effective in the social intimate relationships and in business relationships where the relational rules differ. Mediation helps people to see what they have in common and focus on interests, in negotiations, rather than positions. I submit that mediation is good for the society in which it is practiced.

One of the points that advocates of mediation make is that an agreement reached through mediation is more likely to stick. The parties in the mediation craft an agreement which serves their interests. They do not passively wait for a judge to hand down a decision. They own the decision and thus should understand it and know how to live with it better than any litigant who resorts to trial by a judge. A decision by a judge sometimes brings disappointment to both parties. The loser is certainly disappointed but sometimes the winner may be as well because he/she does not obtain everything expected from the lawsuits. This explains appeals by winning parties. The attraction to mediation then should go way beyond reduction of the backlog

of cases on the court's docket.

In today's world, especially in the developing world, there are pressing issues of economic development and food shortages, health care and education that are to be tackled. The Millennium Agenda set by the United Nations focuses on these things. But central to the problems existing in the world today is the issue of how we manage and nurture our relationships. These issues are not to be separated from economic concerns. Health costs could be reduced if there were fewer incidents of domestic violence, murder, rape, wounding, other injury and assault. Contractual relationships are less likely to break down if the parties know how to respect the legal relationship and resolve disputes arising from those relationships. Breakdowns in relationships if not managed properly can and will contribute to mental health problems, stress and trauma. Many are the stress and trauma related diseases which are related to persons witnessing acts of violence in the home or otherwise. Building better relationships is one way of building respect among people and that is sorely needed all over the world.

I would therefore argue that a good case could be put by the authorities in legal affairs and the judiciary in states where mediation is now under consideration that there would be considerable money saved in the long run by implementing mediation and promoting its methodology. So reduction of the backlog has its ripple effect in getting business going and opening doors which were closed by disputes. This builds confidence in the court system. But building better relationships in general pays dividends of its own.

I have mentioned that in the Eastern Caribbean it is the CPR 2000 which institutionalized court connected mediation. But beyond the High Court Rules, the programme focused on community involvement. The law was hitherto an enclave for lawyers. However, mediation requires persons of some level of educational achievement and experience, not necessarily having law degrees to be trained as mediators. In addition, interest groups were called upon to give their support to the effort and send representatives to be members of a management committee of court connected mediation programmes. Here again the citizen who is not legally trained feels that he has a stake and a say in the administration of justice in a manner which never existed before. I believe this too is good for the society because it brings people together to offer guidance and indeed share the responsibility of making this aspect of the

administration of justice work.

In the Eastern Caribbean we utilized the radio and television, we spoke to community groups, the churches, our friends and associates and social clubs about mediation and its benefits and we have not stopped talking about mediation. Nevertheless we feel that more can be done to educate the public.

But we have to accept that the method of getting started with mediation must be a matter for the countries themselves. They will have to face their peculiar challenges and issues. Among these issues the following are relevant:

#### 1. The legislative approach they wish to use to institutionalize mediation

The authorities would have to look at their constitutional structures and their court structures. They would have to decide whether introducing mediation should be an aspect of a change in the wider court rules and the adversarial system, to the extent that cooperation between the parties is encouraged by those rules and mediation is permitted to thrive in a culture of cooperation.

#### 2. Human Resources

At the human resource level, these countries would also have to consider how many mediators they need to train, and whether they should be paid. They will have to select administrators to man the mediation offices. They would also have to decide whether judges should be mediators as is apparently the practice in India. If the latter were permitted, then specific rules would have to be designed around that structure to provide safeguards against the danger of judges prejudging cases by sitting on matters that they have mediated. This also impinges on the constitutional status of the judge and the court system itself.

#### 3. Infrastructure

At the infrastructural level, they would have to provide properly equipped mediation centers in or near to their court buildings.

#### 4. Limits of Mediation

Finally, the authorities would have to determine the limits of mediation. This is an issue that arises if family matters and possibly criminal matters are to be included in the reach of the mediation

***"Mediation has come into the legal system as a concession that the trial process, while having great legitimacy, is not the best way of solving many disputes."***

process. It is thought that family matters require specially trained mediators while, criminal matters create other issues relating to the possible belittling of the injury done to the victim. Nevertheless, mediation should not be automatically ruled out in this quarter of the judicial system.

Mediation has come into the legal system as a concession that the trial process, while having great legitimacy, is not the best way of solving many disputes. Each culture needs to respond to its own peculiar patterns and practices, norms and values. The legitimacy of the adversarial system may instigate the fear of change to a system of greater cooperation. We also recognize that there are societies in which the prior-

ity is simply the achievement of basic human rights and democracy. While the path to these fundamental rights may be negotiable there can be no compromise on the attainment and acceptance of those priorities.

Mediation is not a panacea, but its practice and philosophical underpinnings can strengthen democratic institutions and enhance peaceful relations in communities throughout the world. Indeed by removing matters from the trial list, mediation creates more time for the serious cases that require full judicial attention. All things considered, mediation is highly recommended for all court systems.



### The CJEI Gateway wins plaudits . . .

*"The benefits of the Project are enormous. In Malawi, we are still developing technologically, such that our judicial education materials are mostly in the form of hard copies. If we can have a website fully loaded with judicial education materials, this will enable most of the judicial officers, who have access to the Internet, to have access to these materials. This easy access will benefit mostly those who never had a chance to attend the training/workshop where the materials were disseminated. The materials will also help those who are doing further studies and research. The website will also help Malawi to access the judicial education materials that have been posted on the website of the other Commonwealth jurisdictions. This will really enrich our knowledge base."*

**Her Worship Kettie Chisi-Nthara**  
Principal Resident Magistrate, Malawi

*"I believe this web site would be of immense help to widen the horizons of our judges, since we don't get much exposure to international arena. I hope in the future too, you would give preference to Sri Lanka when this kind of projects is launched, as it is sometimes not affordable for our institutions to introduce novel concepts to the judicial system of our country. Thus, only through projects of this nature we would be able to have an insight into the outer world. I thank the CJEI on behalf of all the members of the judiciary of Sri Lanka, for their great efforts to take our judges to the international arena."*

**Rangajeeva Wimalasena**  
Additional District Judge/Magistrate  
Homagama, Sri Lanka

*"The Project has really assisted me in the discharge of my training functions more so because it is going to go a long way towards making distance judicial education a reality."*

**Gugu-Sello Mokhoro**  
Resident Magistrate, Judicial Training, Lesotho

# NEWS & NOTES



## PHILIPPINES

### Court-Annexed Mediation

Recently, court-mediation in the Philippines has been institutionalized via the establishment of the Philippine Mediation Center. Court-annexed mediation and judicial dispute resolution are now part of the judicial proceedings

*Mme. Eulogia M. Cueva (CJEI Fellow, 2001)*



## TRINIDAD AND TOBAGO

### Industrial Court Updates

#### ADR

Under the auspices of the ILO Sub-Region, a Training Workshop in Conciliation/Mediation was conducted by Mr. Samuel J. Goolsarran in Georgetown, Guyana (April 24 - 30, 2008). It was attended by some thirty participants from Guyana, Belize, Aruba, Curacao, Surinam and the English-speaking territories of the Caribbean – all with working experience of ADR in industrial relations.

#### Technology in the Justice Delivery System

The Industrial Court is fully networked in a WAN (wide area network) which links the offices at the two locations in the Port of Spain and San Fernando and provides infrastructure that facilitates sharing of resources.

#### Technologies which have recently been introduced or are currently being implemented in the court include:

The **MINISIS** database of summaries of judgments which is in the final stages of development and when completely installed will allow viewing access to users other than library staff, across the network with use of a web browser. Old hardcopy judgments are currently being digitized for inclusion into this database.

**JEMS** (Judicial Enforcement Management Software) has been introduced and is being used by the registry staff in the first phase. Data is currently being keyed into the database at both offices. JEMS will improve the efficiency of case tracking, information and file

management/retrieval, and report and statistical production.

**STENOCAST** is a technology being used in the court which allows the Judge to receive a real-time view on his/her computer of the notes being taken by the court reporter, and is able to personalise the notes with comments which are then saved to his/her computer.

**FTR** (for the record) another innovation in court technology, is a software driven high-quality digital recording of court proceedings. It allows instant audio playback in court of selected contributions by participants in court. It is an added advantage for reporters when preparing transcripts.

*H.H. E.J. Donaldson-Honeywell (CJEI Fellow, 2006)*



## CAMEROON

### Training of Judicial and Paralegal Officers on the OHADA Business Laws

The Ministry of Justice has within the last year initiated and embarked on a series of nation wide training seminars aimed at popularizing the OHADA Business laws and building the capacities of judicial and paralegal officers for effective application of this regional instrument within the national territory. The '*Organisation pour l'Harmonisation du Droit des Affaires en Afrique*' (Organization for the Harmonisation of Business law in Africa) –OHADA Treaty of 1993 has thus far led to the adoption of 8 Uniform Acts relating to various aspects of business law. Its member states have civil law legal systems except for Cameroon with an applicable common law system. Building the capacities of key actors in the judicial and legal systems is crucial to attain the objectives of this regional approach to economic growth.

Within this recent response from the Ministry supported by the African Development Bank, trainings have taken place during the April-June 2008 quarter in four provincial headquarters: Yaounde, Douala, Garoua and Bamenda. Participants were drawn from among judicial and legal officers, court registrars, pri-

vate practitioners, sheriff-bailiffs and public notaries. Training programmes have focused on the eight Uniform Acts adopted by the member states which include: general commercial law, company law, accounting, arbitration, securities, simplified procedure for recovery and enforcement, carriage of goods by road and proceedings for clearing debts.

The attention focused on the uniform and harmonized system of business laws in Africa demonstrates the critical role the judiciary can play in guaranteeing security for domestic and international investments, thus rendering the judicial system an indispensable vector for economic development in Africa.

*The Honourable Justice Prudence Tangham Galega  
(CJEI Fellow, 2005)*



### MALAWI Court Specialization and Improvement of Access to Justice

In order to improve the delivery of justice the Judicial Service of Malawi has established specialized Juvenile and Commercial Courts in December, 2007.

Since the beginning of January 2008, mandatory mediation has taken ground and a reduction of approximately 20% on court cases is estimated.

Developments are underway to have all courts connected on line. This is to keep track of cases and ensure that there is proper management of cases. The European Union is also in the process of refurbishing approximately twenty-five courts - work has started and is expected to be completed by the end of 2009. One new Magistrates' Court in Blantyre (the commercial city of Malawi) is nearing completion and will improve the outlook of Malawian courts.



Madonna with adopted  
son David Banda

### MALAWI—HIGH PROFILE MADONNA ADOPTION CASE

The adoption of Malawian child David Banda by celebrity couple Madonna and Guy Ritchie made international headlines over the two past years. The “Madonna adoption case”, was finally ruled upon on May 28th, 2008, at the High Court of Lilongwe, by Justice Andrew Nyirenda. In the delivery of his ruling, Justice Nyirenda stated:

*“In conclusion and for all that I have discussed, I am left in no doubt that there is sufficient legal basis and reason, and I am also left in no doubt that the best interest of the infant would thus be achieved by granting this petition. Consequently, I make a final order of adoption of the infant David Banda in favour of the two spouses, Guy Stuart Ritchie and Madonna Louise Ritchie, jointly pursuant to Section 2(3) of the Adoption of Children Act of the Laws of Malawi.*

Adoption Cause No. 2 of 2006 - in the matter of the Adoption of Children Act (Cap. 26:01)

A committee reviewing the civil procedure rules will be finishing its work soon. The committee has just produced a draft of the new rules. The aim is to cut down on the many procedural requirements not affecting the quality of justice.

*The Honourable Justice Esme J. Chombo  
(CJEI Fellow, 2006)*



### ORGANISATION OF EASTERN CARIBBEAN STATES

#### International Commercial Litigation Training Seminar

The JEI held its first ever seminar on international commercial litigation for all judges and masters of the ECSC from March 27-28, 2008. The seminar was held in the British Virgin Island of Tortola and was funded by the Canadian International Development Agency and the ECSC. The objective of the training was to expose the judges to emerging trends in international commercial litigation and to equip them to function effectively and efficiently in this special field. Commercial litigation is an area of the law which has been developing rapidly throughout the court's jurisdiction and, particularly, in the B.V.I.

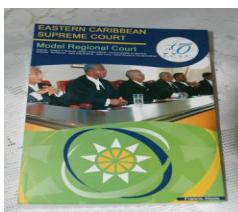
The workshop was facilitated by Justice Ian Kawaley, a Senior Commercial Judge of the Supreme Court of Bermuda; Justice James Farley retired supervising Judge of the Commercial List in Toronto, Mr. Frank Walwyn, Senior Attorney who specializes in complex commercial litigation and estates litigation in Canada, Mr. Edward Bannister, QC, Senior Attorney specializing in commercial and chancery litigation in London.

Other facilitators included Justice Indra Hariprashad-Charles and Justice Rita Joseph Olivetti ECSC Judges both resident in B.V.I. where they preside over commercial cases on a regular basis.

Participants included the entire Judiciary of the ECSC, and fellow judges from Barbados, Cayman Islands, Jamaica and Trinidad and Tobago.

#### **ECSC 40th Anniversary Publication**

The Eastern Caribbean Supreme Court (ECSC) celebrated forty years of existence on 27 February



2007. As part of the commemoration of this milestone, the ECSC launched its publication "Eastern Caribbean Supreme Court-Model Regional Court" on 9 February, 2008. The book which is the brain child of former Acting Chief Justice, Sir Brian Alleyne, SC, KCN documents the Court's growth and development over the past forty years. This is the first ever publication documenting the history of a regional court. The publication was launched in Castries, Saint Lucia, and is written by one of the leading constitutional lawyers in the OECS region, Dr. Francis Alexis. Similar launches of the book took place in Grenada and Sir Brian's homeland, the Commonwealth of Dominica.

"Eastern Caribbean Supreme Court-Model Regional Court" is described as a collector's item for persons in the legal profession, journalists, historians, archivists, information officers, public servants and the general public.

*Mrs. Kimberly Cenac-Phulgence  
(CJEI Fellow, 2007)*



#### **INDIA**

##### **Recent Events and Lok Adalat**

#### **Conference of Chief Justices of the High Courts**

A Conference of Chief Justices of the High Courts was convened by the Honourable Chief Justices of India in the Supreme Court of India on April 17 and 18, 2008, to devise ways and means to expedite disposal of cases and streamline and improve the Justice Delivery System. The decisions taken at the Conference included: (a) to take immediate steps to fill-up vacancies of Judicial Officers; (b) to set-up at least one Family Court in each district; (c) to set-up additional Courts of Special Judges for trial of corruption cases; (d) to set-up additional Courts of Sub-

ordinate Judges; (e) to set-up evening/morning courts to deal with petty offences; (f) to strengthen the training of Judicial Officers; (g) to consider extending working hours of the High Courts or increasing the working days; and (h) to take all possible steps to reduce arrears and ensure speedy trial.

#### **Conference of Chief Ministers of States and Chief Justices of the High Courts**

A Joint Conference of Chief Ministers of States and Chief Justices of the High Courts was inaugurated by the Honourable Prime Minister on 19 April 2008. The Joint Conference decided that: (a) states will provide adequate funds for augmenting the infrastructure of Subordinate Courts; (b) adequate funds will be given for modernization and computerization of Courts and enhancing I.T. tools including video conferencing, internet usage, e-mail based communication, electronic dissemination of information and use of digital signatures; (c) at least one mediation centre will be set-up in each district with necessary infrastructure and funding; and (d) State Legal Services Authorities will be strengthened and more mediation camps will be organized.

#### **Workshop on the Reporting of Court Proceeding**

A two day Workshop on Reporting of Court Proceedings was organized for Legal Correspondents/Journalists in New Delhi on March 29-30, 2008. The participants included Judges of the Supreme Court, Senior Lawyers, Senior Editors and Journalists. Inaugurating the workshop, Honourable Mr. Justice K.G. Balakrishnan, Chief Justice of India, highlighted the pivotal roles played by both the Media and the Judiciary in bringing administration of justice closer to the citizens and in ensuring maintenance of rule of law. The inaugural session was followed by six technical sessions on various topics. This was followed by Regional Workshops held at Kochi on 21 June 2008 and at Bhubaneshwar on 30 August 2008.

#### **Lok Adalat**

A Lok Adalat (People's Court) was held in Supreme Court of India on 3 May, 2008 for mutual settlement of cases pending in Supreme Court. The Honourable Chief Justice of India and senior Judges of Supreme Court participated in the Lok Adalat and more than 50% of the matters referred to Lok Adalat were amicably settled. The next Lok Adalat is scheduled to be held on 6 September, 2008.

*Mr. V.K. Jain (CJEI Fellow, 2008)*



## PAKISTAN Judicial Good Governance Programme

The Access to Justice Program (AJP) of the Government of Pakistan is a US\$350 million program for judicial reforms. Under this program, the Federal Judicial Academy has to organize a number of training programs, workshops, seminars and conferences. A Two-Day Workshop on the topic of "Judicial Good Governance" was held June 26-27, 2008, by the FJA under the auspices of AJP. The participants were fifteen district and sessions judges from all across Pakistan. The workshop was divided into six sessions. The topics selected for the workshop were: Judicial Good Governance in the context of AJP; Self Management; Judicial Administration in Islam; Role and Responsibility of Institutions in Post Colonial Democratic Reform with Focus on Police, Judiciary, Executive and Enforcement from the Perspective of Judiciary; Judicial Accountability in Islam; Judicial Ethics and Court Management. The resource persons were, inter alia, superior court judges, serving and retired, human resource specialist from the AJP, Director-General of the FJA, former members of district judiciary. The judicial officers who participated in the course enjoyed the workshop and found it most interesting and useful. They agreed that the concepts of judicial good governance are important for a justice delivery system of high quality. They also agreed that they will impart the learning onto the judicial officers working under their control and jurisdiction.

Honourable Chief Justice of Pakistan Mr. Justice Ab-

dul Hameed Dogar, who is also Chairman of the Board of Governors of the Federal Judicial Academy presided over the concluding ceremony of the workshop. In his speech, he was pleased to observe: "I hope, the experience and the insight gained at this workshop will help them in successful performance of their onerous functions and duties, which they are called upon to perform as the heads of the subordinate courts at the district level. It is widely acknowledged that this type of interaction, experience and knowledge sharing among the functionaries from different jurisdictions widens the horizons of the participants and they go back with a new outlook and approach, which enable them to chalk out new strategies for the efficient discharge of their duties." The Honourable Chief Justice of Pakistan further observed: "The ultimate aim of training, a workshop, or a seminar is to improve the professional skills and expertise of the participants and equip them with the techniques and tools whereby they can manage their courts effectively, enhance the pace of dispatch of judicial business and ensure provision of better services to the litigant public."

Before that, Mr. Moazzam Hayat, director general of the Federal Judicial Academy, highlighted the training module and its expected impact on the justice delivery system, while Mr. Afzal Kahut, program director of the Access to Justice Program, enlightened the participants with the importance of the AJP and its relation to judicial training in Pakistan.

*Mr. Muhammad Amir Munir (CJEI Fellow, 2008)*

## Employing Results-Based Evaluation in Judicial Education Programmes

(Continued from page 8)

### A Few Challenges

With all these advantages, the greatest challenge is how to develop a specific model for evaluating JE without compromising the unique characteristics of judicial independence. There can be many arguments against the application of this principle. Some of them are:

- It can result in *undue stress on the judicial officer*, as h/she will have to cater to work pressures and at the same time rise up to the qualitative output as mandated by the model.
- It can result in the labeling of certain judges as good and certain others as *successful or unsuccessful*.
- The results can vary depending on the level of resources with the JEI. Since it is a continuing process there has to be a dedicated team to monitor the results. The problem herein is that in most countries, JE is not scientifically organized; it is more or less ad hoc in nature. Accordingly, monitoring the implementa-

tion of the model will impose an additional burden on these JEIs.

- There are several judiciaries, which are still resistant to JE. In such a scenario, will they allow close monitoring of their activities? Since it is a participatory process, the success of the programme will depend on cooperation from the judiciary and their willingness to be subject to scrutiny. They can even raise the issue of interference with judicial independence.

### Conclusion

It is imperative that the consumers of justice - the litigants or the public are assured that JE programmes have a measurable impact on justice dispensation and that there is a marked improvement in the quality of justice that is being delivered. Accordingly, it is important that the judiciary consider innovative concepts like REB for JE programmes as a measure which can help them to better serve the public.



## Recent Judicial Reform Initiatives: Bangladesh



**Brief History:** The Judiciary of Bangladesh is rich in tradition. The people of Bangladesh had been struggling to free the Judiciary from the clutches of the executive for over a century. During the British rule, there was a demand for separation of the judiciary from the executive. In 1919, the matter of separation was raised in the House of Commons, but it was not discussed as it was a matter within the jurisdiction of the provincial government. In 1921, a resolution regarding separation was passed in the Bengal Legislative Assembly which was followed by the formation of a committee. The committee reported that there was no practical problem in separation. However, nothing more was done during the British rule.

In 1957, the East Pakistan Provincial Assembly passed the Code of Criminal Procedure (Act no. 36) with a view to separate the Judicial and executive functions of magistrates. In 1958, the Pakistan Law Commission recommended that judicial magistrates be brought under the control of the High Court. However, it was never given effect during the period when Bangladesh was part of Pakistan.

In 1972, after independence of Bangladesh the Constitution of the Peoples Republic of Bangladesh was adopted. Provision was made in Article 22 as part of the Fundamental Principles of State Policy, that the state shall ensure the separation of the Judiciary from the executive organs of the state. Since separation was also the ardent demand of the people, political parties began to use this issue as a tool of earn public sympathy. In every year after 1990, all major political parties made a commitment in their election manifesto to separate the judiciary from the executive. In 1991, a private member's Bill, namely, the Constitution (14<sup>th</sup> Amendment) Bill, was introduced for ensuring the separation of the subordinate judiciary from the executive branch. The Bill was sent to a select committee which has carried out about thirteen meetings to consider the proposal. However, no further steps were taken to pass the Bill.

In 1995 Masder Hossain along with 441 judicial officers who were judges in different civil courts filed a Writ Petition (No. 2424). The court delivered its historic judgment on 7 May, 1997.<sup>1</sup> The government preferred a leave to appeal and the Appellate Division delivered a judgment on 2 December, 1999.<sup>2</sup> The Appellate Division on the judgment directed the government to implement its twelve point directives, including formation of separate Judicial Service Commission and Judicial Service Pay Commission to separate the judiciary from the control of the executive. Thus, it seemed that the long cherished desire of the people of Bangladesh was going to be fulfilled. But the government was very slow in initiating steps.

**Implementation of the judgment in *Masder Hossain case*:** The present caretaker government from the very beginning adopted a positive and firm outlook with a determination to separate the judiciary from the executive based on the constitutional directive principles and Appellate Division's judgment in the *Masder Hossain's case*. Accordingly, four service rules, namely, (a) Bangladesh Judicial Service Commission Rules, 2007, (b) Bangladesh Judicial Service (Pay Commission) Rules, 2007, (c) Bangladesh Judicial Service Commission (Construction of Service, Appointments in the Service and Suspension, Removal & Dismissal from the Service) Rules, 2007, and (d) Bangladesh Judicial Service (Posting, Promotion, Grant of Leave, Control, Discipline and other Conditions of Service) Rules, 2007, have been enacted and changes were brought to the existing Code of Criminal Procedure by Ordinance No. II and No. IV of 2007. This is considered to be a major change paving the way for dispensation of criminal justice at the level of magistracy by the officers belonging to the Bangladesh Judicial Service. The district and sessions judges are not playing increased supervisory role over the magistracy and the magistracy is no longer under the control of the executives.

**The role that the CJEI can play:** Recently, 391 judicial officers out of which 119 are female had been recruited through the Judicial Service Commission and now they are working as judicial magistrates as well as assistant judges in the subordinate judiciary. A needs assessment has been made and on the basis of the results, it is evident that at present there is a need to equip the judges through training both at home and abroad. The Judicial Administration Training Institute (JATI) is giving the judges in-service training, phase by phase. The CJEI can give technical support to the JATI of Bangladesh. In fact, a two member delegation attended the “Fifteenth Annual Intensive Study Programme for Judicial Educators” held in Canada, from June 8-28, 2008, arranged by CJEI. As a member of the said delegation, I firmly believe that this study programme has given us a unique opportunity to have an in-depth understanding on the smooth functioning of judicial training institutes and knowledge on effective methods of training judges. CJEI can also help establish a regional training institute (a regional CJEI) in the subcontinent which could impart training to more judges and help the judiciary fulfill the aspirations of the people of this region.

Mr. Badrul Alam Bhuiyan (CJEL Fellow, 2008)  
Joint District & Sessions Judge, Bangladesh

<sup>1</sup> Reported in 18 BLD 558.

<sup>2</sup> Civil Appeal No. 70/1999.

<sup>3</sup> Reported in 52 DLR 82.



## **When is a Magistrate not a Magistrate?**

*Submitted by Ms. Naomi N. Shivute, Namibia (CJEI Fellow, 2008 )*

This short article relates to the predicament the Magistracy in Namibia finds itself in following a recent judgment of the High Court in the matter of *Jacob Alexander v Minister of Justice et al.*<sup>1</sup> The Magistrates' Courts in Namibia are also known as "Lower Courts". Until the ruling of the Court in the above matter, the Namibian Magistracy had been headed by the Chief Magistrate officially known as "Chief: Lower Courts". The incumbent has been a magistrate for more than two decades. In 2003, Parliament enacted legislation, the Magistrates Act, No 3 of 2003 (the Act), to provide for the establishment of the Magistracy outside the Public Service so as to enhance the independence of the magistrates as judicial officers.

Section 11(1) of the Act provides as follows:

"(1) there is a magistracy consisting of magistrates appointed permanently or temporarily in respect of lower courts under and subject to this Act".

Section 11(7)(a) states:

"(a) Notwithstanding section 13(1), the Commission may appoint temporarily any person who is qualified to be appointed as a magistrate under this Act to act, either generally or in a particular matter, as magistrate of a regional division, district division, district or sub district".

(b) A person appointed under paragraph (a) must be appointed for such period as the Commission may determine at the time of the appointment or for the duration of a particular matter.

(c) Notwithstanding section 18(1) and (2), the Minister, in consultation with the Commission and with the concurrence of the Minister responsible for finance, may determine the remuneration and allowances, and the method of calculation of such remuneration and allowances, payable to a person appointed under paragraph (a) who is not subject to the laws governing the Public Service.

Section 1 of the Act defines the Chief: Lower Courts as meaning "Chief of Lower Courts in the Ministry of Justice".

Section 29 of the Act says:

"(1) All posts created for magistrates on the establishment of the Ministry of Justice and which existed immediately before the date of commencement of section 12 are, as from the said date, deemed to be posts created in terms of that section for magistrates on the permanent establishment of the magistracy.

(2) Any person who immediately before the date of commencement of section 13 held the office of magistrate is, as from the said date deemed to have been duly appointed as a magistrate under that section and the provisions of this Act apply to such person."

Magistrates are appointed on the permanent establishment of the Magistracy by the Minister of Justice on the recommendation of the Magistrates Commission established by section 2 of the Act and presided over by a Judge of the High Court. The other members of the Commission are the Chief: Lower Courts; one magistrate appointed by the Minister of Justice from the list of three magistrates nominated by the Judges and Magistrates Association of Namibia; one staff member of the Ministry of Justice appointed by the Minister; one person designated by the Public Service Commission; one person designated by the Attorney-General, and one teacher of law appointed by the Minister from a list of two law teachers nominated by the Vice-Chancellor of the University of Namibia.

Furthermore, section 27 provides that the Minister may make regulations, on the recommendation of the Commission regarding certain matters in relation to magistrates. Regulation 5 of the Regulations made in terms of that section reads:

"The remuneration payable to a magistrate in terms of section 18 of the Act is set out in schedule 1 opposite his or her grade."

Chief: Lower Courts appears on the schedule 1 to the Regulations.

Following a formal request for his extradition to the United States of America to face alleged criminal charges in that country, Mr Alexander (the applicant) was arrested in Namibia pending extradition proceedings. He was subsequently released on bail. The Minister of Justice authorised a magistrate to preside over the extradition enquiry. The magistrate who was initially designated to preside over the inquiry for some reason excused himself from the proceedings. The Magistrates Commission then appointed the Chief: Lower Courts to take charge of the extradition enquiry.

It transpired during the hearing of the application that the Magistrates Commission had appointed the Chief: Lower Courts as temporary magistrate in terms of section 11(7).

Among the orders the applicant sought from the court was a declaration to the effect that the Chief: Lower Court was not a magistrate but a civil servant in the Ministry of Justice and who could not therefore lawfully conduct the extradition enquiry.

The Court agreed with the applicant on this score and held that the phrase "Chief: Lower Courts" in the definition section of the Act must be given its ordinary, literal and grammatical meaning and that if that canon of construction is adopted, it became clear that the Chief: Lower Courts was a public servant and not a magistrate. Therefore, he could not lawfully conduct the enquiry. The Magistrates Commission was also wrong to have assigned him to preside over the extradition hearing. With that ruling the court left a vacuum in the administration of the Magistracy. Can the Chief: Lower Courts continue to be the administrative head of magistrates when he is a civil servant? Does it mean that even with the passage of the Magistrates Act, the magistracy has not moved out of the control of the executive branch of the state? What happens to judicial decisions taken by the Chief: Lower Courts and other former magistrates who may have been appointed by the Commission as temporary magistrates before the court ruling? These are some of the remaining unanswered questions.

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<sup>1</sup> Available at [www.superiorcourts.org.na/](http://www.superiorcourts.org.na/) (High Court) [Accessed 9/07/2008]

## ***The CJEI 2008 Biennial Meeting at Arusha***

The CJEI 2008 Biennial Meeting was held in Arusha and Lake Manyara, Tanzania from October 29 – November 2, 2008. We were pleased to have in attendance judicial educators from the following countries: Australia, Canada, Lesotho, Mauritius, Nigeria, Organization of Eastern Caribbean States, Pakistan, Rwanda, South Africa, Swaziland, Tanzania, Uganda and Zambia. This Meeting exchanged judicial education human and material resources including teaching tools, exchanged responses to challenges and experiences, planned future common programming and identified areas where special CJEI support may be useful.

The main themes discussed were: judicial skill of judgment writing, perspectives on the judicial discipline process, human trafficking, long and sensational trials, judicial education in an electronic age, planning, establishing and evaluating a national judicial education body, use of literature and popular films in identifying personal judicial impact on the image of justice, legal issues of HIV/AIDS, etc. The participants were introduced to international best practices in judicial education and had an opportunity to network with Commonwealth leaders in this field.

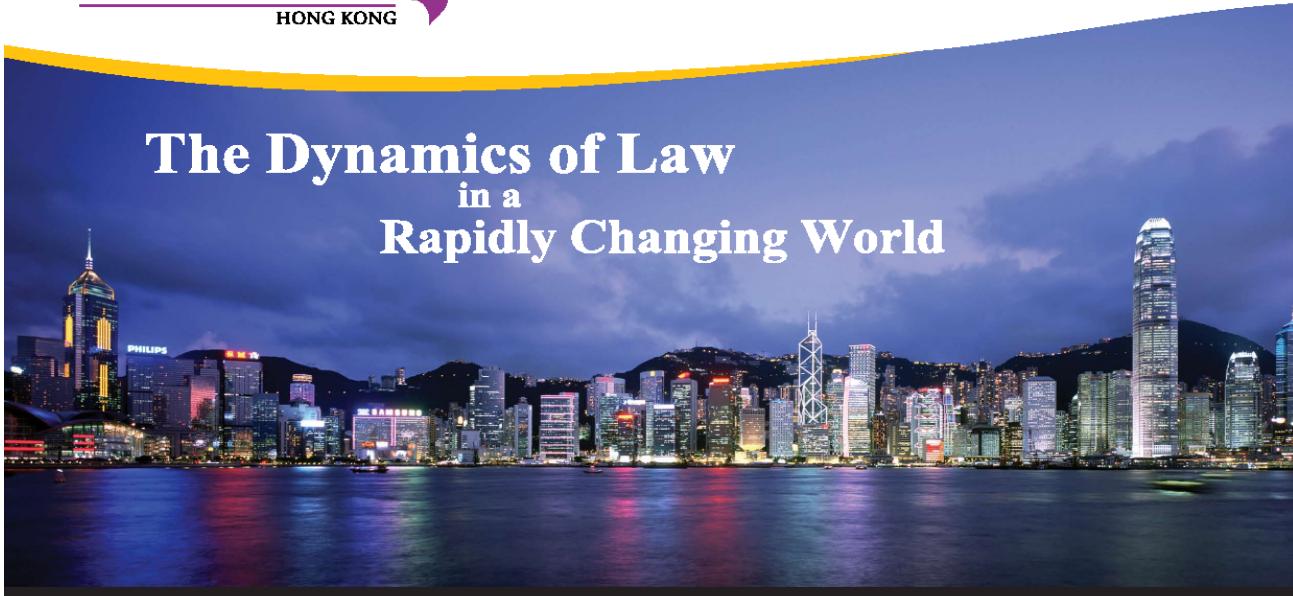
## UPCOMING EVENTS

CONFERENCE/ SEMINAR	DATE/PLACE	INFORMATION/CONTACT
Phoenix Judges Programme: Peer-led Professional Development for Judges	March 2-5, 2009 Canberra	National Judicial College of Australia: 4 day refresher programme will give experienced judges the opportunity to revisit certain key areas of their work. <a href="http://www.njca.com.au">www.njca.com.au</a>
IAWJ Asia-Pacific Regional Meeting	March 4-5, 2009 Manila	International Association of Women Judges: This Meeting to be hosted by the Philippine Women Judges Association has as its main theme "Women Judges Upholding Human and Family Rights". <a href="http://www.iawj.org">http://www.iawj.org</a>
ICT Training for all Magistrates in the Greater Accra Region	March 13, 2009 Ghana	This one day training programme organized by the Judicial Training Institute at Ghana will equip magistrates in efficient court and case management techniques using information and communication technology. <a href="mailto:info@jtighana.org">info@jtighana.org</a>
Protection of Vulnerable Victims and their Standing in Criminal Proceedings	March 17-18, 2009 Prague	This Conference organized by Ministry of Justice of the Czech Republic in cooperation with Academy of European Law will review the current framework and desirable future improvements by practitioners from the EU Members States. <a href="http://www.era.int">http://www.era.int</a>
17th Pre-Judicature Programme	March 23-April 2, 2009 Metro Manila	This Programme organized by the Philippines Judicial Academy offers a 3-in-1 package deal—it will qualify its successful graduates for possible nomination by the Judicial and Bar Council to judicial positions, some units can be earned towards a Master of Laws degree, etc. <a href="http://philia.judiciary.gov.ph/">http://philia.judiciary.gov.ph/</a>
Patron Chief Justices' Meeting	April 4-5, 2009 Hong Kong	The CJEI is organizing its Patron Chief Justices' Meeting to obtain guidance on their programming and development of long range plans. It will also provide an opportunity for the Chief Justices to discuss matters of common interest and concern.
NJI 20th Anniversary Symposium: The Splendid Idea: Judging and Judicial Education in Our Transforming World	April 23-24, 2009 Ottawa	This Symposium by the National Judicial Institute is designed to foster active conversation among participants about issues and opportunities facing judging over the next twenty years. <a href="http://www.nji.ca">http://www.nji.ca</a>
CMJA 15th Triennial Conference	September 26—October 3, 2009 Turks and Caicos Islands, Caribbean	Commonwealth Magistrates' and Judges' Association: This week long conference provides an opportunity to share with other judicial officers from around the Commonwealth, topics of relevance in their daily work. The conference will deal with promotion and protection of judicial independence and the colloquium (in conjunction with the UNICEF) will deal with law and the child including justice to children, child protection and restorative justice for juveniles. <a href="http://www.cmja.org/conferences.htm">http://www.cmja.org/conferences.htm</a>

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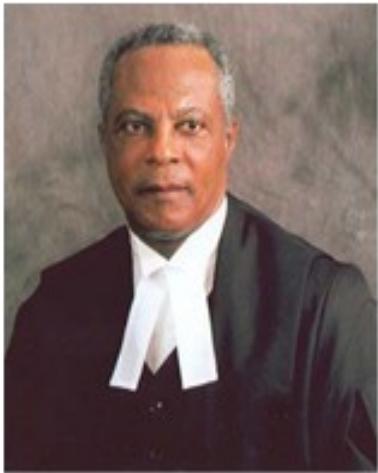


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Fax: (852) 2547 9528  
Email: [info@commonwealthlaw2009.org](mailto:info@commonwealthlaw2009.org)

## APPOINTMENTS



**The Eastern Caribbean Supreme Court (ECSC)** is pleased to announce the appointment of the new **Chief Justice, His Lordship, Mr. Hugh A. Rawlins**. The appointment was made by Letters Patent issued by Her Majesty, the Queen on 30 May 2008 and sent to him by the Lord Chancellor. He is a CJEI Fellow (2004) and a Member of the CJEI Advisory Committee.

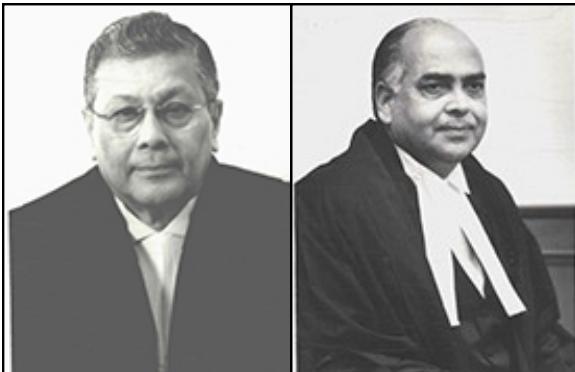
Chief Justice Rawlins assumed the office initially in an acting capacity from 28 April, 2008, having previously held office as a Justice of the Court of Appeal. He joined the ECSC in 2000, at a time when the procedural reforms of the Court were initiated with the passage of the Civil Procedure Rules 2000. He first held the office of Master and thereafter moved up through the judiciary. He was appointed to the office of High Court Judge in January 2002 and served as such in Dominica, Antigua and Barbuda and the British Virgin Islands before his appointment as a Justice of Appeal of the Court in September 2005. During these times he was the Chairman of the Court's Judicial Education Institute as well as the Judicial Ethics Committee.

Having participated in the implementation of the Court's reform programmes over the years, Chief Justice Rawlins has indicated a desire to continue with the restructuring of the Court into the specialized divisions of Commercial, Criminal, Civil, and Family. Since assuming office, the court has seen the passage of the Criminal Delay Reduction Rules. Also, high on the agenda of Chief Justice is the revision of the Civil Procedure Rules 2000; the integration of the Magistracy into the judiciary, and the construction of suitable Halls of Justice facilities for housing the courts throughout the nine Member States which form part of the Eastern Caribbean Supreme Court. After he qualified as a lawyer, Chief Justice Rawlins held the offices of Crown Counsel, Registrar of the High Court and Additional Magistrate and Solicitor General of St. Kitts and Nevis. He was also a Lecturer in Law at the University of the West Indies.

Two Judges were recently appointed to the **Supreme Court of India**, **The Honourable Dr. Justice Mukundakam Sharma** and **The Honourable Mr. Justice Cyriac Joseph**.

The Honourable Dr. Justice Mukundakam Sharma was elevated to the Supreme Court on April 9, 2008. Prior to appointment Dr. Justice Mukundakam Sharma had worked as an advocate, a Panel Counsel for various governments, and lecturer for Guwahati University. His Honour was first appointed to the Guwahati High Court in 1994, from there he was transferred to the Delhi High Court where he took over as its Chief Justice in 2006.

The Honourable Mr. Justice Cyriac Joseph was elevated to the Supreme Court of India on July 7, 2008. His Honour has had an extensive career in the legal field, including positions as an advocate, a High Court Government Pleader, a Liaison Officer, a Senior Government Pleader, and as addi-



Honourable Dr. Justice Mukundakam Sharma (left) and Honourable Mr. Justice Cyriac Joseph (right) Taken from: <http://www.supremecourtindia.nic.in/>

tional Advocate General, State of Kerala. Justice Cyriac Joseph was appointed to the Bench in 1994 as a Judge of the Kerala High Court. Since appointment His Honour has sat as Judge of Kerala High Court, Chief Justice of the High Court of Uttarakhand, and Chief Justice of Karnataka High Court.

The **Honourable Lovemore Green Munlo**, former Deputy Registrar of the International Tribunal for Rwanda,

Registrar of the Special Court of Sierra Leone, and Minister of Justice and Attorney-General of Malawi was appointed **Chief Justice of Malawi** following the retirement of Chief Justice Lenard Unyolo, and the retirement of two Acting Chief Justices—Acting Chief Justice Mtegha and Acting Chief Justice James Kalaile. Chief Justice Green Munlo started his position in official capacity on June 2nd, 2008.



*Honourable Chief Justice Lovemore Green Munlo. Taken from: <http://69.94.11.53/ENGLISH/newsletter/feb06/feb06.pdf>*

**Ms. Justice Rose Constance Owusu, Mr. Justice Jones Victor Mawulom Dotse** (CJEI Fellow, 2006), **Mr. Justice Anin Yeboah** and **Mr. Justice Paul Baffoe-Bonnie** (CJEI Fellow, 2007) were appointed to the **Supreme Court of Ghana**. The swearing in, done by his Excellency the President of Ghana J.A. Kufuor, took place on 11 June 2008.



*Supreme Court of Ghana swearing in ceremony. Taken from: [www.judicial.gov.gh/index.htm](http://www.judicial.gov.gh/index.htm)*

**Mr. Justice Jones Victor Mawulom Dotse** (CJEI Fellow, 2006) was also appointed to the **Supreme Court of Gambia** and sworn in on 4 February 2008. He will combine the two appointments to the Supreme Court of Ghana and the Supreme Court of Gambia for the time being.

## IN MEMORIAM

**Lloyd G. Williams Q.C.** who died on 16 January 2008, was born in Jamaica but was considered a Kittitian as he served as Puisne Judge in St. Kitts for several years and married Kittitian born Cynthia Berridge-Williams. Justice Williams loved the criminal law having served as a prosecutor in Jamaica prior to his elevation to the Eastern Caribbean Supreme Court bench. Justice Williams was unmatched when it came to summing up and explaining the criminal law to a jury. On his retirement from the OECS bench, Justice Williams served on the International War Crimes Tri-



bunal in Rwanda just prior to the tenure at that tribunal of Right Honourable Sir Dennis Byron former Chief Justice of the Eastern Caribbean Supreme Court (and CJEI President). Justice Williams was the father of the famous American actress Tonya Williams who played the role of a female doctor on the soap opera "Young and Restless". The St. Kitts/ Nevis Bar regret the passing of Justice Lloyd G. Williams QC who made great contribution to the criminal law in the Federation and who ensured there was never any backlog of criminal cases. In fact, during his tenure in St. Kitts/Nevis there was never any traversing of criminal cases from one assize to the next assize.

*- By Mrs. Josephine Peta Mallalieu-Webbe, CJEI Fellow, 2006*

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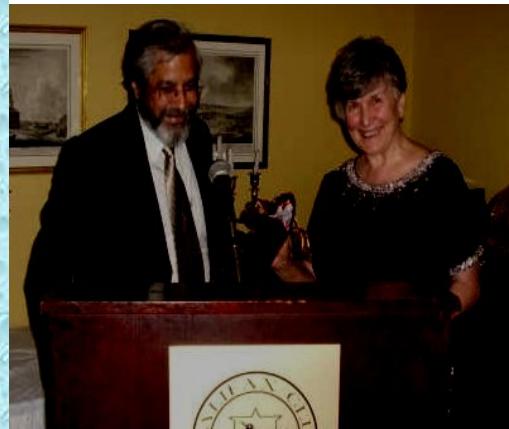
Room 306, Dalhousie Law School  
6061 University Avenue  
Halifax, Nova Scotia  
Canada, B3H 4H9  
Tel: +1 902 494 1002  
Fax: +1 902 494 1031  
Email: cjei@dal.ca

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## THE CJEI REPORT

# CJEI Welcomes Four New Members to its Board of Directors



Justice Lokur being welcomed as one of the new members of CJEI's Board of Directors by CJEI Chairperson Judge Sandra E. Oxner, at the Halifax Club

The Board of Directors — consisting of The Right Honourable Sir Dennis Byron, CJEI President; The Honourable Judge Sandra E. Oxner, CJEI Chairperson; The Right Honourable Chief Justice Beverley McLachlin, Canada; The Honourable Justice Sophia Akuffo, Ghana; The Honourable Judge Gertrude Chawatama, Zambia; The Honourable Justice Joe Raulinga, South Africa; Professor Michael Deturbide, Canada; Professor John A. Yogis, QC, Canada; and Mr. Larry Smith, C.A., Honorary Secretary/Treasurer — welcome their newest members: The Honourable Justice Madan Lokur, Judge, High Court of Delhi, India, (CJEI Fellow, 2008); The Honourable Justice Rahila Hadea Cudjoe, Chief Justice of Kaduna State, Nigeria, (CJEI Fellow, 2006); The Honourable Justice Asif Saeed Khan Khosa, Judge of Lahore High Court, Pakistan, (CJEI Fellow, 2007); and The Honourable Justice Irene Mambilima, Deputy Chief Justice, Zambia, (CJEI Fellow, 1999).

## CJEI Announces its 16th Annual Intensive Study Programme for Judicial Educators

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