ROUND TABLE DISCUSSION

CURRENT LEGAL ISSUES – ROUND TABLE DISCUSSION

INTRODUCTION

1. At their 1999 Meeting Law Ministers expressed the view that it was an opportune time to give consideration to the question how they might maximise the opportunities given by their meetings for the development of pan-Commonwealth solutions to shared problems; for the devising of means of advancing the shared legal tradition of the Commonwealth and for maintaining and implementing the core values of the Association. They concluded that meetings should balance the tradition of sharing national experiences with the need to ensure time for adequate debate on new issues.

2. Seeking to give effect to the wish of Ministers to have a general opportunity to share national experience, the Secretary-General, in his letter notifying this meeting proposed the inclusion in the agenda of a session lasting a couple of hours where Ministers could take the opportunity simply to raise major topical issues of concern. He expressed his hope that such a formation would allow the continuation of the strong tradition of facilitating the presentation of national perspectives and at the same time provide opportunities for the identification of subjects upon which Ministers believed pan-Commonwealth collaboration could add to the achievement of the Commonwealth's fundamental political values.

3. While not wishing to constrain the breadth of discussion in this session, the Secretariat has prepared some short notes on issues it perceives, from its experience working with law ministries, might be of some interest to Ministers and might lend themselves to brief discussion. Accordingly, annexes to this paper canvass the following issues –

- the evolving role of regional courts (*Annex A*);
- traditional and cultural knowledge and their protection under intellectual property rights regimes (*Annex B*);
- training of legislative drafters (*Annex C*);
- eliminating corruption in the judicial system (*Annex D*);
- legal education (*Annex E*);
- freedom of the press (*Annex F*);
- creditors' remedies (*Annex G*).

4. Ministers may choose to consider some of these issues in the context of their national situations while at the same time bringing to the table any other issues of relevance to them.

ANNEX A

THE EVOLVING ROLE OF REGIONAL COURTS WITHIN THE FRAMEWORK OF INTERNATIONAL LAW WITH THE ATTENDANT NEED FOR INTRA REGIONAL HARMONISATION OF LAWS

REGIONAL DEVELOPING TRENDS

1. The association of the practice of law across international borders with that of the International Court of Justice (ICJ) is now undergoing change as the emergence of regional courts is progressively materializing. This is as a result of the thrust of globalisation which has changed not only the financial landmark of the planet, but has increasingly modified the legal parameters of the traditional forms of justice at the international level and access thereto. At the regional level, the challenges are indeed assuming an energy of their own and in some respects, are in the process of developing regional jurisprudence as a hybrid form of international law within the general body of international law itself.

2. The forerunner of a regional court without doubt has been the European Court of Justice established pursuant to Article 177 of the Treaty of Rome, *viz:*

> *"The Court of Justice shall have jurisdiction to give preliminary rulings concerning:*
>
> (a) *the interpretation of this Treaty;*
> (b) *the validity and interpretation of the acts of the institutions of the Community;*
> (c) *the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.*

3. In the southern hemisphere, the need for the creation of a regional court to adjudicate on matters deemed particular to the dictates of that region was evidenced in the Agreement Creating the Court of Justice of the Cartagena Agreement being signed in 1979 and coming into effect in 1983. It will be recalled that the constituent members of the Andean Community – Bolivia, Colombia, Ecuador, Peru and Venezuela are associated through the Andean system of integration as they deem it necessary to co exist on the mutuality of shared regional interests.

4. Since the formation of these regional courts there is heightened interest as the world is increasingly being described as a global village and the advances of technology now enlighten the manner in which multilateral conventions are to be elaborated for the transborder movement of goods and services and the attendant institutional framework to let it all come together.

5. Communities in their regions have felt the need to, in some instances, deepen their traditional form of regional camaraderie so as to present a unified force to the challenges of globalisation. Weighing in the balance of all this, are the justifiable concerns of developing and less developing countries to maintain a posture of competitiveness on an uneven playing field. The need to associate not only becomes more compelling, but also evolves at a heightened level. It is at this stage that regional communities recognise the need to formalise the development of their communal law.

6. In order to provide a legal framework for the operation of the regional system, pursuant to the particular Treaty of association, a regional court in turn unfolds. In the instance of the European Court of Justice, that institution assumes the characteristic of a court of supra-national status, effectively being the final instance of appeal from courts of national jurisdiction in the countries of the European Member States themselves. A similar situation arises in the Court of Justice of the

Cartagena Agreement. That agreement has expressed that the creation of a tribunal at the highest level shall have the authority to define "communitarian" law.

REGIONAL COURTS AND LEGAL SYSTEMS

7. In an examination of the regional activities of the Commonwealth family, the following judicial arrangements are of note:

- The Court of Justice of the Economic Community of West African States (ECOWAS)
- The Court of Justice of the Common Market For Eastern and Southern Africa (COMESA)
- The proposed Caribbean Court of Justice For The Caribbean Community (CARICOM)

The various Treaties of association of these regional groups and/or the instruments creating the courts are consistently thematic in their purposes.

ECOWAS

8. The aims and objectives of ECOWAS, as stated in its founding Treaty of association at Article 3, declared, *inter alia*, "...the establishment of an enabling legal environment". This "enabling legal environment" is facilitated by the creation in Article 15 of the "Court of Justice of the Community", as the Treaty was revised in 1993. The Court, while not yet functional, is in the process of putting in place all the preparatory arrangements for its inauguration.

9. The Court of Justice will replace the Community tribunal. The functions and powers of the Court are assigned to it independently of the Member States and the institutions of the Community and its judgements are binding on the Member States, the Community and its institutions as well as on individuals and corporate bodies. The Court is deemed to therefore be an organ for jurisdictional control and has the added role of assessing the extent to which states fulfil their obligations and verifying the legality of acts adopted by the institutions of the Community.

COMESA

10. COMESA's objectives echo those of an association seeking to increase levels of integration. Of particular note is the creation of a free trade area and promotion of trade through the provisions of its Treaty. In endowing its association with the requisite infrastructure, COMESA is seeking to create the necessary legal framework which will encourage growth of the private sector, the establishment of a secure investment environment and the adoption of a common set of standards.

11. The Court of Justice of the Common Market of COMESA is charged with the responsibility of realising these legal objectives and is established under Article 7 of the COMESA Treaty as one of its organs. The Court has power to hear:

- matters referred to it over legal and natural persons resident in a Member State;
- disputes between COMSESA and its employees;
- matters relating to arbitration and special agreements;
- any matter arising from an arbitration clause contained in a contract which confers such jurisdiction to which COMESA or any of its institutions is a party and to determine any dispute between the Member States regarding the Treaty if the dispute is submitted under a special agreement between the Member States concerned.

12. The Court of Justice will then foster the development of the regional body of laws and this is additionally consolidated by the fact that decisions of the Court on the interpretation of the provisions of the Treaty will have precedence over decisions of national courts or tribunals.

CARICOM

13. The proposed Caribbean Court of Justice (CCJ) is expected to commence its jurisdictions on a phased basis. The first active members are expected to be Barbados, Guyana, Jamaica and Trinidad and Tobago, and possibly, Belize. Thereafter, other Member States in the sub regional grouping of the OECS will follow suit as soon as their constitutional arrangements are in place. Since the Bahamas is not a member of the common market, its attachment to the Court is not yet defined.

14. The CCJ is designed to replace the Judicial Committee of the Privy Council as the highest appellate municipal court of the Member States. However, it is designed to be an international tribunal with the consequent attention to the rules of international law, particularly as they relate to the interpretation of CARICOM's treaty of association. This latter function will see the CCJ rule, in original jurisdiction mode, on matters relating to the operation of the CARICOM Single Market and Economy (CSME). Both functions are to be employed so as to ensure legal certainty and send a message of stability to investors in the region.

15. It should also be noted that the original jurisdiction of the CCJ regarding the CSME ensures that any questions relating to its operation and interpretation of rules relating thereto are accorded consistent elucidation since these will be removed from national jurisdictions. Equally, the CCJ's appellate chambers will also adjudicate as an appellate body for the CSME.

16. The implications of this will not only afford the level of respectable assurances necessary for investment and development in the region, but will nurture the true development of a regional Caribbean jurisprudence, thereby constituting another area of meaningful regional maturity.

THOUGHTS ON THE CONTRIBUTION OF THE COMMONWEALTH SECRETARIAT

17. What have emerged as consistent in these regional efforts are the following:

- regional communities have recognised the need to establish a judicial body to ensure that there is uniformity and confidence in the legal system of those communities;
- the drive to seek such assurances of a legal system go to the heart of providing an inviting environment for development of the particular region; and
- buttressing these efforts will require that the specific legal framework is sufficiently harmonious throughout that region on one hand and on the other, fully compliant with the international standards mandated by multilateral or bilateral treaties.

18. The various regional groupings in which Commonwealth countries participate (in some cases the groups comprise only, or a vast majority of, Commonwealth countries) have tacitly or expressly declared through their various instruments of association that their developmental needs and goals are:

- the intra regional free movement of goods and persons for enhanced trade and investment opportunities; and
- the indication to any potential investor in the respective region that there are sufficient levels of predictability and self-assurance in the relevant legislative framework to render belief in the investment being undertaken.

The legal instruments governing regional integration, such as CARICOM's Treaty of Chaguaramas, require harmonisation of relevant laws of Member States.

ISSUE OF CONSIDERATION BY MINISTERS

19. Ministers may wish to consider whether there is merit in the Commonwealth facilitating collaboration and co-operation among regions that are working towards parallel goals to facilitate the creation of legal regimes that will foster common developments in corporations and other trade related laws.

ANNEX B

TRADITIONAL AND CULTURAL KNOWLEDGE AND THEIR PROTECTION UNDER INTELLECTUAL PROPERTY RIGHTS REGIMES

1. Law Ministers will recall at their last meeting in Trinidad, they noted the significance of the United Nations Framework Convention on Biological Diversity 1992 and its provisions on intellectual property rights, not least in the context of rights in plants used in traditional medicine. They asked the Commonwealth Secretariat to continue its work in this important field including the provision of advice and assistance in the implementation of the Convention.

2. Since that meeting there has been increased awareness of the issue of the protection of indigenous folklore that is of great significance in many member countries.

3. Folklore has been defined as: "the totality of tradition-based creations of a cultural community, expressed by a group of individuals and recognised as reflecting the expectations of a community in so far as they reflect its cultural and social identity; its standards and values are transmitted orally, by imitation or by other means".[1] It has been determined that the heritage of indigenous peoples, includes among others, the expressions of song, literary works, music, dance, games, mythology, rituals, customs, handicrafts, architecture and their consequent documentation on film, photographs, video tape or audio tape.

4. The challenges faced for the protection of folklore arise because -

- the usual requirement is that an author is clearly identifiable for his/her creation. Because of the collective nature of indigenous folkloric works, and their essence being an accumulation of culture overtime, no one individual can be specifically identified as author or owner;
- ownership of folklore is therefore collective of its indigenous community, and such community may be charged with the responsibility of protection of its indigenous folklore, equivalent to that of a custodian; and
- while rights of an individual invariably facilitate economic benefit, communal ownership has far reaching consequences of an economic and social nature.

5. Beyond the concerns of the legal ability to protect folklore, there are further areas of disquietude, notably:

- traditional forms of folklore are particularly fragile, especially the oral tradition which is under threat of being lost;
- folklore is a constituent of the universal heritage of mankind, which not only fosters cultural identity, but becomes a catalyst for bringing together diverse peoples and social groups;
- without the appropriate forms of protection, folklore is subject to unwanted economic exploitation which is often prejudicial to the integrity of the indigenous community;
- as a somewhat intangible heritage, folklore is endangered within the increasing thrust of globalisation which may alter life styles and undermine the environment in which these traditions are practised and maintained; and
- erosion of cultural knowledge and heritage brings about degradation of a communal society with the attendant problems of sustained underdevelopment and grave social insecurities

---

[1] See Recommendation on the Safeguarding of Traditional Culture and Folklore adopted by the General Conference at its twenty fifth session. Paris, 15 November 1989.

6. Some of the above concerns have directed international and regional attention towards safeguarding folklore. The differing attempts to protect expressions of folklore have been disappointing. A brief examination will indicate though the level of activity has been high, the results have yielded a pitiful harvest -

- In 1973 a UNESCO action began with the proposal of Bolivia that a Protocol be added to the Universal Copyright Convention in order to protect folklore;
- In 1976 under the auspices of UNESCO and WIPO a committee of governmental experts adopted the Tunis Model, which refers to the protection of folklore;
- In 1982 UNESCO and WIPO jointly issued Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions;
- In 1989 UNESCO published its Recommendations on the Protection of Traditional Culture and Folklore. This effort has been hailed as being particularly meaningful since it heralded an important precedent for the recognition of the heritage aspects of traditional culture and folklore;
- In 1997 UNESCO and WIPO jointly organised a World Forum on the Protection of Folklore which was held in Thailand;
- In 1999 four regional consultations on the protection of expressions were organised with WIPO for Africa; Asia – Pacific Region; Arab States; and Latin America and the Caribbean;
- In 1999 UNESCO organised a symposium on the protection of traditional knowledge and expressions of indigenous cultures; and
- In 2000 at the WIPO General Assembly, an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore was created.

7. In terms of the existing legal framework on intellectual property rights, while there is studious attention to the other forms of intellectual property, traditional folklore and its intangible nature have not been sufficiently embraced by the various conventions. Indeed the World Forum meetings in Thailand concluded that intellectual property does not give appropriate protection to expressions of folklore and a *sui generis* regime specific to this purpose needs to be developed.

8. National legislation for the protection of folklore will only have effect in those national jurisdictions and thereby will not facilitate the global thrust for international recognition of these rights. Consequently, while national legislation will certainly help, it is not the cure.

9. Of note, is the fact that the awareness of potential economic exploitation of this type of traditional knowledge and the need for redress has already inspired law courses in some law faculties in parts of the Commonwealth. The importance then should not be underestimated.

10. While the issue of traditional knowledge as it relates to the use of indigenous medicinal plants has earned appropriate attention within the body of intellectual property rights for further elaboration under the WTO, the other issue for developing countries relating to folklore, arguably warrants attention. It is apparent that the work already undertaken on folklore has not yielded real results. To this end, pressure could perhaps be brought to bear in international fora for the purpose of establishing a regime for negotiation on the matter of the proper place of traditional folklore, within the family of intellectual property rights.

11. Law Ministers may wish to consider whether there ought to be adjudged parameters for the economic exploitation of such intimate ways of life and to discuss whether the issue of folklore protection is a subject of common concern warranting collaboration and co-operation between member countries.

ANNEX C

TRAINING OF LEGISLATIVE DRAFTERS

INTRODUCTION

1. The training of legislative drafters, especially in "small" jurisdictions, has been a concern of Commonwealth Law Ministers since at least the early 1970s. Virtually every Communiqué emanating from their meetings has expressed concern with the supply and retention of qualified drafters in these jurisdictions. In the Communiqué from their 1993 Meeting, for example, the Law Ministers stated that "Without professionally drafted laws, Parliaments no less than the courts could not operate effectively and yet, almost without exception, member countries were suffering from an acute shortage of law drafters." Ministers also recognized that it was for them and their countries to ensure that the terms and conditions of service of law drafters were such as to attract new recruits and retain experienced practitioners in the drafting service. It is important to recall that terms and conditions of service relate not only to salaries but also to the opportunities given to staff to improve skills through appropriate training.

2. Over the years the Commonwealth Secretariat has invested vast resources in the provision of assistance to member countries relating to the provision and training of drafters. For many years significant funding was provided to enable students to attend a LMM course at the University of the West Indies specifically focusing on drafting. Early in the 1990's the Secretariat, with the Commonwealth of Learning invested heavily in the development of materials for distance learning (welcomed by Law Ministers in 1993). For all of its history the Secretariat has funded and provided trained drafters for a significant range of member countries. All this notwithstanding the problem of securing adequate supplies of competent drafters remains and, for some countries hampers seriously the development of their laws. At a time when the demands of globalisation (for all countries) and donor conditions on good governance reforms (for developing countries) require the passage of new laws, the issue of training and retaining drafters is one of high priority.

RECENT DEVELOPMENTS

3. A conference on training legislative drafters took place in St. Lucia in July 2002, under the auspices of the University of the West Indies Faculty of Law. This conference was significant because it marked the first time that the training of legislative drafters had been the primary focus of a meeting of legislative drafters.

4. The Conference conclusions will undoubtedly be of interest to Law Ministers. A summary of the main conclusions is therefore set out below.

(a) In principle, in-house training remains the best method of training legislative drafters. Programmes such as those found in the drafting offices in the Office of Parliamentary Counsel in Canberra and the Department of Justice in Ottawa offer useful models for those jurisdictions with the resources to implement them. However, in-house training on these lines requires a large and fully staffed office with adequate numbers of experienced senior staff willing to act as mentors, and in terms of demands it makes on office resources, it is potentially expensive. In regions such as the Caribbean, few drafting offices are in a position to put in place training programmes of the range and quality found in Ottawa and Canberra.

(b) International courses concerned with the basics of drafting can provide a valuable introduction to the subject and a broader understanding of the processes connected with the preparation of legislation. However, they are expensive and remove trainees and the training from the environment in which drafting will be practised.

(c) There is a place in training for formal courses concerned with the core aspects of legislative composition as they relate to a particular jurisdiction. These are likely to be most effective if they are designed to be part of a well-structured programme devised to meet the needs of the particular drafting office. Aspects of training concerned with such matters as computer use, time management, negotiation, collaborative working and development of interpersonal skills are better delivered in-house. The drafting office should determine the actual content and mode of delivery of this training. It is valuable to be able to assign to a senior drafter responsibility for organising and supervising the delivery of training.

(d) While there is advantage in having training undertaken by senior drafters interested and competent in such an activity, there is a place for experienced trainers from outside the drafting of office working with in-house trainers.

(e) There is some merit in trainees attending a foundation course in drafting which could provide basic training in the techniques of legislative composition and the development of sound analytical skills, as well as an awareness of the role and responsibilities of drafters and a sound understanding of such matters as the policy formation, preparation and legislative processes and the effects of statutory interpretation on drafting. In this context the programme offered by the University of Papua New Guinea using the distance learning materials developed by the Commonwealth of Learning (COL) might be a useful model that could be adapted for use in other regions.

(f) In addition to training new drafters, more attention should be paid to training as part of the career development of all drafters. This could entail participation in drafting workshops on specialized topics such as drafting in accord with constitutional and administrative law principles, drafting international conventions and implementing legislation, drafting fiscal legislation, etc.

POSSIBLE ACTION BY LAW MINISTERS

5. The difficulties being experienced by member countries in obtaining drafting services, and by the Commonwealth Secretariat in seeking to meet the continued and growing demand for such services leads to the conclusion that this issue remains on to which serious attention must be given if a long-term sustainable solution is to be found.

6. Some suggestions that have been made include:

- the establishment of bilateral support programmes under which countries having a reasonable supply of drafters could consider, as part of the career development of those officers, making drafters available to serve in other member countries;
- the establishment of regional associations of legislative drafters and the development of websites which would include a database of training materials and links to other useful sites;
- collaboration between law ministries and/or offices of legislative drafting and national or regional universities to devise collaborative strategies for the development of appropriate training programmes;
- adoption of relevant conclusions of the recent Caribbean regional conference as a means of improving training – both external and on-the-job.

7. Ministers may wish to consider whether the Secretariat is able to facilitate any national or regional efforts to address this problem in a way that takes account of the significant investment already made by the Commonwealth in training drafters and makes use, at least in part, of the distance learning programme already developed.

ELIMINATING CORRUPTION IN THE JUDICIAL SYSTEM

BACKGROUND

1. Law Ministers will recall their work on the Commonwealth Principles on Promoting Good Governance and Combating Corruption. Following the adoption of those Principles by Heads of Government, the Secretariat, as part of its ongoing multidisciplinary work in this area, organised with the Commonwealth Magistrates and Judges Association, a judicial colloquium on combating corruption within the judicial. Participants asked that their conclusions be conveyed to Law Ministers.

THE LIMASSOL COLLOQUIUM

2. The substantive parts of the Report of the Judicial Colloquium is set out below for the information of Ministers.

LIMASSOL CONCLUSIONS

1. Commonwealth Judicial Officers, including heads of judiciary, judges from a range of courts and magistrates, met in Limassol, Cyprus from 25-27 June 2002 to consider how best the judiciary could contribute to the goals of eliminating corruption and promoting high ethical standards in the court system. They represented 23 Commonwealth countries and jurisdictions. Their number was supplemented by judicial educators and experts in the area of combating corruption and by government officers whose responsibilities include the investigation of acts of judicial corruption.

2. The Judicial Officers accepted, as a common philosophical and practical starting point, the Commonwealth Harare Declaration that commits all member countries to the fundamental values of democracy, rule of law, independence of the judiciary and the promotion and protection of fundamental human rights.

3. They acknowledged that a judicial system free from corruption was an essential component of a truly democratic country and is critical to national development and the eradication of poverty. A court system that is free from corruption was recognised as one of the essential features of a country able to attract investment and thus develop in a way that would enhance the welfare of its people.

4. The colloquium welcomed the 1999 commitment of Commonwealth Heads of Government to the Framework for Commonwealth Principles on Promoting Good Governance and Combating Corruption (the Framework). They acknowledged, in particular, the commitment of Heads of Government to the concept that all Commonwealth countries should develop national strategies to promote good governance and eliminate corruption and recognised that judicial action to complement and supplement governmental action was both necessary and desirable.

5. Judicial Officers re-affirmed the statement of Heads of Government in the Framework that -

> *"An independent and competent judiciary, which is impartial, efficient and reliable is of paramount importance. This requires objective criteria for the selection and removal of judges, adequate remuneration, security of tenure and independence from the executive and legislative branches of government.*

However, judicial independence does not imply a lack of accountability. Judges should act properly in accordance with their office and should be subject to the ordinary criminal laws of the land. There should be procedures to discipline or dismiss them if they act improperly or otherwise fail in the performance of their duties to society. These procedures should be transparent and administered by institutions which are themselves independent and impartial".

6. In their deliberations, judicial officers sought to identify strategies, best practices and actions that would achieve the objective of securing independence, integrity and accountability of judicial officers and a judicial system free from corruption.

7. The Colloquium conclusions combine recommendations for consideration, and where necessary and appropriate in national circumstances, implementation by the judiciary itself, by government and by the legal profession. Some of the recommendations may commend themselves for consideration by international organisations, both intergovernmental and non-governmental. The Colloquium trusts that its deliberations will assist in informing the thinking of, and action by, the appropriate national and international bodies that are seeking to achieve the Commonwealth's goal of zero tolerance of corruption.

8. The Colloquium conclusions and recommendations cover a number of subjects and areas. Those considered by the Colloquium to be of paramount importance are the following: –

The Colloquium -

i. recommends the adoption of guidelines on judicial ethics as a means of underpinning the integrity of the judiciary and promoting better public awareness of the requisite ethical standards. Such guidelines should be formulated by judicial officers and kept under constant review by them. Judicial officers should take responsibility for ensuring compliance with those guidelines;

ii. urges all national and international legal professional organisations within the Commonwealth to promote anti-corruption programmes for the legal profession;

iii. encourages the formulation of national strategies aimed at eliminating conflicts of interest and corrupt practices within the judiciary;

iv. recognising that transparency assists in combating corruption, encourages judicial officers and their court staff to foster greater public awareness of the court's operations, role and function;

v. places on record its support in principle for the Latimer House Guidelines and their footnotes as they relate to the judiciary; and

vi. notes that traditional or customary courts and other tribunals recognised in some national constitutions make a positive contribution to the administration of justice. The public that is served by such bodies should continue to expect and receive fair and just resolution of their disputes.

9. In considering action within the courts, the Colloquium expresses the view that –

vii. judicial training programmes should be available and should include training on ethical and corruption issues. For newly appointed judicial officers the practice of mentoring should be encouraged; and

viii. there should be greater interaction between judicial officers at all levels nationally, regionally and internationally in order to promote the best judicial practice.

10. The Colloquium recommends for consideration by law ministers and governments the following: -

ix. recognising the interdependence of an efficient, impartial and accessible machinery of justice and the process of good governance and development, that governments should allocate sufficient resources to the courts to ensure their ability to provide that efficient, impartial and accessible service;

x. The process of appointment and promotion of judges should respect the principle of separation of powers and reflect principles of transparency, competitiveness and merit;

xi. to promote the recruitment and retention of persons of the requisite integrity and competence, Governments should ensure at all times that the remuneration of judicial officers is fixed at a level that will ensure that they enjoy financial security during their tenure of office and that upon retirement they continue to enjoy such security.

xii. Governments, in the light of threats to the personal safety of judicial officers, should provide adequate personal protection for all judicial officers particularly those who are regularly required to adjudicate on serious criminal offences.

11. In order to strengthen judicial independence and integrity the Colloquium requests the Commonwealth Secretariat to facilitate the carrying out of a comprehensive survey of the methods of determining conditions of service of judicial officers throughout the Commonwealth so as to provide guidelines on prevailing best practices. The Colloquium notes the practice adopted in some jurisdictions of determination of judicial salaries and terms and conditions by an independent commission.

12. In dealing with the issue of judicial accountability, the Colloquium -

xiii. notes with approval that in some jurisdictions the judiciary publishes periodic reports of its activities. The Colloquium considers that this is a desirable practice for purposes of accountability and promoting greater understanding of its role.

xiv. expresses its view that there should be a greater degree of judicial awareness of the work of the court staff and liaison with the said staff should be encouraged in order to ensure the smooth operation of the judicial system.

xv. in order to maintain public confidence in the judicial system, recommends that the Courts should at all times ensure that their rules and procedures are simplified and that, except for good cause, cases should be heard in public.

xvi. recommends that judicial officers should ensure that their judgments are well reasoned and delivered within a reasonable time; and

xvii. notes that a pro-active leadership role of Heads of Judiciary is essential in promoting an impartial and independent, competent, efficient and effective judiciary.

13. The Colloquium considered the issue of judicial education and training. Its recommendations on this subject are set out in Annex A to this report (not included in this paper).

14. The Colloquium requests the Commonwealth Secretariat to convey its conclusions to national heads of judiciary, Law Ministers and each of the Commonwealth legal professional associations. It also requests the Secretariat to continue to work with the Commonwealth Magistrates and Judges Association, as well as with national judiciaries, to advance programmes that will assist in the entrenchment of principles of independence, integrity and accountability of the judiciary at all levels.

3. Following the meeting in Limassol the recommendations were placed before the Jubilee Conference of the Commonwealth Magistrates and Judges Association which endorsed the conclusions and called on governments and judiciaries of the Commonwealth to give every support to those conclusions.

ISSUES FOR CONSIDERATION BY LAW MINISTERS

4. The specific request of the participating members of the judiciary that their recommendations be put before Law Ministers arises, primarily, from the recommendations contained in paragraphs 10 and 11 of the report set out above. Law Ministers may wish to express their views on those issues.

5. A recurring subject of discussion by the Limassol participants was the issue of the relationship between judicial officers and court staff. In many, if not most, jurisdictions court staff are employed by a department of state and are not subject to specific control by the judges. The question therefore arose as to how judges could ensure that corruption in court administration did not undermine efforts of judicial officers to instill zero tolerance of it in their courts. Judges recognized that they had a responsibility to ensure that court staff understood their commitment to eradicate corruption amongst judicial officers but also sought to identify ways in which they could work formally with court staff to ensure the court system, as a whole, was not affected by corruption. Ministers may wish to address this question.

6. They may also wish to welcome the attention given to the development of strategies to combat corruption in the judiciary and to express their support for the commitment of CMJA and individual judges to the implementation of appropriate training and mentoring programmes for judges.

ANNEX E

LEGAL EDUCATION

1. The Report of the Commonwealth Legal Education Association is contained in paper LMM(02)19. That Report identifies various areas in which the Association has found that there is need to develop curricula for the teaching of subjects in law schools. The specific areas identified are -

- Human Rights for the Commonwealth
- Transnational crime/Anti-terrorism law
- Environmental Justice
- International Trade Law
- Law and Development

2. The report describes the work being done by the Association in conjunction with the Commonwealth Secretariat on the first of these two subjects. Law schools would like to be in a position to offer courses on the other subjects and, in particular, it would be helpful if they could identify sources of assistance in the development of materials and in securing law teachers with the requisite knowledge to deliver the courses.

3. Law Ministers may wish to consider whether there is opportunity for them to work with the law faculties in their countries to assist in the development of these and other programmes of study that will produce graduates having a background in areas of public law that are of particular relevance to government legal services.

4. Consideration could be given, for example, to facilitating, where possible, the release (on a part time basis) of experienced government lawyers to assist in the delivery of courses that are of particular relevance to the government legal service.

5. Ministers may wish to welcome the development of the law curriculum programme and to encourage its further development – either generally or in areas they wish to identify.

GOOD GOVERNANCE AND FREEDOM OF THE PRESS

1. In any well functioning democratic government, the public is adequately informed as to the actions of Government officials and the elected representatives. Information is not just a necessity for people – it is an essential part of good government. It allows people to scrutinise the actions of a government and is the basis for proper, informed debate of those actions. The free flow of this information necessitates a free press and this freedom is guaranteed under the Constitutions of most democratic countries. It is however subject to restrictions for the protection of social order, the administration of justice, and personal rights and interests.

2. Although press freedom is instrumental in the realisation of other rights and freedoms, (e.g freedom to seek, impart and receive information and freedom of thought), this does not mean that the press is free to investigate or publish anything it wishes or anything that readers may wish to know. The Royal Commission on the Press in the United Kingdom explained:

> *"Proprietors, contributors and editors must accept the limits to free expression set by the need to reconcile claims which may often conflict. The public, too, asserts the right to accurate information and fair comment, which, in turn has to balanced against the claims both of national security and of individuals to safeguards for their reputation and privacy except when these are overridden by the public interest. But the public interest does not reside in whatever the public may happen to find interesting, and the press must be careful not to perpetrate abuses and call them freedom"*- Royal Commission on the Press, Final Report (London, Cmnd 6810, 1977), para 2.2

3. The act of balancing the freedom of the press against other interests is a vexing issue.

PRESS SELF REGULATION OR PRESS COMPLAINTS TRIBUNAL?

4. Regulating the press by legislation requires the "balancing" of competing interests in the sense that the values of freedom of expression and the government's regulatory interests will be balanced on a case-by-case basis.

5. In many developed and developing countries self-regulating bodies like press councils are fairly common. Their primary function is to draw up and keep under review a code of practice and to receive complaints of alleged breaches of the code. Very rarely have statutory tribunals been established on the premise that imposition of statutory controls might open the way for regulating content, thereby laying the governments open to charges of press censorship.

6. On the other hand, criticisms have been levelled at self-regulating press councils for providing inadequate redress for a wronged person.

7. Law Ministers may wish to consider the role of the press in democratic countries as well as the appropriate form of regulating the ethics and standards of the media in their respective jurisdictions.

CREDITORS' REMEDIES

SUMMARY JUDGMENT PROCEEDINGS AND SMALL CLAIMS TRIBUNALS

1. Access to capital and finance largely create lender/borrower, mortgagee/mortgagor and lender/guarantor relationships between lending institutions and individuals who raise capital from them.

2. The legal rights and obligations created by these relationships give lending institutions the right to foreclose on property offered as security and the right to sue for recovery of debt. In many countries, the process of filing commencement proceedings up to obtaining judgment against a debtor at first instance, is long and drawn out especially where monies to be recovered are liquidated amounts. In some cases, the costs for such proceedings do not justify the pursuit of small debts.

3. Where a loan is not secured by land which is identifiable, enforcement of judgment can be thwarted by the lack of a chattels register and a computerised register of land owners and properties they own. A creditor is therefore prevented from ascertaining if the debtor has chattels and real property that can be seized or charged in satisfaction of debt.

4. Law Ministers may wish to consider:-

- the introduction of Summary Judgment proceedings which would speed up the process for obtaining judgment against a debtor;
- the establishment of Small Claims Tribunals which are not only cost effective to both creditor and debtor but would avoid delay;
- the establishment of Chattels and Real Property registers to facilitate enforcement of judgments;
- a review and amendment of their Courts' civil procedure rules.