

Legal Development Issues

UPDATE ON THE ESTABLISHMENT OF FINAL / REGIONAL APPELLATE COURTS

Paper by the Commonwealth Secretariat

Background

1. The evolving jurisprudential landscape in the Commonwealth has been of significant importance to the Commonwealth Secretariat.
2. Commonwealth Law Ministers will recall that at their Meeting in St Vincent and the Grenadines, in November 2002, the matter of regional and final appellate Courts was discussed. These Courts, at that time, were at various stages of readiness in replacing the appellate jurisdiction of the Judicial Committee of the Privy Council (JCPC) as the final Court of Appeal.
3. Law Ministers will again recall that they acknowledged the challenges confronted by those member countries who were faced with this transitional process. It was further recognised that within this judicial evolutionary progression, there would be the need to ensure that traditional standards of the judiciary were maintained on one hand, and on the other, to foster the development of the jurisprudence of the region in question. Note was also taken of the fact that the emergence of regional Courts was integral to the various treaties of regional association and their responsiveness to the realities of an increasingly globalised world

Activity

4. In light of the foregoing, Law Ministers will remember that they mandated the Secretariat to convene an Expert Group to examine the issues and processes involved in the transition from the JCPC to the respective regional Court as the final Court of Appeal. That Expert Group Meeting was held in London from 10 to 13 June, 2003 and was charged with the following mandate, which it fulfilled:
 - an examination of the steps other regions and countries have taken towards removal of jurisdiction from the JCPC;
 - a pronouncement on the processes involved in cutting ties with the JCPC;
 - an examination of the effects on national constitutions for those Member Countries which face constitutional requirements, to effect such a transition;
 - making recommendations as appropriate; and
 - consideration of any future implications arising from the emergence of regional/final appellate courts
5. Since that meeting of Experts, profound changes in the Commonwealth have occurred. The Supreme Court of New Zealand became a reality in July, 2004; the Caribbean Court of Justice (CCJ) of the Caribbean Community (CARICOM) was inaugurated in April, 2005; the Justices to the Court of Justice of the Economic Community of West African States (ECOWAS) have been appointed; and there have been fresh appointments to the Court of Justice of the Common Market for Eastern and Southern Africa (COMESA).

6. The Legal and Constitutional Affairs Division has:
 - engaged in an ongoing dialogue with the Court of Justice of COMESA and the International Court of Justice since 2003;
 - visited the newly inaugurated Supreme Court of New Zealand in November 2004 and held valuable discussions with its Justices who emphasised the importance of sharing such experiences, particularly for Justices appointed to newly established Courts;
 - commenced constructive relations with the Court of Justice of ECOWAS since 2004; and
 - initiated enriching discourse with the Supreme Court of Canada in 2005.
7. The activity to continue this mandate will see a coming together of Justices and Registrars of the Supreme Courts of New Zealand and Canada; the High Court of Australia and the regional Courts of the CCJ, COMESA and ECOWAS early in 2006.
8. The Commonwealth Secretariat will, at the conclusion of these activities, produce an administrative guide to embody best practice.