

THE PROPOSED CARIBBEAN SUPREME COURT - A SUMMARY OF THE DRAFT INSTRUMENTS

1) AGREEMENT ESTABLISHING THE CARIBBEAN SUPREME COURT

- (i) **Membership** - open to member states of CARICOM and “any other Caribbean Country which is invited by the Conference [of Heads of Government of CARICOM] to become a party”.
- (ii) **Establishment and Seat** - The Court is to be established as a superior Court of record to have its seat “in the territory of a Contracting Party as determined from time to time by the unanimous Agreement of the Contracting Parties but, when exercising its jurisdiction, the Court may sit in the territory of any other Contracting Party as the President may direct”.
- (iii) **Constitution of the Court** - A President and not more than 5 other judges. The President is to be appointed by the unanimous vote of Heads of Government of the Contracting Parties, while the other judges are to be appointed by a majority vote of the Regional Judicial and Legal Services Commission (see below). Judges need to have had a minimum of 15 years legal experience.
- (iv) **Regional Judicial and Legal Services Commission** - This will have responsibility for the appointment of judges - other than the

President - and other officers of the Court (Registrar, Deputy Registrar etc.). The President shall be Chairman and provision is made for representation of nominees of a regional body representative of the legal profession, Chairman Judicial Services Commission of Contracting Parties, the CARICOM Secretary-General, persons nominated by Bar Associations and "a distinguished Caribbean jurist" appointed by the President after consultation with the Dean of the Faculty of Law, U.W.I., and the Council of Legal Education.

(v) **Acting Appointments** - Provision is made for a Judge of the Court to act as President or for "a person qualified for appointment as a Judge of the Court" to act as a Judge.

(vi) **Tenure of office of Judges** - Judges shall hold office to age 70 and shall be removed "only for inability to perform the functions" of the office ("whether arising from illness or any other cause or for misbehaviour"). Detailed provisions are made with regard to the procedure for removal in appropriate cases.

(vii) **Appellate Jurisdiction of the Court** -

1. Appeals shall lie to the Court from decisions of the Court of Appeal of a Contracting Party as of right in the following cases -

(a) final decisions in civil proceedings where the matter in dispute on appeal to the Court is of the value of not less than [three thousand five hundred dollars Eastern Caribbean currency (EC\$3,500)] or where the appeal

involves directly or indirectly a claim or a question respecting property or a right of the aforesaid value;

- (b) final decisions in proceedings for dissolution or nullity of marriage;
- (c) final decisions in any civil, criminal or other proceedings which involve a question as to the interpretation of the Constitution of the Contracting Party;
- (d) any order or decision given in the exercise of the jurisdiction conferred on a superior Court of a Contracting Party relating to redress for contravention of the provisions of the Constitution of the Contracting Party for the protection of fundamental rights or relating to the determination of the any question for which a right of access to that superior Court is guaranteed by the Constitution of the Contracting Party.
- (e) such other cases as may be prescribed by any law of the Contracting Party;

2. An appeal shall lie to the Court with the leave of the Court of Appeal of a Contracting Party from the decisions of the Court of Appeal in the following cases -

- (a) decisions in any civil proceedings where, in the opinion of the Court of Appeal, the question involved in the appeal is one that by reason of its public importance or

otherwise, ought to be submitted to the Court; and

- (b) such other cases as may be prescribed by any law of the Contracting Party.

3. An appeal shall lie to the Court with the special leave of the Court from any decision of the Court of Appeal of a Contracting Party in any civil or criminal matter.

- (viii) **Officers of the Court** - There shall be a Registrar “and such Deputy Registrars and other officers and employees of the Court” as may be in the opinion of the Commission necessary from time to time.
- (ix) **Financial provisions** - The expenses of the Court shall be borne by the Contracting Parties in such proportions as may be agreed.
- (x) **Right of audience** - Attorneys-at-law in the Courts of a Contracting Party “shall ... not be required to satisfy any other condition in order to practise before the Court wherever the Court is sitting in exercise of its jurisdiction...” - Provided that a Contracting Party may take such measures “as may be necessary in the interests of the security” of that Party.
- (xi) Provisions are made for signature, ratification, entry into force, accession, withdrawal and implementation of the Agreement.
- (xii) Appendix II, which sets out the proposed terms and conditions of service of the Judges of the Court is attached hereto in full.

2) **A BILL TO IMPLEMENT THE AGREEMENT IN THE MUNICIPAL LAW OF THE CONTRACTING PARTIES**

The discussions contemplate a uniform implementing provision, in the same manner as the Council of Legal Education Act gives effect in our law of the Council of Legal Education Treaty.

3) **THE CARIBBEAN SUPREME COURT RULES OF COURT**

This contains detailed rules relating to sittings of the Court and the filing and due prosecution of appeals to the Court. It closely follows the form of Court of Appeal Rules already in existence and some of the Rules now applicable to appeals to the Privy Council (It provides for instance, for the entering of an Appearance by the Respondent after the arrival of the record of appeal, for the preparation and filing of a written case by both parties - though with an exception in the case of a respondent who may give notice of his intention to file no case, but reserving his right to address the Court on the question of costs - the filing of lists of authorities, and so on).

4) **REGULATIONS OF THE REGIONAL JUDICIAL AND LEGAL SERVICES COMMISSION**

This protocol sets out detailed privileges and immunities "to be granted by the Contracting Parties to the Judges and Officers of the Court necessary to protect their independence and impartiality ... and to safeguard the independence and integrity of the Judges and Officers of the Court and the Members ... " of the Commission. The standard immunities are granted to the

Judges and Counsel and specific undertakings are given by Contracting Parties with regard to immigration restrictions and the like.

6) **HEADQUARTERS AGREEMENT BETWEEN GOVERNMENT
OF TRINIDAD & TOBAGO AND CARICOM**

This document governs the relationship between the host Government and the Court and is largely repetitive of the Protocol described at (5) above.

JAMAICAN BAR ASSOCIATION

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