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Rhea P. Hamilton

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A GUIDE TO RESEARCHING THE CARIBBEAN COURT OF JUSTICE

*Rhea P. Hamilton**

I. INTRODUCTION

This Pathfinder outlines sources and techniques that are useful in researching the development of the Caribbean Court of Justice ("CCJ"). This guide also discusses research materials regarding Caribbean legal systems.

II. ESTABLISHING THE CARIBBEAN COURT OF JUSTICE

Currently, the Judicial Committee of the Privy Council in the United Kingdom serves as the ultimate arbiter of legal disputes that arise in most Member States of the Caribbean Community.¹ Guyana is an exception. Guyana abolished appeals to

* B.S., New York University; Diplôme de Langue, College Internationale de Cannes; M.A., New York University; J.D., Brooklyn Law School. The author wishes to thank her parents Joy and Cosmo Hamilton for their relentless support and librarians Jean Davis and Deborah Paulus for the assistance and thoughtful comments that helped to complete this guide.

1. See HUGH RAWLINS, *THE CARIBBEAN COURT OF JUSTICE: THE HISTORY AND ANALYSIS OF THE DEBATE* 5 (2000), available at <http://www.caricom.org> (last visited Feb. 1, 2002); Roget V. Bryan, Comment, *Toward the Development of a Caribbean Jurisprudence: The Case for Establishing a Caribbean Court of Appeal*, 7 J. TRANSNAT'L L. & POL'Y 181, 183 (1998). For further information on the appellate jurisdiction of the Judicial Committee of the Privy Council, see Privy Council Office, Judicial Committee, *Judicial Committee of the Privy Council: Jurisdiction as at March 2000*, at <http://www.privy-council.org.uk/judicial-committee/2000/jurisdiction.htm> (last visited Feb. 1, 2002). Member States of the Caribbean Community include Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Monserrat, St. Kitts and Nevis, St. Lucia, Suriname, St. Vincent & the Grenadines and Trinidad and Tobago. The Caribbean Community, *Member Countries and Associated Members*, at <http://www.caricom.org> (last visited Feb. 1, 2002).

the Judicial Committee in 1970, and maintains its own court of last resort.²

The Judicial Committee Act of 1833³ formally established the Judicial Committee of the Privy Council.⁴ The Judicial Committee's authority developed from "the prerogative right of the Sovereign as the fountain head of all justice to entertain appeals from the courts in her dominions."⁵ Since the middle of the 17th century, the Judicial Committee has served as a court to hear appeals from British territories overseas.⁶

Establishment of the CCJ will mark a departure from the British system and a turning point in Caribbean jurisprudence. In 1970, the Jamaican Delegation to an inter-governmental conference held in Jamaica recommended creation of a Caribbean Court of Appeal to replace the Judicial Committee of the Privy Council.⁷ The 2001 Agreement Establishing the Caribbean Court of Justice⁸ creates two distinct functions for the CCJ. First, the CCJ will have original jurisdiction when acting as an international tribunal to interpret and apply the Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy.⁹ Second, the CCJ will assume the jurisdiction of the Judicial Committee and will hear civil and criminal appeals from the lower courts of the Caribbean Community Member States.¹⁰ At

2. Bryan, *supra* note 1, at 183 n.8.

3. Judicial Committee Act, 1833, 3 & 4 Will. 4, c. 41 (Eng.).

4. RAWLINS, *supra* note 1, at 9, 20 n.5. Rawlins also identifies the English laws that further defined the Judicial Committee of the Privy Council. *See id.* at 20 n.8.

5. 10 HALSBURY'S LAWS OF ENGLAND ¶ 770 (4th ed. 1975).

6. *See* RAWLINS, *supra* note 1, at 9; Bryan, *supra* note 1, at 183-84.

7. Duke Pollard, *The Caribbean Court of Justice: What It Is: What It Does* (Apr. 17, 2000), at <http://www.caricom.org>.

8. Agreement Establishing the Caribbean Court of Justice, Feb. 14, 2001, available at <http://www.caricom.org> > "Information Services" > "Treaties and Protocols" (last visited Feb. 1, 2002) [hereinafter Caribbean Court Agreement].

9. *See* Pollard, *supra* note 7. *See also* Caribbean Court Agreement, *supra* note 8, art. III and pt. II. Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy (2001), available at <http://www.caricom.org> > "Information Services" > "Treaties and Protocols" (last visited Feb. 1, 2002).

10. *See* Pollard, *supra* note 7. *See also* Caribbean Court Agreement, *supra* note 8, art. III and pt. II.

a November 2001 meeting of the Legal Affairs Committee of the Caribbean Community, participants noted that three jurisdictions must ratify the Agreement Establishing the Caribbean Court of Justice for this Agreement to enter into force; Barbados, Belize, Guyana, and Trinidad and Tobago expressed a willingness to promptly ratify the Agreement.¹¹

Proponents of the CCJ maintain that a court seated in the Caribbean and managed by judges from the region would have many benefits, such as achieving judicial independence for the Caribbean Community and issuing decisions that reflect the region's social standards. It could also bolster foreign investment if the CCJ decided cases in an expeditious manner.¹² Opponents of the CCJ cite concerns about funding; raise issues regarding the qualifications and impartiality of potential CCJ judges; and focus on potential human rights implications of CCJ decisions, particularly with respect to the death penalty.¹³

III. OBTAINING BACKGROUND INFORMATION ON CARIBBEAN LEGAL SYSTEMS

In an introduction to the Caribbean in their *Foreign Law Guide*, Thomas Reynolds and Arturo Flores note that a researcher will face severe problems in locating current laws of Caribbean nations.¹⁴ Reynolds and Flores describe Caribbean countries as "small jurisdictions lacking an audience of legal and judicial and business consumers sufficient to justify economic production of the most basic legal publications."¹⁵

There are, however, three valuable starting points exist to assist the researcher of Caribbean legal systems. Volume 7 of

11. Press Release, Caribbean Community (CARICOM) Secretariat, Press Release Issued on the Conclusion of the Fifth Ordinary Meeting of the Legal Affairs Committee (LAC) of the Caribbean Community (CARICOM) Held in Port-of-Spain, Trinidad and Tobago, 28-30 November 2001, (Dec. 6, 2001), available at <http://www.caricom.org> > "Information Services" > "Press Releases" (last visited Feb. 1, 2002).

12. See Pollard, *supra* note 7.

13. *Id.*

14. Thomas H. Reynolds & Arturo A. Flores, *Foreign Law Guide: Current Sources of Codes and Basic Legislation in Jurisdictions of the World, The Caribbean: A Note About Its Development and Legislation*, at <http://www.foreignlawguide.com/FLG/frameset.htm> (last visited Feb. 1, 2002) (subscription database available at Brooklyn Law School Library).

15. *Id.*

the *Modern Legal Systems Cyclopedia* focuses on the legal regimes of Central America and the Caribbean.¹⁶ It contains sections for each country of the Caribbean, including the sub-heading, "The Legal Systems of the Commonwealth Caribbean," which addresses the region as a whole.¹⁷ "The Legal Systems of the Commonwealth Caribbean" is further divided into subsections: "Background"; "Sources of Law"; "Administration of Justice"; "Legal Education and Profession"; "Legal Materials"; "Legal Ethics"; and "Bibliography."¹⁸ This section was prepared by Velma Newton, Law Librarian, Faculty of Law Library, University of the West Indies, who has written extensively on Commonwealth Caribbean legal systems and sources.

Reynolds and Flores provide an overview of Caribbean legislation in their *Foreign Law Guide*.¹⁹ The authors focus their discussion on organizations that have affected Caribbean legislation. The *Foreign Law Guide* overview also contains footnotes that cite to Caribbean law reporters and to two works by Velma Newton. Newton's two publications will be discussed later in this research Pathfinder. In other parts of the *Foreign Law Guide*, the authors describe key legislative publications and court reports of individual Caribbean jurisdictions.

*The Common Law Abroad: Constitutional and Legal Legacy of the British Empire*²⁰ is an extensive bibliography of sources regarding the colonial dependencies of Great Britain. It describes constitutional and legal works "generated in or for the British dependencies during the time of imperial influence, typically until independence."²¹ Author Jerry Dupont focuses on historical primary legal sources (excluding official gazettes) and selected secondary sources available in twelve major law libraries. This bibliography includes the sections "General Treatises"²² (excluding recently published treatises) and "Brit-

16. 7 MODERN LEGAL SYSTEMS CYCLOPEDIA (Kenneth Redden ed., 1984).

17. *See id.*

18. *See id.*

19. Reynolds & Flores, *supra* note 14. Like the MODERN LEGAL SYSTEMS CYCLOPEDIA, the *Foreign Law Guide* also has separate sections for each Caribbean country.

20. JERRY DUPONT, THE COMMON LAW ABROAD: CONSTITUTIONAL AND LEGAL LEGACY OF THE BRITISH EMPIRE (2001).

21. *Id.* at viii.

22. *Id.* at 1-42.

ish Caribbean.”²³ For each geographic area in the “British Caribbean” section, Dupont includes citations to materials on the reception and administration of law.

To locate sources on the CCJ and Caribbean legal systems through many library catalogs, the researcher can employ the following Library of Congress subject headings:

- “Caribbean Area – Politics and Government”
- “Appellate Courts – Caribbean, English Speaking”
- “Courts of Last Resort – Caribbean, English Speaking”
- “Jurisprudence – Caribbean Region”
- “Law – Caribbean Area”

“Law – Caribbean Area” is a particularly useful subject heading. Entering this subject search in law library catalogs will yield sources such as:

- Rose-Marie Belle Antoine, *Commonwealth Caribbean Law and Legal Systems* (1999). Antoine discusses legal systems, legal sources, courts and alternative dispute mechanisms in the Commonwealth Caribbean. This work includes the chapters “Introduction to Law and Legal Systems in the Commonwealth Caribbean,” “The Reception of English Law and its Significance to Caribbean Jurisdictions” and “The Court System of the Commonwealth Caribbean.” The chapter “The Caribbean Court of Justice and the Privy Council” is highly useful for the CCJ researcher.

- Albert Fiadjoe, *Caribbean Public Law* (1996). Fiadjoe notes that “the primary focus of this book is on the relationship between the courts and the executive branches of government, and on the role of judicial review in the constitutional and governmental framework of the English-speaking Commonwealth Caribbean.”²⁴ A second edition of this work, published in 1999, is now available.

- Velma Newton, *Commonwealth Caribbean Legal Systems: A Study of Small Jurisdictions* (1988). The content of this work mirrors that of Volume 7 of the *Modern Legal Systems Cyclopedia*, however, *Commonwealth Caribbean Legal Systems* provides more detailed treatment of Caribbean legal structures.

23. *Id.* at 151-311.

24. ALBERT FIADJOE, *CARIBBEAN PUBLIC LAW* xi (1996).

◦ Velma Newton, *Commonwealth Caribbean Legal Literature: A Bibliography of All Primary Sources to Date and Secondary Sources for 1971-85* (1987). This contains information on primary sources of law such as the constitutions and laws of Member States. It also includes data on many secondary resources such as periodicals, bibliographies, books and articles (including articles on the CCJ, referred to as the Caribbean Court of Appeal in this volume). The Faculty of Law Library, University of the West Indies, published this work. To update this *Bibliography*, the researcher might wish to contact staff of the Faculty of Law Library.²⁵

The researcher will also find useful materials through the following sources:

◦ *World Cat on First Search*, available at <http://firstsearch.oclc.org>. *World Cat* will enable the researcher to search library catalogs around the world. The author recommends searching this online union catalog because relevant titles on Caribbean law and the CCJ may not be available locally.

◦ *WebLuis*. *WebLuis* is the State University System of Florida's online union catalog. Research Analyst Andrew Zimmerman has described Florida State University at Tallahassee as the best American source of Caribbean legal materials.²⁶ The *WebLuis* subject query: "Law-Caribbean Area" produced thirty bibliographic records. A *WebLuis* search also yielded *The Caribbean Journal of Legal Information*, *Caribbean Law and Business*, *Caribbean Law Bulletin* and *The Caribbean Law Review*.²⁷ These legal periodicals will likely contain information on developments regarding the CCJ. To access this user friendly source, follow the path: <http://www.fsu.edu/~library> > "WebLuis" > "SUS Library Catalogs and Course Reserve Indexes" > "Union Index to All Libraries." Enter search terms in the appropriate fields.

25. One could contact the Faculty of Law Library staff via e-mail at lawlib@caribsurf.com or at pubserv@uwichill.edu.bb.

26. Andrew Zimmerman, *Zimmerman's Research Guide: Caribbean*, at <http://www.llrx.com/guide-gen/3/183.html> (last visited Feb. 1, 2002).

27. In the New York metropolitan area, *Caribbean Law Bulletin*, *Caribbean Law Review* and *Contemporary Caribbean Legal Issues* are available at the New York University School of Law Library (the *JULIUS Online Catalog* is available through <http://julius.law.nyu.edu>).

- The Libraries of the University of Puerto Rico. Also recommended by Zimmerman as a good source of Caribbean materials,²⁸ one can access many of the libraries of the University of Puerto Rico at <http://www.upr.clu.edu/upri> > "On-line Libraries." Use the subject searches recommended previously to find numerous volumes on the Caribbean.
- Faculty of Law Library at the University of the West Indies, Cave Hill Campus. Though not equipped for online catalog searches, this library is a premier source of Caribbean legal materials. From *The Faculty of Law, University of the West Indies*, at <http://law.uwichill.edu.bb>, the researcher can browse the University's serial holdings and obtain other general library information. One could contact library staff via e-mail at lawlib@caribsurf.com or pubserv@uwichill.edu.bb.

IV. RESEARCHING THE CCJ

A. *Website of the Caribbean Community (CARICOM) Secretariat*

Once the researcher has acquired background information on Caribbean legal systems, the researcher can focus on the CCJ. The best starting point is the website of the *Caribbean Community (CARICOM) Secretariat*, at <http://www.caricom.org>, an up-to-date and authoritative source on the CCJ. Clicking on the site's "CCJ" link, the researcher will be able to review a great deal of information on the CCJ. This link is divided into thirteen subsections through which the researcher can obtain documents such as: Agreement Establishing the Caribbean Court of Justice; Agreement Establishing the Seat of the Caribbean Court of Justice and the Offices of the Regional Judicial and Legal Services Commission Between the Government of Trinidad and Tobago and the Caribbean Community; draft rules of the CCJ; the proposed Code of Judicial Conduct; and an overview of the CCJ organized in a question-and-answer format.

28. Zimmerman, *supra* note 26.

B. Books and Papers on the Caribbean Court of Justice

In addition to Antoine's *Commonwealth Caribbean Law and Legal Systems*,²⁹ the researcher should also consult the following texts:³⁰

- *Conference on Governance in the Contemporary Caribbean: The Way Forward: Selected Papers* (2001).
- Hugh Rawlins, *Caribbean Court of Justice: The History and Analysis of the Debate* (2000).
- *Caribbean Court of Justice: Critical Viewpoints from a Caribbean Rights Symposium* (1998).
- Stephen Vasciannie, *The Privy Council Versus the Caribbean Court of Appeal: Some General Observations* (1996).

An "Advanced Search" query on *World Cat* employing the keyword phrases "Caribbean Court of Justice" and "Caribbean Court of Appeal" yielded these titles. Rawlins' paper is available through Caribbean Community (CARICOM) Secretariat at <http://www.caricom.org> > "CCJ." Vasciannie's work is available at Harvard Law School Library and Yale University Library.³¹ The other two sources are available in the collection of the University of the West Indies. Alternatively, the researcher can attempt to obtain *Conference on Governance in the Contemporary Caribbean: The Way Forward: Selected Papers* from the Caribbean Community (CARICOM) Secretariat, and *Caribbean Court of Justice: Critical Viewpoints from a Caribbean Rights Symposium* from the Caribbean Human Rights Network. The websites of both bodies have links through which one can order publications.³²

29. ROSE-MARIE BELLE ANTOINE, *COMMONWEALTH CARIBBEAN LAW AND LEGAL SYSTEMS* (1999).

30. The author was unable to review some of these texts for the purposes of this guide. Generally, sources on Caribbean law and the CCJ published by the Caribbean Community (CARICOM) Secretariat and the University of the West Indies will be highly useful.

31. The Harvard OnLine Library Information System, at <http://hollisweb.harvard.edu> (last visited Feb. 1, 2002); Yale University Library, *Orbis & Library Catalogs*, at <http://www.library.yale.edu/orbis> (last visited Feb. 1, 2002).

32. To order materials through the Caribbean Community (CARICOM) Secretariat's website, at <http://www.caricom.org>, click on the "Publications" link. For publications of the Caribbean Human Rights Network, send orders or inquiries via e-mail to crights@caribsurf.com, or call (246) 436-9456.

C. Other CCJ Sources

1. Legal Periodical Articles

Since the CCJ is a developing institution, the researcher should consult current legal periodical articles about this court. *Westlaw* and *LexisNexis* provide databases in which to retrieve such articles.

Through *Westlaw*, at <http://westlaw.com>, the author conducted searches in three legal periodical databases. The *Legal Resource Index* database (coverage: 1980 - present) provides citations to articles from over 850 legal sources published in the United States, Canada, Great Britain, New Zealand and Australia. The *Legal Journals Index* database (coverage: 1986 - present) includes citations to journal articles published in the United Kingdom and Europe. The *International Law - Law Reviews, Texts & Bar Journals* database consists of documents from various secondary legal sources, including law reviews, texts, bar journals and legal-practice oriented materials. The author executed the following "Terms and Connectors" searches in these three databases: "ti, in(caribbean)" and "ti, in(caribbean court of justice)." Dianne Stafford's brief article, *Caribbean Court of Justice*,³³ provides a recent analysis of the CCJ. Roget Bryan's comment in the *Journal of Transnational Law and Policy* is highly useful because it outlines the history of the Judicial Committee of the Privy Council and the formation and development of the CCJ.³⁴

Through *LexisNexis*, at <http://www.lexis.com>, the researcher can retrieve full text legal periodical articles from the following path: "All Sources" > "Secondary Legal" > "Law Reviews, Combined." Recommended "Terms and Connectors" search queries are: "Title (caribbean) or Summary (caribbean);" "Title (caribbean court of justice) or Summary (caribbean court of justice);" and "Title (caribbean court of appeal) or Summary (caribbean court of appeal)." A key result is the article by Hugh A. Salmon titled *The Caribbean Court of Justice: A March With Destiny*.³⁵

33. Dianne Stafford, *Caribbean Court of Justice*, 14 COM. JUD. J. 18 (2001).

34. Bryan, *supra* note 1.

35. Hugh A. Salmon, *The Caribbean Court of Justice: A March With Destiny*, 2 FLA. COASTAL L.J. 231 (2000).

Moreover, one can obtain citations to articles and link to the text of selected articles through the online *Legal Resource Index* (coverage: 1977 - present). Access *Legal Resource Index* through the path: "All Sources" > "Secondary Legal" > "Annotations & Indexes" > "Legal Resource Index."

The *Index to Foreign Legal Periodicals* ("IFLP") is a tool to locate scholarly articles and collections of essays. It includes citations to sources that are not available through either *Lexis Nexis* files or *Westlaw* databases. In the IFLP subject index, "Courts and Tribunals" and "Administration of Justice" are useful headings. The best way to use IFLP for CCJ research, however, is to consult the geographical index under the heading "Caribbean," particularly if journal title or author information is unavailable. The author reviewed the 1998-2000 volumes and 2001 issues of the IFLP. The following are two titles of potential relevance:

- Rosalea Hamilton, *Stare Decisis and the Development of Caribbean Jurisprudence*, 8 *Caribbean L. Rev.* 330 (1998); and
- Hugh A. Rawlins, *State Proceedings in the Commonwealth Caribbean*, 7 *Caribbean L. Rev.* 497 (1997).

2. News

News sources also report on recent activities concerning the CCJ. Both *LexisNexis* and *Westlaw* have rich news databases that will assist the researcher.

On *LexisNexis*, one can find news articles through the following path: "All Sources" > "News" > "Major World Newspapers." The *Major World Newspapers* file contains articles from over 140 newspapers from around the globe, many of which will cover CCJ developments. *Westlaw* enables the researcher to execute a region-specific search in the *Latin America, West Indies and Caribbean News* ("LATNEWS") database. LATNEWS offers materials from newspapers, magazines, transcripts, newsletters and news wires.

There are also many free Internet sources that contain news articles about the Caribbean region. Some noteworthy sites include *The Guyana Chronicle* at <http://www.guyanachronicle.com>, *The Barbados Nation Online* at <http://www.nationnews.com>, *The Trinidad Guardian* at <http://www.guardian.co.tt> and *Jamaica Gleaner* at <http://www.jamaica-gleaner.com>.

D. Other Internet Resources

To locate additional Internet sites about the CCJ, the author recommends *Google*, at <http://www.google.com>, and an “Advanced Search” query using the phrase “Caribbean Court of Justice.” Sites maintained by government bodies, bar associations, courts and law firms will likely contain reliable information. The following sites are helpful:

- The law firm of Myers, Fletcher & Gordon (“MFG”) maintains a site at <http://www.mfg-law.com>. This site includes links to the firm’s newsletter and to “Developments In West Indian Law.” The June 2000 edition of the newsletter contains an article discussing the CCJ’s power to resolve trade disputes between CARICOM nations. The author contacted this firm. In response, Derek Jones, a Partner at MFG and the President of the Jamaican Bar Association, provided two papers. These papers describe the history of the CCJ and discuss issues such as the cost of creating and maintaining the CCJ, questions of judicial impartiality, and suggestions for the CCJ’s structure. These highly useful papers are: *Position Paper of the Council of the Jamaican Bar Association on the Proposed Caribbean Supreme Court* (March 16, 2000) and *Presentation in Respect of the Proposed CCJ*, presented in St. Lucia on August 16, 2000.

- The Supreme Court of Jamaica’s website at <http://www.sc.gov.jm> includes a “Caribbean Court of Justice” link. At this time, this link only transfers the researcher to the *Ministry of National Security and Justice Jamaica* at <http://www.mnsj.gov.jm/caribCOA/index.htm> (“Ministry”). The Ministry’s site includes a summary document by Rosalea Hamilton, *Legal and Economic Arguments in the Judicial Committee of the Privy Council v. Caribbean Court of Justice Debate* (March 2000). The Ministry’s site also provides articles in the online forum *Caribbean Court of Justice Discussion Online*. Additionally, the Supreme Court of Jamaica’s website links to the *Smithfield Digest*, which contains notes and indexes of decisions from the courts of Jamaica and the Judicial Committee of the Privy Council.³⁶

36. *Smithfield Digest*, at <http://www.Smithfield.com.jm> (last visited Mar. 20, 2002).

V. CONCLUSION

This guide highlights print and electronic sources on the CCJ and Caribbean law. Future actions of Caribbean Community Member States concerning the CCJ likely will result in publication of additional materials. The researcher will be able to locate such materials by visiting the website of the Caribbean Community (CARICOM) Secretariat at <http://www.caricom.org> and searching law library catalogs with the U.S. Library of Congress subject headings recommended in Part III of this guide. The researcher also will find current materials on the CCJ by using the database search queries and additional resources described in this Pathfinder.