Proposals for the Development of Caribbean Integration Law, Direct Effect and the creation of a Mediation avenue using Article 214 RTC.
Presentation / question 4 : Essay Plan:

1. Introduction

Caribbean Integration law is still in its infancy and lacks the teeth of enforcement procedures and referral mechanisms which would help remedy contentious issues and provide the deterring bite that would prevent future breaches of law.

Cases such as the “Alex Mitchell” situation are common as seen with the issue of Shanique Myrie, a Jamaican woman who alleged that she was sexually assaulted and verbally abused by Barbadian immigration officials in March 2011.

The only way to ensure that these incidents do not reoccur is strict and uniform application and enforcement of standards across CARICOM.

2. Applying EU law to the Revised Treaty of Chaguaramas

The RTC is based European Union, with many of the articles of both treaties having striking similarities. The CCJ has used EU jurisprudence to interpret the RTC as seen in the case of TCL v Guyana.

In the TCL case the court looked at the issue of granting damages, and relied on the ECJ cases of Francovich and ex parte Factortame to

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rule that the court had the power to grant damages as a remedy.

The court noted that the ECJ in Francovich based its decision on the principle of Effectiveness of EU law and held that this same principle is equally applicable to the RTC.

Dr. Berry and the late professor Raph Carnegie have said that the CCJ applies a teleological style of interpretation to the RTC ⁴ and as such the court can read principles into the treaty and develop Community Law without the need for Legislation or treaty revisions. This flexibility will allow the adoption of more principles from the EU that can help strengthen Community Law.

3.  Adopting Direct Effect and Direct Applicability: Giving the RTC Teeth.

The doctrine of Direct effect finds that some provisions of community law can create rights that are directly enforceable by individuals before national courts. These rights arise by virtue of community law and are separate from national law, allowing rights under community law to be enforced in the absence of national legislation on the matter..

The Locus Classicus for Direct effect is the case of Van Gend En Loos. ⁵

From the case of Van Gend onward the ECJ has developed the principle of direct effect both ‘vertically’ and ‘horizontally’. Vertically, the principle allows individuals to sue Member States and Community institutions for breach of rights under Community law as seen in the Van

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³ *ex parte Factortame* [1999] 3 WLR 1062
⁴ Dr. David Berry, *Building a Legal Framework for the CSME, UWI faculty of Law*
⁵ Van Gend En Loos v Nederlandse Administratie der Belastingen [1963] 26/62 ECR 1 ECJ
Gend case itself. Horizontally private legal persons such as companies may be sued for similar breaches as in Defrenne v Sabena\textsuperscript{6}.

Looking to the origins of Direct Effect in Van Gend we see Teleological interpretation at work. The court proclaimed to look to the ‘spirit’ and ‘general scheme’ of the treaty.

The court referred to Article. 267 TFEU, which provides for the preliminary reference procedure that allows national courts to request from the ECJ a preliminary ruling on the validity of EC law. The court saw this as acknowledgment that “Community law has an authority which can be invoked by their nationals before those courts and tribunals.”

The Learned Doctor Berry has noted that the RTC already has the seeds of direct effect within its provisions, and there is potential for the principle to be developed

Art. 211 of the Revised Treaty of Chaguaramas grants the CCJ compulsory and exclusive jurisdiction to hear and determine disputes over the interpretation of the RTC treaty, including applications by persons under Art 222.

Under Article 214 of the RTC where an issue of treaty interpretation arises before a domestic court or tribunal, the court may refer the question to the CCJ for determination.

These provisions are very similar to the provisions of the Treaty of Lisbon that lead to direct effect such as Art 267 of the Treaty on the Functioning of the European Union.

Using Teleological reasoning, the CCJ can derive something similar to Direct Effect from the aforementioned articles of the treaty.

\textsuperscript{6} Defrenne v Sabena [1976] 43/75 ECR 455
There is thus the potential for the doctrine of Direct Effect to be developed by the CCJ in future cases.

However the CARICOM secretariat can speed up the process by creating legislation or a treaty revision that provides for direct effect expressly and thus giving rights to future Alex Mitchells.

It is my submission that CARICOM must adopt this principle in order to bolster the effectiveness of community law.

4. **Developing Mechanisms for dealing with ‘Alex Mitchell’ cases**

With the goal of ensuring speedy and efficient resolution of future cases in mind I propose a mechanism for dealing with such claims with an emphasis on mediation and settlement.

The procedure can be summarized as follows:

1. An aggrieved person applies to a domestic court in a member state for redress, alleging breaches of rights under the RTC. The procedural rules governing such an application will be those of the member state in question.

2. The domestic court hears the application and takes an in-depth look at the substance of the claim. The aim here is for the applicant to prove that they have a prima facie case, providing sufficient affidavit evidence to show a good chance of success.

3. Once the domestic court is satisfied that a Prima facie case is set out, they will refer the issue to a Mediation body within the CCJ’s purview under Article 214 of the RTC. **shanique myrie pre trial mediation**

4. The Mediation body will attempt to bring the case to a speedy settlement in order to minimize legal costs to all parties concerned. If
mediation fails the parties can seek to adjudicate the claim at the CCJ itself, a prima facie case already having been made out.

**Referral under Article 214 : Laying out a Prima Facie Case.**

A major issue to be faced in these cases is the validity of claims, any mechanism of dealing with these issues must find a way to sort through frivolous claims and identify only the individuals whose rights have genuinely been breached.

Using Article 214 domestic courts can review all cases at the pretrial level, and ensure that the standard of Prima Facie case is met. Cases that appear to be fabricated or vexatious can be thrown out at the discretion of the judge, who will act as gatekeeper before sending the claim to the CCJ.

This method provides several advantages: No new institutions need to be set up to deal with the claims on the national level, and individuals who are seeking justice simply need to apply to the High courts of their respective states under the domestic procedures that any local lawyer will be familiar with.

The legal costs involved in meeting the standard of Prima Facie case will also be affordable for most claimants, and perhaps Legal Aid authorities in member states can help poor claimants meet these costs.