



Caymanian Jurisprudence

A Guide to the Legal Environment of the Cayman Islands



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Cayman Islands

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Grand Cayman

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Introduction

- British Overseas Territory
- Three Islands: Grand Cayman, Little Cayman and Cayman Brac
- Divided into seven districts
- Major industries: Tourism and Banking
- Population: 47,862
- 1.5 times the size of Washington D.C
- Legal counsel referred to as Queen's Counsel

History

- Discovered May 10th, 1503 by Christopher Columbus
- Originally named *Las Tortugas*
- Came under British control in 1670 with signing of Treaty of Madrid
- Dependency of Jamaica 1670-1962
- Chose to remain territory of UK in 1962

CARICOM

- Associate Member of Caribbean Community
- Joined May 22nd, 2002
- Has two representatives, Member States have four representatives
- Has right to speak at Assembly, no right to vote
- Does not count towards quorum requirement
- Does not recognize CCJ as appellate court of last resort, continues use of Privy Council in London

Judicial System

- Four tiered court system (plus one)
- Summary Court
 - Hears civil and criminal matters
 - Civil monetary limit of CI\$20,000
 - Initial stage for all criminal cases
 - Maximum sentence of 4 years with exception for drug offenses
 - Drug offenders may be sentenced up to 30 years
 - Includes Youth and Traffic Court

Judicial System

- Grand Court
 - Comparable to Her Majesty's High Court of Justice in England
 - Acts as Court of first Instance with unlimited jurisdiction in all civil and criminal matters
 - Acts as Court of Appeal for lower courts
 - Made up of Chief Justice and Judges
 - Chief Justice acts as Central Authority of Mutual Legal Assistance Treaty (MLAT) with U.S.
 - Court sits with a judge and jury of 7 or 12 (murder, money laundering) for criminal and alone for civil matters

Judicial System

- Cayman Island Court of Appeal
 - Established in 1984
 - Court is a Superior Court of Record created by statute and Constitution
 - Three judges sit at hearing
 - Only 3 hearing sessions of 3 weeks each per year

Judicial System

- Judicial Committee of the Privy Council
 - Established by Judicial Committee Act of 1833
 - Located at Downing Street in London
 - Final Court of Appeal for UK and territories
 - Cayman appeals governed by UK statutory instrument 1984/1151
 - Three categories of appeals: as of right, by discretion of the local Court of Appeal and by special leave

Judicial System

- Plus One-European Court of Human Rights
 - UK is signatory to treaty creating ECHR
 - As overseas territory of UK , Cayman Islands fall under ECHR jurisdiction
 - ECHR may hear cases when all local remedies have been exhausted
 - Possibility of filing suit with ECHR if no remedy at Privy Council level

McLaughlin Case

- Example of judicial procedure for a civil matter
- Facts of Case
 - Dr. McLaughlin dismissed from position in Caymanian Government by Governor with 3 months pay in lieu of notice
 - McLaughlin believes dismissal was unlawful and that he should retain his position in Government service

McLaughlin Case

- Procedure of Case
 - McLaughlin applies for judicial review
 - Application and approval are Summary Court action
 - Judge dismisses substantive application at Grand Court level finding Governor could legally enforce retirement action
 - McLaughlin gives notice for appeal to set aside judgment and seek reinstatement

McLaughlin Case

- Procedure continued
 - Court of Appeals voided decision of dismissal by Grand Court
 - Due to length of time since dismissal Court decided damages, not reinstatement, was proper remedy
 - Case remitted to Grand court for assessment for damages

McLaughlin Case

- Procedure continued
 - Grand Court held 2 hearings; first to clarify Court of Appeals decision and second to assess damages
 - Grand Court found McLaughlin entitled to 1 year continued salary entitlement plus pension contribution
 - Governor appealed on grounds of misinterpretation of higher courts decision
 - McLaughlin cross-appealed on grounds that the decision stated a cessation of his public office

McLaughlin Case

- Procedure continued
 - Court of Appeal clarified that by voiding first decision it had ruled that the termination was unlawful but did end McLaughlin's service
 - Since service decided as ended McLaughlin's lack of appeal for reinstatement made cross-appeal dismissible
 - Case once again remitted to Grand Court for assessment of damages

McLaughlin Case

- Concluding Holding
 - After second decision of Court of Appeals case is reviewed by Judicial Committee of the Privy Council
 - Privy Council finds second decision of Court of Appeals incorrect as to McLaughlin's unlawful but effective termination
 - Holds McLaughlin as still employed with back pay due from original termination date
 - Remitted to Grand Court for computation of salary and interest

Alternative Dispute Resolution

- ADR is not as popular in Cayman Islands as in the United States
- Court system is viewed as efficient and inexpensive with only small case backlog
- No long waiting period for suits to go to trial
- International trend towards arbitration and mediation has influenced Cayman Islands
- Now multiple Cayman firms have ADR departments

Alternative Dispute Resolution

- Arbitration - most popular in lieu of litigation
- Used for aspect of confidentiality and fact that arbitrator's decision is binding
- High number of international contracts now state arbitration as method for dispute resolution in terms
- Choice of rules:
 - American Arbitrator's Association
 - International Chamber of Commerce
 - London Chamber of International Arbitration

Alternative Dispute Resolution

- Mediation - non-binding, leads to best alternative for both sides through use of mediator
- Executive Tribunal – non-binding, more formal mediation where executives make statements and use questioning to try and reach agreement
- Expert Appraisal – non-binding, technical expert in the field gives an assessment to help the parties reach agreement
- Adjudication – third party gives a non-binding decision based on the merits of the situation

Legal Aid

- Available for civil or criminal matters
- Court appointed under provisions of Legal Aid Rules of 1997
- \$ 1.825 million approved for legal aid - 2007
- Regulated by Legal Aid Law (1999 Revision)
- Certificate for aid provided to those without means

Legal Aid

- Available for any criminal offense at Grand Court level
- Only for schedule of criminal offenses at Summary Court level
- Probation Officer appointed to investigate insufficiency of means
- Means test based on obtainable and disposable income

Legal Aid

- Legal counsel comes from private sector
- Clerk of Court keeps list of private sector lawyers
- Lawyers paid at rate of \$100 per hour
- Queen's Counsel from outside jurisdictions may be appointed (Jamaica, Bermuda, etc.)

Education

- Public education provided free by the government for children ages 4-16
- Current literacy rate of 90%
- State schools based on English system
 - Primary schools (4-11) in each district
 - High school (11-16) in 5 locations
 - Curriculum based on Caribbean Examinations Council (CXC), comparable to English GCSE

Education

- Completion of CXC allows for application to one of the next level schools
- Community College
- University College
 - Vocational training and associate degrees
- Cayman Islands Law School
 - Founded 1982 as affiliate of University of Liverpool
 - 3 year Bachelor of Laws, 5 year Attorney at Law or Diploma in Legal Studies available

Education

- Government also provides facilities for:
 - Special education and training for disabled
 - Alternative Education Center for juvenile offenders
- Schooling is mandatory for all children
- Enforcement regulated by the Education Department and Court System

Education

- Private Education available:
 - Regulated by Government's School Inspectorate
 - Pre-schools
 - 7 private schools
 - International College of the Cayman Islands
 - Founded 1970
 - Affiliated with number of U.S. schools
 - Offers numerous undergraduate and Master's

Legal Employment

- Admission to Cayman Bar regulated by the Legal Practitioner Law (Revised 2007)
- Must be practitioner of a Commonwealth country or;
- Under Section 20 may complete:
 - Qualifying Examination of Professional Practice Course and;
 - 18 month period of Articles of Clerkship

Legal Employment

- Must be Caymanian or have Caymanian status to enroll in Professional Practice Course
- May get written consent from Governor
- Must have L.L.B. (U.K. J.D. equivalent)
- May get written equivalency from Legal Advisory Council
- Extremely difficult for foreigners but if admitted...

Legal Employment

- Seven year limit on foreign workers
- Must apply for work permit
- After 7 years must leave for at least one year before returning to work
- May apply for 'key employee' status which extends permit for 2 additional years
- May apply for permanent residency after 8 years

Conclusion

