

**Final
Consultancy Report
Integration of OECS Magistrates Courts under Eastern Caribbean Supreme Court**



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ACRONYMS

ALJ	Australian Law Journal
BVI	British Virgin Islands
CARICOM	The Member States of the Caribbean Community
CariLaw	Caribbean Law Online
CIDA	Canadian International Development Agency
CKLN	Caribbean Knowledge and Learning Network
CLIC	Caribbean Law Institute Centre, UWI, Barbados
DPP	Director of Public Prosecutions
ECCB	Eastern Caribbean Central Bank
ECSC	Eastern Caribbean Supreme Court
JEI	Eastern Caribbean Supreme Court, Judicial Education Institute
JEMS	Judicial Enforcement Management System
JLSC	Judicial and Legal Services Commission
NSW	New South Wales
OECS	Organization of Eastern Caribbean States
P.I.	Preliminary Inquiry undertaken by a Magistrate's Court
USAID	United States Agency for International Development
UWI	University of the West Indies

PREFACE

“ The Court’s authority – possessed of neither the purse nor the sword – ultimately rests on substantial public confidence in its moral sanctions.”

- Felix Frankfurter

Before turning to an important challenge confronting the judiciary at the beginning of the 21st century, which requires change, it is useful to remind ourselves of the secure and stable foundations upon which OECS societies rest, and of the role of the courts in maintaining that security and stability.

As we address the promises, and challenges, of a new era, the ECSC seeks to discharge its functions of upholding the Constitution, maintaining the rule of law and administering civil and criminal justice, in a rapidly changing environment. The citizens of the OECS Countries are entitled to expect that the Courts will respond appropriately to change and, at the same time adhere to fundamental operational values. Foremost among those values are independence, impartiality, professionalism, and a commitment to justice. These operational values also embrace those set out immediately below:

- (a) To ensure that all persons are able to live securely under the Rule of Law;
- (b) To promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
- (c) To administer the law impartially among persons and between persons and the State.

OECS Citizens are fortunate to live in societies that have inherited and embraced a tradition of parliamentary democracy. The Rule of Law is established as a principle upon which the affairs of the countries are conducted. The decisions of courts, whether popular or controversial, are routinely accepted and acted upon by citizens and governments alike. The integrity and impartiality of the judiciary, and the freedom of courts from influence by governments or powerful interests, are largely taken for granted. These are matters beyond arithmetical calculation, but they are of paramount importance to sustained long-term development in the OECS Countries.

Citizens of the OECS Countries also take for granted that they have a well-educated, and professionally trained, judiciary. The decisions of judicial officers are given in public, they must be supported by reasons, and they are subject to appellate review on their merits. The transparency of the OECS system of administering justice is as complete as that of any judicial system in the world.

There is however a growing perception in the OECS Region that the Magistrates Courts have not lived up to the high expectations reposed in them caused largely by the facts that cases take years to reach the Courts and when they do, the Magistrates do not always deliver timely, reasoned and erudite judgments. Some believe that the criminal justice system is near collapse, assisted by inconsistent sentencing signals from Magistrates, while some citizens feel that the Courts are citadels of sympathy for criminals who commit outrageous crimes. Many OECS Countries continue to operate Magistrate Courts governed by legislation written prior to the independence of those countries. As an example, in Nevis the Magistrates

Code of Procedure Act that was enacted in 1892 governs the procedures and powers of the Magistrate Court.

Adding to the above perceptions by citizens is the fact that the OECS Magistracies have been placed under the direction of the Public Service under various State Constitutions and that a common feature through all the countries (except Montserrat and BVI) is that the Magistrate Courts have become overwhelmed with an enormous backlog of cases. A recent survey in the OECS on the performance of Magistrate Courts, particularly on the time it takes to dispose of cases,¹ confirms the predicament and provided the following information:

- (1) The average length of time between the date the offence occurred and the date the charge was laid with the Court was 51.5 days;
- (2) For over 56% of cases, under 30 days elapsed between the date of offence and the date the charge was laid with the Court;
- (3) The average length of time, between the offence and case completion was 202 days;
- (4) The average length of time (that is the length of time) between the offence and the date the notice of appeal is filed is 146 days. The average length of time, (that is the length of time) between the date of the offence and the date of the appeal hearing was 331 days.

The urgent need seems to be to fashion and establish a new Magistracy consistent with the provisions of the OECS Constitutions and the separation of powers. It is the view of the consultant that significant changes need to be made to the Magistrates Court system in the OECS Countries that will ensure that the reporting requirements of Magistrates are unequivocal and unambiguous and that their reporting and accountability obligations are not split between the Judiciary and Executive arms of government, as is presently the case. These changes should, at a minimum, answer the following questions: To which authority are magistrates to be accountable for the performance of their functions and duties: is it the Chief Justice of the ECSC or the Attorney General/Minister of Justice/Governor in each national jurisdiction, or is it a shared responsibility?

The long-term effect that these changes will have on the wider OECS Court System and the perception of citizens of the Magistracy is difficult to measure at this time, but in our view can be summed up by the following quotation:

“Change has a considerable psychological impact on the human mind. To the fearful it is threatening because it means that things may get worse. To the hopeful it is encouraging because things may get better. To the confident it is inspiring because the challenge exists to make things better.” King Whitney, Jnr.

We suggest that the changes recommended in this report be seized and implemented with confidence, enthusiasm and optimism.

¹ Survey results provided on page 5 of “Reflections on the Perception of Justice in the Commonwealth Caribbean – November 2002”, by Dr. Kenny Anthony

The consultants wish to thank the Honourable Sir Brian Alleyne, Acting Chief Justice of the OECS Supreme Court, for commissioning this consultancy and for his incisive insights and support. The consultants also acknowledge the assistance of the following persons, without whom this consultancy could not have been successfully conducted:

- Ms. Michele Gibson, Senior Development Officer of the Canadian International Development Agency based in Bridgetown, Barbados
- Mr. Gregory Girard, Executive Court Administrator, Eastern Caribbean Supreme Court and his dedicated staff
- Ms. Lenore St. Croix, Mediation Coordinator, Eastern Caribbean Supreme Court
- Ms. Sheran Emmanuel, Administrative Secretary, Eastern Caribbean Supreme Court

EXECUTIVE SUMMARY

“ In successful developing nations, the vital connection between a strong judiciary, a strong democracy, and a strong economy unites all three branches of government behind the effort to build a strong, independent judiciary. This effort must be led by the judiciary, but it requires support, both moral and material, from the other branches as well.”²

The Eastern Caribbean States and Territories inherited a two-tier judicial system from England, namely: (i) a higher judiciary consisting of judges of the Court of Appeal and judges of the High Court; and (ii) a lower judiciary, consisting of Magistrates, the Chief Registrar and the Registrars of the High Court.

The Magistrates Courts in the OECS Countries are placed by the Constitutions/various Magistrates Courts Acts in an invidious position in that Magistrates are members of the public service, reporting to the Attorney General/ Minister of Justice/Governor on the one hand, and on the other hand also owe monthly reporting obligations to the Chief Justice of the ECSC. The invidious position in which Magistrates have been placed seems to strike at those fundamental aspects of judicial independence that are the bedrock of the rule of law in common law countries and which are also the subject of international norms and declarations.³

The core elements of judicial independence are (i) freedom from external control by the executive government and (ii) freedom from internal control by other judicial officers, including the Chief Justice or Chief Magistrate.⁴ External judicial independence enables judicial officers to make decisions they regard as just according to the law and fact, without being influenced by the government to reach a particular result. External judicial independence enhances the rule of law in several ways. In cases between citizens, it supports decision-making based on the facts established by the evidence and the legal arguments rather than external direction. When the court must decide disputes between citizens and governments, independence from the government reduces the risk of apprehended or actual bias in favour of the government as a litigant. External judicial independence also supports the rule of law by maintaining public confidence in the judiciary and the courts as institutions. **“A judicial officer who could be dismissed for making a decision of which the government disapproved, would be unlikely to command the confidence of the public.”**⁵

Internal judicial independence is also a key mechanism in the rule of law. Just as executive direction of adjudication would be inconsistent with the rule of law, so would improper direction from a presiding judicial officer --- or any other judicial officer. The independence of the judiciary includes the independence of judges from one another. The Chief Justice of a court has no capacity to direct, or even influence, judges of the court in the discharge of their adjudicative powers and responsibility.⁶

² OECS Judiciary Modernization (Phase Three Report), Court Management Associates, page 5

³ See e.g. Committee of Experts, the International Association of Penal Law and the International Commission of Jurists, The Syracuse Draft Principles on the Independence of the Judiciary (1981)

⁴ Kate Malleson, “Judicial Training and Performance Appraisal: the Problem of Judicial Independence” (1997) 60 Modern Law Review 655

⁵ Chief Justice Murray Gleeson, “foreword in Helen Cunningham (9 ed.) Fragile Bastion: Judicial Independence in the Nineties and Beyond (1997)

⁶ Re Colina; Ex parte Torney (1999) 200 CLR 386, 398 (Gleeson CJ and Gummow J)

In the OECS Countries there is no provision in the various Constitutions, or local legislation, for the appointment of Magistrates for a term of office ending with a fixed retirement age, as is the case for Judges. Section 8 of the Supreme Court Order specifies that a Judge of the Court of Appeal should hold office until the age of 65 and Puisne Judge until the age of 62. In the Magistracy, appointments on contracts, for one, two and three-year periods, are made as often as permanent appointments. In some countries (Montserrat, BVI) the sole Magistrates are employed only on contracts. While a Magistrate appointed, whether permanently or on contract, cannot be dismissed without cause, the fact remains that Magistrates employed on contract need be given no reason for a refusal of renewal at the end of the contract period.

It is the view of the consultant that the removal of OECS Magistrates from public service status is required to place Magistrates in the same position as other judicial officers and to improve the formal status of Magistrates as independent judicial officers in the OECS Court System. In short, we are of the view that a central mechanism for ensuring both external and internal judicial independence is security of tenure.⁷ In our view it is not necessary to amend OECS Country Constitutions to provide Magistrates with sufficient security of tenure as present judicial decisions seem to indicate that there need be no constitutional requirement that all judicial officers must have their independence secured to “the highest possible degree in every respect”⁸ and some “legislative choice” is allowed in the mechanisms employed to promote judicial independence. As was stated by the High Court in *NAALAS v Bradley*, it is not possible to give an “exhaustive treatment of what constitutes ... the relevant minimum characteristics of an independent and impartial tribunal exercising the jurisdiction of the courts over which the Chief Magistrate presides.”⁹ There are certain important indicators of breaches of minimum standards found in *NAALAS v Bradley* however which include:

- **The judicial officer is inappropriately dependent on the legislature or executive ... in a way incompatible with requirements of independence and impartiality**
- **The circumstances “compromise or jeopardize the integrity of the Magistracy or the judicial system”**
- **Reasonable and informed members of the public [would] conclude that the magistracy Was not free from the influence of the other branches of government in exercising their judicial function.”**

The Member States of the Organization of Eastern Caribbean States (OECS) have agreed to establish common services and pursue joint policies in a number of areas including that of the judiciary. Under the Agreement establishing the OECS, the States have agreed to “take all steps as may be reasonably practicable, having regard to the circumstances of each State to promote uniformity in the laws of the State confirming jurisdiction and power on the Court of Appeal and High Court and regulating the practice and procedure of those Courts....” Increasingly, the trend is to underpin the institutional framework to extend the reach of the integration effort further into the court system. A number of measures have been taken in furtherance of this objective. In May of 1988, the OECS Heads of Government established a Committee of Attorneys General to review and make recommendations for the

⁷ See Elizabeth Handsley, ‘Issues Paper on Judicial Accountability’ (2001) 10 *Journal of Judicial Administration* 179, 187

⁸ See *NAALAS v Bradley* (2004) 218 CLR 146, 153 (Gleeson CJ)

⁹ *Ibid* 163

establishment of a unified legal services structure. The Committee met under the Chairmanship of Mr. J.S. Archibald Q.C. of the British Virgin Islands. There was a specific recommendation that the idea of a regional magistracy be accepted in principle and that a detailed study be undertaken. It is against this background that the CIDA/OECS Judicial and Legal Reform Project agreed to provide support for a detailed review of the legislative, administrative and financial requirements for a Unified Magistracy.¹⁰

Through this consultancy the consultants hope to significantly further the Magistrates Courts integration process and to provide practical examples of legislative and other changes that will allow this objective to be achieved. As Magistrates Courts increasingly resemble higher courts, there will be a concomitant expectation on the part of civil society that those who preside over them will act judicially, i.e., act as ‘judges’. The Judicial Commission of New South Wales (NSW) addressed the matter squarely when it said:

“The litigants and public expect impartial and independent adjudication from magistrates just as they expect it from judges. The common law principles relating to bias and ostensible bias apply to magistrates as well as judges. Magistrates’ Courts undertake important work extending over a wider range of issues. They exercise an important jurisdiction in relation to summary offences. They are the principal point of contact that the community has with the court system. Today there are strong reasons for applying the concept of judicial independence to magistrates.”¹¹

¹⁰ See Appendix Four to this Report for a description of the CIDA/OECS Judicial and Legal Reform Project

¹¹ “Fragile Bastion of Judicial Independence in the Nineties and Beyond” The Judicial Commission of NSW 2000 at page 31

INTRODUCTION

OECS – JUDICIAL SYSTEM OVERVIEW

1.1.1 The Eastern Caribbean Supreme Court

Mission Statement

" Delivery of justice independently by competent officers in a prompt, fair, efficient, and effective manner. "

The Eastern Caribbean Supreme Court ¹² was established in 1967 by the West Indies Associated States Supreme Court Order No. 223 of 1967 and it is the superior court of record for nine Member States, six of which are independent namely, Antigua and Barbuda, Dominica, Grenada, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and three British Overseas Territories namely, Anguilla, the British Virgin Islands and Montserrat.

1.1.2 Functions and Powers

The Eastern Caribbean Supreme Court has unlimited jurisdiction in the Member States, in accordance with the respective Supreme Court Acts. Section 17 of the Courts Order empowers the Chief Justice and two judges of the Supreme Court, selected by the Chief Justice, to make rules of court for regulating the practice and procedure of the Court of Appeal and the High Court. Also, national legislation in the countries served by the Court confers rule-making authority on the Chief Justice in relation to matters outside the Court of Appeal and the High Court.

1.1.3 Composition

The current authorized complement of the Eastern Caribbean Supreme Court is the Chief Justice, who is the Head of the Judiciary and President of the Court of Appeal, four (4) Justices of Appeal, eighteen (18) High Court Judges and two (2) Masters. A meeting of the Heads of Government of the Organization of Eastern Caribbean States (The Authority) in the Commonwealth of Dominica in June 2005, confirmed increases in the composition of the Court. An additional judge was approved in November 2005 to serve as Managing Judge for a Court Structures Project, as well as one for the Saint Vincent and the Grenadines Land Title Matters Project. The Authority also approved a further increase in the judicial complement in May 2007 to accommodate the inclusion of the Commercial Judge in the BVI.

To qualify for appointment as a Justice of Appeal, a person must be or have been a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such court for an aggregate of at least five years, or a person who is qualified to practice as an advocate in such a court and has so practised for an aggregate of at least fifteen years.

To qualify for appointment as a High Court Judge, a person must be or have been a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having

¹² See Appendix Five of this Report which provides a diagram of the structure of the ECSC

jurisdiction in appeals from such court, or a person who is qualified to practice as an advocate in such a court and has so practiced for an aggregate of at least ten years.

To qualify for appointment as a Master, a person must be qualified to practise as an advocate and has so practised for an aggregate of at least ten years in a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such court.

1.1.4 Court Sittings

The Court sits in two divisions: the Court of Appeal and the High Court of Justice – Trial Division. The five member Court of Appeal is itinerant and sits in each Member State to hear appeals. The eighteen High Court Judges are assigned by the Chief Justice as resident Judges in the various Member States. The Trial Courts sit throughout the year. Criminal Assizes convene in each jurisdiction on dates determined by the Chief Justice after discussions with the various judges of the court.

1.1.5 Court of Appeal

The Court of Appeal hears appeals from decisions of the High Court and Magistrates/District Courts in both Civil and Criminal matters, the Family Courts in Saint Lucia and Saint Vincent and the Grenadines, the Industrial Court in Antigua and Barbuda, and the Administrative Tribunals in the British Virgin Islands and Montserrat. Appeals are heard by the Full Court comprising a panel of three justices of appeal, or in a limited class of matters, by a single judge sitting in Chambers, in which case any decision is subject to review by the Full Court.

1.1.6 High Court

At least one High Court Judge and a Registrar, with the exception of Montserrat, where there is no resident judge, serve each Member State and Territory. The Federation of Saint Kitts and Nevis is divided into two Circuits, with a resident judge in Saint Kitts and one in Nevis, with the latter serving Montserrat and the Commonwealth of Dominica as needed, and also available to back-up the Judge resident in Saint Kitts as the work load dictates.

Each Member Territory has its own High Court, which in addition to the High Court Registry, houses the office of the local High Court Judge. A legally trained Registrar who provides the necessary administrative and legal support for the functioning of the High Court heads the High Court Registry. Filing in the Registries commences the proceedings in matters before the High Court in each of the nine territories.

1.1.7 Other Courts

There are summary courts located in the Member States, which include the Magistrates Court, the Family Court, the Traffic Court and the Coroners Court.

The Magistrates Court falls under the National Government, and in those Member States where there is more than one Magistrate, a Chief/Senior Magistrate, who is responsible for the administrative aspects, heads it.

There is an Industrial Court in Antigua and Barbuda, established under the Industrial Court Act (1976). This is a Superior Court of Record, and has jurisdiction to hear and determine trade disputes or other complaints referred to it in accordance with the Act; and to enjoin a trade union or other organization, employee or employer from taking or continuing industrial action. The Court determines its own procedure and its decisions may be appealed on limited grounds- namely that the Industrial Court had no jurisdiction or that it exceeded its jurisdiction; that an award or order was obtained fraudulently; that the finding or decision was erroneous in point of law; or that some other specific illegality was committed. The Court's decision is binding on all parties.

1.1.8 Legal Provisions governing the OECS Judiciary

The Chief Justice is appointed by Her Majesty the Queen,¹³ on the advice of the Prime Ministers of the OECS who must be unanimous in the tendering of their advice. The Judicial and Legal Services Commission, a body chaired by the Chief Justice, appoints judges of the Court. Once the Chief Justice is appointed, he becomes tenured and can be removed only on proof of misbehaviour or medical inability to perform his duties.¹⁴ Judges of the Court of Appeal must retire at the age of 65 and Puisne Judges at age 62.¹⁵ The Saint Lucia-based Judicial and Legal Services Commission can grant an extension of three years in the independent OECS Countries, but only with the agreement of the Prime Ministers of all the States.¹⁶ Although the terms and conditions of service cannot be changed adversely during a Judge's tenure of office without that Judge's consent, the unanimous consent of the Prime Ministers would be required for any rise in salaries and pensions to meet upward revisions in the cost of living.¹⁷

1.1.9 Constitutional provisions governing the OECS Magistracy

In **Hinds v R**¹⁸ Lord Diplock confirmed that Judges are given a greater security of tenure than Magistrates. While this is undoubtedly the case, the OECS Constitutions never clarified the judicial responsibilities of the Magistrates, or for that matter, clearly delineated the responsibilities of representatives of the Executive with respect to the Magistracy. The issue of accountability of Magistrates therefore requires clarification and we suggest that this clarification takes place within the context of a future constitutional reform process in the OECS Countries.¹⁹ The existing constitutional provisions governing Magistrates, display both similarities and differences. These are set out below:

Magistrate Appointments

The Constitutional provisions for appointments of Magistrates vary significantly:

In Saint Lucia, section 81 vests the power to appoint persons to hold or act in the position of Magistrate in the JLSC.

¹³ The West Indies Associated States Supreme Court Order 1967, Section 5 (1)

¹⁴ *ibid* Section 8 (3)

¹⁵ *ibid* Section 8(1)

¹⁶ *ibid* Section 8(1)

¹⁷ *ibid* Section 11(1)

¹⁸ 1997 A.C. 195 at 2186

¹⁹ See Section 13 (1) of the proposed Eastern Caribbean Magistrates Agreement, 2007, in Appendix Eight, for possible issues which could be considered in future referenda in the OECS Countries

In Antigua and Barbuda, section 82 vests the power in the Governor General acting in accordance with the advice of the Public Service Commission, “Provided that the Public Service Commission shall not advise the Governor General with respect to the exercise of that power unless it has consulted the Judicial and Legal Services Commission.”

In Dominica, section 92 of the Constitution vests the power in the Public Service Commission. There is a similar provision to that in the Constitution of Antigua and Barbuda – “Provided that before exercising the powers conferred by this section in any case the Public Service Commission shall consult the Judicial and Legal Services Commission.”

In Grenada, section 88 of the Constitution vests the power in the Governor General acting in accordance with the advice of the Judicial and Legal Services Commission. There is no proviso.

In Saint Kitts and Nevis, section 83 of the Constitution vests the power in the Governor General acting in accordance with the recommendation of the Public Service Commission. There is a proviso requiring consultation with the Judicial and Legal Services Commission before the recommendation is made.

In Saint Vincent and the Grenadines, section 88 vests the power in the Governor General acting in accordance with the advice of the Judicial and Legal Services Commission. There is no proviso.

In Montserrat, section 6 (2) states that “Power to make appointments to the office any magistrate or any registrar or other officer of the High Court who is required to possess legal qualifications, and power to exercise disciplinary control over or remove from office any person holding or acting in any such office, shall vest in the Governor, acting after consultation with the Chief Justice.”

In the British Virgin Islands, section 95 vests the power in the Governor acting in accordance with the BVI Judicial and Legal Services Commission. The Governor acting in his/her discretion may act otherwise than in accordance with that advice if he/she determines that compliance with that advice would prejudice Her Majesty’s service.

In Anguilla, section 68 (1) of the Constitution vests the power in the Governor acting after consultation with the Anguilla Judicial Service Commission.

Disciplinary Proceedings or Removal from office

Section 90 of the Dominica Constitution substantially mirrors the provisions in other OECS Constitutions on the matter of exercising disciplinary control:

“Section 90. 1. This section applies to the office of Magistrates [among others].....

“2. Subject to the provisions of section 17(1)(4) of the Constitution, the power to exercise disciplinary control over persons holding or acting in offices to which this section applies and to remove such persons from office shall vest in the Judicial and Legal Services Commission. Provided that before exercising the powers conferred by this subsection and in any case the Judicial and Legal Services Commission shall consult the Public Services Commission.” The power to exercise disciplinary control over Magistrates and to remove them from office is vested in the Judicial and Legal Services Commission. In Grenada and

St. Lucia, there is no need for the Judicial and Legal Services Commission to consult with the respective Public Service Commissions before exercising the power to discipline or to remove from office. The Judicial and Legal Services Commission has rules regulating the exercise of the power. The matter is reported to the Chief Justice by the authorities of the State concerned. The report contains statements in support of the misconduct alleged. The Chief Justice places the report before the Commission seeking its views on the matter and proposing the name of a Judge to be appointed to investigate the complaint. The Judge holds a hearing at which the Magistrate has an opportunity to challenge any accusations and lead evidence on his or her behalf. The inquiring Judge then submits his or her report and conclusions to the JLSC for its consideration. This provision ensures that a Magistrate can only be removed from office for cause, a position not dissimilar to that of a Judge.

2.0.1 The Judicial and Legal Services Commissions

The Judicial and Legal Services Commission of the Eastern Caribbean Supreme Court was established by the enactment of the West Indies Associated States Supreme Court Order 1967. The Commission derives its power from the Constitutions and Legislation of the Member States, and is made up of a five-member committee chaired by the Chief Justice of the ECSC. Supporting the Chief Justice as members of the Commission are a Justice of Appeal or High Court Judge, a person who has been Judge of a Court and the Chairmen of the Public Service Commissions of two Member States. The two Public Service Commission representatives are rotated every three years. The Commission serves six Member States namely Antigua and Barbuda, the Commonwealth of Dominica, Grenada, Saint Lucia, Saint Kitts and Nevis and Saint Vincent and the Grenadines. The Overseas Dependent Territories of Anguilla, and the British Virgin Islands have their individual Judicial Services Commissions.²⁰ The appointment of three of the five members who comprise the Judicial and Legal Services Commission is subject to OECS Prime Ministerial approval. One member must be a person who has served as a Judge of a Court of unlimited jurisdiction in criminal and civil matters in some part of the Commonwealth but that person's appointment must have the concurrence of the Prime Ministers of not less than four of the States. Two other members are Chairpersons of the Public Service Commissions of two OECS States. These persons are appointed to that office on the advice of the Prime Ministers of their States. Experience over time has shown that persons of integrity and stature have been appointed as Commission members and that they have acted independently in fulfilling the duties of their office.

The JLSC makes judicial appointments for the ECSC, except that of the Chief Justice who is appointed by Her Majesty the Queen. In addition, the power to exercise disciplinary control over Magistrates including the power to remove them from office, is vested by our constitutions in the Judicial and Legal Services Commission.

The Judicial and Legal Services Commissions are destined to play a critical role in the proposed future integration of the Magistrate Courts under the ECSC having regard to the intent to preserve their role in the appointment and disciplining of Magistrates under an integrated Magistracy.

²⁰ As an example, see Section 94 of the BVI Constitution which states that "There shall be in and for the Virgin Islands a Judicial and Legal Services Commission which shall consist of (a) the Chief Justice as Chairman; (b) one judge of the Court of Appeal or the High Court nominated by the Chief Justice after consultation with the Governor and the Virgin Islands General Legal Council; (c) the Chairman of the Public Service Commission; and (d) two other members appointed by the Governor, acting in accordance with the advice of the Premier and Leader of the Opposition who will each nominate one member, at least one of whom shall be a legal practitioner."

PART I

BACKGROUND

2.1 CONTEXTS AND JUSTIFICATION FOR MAGISTRATE COURT CONSULTANCY

2.1.1 THE MAGISTRATE COURTS SYSTEM – the need for reform

“Judicial independence is at the heart of the western democratic legal system. It is ‘integral to upholding the rule of law, engendering public confidence and dispensing justice.’”²¹

With respect to public perceptions of the OECS Magistrate’s Court system, members of the OECS Magistracy note that they are forced to work with very limited financial resources, underdeveloped communication systems and physical plant, poor access to law reports and court decisions, and limited resources and technology to support court processes. The courts in which they function are overburdened and operate within an environment of extremely scarce resources. While some Magistrates Courts are better endowed than others, e.g. Saint Kitts, there are Court premises where both the physical conditions of the premises and the lack of facilities operate as a disincentive to efficient performance and to conveying to its users that the premises from which justice is being dispensed was valued highly enough to be maintained in pristine condition. A report of the CIDA/OECS Judicial Reform Project stated:

“In many cases these Courts [Magistrate Courts] have a look and feel of a service that is not highly valued or properly maintained.”²²

Unfortunately, the above position had not changed dramatically for the better at the time this consultancy was undertaken. The lack of sufficient staff and resources prevents the courts from functioning at maximum efficiency. Trials have been delayed for years and other cases are dismissed because files cannot be located, or the police investigative processes are inadequate to support the charges brought. As a result, significant delays in case disposition are occurring. There is therefore widespread general dissatisfaction with the system, and a perception that the administration of justice in these courts, which handle 90% (70% in the case of Montserrat) of all the court cases coming into the OECS legal system, is neither fair nor swift. Particularly among the poor, there is the view that the justice system punishes the person, not the offence. It is believed that “who you are and whom you know” influence the nature of the punishment.

In order to stem the development of parallel systems that have developed in some CARICOM Countries in which ‘justice’ is meted out by ‘community leaders’ or ‘dons’ to inner-city perpetrators for alleged offences such as robbery and rape, it is necessary to strengthen the availability of expeditious justice in the Magistrates Courts. It is the view of the consultant that such strengthening is more likely to take place under the auspices of the judiciary, which already has established operational norms relating to the judicial system, than through the efforts of a Magistracy having divided loyalties between the Executive and Judicial branches of government, as is presently the case in the OECS Countries. It is also our view

²¹ “Commonwealth Principles on the Accountability of and the Relationship between the Three Branches of Government”, as agreed by Law Ministers and endorsed by the Commonwealth Heads of Government Meeting, Abuja, Nigeria, 2003

²² OECS District Court Review, 2001

that any recommended integration process for the Magistracy into the ECSC should not be viewed separately from the issue of ensuring that adequate resources are provided on an ongoing basis to ensure that the physical facilities from which the Magistrate Courts operate are adequate to maintain the high regard which citizens in the OECS Countries have for the Rule of Law. Ensuring the provision of adequate resources for the national courts will necessitate the continuation of ongoing dialogue between the ECSC and OECS Governments in this regard.

2.1.2. THE STATUS OF THE MAGISTRACY

“It is upon the magistrates’ courts that we depend principally for our ability to make justice accessible to ordinary people. The legal profession, and the community generally, have a large stake in the capacity of Local Courts to deal promptly, fairly and inexpensively, with the bulk of litigation. That stake is not sufficiently recognised. The profession ought to take a strong and active interest in the magistracy.”²³

In the view of the consultant, one of the most telling statements on the status of the OECS Magistracy can be found in a 2002 Constitutional Review Commission Report on Antigua and Barbuda.²⁴ It was stated in the report that:

“ It was brought to our notice that the Magistrate and the Registrar of the Supreme Court in Antigua and Barbuda (and indeed in all the territories comprising the OECS) are unhappy about their status and the treatment they receive at the hands of the public. They clearly find such treatment unwarranted, since the Constitutions of Grenada, Saint Vincent and the Grenadines, Saint Lucia and Antigua and Barbuda provide that their appointments are made by the respective Governors General on the recommendation of the regional Judicial and Legal Services Commission. In the case of Dominica as well as Saint Kitts and Nevis the appointments are made by the Public Service Commission. Whereas disciplinary matters are dealt with by the Judicial and Legal Services Commission after consultation with the Public Service Commission. Our Chairman looked closely into the position of the officers concerned in the course of interviewing three local Magistrates to determine how they felt about their terms and conditions of service. From the meetings, the Chairman formed the impression that all was not well and that these officers quite justifiably yearn to be regarded as judicial personnel rather than civil servants with legal knowledge presiding over courts of the lower judiciary. The plain fact is that notwithstanding their appointment by a regional commission they are treated simply as sub-heads of departments. They are sent letters of appointment containing their contracts from local executives. They approach the Chief Establishment Officer for leave or for an increase in their house allowance or for a renewal of their contract. Their terms and conditions are reviewed and determined by Cabinet in every case. They have no institutional independence. They have no access to the Chief Justice about their work or their terms and conditions, which are considered matters of local concern. There is no one locally or elsewhere who monitors their workload or conduct. They are left to their own devices and the general public does not know to whom to make complaints, if the behaviour of the officer warrants such a step. There is urgent need to put their status on a new footing.”

²³ Gleeson CJ, op.cit.

²⁴ Report of the Constitution Review Commission (Antigua and Barbuda), February 28, 2002, chaired by Sir Fred Phillips, Q.C., page 103

The question of how to ensure that the OECS Magistrates assume an integrated role in the OECS Supreme Court devoid of all divided loyalties between the Judicial and Executive arms of the OECS Governments has been extensively reviewed and analysed over the years.²⁵ This consultancy has as one of its core objectives the determination of the practical steps that need to be taken to ensure the integration of the Magistracy with the OECS Supreme Court taking into account the extensive knowledge that has been acquired through numerous studies over the years. There are certain common points of view that kept re-occurring throughout the nine OECS Countries visited and a wide range of persons in the various countries who come into regular contact with how the Magistrates Courts function on a day-to day basis provided valuable insights to the consultant on how the Magistrates Courts are being perceived. A listing of these persons appears in Appendix Twelve of this Report. All our investigations throughout the OECS Countries these last few weeks, affirm the conclusion of Mr. Justice Thomas of the Supreme Court of Queensland who, in an address to Magistrates in 1991, stated that:

“The Magistrates’ Courts are for most citizens the only place where direct contact is made with a judicial officer. It is inescapable that the point has been reached where the magistrates must be regarded as a group of judicial officers forming the ground level of a three-tier judicial structure. It is no longer valid to view the magistracy as a hybrid creature, part public servant, part judicial officer, disadvantaged by inadequate training and with an imperfect understanding of the judicial role. There were times not long distant when such a view was accurate. The times have changed, and in this instance for the better. I take it to be clearly established that the magistracy is here to stay as a primary and clearly identifiable sector of the Australian judiciary.”²⁶

In order to ensure that the OECS Magistracy is “Judicialised” and made a part of the mainstream of the OECS Court System, it is the view of the consultant that the following conditions will have to be present:

- Largely independent of the public service through severance of the Magistracy from the executive arm of the government/public service;
- The Magistrates are required to be legally qualified and have security of tenure;
- The jurisdiction of the Magistrates needs to be expanded by encouraging them to shed their administrative functions and encouraging them to perform more judicial functions.

We are of the view that the statements made in the Bauer Report that **“The Theoretical indicators examined in the context of Saint Lucia indicated a serious and deteriorating dysfunction in the District Courts”** and that **“An examination of the structure of the District Courts and their working, demonstrate that, over an extended period, systems, infrastructure and physical assets have been seriously neglected and allowed to fall into a state of disrepair The District Court has been grievously deprived of money, energy and administrative support over a protracted period ... If the District Court system remains in disrepute it represents a cancer on the whole judicial**

²⁵ Report on the Feasibility Review For Programme of Support to District Courts of Saint Lucia by Hon. Justice Bauer and M.J. Ryan; Report of J.L. O’Meally on Implementation of the Bauer Report; Report on Selection Criteria for the Eastern Caribbean Supreme Court; OECS Judicial and Legal Reform Project on Magistrates’ Court Review; Modernization of the OECS Judiciary Report and Recommendations) (Robert Lipscher & Carolyn Campbell)

²⁶ Justice Thomas, ‘The Ethics of Magistrates’ (1991) 65 Australian Law Journal 387 at 389, 390, quoting Briese, ‘Judge or Magistrate’ (1988) 7 Commonwealth Judicial Journal 19 at 20.

system”,²⁷ can be expanded to embrace all the Magistrates Courts in the OECS Court System (except Anguilla and the BVI) based on our direct observations.

In making recommendations for integration the consultant has remained mindful of the fact that **“There is a danger that the judiciary itself may become bureaucratized. In our enthusiasm to respond to various pressures, including those that come from increasing numbers, and the complexity of the court structures, we may risk losing some of the vitality that comes from our individual independence of one another. Leaders of the judiciary --- need to take care not to stifle this individual independence. Judges can be led, but they are not amenable to command and direction in the same manner as employees or subordinates. Courts and members are awkward to manage. I prefer it this way. The day the judiciary becomes easy to manage is the day it will have changed beyond my recognition.”**²⁸

One of the major challenges confronting the judiciary is the search for a model of court governance that guarantees and protects the judicial independence of all Magistrates’ Courts without compromising their inherent character of providing grassroots justice. As it becomes more judicial it may be that the grassroots connection of the magistracy will be sacrificed. It is striking this fine balance that has been an important pre-occupation of the consultant in writing this report.

2.1.3 Severance of Magistrates from public service.

“It is sometimes apparent that Magistrates consider themselves to be accountable, if accountable at all, to the Attorney General, and thus to the Executive, of the State by which they are employed and in which they serve. Not only is this wholly contrary to the Constitutions of our States, it is fundamentally contrary to the basic Constitutional principles of the separation of Powers and the independence of the judiciary, of which the Magistrates are a very important part, a fact which is often overlooked.”²⁹

Under this heading, we will discuss the first requirement mentioned on page 16 of this report, as being necessary to bring the OECS Magistrate Courts within the ambit of the ECSC. Presently OECS Magistrates are part of the public service and are subject to public service terms and conditions.³⁰ It is instructive to the reader of this report to provide an example from Grenada as to the steps leading to the selection of a Magistrate for service:

- Advertisement of position by Public Service Commission (PSC)
- Receipt of applications by PSC
- Names of applicants sent by PSC to Ministry of Legal Affairs (MLA)
- MLA prepares a shortlist of applicants
- Names of shortlisted applicants sent back to PSC by MLA
- PSC sends names of shortlisted applicants to Judicial and Legal Services Commission (JLSC)

²⁷ Report on feasibility review for a program of support to the District Courts of Saint Lucia

²⁸ Gleeson CJ, *op. cit*

²⁹ Address by the Honorable Chief Justice [Ag.] of the ECSC, Sir Brian Alleyne, S.C. to mark the opening of Law Year 2005/2006.

³⁰ See for example section 2(2) of the Anguilla Magistrate’s Code of Procedure Act, 2006, which states that “ there is established the office of Magistrate as a public office to which appointments are to be made in accordance with section 68 of the Constitution of Anguilla.”

- JLSC approves a shortlisted applicant and sends the name back to the PSC
- PSC sends names of applicant to the Governor General
- Formal swearing in of successful applicant by Governor General
- Contract with Magistrate signed by PSC via the Chief Personnel Officer

As can be seen from the above procedure, the Magistrate, apart from being a part of the public sector apparatus, could have a decision made by various parts of that apparatus not to award a contract to an aspiring Magistrate at various stages in the selection process. As no reason for a non-award of contract need be given, any number of considerations could be taken into account in not making a contract award. In the view of the consultant, this is a totally undesirable state of affairs that needs to be remedied expeditiously. The consultant is of the view that

“there are strong grounds for maintaining that no person holding judicial office should be in the public service, more especially if he or she has to hear and determine prosecutions or civil causes in which the State or its agents is a party ... The principles of judicial independence apply just as forcibly to Magistrates who, statistically, are seen to administer justice for a far greater number of people than do the Supreme Court judges.”³¹

A move away from public service status on the part of the Magistracy is clearly required to improve the formal status of Magistrates as independent judicial officers and it is so recommended. This severance of the Magistracy from the public service can in our view be effected by legislation in each OECS Country that specifically addresses the issue. A draft of such legislation is provided in Appendix Eight of this Report.

2.1.4 THE LEGAL QUALIFICATIONS AND SECURITY OF TENURE OF OECS MAGISTRATES

2.1.4.1 Qualifications

There is, as a whole, increased recognition of Magistrates as independent judicial officers. Not least important in this process has been the professionalisation of the Magistracy. Where Magistrates were once almost all public service trained, with no legal training and only ad hoc legal knowledge, the magistrates recruited for the Magistrates Courts today are, with very few exceptions, legally qualified. The consultant could not ascertain any legal requirement for formal academic legal qualifications with respect to the hiring of Magistrates in the national legislation of the nine OECS Countries.³² The practice of selecting Magistrates with legal qualifications and/or experience as an advocate seems however to be now well established. A 2005 advertisement for Magistrates by the Antigua & Barbuda Ministry of Justice required that applicants “have a Bachelor of Law Degree, a Legal Education Certificate and at least seven years experience as an advocate in a court having unlimited jurisdiction in civil matters in some part of the Commonwealth.”³³ The legal requirements required for the retention of the services of a Magistrate in this case were not substantially different from the minimum formal qualifications required for a Puisne Judge

³¹ Fingleton v Christian Ivanoff Pty Ltd (1976) 14 SASR 530, 546

³² As an example, Section 7 of the Magistrates Act of Saint Vincent and the Grenadines states that “The Governor General, acting in accordance with the advice of the Judicial and Legal Services Commission, may appoint persons to be magistrates and may appoint such persons to be magistrates for each district.”

³³ See Appendix Nine for the actual Magistrate advertisement

in Section 5 (2) (b) of the West Indies Associated States Supreme Court Order, 1967. Under Section 5 (2) (b) (ii) a Puisne Judge is required to be **“qualified to practice as an advocate in such a court [a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court] and has so practiced for a period of or periods amounting in the aggregate to not less than ten years.”**

It is the view of the consultant that the above difference in the period of admission as a legal practitioner between the Magistrate and a Puisne Judge does not provide any significant basis for drawing the present sharp dividing line between Judges and Magistrates as judicial officers; nor should it affect a claim for judicial independence on the part of Magistrates in the OECS Countries.

2.1.5 Security of Tenure

In the OECS Countries there are significant inconsistencies in conditions of tenure between Magistrates and Judges of the ECSC. These inconsistencies are especially marked in the processes and criteria for removal and suspension from office and in the lack of salary guarantees. There is no legal provision in the OECS Countries for the appointment of Magistrates for a term of office ending with a fixed retirement age. In the Magistracy, appointments on contract are made as often as permanent appointments. Once a Magistrate has been appointed, however, whether on contract or permanently, he/she cannot be dismissed without cause. There remain, however, significant problems with contractual appointments in that, at the end of the term of contract, it will expire and no cause need be given for refusal of renewal. This possibility may influence the Magistrate’s sense of independence. There may be a tendency to behave in a manner that it is thought might lead to a future favourable decision on the part of the Executive on the issue of contract renewal.

Magistrates and their courts have undergone substantial changes, and there has been an increasing professionalisation of Magistrates as judicial officers. They hear and decide a wide variety of serious cases each day. They deal with a very high volume of cases with over 90 per cent of all civil and criminal cases in the OECS Countries being initiated in the Magistrates Courts (70% in the case of Montserrat). This has enabled them to take on work of greater substance and complexity that in turn has resulted in the growth of the jurisdiction. As an example, in Saint Vincent and the Grenadines, **“Every Magistrate shall have full jurisdiction and power, either within or without his district, to receive and inquire into all charges of indictable offences, whether the same are alleged to have been committed within or without his district, and to make such orders in respect thereof as may be required by the provisions of any written law for the time being in force in relation to procedure in respect of indictable offences.”**³⁴

The Magistrates also have wide powers to deal with significant criminal offences such as burglary, indecent assault, serious wounding offences and drug possession. In the case of drug possession, a Magistrate can impose fines up to EC\$100,000. While the civil jurisdiction of the Magistrate Court in Saint Vincent and the Grenadines is presently EC\$6,000, the Chief Magistrate has made formal requests that this limit be raised to EC\$10,000.

Other jurisdictions exercised by OECS Magistrates include:

- A coronial jurisdiction

³⁴ Section 25 of the Magistrates Act

- Theft
- Traffic Offences
- Certain types of sexual assault cases
- Damage to property
- Disorderly Behaviour
- Praedial Larceny
- Certain types of trespass
- Certain types of grievous bodily harm
- Domestic violence
- Maintenance
- Affiliation
- Juvenile matters
- Rape
- Manslaughter
- Murder

While not all OECS Countries exercise all of these jurisdictions, this list is indicative of the vast width of the jurisdiction of the OECS Magistracy.

In addition to the above, Magistrates sit in both urban and, suburban areas and criminal defendants and civil litigants in Magistrates' Courts are often unrepresented, although this situation is rapidly changing in the OECS Countries due to the larger number of lawyers who are now willing to undertake cases in these Courts.³⁵ The criminal charge or civil claim may be only one aspect of the varied problems Magistrates have to confront among the users of the courts such as financial hardship, precarious employment, mental and physical disabilities and substance dependence. Sir Anthony Mason³⁶ links the importance of judicial independence for Magistrates with their increasing jurisdiction:

“The litigants and the public expect impartial and independent adjudication from magistrates just as they expect it from judges. ... Magistrates’ courts undertake important work extending over a wider range of issues. They exercise an important jurisdiction in relation to summary offences. They are the principal point of contact that the community has with the court system. Today there are strong reasons for applying the concept of judicial independence to magistrates.”³⁷

Although Magistrates are becoming more like judges of the higher courts in their functions and characteristics, the tenure of Magistrates is not protected to the same extent or in the same ways as the tenure of Judges of the ECSC. In the case of **Hinds v The Queen**,³⁸ Lord Diplock stated the position as follows:

“The distinction between the higher judiciary and the lower judiciary is that the former are given a greater security of tenure than the latter. There is nothing in the Constitution to protect the lower

³⁵ The present estimate is that there is a 60/40 split in favour of representation by counsel in the OECS Magistrates Courts

³⁶ AC; KBE; QC, was the 9th Chief Justice of Australia (1972-1995). Now one of the non-permanent Justices of the Hong Kong Court of Final Appeal

³⁷ Sir Anthony Mason, “The Appointment and Removal of Judges “ in Helen Cunningham (ed.), *Fragile Bastion: Judicial Independence in the Nineties and Beyond* (1997) 1, 31

³⁸ [1976] 2 WLR 366 at 377

judiciary against Parliament passing ordinary laws (a) abolishing their office (b) reducing their salaries while they are in office or providing that their appointments to judicial office shall be only for a fixed term of years ... the only protection that is assured to them by section 112 is that they cannot be removed or disciplined except on the recommendation of the Judicial and Legal Services Commission with a right of appeal to the Privy Council.”

A classic case demonstrating the tenuous tenure of OECS Magistrates can be seen in the 2005 **Horace Fraser case**³⁹ which was decided by the ECSC Court of Appeal and which concluded that a Magistrate’s services could be terminated not by the Judicial and Legal Services Commission, but by the executive under the right circumstances. In this case the Court of Appeal invoked a clause in the Magistrate’s contract that provided that the Government of Saint Lucia could at any time determine the engagement on three month’s notice or on paying one month’s salary in lieu of notice. The Court held that this term of the Magistrate’s contract allowed his engagement to be determined by the Government of Saint Lucia by giving him one month’s salary in lieu of notice. This was the case even though the Magistrate was appointed by the JLSC under a two-year contract. It has been argued that until the Magistrates are formally brought into the ECSC system, the apparent ability to remove a Magistrate without cause on 3 months notice [in the BVI] breaches Article 6 of the European Convention on Human Rights.⁴⁰

It is the view of the consultant that Magistrates today are more like judges of the higher courts in their functions and characteristics and are hence deserving of similar protections for their independence, especially security of tenure. At the same time, Magistrates Courts have a number of distinctive features. These differences between the Courts and their status do not in our view justify any lesser protection for the Magistrates and the public they serve; rather, they reinforce the need for clearer protections for Magistrates’ security of tenure. We think that it is desirable to ensure that the status of Magistrates should be equivalent to the status of Judges on the issue of independence from the Executive. A requirement that Judges and Magistrates serving the community until retiring age, as long as good behaviour is maintained, is a stringent and well-trying test that would be undermined by the risk or reality of removal by the Executive. In that regard, we are of the view that serving Magistrates should have the opportunity to apply for tenure and be evaluated by the Chief Justice and the JLSC for suitability in this regard. A suitable retirement age, which bears some relationship to that of a Master in the High Court, and which can move up in the event that the Master’s age of retirement goes up, should be a feature of the tenure considerations for the integrated Magistrates. A draft of the type of legislation that could achieve this objective can be found in Appendix Eight of this Report.

2.1.6 Abolition of Magistrates’ Courts

We consider ourselves fortunate in this consultancy assignment that the issue of the abolition of the OECS Magistrates Courts is not being contemplated. The transition of the Magistrates from being accountable to the Executive to being directly accountable to the Chief Justice of the ECSC does however compel us to recommend that there be an explicit legislative provision that provides for existing

³⁹ Civil Appeal No. 24 of 2005 (October 26; November 28)

⁴⁰ See University of Essex Study “The Judicial System of the Virgin Islands, Options for Reform, Volume 1, pg. 142. Article 6 provides for a detailed right to a fair trial, including the right to a public hearing before an independent and impartial tribunal within reasonable time, the presumption of innocence, and other minimum rights for those charged in a criminal case (adequate time and facilities to prepare their defence, access to legal representation, right to examine witnesses against them or have them examined, right to the free assistance of an interpreter).

Magistrates Contracts to be renewed by the JLSC based upon a recommendation by the ECSC Chief Justice in this regard. The delivery of a positive recommendation by the Chief Justice should be based upon the past performance of the Magistrate and dialogue with the Magistrate in question as to whether he/she is available and interested in being re-appointed.

2.1.7 Promotion

Upon the integration of the Magistrates under the judiciary, it is expected that a formal career path will be created which will allow Magistrates, whose performance in the job warrant it, to be promoted to higher judicial positions. Some schools of legal thought are of the view that the possibility or expectation of promotion to a higher position in the judicial hierarchy could be regarded as inconsistent with the principles of judicial independence in that a Magistrate seeking promotion may appear to be tempted to decide cases in a way that will please other individuals or groups that may have an influence on Magisterial promotions. In contrast, international norms, such as the Basic Principles on the Independence of the Judiciary, expressly contemplate promotion when based on ‘objective factors ... [such as] ability, integrity, and experience.’⁴¹ Indeed, such promotion is a normal feature of European court systems. The consultant is of the view that questions about promotion and independence in the OECS Magistracy will need to be clearly resolved in an integrated Magistracy. It is the view of the consultant that the basic principles on the independence of the judiciary identified should be immediately applicable to the future promotion of integrated Magistrates as they are presently being applied to the selection of Judges and Masters of the ECSC.

We recommend that if previous magisterial experience is thought to be an appropriate or desirable qualification for appointment to a particular judicial office, this should be openly stated by the JLSC so that the implications of promotion for the independence of all judicial officers can be transparently resolved. It is useful to note here that we encountered three clear examples of former Chief Magistrates who have been elevated to the High Court and this is an encouraging sign that an informal career path for Magistrates already exists which simply needs formalization upon integration taking place.

2.1.8 Assignment of Magistrates

We are of the view that the assignment of Magistrates between OECS Countries should be considered as a real possibility under any scenario that integrates the Magistracy under the Judiciary. While there were many views from stakeholders as to what form assignments should take, all the stakeholders that were interviewed accepted its basic concept. The majority of stakeholders were of the view that the Chief Justice must be put in the position to ask Magistrates to serve for various periods of time in other countries when needed, especially in time of emergency or to deal with special problems beyond the capacity of an individual country (e.g. overcoming specific case backlog situations, dealing with a particular matter which has a local political dimension, etc.). These service periods would not be permanent transfers by the JLSC from one country to another, which would not be allowed under the various country constitutions, but would be in the nature of temporary assignments to fill particular service needs. Under an Agreement which we propose be signed by each OECS Country with the ECSC, it would be clearly agreed that the Chief Justice of the ECSC would have the power to assign Magistrates

⁴¹ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Basic Principles on the Independence of the Judiciary (1985) art. 13.

to the various member countries. Acts of Parliament enacted in each OECS Country would legally confirm the above position. The terms of the Agreement are contained in Appendix Eight to this Report.

While the ECSC has achieved rotation in a satisfactory manner for the judiciary (with the present practice being that a Judge be considered for transfer every four or five years), we are of the view that based on the particular remuneration profiles among the OECS Magistrates, which see those Magistrates located in the British Overseas Territories of BVI and Anguilla being paid more than other OECS Magistrates, there ought to be a phased introduction of assignments among the Magistrates, with limited assignments initially taking place among the Magistrates of BVI and Anguilla and wider assignments being undertaken among the other seven ECSC member countries. The other option would be for full initial assignments to take place among all the Magistrates with the understanding among all of them that no matter what their salary levels are they will be eligible to receive only those allowances that are currently in force in the country to which they have been assigned. Existing Magistrates in a newly integrated Magistracy would be asked to consider assignment on a voluntary basis only. Over time however, it is recommended that the possibility of assignment be made a part of the terms and conditions of employment for all new Magistrates. In this regard, all solicitations for the services of future Magistrates would clearly state the possibility of assignment between eligible OECS Countries. Whatever the configuration finally approved by the Chief Justice and JLSC for assignment of Magistrates, we strongly recommend that the Chief Justice ask the Magistrates to provide ongoing information on the progress of Magistrate Court operations in each country to a Managing Judge. The Managing Judge would be tasked by the Chief Justice with maintaining effective consultations with the Magistrates in each country with respect to the efficient functioning of the Court(s) under their jurisdiction. The Managing Judge would report directly to the Chief Justice with respect to undertaking his/her liaison relationships with the Magistrates. On the basis of the information received from the above sources, the Managing Judge would make recommendations to the Chief Justice who would authorize their implementation or bring them to the attention of the Governments of the States as necessary. The Managing Judge would also maintain an active dialogue with the High Court Judge resident in the various ECSC Member Countries with a view to closing the informational loop between the integrated magistracy and the judiciary in each country. It is recommended that the Managing Judge have a roving jurisdiction with respect to the exercise of his/her responsibilities within the ECSC member countries. The ECSC has had the foresight to appoint an additional judge in November 2005, who has been tasked to serve as Managing Judge for the ongoing Court Structures Project. It is recommended that this existing Managing Judge undertake the judicial supervision of the Magistracy in the OECS Countries as recommended above.

It is recommended that the Magistrates provide monthly reports to the Managing Judge to enable the capturing of information on case filings and dispositions presented by the ECSC in its Annual Reports. The reports from the Magistrates should be in the following format:

Case Categories:

Summary Cases

- # of cases in the system (by major type, e.g. civil, criminal, matrimonial)
- # of cases filed in current reporting period (by major type)
- # of cases disposed of in current reporting period (by major type)
- Method of disposition (e.g. trial, dismissals, etc.)

Indictable Cases

of cases in the system (by major type e.g. wounding, murder)

of cases filed in current reporting period (by major type)

of cases disposed of in current reporting period (by major type)

Method of disposition (e.g. trial, dismissals, nolle prosequi, etc.)

Number of cases pending Preliminary Inquiry

It is our opinion that the Chief Justice of the ECSC can undertake the implementation of the above Magistrate reporting recommendations under the auspices of Paragraph 9 of the Eastern Caribbean Supreme Court Agreement of 1982, which states that:

“The administration of all courts in each State subordinate to the Court of Appeal or High Court (other than courts-martial) shall be subject to inspection by the Chief Justice or any judge or officer of the Supreme Court, authorized by him in that behalf, each of whom shall be entitled to make such enquiries and to be furnished with such information as he may require for that purpose, and the Chief Justice may from time to time make recommendations thereon to the Government of any state concerned.”

2.1.9 Salary and Remuneration

The arrangements for judicial remuneration are obviously central to judicial independence.

Security of tenure in relation to salary has several aspects:

- **Payment at a high enough level to ensure a high quality judiciary;**
- **A process for fixing remuneration which is itself independent of political influence; and**
- **An assurance that the remuneration will not be reduced during the judicial officer’s tenure.**

1. Salary Levels

The annual salary levels of Magistrates vary from country to country but using Montserrat as a prime example, they are as follows:

Magistrate – Basic	EC\$75,000
Car Allowance	EC\$ 800
Housing	EC\$ 1,500
Allowance in Lieu of Practice	EC\$ 4,000
Telephone	EC\$ 120

These salary amounts are significantly lower than those annual salary entitlements provided below for other judicial officers, reflecting the present attachment of the Magistrates to the civil service of each country:

Chief Justice – Basic	EC\$184,140
Car Allowance	EC\$ 8,400
Entertainment	EC\$ 6,000
Justice of Appeal – Basic	EC\$153,450
Car Allowance	EC\$ 8,400

Entertainment	EC\$ 3,000
Judges – Basic	EC\$135,036
Car Allowance	EC\$ 8,400
Entertainment	EC\$ 3,000
Masters – Basic	EC\$114,781
Car Allowance	EC\$ 6,960
Housing	EC\$ 18,000

The above figures in our view can be used as a good basis of comparison by the JLSC to enable it to be in a position to fix the salaries of the newly integrated Magistrates at some realistic level that reflects a percentage of the salaries paid to the judiciary. It was suggested in the Maynard/Lazare Report that future **“salaries at the four levels of the Judiciary should have a fixed parity of 1.2 between each level.”**⁴² The four levels of the judiciary mentioned are (a) The Chief Justice; (b) Appeal Court Judges; (c) High Court Judges; and (d) Masters. We agree with the parity level suggested by Maynard/Lazare and recommend that the newly integrated Magistrates be added as another level for remuneration consideration and that a fixed parity of 1.2 be maintained between the salaries of Masters and Magistrates. It is to be noted that it was proposed in the recent past by Maynard/Lazare that an increase in the present salaries listed above for the judiciary be contemplated and discussions along this line were undertaken between the ECSC and the relevant parties in the most recent Heads of Government conference which took place in Grenada on May 23-25, 2007.⁴³

2. Fixing Remuneration

Upon integration, the Magistrates will in our view form part of a third-tier of the ECSC judiciary. As a consequence of this, we are of the view that the mechanism for setting the salaries for the former Magistrates should not differ significantly from the setting of salaries for the higher judiciary. Their wider remuneration package should also include the provision of tax-free salaries as well as the entitlement to a duty-free vehicle every four or five years as is presently the case for Supreme Court Judges. We had previously recommended in this report that the salaries of the integrated Magistracy bear a fixed percentage relationship to the salary of the ECSC Master. It is recommended for integration purposes that this fixed percentage relationship be reflected legislatively. The relevant draft Agreement to achieve this can be found in Appendix Eight of this report.

3. Non-Reduction of Remuneration

Under this heading it is useful to look at an example from the Montserrat Magistrate’s Court Act. This Act states that **“The salary of the Magistrate and of any person appointed to act as Magistrate shall be such as may be prescribed by law and shall be charged on the Consolidated Fund. Provided that the salary of the Magistrate shall not be reduced during his tenure of Office.”**⁴⁴ It is our view that

⁴² Charles Maynard/Alick Lazare Report on Pay and Conditions of Service of Judges of the Eastern Caribbean Supreme Court, May 2006, page 33

⁴³ The last salary revision for the judges was in the year 2000

⁴⁴ Section 9, Montserrat Magistrate’s Court Act

this type of clause should be embodied in all proposed legislation for the integration of the Magistracy under the Judiciary and we so recommend.

As previously discussed, the amendments to the OECS Country Constitutions are not being contemplated at this time. In order therefore to obtain some protection against salary reductions with regard to the newly integrated Magistrates, it has been recommended that their salaries be linked legislatively with the salary of a Master whose position already has constitutional protection against salary reduction.

3.0.1 Retirement and Pensions

The following quotation from the Maynard/Lazare Report ⁴⁵ provides some information on the issue of retirement of judges:

“According to Section 8 of the Supreme Court Order, 1967, a puisne judge and a judge of the Appeals Court shall hold office up to the age of 62 and 65 respectively, provided that the Judicial and Legal Services Commission, acting with the concurrence of the Premiers [Prime Ministers] of all the States, may permit a judge to continue in office after attaining the age prescribed for retirement for a period or periods not exceeding in the aggregate three years.

One view is that the retiring judge must satisfy both of the following requirements:

- that the stipulated age for retirement, namely, in the case of a High Court judge, 62 years, and in the case of an Appeals Court Judge, 65 years, has been reached; and**
- that at least ten years service, including the additional five years allowed in the Act to assist him to qualify must have been given.**

This view maintains that a judge has not retired until the stipulated age for retirement has been reached. The judge may have resigned or may have other reasons for demitting office, but in such a case the judge would not qualify for a pension unless the second requirement has been met. In this case the judge gets nothing for the years service given if less than ten years.

Another view is that pension is vested once ten years’ service has been completed; but such pension will only become payable at the age of 62 or 65 as the case may be, even though the judge may have demitted office some time before.

The Chief Justice must have a period of not less than 10 years service to receive full pensionable emoluments at the date of his retirement. Otherwise, he shall receive a pension at a rate equivalent to three-fourths of his full annual pensionable emoluments. In the case of a Justice of Appeal the years of service is 12 years and for the High Court judge is 15 years.

Upon retirement, a judge can opt to receive in lieu of the full annual pensionable emoluments a reduced pension at a rate of three-fourths of the full annual pensionable emoluments together with a gratuity equal to fifteen times one-quarter of his full pension.”

The question of pensions for Magistrates is relevant. OECS Magistrates are differently situated than judges in relation to their retirement ages and pension entitlements. Magistrates in every OECS

⁴⁵ *ibid*, pages 28, 29

jurisdiction lack these entitlements, as they are usually defined as government employees for the purpose of the relevant pension legislation in the OECS Countries. This entitles them to whatever pension benefits that may be available to employees generally, based on employer and employee contributions. A secure retirement is important to judicial independence as it avoids the need for a judicial officer to seek paid employment after completing judicial service. A need for such further employment may create at least the appearance of a motive to decide cases in ways that would enhance future employment prospects. It is probably not financially or politically possible for Magistrates to receive the same terms as judges of the ECSC, based on our recommendation that they be recognized as third-tier judicial officers. To achieve full independence however, Magistrates should be entitled to a non-contributory pension along similar lines to the to that paid to the ECSC judiciary. Significant discussions are now taking place in relation to the retirement benefits of judges. It might be said that Magistrates have not been featured significantly in these discussions largely because of their non-integration into the existing OECS judicial structure. As Chief Justice Gleeson said in 2001, their remuneration and pension arrangements still reflect the public service background.⁴⁶ As a prelude to the integration of the Magistracy under the judiciary, it is timely for the development of a protocol or minimum standard for retirement benefits of Magistrates that should bear some percentage relationship to the pensions currently being provided to the OECS judiciary. In our view, judicial independence would be better protected by a greater degree of consistency and guaranteed minimum entitlements across all the members of an integrated court. It seems to us that this objective would be considerably enhanced if harmonization of the various pension laws in the OECS Countries were undertaken simultaneously with the Magistrate integration process as the various OECS Governments frequently interpret these laws differently in the assessment of pension claims. These differences of interpretation frequently create significant delays in their final resolution.

3.0.2 FINANCING

The ECSC's budget, based on a financial year that runs from 1 July to 30 June, is prepared centrally by the ECSC headquarters in St. Lucia, following a process of internal consultations with all departments. The budget includes the emoluments of all judges and staff of the ECSC as well as the operational cost of the ECSC headquarters.

A Budget Committee comprising the Budget Officers of the Member States reviews the prepared budget and makes recommendations for any changes desired prior to the submission of a final report for approval.

The final budget approval authority is the OECS Heads of Government, whose approval must be unanimous in this regard. The Chief Justice presents an annual budget to the meeting of Heads of Government for their consideration.

It is a treaty obligation that once the Heads of Government have approved the ECSC budget, each Member State must pay its share, based on an agreed formula for burden sharing.⁴⁷ Payments are normally due at the commencement of the financial year, but most governments take the option to make monthly or quarterly payments. The national budgets include a number of expenses relating directly to the judges, such as house rentals, the payment of utility costs and payment of pensions. This seems to be a well-established arrangement since in the standard letter of appointment issued

⁴⁶ Gleeson CJ, "The State of the Judicature", *op. cit.*

⁴⁷ See Appendix Six to this Report for a breakdown of present OECS Country Contributions

to judges on first appointment, it is stipulated that the government of the Member State to which the judge is posted will be responsible for providing free, furnished quarters and for meeting the costs of telephone rental, local calls, electricity charges, water and sewerage rates.

This arrangement appears to have worked well in the past. However, many judges, both serving and retired, have in the past indicated their unhappiness with having to interface directly with the national administrations concerning unpaid rentals and utility bills. The situation is said to be even more distressing with regard to pensions as in some cases it was reported that retired judges do not receive their pensions until 18 to 24 months after they have retired.⁴⁸ It is recommended that those payments relating directly to the judges should be included in the ECSC central budget and disbursed directly from there after approval by the Authority. The integrated Magistrates should be fully subsumed under the ECSC budget with respect to the payment of all claims to remuneration and pension entitlements. This process will be less financially burdensome for OECS Member States in the future if our following recommendation for the establishment of a Trust Fund to finance the judicial system is accepted.

The above-recommended payment mechanism would also be directly relevant to a critical aspect of the independence of the Magistracy, which arises from the control exerted by the Executive over the access, maintenance and availability of court premises, facilities, staff and budget. The present situation in the OECS Countries is that while the executive does not declare any interest in, or control over, the legal jurisdiction of the Magistrates, it does provide most of the administrative support, in the form of local court staff and equipment, that enables the conduct of business by the Magistrates. In the view of the consultant, to ensure full independence of the Magistracy, and the wider judiciary, a different relationship will have to be worked out between the ECSC and the Executive with relation to how financial support is provided to the judiciary. As has been previously stated by judicial authority:

“ It is very important that the judges of a court should unambiguously possess and exercise the right of control of the court’s premises, facilities, staff and budget. Executive control of these areas carries with it the ability to exert or threaten almost as much pressure on judges as the power arbitrarily to remove them or reduce their salaries. Realistically, the judges cannot be regarded as in control of the administration of justice and operation of their court unless they control these areas.”⁴⁹ Again, an eminent authority has stated that:

“there is a tendency to judge the significance and worth of public functions by reference to their outward manifestations. Public confidence in the judiciary could be significantly affected by the nature and suitability of court buildings and court facilities and by whether these buildings and facilities are seen to be controlled by the executive government or by the judges. If the courts are to have exclusive authority to declare and apply the law and to administer justice, as the principles of the rule of law and judicial independence demand, they cannot confine their responsibilities to the mere hearing of cases. They must concern themselves with all those matters which are capable of affecting the course and the outcome of legal proceedings, however mundane or remote from the traditional role of judges those

⁴⁸ Maynard/Lazare Report on Pay and Conditions of Service of Judges of the Eastern Caribbean Supreme Court

⁴⁹ Mr. Justice McGarvie, “The foundations of Judicial Independence in a Modern Democracy (1991) 1(1) Journal of Judicial Administration 3, 30

matters might appear to be. For these reasons I hold strongly to the view that the only effective way in which judicial independence can be adequately ensured is by vesting the judiciary complete control over the court and its facilities. Such complete control is, I suspect, the exception rather than the rule in most countries. It is an aspect of judicial independence which demands a good deal more attention than it has hitherto received.”⁵⁰

It is the view of the consultant that the stage has not yet been reached in the OECS Countries where the constitutional arrangements require a sum to be voted adequate to meet a budget drafted by the Judiciary with its needs foremost in mind. This is a significant gap that needs to be extensively reviewed for amelioration in the future. As was stated by Chief Justice King:

“The effective functioning of the judiciary depends in large measure upon the financial and material resources made available to it --- the dependence of the judiciary on outside sources for the wherewithal to perform its function must always pose some threat to the independent and impartial administration of justice. Those who control the purse strings will always have some capacity to influence the actions of those who are dependent upon the contents of the purse.”⁵¹

Various studies have examined options for securing a more reliable and secure method of financing for the ECSC, but these have not been adopted either because their recommendations involved diversion of revenue to the control of the organization or the advocating of the use of independent sources of financing which would result in the imposition of additional government taxation. In our view, in order to further buttress the independence of the OECS judiciary, and magistracy, it is necessary to identify and design an independent source of financing for the ECSC. We highly commend for consideration the use of a Trust Fund kind of arrangement similar to that used to establish the Caribbean Court of Justice.⁵² In the establishment of this Trust Fund we recommend that the Governor of the ECCB be approached to capitalize the fund from existing sources of income that could be made available to the OECS Court system under appropriate circumstances. The ECCB should also be consulted with respect to the possibility of having the various OECS Governments continuing to provide the buildings for courtrooms while having the maintenance of such buildings being a charge on the Trust Fund. We recommend that the establishment of the Trust Fund contemplate the payment of Judges and Magistrate salaries and pensions. The Trust Fund should also bear the cost of the hiring and payment of all court staff that are presently being paid for by the Executive in all the OECS Courts, as there have been many occasions in the past where the smooth administrative operations of the Magistrate’s Court have been disrupted due to the transfer of competent court staff to other areas of the public service in furtherance of the achievement of their career goals. The hiring and payment of Court Staff under the Trust Fund would also provide the ECSC with the ability to ensure that all court staff members live up to the expectations of the court with regard to the provision of a high level of service to the public. With respect to the payment of Court Staff under a Trust Fund, it is recommended that the Court Registrars in the various OECS Countries be considered for salaries review once they become fully active in the proposed reform to involve them in the assumption of quasi-judicial responsibilities which are supported by the engagement of management personnel to serve as Trial Court Administrators in the Court Offices. In our view, the salary and benefits of the Registrars in

⁵⁰ Mr. Justice LJ King, Minimum Standards of Judicial Independence (1984) 58 Australian Law Journal, 340, 344

⁵¹ King, L” Minimum Standards of Judicial Independence (1984) 58 Australian Law Journal, 340, 341-2

⁵² Appendix Eleven to this Report provides CCJ Trust Fund details

the region should track, in the form of a percentage amount, any improved salary and benefits that might be provided to the Magistrates upon integration into the judiciary. A similar comment would apply to the salaries of the proposed Trial Court Administrators whose salaries should also track in percentage terms the new salaries of the Registrars.

PART II

CONSULTANCY FINDINGS AND RECOMMENDATIONS

There was wide stakeholder consensus throughout the nine OECS Countries visited that the time has now come for the Magistracy to be given the same level of independence as the Judiciary and that the present system whereby Magistrates report to the Executive is incompatible with strengthening the Rule of Law and the proper administration of justice. The stakeholder interviewees were of the view that the Magistracy had to be made independent of the Executive, even if there was no undue influence being exercised over it, in conformity with the principle that **“justice must not only be done, but should manifestly and undoubtedly be seen to be done.”**⁵³ In order to effect this transformation, we have recommended that a number of legislative interventions be undertaken within the national legislation of the various ECSC Member States. As a practical matter however, because of the political processes involved, legislative transformation will not occur immediately. While the various stakeholders are studying the proposed legislative interventions, we strongly recommend that the following functional and managerial integration steps be undertaken in advance of, or simultaneously with, the acceptance of the proposed legislative interventions:

- **Executive Administration Office of the ECSC**

- The proposed integration of the Magistrates under the judiciary will require greater delivery of court administration services to the integrated system. It is recommended that two persons be added to the Court Executive Administrator’s office whose services are primarily directed to the provision of services to the Saint Lucia-based Judicial and Legal Services Commission whose mandate would be expanded upon integration to include personnel administration and deployment responsibilities for the newly integrated Magistrates. The services of these two management persons would also be available to the wider Supreme Court to perform other management duties as determined by the Court Executive Administrator. These other duties could include responsibilities for the management of any court facilities that come under the future direct management of the ECSC. These administrative changes would be so designed that they accord with, flow seamlessly into, and are supported by, the existing management structure currently used by the ECSC throughout its nine country jurisdictions.

- **Magistrates Courts**

- The ECSC to provide funding support to enable the acquisition of regional technical assistance services to determine the nature and extent of the existing civil and criminal case backlogs in the Magistrates Courts. It is particularly important to ascertain the backlogs as these Courts hear approximately 90% of all criminal and civil cases entering the OECS Court system and represent the first line of contact with the court system for aggrieved citizens. Funding support could be used to undertake the following activities:
 - Establish a backlog reduction project in those Magistrates Courts identified as being the most severely affected, the size and complexity of which will be determined by available ECSC and other funding. A critical part of this backlog identification effort should be the convening of status hearings by the Magistrates, with the lawyers representing both sides

⁵³ Per Lord Hewart, CJ in *Rex v Sussex Justices, Ex parte McCarthy* [1923] All E.R. 233

of the issues present, to determine whether particular cases have the evidential and other bases to be contested or whether these cases should be deemed abandoned. After the backlog has been ascertained, it is highly recommended that the case disposition data collection system currently being developed and refined by a senior member of the ECSC Judiciary be further strengthened to include this new information on the newly integrated Magistrates Courts. In our view, this approach, in addition to fostering the integration process between the newly integrated Magistrates Courts and the wider court system, will eliminate once and for all the dearth of statistics which has in the past hindered the ability of the Chief Justice and system planners to effectively come to grips with the nature and extent of the case backlogs in the Magistrates Courts.

- Draft and implement modernized Civil Procedure Rules of Court to ensure that Magistrates can be more effectively in charge of court proceedings. In this regard, any new rules should precisely delineate very limited circumstances where Magistrates will grant adjournment of cases, as adjourned cases are one of the main causes of increasing case backlogs in these courts. The new procedural rules should draw heavily from the existing ECSC Civil Procedure Rules that have been highly successful in allowing judges to maintain control of High Court proceedings.
 - Develop and utilize mediation techniques in the Magistrates Courts and develop the necessary Civil Procedure Rules to support this proposed intervention. This initiative would directly complement and utilize the positive lessons learnt from the existing highly successful court-connected mediation programme in the ECSC that was previously introduced with the financial assistance of USAID. We understand that a representative from the ECSC Mediation Unit is already in touch with the relevant Magistrates' Court authority in BVI to ascertain any existing impediments to the more extensive use of civil mediation in the Court.
 - Establish modern Court Reporting Systems in the Magistrate Courts. The High Courts in the various countries have already made a start in this area, but the effort has to be consolidated with respect to obtaining a continuous flow of trained reporters and modern court reporting equipment to service the court reporting needs of both the High Courts and the Magistrate Courts. With respect to the provision of Court Reporting equipment, the CIDA/JLR Project has been instrumental in the past in the provision of court reporting equipment to some OECS Magistrates Courts. This effort however needs to be buttressed by a stronger emphasis on the acquisition of trained personnel as well as the provision of technical assistance in the preparation of any necessary legislation that will enable the transcripts of proceedings to have evidential value in the proceedings of all the Courts.
- **Magistrates Appointments and Disciplining:**
- The constitutional provisions for Magistrate appointments vary significantly in the OECS. None of these provisions are geared to accommodate a Magistracy organized on regional lines and administered by a regional agency. In light of the reality that no consensus was found in the OECS Countries for undertaking protracted and costly referenda exercises to ascertain citizens' views on changing the Constitutions to achieve Magistracy integration, it is recommended that each OECS

Country should enter into an Agreement with the ECSC to set up a third-tier Magistrate Court in each of the States. We recommend that a separate Act of Parliament be passed in each State providing for the integration of the Magistrates Courts under the ECSC. Appointments, tenure and terms and conditions for the Magistrates would be removed from the Executive Branch of Government and placed under the jurisdiction of the JLSC. The JLSC would then set out guidelines for recruitment approximating those for ECSC Judges. The consultants recommend this as a preferable arrangement to effecting integration through constitutional changes. The use of this type of Agreement by the OECS States is not new and has been used effectively in the establishment and operation of a common Supreme Court for all the OECS Member States.⁵⁴

- There is presently no legal provision for appointment of Magistrates for a term of office ending with a fixed retirement age as obtains for judges of the ECSC. Once a Magistrate has been appointed, however, whether on contract or permanently, there can be no dismissal without cause. The fact that at the end of the contractual term no reason need be given for refusal or renewal may however negatively influence the Magistrates' sense of independence. It is recommended that the continued employment of Magistrates under contract be contemplated only in very rare circumstances for the retention of all future Magistrates under an integrated system. A process whereby existing Magistrates can apply to the Chief Justice for tenure and be evaluated for employment suitability based on their performance track record is also recommended for implementation under a Magistracy integration scenario.
- The power to exercise disciplinary control and to remove the present Magistrates from office is vested in the Judicial and Legal Services Commissions and this relationship should be maintained in any new dispensation in which Magistrates become part of an integrated Judiciary.
- It is recommended that the limit of the civil jurisdiction for the integrated magistracy be increased to EC\$25,000.00, which would allow the newly integrated Magistrates to undertake civil trials that have more substantial gravity than at present and help to distribute the trial burden of civil cases more equitably between the High Court and the Magistrate Courts. The existing Magistrates' Courts civil jurisdiction in the OECS Countries ranges from EC\$6,000 to EC\$25,000 and US\$10,000 (e.g. Nevis and BVI respectively). As was stated by the World Bank recently:

“magistrate courts can resolve simple commercial matters efficiently and effectively. St. Kitts and Nevis recently expanded the reach of magistrate courts by amending the civil procedural code to increase the value of claims heard by court from EC\$10,000 to EC\$25,000.”⁵⁵ The BVI presently has a civil jurisdiction of US\$10,000.

- The work of the Magistrates should be conducted in accordance with the Code of Ethics that is presently being used by the ECSC judges. Suggestions for possible additions to the existing Code of Ethics have been prepared by the Lead Consultant for the consideration of the ECSC Chief Justice and are contained in Appendix Ten to this report.

⁵⁴ Eastern Caribbean Supreme Court Agreement, 1982

⁵⁵ Doing Business 2007: Organization of Eastern Caribbean States, World Bank, page 26

- The strong recommendation is for Magistrates to be provided with opportunities that facilitate their professional advancement. This should include orientation courses of the type provided by the ECSC for new judges, annual conferences for exchanging issues of common concern and opportunities for educational advancement. It is recommended that the Judicial Education Institute plays a lead role in this integrated training thrust, working in close collaboration with the Caribbean Knowledge and Learning Network based in Grenada, the Faculty of Law of the UWI based in Barbados, the Faculty of Law of the University of Guyana and the Regional Law Schools based in Trinidad, Bahamas and Jamaica.

- **Physical Facilities:**

- There were strong views that the state of the physical structures housing the Magistracy did not create the impression within the OECS Countries that the Rule of Law and the efficient administration of justice were accorded pride of place in the eyes of political decision-makers. A Trust Fund needs to be created the proceeds of which are used by the Judiciary to establish and maintain its own physical facilities. Such an arrangement would enhance the independence of the judiciary. There was no objection among stakeholders interviewed in the various countries to such funds being provided by the ECCB that has been contemplating financial assistance to the justice sector for some time as part of its economic development thrust in the OECS Region. The relevant guidelines would be developed between the ECSC and the ECCB to ensure that Fund proceeds are used in accordance with its articles of establishment. In conjunction with this recommendation, careful thought should be given to the configuration of future new court facilities along more holistic lines. New facilities should have “one stop” features which would allow the delivery of other services to persons seeking assistance in areas related to the delivery of justice, e.g. mediation and counseling. It is now timely to take this recommendation into account having regard to the fact that Saint Kitts, Saint Lucia, Saint Vincent and Montserrat have plans to build new court facilities and Grenada is currently upgrading its High Court Registry. The BVI also has plans to construct an integrated Judicial and Legal Services Complex that is likely to be based on the holistic development model recommended above.

- **Court Security**

- The provision of adequate numbers of police personnel to the OECS Magistrate Courts to present a credible deterrent to any attacks on their physical premises or personnel was in the view of the consultant inadequate. The lack of deployment of adequate numbers of personnel around the clock can be directly traced to the necessity for such personnel to be deployed in the fight against rising crime and general lawlessness in the OECS Countries. The consultant recommends that a small cadre of civilians be trained by the police in each country on an ongoing basis who would be supervised and tasked to protect judges and magistrates in the countries. Their protective security umbrella would extend to the High Court, Magistrate Courts and to the private residences of the judges and former magistrates. The recommendation that former Magistrates be protected both at home and at the courts is particularly important having regard to the fact that they will continue to be responsible for the trial of most drug and firearm cases that arise in the OECS court system. The implementation of this recommendation would also ensure that police resources in the OECS Countries are freed-up to be deployed to crime-fighting responsibilities in the countries.

▪ **Police Prosecutions:**

- With regard to the prosecution of cases in the Magistrate Court by police personnel who are not trained lawyers, it is the view of the consultant that while the ideal situation would be to replace the police prosecutors with trained lawyers in the nine ECSC member countries, the negative budget implications would be too severe to justify any gains made in this area. Accordingly therefore, we recommend that more precise guidelines be established by country Directors of Public Prosecutions (DPP)/ Attorneys General that clearly delineate the gravity of cases in which sole use is made of police prosecutors. In more complex and serious cases, the trained staff of the DPP should be utilized for prosecutions. It is understood that the implementation of this recommendation might require the retention of more trained lawyers and/or increased training for the staffs of the DPP/Attorneys General offices throughout the OECS Countries. However, we are of the view that this recommendation can also be substantially implemented through the secondment from the police department of police prosecutors who wish to study law and who have displayed the right temperament with regard to the acquisition and utilization of key legal principles in criminal prosecutions. In these situations, we recommend that the police personnel seconded to the DPP Offices report directly to the DPP who will be responsible for the development of the necessary performance appraisal reports on their behalf which will be submitted periodically to their superiors in the police force and be used as the basis of their continued upward mobility in the force. We note that the BVI is far advanced in its thinking about the use and role of the Police Prosecutors in the Magistrate Court and plans are being implemented to have all police prosecutors be physically located in the DPP's Office and under his full control and supervision. The DPP would be responsible for providing periodic performance reports on the police prosecutors to their superiors in the police force. A similar comment relates to the already established Crown Prosecution Service in Saint Lucia that is headed by the DPP.

▪ **Administrative Procedures:**

- One of the main causes of the backlog of civil and criminal cases in the Magistrates Courts (with the exception of Montserrat which does not seem to have a backlog of cases at this time) is the absence of procedural guidelines that gave the Magistrates predominant control over proceedings in their courts, with specific reference to controlling the large number of requests for case adjournments on the part of lawyers and police prosecutors. In this regard, such procedural guidelines should be drafted and implemented as a matter of urgency, prior to, or simultaneously with, the integration of the Magistracy with the Judiciary. The procedural guidelines should clearly tackle the question of what happens in a case where a lawyer has a case to be heard in the High Court at the same time as one in the Magistrate Court. To the greatest extent possible, the new rules should eliminate the possibility of this conflict being recognized as a ground for a case adjournment in the Magistrates' Court.
- In our view, guidelines should also be enforced by the ECSC with regard to the procedures to be adopted by the newly integrated Magistrate Courts in criminal proceedings instituted in these courts in the period before trial. An excellent example of such procedural rules, issued by the ECSC, is being utilized in the Saint Vincent Magistrates' Courts⁵⁶ and could be used as the template for the development of guidelines for all the OECS Magistrate Courts.

⁵⁶ Magistrate's Court Pre-Trial Time Limits Guidelines, 2003

- An enhancement in the efficiency of the Magistrate Courts could be achieved through the amendment of the Evidence Acts in the OECS Countries (with the exceptions of BVI⁵⁷ and Anguilla which have current legislation on this matter) to enable the admission in court of evidence disseminated by such information sources as video recordings, facsimile transmissions, E-mail transmissions, computer hard-drive information, etc. It is recommended that the present BVI Evidence Act be used as a comprehensive source of reference for the drafting of new Evidence Acts. The CARICOM Secretariat, based in Guyana, has produced a draft CARICOM Evidence Act that should also be consulted in the drafting exercise.
- An important backlog causative factor in the Magistrates Courts is the absence of court reporting technologies and reporters that forces the Magistrates to record the court proceedings in longhand. It was the widely held view that the training of court reporters should be organized on a continuous basis using the services of one of the countries that have court reporter training schools in the region. The consensus of views was that the Jamaica Justice Training Institute and the Saint Lucia Sir Arthur Lewis Community College should be approached to see which organization could most efficiently provide long-term court reporting training services to the OECS Countries. Whichever institution was chosen, it was the feeling that their ability to continuously provide court reporter training services over the long-term could be significantly enhanced by the utilization of the technical assistance of the Caribbean Knowledge and Learning Network in the development of training curricula and the strengthening of their telecommunications infrastructure to permit the cost-efficient delivery of training modules by video and voice transmissions. Technical assistance services are also required to draft laws repealing existing legislation in the OECS Countries requiring that notes of evidence be taken by hand. The medium to long-term strengthening of the delivery of court reporting services should be assisted in the various OECS Magistrate Courts using the expertise of the personnel of the Court Reporting Unit located in premises opposite the High Court in Saint Lucia.
- A large number of the fees being charged for various services by Magistrate Courts are set at very low levels. An increase in these fees to realistic levels combined with the ECSC obtaining legal authority to collect and retain a percentage of such fees for the maintenance of the court system,⁵⁸ would achieve significant results in all operational areas. In this regard, the 1990 Alick Lazare study of fees and fines in the OECS Magistrates Courts should be updated with specific information on the adequacy of the fees in these Courts as a precursor to the implementation of upward fee revisions. Any new fees proposed for the Magistrates Courts should use as comparator information the previous recommendations for High Court fee adjustments made in a more recent Lazare Study on High Court Filing Fees. Every attempt should of course be made to be sensitive to the fact that if fees are upped too far they can effectively operate to limit access to poor litigants. A fine balancing act has therefore to be pursued in this matter.

⁵⁷ See for example section 56 (1) of the BVI Evidence Act, 2006, which provides that “In any civil proceedings, a statement contained in a document produced by a computer is admissible as evidence of any fact stated therein of which direct oral evidence would be admissible ----.”

⁵⁸ Under section 102 of the BVI Constitution there was found some evidence that this could be achieved. Section 9 states that “All revenues or other moneys raised by or for the purposes of the Government of the Virgin Islands (not being revenues or other moneys that are payable by or under any law into some other fund established for any specific purpose or that may, by or under any law, be retained by the authority that received them for the purpose of defraying the expenses of that authority) shall be paid into and form part of the Consolidated Fund.”

- While the consultants were visiting the ECSC in Saint Lucia in May 2007, we met briefly with management consultant Dr. Trevor Hamilton who was conducting a consultancy study that would lead to the assignment of grades and salaries to all non-judicial positions at the ECSC Headquarters. While it is too late to incorporate reference to a similar study being undertaken for the Magistracy by Dr. Hamilton as part of his present consultancy exercise, we do recommend that a similar study be commissioned by the ECSC Chief Justice for the Magistrate Courts once the Magistracy Integration Legislation has been enacted into law in the OECS Countries.
- The integration of the Magistracy under the Judiciary will entail fundamental adjustments to the present methods of operation of the present Magistrates in the OECS Countries. Some Magistrates might find such adjustments difficult or impossible to undertake and might not wish to undertake the new responsibilities brought about by the proposed increase in civil jurisdiction to EC\$25,000. To cater for such an eventuality, we recommend that a Severance Fund be established which has in it sufficient funding to provide severance payments to those Magistrates who do not wish to participate in the new Magistrate Court structure. We estimate that approximately 10% of the existing Magistrate complement of twenty nine full-time persons, might not wish to participate in the newly integrated system and we therefore recommend that a sum relating to the salary and allowances of three Magistrates be set aside in the ECSC budget for this purpose.
- The practice where some Magistrates in certain OECS Countries still perform private practice as lawyers should be discontinued. In the view of the consultant, the remuneration of the Magistrates should be set at a level by the JLSC which is sufficiently attractive to obviate the need for them to engage in private law practice to make financial ends meet. A good start has already been made in this matter by BVI and Anguilla that have salaries which compare favourably with the High Court Judges posted to those territories.

▪ **Utilization of Technological Applications:**

- An integrated information system between the Magistrate Courts, the Police and the Prisons was stated to be useful in ensuring that Magistrates could make informed sentencing and other case decisions. Over the longer term, we recommend that the services of an appropriate technical person be utilized to effect a computerized linkage to the police and the prisons for the entire ECSC. This computerized linkage would of course be configured to deny access to sensitive information not strictly required by the courts in the efficient performance of its duties. The provision of the relevant specialized training to the newly integrated Magistrates, to ensure that they know how to use these databases most efficiently, would also be required and could be provided by the JEI for the entire judiciary.
- The electronic linkage of the Judicial Enforcement Management System (JEMS), presently operational in the High Courts, with the newly integrated Magistrate Courts would provide those courts with a great efficiency tool. The JEMS system has been implemented in the High Court and has the capacity to undertake the management of the work processes of the Magistrate Courts. While there are many court management systems on the market, there are benefits to be gained from implementing a system in the Magistrate Courts that is fully compatible with an existing system in the High Court. The benefits to be gained include:

- Lower implementation costs, as central support staff are only required to support one type of system, rather than multiple systems;
 - Shorter learning curve for implementing the system because there are already knowledgeable people within the court system;
 - Magistrate Courts staff training can be combined with the High Court;
 - High Court staff can assist with the implementation;
 - Flexibility can be gained through the sharing of Court staff in peak periods;
 - Court staff gain career advancement opportunities as they are trained in systems for all courts; and
 - Judges and Magistrates who become familiar with the court management system will be knowledgeable of the functionality available in all courts, rather than just one court.
- The Chief Justice of the ECSC should also consider using user fees obtained from JEMS in the E-filing area to offset any increased costs that accrue as a result of integration. These user fees would be levied for the electronic filing of court documents and present indications are that such a service would be heavily subscribed to by the Bar and the wider citizenry. A policy dialogue would have to be undertaken by the Chief Justice with the Executive to seek agreement on the proceeds from user fees being made part of a dedicated fund solely available to the ECSC for specified improvement purposes.
 - The present JEMS software should be enlarged in scope to utilize its ability to provide electronic document filing capability within the Registries of the High Court in each OECS Country. Each High Court Office should be so administered that electronic filing of documents for both High Court and Magistrate Court matters can take place within its confines. In order to cater to the rural areas in the OECS Countries, the Magistrate Courts in those areas should be provided with the electronic filing capabilities that would allow both High Court Matters and Magistrate Court matters to be filed within their confines.

▪ **Provision of Training Opportunities**

- The OECS court system is functioning under an already heavy burden of old cases and it is called upon to meet many new and complex security challenges. There still exists a need therefore to provide appropriate training for judges and magistrates, particularly with respect to new legislation and the use of increasingly complex scientific and technical evidence in criminal cases.
- The Magistrates need a program of continuing legal education opportunities akin to that being provided to judges under the auspices of the ECSC's JEI. With the integration of the Magistracy with the judiciary, greater efforts should be made to ensure that the Magistrates are fully incorporated into the training regime of the JEI. Training topics for early implementation should be judicial ethics, change management and stress management. In particular, we recommend that the Chief Justice consider the possibility of having the Magistrates attend and participate in the orientation program for new judges that has been made available to new ECSC judges in the past by the JEI.
- In all of the OECS Countries, the Magistrates' Courts Bailiffs serve summonses, execute warrants and writs of execution, warrants of possession and return affidavits of service for daily court lists.

In some countries (e.g. Saint Vincent) they do not attend court to act as court clerks in civil matters. It is fair to state that the level of training and management control of the Bailiffs in all of the countries need to be strengthened, as there are huge gaps in the job performance of the Bailiffs throughout the countries. As the Bailiffs represent the critical interface between the legal pronouncements of the Magistrates' Courts and the ability to effectively implement those pronouncements on the ground, it is recommended that more practical training courses be given to the Bailiffs on a more systematic basis. These courses could be along the lines of the recent Bailiffs Workshop in the BVI, which focused on: legal obligations with special emphasis on enforcing judgements, collecting and accounting for creditor's money as well as bookkeeping. Bailiffs also discussed protocol and decorum, audit, reporting procedures and supervision of assistant or junior Bailiffs. More generally, the Registrars, under whose management jurisdiction the Bailiffs fall, should be also provided with the relevant management courses to enhance their ability to more effectively utilize the Bailiff's services.

- The integration of the Magistrates into the Judiciary will provide the Chief Justice of the ECSC with the opportunity to appropriately extend the scope and content of present judicial training opportunities being offered at the JEI, to include Magistrates. It is recommended that an ongoing court reporting training program be developed for the OECS Countries using the services of the Caribbean Knowledge and Learning Network (CKLN) which now has the capability to assist University and Colleges throughout the region acquire the hardware and technical skills required to disseminate educational programs in specialized areas. As the UWI is a CKLN partner, it is recommended that the JEI establish a partnership relationship with the UWI Faculty of Law and professional Law Schools in the wider Caribbean Region, which will allow the JEI to accomplish its two strategic goals of (i) in the short term, the provision of training for court staff and judicial officers; and (ii) in the long term, developing a JEI which has academics attached to it as part of its regional judicial training outreach.⁵⁹
- **Access to legal information**
 - As the case law information available from CariLaw at the UWI Faculty of Law in Barbados would form an invaluable resource for the newly integrated Magistrates in the conduct of their daily adjudication responsibilities, it is recommended that the relevant computer hardware and software be provided to all Magistrate Courts to enable them to be in a position to access CariLaw information.
- **National and Regional Bar Associations**
 - As soon as the Magistracy integration process is legally concluded, it is recommended that the Chief Justice of the ECSC convene a special meeting with the judges of the ECSC, the Magistrates and the leaders of the OECS and National Bar Associations with a view to exploring the ramifications of all the changes which will be implemented to ensure the seamless integration of the Magistracy with the ECSC. Specific focus should be placed on getting the commitment of all the members of the organizations present to adhere to the changes that will be implemented to

⁵⁹ See the Latimer House Guidelines, 1998 that has the following words appearing under the rubric "Training"—"A culture of judicial training should be developed. Training should be organized, systematic and ongoing and under the control of an adequately funded judicial body."

ensure the maximum efficiency of the former Magistrate Courts. Once this agreement is obtained, we recommend that the agreed implementation agreements be embodied in formal ECSC Practice Directions for the integrated system.

SUSTAINABILITY CHALLENGES

In order to guarantee the long-term sustainability of newly integrated Magistrate Courts, a thorough cost benefit analysis should be undertaken early in the Magistrate Court Integration process. It is understood that expensive solutions such as the implementation of an integrated computerized management system must demonstrate a return to offset the on-going maintenance and licensing costs. These costs can be balanced through savings in staff resources, airline travel and telephone charges which may be obtained through the streamlining of processes, or through an increased ability to obtain access to a percentage of the fees and fines and other revenue charged for the utilization of court services or levied against individuals. But we should not lose sight of the fact that an efficient and effective justice system which provides a consistent means for the resolution of disputes, is a benefit in and of itself and has revenue earning capabilities far beyond the actual system itself, e.g. enhanced business and investor confidence which results in higher levels of business activity and investments from local and overseas sources.

While the various OECS Governments have made commendable progress in setting aside funding for the maintenance of court system improvements, much more remains to be done to ensure the long-term sustainability of improvements effected. A sustainability plan which details how ECSC integration improvements for the court system will be maintained over the medium-term is recommended as an important deliverable early in the life of the Magistrate Courts integration effort. This sustainability plan should be a companion piece to the cost-benefit analysis recommended above.

There are considerable logistic challenges accompanying any proposed assistance to the Magistrate Courts which are geographically dispersed and some of which do not have the level of security which would ensure the safety of any computer and other equipment purchased by the ECSC to effect improvements. Every attempt should be made by the ECSC to have dialogue with the OECS Governments to improve court security at all courts, with specific reference to those that are to be provided new assistance and which are most vulnerable. A specialized court security unit, using persons who have been designated as Special Constables, thus freeing police personnel who presently exercise some security duties in this regard, to undertake more active policing duties, should provide this enhanced security profile.

A Court Computerization Report for the Eastern Caribbean Supreme Court dated July 19, 1999 states that the JEMS system was selected for the following reasons:

- JEMS has a large customer base – over 3,000 users
- JEMS has a current customer base in the Caribbean
- The company which designed JEMS (PCSS) has been designing and developing judicial software packages for more than 14 years)
- The JEMS system had a larger number of distinctive features

This report also indicates that the cost of implementing the JEMS system in the High Court for each Member State (to support five staff, one Magistrate, one Registrar and one public access computer) was

EC\$315,500. Another report ⁶⁰ indicates that the costs for implementing JEMS in the Magistrates Court would be significantly less than the estimate prepared for the High Court. This report indicates that the Magistrates Court can utilize the Systems Administrator who works for the High Court (a savings of \$48,000 annually) and that another network server is not required (a one-time saving of \$9,000). As well, the Magistrates Court has already acquired a number of desktop computers, and therefore the cost of hardware is somewhat reduced. No allocation for laptop computers for the Magistrates is made, nor is a public computer contemplated in this estimate. The information did not however include the cost of user licenses or modifications, or annual support costs. The present estimate by the ECSC Information Technology Manager is that while a good start was made in acquiring ten licenses for JEMS for the Magistrates Courts under USAID auspices in the past, twelve (12) additional licenses per independent OECS Country Magistrates Court will be required to ensure that JEMS is effectively utilized in these courts. In the table set out below, an effort is made to estimate these costs, together with the other costs of implementing the system in the Magistrates Courts. Costs are broken down into one-time costs and annual costs for supporting the system. Before a decision is made to continue the extension of implementation of JEMS or any other computerized court management system in the integrated Magistrates Courts, a more detailed costing exercise should be undertaken. What is however apparent is that the complete extension of JEMS to the Magistrate Courts will necessitate a considerable future capital cost of establishment and attendant recurrent annual maintenance costs.

JEMS Estimated Budgetary Requirements Per Magistrates Court				
	Budget Item	Description	One-Time Costs (EC)	Annual Costs
1	Equipment	Desktop Computers for Court Administration Offices and Family Court (5) Laptops for Magistrates (8) Additional File/Application Server Network Hub/Switches (3) Laser Printers (5)	\$ 15,000 \$ 32,600 \$27,000 \$6,000 \$12,500	
2	Software	JEMS Case Management Software (12 user licenses) Supporting Software (Microsoft Office etc.) Annual Application Support Case Management and Related software	\$100,000 \$10,600 \$13,500	\$15,000
3	Training	Travel Expenses of Trainer		\$12,000
4	Communications	Internet Access/ADSL Line		\$2,250
5	Supplies	Secondary Storage Media, Paper, Printer cartridges etc.		\$6,000
6	System Administrator	Annual Salary		\$42,000
7	Contingency		\$15,060	\$4,750
	Totals (EC)		\$232,260	\$82,000

⁶⁰ JEMS Pilot Project – Magistrates Court Saint Lucia, October 26, 2001

The negotiation and establishment of a Trust Fund, in which the ECCB is a major participant, would provide the ECSC with a source of adequate financing, likely into perpetuity. Such a Trust Fund would ensure that the ECSC would be able to have funding available for buildings maintenance, court staff retention, payment of higher rates of remuneration to Magistrates and other judicial staff and the acquisition of much needed computer equipment and JEMS software licenses. The pursuance of this course of action is highly recommended to enhance court system financial independence and sustainability.

CONCLUSIONS

- The Consultant was conscious of the fact that there have been earlier studies and a range of views expressed on this subject of Magistracy Integration. Indeed, this has been a long-standing matter as is the case with many similar subjects for common service treatment at OECS level. It should be noted from the deeply entrenched Constitutional provisions relating to the governance of the Magistracies in each OECS Country that the intentions of the constitutional provisions were to embrace Magistracies which are organized and conducted on national lines only, leaving open no possibility of being applicable to a Magistracy organized and administered across regional lines. Amending these provisions in each OECS Country to allow for the possibility of Magistrates being treated in a similar fashion to the Judiciary in each national jurisdiction would require the entering into of far-reaching constitutional reform initiatives in each OECS Country. Apart from the significant monetary costs which would be attendant on such exercises relating to the conduct of such prerequisites as referenda among the citizens of each country, it is our view that the outcome of such a constitutional reform process would be so uncertain in achieving the desired Magistrate improvement outcomes that they ought not to be contemplated at this time as part of the solution to endowing the Magistracies with those attributes which would bring their personnel and functions within the ambit of the OECS judiciary. The consultants are of the view that the impracticality of the constitutional amendment route leaves no option but to recommend that an appropriately worded Agreement be entered into by each OECS Country with the ECSC which provides clear terms for the cooperation of each state in administering a newly integrated Magistracy under the ECSC, offers the best possibility of successfully imbuing the Magistracy with those characteristics which would remove its present bifurcated reporting and functional relationships with both the Executive and Judicial branches of government in each of the OECS Countries.
- The Legislative Drafting Consultant has provided a Draft Agreement for consideration by the ECSC and OECS Governments in Appendix Eight of this report. The relevant Draft Bill, which it is recommended that the legislators in each of the States consider for enactment to bring the Agreement into force, is also included in Appendix Eight.
- Magistrates today need to be made fully separate from the public service. Their formal qualifications are substantially the same as those of judges of the higher courts and they adjudicate serious civil and criminal matters. Magistrates exercise powers, such as contempt, once thought to be exclusive to the higher courts. They sit without juries on serious criminal matters, requiring them to make impartial decisions on fact as well as law. The members of the public who appear in the Magistrates Courts are entitled to have their cases heard by judicial officers who are accorded

at least the same protections as judges of the higher courts, which meet minimum constitutional standards of judicial independence.

- This report establishes that Magistrates lack some specific elements of security of tenure that are accorded to the judicial officers of the ECSC. Magistrates in the OECS Countries undertake their judicial duties with the same impartiality and integrity as other, better-protected, judicial officers. There is no justification for the lesser protection accorded to Magistrates and to the public they serve. The aspects of security of tenure for OECS Magistrates reviewed in this paper reflect some similarities of treatment between judges and Magistrates, some undesirable distinctions and some features which appear to breach constitutional standards, based on the reasoning of the High Court in *NAALAS v Bradley*.
- Magistrates should no longer be public servants because that status does not provide sufficient judicial independence. In most jurisdictions, Magistrates possess very similar formal qualifications to those persons appointed to higher courts and Magistrates now hear and decide serious civil and criminal matters. These developments all combine to require that Magistrates Courts, and the public they serve, should be accorded protections for judicial independence similar to those available to the higher courts.
- There is no fixed retirement age for Magistrates compared to judges where the retirement ages are 65 years and 62 years for Court of Appeal and Puisne Judges, respectively. There is no express or apparent justification for this distinction, and it is recommended that a fixed retirement age be established for the Magistrates that has a direct relationship to that of the ECSC Master. This retirement age would have the flexibility of moving upwards in the event that the retirement age of the Master does so. The determination of whether a former Magistrate should be recommended for tenure should however be a matter for the ECSC Chief Justice and the JLSC and should take such factors as the former Magistrate's performance track record into account.
- Magistrates' salaries are significantly lower than those of judges in the ECSC (with the exception of the Magistrates in the BVI and Anguilla), and present salary levels in our view are inadequate for adhering to minimum internationally accepted standards of judicial independence.
- There is no adequate protection against reduction in the remuneration of Magistrates. This vulnerability to reduction in salary and the differences in provisions for removal as well as the lack of formal protection for Magistrates' salary and remuneration are particularly marked and are matters for concern. It is clear there is no legitimate basis for these inconsistencies and some appear to fall below minimum internationally accepted standards for judicial independence. Several formal legal mechanisms to ensure security of tenure for Magistrates are needed:
 - Procedures and standards for the removal of Magistrates in the OECS Countries should provide the same protection as is accorded the judges of the ECSC. This gap is perhaps the most significant difference and is the area where the lack of protection for Magistrates seems to breach 'the permitted minimum criteria for the appearance of impartiality.'
 - Clear and explicit protection for security of remuneration with an express prohibition against reduction in salary and allowances should be provided for OECS Magistrates. The

better approach, to ensure the substance and appearance of the ‘essential characteristics of an independent and impartial tribunal’, is to make this guarantee explicit in legislation. Magistrates play a central role in the OECS legal system. They, and the public they serve, deserve appropriate formal legal mechanisms for the protection of security of tenure to support full judicial independence.

- As has been described, Magistrates and their courts have become like the higher courts in several respects — particularly in the requirements for professional qualifications and the judicial nature of their work. At the same time, the distinctive features of Magistrates Courts suggest that the obligations of Magistrates to be and to appear to be impartial can be particularly demanding. Regardless of whether similarities or differences are emphasized, those who appear before Magistrates are entitled to a judicial officer who is accorded at least the same degree of independence as would be available in other courts, protected by appropriate mechanisms. However, an examination of the specific protections for security of tenure applicable to the Magistracy discloses significant and unjustified differences, which may fall below internationally accepted standards for judicial independence.

It is expected that the integration of the Magistracy with the judiciary will confer the following advantages:

- Integration would bring the newly integrated Magistrates Courts and the ECSC together as a complete system, thereby eliminating unnecessary expenses in their functioning, strengthen the lines of communication and knowledge transfer between Judges and Magistrates and provide economies with respect to obviating the delay, inconvenience and confusion presently attendant in communicating and exchanging information with a Magistracy that has only minimal official connection with the ECSC on a daily basis.
- Integration would create a critical mass of judges and staff that would provide the fulcrum for a broad range of further reforms, including the creation of specialized courts, the provision of regular training opportunities by the Judges of the ECSC to the Magistrates, the transfer of court reporting expertise and automation, the extension of access facilities to specialized legal databases and the optimization of the use of existing and future court facilities.
- Integration would assist the transfer of relevant court administration theories and practice to the Magistrates and their courts. This will enable the development of common performance standards, reporting protocols and backlog reduction initiatives that will benefit both the ECSC and the Magistrate Courts.
- Integration would enable trial courts to operate as a single administrative unit supervised by the Executive Court Administrator whose staff would be tasked with managing the administrative arrangements for the relevant courts in each OECS Country. Such an administrative arrangement would ensure that the newly integrated Magistrates have the ability to devote maximum attention to their judicial responsibilities, leaving court administration in the hands of trained court administrators.

- Integration would serve to improve the public’s perception of the Magistrates Courts and strengthen its confidence that these courts were working in an environment where the Rule of Law, not political considerations, is of paramount importance.

In conclusion, it is our view that “ **The attempt to manage the District Courts [Magistrates Courts] outside the judiciary chain of command has been unsuccessful. District Courts [Magistrates Courts] are an essential part of the judicial organization carrying, as they do, the largest portion of the workload of the courts. Public trust and confidence of the judiciary depends largely upon them. These courts desperately need reform and modernization. They cannot do so on their own or under the direction of the executive. Only under the leadership of the judiciary, and responsible to it for planning, coordination and control, can these courts, and the entire judicial branch succeed.** ⁶¹

⁶¹ Robert Lipscher, OECS Judiciary Modernization Phase Three Report, Court Management Associates, page 35.

APPENDIX ONE

Terms of Reference

TERMS OF REFERENCE FOR CONSTITUTIONAL AND LEGISLATIVE DRAFTING CONSULTANTS TO PREPARE THE REQUIRED LEGISLATIVE FRAMEWORK AND DOCUMENTS GOVERNING THE INTEGRATION OF THE MAGISTRACIES OF THE INDIVIDUAL MEMBER STATES OF THE EASTERN CARIBBEAN FULLY INTO THE EASTERN CARIBBEAN SUPREME COURT

Background

1.1 The Eastern Caribbean Supreme Court (ECSC) seeks to restructure and modernise the Eastern Caribbean courts system and to build public trust and confidence in the Judiciary by overcoming the backlogs and delays and streamlining procedures while ensuring that decision making is fair, impartial and independent of exogenous forces.

Discussions on reforming the magistracy have been ongoing for almost 20 years. Most recently, the OECS CIDA / JLR Project commissioned Justice Telford Georges, assisted by Mr. Charles Maynard, to report on the feasibility of a regional magistracy. The Georges/Maynard Report completed in June 2002 concluded that the Constitutional provisions for appointments for Magistrates in the OECS Member States do not readily accommodate a Magistracy organized along regional lines and administered by a regional agency. The Georges/Maynard Report recommendation for the establishment of a regional Magistracy was for the Member States to enter into a Treaty, undertaking to set up a District Court in each of the Member States, the Presiding officer of which would be vested with the power to exercise jurisdiction in all the States that are parties to the Treaty.

Against the background of the Georges/Maynard Report and other similar studies, this project seeks to strengthen the judicial branch of government by promoting an efficient, fair, impartial and independent Justice system of Eastern Caribbean States through the integration of the Magistracy into the Judiciary of the Eastern Caribbean.

Since the Georges/Maynard study, the Court has embarked upon a restructuring of the administrative functions of the Trial Courts that has to some extent started in Saint Lucia with the assistance of the Canadian International Development Agency (CIDA). The Consultant, Mr. Robert Lipscher, having undertaken a financial and court administration consultancy with the assistance of USAID a few years ago, participated in this restructuring.

Objective of the Consultancy

2.1 The overall objective of the Consultancy is to formulate and prepare legislation that will:

2.1.1 promote greater accountability of the magistracy within the judicial chain of command;

restructure the Judiciary in the Eastern Caribbean with magistrates being integrated fully into the Judicial branch;

maintain the national character of each islands Magistracy; and eventually achieve a strengthened judicial branch of government by promoting an efficient, fair, impartial and independent Justice system.

Scope and Focus of Consultancy

The consultancy will be conducted in two general phases together lasting no longer than 8 months and is to be accomplished by:

- Conducting an initial assessment of the applicable laws in the Member States and Territories of the ECSC which would include national consultations;
- Preparing a brief that outlines the policy and the extent of revision required; and
- Drafting of comprehensive model legislation for adoption by the states.

Phase I:

Preparatory work with ECSC Committee – one week (Consultant led)

Consultative visit in each Member State during a 2 week period.

Drafting of Report to ECSC including:

Recommendations on Scope of Work including Level of Effort for Drafting Instructions, Level of Effort for Legislative Drafting

Recommendations on an approach to the exercise

Final Report on drafting instructions for a restructured lower judiciary

This Phase is anticipated to be completed in 6 to 8 weeks.

Phase II:

Engaging Legislative Drafting Consultant

Instruct Consultant as to legislative policy agreed to Member States and the ECSC.

Consultation with stakeholders

Drafting of legislative documents required for implementation of policy;

Draft Bills circulated for review by key stakeholders including OECS Attorneys General and Heads of Government.

This Phase is anticipated to be completed within 6 months from the start of the project.

4.0 MILESTONES

The following table presents the Project Milestones.

Milestone	Milestone Measurement Criteria	Projected Achievement Date
Consultants selected and mobilised.	Consultants and ECSC Management agree terms of reference and scope of work.	-
Consultations held with key stakeholders in each ECSC Member State.	Report submitted to ECSC management outlining key issues of consultations and feedback from stakeholders.	3 weeks from contract
Consultants prepare report providing recommendations on	Final report submitted and accepted by ECSC Management.	6 weeks from contract

policies and approaches to accomplish integration of the magistracy and drafting instructions for new legislation.		
Final report submitted to OECS Authority.	Policies and approaches to integration of the Magistracy reviewed and accepted by OECS Authority.	9 weeks from contract
Consultant(s) to undertake legislative drafting selected and mobilised.	Consultant(s) and ECSC Management agree to terms of reference and scope of work.	-
Draft legislative documents completed.	Draft legislative documents submitted, reviewed and accepted by ECSC Management.	6 weeks from contract
Draft legislative documents circulated to ECSC Member States for review.	Comments and feedback from ECSC Member States on draft legislative documents received by ECSC.	10 weeks from contract
Final Draft of legislative documents prepared by consultant(s).	Final Draft of legislative documents submitted, reviewed and accepted by ECSC Management.	13 weeks from contract
Final Draft of Legislative documents presented to ECSC Member States.	Final Drafts of legislative documents reviewed and accepted by Attorneys General and Heads of Government in ECSC Member States.	15 weeks from contract

5.0 Results and Performance Indicators

Expected Project Results

5.1 Project Outcomes

(1) Consultant's Report and strategic plan for the design of the most appropriate legislative framework that would strengthen judicial governance and administration through the full integration of the magistracy into the Judicial Branch of Government.

(2) Drafting instructions on the agreed framework for the Legislative Drafting Consultant.

5.2 Project Outputs

1. Draft model Legislation ready for passage by the legislatures of the Member States and Territories within 90 days of consultant being engaged.
2. Greater accountability of the magistracy within the judicial chain of command.

3. Restructured Judiciary with magistrates part of the Judicial branch upon the passage of the legislation in all Member States and Territories.

6.0 Deliverables

Phase I

A final report from Consultant that includes a Strategic Plan for the integration of the several magistracies into the Eastern Caribbean Supreme Court and the relevant instructions to the Legislative Drafting consultant to guide him in the drafting of the legislative documents in Phase II.

Phase II

A final report from the Consultant that includes draft Legislative documents that are in a manner to be readily adopted by the legislature of the Member States of the Eastern Caribbean Supreme Court.

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APPENDIX TWO CONSULTANCY METHODOLOGY

The consultancy team was comprised of two senior Attorneys-at-Law, Hyacinth Lindsay, Q.C. and Dennis Darby, with a cumulative total of sixty years of experience working on a wide array of Caribbean and Central American legal issues, including the drafting of legislation for the Countries of the Caribbean Community. Attorney-at-Law Dennis Darby functioned as the Lead Consultant for the conduct of the consultancy. Hyacinth Lindsay, Q.C. focused on providing the legislative drafts that were found to be necessary based on the research and report writing which were undertaken by Dennis Darby.

Stakeholder involvement was fundamental to the consultancy assignment. The consultants conducted a participatory consultancy assessment in which stakeholder consultation and involvement were the most critical components. The consultancy was conducted over the course of approximately three months and was a qualitative exercise involving:

Document review and analysis

Key informant interviews

Site visits

Focus group meetings (stakeholders schedules permitting)

▪ **Document review and analysis**

Documentation review provided the consultants with background information, baseline information and reporting information. The consultants reviewed project files, project reports, evaluations, baseline studies, project products, relevant information provided by CIDA, and relevant documentation available from, and identified by the ECSC, CIDA and OECS Country Stakeholders. The consultants reviewed files, reports, conventions, protocols, legislative enactments, and other relevant documentation in accomplishing the consultancy at hand. The consultants also reviewed other relevant documents identified in the course of the consultancy, including those originating from other donors who might be interested in the judicial reform area, OECS Governments, OECS Chambers of Commerce, the Law Faculty of the University of the West Indies, the legal department of the OECS Secretariat and the legal department of the Eastern Caribbean Central Bank.

▪ **Key informant interviews**

Relevant representatives of the participating countries were interviewed. This was particularly the case for those participating country representatives that had a direct or indirect relationship with the ECSC and the Magistrate Courts in the OECS Region. Interviews were attended by both consultants in order to provide a better understanding of the relationship between the legislation governing the Supreme Court and Magistrate Courts and what legislation would be required in the future to effect an integration of the Magistrates Courts under the jurisdictional umbrella of the ECSC.

Key informant interviews among other things served to:

- Consult with OECS judicial personnel in order to confirm judicial and governmental perceptions about proposed Magistrate Courts integration with the Supreme Court and the possible contribution of an integrated Magistracy in achieving this result

- Identify integration issues that judges and magistrates wished to have addressed in the draft legislation which was produced to foster integration
- More deeply probe issues not adequately addressed in the documentation
- Corroborate/triangulate information in the documentation with other stakeholders
- Identify additional sources of information
- Clarify issues arising from the documentation
- Identify lessons learned and recommendations which informed the legislative drafting process for courts integration

Face-to-face interviews were the preferred method; however, given time constraints and scheduling challenges, it was necessary to conduct some interviews by telephone or E-mail. A list of interviewees/organizations includes:

- Acting Chief Justice of the ECSC
- The CIDA Senior Development Officer based in Barbados
- ECSC Judges
- Past Judges of the ECSC
- ECSC Executive Court Administrator
- ECSC Deputy Court Administrator
- OECS Supreme Court Registrar
- Magistrates Courts Registrars
- Country Attorneys General
- Country Chambers of Commerce
- Ministries of Finance
- OECS Magistrates
- OECS national legislative draftspersons
- Members of the legal profession (including Presidents of the Bar Associations)
- The OECS Secretariat
- The Eastern Caribbean Central Bank
- The UWI Faculty of Law, Barbados

In order to enable free and frank discussion and sharing of information, the consultants maintained the confidentiality of the responses of key informants. While persons interviewed are listed as an appendix to the consultant report, the report does not attribute specific comments to informants. It was also recognised that in the region interviewees might be more forthcoming with required legal system information if members of the ECSC and CIDA were not present at all interviewing sessions. Accordingly therefore, representatives from these organizations only accompanied the consultants to those interviews that had a policy dimension (e.g. with regional Attorneys General/Ministers of Justice) or in those cases where it was found necessary to convene a regional focus group.

▪ **Site visits:**

Site visits were made to all nine ECSC member countries by both consultants in a simultaneous fashion designed to ensure that information was collected from relevant interviewees in such a manner that it informed both the legal information collection needs and proposed legislative drafting processes at a single interviewing session. This approach was salutary in ensuring cost efficiency and obviated the need for duplicative interviewing sessions of busy OECS Country judicial and other officials. Site visits were staggered over time with one or two week breaks in between visits to enable the consultants to assimilate

the information received and incorporate their findings into a draft report. The first site visit took place on May 2 in Saint Lucia where the consultants started off the consultancy assignment with meetings with the Acting Chief Justice of the ECSC, the Executive Court Administrator and Deputy Executive Court Administrator and the CIDA Senior Development Officer, based in Barbados. After these core meetings were held, the consultants proceeded to other meetings in Saint Lucia with representatives of organizations contained in the “key informant interviews” section identified above.

▪ **Logistic Arrangements**

Work commenced on April 27, 2007. The Consultants made a first visit to Saint Lucia on May 1, 2007 to hold discussions with the Chief Justice and members of his wider administrative team led by the Executive Officer. Opportunity was taken while in Saint Lucia to interview various persons whose views on integration helped shape the conclusions of this assessment. These persons included the Director General of the OECS Secretariat. The Consultants then proceeded to visit the following Member States in the following order:

- Saint Lucia
- Saint Vincent
- Grenada
- Antigua & Barbuda
- Dominica
- St. Kitts/Nevis
- Montserrat
- BVI
- Anguilla

The ECSC and CIDA agreed that a full-time logistics person would be deployed in the Court for the duration of the travel phase of the consultants. This logistics person was responsible for the making of all airline travel arrangements for the consultants for travel between the nine OECS Countries, making in-country meeting appointments which were previously identified by the Lead Consultant. The liaison person acted as a critical intermediary between the consultants, the Court and CIDA while the consultants were travelling in the OECS Countries. The lead consultant was responsible for all consultancy travel arrangements originating in Jamaica and terminating in any of the nine OECS Countries.

▪ **Focus Groups Meetings**

This was considered as an appropriate option in those circumstances where it was impractical to have one-on-one interviews in target countries.

▪ **Accountabilities and Responsibilities**

The Lead Consultant was responsible for the overall management of the consultancy and the timely submission of all deliverables identified under the terms of the contract executed between the Lead Consultant and the Supreme Court on April 27, 2007. The Lead Consultant kept the Saint Lucia-based Executive Court Administrator for the ECSC apprised of consultancy developments on a weekly basis. The Lead Consultant submitted deliverables to the Executive Court Administrator as required by the terms of the contract mentioned above.

It was agreed between the ECSC, CIDA and the consultants that the Court would deploy a full-time logistics person, based at the ECSC in Saint Lucia, and who provided logistic support to the consultants for the duration of the consultancy. Such logistic support took the form of (a) all airline scheduling and rescheduling requests for travel taking place in the nine OECS Countries at the request of the Lead Consultant; (b) All hotel reservations, and changes to reservations, in the nine OECS Countries which were the subject of the consultancy; (c) The setting up of stakeholder meetings for the consultants in all nine OECS Countries based on a approved category listing previously provided by the Lead Consultant to the ECSC and CIDA. The consultants were responsible for making all airline flight arrangements that originated in Kingston, Jamaica, and terminated in Saint Lucia and any other OECS Country.

▪ **Intended audiences for this report**

The key audiences for the consultancy report includes the major stakeholders — The OECS Supreme Court, the OECS RM Courts, the OECS Bar Associations and members of the legal profession, the OECS Prime Ministers, the OECS Attorneys General, OECS Ministers of Justice, CIDA representatives in the OECS and Canada and Civil Society in the OECS, to enable them to assimilate the lessons learned and assist in the implementation of the recommended courses of action. CIDA may also wish to share the assessment with other donors in the Eastern Caribbean who might be interested in providing future assistance to the OECS Supreme Court in the financing of its ongoing and proposed reform initiatives. The consultancy assisted the ECSC, the Government of the OECS Countries and CIDA, to determine how to proceed with the full administrative integration of the RM Courts under the jurisdictional umbrella of the ECSC.

The consultancy produced an Agreement for execution between ECSC participating countries and the draft legislation needed for a seamless integration of the Resident Magistrates Courts and provided recommendations as to how the integration interventions can be sustained over time.

**APPENDIX THREE
SUMMARY OF RECOMMENDATIONS**

Activities to be Implemented	Expected Outcomes
<p>Negotiation of Agreement between ECSC and nine OECS Member Governments with respect to the establishment of a third-tier Magistrate Court in each country</p>	<p>All nine ECSC Member States sign the Agreement without undue delays setting the stage for the Magistrates Courts to be more closely identified with the judiciary</p>
<p>Each ECSC Member State enacts national legislation which severs the connection between the Executive and the Magistrates Courts and which provides for the integration of the Magistrates' Courts under the ECSC</p>	<p>The Executive Branch of the OECS Governments will no longer have hiring and firing responsibilities for Magistrates. Magistrates will now be recruited by the Saint Lucia based JLSC and the JLSC's located in BVI and Anguilla</p>
<p>Strengthen the Executive Administration Office of the ECSC</p>	<p>The services of two additional management personnel will be added to the ECSC staff complement who will provide management support to the Saint Lucia-based JLSC and such other support to the ECSC that will support the Magistracy integration process over time.</p>
<p>Ascertain with precision the existing civil backlogs in the Magistrates Courts</p>	<p>Through the utilization of local and/or regional technical assistance the precise statistics on civil backlogs will be ascertained. These statistics will be incorporated into the Annual Reports of the ECSC and will be used as the future basis for planning by the Chief Justice and the Managing Judge as to what systemic measures are required in the future to reduce any backlogs identified. Magistrates and the legal representatives on both sides of cases will also utilize status hearings on the progress of various cases in the determination of whether cases should be continued or abandoned.</p>
<p>Draft modern civil procedure rules for the Magistrate Courts</p>	<p>The Magistrates will be firmly placed by the new rules as having more control of court proceedings with particular reference to granting or refusing case adjournments.</p>
<p>Develop and utilize civil mediation in the Magistrates'</p>	<p>The use of civil mediation, patterned from the ECSC experience, will be a useful tool to divert cases for</p>

Courts	settlement outside the necessity for a formal trial. The experience gained in this area could also be used in the establishment of Small Claims Courts throughout the OECS Countries
Establish Court Reporting Systems in Magistrates' Courts	Arrangements will be made with one of the regional training organizations for the continuous training of court reporters. The introduction of court reporting technologies and personnel in the Magistrates courts will free up the time of the Magistrates to listen more keenly to the arguments being presented on the both sides of a case and lessen the need for Magistrates to transcribe court proceedings in longhand. The availability of court transcripts very close to the event will facilitate the appellate process from the Magistrate's Courts to the Court of Appeal, as the transcripts needed on appeal will be readily available.
Increase jurisdictional limits of Magistrates Courts to EC\$25,000 (US\$25,000 in the case of BVI)	An increase in jurisdictional limits will distribute the trial burden for civil cases more equitably between the High Court and the Magistrate's Courts. The upward revision of the jurisdiction will also ensure that the Magistrates are presented with cases that more effectively utilize their considerable intellect and legal experience. The upward revision will also ensure that more commercial matters are resolved at the Magistrates Court level.
Preparation of a Code of Ethics for District Court Judges	Adherence by the District Court Judges to a formal Code of Ethics, as is being done by the judges of the ECSC, is a salutary way to foster the integration process of the former Magistrates into the judiciary.
District Court Judges to be provided opportunities to facilitate their professional advancement	As part of an integrated judiciary, the District Court Judges will directly benefit from more participation in training courses that are conducted for their members as well as with the wider judiciary. The contents of these training courses will be sufficiently broad to provide the District Court Judges with the knowledge necessary to facilitate their upward progression as judicial officers.
Training of Bailiffs and Registrars	Court bailiffs will be provided with systematic training in those courses that enable them to increase the efficiency of

<p>Improvement of Physical Facilities and staff</p>	<p>their job performances.</p> <p>It is thought that an improvement of the physical facilities of District Court Judges over time will enable the conduct of District Court proceedings in an environment that conveys the seriousness and respect to be accorded to the work of the former Magistrates and the wider administration of justice. It is thought that the best way of achieving permanent physical facilities improvement and the ability to control court staff is through the establishment of a Trust Fund along the lines of that being used for the CCJ. The ECCB should be asked to play a major role in Trust Fund establishment.</p>
<p>Improvement of Court Security</p>	<p>A general improvement of court security for both judges and Magistrates would ensure that these judicial officers can discharge their responsibilities without fear for their physical safety. This is particularly the case for Magistrates who are more likely to be targeted by criminals due to their extensive jurisdictions in Drug and Firearm offences.</p>
<p>Use of Police Prosecutors</p>	<p>More precise guidelines will be established with regard to the circumstances when Police Prosecutors need the active intervention of the DPP, or Attorney General, in criminal case prosecutions in the various OECS Countries. The DPP/Attorney General and the various OECS Police Forces will develop a system of evaluating the performance of police prosecutors to assist their progression in the police force.</p>
<p>The Evidence Acts in various OECS Countries (with the exception of BVI and Anguilla) need to be revised</p>	<p>Revision of these Acts will ensure that the efficiency of the Magistrates Courts are improved through their ability to take into account sources of evidence which are inadmissible at this time, e.g. computer generated information.</p>
<p>Revision of Fees</p>	<p>A large number of the fees being charged for various services provided by the Magistrates Courts are set at very low levels. An increase in these fees to realistic levels, coupled with the ECSC obtaining legal means to retain some of the fee proceeds for court system sustainability purposes, would go a far way in ensuring court system</p>

<p>Improve efficiency of Court Bailiffs</p>	<p>sustainability over time.</p> <p>Unless the orders of the Magistrates Courts are executed with precision and timeliness, the legal system can be bought into disrepute, as justice will not be delivered in a timely fashion. A focus on improving the efficiency of the court bailiffs in the Magistrates Court will be undertaken through improved management methods in the Registries as well as through systematic training.</p>
<p>Utilization of Technological Applications</p>	<p>The utilization of modern technologies that are already being used by the ECSC will improve the efficiency of the integrated Magistrates' Courts. Over time, certain technological applications such as JEMS, electronic access to the ECSC and regional legal databases, will be fully utilized in these Courts.</p>
<p>National and Regional Bar Associations</p>	<p>The Magistrate's Court integration process will be considerably enhanced if all the parties in the legal system are apprised of its intentions and proposed outcomes. The ECSC Chief Justice will lead this process and will convene a meeting of the Bench and Bar to gain consensus and to articulate the essential elements of Magistracy integration. Over time it is expected that the Chief Justice will issue a Practice Direction that provides detailed directions on the workings of the integrated court system.</p>
<p>Development of a protocol or minimum standard for retirement benefits for Magistrates</p>	<p>The pension rights of those Magistrates employed within the permanent establishment of the OECS Countries reflects the levels prevailing in the general public service. With the integration of the Magistrates with the wider judiciary it will now be necessary to provide them with pension entitlements that bear a relationship to the wider judiciary. The development of a protocol or minimum standard for retirement benefits will therefore have to be tackled by the ECSC.</p>
<p>Harmonization of Pensions Laws in OECS Countries</p>	<p>Many of the OECS Countries have pension laws with different provisions. These provisions are frequently interpreted in different ways in assessing pension claims for judges. The integration of the Magistrates with the Judiciary provides a golden opportunity to ensure the harmonization of the various pension laws in the OECS</p>

<p>Conduct of constitutional reform referenda in those OECS Countries that have not recently undergone constitutional reform exercises (e.g. BVI)</p>	<p>Countries. Assessment of pension claims for the entire ECSC would be streamlined over time and the assessment of pension claims should be speeded up due to the elimination of disparate interpretations of various pension provisions.</p> <p>Constitutional reform in the various OECS Countries would provide firm indications of where the public stand with respect to fundamental issues related to the continued development of the court system in the countries. One such fundamental issue is: The harmonization of the constitutional provisions relating to the appointment of Magistrates.</p>
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APPENDIX FOUR

DESCRIPTION OF OECS-CIDA JUDICIAL AND LEGAL REFORM PROJECT

2001-2004

Goal & Purpose

The goal of this project is to strengthen the role of the legal and judicial system in providing a sustainable, enabling environment for equitable social and economic development.

The purpose is to:

Increase the efficiency of the court system;

Promote better management of all aspects of the legal system (e.g. strategic, human resource and operational management) through the introduction of a legal information system;

Promote greater fairness and adaptability in the legal system with respect to prevention, settlement, sentencing and rehabilitation

Scope and Target Group

This is a regional project with discrete activities in individual countries. The countries encompassed in this project are those that are members of the Organization of Eastern Caribbean States which include Antigua & Barbuda, Dominica, Grenada, St Kitts & Nevis, St Lucia, and St Vincent & the Grenadines. The project will benefit all the citizens of the region, however, some components will focus on issues related to youth and women.

The project is targeted at both legal institutions and specific communities within the OECS. Within the legal system, the project focuses on developing the capacity for the expedient, fair and transparent management of conflicts. Its primary partners are the Attorneys General and the District Courts, the Chief Justice and members of the Supreme Court, the judiciary, Bar Associations, Ombudsmen and civil society organizations and individuals interested in legal issues.

Project Description

The project was developed on an iterative basis and included the provision of a mix of short-term and long-term technical assistance, capacity building, training and equipment. While each member country received some assistance under the Project, the budget did not accommodate comprehensive initiatives in all components in all countries. The project objectives address the issues of efficiency and fairness. The project includes both country-specific components and regional components.

The project has three technical components focusing on court efficiency, a strategic management and legal information system, and complementary measures to conventional justice responses. Together these components are intended to allow participating states to use their scarce legal resources more effectively, find appropriate solutions to their individual needs, and address equity issues.

A pilot project approach is being used. During the design phase, criteria and preconditions for the selection of pilot projects were established. The project brought the various parties together to allow them to discuss the problem, evaluate alternative solutions, agree on likely models, and implement a pilot project or projects to test one or more of the models. After testing the model and incorporating any lessons learned, other-country replication will be undertaken.

Court Efficiency

Key themes addressed through this component:

Development and implementation of up-to-date case management practices to ensure that cases proceed in an effective way through the court system from their initiation to a final disposition;

Modernizing the recording, filing, storage, and retrieval of court records;

Improving the system of recording and transcribing the evidence of court hearings (moving from handwritten notes of judges to a court reporting system);

Systematize the recording and distribution of Eastern Caribbean case law and develop the means and capacity of law professionals to access legal databases (access to jurisprudence).

Legal Information and Strategic Management

The establishment of base-line data and the development of an on-going system to collect and distribute law-related statistics will provide policy makers and program managers of the region with a reliable source of information that will guide them in their work. The information available will support better planning, adequate human resources management, the establishment of performance standards, as well as the monitoring of the system as a whole. With reliable baseline information, and with a system to collect, interpret, and disseminate information on a regular basis, it will also be possible to evaluate the results of donor projects.

Complementary Measures to Conventional Justice Responses

Improving the efficiency and fairness of the justice system in the Eastern Caribbean can be aided by the adoption of measures that relieve some of the pressures on the formal legal institutions, notably the courts and prisons. This component supports a variety of activities that contribute to prevention and early interception (particularly with respect to youth and domestic violence), to settlement of disputes, to alternative sentencing, and to those other measures that restore offenders to a productive role in their society.

2004 – 2007

Since 2004, at the request of the Governments of the Member States, the remaining funds of the CIDA/OECS JLR project have been committed to the ECSC reform program on new Court Structures which is consistent with the original priorities of the project as described below:

ECSC “Restructuring of the Judicial Branch of the Eastern Caribbean Governments” - CIDA OECS JLR project

Goal: to strengthen the judicial branch of government to further the rule of law thereby contributing to social and economic development of Eastern Caribbean States.

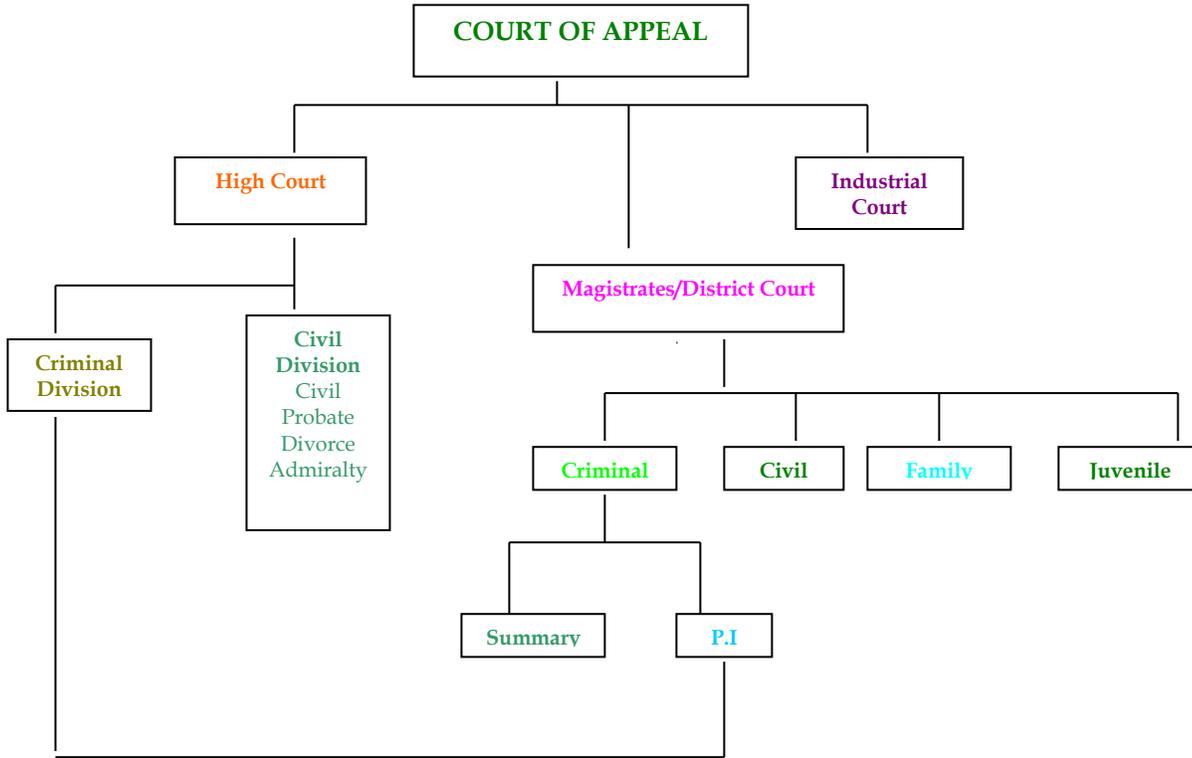
Purpose: to promote a fair, efficient and effective delivery of justice by reforming the court structure and court administration in the Eastern Caribbean.

Expected Results:

1. Strengthened judicial governance and administration with increased accountability, active participation and leadership by a majority of members of staff and judiciary in the Eastern Caribbean judicial system;

2. Increased efficiency and effectiveness in the management of cases through unified Divisions of the Magistrates and High Courts.

APPENDIX FIVE
Eastern Caribbean States Court Structure



APPENDIX SIX
Planned OECS Government Expenditures on ECSC 2007-2008

APPENDIX SEVEN
Disposal of Court Cases in a Magistrates Court

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Returns Of Cases For The Month Of April 2007 Court No. 1 and Court No. 2

Types of cases	No. of cases awaiting trial at commencement of month	No. of cases disposed of during the month in Court No. 1	No. of cases disposed of during the month in Court No. 2	No. of cases filed during the month	No. of cases awaiting trial at the end of the month	Remarks
Police	891	21	44	84	910	
Private Criminal	66	4	0	4	66	
P. I.	365	22	4	15	354	
Civil	649	39	20	68	658	
Inquest	41	0	7	7	41	
Total	2012	86	75	178	2029	

Certified Correct

Magistrate
District "E"

Chief Magistrate

“prescribed proceedings” means any proceedings which, under the constitution of a State, are required to be conducted in connection with the removal of a magistrate from office.

Commencement.

3. This Agreement shall come into force on the signature of at least five States, and, subject to the provisions of Article 12 of this Agreement, shall continue in force as respects each such State until such time as it is determined in its application to that State under Article 17.

Powers of Chief Justice.

4. (1) The Chief Justice shall, after consultation with the constituted authority of each State and the Heads of Government of the States, make recommendations with respect to the terms and conditions which, in the opinion of the Chief Justice, are appropriate to the office of Magistrate.

(2) Magistrates appointed in each State shall enjoy complete independence in the performance of their judicial functions and shall, subject to paragraph (3), be responsible to the Chief Justice or any other person authorized by the Chief Justice for the due discharge of their judicial functions and shall not, in the performance of their duties as such, be subject to the direction or control of any officer or authority.

(3) The Chief Justice may, where he considers it expedient or desirable in any particular circumstances, assign a Magistrate who is appointed in one State and who agrees to such assignment, to perform duties as a Magistrate in any other State if the constituted authority of that other State agrees with such assignment.

Terms and conditions of service.

5. (1) A Magistrate appointed in accordance with the relevant constitutional provisions of each State may be removed from office only for misconduct or inability to discharge the functions of that office (whether arising from infirmity of body or mind or any other cause) and shall not be so removed except in accordance with the relevant provisions of the constitution of the State in which the question of removal arises.

(2) The constituted authority may suspend a Magistrate from performing the functions of his or her office pending the outcome of any prescribed proceedings.

Remuneration of

- Magistrate.
6. (1) The salary payable to a Magistrate shall be not less than 80% of the salary paid to the next level of judicial officer.
- (2) A Magistrate shall be paid such allowances as are determined by the Chief Justice after consultation with the constituted authority of each State.
- Office of Magistrate to be pensionable.
7. (1) The office of Magistrate shall be a pensionable office under the Government of each State.
- (2) Where a person performs service as a Magistrate in more than one State, the Government of each State shall be responsible for a proportionate part of the pension payable to that Magistrate in respect of the period of service in that State.
- Continuing education.
8. The Chief Justice shall make such arrangements as he considers necessary or desirable for-
- (a) continuing education courses for Magistrates in order to enhance professional development and to improve the performance of their judicial tasks, including training on specific legislative or policy developments in the States;
- (b) training programmes for the clerical, administrative and other support staff in the Magistrates Courts.
- Reports to Chief Justice.
9. Every Magistrate in each State shall, at the end of each month, make and transmit to the Chief Justice or to a person designated by the Chief Justice for that purpose, a return in such form and containing such particulars as the Chief Justice may require.
- Provision of facilities.
10. (1) The States Parties shall, on recommendations made by the Chief Justice, take such steps as may be reasonably practicable, having regard to the circumstances of each State, to provide such facilities and institute such measures as are necessary and appropriate for the effective performance by Magistrates of their judicial functions in that State.
- (2) Without prejudice to the generality of paragraph (1), the Governments of the States Parties shall institute such measures as are necessary for ensuring the security

of the members of staff and the buildings, equipment and records of the Courts.

Transitional.

11. (1) The provisions of paragraph (2) shall apply to every person who, on the commencement date, is employed in the States Parties as a Magistrate.

(2) The Chief Justice shall -

(a) in the case of a person employed on contract, make an assessment of the performance of that person during the period of the contract and hold such discussions with the person as the Chief Justice considers necessary or desirable, in order to make recommendations as to whether that person should, on the date of expiration of the contract, be re-employed on the terms set forth in this Agreement; and

(b) in any other case, give notice in writing to the person of the terms and conditions set forth in this Agreement in relation to that person's employment.

Variation of this Agreement.

12. This Agreement may be varied by further Agreement between the Governments of all the States Parties in respect of which it is for the time being in force.

Provided that if any of those Governments wishes to propose any variation, it shall give the remainder of those Governments at least six months' notice in writing of the proposed variation and the Governments of all those States shall consult together before the expiration of the notice to consider the desirability of adopting the proposal, with or without modification;

Obligation of Governments

13. The Government of each State undertakes to ensure that the constitutional and other provisions in relation to Magistrates in its States are in conformity with this Agreement.

Accession.

14. (1) Any State may accede to this Agreement in accordance with the terms and conditions set out in this Agreement.

(2) Accession shall be effected by deposit of an instrument of accession approved by the States Parties.

(3) This Agreement shall enter into force for the acceding State on the [thirtieth] day following the date on which the instrument of accession was deposited with the Director General of the OECS Secretariat.

Signatures.

15. This Agreement shall be open for signature by the States Parties.

Ratification. 16. (1) This Agreement shall be subject to ratification by the signatory Participating States in accordance with their respective constitutional procedures.

(2) Instruments of Ratification shall be deposited with the Director General of the OECS Secretariat who shall transmit certified copies to each Participating State.

Termination. 17. This Agreement shall cease to have effect as respects any State-

(a) if the Government of that State gives the Governments of all other States in respect of which it is for the time being in force and the Chief Justice at least six months' notice in writing of its desire to determine this Agreement in its application to that State; or

(b) if the Governments of all the other States give the Government of that State and the Chief Justice at least six months' notice in writing of their desire to determine this Agreement in its application to that State.

Done in Nine Copies at this day of , 2007.

For the Government of:

Anguilla.....
Antigua and Barbuda.....
British Virgin Islands.....
Dominica.....
Grenada
Saint Christopher-Nevis.....
St. Lucia.....
Montserrat.....
Saint Vincent and the Grenadines.....

A BILL

Entitled

AN ACT To give effect to the Eastern Caribbean Magistrates Agreement

[Enacting Clause]

Short
title.

1. This Act may be cited as the Eastern Caribbean Magistrate Act, 2007.

Commencement.

2. This Act shall come into operation on a day to be appointed by the Minister by notice.

Interpretation.

3. In this Act-

“the Agreement” means the Eastern Caribbean Magistrates Agreement 2007 of which the text of the Articles is set out in the Schedule;

“Minister” means the Minister responsible for justice.

Agreement to
have force
of law.

4. The Agreement shall have the force of law in [].

Power of
Chief Justice
to make Rules.

5. The Chief Justice may make such rules as he considers necessary or desirable for carrying into effect any of the provisions of the Agreement.

Amendment of
Schedule consequent
on variation of
Agreement.

6. (1) Where any variation of the Agreement is made, the Minister may, [by order], amend the Schedule by including therein the variation so made.

(2) Any [order] made under this section may contain such consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving due effect to the amendment so accepted and, without prejudice to the generality of the foregoing, may contain provisions

amending references in this Act to specific provisions of the Agreement.

(3) Every [order] made under this section shall be subject to affirmative resolution.

(4) Where the Schedule is amended pursuant to this section any reference in this Act or any other instrument to the Agreement shall, unless the context otherwise requires, be construed as a reference to the Agreement so varied.

SCHEDULE

(Section 2).

The Eastern Caribbean Magistrates Agreement, 2007
(Insert text of Agreement)

**APPENDIX NINE
MAGISTRATE ADVERTISEMENT**

GOVERNMENT NEWS

Issue No. 99 May 2005

VACANCY NOTICE

Particulars of the Post of Magistrate, Magistrates Court

Ministry of Justice, Antigua and Barbuda

Applications are invited from suitably qualified persons for the post of Magistrate, High Court, Ministry of Justice.

Post: Magistrate

Qualifications: Bachelor of Law Degree

Legal Education Certificate

At least seven (7) years experience as an advocate in a Court having unlimited jurisdiction in civil matters in some part of the Commonwealth.

Salary: \$58,836.00 per annum

Travelling Allowance: \$5,844.00 per annum (provided the officer maintains a car for the performance of official duties).

Housing Allowance: \$18,000.00 per annum

Duty Allowance: \$18,000.00 per annum

Telephone: Free telephone (limited to local calls)

Vacation Leave: Twenty-seven (27) working days per annum and in accordance with existing regulations.

Sick Leave: Thirty (30) calendar days during the period of twelve (12) months.

Duties: (a) adjudicate all criminal, quasi-criminal and civil cases within the limits prescribed by the Magistrate's Code of Procedure Act, Cap. 255 and any other law;

(b) conduct coroner's inquiries and licensing sessions;

(c) hear affiliation matters, certain matrimonial matters and other matters relating to the custody of children;

(d) conduct juvenile court;

(e) perform other judicial and administrative functions (e.g., issuing of warrants and granting of bail)

(f) perform any other duties which may be assigned by the Chief Magistrate, or as required by statute.

Hours of Work: (1) Mondays to Thursdays 8:00 a.m. to 4:30 p.m.

Fridays 8:00 a.m. to 3:00 p.m.

(2) Notwithstanding (1) above, the nature of the duties will require the Officer to perform work outside of the hours mentioned above, in addition to Sundays and Public Holidays when necessary.

Applications stating qualifications, experience, the names and addresses of at least two referees, along with copies of Certificates should be sent by June 15th 2005 to:

The Permanent Secretary Ministry of Justice, New Office Complex, Parliament Drive, St. John's, Antigua W.I.

APPENDIX TEN
Proposed Code of Ethics for Magistrates

CANON 1: A Magistrate shall uphold the integrity and independence of the magistracy.

CANON 2: A Magistrate shall avoid impropriety and the appearance of impropriety in all of the magistrate's activities.

CANON 3: A Magistrate shall perform the duties of the office impartially and diligently.

CANON 4: A Magistrate may engage in extra-judicial activities designed to improve the law, the legal system, and the administration of justice, and shall conduct any such extra-judicial activities in a manner that minimizes the risk of conflict with magisterial obligations.

CANON 5: A Magistrate shall refrain from activity inappropriate to the office.

CANON 6: Magistrates and substitute magistrates are required to comply with the Canons.

CANON 7: Effective Date.

PREAMBLE

The OECS legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern the countries. The role of the judiciary is central to Eastern Caribbean concepts of justice and the rule of law. Intrinsic to all sections of these Canons are the precepts that Magistrates, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in the legal system. The Magistrate is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Canons of Judicial Conduct are intended to establish standards for the ethical conduct of OECS Magistrates. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon and Commentary. The text of the Canons and the Sections is authoritative. Each Commentary, by explanation and example, is advisory and provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not" or "must" or "must not" it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as a statement of what is or is not appropriate conduct but not as a binding rule under which a Magistrate may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decided case law and in the context of all relevant circumstances. The Canons are to be construed so as not to impinge on the essential independence of Magistrates in making magisterial decisions.

The Canons are designed to provide guidance to Magistrates and candidates for magisterial positions and to provide a structure for regulating conduct. It is not designed or intended as a basis for civil liability or

criminal prosecution. Furthermore, the purpose of the Canons would be subverted if the Canons were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern the conduct of Magistrates and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

CANON 1.

A MAGISTRATE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE MAGISTRACY.

An independent and honorable judiciary is indispensable to justice in OECS societies. A Magistrate should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of these Canons are to be construed and applied to further that objective.

Commentary:

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of Magistrates. The integrity and independence of Judges depends in turn upon their acting without fear or favor. Although Magistrates should be independent, they must comply with the law, including the provisions of these Canons. Public confidence in the impartiality of the Magistrate is maintained by the adherence of each magistrate to this responsibility. Conversely, violation of this Canon diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2.

A MAGISTRATE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE MAGISTRATE'S ACTIVITIES.

A Magistrate shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Commentary:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by Magistrates. A Magistrate must avoid all impropriety and appearance of impropriety. A Magistrate must expect to be the subject of constant public scrutiny. A Magistrate must therefore accept restrictions on his/her conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a Magistrate. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by Magistrates that is harmful although not specifically mentioned in the Canons. Actual improprieties under this standard include violations of law, court rules or other specific provisions of these Canons. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the magistrate's ability to carry out judicial responsibilities with integrity and impartiality is impaired.

CANON 3

A Magistrate shall not allow family, social, political or other relationships to influence his/her judicial conduct or judgment. A Magistrate shall not lend the prestige of judicial office to advance the private interests of the magistrate or others; nor shall a Magistrate convey or permit others to convey the impression that they are in a special position to influence the judge. A Magistrate shall not testify as a character witness.

Commentary:

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Magistrates should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a magistrate to allude to his or her magistracy to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, court letterheads must not be used for conducting a magistrate's personal business.

A Magistrate must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a magistrate must not use his/her magisterial position to gain advantage in a civil suit involving a member of the magistrate's family.

Although a magistrate should be sensitive to possible abuse of the prestige of office, a Magistrate may, based on his/her personal knowledge, serve as a reference or provide a letter of recommendation. When using court stationery for letters of reference an indication should be made that the opinion expressed is personal and not an opinion of the court. However, a Magistrate must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such person information for the record in response to a formal request.

Magistrates may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a Magistrate position.

CANON 4

A Magistrate shall not hold membership in any organization that practices discrimination on the basis of race, sex, religion or national origin.

Commentary:

Membership of a Magistrate in an organization that practices invidious discrimination gives rise to perceptions that the magistrate's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which magistrate's should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership.

A Magistrate's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction violates Canon 2 and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 for a magistrate to arrange a meeting at a club that the magistrate knows practices invidious discrimination on the basis of race, sex, religion or national origin in its membership or other policies, or for the magistrate to regularly use such a club. Moreover, public manifestation by a magistrate of his/her knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the magistracy.

CANON 5

A MAGISTRATE SHALL PERFORM THE DUTIES OF OFFICE IMPARTIALLY AND DILIGENTLY.

Magisterial Duties in General:

The duties of a Magistrate take precedence over all the magistrate's other activities. The magistrate's duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

Adjudicative Responsibilities:

A Magistrate shall hear and decide promptly matters assigned to him/her except those in which disqualification is required.

A Magistrate shall be faithful to the law and maintain professional competence in it. Partisan interests, public clamor or fear of criticism shall not sway a magistrate.

A Magistrate shall require order, decorum, and civility in proceedings before him/her.

Commentary:

"Require." The rules prescribing that a Magistrate "require" certain conduct of others are, like all of the rules in these Canons, rules of reason. The use of the term "require" in that context means a Magistrate is to exercise reasonable direction and control over the conduct of those persons subject to the magistrate's direction and control.

CANON 6

A Magistrate shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom he/she deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to his/her direction and control.

Commentary:

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Magistrates can be efficient and businesslike while being patient and deliberate.

CANON 7

A Magistrate shall perform judicial duties without bias or prejudice. A Magistrate shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to

the magistrate's direction and control to do so. This Section does not preclude proper magisterial consideration when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or similar factors, are issues in the proceeding.

Commentary:

A Magistrate must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to his/her direction and control.

A Magistrate must perform judicial duties impartially and fairly. A magistrate who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the magistracy into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A magistrate must be alert to avoid behavior that may be perceived as prejudicial.

CANON 8

A Magistrate shall require all persons appearing in proceedings before him/her to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

CANON 9

A Magistrate shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A magistrate shall not initiate, permit, or consider ex parte communications, or consider other communications made to him/her outside the presence of the parties concerning a pending or impending proceeding except that:

1. Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:
2. The Magistrate reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
3. The Magistrate makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.
4. A Magistrate may obtain the advice of a disinterested expert on the law applicable to a proceeding before him/her if the Judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.
5. A Magistrate may consult with law clerks whose function is to aid him/her in carrying out the Magistrate's adjudicative responsibilities or with other judges.

6. A Magistrate may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before him/her.

7. A Magistrate may initiate or consider any ex parte communications when expressly authorized by law to do so.

Commentary:

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a Magistrate. A magistrate should always be cautious with regard to the possibility of prejudice or the appearance of such when communicating with a probation officer or a similarly situated person without the involvement of all parties.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

Certain ex parte communications are approved to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a Magistrate must discourage ex parte communication and allow it only if all the criteria are clearly met. A Magistrate must disclose to all parties all ex parte communications regarding a proceeding pending or impending before him/her. A Magistrate must not independently investigate facts in a case and must consider only the evidence presented.

A Magistrate may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A Magistrate must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 7 is not violated through clerks or other personnel on his/her staff. If communication between the Magistrate and the High Court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

Judges have historically played an important role in providing instruction, advice and mentoring to lawyers as they begin and continue to develop their practice skills. Magistrates should insure that the instruction and advice they provide will not result in unfair advantage to the recipient or prejudice to other parties in a pending proceeding.

CANON 10

A Magistrate shall dispose promptly of the business of the court.

Commentary:

In disposing of matters promptly, a Magistrate must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public.

Prompt disposition of the court's business requires a Magistrate to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with him/her to that end.

CANON 11

A Magistrate shall abstain from public comment about a pending or impending proceeding in any court, and should direct similar abstention on the part of court personnel subject to his/her direction and control. This subsection does not prohibit Magistrates or court personnel from speaking on the legal system or the administration of justice or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the Magistrate is a litigant in a personal capacity.

Commentary:

The requirement that Magistrates abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a Magistrate from commenting on proceedings in which he/she is a litigant in a personal capacity.

CANON 12

A Magistrate shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a magisterial capacity.

Administrative Responsibilities.

1. A Magistrate shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and shall cooperate with other magistrates and court officials in the administration of court business.
2. A Magistrate shall require staff, court officials and others subject to his/her direction and control to observe the standards of fidelity and diligence that apply to the magistrate and to refrain from manifesting bias or prejudice in the performance of their official duties.
3. The Magistrate shall take reasonable measures to assure the prompt disposition of matters before the court.

CANON 13

Disciplinary Responsibilities.

1. A Magistrate who receives reliable information indicating a substantial likelihood that another Magistrate has committed a violation of these Canons should take appropriate action. A Magistrate on discovering that another Magistrate has committed a violation of these Canons that raises a substantial question as to the other magistrate's fitness for office should inform the Chief Justice of the Eastern Caribbean Supreme Court. A Magistrate who receives reliable information indicating a substantial likelihood that a lawyer has committed an ethical violation should take appropriate action. A Magistrate having knowledge that a lawyer has committed an ethical violation that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects should inform the head of the relevant Bar Association.

Commentary:

Appropriate action may include direct communication with the magistrate or lawyer who has committed the violation, other direct action if available, and reporting the violation to the Chief Justice of the Eastern Caribbean Supreme Court.

CANON 14

Disqualification.

A Magistrate shall disqualify himself or herself in a proceeding in which his/her impartiality might reasonably be questioned.

Commentary:

Under this rule, a Magistrate is disqualified whenever his/her impartiality might reasonably be questioned, regardless whether any of the specific rules in Canon 3 apply. A Magistrate should disclose information that he/she believes the parties or their lawyers might consider relevant to the question of disqualification, even if he/she believes there is no real basis for disqualification. In such cases, the Magistrate must disclose the basis for possible disqualification and use reasonable efforts to transfer the matter to another magistrate as soon as practicable.

a. The Magistrate has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

b. The Magistrate served as a lawyer in the matter in controversy, or a lawyer with whom the magistrate previously practiced law served during such association as a lawyer concerning the matter, or the magistrate has been a material witness concerning it;

Commentary:

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of this section; a Magistrate formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the magistrate's impartiality might reasonably be questioned because of such association.

The Magistrate knows that he or she, individually or as a fiduciary, or the magistrate's spouse, parent, or child wherever residing, or any other member of the magistrate's family residing in his/her household, has an economic interest in the subject matter in controversy or in a party to the

proceeding or has more than a de minimis interest that could be substantially affected by the proceeding;

The Magistrate or his/her spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

Commentary:

"Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

- (i) is a party to the proceeding, or an officer, director or trustee of a party;
- (ii) is acting as a lawyer in the proceeding;
- (iii) is known by the Magistrate to have a more than de minimis interest that could be substantially affected by the proceeding;
- (iv) is to the Magistrate's knowledge likely to be a material witness in the proceeding.

Commentary:

The fact that a lawyer in a proceeding is affiliated with a law firm or governmental agency with which a relative of the Magistrate is affiliated does not of itself disqualify him/her. Under appropriate circumstances, the fact that "the magistrate's impartiality might reasonably be questioned" under Canon 3, or that the relative is known by the Magistrate to have an interest in the law firm or governmental agency that could be "substantially affected by the outcome of the proceeding "may require the magistrate's disqualification.

CANON 15

A Magistrate shall keep informed about his/her personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the his/her spouse and minor children residing in his/her household.

Commentary:

"Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

- (i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the magistrate participates in the management of the fund or a proceeding pending or impending before the magistrate could substantially affect the value of the interest;
- (ii) service by a magistrate as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a magistrate's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization.

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the magistrate could substantially affect the value of the interest;

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

"Member of the Magistrate's family residing in the magistrate's household" denotes any relative of a magistrate by blood or marriage, or a person treated by a magistrate as a member of his/her family, who resides in the his/her household.

CANON 16

A MAGISTRATE MAY ENGAGE IN EXTRA-JUDICIAL ACTIVITIES DESIGNED TO IMPROVE THE LAW, THE LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE, AND SHALL CONDUCT ANY SUCH EXTRA-JUDICIAL ACTIVITIES IN A MANNER THAT MINIMIZES THE RISK OF CONFLICT WITH MAGISTERIAL OBLIGATIONS.

Extra Judicial Activities in General.

A Magistrate shall conduct all of his/her extra judicial activities so that they do not:

Cast reasonable doubt on his/her capacity to act impartially as a magistrate;

Demean the magisterial office; or

Interfere with the proper performance of magisterial duties.

Commentary:

Complete separation of a Magistrate from extra judicial activities is neither possible nor wise; a magistrate should not become isolated from the community in which he/she lives. Expressions of bias or prejudice by a magistrate, even outside the magistrate's adjudication activities, may cast reasonable doubt on the magistrate's capacity to act impartially. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status.

CANON 17

Avocational Activities. A Magistrate may speak, write, lecture, teach and participate in other extra judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of these Canons.

Commentary:

As a judicial officer and person specially learned in the law, a Magistrate is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice. To the extent that time permits, a Magistrate is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Magistrates may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession.

Governmental, Civic or Charitable Activities.

1. A Magistrate shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the magistrate or the magistrate's interests.

2. A Magistrate shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A magistrate may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

3. A Magistrate may serve as an officer, director, trustee or non legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

4. A Magistrate shall not serve as an officer, director, trustee or non legal advisor of a governmental, civic, or charitable organization if it is likely that the organization:

1. Will be engaged in proceedings that would ordinarily come before him/her, or will be engaged frequently in adversary proceedings in the court of which he/she is a member or in any court subject to the appellate jurisdiction of the court of which he/she is a member.

A Magistrate as an officer, director, trustee or non legal advisor, or as a member or otherwise: may assist such an organization in planning fund raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds, except that a magistrate may solicit funds from other magistrates over whom the magistrate does not exercise supervisory or appellate authority;

May make recommendations to public and private fund granting organizations on projects and programs concerning the law, the legal system or the administration of justice so long as one organization is not favored over another;

Shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, if the membership solicitation is essentially a fund raising mechanism;

Shall not use or permit the use of the prestige of judicial office for fund raising or membership solicitation; and

Shall not be a speaker or guest of honor at an organization's fund raising events, but may attend such events.

Commentary:

A Magistrate may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A Magistrate must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: 1) a Magistrate may solicit funds or

memberships from other magistrates over whom the magistrate does not exercise supervisory or appellate authority, (2) A Magistrate may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the magistrate serves and (3) a Magistrate who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature. This Canon is not intended to prohibit Magistrates from participating in all charitable events. Magistrates are encouraged to be involved in community activities so long as the judge does not participate in the solicitation of funds and the prestige of the office is not used for fund raising. Use of an organization letterhead for fund raising or membership solicitation does not in itself violate the Canons provided the letterhead lists only the magistrate's name and office or other position in the organization, and, if comparable designations are listed for other persons. In addition, a Magistrate must also make reasonable efforts to ensure that his/her staff, court officials and others subject to the magistrate's direction and control do not solicit funds on his/her behalf for any purpose, charitable or otherwise.

CANON 18

Financial Activities.

A Magistrate shall not engage in financial and business dealings that may reasonably be perceived to exploit his/her position, or involve him/her in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which he/she serves:

Commentary:

A Magistrate must avoid financial and business dealings that involve him/her in frequent transactions or continuing business relationships with persons likely to come either before him/her personally. In addition, a Magistrate should discourage members of his/her family from engaging in dealings that would reasonably appear to exploit his/her magisterial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification.

A Magistrate may, subject to the requirements of this Canon, hold and manage investments on behalf of him/her and members of his/her family, including real estate.

Commentary:

This Section provides that, subject to the requirements of this Canon, a Magistrate may hold and manage investments owned solely by him/her, investments owned solely by a member or members of his/her family, and investments owned jointly by the Magistrate and members of his/her family.

CANON 19

A MAGISTRATE SHALL REFRAIN FROM POLITICAL ACTIVITY INAPPOPRIATE TO THE OFFICE.

Political Conduct in General.

A Magistrate shall not:

Act as a leader or hold any office in a political organization;

Make speeches for a political organization or candidate or publicly endorse or oppose a candidate for public office; or

Solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other political functions. A Magistrate shall resign his or her office when he or she becomes a candidate either in a party primary or in a general election for a public office.
A Magistrate shall not engage in any other political activity.

EFFECTIVE DATE. These Canons shall become effective XXX, 2007

APPENDIX ELEVEN CARIBBEAN COURT OF JUSTICE TRUST FUND

The Board of Trustees



THE CARIBBEAN COURT OF JUSTICE TRUST FUND

Financing the Court

Concerns have been expressed that the Judges of the Court would be paid by governments that can exert decisive informal pressure on them to deliver judgements favourable to this or that government. In order to pre-empt this eventuality and fund the Caribbean Court of Justice in perpetuity, a Trust Fund of US\$100 million has been established, so as to enable the expenditures of the Court to be financed by income from the Fund. In this way, the expenditures of the Court, including the remuneration of the Judges, is not dependent on the disposition of governments. As a consequence, the CCJ is the only integration court of its kind financially independent of the largesse of governments and free from their administrative control. A Board of Trustees drawn from regional entities administers the Caribbean Court of Justice Trust Fund.

The Preamble of the Revised Agreement Establishing the CCJ Trust Fund recognizes the importance of adequate and secure funding to the sustainability, independence and credibility of the Court. It states:

“The Parties to the Agreement Establishing the Caribbean Court of Justice:

Cognisant that the Court is indispensable for the good governance of the Caribbean Community;

Recognising the critical role of the Court in the efficient administration of Justice in the territories of the Contracting Parties to the Agreement establishing the Court;

Recognising further that the Court is vital for the structured and efficient functioning of the CARICOM Single Market and Economy;

Noting the provisions of Article XXVIII of the Agreement establishing the Court which requires the expenses of the Court and the Commission to be borne by the Contracting Parties to the Agreement establishing the Court;

Conscious that the financial viability of the Court is essential for its efficiency, effectiveness and independence in the performance of its functions;

Bearing in mind the decision of the Twenty-Third Meeting of the Conference of Heads of Government of the Caribbean Community concerning the capital and recurrent expenditures of the Court;

Determined to promote and safeguard the independence, integrity and credibility of the Court,
Have agreed ...”

The Functions of the Board

Article VII of the Revised Agreement determines the functions of the Board of Trustees. It states:

“1. The Board shall be responsible for directing the operations of the Fund, and, for this purpose shall, in particular, exercise the following functions:

- (a) evaluate the performance of the Fund;
- (b) establish with the approval of the members guidelines for prudential investment of the resources of the Fund;
- (c) establish with the approval of the members the financial regulations of the Fund;
- (d) appoint the Executive Officer of the Fund
- (e) authorize the provision of resources required for the biennial capital and operating budget of the Court and the Commission submitted by the Executive Officer;
- (f) appoint an investment manager or managers to manage the investments of the Fund in accordance with the investment guidelines for the Fund;
- (g) approve the annual report on the performance of the Fund for transmission to the members;
- (h) approve the capital and operating annual budget of the Fund;
- (i) appoint the external auditor of the Fund;
- (j) submit an annual report to the members, and
- (k) perform such other functions as may be necessary or appropriate for the operations of the Fund.

2. The Board may exercise such powers and establish such rules as may be necessary or appropriate in furtherance of its purpose and functions consistent with this Agreement.”

The Composition of the Board

Article VI states,

“1. Subject to the provisions of this Article, the Board of Trustees shall consist of the following or their nominees:

- (a) The Secretary-General (of the Caribbean Community);
- (b) The Vice-Chancellor of the University of the West Indies;
- (c) The President of the Insurance Association of the Caribbean;
- (d) The Chairman of the Association of Indigenous Banks of the Caribbean;
- (e) The President of the Caribbean Institute of Chartered Accountants;
- (f) The President of the Organisation of Commonwealth Caribbean Bar Associations;
- (g) The Chairman of the Conference of Heads of the Judiciary of Member States of the Caribbean Community;
- (h) The President of the Caribbean Association of Industry and Commerce; and
- (i) The President of the Caribbean Congress of Labour.

2. There shall be a Chairman and Vice-Chairman of the Board elected by the Board from among

its members. The Chairman and Vice-Chairman shall hold office for a period of three years.”
At present, the Board of Trustees of the Caribbean Court of Justice Trust Fund comprises the following persons:

Dr. Rollin Bertrand (Chairman)

The Honourable Mr. Justice Abdulai Conteh, Chief Justice of Belize

Mr. Patrick Patterson

Dr. Bhoendradatt Tewarie, Principal of the St. Augustine Campus of the University of the West Indies

Mr. Gerry Brooks

Mr. Elson Jordan

Mr. Oswald Barnes

Mr. Michael Archibald

Prof. Harold Lutchman

The Board has appointed Mr. Richard Kellman as its Executive Officer.

**APPENDIX TWELVE
PERSONS INTERVEIWED**

Contact	Position
Eastern Caribbean Supreme Court	
His Lordship, the Hon. Justice Brian Alleyne, S.C.	Acting Chief Justice
Mr. Justice Hugh Rawlings	Justice of Appeal
Mr. Justice Denys Barrow	Justice of Appeal
Mr. Justice Anthony Ross	High Court Judge (Acting)
Mr. Justice Kenneth Benjamin	High Court Judge (Grenada)
Mr. Gregory Girard	Executive Court Administrator
Mr. Francis Letang	Deputy Court Administrator
Ms. Aisha Jn Baptiste	High Court Registrar
Madam Justice Louise Blenman	High Court Judge (Antigua & Barbuda)
Ms. Cheryl Mathurin	Master (Antigua & Barbuda)
Mr. Justice Davidson Baptiste	High Court Judge (Dominica)
Mr. Reginald Winston	High Court Registrar (Dominica)
Mr. Ossie Walsh	Deputy High Court Registrar (Dominica)
Mr. Justice Francis Belle	High Court Judge (Saint Kitts)
Madam Justice Ianthea Leigertwood-Octave	High Court Judge (Nevis & Montserrat)
Madam Justice Indra Hariprashad-Charles	High Court Judge (BVI)
Madam Justice Rita Joseph-Olivetti	High Court Judge (BVI)
Ms. Sonya Young	Registrar (BVI)
Ms. Paula Ajarie	Deputy Registrar (BVI)
Madam Justice Janice George-Creque	High Court Judge (Anguilla)
Ms. Patricia Harding	High Court Registrar (Anguilla)

<p>Heads of State His Excellency, Dr. Nicholas Liverpool Honorable Joseph Parry</p>	<p>President (Dominica) Premier (Nevis)</p>
<p>Attorneys General Hon. Senator Nicholas Frederick Hon. Judith Jones-Morgan Hon. Justin Simon, Q.C. Hon. Ian Douglas Hon. Dennis Merchant Hon. Eugene Otuonye, Q.C. Mr. Arden Warner Hon. Wilhelm Bourne</p>	<p>Attorney General (Saint Lucia) Attorney General (Saint Vincent & the Grenadines) Attorney General (Antigua & Barbuda) Attorney General (Dominica) Attorney General (Saint Kitts & Nevis) Attorney General (Montserrat) Attorney General (Acting) (BVI) Attorney General (Anguilla)</p>
<p>Eastern Caribbean Central Bank Sir Dwight Venner Ms. Esco Henry Ms. Maria Barthelmy</p>	<p>Governor Legal Adviser Legal Adviser</p>
<p>OECS Magistrate Courts Ms. Floreta Nicholas Ms. Simone Churaman Ms. Patricia Mark Ms. Maureen Hyman Ms. Evelina Baptiste Ms. Josephine Mallalieu-Webb Ms. Yasmin Clarke Mr. Clifton Warner Ms. Valerie Stephens Ms. Birnie Stephenson-Brooks</p>	<p>Chief Magistrate (Saint Lucia) Chief Magistrate (Saint Vincent and the Grenadines) Chief Magistrate (Grenada) Chief Magistrate (Antigua & Barbuda) Chief Magistrate (Dominica) Chief Magistrate (Saint Kitts) Magistrate (Nevis) Magistrate (Montserrat) Magistrate (BVI) Magistrate (Anguilla)</p>
<p>OECS and National Bar Association Representatives Ms. Nicole Sylvester Mr. Ruggles Ferguson Mr. Hugh Marshall Ms. Francine Baron-Royer Mr. Vernon Veira Mrs. Lisa Penn-Lettsome</p>	<p>President, OECS and Saint Vincent and the Grenadines Bar Associations (Saint Vincent and the Grenadines) President, Grenada Bar Association (Grenada) President, Antigua & Barbuda Bar Association (Antigua & Barbuda) President, Dominica Bar Association (Dominica) President, Saint Kitts & Nevis Bar Association Saint Kitts & Nevis) President, BVI Bar Association (BVI)</p>

<p>Legal Profession Dr. Francis Alexis Mr. Emile Ferdinand</p> <p>Mr. Tapley Seaton, Q.C. Ms. Myrna Walwyn Mr. Patrice Nisbett Dr. Joseph Archibald, Q.C.</p>	<p>Attorney-at-Law (Grenada) Barrister & Chairman of the Caribbean Council of Legal Education</p> <p>Barrister and former Attorney General of Saint Kitts & Nevis Senior Member of Nevis Bar Legal Adviser to Nevis Island Administration Barrister & former Attorney General (BVI)</p>
<p>Directors of Public Prosecutions Mr. Christopher Nelson Mr. Anthony Armstrong Mrs. Candia Carette-George Ms. Paulina Hendrickson Mr. Terrence Williams</p>	<p>DPP (Grenada) DPP (Antigua & Barbuda) State Attorney (Dominica) DPP (Saint Kitts & Nevis) DPP (BVI)</p>
<p>CIDA Ms. Michele Gibson</p>	<p>Senior Development Officer</p>
<p>Police Mr. Ausbert Regis Mr. Lenroy Brewster Mr. Winston James Mr. Delano Christopher Mr. Matthias Lestrade Mr. Robert Jeffers Mr. Reynell Fraser Mr. Keithly Benjamin</p>	<p>Commissioner (Saint Lucia) Deputy Commissioner (Saint Vincent) Commissioner (Grenada) Commissioner (Antigua & Barbuda) Commissioner (Dominica) Commissioner (Saint Kitts & Nevis) Commissioner (BVI) Commissioner (Anguilla)</p>
<p>Chambers of Commerce Mr. Brian Louisy Mr. Lennox Lampkin Mrs. Yvonne Gillineau-Simon Mr. Christopher Deriggs Mr. Everett Christian Mr. Karl Nassief Mr. Franklin Brand Ms. Wendy Phipps Ms. Voilet Gaul</p>	<p>Executive Director (Saint Lucia) Executive Director (Saint Vincent and the Grenadines) President (Grenada) Executive Director (Grenada) President (Antigua & Barbuda) President (Dominica) President (Saint Kitts & Nevis) Executive Director (Saint Kitts & Nevis) President (BVI)</p>
<p>Ministry of Justice/Legal Affairs Mr. Eustace Monroe Ms. Nadica McIntyre Hon. Colin Derrick Mr. Vincent Philibert Mrs. Ryllis Vasquez</p>	<p>Deputy Permanent Secretary (Saint Lucia) Permanent Secretary (Grenada) Minster of Justice and Security (Antigua) Permanent Secretary (Dominica) Permanent Secretary (Saint Kitts & Nevis)</p>

Public Service Commissions Mr. Frank Myers Mrs. Grace Ward-Glasgow Mr. Blazer Williams Justice Monica Josephs Mrs. Victorine George-Alexander Mr. Damien Dublin Dr. Joseph Halliday Ms.???? Ms. Joycelyn Walter	Chairman (Saint Lucia) Legal Advisor, Public and Teaching Service Commissions (Saint Lucia) Chairman (Saint Vincent & the Grenadines) Chairperson (Grenada) Chairperson (Antigua & Barbuda) Chairman (Dominica) Chairman (Saint Kitts & Nevis) Member (Montserrat) Secretary (BVI)
OECS Secretariat Dr. Len Ishmael	Director General
UWI Faculty of Law, Barbados Professor Simeon McIntosh Professor Senator Velma Newton Professor Ralph Carnegie	Dean Professor and Law Librarian Executive Director, CLIC (by telephone)

APPENDIX THIRTEEN BIBLIOGRAPHY

- Constitutional and legislative information relating to nature and extent of the Jurisdiction of the Magistrates Courts in the 9 ECSC member countries (Antigua & Barbuda, Dominica, Grenada, Saint Kitts & Nevis, Saint Lucia, Saint Vincent and the Grenadines, Anguilla, BVI, Montserrat)
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**APPENDIX FOURTEEN
IMPLEMENTATION PLAN**

Activity	Area of Focus	Participants	Countries	Method of Operation	Expected Outcomes	Timeline
Integration of OECS Magistracy into Judiciary.	Distribution of Magistracy Integration Report to OECS Regional Stakeholders for comments.	Judges; Magistrates; ECSC Executive Court Administrator; Bar Associations; UWI; CIDA; Parliamentary Counsel; Attorneys General.	9 OECS Countries.	Distribution of the Report will be undertaken on a confidential draft basis as well as in final form. Both versions of the report will be distributed in hard-copy form.	Comments on report received from regional participants.	Over the period September 15 to October 15, 2007.

Activity	Area of Focus	Participants	Countries	Method of Operation	Expected Outcome	Timeline
Simultaneous implementation of Magistracy improvement activities while Authority reviews Magistracy Integration Report	Develop and articulate a strategy for the establishment of a Trust Fund which will allow the OECS Judicial System to be financially self-sufficient over time.	ECSC Chief Justice; Governor of Eastern Caribbean Central Bank; ECSC Attorneys General; country Ministers of Finance.	9 OECS Countries.	Strategy for Trust Fund established and presented to the Authority.	The Trust Fund will likely be managed by a Board of Trustees which will have wide regional representation from the private sector; CARICOM Secretariat; Caribbean Development Bank; the Judiciary; regional governments and the Trade Unions.	It is expected that a Trust Fund Strategy will be developed in time for its presentation at the next meeting of the Authority, likely to take place in either December 2007 or January 2008.

Continued	Area of Focus	Participants	Countries	Method of Operation	Expected Outcomes	Timeline
	<p>Technical assistance provided by ECSC to assist OECS Magistrate Courts create electronic databases of their backlogged civil cases.</p>	<p>ECSC Executive Court Administrator; local technical assistance service providers; OECS Magistrates; Court Registrars.</p>	<p>6 independent OECS Countries.</p>	<p>Working teams will be formed which will operate in each local jurisdiction. Local technical assistance will be used to create and link the databases.</p>	<p>The nature, scope and extent of the backlog of civil cases in the Magistrates Court will be ascertained and classified with a view to systematic reduction.</p>	<p>This activity will be started in October 2007 and will conclude in January 2008.</p>
	<p>Establish a Trust Fund to finance Improvement of Court physical facilities.</p>	<p>Chief Justice, ECSC.</p>	<p>7 OECS Countries (except Anguilla, BVI).</p>	<p>The ECSC will formulate a financial strategy which seeks financial self-sufficiency of the court system through the use of funding obtained from various sources such as the Eastern Caribbean Central Bank and possibly private sector sources.</p>	<p>An improvement of the physical facilities of Magistrates Courts over time will enable the conduct of Court proceedings in an environment that conveys the seriousness and respect to be accorded to the work of the integrated Magistrates and the wider administration of justice.</p>	<p>A financial strategy will be prepared and presented to the Authority at its next meeting in December 2007</p>

Continued	Area of Focus	Participants	Countries	Method of Operation	Expected Outcomes	Timeline
	Establish Court reporting system, inclusive of equipment, personnel and training, to support an integrated Magistracy.	ECSC Executive Court Administrator; Court reporting staff of ECSC; Magistrates; Magistrate's Courts staffs; ECSC Registrars.	7 OECS Countries (except BVI & Anguilla).	Arrangements will be made with one of the regional training organizations for the continuous training of court reporters.	The introduction of court reporting technologies and personnel in the Magistrates courts will free up the time of the Magistrates to listen more keenly to the arguments being presented on the both sides of a case and lessen the need for Magistrates to transcribe court proceedings in longhand. The availability of court transcripts very close to the event will facilitate the appellate process from the Magistrate's Courts to the Court of Appeal, as the transcripts needed on appeal will be readily available.	Completed by August 2008

Continued	Area of Focus	Participants	Countries	Method of Operation	Expected Outcomes	Timeline
	Full Utilization of technological applications in Magistrates Courts.	ECSC Executive Court Administrator; Magistrates; Magistrate's Court personnel; local and regional technical assistance persons.	OECS Countries (with the exception of BVI and Anguilla).	The technology application thrust will be led by the ECSC Executive Court Administrator using the assistance of local and regional technical assistance service providers where necessary and appropriate.	The utilization of modern technologies that are already being used by the ECSC will improve the efficiency of the integrated Magistrates' Courts.	Completion by November 2008.
	A Code of Ethics for Regional Magistrates	ECSC Judges; Justice Education Institute; ECSC Court Administrator; OECS Magistrates.	9 OECS Countries.	The Code of Ethics will be drafted by the ECSC and Magistrates will be asked to comment on its contents during a November 2007 Magistrates Conference.	The Code of Ethics will form the ethical focal point for the Magistrates as they conduct their daily activities.	The Code will become operational in December 2007.
	Revision of Fees.	Chief Parliamentary Counsels; OECS Secretariat; ECSC Executive Court Administrator; Attorneys General	7 OECS Countries (except BVI and Anguilla).	The Lazare Report on Fees in the OECS Court System will be revised and used as a source of reference for fee revisions.	Fees being charged for various services in the Magistrates Courts are set at very low levels.	To be completed by October 2009.

Continued	Area of Focus	Participants	Countries	Method of Operation	Expected Outcomes	Timeline
	Development of a Strategic Plan for system wide security for the ECSC.	ECSC Chief Justice; Magistrates; ECSC Executive Court Administrator; Commissioners of Police; Ministers of Security; Attorneys General.	7 OECS Countries (except BVI & Anguilla).	ECSC Chief Justice and Executive Court Administration work closely with Attorneys General and Commissioners of Police to develop a strategic plan and to ensure that appropriate personnel are fully dedicated to the protection of all judicial officers assigned to the particular country.	A general improvement of court security for both judges and Magistrates would ensure that these judicial officers can discharge their responsibilities without fear for their physical safety. This is particularly the case for Magistrates who are more likely to be targeted by criminals due to their extensive jurisdictions in Drug and Firearm offences.	Completed by December 2008.

Continued	Area of Focus	Participants	Countries	Method of Operation	Expected Outcomes	Timeline
	Increase civil jurisdictional limits of Magistrates Courts to EC\$25,000 (US\$25,000 in the case of BVI).	Parliamentary Counsel, Attorneys General; OECS Secretariat; ECSC Executive Court Administrator.	7 OECS Countries (excluding Montserrat & Anguilla).	The Chief Parliamentary Counsel in each OECS Country will be asked by the Attorney General to draft the necessary legislation which increases the civil jurisdictional limit of the Magistrate's Courts to EC\$25,000 (US\$25,000).	An increase in jurisdictional limits will distribute the trial burden for civil cases more equitably between the High Court and the Magistrate's Courts. The upward revision of the jurisdiction will also ensure that the Magistrates are presented with cases that more effectively utilize their considerable intellect and legal experience. The upward revision will also ensure that more commercial matters are resolved at the Magistrates Court level.	Six months after execution of the proposed Agreement between the ECSC and nine OECS Member Governments with respect to the establishment of a third-tier Magistrate Court in each country as proposed in Magistracy Integration Consultant Report

Continued	Area of Focus	Participants	Countries	Method of Operation	Expected Outcomes	Timeline
	Revise Evidence Acts.	Parliamentary Counsel; Attorneys General; OECS Secretariat; ECSC Executive Court Administrator; OECS Secretariat.	7 OECS Countries (with exception of BVI and Anguilla).	The Chief Parliamentary Counsel in the relevant OECS Countries will be asked by the Attorney General to draft the necessary legislation which amends the existing Evidence Acts.	Revision of these Acts will ensure that the efficiency of the Magistrates Courts are improved through their ability to take into account sources of evidence which are inadmissible at this time, e.g. computer generated information.	Completed by November 2008.

Continued	Area of Focus	Participants	Countries	Method of Operation	Expected Outcomes	Timeline
	Strengthen the Executive Administration Office of the ECSC.	ECSC Chief Justice, ECSC Executive Court Administrator, Judicial and Legal Services Commission.	ECSC Headquarters in Saint Lucia.	In consultation with the Chief Justice of the ECSC, the Executive Court Administrator of the ECSC will prepare job descriptions for appropriate personnel who will be recruited to strengthen the outreach of the Court Administrator's Office in light of the proposed integration of regional Magistracies under the auspices of the ECSC.	Additional management personnel will be added to the ECSC staff complement that will provide management support to the Saint Lucia-based JLSC and such other support to the ECSC that will support the Magistracy integration process over time.	Completed by June 2008.

Activity	Area of Focus	Participants	Countries	Method of Operation	Expected Outcomes	Timelines
Approval of Magistracy Integration Report by OECS Heads of Government (Authority).	Magistracy Integration Report.	OECS Authority.	9 OECS Countries.	ECSC Chief Justice and Regional Attorneys General initiate dialogue with respect to the de-linking of the Magistracy from the administrative management purview of the Attorneys General.	Authority approves the contents of the Report, including the draft integration legislation on Magistracy Integration contained therein.	Completed by January 2008.

Activity	Area of Focus	Participants	Countries	Method of Operation	Expected Outcomes	Timeline
Negotiation of Agreement between the ECSC and nine OECS Member Governments with respect to the establishment of a third-tier Magistrate Court in each country.	Legally binding Agreement between OECS States.	Chief Justice ECSC; Executive Court Administrator; Attorneys General; OECS Secretariat.	9 OECS Countries.	The participants actively engage in a policy dialogue which results in the establishment of a third-tier Magistrate Court in each country.	All nine ECSC Member States sign the Agreement without undue delays setting the stage for the Magistrate's Courts to be more closely identified with the judiciary.	Completed by March 2008.
Each ECSC Member State enacts national legislation which severs the connection between the Executive and the Magistrates Courts.	Magistrates reporting requirements shifted to ECSC Chief Justice; Magistrates now payable from ECSC Budget; JLSC now in charge of assessing and establishing Magistrates conditions of service.	ECSC Chief Justice; Regional Attorneys General; Judicial and Legal Services Commissions (Independent and British Territories); ECSC Executive Court Administrator.	9 OECS Countries.	Member States will be fully apprised by the Authority of the nature, scope and extent of the proposed changes approved for Magistracy Integration.	The administrative control of regional Attorneys General over the Magistracy will be severed. Magistrates now function as District Court Judges.	Completed by June 2008.
Magistracy de-linking actions by Attorneys General	Magistrates reporting requirements shifted to ECSC Chief Justice; Magistrates now payable from ECSC Budget.	ECSC Chief Justice; Regional Attorneys General. Judicial and Legal services Commissions (independent and British Territories).	9 OECS Countries.	Sustained dialogue between ECSC Attorneys General and Public Service Commissions in each country.	The administrative control of regional Attorneys General. Executive control over the Magistracy will be severed. Magistrates now function as District Court Judges	Start July 2008; completed by November 2008.

National and Regional Bar Associations	Apprising critical stakeholders of, and gaining their support for, the changes to be made in the court system as a result of the integration of the Magistracy under the Judiciary.	Chief Justice; ECSC.	9 OECS Countries.	The Chief Justice will convene personal meetings with such critical stakeholders in the court system as Bar Associations and apprise them of proposed reforms to the Magistrate Courts system. The Chief justice will also use the meeting opportunities to gain additional insights into how particular Magistracy integration changes can best be effected.	The Magistrate's Court integration process will be considerably enhanced if all the parties in the legal system are apprised of its intentions and proposed outcomes. The ECSC Chief Justice will lead this process and will convene a meeting of the Bench and Bar to gain consensus and to articulate the essential elements of Magistracy integration. It is expected that the Chief Justice will issue a Practice Direction that provides detailed directions on the workings of the integrated court system.	Start July 2008; completed December 2008.
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