

Albert Fiadjoe

Commonwealth Caribbean
Public Law

Third Edition



COMMONWEALTH CARIBBEAN PUBLIC LAW

Third Edition

Taking a critical look at the major areas of constitutional and administrative law, *Commonwealth Caribbean Public Law* places a firm emphasis on the protection of citizens' rights and good governance. The third edition of this book builds on the success of the previous two editions, setting out the established legal principles through Caribbean cases, along with critique and commentary of the law where appropriate. Contemporary issues and changes in Caribbean public law are addressed; these include the refining of the rules governing judicial review, recent cases dealing with the death penalty, and the likely impact of CARICOM initiatives on the rights of citizens.

Review of the previous edition: '... this [book] will surely influence the development of public law in the region. This book deserves a wide audience.' *The Law Teacher*, Vol 32, Issue 1.

Professor Albert Fiadjoe is Professor of Public Law at the University of the West Indies, Cave Hill Campus, in Barbados, and has undertaken numerous consultancy assignments in public service regulatory reform in various countries, financial sector legal reform, constitutional reform, local government law, small business enterprise development and the electoral process. He has published widely in these areas. He is also the author of *Alternative Dispute Resolution: A Developing World Perspective*, also published by Routledge-Cavendish.



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COMMONWEALTH CARIBBEAN PUBLIC LAW

Third Edition

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With a foreword by

Mr Justice Michael de la Bastide
President of the Caribbean Court of Justice

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*This book is dedicated to
Liza, John, Tsatsu and Yvonne
and
to all students of Caribbean Public
Law – past, present and future*



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FOREWORD

This is the third edition of a book which was first published in 1996. This fact alone testifies, first, to the essential quality of the work and the wide acceptance it has deservedly received from the readership which it targeted. It is also testimony to the rapid rate at which public law has been developing in this region in the last ten years.

I have found this book to be far more readable than most legal text books. This has to do with both its style and content, neither of which is of the 'dry as dust' variety that one usually associates with legal texts. The author is not content merely to report on the state of the law, but is prepared to debate such controversial issues as the limits that should be set on judicial supervision of executive and legislative action and how, in this connection, one should balance access to the courts with respect for representative democracy and the separation of powers. The author is also willing to offer his own suggestions on such practical matters as the procedure to be adopted when reforming a constitution, or the measures that might be taken to reduce the volume of public law litigation.

Another attractive feature of the book is the width and depth of the exposure it affords not only to judgments of Caribbean judges sitting in High Courts and Courts of Appeal, but also to the views and comments of academics and jurists from within the region.

Public law has been developing apace throughout the Commonwealth, but nowhere has it been developing faster than in the Commonwealth Caribbean. This is reflected in the volume and importance of the new material which has been added in this third edition. The developments addressed by this new material include the progressive emasculature of 'ouster clauses', the extension of the doctrine of legitimate expectation to substantive expectations, a new formulation of the test of 'apparent' bias and the fashioning of new remedies to deal with recalcitrant infringers of constitutional rights. The author has also taken note of the establishment of a new regional institution, the Caribbean Court of Justice – now the final court of appeal for Barbados and Guyana – and examines the judgments delivered by that court in a death penalty case (*Attorney-General for Barbados v Joseph and Boyce*).

For those who have a need to be informed about the current state of public law in the Commonwealth Caribbean, the third edition of Professor Fiadjoe's work is essential reading. The persons who fall within this category obviously include practising attorneys, judges and magistrates, academic lawyers and law students. Less obviously, perhaps, there should also be included in this class those persons with responsibility for taking actions or making decisions that, because of their public law flavour, are amenable to judicial review. But I do not limit my recommendation of this book to this extended group, as it seems to me that anyone with even a slight interest in its subject matter will find browsing through this book an enjoyable and enlightening experience.

M A de la Bastide, TC, PC
9 August 2007



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PREFACE

Since 1999, when the second edition of *Commonwealth Caribbean Public Law* was published, a great deal has happened to the terrain of public law from a Commonwealth Caribbean perspective.

Caribbean courts have continued to refine and re-define the boundaries of judicial review. As governments have used various devices and stratagems to carry out public functions under the guise of private entities, Caribbean courts, just like their counterparts in the wider Commonwealth, have refined the rules of judicial review so as to ensure that these entities, whether *de facto* or *de jure*, do not escape the clutches of judicial review.

In 'death row' cases, involving applications by way of constitutional motion or judicial review, several twists and turns in our jurisprudence can be clearly noticed.

On the socio-economic front, the CARICOM family proceeds apace with a number of creative initiatives which ought to have a profound impact on the rights and protections of the citizenry. Reference is made to the Caribbean Single Market and Economy, the Caribbean Court of Justice and the Charter of Civil Society – all of which are but singular examples of deeper Caribbean integration, leading to the free movement of peoples, goods and services. CARICOM's call for a free trade deal with the US post-2008, and the call for significant changes to the administrative functioning of the 32-year-old Caribbean Community, will have a direct impact on citizens' rights.

On account of the fast pace of the developments in the public law regional jurisprudence, this edition has had to reflect updates in the following topics:

- judicial review;
- administrative justice;
- natural justice, especially with reference to the test for bias;
- the rule of law;
- the public service;
- separation of powers;
- locus standi;
- the judiciary, incorporating discussion of the Caribbean Court of Justice; and
- the Ombudsman.

New materials have been added to this edition on the Caribbean Court of Justice (CCJ).

In settling on the text of this edition, I have sought, as in the past, to be selective in the choice of topics with the principal aim of highlighting the essential contemporary issues in Caribbean public law and placing the law in the context of the main political developments in the region.

It is my hope that this exposition will offer some guidance to those who need to understand the dynamics of public law for practical purposes. Ultimately, my aim has been to stimulate critical discussion on several burning challenges facing Caribbean public law.

My grateful thanks go to all my students of public law through the years.

Equal thanks go to Sir Fred Phillips, CVO, QC, Sir David Simmons, KCA, Chief

Justice of Barbados and Professor Emeritus Arthur Ralph Carnegie, all of whom have been wise counsellors to me during my sojourn in the West Indies. I am totally in their debt and gratitude.

The Rt Hon Mr Justice Michael de la Bastide, TC, President of the Caribbean Court of Justice, has been kind enough to read the manuscript and to write a Foreword. I cannot thank him enough for his very kind words.

Routledge-Cavendish Publishing Inc. continues to look kindly upon my modest efforts. I am in their debt.

Ms Pat Worrell continues to be a marvel in so easily deciphering my awful calligraphy. I thank her sincerely for her unstinted support.

I have tried to state the law as at February 2007.

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December 2007*

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