# The Governance of Vocational/Professional Legal Education in the Commonwealth Caribbean - A Case Study of the Council of Legal Education

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Thesis submitted in fulfilment of the requirements for the degree of Doctor of Education

2021

# Dedication

This thesis is dedicated to the founding fathers and genuine pioneers of Caribbean legal education; and to the staff, students and graduates of the Council of Legal Education's law schools for their vision of and commitment to forging legal education into a tool to transform Caribbean society based on its unique history and diversity of cultures within a singularly indigenous Caribbean.

# Acknowledgements

I wish to thank God first for directing me to take up the challenge of this EdD programme and preserving me through this process. It has challenged me in ways that I never thought possible. I would also like to thank my beautiful, patient and all-forgiving wife who has tolerated my affair with this journey. I hope I can now spend more time with her. To my parents who were both educators and whose DNA is responsible for whatever success I may have had in my career. To my supervisors and mentors who were super patient with my missed deadlines and tolerant of my ignorance. To every member of my cohort who assisted knowingly and unknowingly through their advice, support and for getting the work done ahead of me so that I could learn from their experiences. To all researchers and scholars whose work helped to guide me on this quest. To all my family and friends - Thank You!

# Abstract

This research is a qualitative exploratory case study that examines the governance and administrative arrangements in professional legal education in the English-speaking Caribbean through the lens of the various missions of the Council of Legal Education (CLE) which was created, in conjunction with the Faculty of Law (UWI), to produce a knowledgeable and skilled Caribbean lawyer passionate to transform his society. At inception, the CLE was ahead of its time as a regional, postcolonial, multinational, multisystem, institution of professional legal education designed to produce lawyers to fill the needs of the legal services industry in the Caribbean.

The primary research method is documentary analysis examining the treaty that birthed it and its foundation and policy documents through which I examine its governance and administrative structure and policy framework. I also use reports, institutional reviews and un/published commentary from academics and authoritative stakeholder interests, as well as newspaper commentary from the general public. Semi-structured interviews, focus group discussions and a closed survey were also used with the major stakeholders of the CLE to determine the effectiveness of these systems in achieving its institutional missions.

My findings show the CLE conforms to what I perceive to be a postcolonial system of legal education. While it was avant garde for its time in legal education, its governance and administrative structure has been challenged in supporting its missions through a flawed governance structure; lack of an articulate policy framework and adherence to fundamental principles of democratic governance; and the absence a quality assurance system and central executive leadership. In spite of these challenges, the CLE has several unique advantages to re-emerge as a global force in legal education if it is successful at the necessary systemic reforms; harnessing the creativity of Caribbean people; and facilitating a new entrepreneurial model of legal education.

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# List of Abbreviations

| | |
|---|---|
| ABA | American Bar Association |
| AC | Academic Committee |
| ADR | Alternative Dispute Resolution |
| AGB | Association of Governing Boards of Universities and Colleges (USA) |
| BPTC | Bar Professional Training Course |
| BAC | Bar Admissions Course (Canada) |
| BSB | Bar Standards Board |
| CIS | Curriculum Implementation Sub-Committee |
| CLE | Council of Legal Education (of the Caribbean) |
| Council | The chief governing body of the CLE |
| Director | Director of Legal Education |
| EDLS | Eugene Dupuch Law School |
| ExCo | Executive Committee |
| E&W | England and Wales |
| GATS | General Agreement on Trade in Services |
| GATT | General Agreement on Tariffs and Trade |
| HEI | Higher Education Institution |
| HWLS | Hugh Wooding Law School |
| IALE | Institutional Academic Legal Education or Institutions of Academic Legal Education wherever the context permits |
| IPLS | Institute of Professional Legal Studies |
| IVPLE | Institutional Vocational/Professional Legal Education |
| KCLE | Kenyan Council of Legal Education |
| KSL | Kenya School of Law |
| LAC | Legal Aid Clinic |
| LEC | Legal Education Certificate |
| LETR | Legal Education and Training Review |
| LPC | Legal Practice Course |
| LSAT | Law School Admission Test |
| LSBC | Law Society of British Columbia |
| LSO | Law Society of Ontario |
| NMLS | Norman Manley Law School |
| NZ | New Zealand |
| NZCLE | New Zealand Council of Legal Education |
| Orientation Brief | An Orientation Brief for New Members of the Council of Legal Education of the Commonwealth Caribbean on the Council's History, Achievements and Challenges 2008 |
| SRA | Solicitors Regulation Authority |
| T&T | Trinidad and Tobago |
| UG | University of Guyana |
| UWI | University of the West Indies |

# Chapter 1: Introduction

## 1.1 Background and Context of the study

Between 1963 and 1972, a group of broad stakeholder consultations were conducted throughout the Commonwealth Caribbean spearheaded by the University of the West Indies (UWI) to make recommendations for a system of legal education for Caribbean peoples which *"should provide for the training in the West Indies of legal practitioners with a view to ensuring their admission to practice and the right to audience before the Courts of the West Indies"* (Council of Legal Education, 1973, p. 9). To accomplish this bold initiative, Ramsahoye (1973) suggested that such a system had to provide its graduates with the broadest educational background, a sound academic education and competent training in professional skills. This professional legal training was established by a regional treaty called "The Agreement establishing the Council of Legal Education" (the Agreement) that created a bifurcated system of training in which the UWI would introduce a Bachelor of Laws (LLB) degree where the first year would be taught at UWI's campuses in Trinidad and Tobago (T&T), Jamaica, Barbados, and at the University of Guyana (UG). The second and third years would be taught at the Cave Hill Campus in Barbados exclusively. This intra-campus system established institutional academic legal education (IALE) in the Caribbean. In using the term IALE, I am referring to an institutional programme of legal education which is usually conducted in a university setting and is designed to provide a grounding in the theoretical framework and fundamental principles of law to give graduates a variety of career options for them or to move on to training specifically designed to enable them to practise law. It is this aspect of legal education, geared towards the

practise of law which the second element of the preamble to the Agreement refers to as vocational or professional legal education, that is the focus of this thesis.

For the purposes of this thesis, I will refer to this type of legal education as "vocational/professional" in a generic manner where 'vocational' refers to a skills-based approach by applying knowledge to a task or service to be performed, and 'professional' refers to the values and culture of the community in which one is engaged. I discuss these approaches in section 2.1 of Chapter 2. I also use this term by way of contrast to academic education which is conducted in IALE. It is further different from a model that I describe as institutional vocational/professional legal education (IVPLE), which is vocational/professional legal education conducted in one or more institutions; or the postcolonial model (PCM) of legal education which is a variant of the IVPLE. In relation to IVPLE, while there are certain fundamental, common characteristics of this model in Commonwealth countries, there is also a great deal of diversity in its structure that requires an individual review of each jurisdiction. The major characteristic of IVPLE is that it is governed, in whole or in part, by the legal professional bodies in various jurisdictions such as England and Wales (E&W) and Canada. It may include a formal period of training varying between and within jurisdictions (which may be managed by the professional association or done by another entity) together with a specified period of apprenticeship. While E&W has eight regulated branches of the legal profession under its Legal Services Act, 2007 [LSA] (Boon, 2010), for the purposes of this thesis, when referring to the legal profession in E&W, I will be restricting such references to barristers and solicitors. The features of IVPLE are further discussed in section 2 of Chapter 3.

Finally, I come to the PCM which the Caribbean has adopted. In this model, there is one institution which is specifically created to govern and manage vocational/professional legal

education in each country. In this model, the institution governs every aspect of IVPLE training – formal institutional training, clinical and experiential programmes and apprenticeships – and provides the final formal certification for admission to legal practise. Here, the legal profession is but one of several stakeholder members of the board of governors of the institution. The Caribbean differs even further, in that, the institution created there is designed to certify its graduates to enable them to practise law in any jurisdiction that is a signatory to the Agreement. I more fully further explore the PCM infra at section 3 of Chapter 3. The diversity of approaches to vocational/professional legal education (whether it is IVPLE or the PCM) has made utilising a common terminology to characterise this phase of training across the various jurisdictions extremely challenging due to their differences from each other.

To provide vocational/professional training, a Council of Legal Education (CLE) was established for the Caribbean which adopted the PCM. In this paper, I will be referring to this entire organisation and all its component parts as the CLE to distinguish it from its ultimate governing authority (board of governors) which I refer to as the 'Council'. Under the original Agreement, the Council consisted of the Attorneys-General, representatives of the judiciary and the practising legal profession of participating states, the Dean and one faculty representative of the Faculty of Law of the UWI, and the Director and Deputy Director of the CLE. The Council later established two professional law schools in 1971, the Norman Manley Law School (NMLS) in Jamaica and the Hugh Wooding Law School (HWLS) in T&T (Council of Legal Education, 1973). A third school, the Eugene Dupuch Law School was later established in 1996 (Council of Legal Education, 1996). The objectives of this integrated system were clearly stated in the preamble to the Agreement.

> Firstly, a University [*sic*] course of academic training in a Faculty of Law designed to give not only a background of general legal principles and techniques but an appreciation of relevant social science subjects including Caribbean history and contemporary Caribbean affairs;
>
> Secondly, a period of further institutional training directed towards the study of legal subjects, having a practical content and emphasis, and the acquisition of the skills and techniques required for the practice of law (CARICOM, 1971, Preamble).

The preamble dealt with both parts of the common reformative issues prevalent in the legal education literature. The first part of the preamble focused on academic education, what a lawyer should know, and the second part focused on the vocational/professional training, what a lawyer should do (skills) and how they should behave (professional). These three elements reflect the three "apprenticeships" advocated in the Carnegie Report ((Sullivan, Colby, Wegner, Bond and Shulman, 2007)) and the Ormrod Report (Ormrod, `1971) . This research is mainly confined to the second phase of the Caribbean programme under the Agreement which I have characterised as IVPLE and which I argue, was designed to be a scheme integrating both the first and second phases of legal education. Under the CLE this phase is designed to produce graduates who are skilled in the practice of the law and capable of pursuing their profession with compassion and with "*an acute awareness of the anatomy of his West Indian condition; with the vision and hope of the law reformer and most importantly, with a deep sense of service to the law, to his client and to his community"* (Council of Legal Education, 1973, Preface).

### 1.1.1 Outline of the Research Issues and Concerns

At its inception, the Caribbean IVPLE was lauded as a struggle for local identity and authenticity to ensure international recognition for Caribbean jurists; a project that brought the finest minds from the region and beyond to work across national boundaries to create institutions to serve multiple states; a process that drew students from many nations for training to practise in multiple international jurisdictions; and engaged a high percentage of women (Lazarus-Black, 2008). In pursuing its mission, Caribbean legal education also integrated training in the traditions of the predominant common law with the civil law systems of St. Lucia, (Liverpool, 1983) and the Roman-Dutch system of Guyana (Glenn, 2002).

Another major feature of the CLE which made it stand apart from its peers in IVPLE was the two-year training period required for the award of the Legal Education Certificate (LEC), which certified that its graduates were qualified, subject to local conditions of fitness, to be admitted to enter the legal profession in multiple independent States with different legal systems subject only to local conditions of fitness of character. The final unique feature of Caribbean legal education is the integrated nature of training between the CLE and the UWI. This integration was envisioned from inception and is reflected in all the early documentation from the preamble of the Agreement to the Barnett Report (Council of Legal Education, 1996). The original university legal training was specifically designed to be both academic, to ensure students had the theoretical foundation they needed to be competent practitioners, as well as liberal in scope to ensure that students had the interdisciplinary skills in the social sciences and history to enable them to understand their postcolonial society. Armed with both types of training graduates would be able to assist in the development of their postcolonial societies. In general, the Agreement provided that LL.B. graduates of the UWI were entitled to automatic

admission to the CLE's programme. However, it is this same vision of a blended system of legal education giving priority of access to UWI graduates that has exposed a shortcoming of the initial plan and the inability of the CLE to find sufficient slots to accommodate qualified non-UWI applicants. This has led to much animosity towards the CLE from among non-UWI applicants and even regional governments (Maharaj, 2000) – the latter being the funders and members of the Council itself.

### 1.1.2 Achievements and Challenges

Over the years, the CLE has (disputedly) achieved its original goal of providing lawyers to service the needs of Caribbean society through its two-tier scheme of legal education. In particular, it has filled the shortage of legal practitioners to serve in the public service and in private practice. Its graduates have served in the highest judicial and Government offices across the Caribbean including the offices of President of the Caribbean Court of Justice, Chief Justices of T&T, Barbados, Guyana and the Eastern Caribbean Supreme Court. Prime government positions held by graduates include – the former Prime Ministers of T&T and Barbados and the former and the current President of T&T. Attorneys-General in all Commonwealth Caribbean countries are graduates of the CLE and graduates have virtually filled the Benches of all regional courts from magistrates' courts to the Caribbean Court of Justice, the Bars of all jurisdictions, the Faculty of Law, UWI and the Council itself (Council of Legal Education, 2008).

Yet, there have been some significant shortcomings in the ideals of the founding fathers of creating competent Caribbean legal practitioners. For instance, the CLE has failed to satisfy the demand for places by qualified non-UWI applicants to its programme forcing various governments to contemplate the establishment of alternative law schools (Maharaj 2000,

Morrison 2014). A proposal in 1977 for the UWI/CLE to conduct a manpower audit of legal professional services in the region to determine an appropriate admissions policy has never been done. While several of its academics have published texts on Caribbean law (Antoine, (1999), Burgess, (2002), Seetahal, (2010) (Nunez-Tesheira, (2001), there have been little or no peer-reviewed publications on vocation/legal education in the Caribbean barring that of Lazarus-Black (2008) who is an American academic. Further, the ideal of creating a Caribbean jurisprudence has been bemoaned by several of its own graduates including senior practitioners (Malcolm, 1994) and judges (Jamadar, 2017).

Shortcomings are also seen from a regional perspective in that the CLE has acknowledged the need to address the unprecedented demand for legal education, dwindling sources of revenue and structural weaknesses in its governance arrangements in order to achieve its mission of providing competent attorneys (Council of Legal Education, 2004). Further, the CLE has had to contend with demands for an expanded curriculum to accommodate new areas of law engendered by the Caribbean Court of Justice (CCJ), the Caribbean Single Market and Economy (CSME) and the current and potential demands of regional accreditation agencies (Council of Legal Education, 2008). Globally, the process of informal globalisation through the natural expansion of international trade in goods and services has intensified and been given impetus by the General Agreement on Tariffs and Trade (GATT) and the General Agreement for Trade in Services (GATS). The latter has created a progressive regime which potentially includes the freeing of trade in both legal professional services and higher education (including legal education) services. This, at once, poses a threat if there is no response and an opportunity to allow graduates to compete for legal services on the global market if there is an effective response (Council of Legal Education, 2008).

Further, in spite of operating for 50 years with several internal reviews, two strategic plans and a fleeting Secretariat, the CLE has effectively failed to implement many of the reforms proposed or agreed upon by its Council since 1977 covering areas of structural reform, the collaborative arrangement, experiential learning, curriculum design and content, and assessment (Council of Legal Education, 2008) or responded to the challenges and proposals for reform mandated by its Strategic Plan 2004 – 2009 (Council of Legal Education, 2004). Most of all, having taken the high ground in innovation in higher and legal education in the 1970s, the CLE has been absent even from a listing of professional legal training institutions in the Commonwealth (Fitzgerald, 1994), or from a comparative analysis of professional legal training globally (Flood, 2012), or from discussions in which smaller jurisdictions such as New Zealand are featured (Bird, 2013).

### 1.1.3 The Governance System of the CLE

More than identifying the shortcomings of the CLE, I was interested in exploring why so many fundamental challenges exist. A preliminary examination of the CLE's governance arrangements revealed several interesting factors. On its face, the CLE has the traditional structure of a university system comprising its Council, a committee structure including Academic and Executive Committees with similar functions and composition as the traditional university shared governance model. At the outset, it had a centralised chief executive officer, the Director of Legal Education (the Director) who, like the provost of a university, was responsible for implementing its policy and administering its law schools. However, several unique features of the Council exist which have elements of a managerial model of governance in that it is not representative (does not have internal representation from faculty, administration, or students) and is comprised of external stakeholder interests who do not bring to the table any

specialised managerial or technical skills relevant to higher education. From this initial realisation, I developed this thesis around the governance model of the CLE (whether shared or managerial). In this exercise, I considered such issues as the composition and functioning of a governing Council, committee structure, leadership and administrative arrangements (Committee of University Chairs, 2020) and issues of accountability and transparency including the role of strategic planning and quality assurance (Jongbloed, Vossensteyn and Vught, 2018). While I sought to compare the CLE with traditional IVPLE in other countries, I found that the unique model of education governed by multiple stakeholder interests within the same institution crossing multiple jurisdictions has not been previously documented in the literature. Therefore, my analysis of the CLE governance rests predominantly on the general principles of higher education governance. In fact, I discerned several common features existing among newly-independent, postcolonial developing countries that were distinct from the traditional IVPLEs which I have characterised as the PCM of legal education.

## 1.2 Research Problem

Globally, legal education is at a critical juncture where the current structure of how and what law schools teach is being questioned. The relatively new Caribbean model of legal education is vulnerable to an even greater extent because of its location in a developing region of the world that may not have the resources to adapt sufficiently or efficiently to the ongoing disruptions of programme expansion, curriculum change, decolonisation, indigenisation and social justice occurring elsewhere. The debate to reform the current state of legal education continues with the pendulum swinging back and forth between academic and vocational/professional training. Historically, legal practice and legal education in E&W and the USA have been slow to embrace change. In England, the pace of legal education reform picked

up in the middle of the nineteenth century, accelerated in the twentieth and really became aggressively transformational in the early twenty-first century (Boon and Webb, 2008, Krook, 2017). However, the early twenty-first century has witnessed tremendous disruption in the legal services industry wrought by factors that include globalisation, Information and Communications Technologies (ICT), deregulation and commoditisation which have challenged the profession and legal education to respond or fail (Susskind, 2010a). In E&W and other Commonwealth countries, legal education has responded by expanding distance education, experiential legal education, both face to face and through simulations. Additionally, the solicitor and barrister branches of the profession in E&W have responded by opening up multiple paths of entry to vocational/professional legal education creating a flexible and customisable pathway to legal practice particularly after the Legal Education and Training Review (LETR) of 2013 (Webb, Ching, Maharg, Sherr, 2013). In the USA, some law schools have responded by moving away from a predominantly black-letter law orientation and have become increasingly innovative by incorporating more experiential, clinical approaches from other professions (Martinez, 2009); developing legal incubators to train students (Kren and Young, 2016); and engaging with distance education (Knake, 2013) and virtual worlds (Sanson, Ireland and Rogers, 2009). These initiatives for legal education established in E&W and the USA, led me to question the CLE's ability to respond to these global challenges. To manage these on-going disruptions to legal education, it is critical that future policy decisions be informed by empirical research, knowledge and experience with a nimbleness to adapt to changing circumstances. The ability of the CLE's governance arrangements and its agility to make quick changes had to be examined to gauge its ability to innovate and reconstruct itself to adapt to current circumstances as it once did 50 years ago.

## 1.3 Aim, Objectives, Research Questions and Justification

### 1.3.1 Aim

The aim of the research is to explore how the CLE implemented its original mission in the Caribbean and examine how well it adapted to the changing environment such as the on-going disruptive factors which affect legal education across the world including the Caribbean.

### 1.3.2 Objectives of the Study

The objectives of this study are to look at how the CLE has addressed its institutional missions and how these may have changed over time through the lens of the drivers of and impediments to change and innovation as seen in the CLE's governance and administrative structures. If we assume that legal graduates in the Caribbean are adequately trained to become the legal practitioners envisioned by its institutional missions, then there is nothing to change. However, if the reverse is true and the missions of the CLE are not fully being materialised, then there is a need to look at the governance and administrative structures to determine the cause and the cure.

### 1.3.3 Research Questions and Justification

The following four research questions articulate the research problem described earlier.

1. Has the original mission of the CLE changed over the last 50 years?

Because I was interested in the disruption to the status quo, this question focused on change to institutional missions or the lack thereof. If the CLE has not changed its mission over the past 50 years, this lack of change suggests that either it prefers stability and does not find value in change or it might mean that its perception of changes over the past 50 years might have

been so incrementally small that its missions are still relevant. It may also mean that there may be structural and administrative impediments that make change, even if desired, difficult to undertake.

2. What are the drivers of change in the governance and administrative system of the CLE?

This question like the previous one deals with change. To understand how the governance and administrative system of the CLE influence the achievement of the CLE's missions, it is important to look at the types of changes made in the history of the CLE over the past 50 years. In doing so it is critical to determine what elements in its governance and administrative structure were influential in facilitating such changes; the processes by which they were made; and identifying any pockets of resistance to such changes as a barometer of how future changes and innovation might take place.

3. What are the barriers to change in the governance and administrative system of the CLE?

In pursuing this question, I asked myself what changes have taken place over the last 50 years in the CLE. Have these changes been for better or worse and what was the process by which they were made? Were they driven by sound structural and policy issues or were they driven by sectoral interests that might be antithetical to the institutional mission? What structures and systems discouraged change from taking place? Did the institution learn from any negative experiences when change took place to engage more meaningfully in change management the next time around? In this engagement, attitudes to change are also important. These may stem from a failure to (a) understand why change is necessary; (b) see the benefits of

proposed change; (c) modify strategy to consider internal and external forces; or (d) be proactive based on the fear that change under current circumstances is beyond its capacity.

4. Is the governance and administrative system of the CLE capable of fulfilling its current missions considering an ever-changing environment?

This final question ties the previous three research questions together and assesses the extent to which there may be more barriers than drivers. It is also important to determine how other legal education systems globally are addressing the disruptions in the legal services market by their internal response and look at whether these changes are similarly having an impact in the Caribbean and how the CLE is responding to them. The effectiveness of any response must be driven by the factors discovered in the exploration of the first three research questions.

## 1.4 Significance of the Research

This research provides for the first time since 1973 a narrative of the CLE in terms of its history, governance structure, challenges and potential which can be used as a fulcrum around which further research can be built. In presenting it to the world, it also provides the international audience and especially IVPLEs with the structure of the Caribbean IVPLE from which lessons might be drawn. While this study is important for the Caribbean, it also contributes to the discussion on the governance and administrative structures of IVPLEs internationally as my research suggests that there has been little or no critical research relating to such governance bodies in other jurisdictions with most research focused on curriculum and teaching and learning issues.

As I explored IVPLEs to contextualise the Caribbean situation, I identified what I call the PCM which emerged in the 1960s and 1970s in developing countries. These emerged in

Commonwealth countries entering full nation status and seeking ways to establish indigenous institutions that would aid in their national development. Education in this context, was seen as the great emancipator, so virtually all postcolonial societies saw a mushrooming of higher education institutions, to train and equip their citizens for the workforce and reconstruct their legal system and laws to reflect their culture and national aspirations. Law and legal education were important elements to this initiative and virtually all nations accepted a model of legal education which rested on the IVPLE system - a programme of academic training, followed by a period of vocational/professional training and finally, a period of apprenticeship. However, what I have characterised as the PCM was different in that their IVPLEs were governed by a statutory body comprised of a multitude of stakeholder interests as opposed to the traditional IVPLE which is governed almost exclusively by the legal professional bodies. This model was marked by several distinct features which were common to all, while still maintaining much diversity based on local circumstances. Consequently, this thesis provides a basis for the further exploration of this model in the field of legal education. Finally, the research provides a basis upon which the CLE and its stakeholders can reflect on the state of affairs presented here as the basis of either further research or remedial action.

### 1.5 My Background and Motivation for the Research

As a graduate, legal practitioner, faculty member and administrator of the CLE, I have benefitted from its activities but have not been immune from its shortcomings. As a former student, I was disappointed by the lack of practical training provided and the programme's heavy academic approach to what I expected to be vocational/professional training. My experience as a practitioner and subsequently as a lecturer at one of the CLE's law schools confirmed my view that the training I received and the programme I was asked to teach had not differed significantly

from my student experience. As a lecturer and administrator, I started to think that many of the challenges in the system did not occur in isolation but formed part of broader structural issues that were connected to institutional governance of legal education. Did other participants or stakeholders in the programme view the situation in the same way? As a child witnessing the birth of our nation and imbued with a sense of Caribbean pride and responsibility, I was motivated to investigate the state of the CLE after 50 years of existence to determine what were some of the drivers of and barriers to change that would have kept it true, not only to its specific missions but to the expectations of an emerging Caribbean society to develop its own laws and systems by and for its own people.

## 1.6 Theoretical Framework and Postcolonial Perspective

In this section, I approach the theoretical framework that has informed my research both from what is now considered to be established theory in the literature and what may be termed emerging theory such as areas of research from which researchers are drawing various perspectives which are useful tools to explain the phenomena under review but have not yet, in the eyes of established research, met the standards of an established theory. Into this latter category lies the postcolonial perspective which is at the core of the establishment of the CLE. I will therefore explore the governance theories I considered and used as well as the postcolonial perspective of the CLE made relevant by virtue of its history, mission, structure, and the objectives of its founders to shape a new society. Austin and Jones (2016), in recognising the relative newness of governance theory to higher education, suggest five theories which are helpful in interrogating governance of higher education from various conceptual angles – institutional theory, agency theory, stewardship theory, stakeholder theory and resource-dependence theory.

**Institutional theory** considers the processes by which, driven by external forces, the structures, policies and culture of an institution develop as the critical premise on which the organisation is founded, and how, over time, they may decline in importance as circumstances change (Lokuwaduge, 2011). **Agency theory** is derived from commercial transactions where a principal contracts with the agent to perform services which the principal cannot perform himself or herself. It adopts a cynical concept of human nature that people will always act in their own interest so where there is an inequality in knowledge between the two parties, the agent will act to his or her own benefit against the interests of the principal. **Stewardship theory**, on the other hand, makes the opposite assumption, that the agent will act in the interests of the institution or the principal even if it is against his own interests. **Stakeholder theory** focuses on the interests of persons who make decisions in an organisation that affect others, and the interests of those others who are affected by such decisions, to ensure that there is sufficient representation that policies and systems devised to build the organisation are sustainable and inclusive. Finally, **resource dependency theory** focuses on the strengths of directors to bring a high level of expertise, knowledge, networks, social influence and legitimacy to the institution which, in turn, reduces its costs. Consequently, the larger the board size, the greater outreach and influence the organisation has (Lokuwaduge, 2011). In pursuing my interest in the change dynamic in higher education, I also looked at the experience of Fullan (2000) the leading theoretician on educational reform and institutional change at both high school and university level. Through his decades of experience in this area, I found his seven premises of change theory compelling (a) a focus on motivation; (b) capacity building, with a focus on results; (c) learning in context; (d) changing context; (e) a bias for reflective action; and (f) tri-level engagement.

No one theory captures the complexity of the modern university and Jones (2017) suggests a multi-theoretical approach is needed to capture the various perspectives in the area which might otherwise be lost. Because I was concerned mainly with governance structure and administrative processes from the perspective of the various interest/stakeholder groups involved in the formation and management of the institution, I restricted my analytical framework to the agency, stakeholder and stewardship theories of governance.

### 1.6.1 Agency Theory

Kivistö (2005) points out that agency theory has been applied in a multiplicity of fields including accounting, marketing, political science, public administration, sociology and even psychology. This theory has been applied in the governance of public higher education particularly to the relationship between governments and universities (Ahmad 2015; Kivistö, 2008). Yallew, Juusola, Ahmad, et al. (2018) agree with Kivistö that it is not commonly used in higher education and the areas in which it has been used are in relation to system policy or institutional management. In contrast, Auld (2010) finds that where strategic planning has been used, failures to implement such plans flow from the principal-agent relationship on which such institutions operate as it imposes constraints on leadership of the institution.

An attractive element of this theory is the quest by researchers to find mechanisms to mitigate the negative effects of the agent/principal relationship (Kiel and Nicholson, 2003). In higher education, the theory has been used to balance the relationship between the principal/governments and the agent/Board whereby the institutionalisation of certain accountability and transparency systems balances the superior knowledge of the agent by making it known to the principal. This would include reporting, not only on financial management, but

also on academic standards and research performance (Ahmad, Adi, Noor, et al., 2013). In both cases it can serve to balance the interests of several critical stakeholders in public higher education: the funders (government) that support the institution and which need to know that the institution is performing, and potential students and their parents who need to assess the standards of the institution to determine whether the institution is a proper 'fit' for them (Sam, 2016).

I have found this theory useful in trying to understand the relationship between the different stakeholders on the CLE with the Council itself and with each other. It is a very useful mechanism to view the structural systems of accountability such as quality assurance and strategic planning. However, it is inadequate to reconcile how stakeholders with conflicting interests interact with each other in the interests of the institution.

### 1.6.2 Stewardship Theory

Stewardship theory operates on the assumption that humans tend to operate for the good of the community as opposed to self-serving interests. This is a particularly useful theory when there is a multiplicity of competing stakeholders and the steward can navigate these interests to achieve a consensus in the interest of the organisation which benefits all. Stewardship theory operates best when the organisation has empowering governance structures and mechanisms that can support the steward's inclinations and gives the steward the latitude to operate without undue restrictions (Davis, 1997). Stewardship theory is a useful concept in understanding the types of choices which an individual (often a leader) makes when dealing with challenges in an environment where personal or group interests predominate. In such a case, it has been contended that the interests of the institution may still hold sway (Segal and Lehrer, 2012).

Segal and Lehrer (2012) suggest that these seemingly opposite views of human nature between agency and stewardship theories are not as contradictory as they may first appear, and there is room in their application to higher education proposing an analytical framework in which they can be integrated. While agency theory is more focused on structures of accountability, the stewardship approach is centred around cultural and value changes in the institution. This has been shown to work in a study undertaken in the Edmonton public school system (Segal and Lehrer (2012). It is applicable to the collegial spirit that exists in higher education and is driven by a pursuit of excellence and community good. In applying this theory, an institution would focus on creating structures that enhance that collaboration and give faculty the academic freedom in which to operate (Fletcher, Dimitratos and Young, 2018).

### 1.6.3 Stakeholder Theory

Freeman (1983) classifies stakeholders as any person or group whose decisions and actions impact on others or on whom the decisions of others impact. In higher education, several classifications of stakeholder interests have been identified based on the voluntary or involuntary nature of their interaction with the institution, their leverage in relation to power, interest, and participation. These include students, local business, staff (faculty and administration), academic and research bodies, local and regional stakeholders, government bodies, societies associated with the university and trustees and governors (Chapleo and Simms 2010). In the Chapleo and Simms (2010) study, it was noted that the application of stakeholder theory to higher education was relatively new and more work needed to be done as universities are different from business organisations even while driven by the need to be efficient and respond to the needs of their customers/students (Hong, 2019). Stakeholder theory and the identification of an institution's stakeholders is, therefore, critical to strategic planning, determining where the seats of power and

influence over the organisation are, and what issues are most critical to the organisation (Chapleo and Simms, 2010). It is important to (a) determine which classes of stakeholders or stakeholder groups have common interests; and (b) better manage resources among competing stakeholders particularly in strategic and sustainability planning (Chapleo and Simms, 2010). The commercial bias of this theory places the customer (students) at its heart to improve the quality of service to meet his or her needs (Iacovidou, Antonaras, Sa and Memtsa, 2004). Governments also contribute to this market-oriented trend by deregulation of higher education, the elimination of monopoly, and privatisation (Hong, 2019). In higher education, stakeholder theory has been used to identify stakeholders and the network of interactions that they form to deal with the challenges of implementation of sustainable development (Vargas, 2017). There have also been multiple stakeholder interests identified in legal education literature (Cownie 2010; Vollans 2008). The CLE has also specifically identified its stakeholders (Council of Legal Education 2008b).

Key (1999) in contesting the primacy of the stakeholder as a critical element of stakeholder theory, points to the theory as being descriptive and not having the critical elements of predictability to be considered a theory. She further challenges the assumption of stakeholder primacy as not always being borne out in practice, referencing litigation in the USA where the courts held that it was just one consideration in corporate governance. This decision highlights the reality of multiple interests where no one theory can be satisfactorily used to explain organisational dynamics. It further supports the contention that stakeholder theory is fertile ground for its intersection with stewardship theory in institutional development (Pratoom, 2011). Nevertheless, the theory is useful in (a) identifying stakeholder interests in strategic planning and developing reporting mechanisms; (b) in helping to understand the position of external

stakeholders and their concerns; and (c) enabling critical networking between internal and external stakeholders and wider spheres of influence in its community and internationally through its faculty. When used creatively, the theory can engage governance structures of higher education to be responsive to community needs, sometimes in unconventional ways as with the establishment of indigenous advisory councils in a rural community that incorporated eleven indigenous nationalities in the Amazon (Wise, Dickinson, Katan, et al. 2020).

In examining these three theories, I have found them all useful spectacles to analyse the PCM especially because of the lack of critical review. Its multiple external stakeholder interests at the top conflict with the internal stakeholder interests thereby engaging stewardship theory and perhaps, with each other's interests so as to determine who is the real 'principal'. When these theories are applied to the CLE, there is little or no consideration of stakeholder theory in the failure to incorporate internal stakeholders on the Council, thereby depriving them of a voice. By contrast, stewardship theory allows for some reconciliation of these interests in the pursuit of the institutional missions. Agency theory is useful to ensure accountability of the Council to Caribbean governments and people. However, a difficulty may arise in determining who is the principal when there are so many different (and often conflicting) stakeholder interests with equal influence. In these circumstances, the stewardship theory is useful to mediate between them and when stakeholder theory is applied may be useful in resolving potential and real conflict.

### 1.6.4 Postcolonial Perspective

The concept of postcolonial studies (also called the postcolonial perspective) first emerged after the colonies of European nations started getting their independence from the

metropole and there was a search to understand, explain and reconstruct colonial societies after the destruction wrought on them by the colonial experience. Ashcroft, Griffiths and Tiffin (2013) ascribe to the term **'**post-colonialism' (particularly after the Second World War) the more historic, political activity of decoupling the colonised country from the control of the coloniser. They view the term 'postcolonialism' as the discourse that has been used to cover a variety of subjects coming out of this experience such as liberation, emancipation and the re-creation of society outside of European strictures and identities. It is also used to refer to all the diverse societies (differentiated by their social, cultural, political, geographical character and origins) impacted by the colonial process from the time of the first colonisers to the present time and has been expanded to describe not only the colonial experience but also imperialism, globalisation and neocolonialism. Apart from the divergence in spelling (postcolonial versus post-colonial), the concept of postcolonial studies (whether a theory, a study or perspective) has faced difficulty in having a universal meaning and acceptance (Ashcroft, Griffiths and Tiffin 2013; Eagleton, 1998, Sawant, 2012). On these bases, the study of postcoloniality has been seen as not being able to form the basis of a theory (Mishra and Hodge, 2005). However, as Young (2012, p.19) notes, the *"desire to pronounce postcolonial theory dead on both sides of the Atlantic suggests that its presence continues to disturb and provoke anxiety: the real problem lies in the fact that the postcolonial remains."*

For the purposes of this thesis, I adopt the meaning of the term postcolonialism as a movement of and discourse among scholars from around the world, in both the former colony and the metropole, writing and trying to understand and explain the impact and effects of colonialism from their perspective (Sawant, 2012). I connect with the views of Young (2012) on its objectives (whether or not it is a theory) as the reconstruction of Western knowledge and

ethical norms, turning the *"power structures of the world upside down, refashioning the world from below"* (p. 20). This is particularly reflected in the works of Caribbean scholars such as Williams (1944) who turned the rationale for the abolition of slavery from a humanitarian one to one grounded on the imperatives of capitalism and Rodney (1973) who studied the effect of the slave trade on the underdevelopment of Africa and sought to develop a relationship of oppressed Caribbean peoples with each other through conversations or 'groundings' (Rodney, 1969). Several approaches have emerged from the works of these writers but the concept of 'otherness' articulated by Said (1994) is the fulcrum around which most of the subsequent discourse in this area has revolved. According to Said's conceptualisation, 'otherness' rests on the power relationship between the coloniser and the colonised where the former is seen as superior and has an agenda of imposing its culture on the colonised thereby dehumanising them, both physically and psychologically so as to justify his actions and soothe his conscience. Subsequent writers like Bhabha (1994) and Naipaul (1979) have developed the notion of 'mimicry' whereby the colonised mimics the coloniser as a form of resistance. The application of resistance has been taken up by Caribbean writers (Rodney, 1973; James, 2001; James, 2013; Williams, 1944). Williams (1950) was clear in placing education at the heart of Caribbean emancipation. This led Williams to spearhead the formation of the UWI as the centre of Caribbean learning to produce a new society and motivated the founding fathers of Caribbean legal education to establish an indigenous system of legal education that could ultimately contribute towards the development of a uniquely Caribbean jurisprudence through the formation of the CLE (Council of Legal Education, 1973).

However, even within what might be considered an emancipated environment, the concept of otherness survived. This is true of Caribbean higher education where Fournillier

(2010) likens her student experience at the UWI as time on the 'plantation'; and Bailey (2011) believes that teacher education at the teacher training college in Jamaica is seen as sub-standard compared to training at the UWI. Resistance theory that explores the resistance to colonialism in various forms (Jefferess, 2003; Shahjahan, 2011, 2014) and globalisation (Rizvi, Lingard and Lavia, 2006), has been an integral aspect of postcolonialism and has been applied to resistance in Caribbean literature (Logan 2009), music (Byer 2019) and in higher education to resist the impact of neoliberalism (Shahjahan 2011). The postcolonial perspective can, consequently, provide a useful lens to view how the missions of creating a Caribbean jurisprudence and developing an indigenous lawyer with the skills and aptitude for service to his or her community have been prosecuted. It can also be used to view the power relationships within the CLE and explore whether legal education has the characteristics of the plantation identified by other researchers; and whether governance and administration of the institution is organised as a postcolonial enterprise (Lazarus-Black, 2008). In relation to Caribbean legal education, I discuss this perspective from the foundation of the CLE through how its postcolonial mission has manifested itself in section 2.2 of Chapter 5 and my concluding discussion at section 3.1 of Chapter 6. Internationally, this perspective has expanded the discussion on law and legal education reform beyond the traditional areas of study to embrace interdisciplinarity, indigenous humanities, pedagogical practices and social activism (Findlay, 2003).

## 1.7 Methodology

This research is a qualitative case study which enables a complex phenomenon such as institutional governance of legal education to be explored through the identification of different factors interacting with each other. The case is an exploratory study of the mission, governance and administrative structure of the CLE. Using a case is appropriate because by treaty

arrangements with participating states, the CLE has been given a monopoly to provide vocational/professional legal education to its students which will qualify them to be admitted to legal practice in any of the participating territories. The study-utilised documents, semi-structured interviews, focus group discussions and a questionnaire survey. The sources used for conducting the documentary analysis came from (a) the legislative framework establishing the CLE; (b) other primary sources directly emanating from the Council itself; (c) other documentary sources from reviews and public commentaries coming from outside the CLE. Semi-structured interviews were conducted with participants who span a range of stakeholder interests including current and/or former members of the Council, administrators, faculty, students and graduates/practitioners. These interviews, focus groups and survey added a realistic sense of how the CLE was being experienced by its governors and stakeholders.

### 1.8 Organisation of Chapters

This thesis is organised into five chapters. Chapter 1 introduces this study and provides the context in which the study is located. It articulates the reason for embarking on this research, presents the statement of the problem, the research questions and the framework for analysis. It describes the CLE and its pivotal role in professional legal education in the Caribbean. My literature review is discussed in Chapters 2 and 3. Chapter 2 discusses the various missions of legal education and the need for greater adaptability to face current challenges in a disruptive world. Chapter 3 then examines the various governance and administrative structures in legal education internationally to determine the extent to which such systems advance the missions of legal education. Additionally, the chapter examines concepts of shared and managerial systems of governance and the structural systems that support them. These concepts are then discussed in relation to IVPLEs with a focus on the PCM. Chapter 4 describes the **methodology** which

utilises a qualitative exploratory case study approach to understanding how the CLE is organised and pursues its missions. I present my data collection methods and procedure, data analysis method and explore ethical issues and the limitations of the research. Chapter 5 presents the **results** of the study along with analysis and interpretation of the results. This chapter also includes a discussion of these findings in the context of the literature presented in Chapters 2 and 3. Finally, the **conclusion** is presented in Chapter 6 which begins with an analysis of the current status of IVPLE in the Caribbean considering the challenges identified in the regional and global environment. The chapter ends with a presentation of my policy recommendations and I also provide some insight on the future direction of this research.

## 1.9 Conclusion

This chapter provided the origins and mission of the CLE and its pivotal role in Caribbean legal education. It also provided the postcolonial context in which the CLE was established and the aspirations which it sought to attain. Fundamental to this achievement is its governance and administrative structure which I have also outlined and the challenges it has faced in fulfilling this mission which lie at the heart of my research enquiry as to whether it can effectively support the institutional missions in a disruptive environment. In this discussion, I have disclosed my positionality based on the various stakeholder positions I have held in the CLE. Chapter 2 will now review the literature in the areas of the missions of legal education, traditional and new governance models and systems with their theoretical structure which will be later used to understand and analyse the data uncovered in the research.

# Chapter 2: The Literature Review – The Missions of Vocational/Professional Legal Education

## 2.1 Introduction

This literature review has been written with three broad objectives in mind: (1) to explore my research questions in the framework of existing theory and critique on the subject; (2) to better understand my research data considering accepted theory; and (3) to come to rational and valid conclusions that can stand up to scrutiny. This will be done within the framework of my research questions:

1. Has the original mission of the CLE changed over the last 50 years?
2. What are the drivers of change in the governance and administrative system of the CLE?
3. What are the barriers to change in the governance and administrative system of the CLE?
4. Is the governance and administrative system of the CLE capable of fulfilling its current missions in light of an ever-changing environment?

In answering the first question, I will be critically discussing the role and function of the missions of legal education as it is the institutional mission that influences its governance and administrative structure which is discussed in Chapter 3. I will examine the second and third questions through the institutional governance arrangements of higher (and legal) education discussed in Chapter 3. Finally, I will answer the fourth question through an analysis and

discussion of the answers to my first three research questions and apply these to my data findings, analysis and conclusions in Chapters 5 and 6.

## 2.2 The Missions of Legal Education

According to Peake (1994), institutional mission is a statement that defines the business, products and services, as well as the markets a company serves and how it will conduct that business. When applied to higher education, it has become associated with the academic process as well as part of the managerial approach (Ciancio, 2018; Carmella and Marius, 2013). The identification of institutional mission is, therefore, an integral part of institutional governance and management (Patterson, 2001). In fact, it is the main responsibility of all Boards of Governors to fulfil the mission of the institution (Committee of University Chairs, 2020). I have chosen the term 'missions' because while the classical use of this term is to describe one mission which may have multiple parts, the mission of legal education mission has grown from its original teaching mission to academic and empirical research, an expansion of the university's third mission which represents its economic and social mission as well as its active engagement in the community in which it resides (Nedeva. 2013; Predassi, 2012), and an embrace of multiple missions based on modern social, economic and political circumstances. Further, the mission of legal education can be contextual depending on its historical circumstance.

The original mission of English legal education was vocational, that is, to prepare students for legal practice through the establishment of the Inns of Court and apprenticeships to practising solicitors (Boon and Webb, 2008; Krook, 2017). Later it was recognised that practice not only involved the daily practice of legal procedures and principles but the study of the common law itself as it grew into a more doctrinal body of principles which could be studied in

its own right or to produce more competent attorneys. As the study of law moved into the university, its mission developed to create graduates who could either articulate and apply the law as written (which led to the predominance of 'black-letter' law in the USA), or to create more liberal graduates who were transformative and could adapt the law to the needs of their society (Krook, 2017). Such persons, consequently, needed a more liberal education that went beyond the mere knowledge of the law itself to the appreciation of its application to the daily life of the persons it affected in the society (as was the case in the USA at the law school of William and Mary University) and a multidisciplinary education was appropriate. As society grew more complex and the lawyer needed to navigate multiple, and often conflicting relationships with colleagues, clients, the courts and the general public, ethical concerns grew as to the framework within which such relationships should operate and a new mission of creating professional, ethical law schools emerged in legal education (Krook, 2017). It can, therefore, be seen that, what I term the 'traditional teaching mission' of legal education really involved the elements of the academic (the 'what' or content), vocational (the 'how' of implementation), liberal (its applicability to society), and professional (the ethical considerations and regulations in providing a service). These concepts are more fully discussed in section 2 infra. A significant offshoot of university teaching was the development of a legal research mission with a modern development towards empirical research in universities in the USA and Australia. I have provided a comparable table of the historical development of legal education in E&W and the USA at Appendix One.

Law is not divorced from the society in which it operates and legal education has had to grapple with many of the social, economic and political realities of the twentieth and twenty-first centuries. Consequently, new missions of legal education are to study and create graduates who

can advance issues of social justice and access to justice, become instruments of decolonisation in postcolonial societies and prepare themselves for legal practice in the current reality of globalisation and internationalisation. Finally, I draw attention to the disruptive effects of ICTs on the legal profession which, on the one hand, if left unattended can see the demise of the legal profession and legal education; and on the other if embraced, can be an opportunity for rationalisation and rebirth of the profession. Legal education, in my view, must adopt what I call 'a new mission' of deliberately reconstituting itself to meet these modern realities away from the preconceptions of the past. This is discussed more fully later in this Chapter at section 5.1.

### 2.2.1 The Teaching Missions of Legal Education

*The Vocational Mission*

In modern legal education, vocational education focuses on the training of students in the skills and attributes necessary for the workforce (James, 2017). It manifests itself through clinical legal education programmes (Wardhaugh and James, 2014), experiential legal education, (Bhabha, 2014; Grimes, 2020; Joy, 2018), externships, (Tokarz, Lopez, et al, 2013), and through the many innovations in practical legal education in the university setting internationally such as in the USA (Escajeda, 2018; Katz, 2012; Thomson, 2014 ), E&W (Kemp, Munk and Gower, 2016; Turner, Bone and Ashton, 2018) in Canada (Sossin, 2013) and Australia (Evans, 2013). In looking at the vocational mission of legal education, it has to be viewed within the context of historical and societal developments. **Appendix 1** provides a comparative table of the historical development of legal education in E&W on the one hand, and the USA on the other. Column 1 describes the historical development while Column 3 provides more information on each development.

English legal education was birthed in the late thirteenth century around the King's Courts where student barristers learnt through court observation, moots and legal debate (which now comprises the field of experiential learning). They further sought lodgings in the various inns around the courts and invited seasoned practitioners to dine with and lecture to them on the law and its practice (Brand, 1987; Krook, 2017; Stein, 1981). Though initially governed by students (as with the civil law universities on the continent), these Inns of Court gradually came under the control of senior 'benchers' who organised the training of students. Solicitors also started training in the Inns of Court as clerks to the Court of Chancery where they were required to enter into training contracts (Boon and Webb, 2008; Stein, 1981). These systems remained unregulated and virtually unchanged until 1729 when a system of apprenticeship was established for solicitors. During this time, legal education in English universities focused on the civil and canon law and it was not until 1753 that the first common law course was introduced by Lord Blackstone at Oxford (Krook, 2017). While the academic programme developed over the next two centuries, it was not until the Ormrod Report in 1971 (Ormrod, `1971) that a serious effort was made to incorporate it into a holistic scheme of legal education and even then *"the value of a university education long remained questionable to those who regulated the profession."* (Boon and Webb, 2008 p.88).

Consequently, in England and most Commonwealth countries in which practical legal education is under the control of the professional bodies, legal education was always designed to be vocational, that is, to prepare graduates for legal practice as opposed to being doctrinal or academic. In spite of this, criticism has been levelled at these 'practical' arrangements as late as 1996 as being too academic - based on lectures and examinations and not on real experiential learning (Boon and Webb, 2008; Saunders, 1996).

In the USA, there was no institutional framework designed to provide practical legal training. Early legal education was primarily vocational in nature where students prepared for entry into legal practice by 'reading the law' self-studying the major legal treatises and judgments, working in lawyers' offices and attending court (Krook, 2017; Manne, 2014; Patton, 2015). The earliest university law school was established in 1776 at the University of William and Mary (infra) that adopted a liberal, vocational approach to legal education under its founder George Wythe (Krook, 2017; Stein, 1981). Harvard Law School was founded in 1817 and would subsequently become the dominant influencer in the academic direction of American legal education. In the American context where legal education was confined within the law school, the debate arose as to what type of lawyer was needed to be produced for its society and how they were to be taught. This led to a contest between vocational legal education on the one hand as exemplified by the Wythe approach and the academic approach on the other hand, adopted at Harvard. In this debate, Krook (2017) has identified the apprenticeship element of vocational/professional as being inconsistent in application in both English and American legal education due to the scarcity of suitable placements and in failing to provide a similar experience to students. This issue has been a perennial one for legal education and more recently has been the subject of reports in E&W (Webb, Maughan and Purcell, 2004) and Canada (London, 2016) for reform of the system.

He also found that the vocational approach lacked a theoretical foundation (academic) which would allow students to discern and apply legal principles to a variety of circumstances. Langdell's 'scientific' approach to legal education was also a firm rejection of the vocational approach as he thought that law was best studied through the rigorous distillation of principles which was antithetical to the vocational approach (Spencer, 2012). Other more modern

criticisms of the role of vocational legal education claim that it is too market-oriented and driven by commercial interests so as to create graduates who are ready for the labour force with little attention to the ethical elements of practice and the critical role of theory to make effective, well-rounded attorneys (Baron, 2013; Heath and Burdon, 2013; Thornton, 2009).

*The Academic Mission*

The attitude of the professions in E&W to university legal education (discussed in the above section on the vocational mission), allowed the university programme to develop a life of its own outside of a mandate to prepare graduates to practise law. This is currently reflected in the quality assurance benchmark for law which categorically states that studying law at an undergraduate level is an academic matter which involves the acquisition of legal knowledge, general intellectual skills and to enable graduates to be prepared for a variety of careers including the legal profession (Quality Assurance Agency for Higher Education, 2019).

In America, despite the initial success of the Wythe approach at William and Mary University, the rise of the modern American law school has been attributed to the work of Christopher Langdell at Harvard between 1869–1870 utilising the Socratic and accompanying case method (Morant, 2016; Schneider, 2013; Sonsteng, 2007). Langdell's positivist worldview dictated that legal study was scientific in nature and there was no need for social context. Consequently, he saw law, not as an endeavour to achieve the public good, but an activity in which individuals pursued competing private claims on a transactional basis. This has stamped American legal practice with the characteristics of corporatism, individualism at the expense of social and professional values (Spencer, 2012). The Harvard Law School set the academic standard for American legal education until the release of the Carnegie Report (Sullivan, Colby, Wegner,

Bond and Shulman, 2007) which advocated the integrative approach of the 'three apprenticeships'. This consisted of the cognitive apprenticeship (academic), the apprenticeship of skills (vocational) and the apprenticeship of professional identity and values (professional). In 2013 in E&W, further progress was made in the evolution of legal education with the report of the LETR which took an integrative approach to the various components of legal education (Webb, Ching, Maharg and Sherr, 2013). In the USA, following the Carnegie Report, the American Bar Association (ABA) laid out specific recommendations for the reform of legal education which focused on the pricing and funding of legal education; accreditation of law schools; greater flexibility to encourage law school innovation; a greater focus on skills and competencies; and the broader delivery of legal and related services (American Bar Association 2014).

*The Liberal Mission*

The E&W approach to university legal education, has at its heart, the pursuit of knowledge, not for its own sake but to be put to the use of the society in which it is to operate. Therefore, the pursuit of such knowledge should be engaged in from the broadest perspective possible, with students from diverse experiences and diverse points of view (Newman, 1852). For centuries, the approach of educating 'gentlemen' who could carry on the business of governance and take up their role in society through a broad-minded education in music, art and critical thought was a cornerstone of legal education in the Inns of Court (Boon and Webb, 2008; Brand, 1987; Stein, 2013). Indeed, the early foundations of American legal education rested on this approach (McManis, 1981; Spencer, 2012). It required a contextualisation of law to the society so that all relevant areas of study or points of reference such as economics, social sciences and political theory and practice must be considered in this pursuit (Burridge and Webb,

2008; p. 268). Even with such a distinguished advocate, it still took another 100 years for university legal education to assert its dominance in England as another famous jurist, Dicey (1883), favouring a more vocational approach, was propelled to ask – "Can English law be taught at the university?"

In England, while liberal, academic legal education was developing under the control of the universities, the vocational/professional element of legal education was rigorously controlled by their respective professional bodies. In fact, to a large extent, academic and professional tracks developed independently of each other as mutual suspicion and even hostility developed between academia on the one hand, and the legal profession on the other. There is still the notion that university professors have no place in commenting on institutional professional programmes because they are too 'academic' and not practical enough, and practitioners and teachers of the vocational/professional programmes have no place interfering with the hegemony and ancient privileges of the university programme (Twining, 2014). However, despite this tension, the growing importance of the university law degree has become increasingly important in the twentieth century forcing the professional bodies to seek an accommodation with the universities to ensure that their graduates coming into the professional programmes are equipped with certain 'core' courses (Boon and Webb, 2008). This discussion is discussed further from the perspective of governance in section 2.1 of Chapter 3. In America, while the debate between the academic and liberal schools of legal education have never been extinguished, it is undeniable that the Harvard model dominated until the latter half of the 20$^{th}$ century (Montgomery, 2008).

*The Professional Mission*

Dagilyte and Coe (2014), writing in the context of law and legal practice, believe that the concepts and values of professionalism are common to all professions. They are comprised not only of the subject-specific knowledge but also the soft skills and meta-competencies such as the ability to manage ambiguous problems, tolerate uncertainty, make decisions with limited information and monitor and evaluate one's own cognitive processes. In legal practice, a modern lawyer has to be able to engage both the social, cultural and economic issues in this global environment and meet the needs of diverse stakeholders – the courts, his or her client, the legal profession and the public (Puchalska, 2004; Rhodes, 2000). He or she must be able to adapt to the changing social and economic environment by combining an array of values, attitudes and skills. Additionally, the attorney must also be reflective of his or her own values and emotional intelligence. This has the potential to extend the traditional boundaries of legal education beyond its rational-analytical basis and its adversarial nature to other forms of problem-solving and conflict resolution (Douglas, 2015; 2018; Montgomery, 2008;Wardhaugh and James, 2014). This ongoing contest between black-letter law and the vocational/professional demands of legal education has fuelled the most influential reviews of legal education in the USA which have been studied and discussed internationally - the MacCrate Report (American Bar Association, 1992), the Carnegie Report (Sullivan et al., 2007) and the Report of the ABA Task Force on Legal Education (American Bar Association 2014). These reports point to the inadequacy of a purely 'black-letter' law approach to legal education and call for the incorporation of a more vocational/professional orientation to legal education. Another significant publication which has generated great discussion in the legal academy is Best Practices (Stuckey, 2007) which provides a practical primer for Law Schools and educators to incorporate more experiential learning in the curriculum. In E&W and across the Commonwealth, professionalism transcends both the

academic and vocational systems of legal education and there have been calls to have ethics taught as a critical part of both the academic and professional programmes (Boon, 2002, 2010; Duncan, 2011). Developments in E&W go further where traditional professionalism is perceived as being challenged due the impact of globalisation; the impact of the LETR reforms and deregulation. These developments have introduced a market-oriented approach to the regulation of the professions - minimising the role of the respective professional bodies (Goldsmith, 2008; Sommerlad, Francis, Loughrey et al., 2020; Webb, 2015). They have also had an impact on the boundaries of professionalism across the various branches of the legal profession (Francis, 2020). These developments have resulted in a call across the most influential jurisdictions in the Commonwealth for the reformulation of professional core values to adapt to the disruptive changes taking place in the professions (Goldsmith, 2007), in Canada (Rochette and Pue, 2001) and Australia (Castles, 2001).

*Summary*

In this discussion of professionalism, vocationalism and academia, there is often room for the blurring of lines. For instance, if vocationalism is seen more broadly as the ability to be employment-ready, then the issue of professionalism comes into play. Vocationalism encompasses not only the knowledge of legal principles and the skills of legal practice but also the values and attitudes which must accompany them (James, 2017). While the silos of academic, vocational, liberal and professional legal education still exist on both sides of the Atlantic, efforts have been made since 2007 to bridge some of these divides. One unifying factor internationally has been the concern for greater professionalism across the board which has led to demands for its inclusion not only in vocational programmes but also in the more traditional academic arenas. I believe that we will get to a point where, while there might still be

separations in concepts, there will be greater unity in endeavour – a point I will develop in my conclusion.

## 2.3 Modern Missions: Social Justice, Interdisciplinarity and Decolonisation vs Globalisation and Internationalisation

These modern missions are a departure from the traditional pigeon-holing of legal education approaches as being academic or liberal or professional or vocational. In fact, they most closely typify the university's third mission of social engagement by merging the professional and the liberal to engage the university in the solution of actual social problems. Theories of legal education see a direct relationship between legal education and the social sciences with specific reference to social justice and human development (Berard, 2009), the pursuit of justice (Pangle, 1989; Walsh, 2007) and agents of change (Rapping, 2015). Here the young lawyer is being called to be social justice transformer (Sherman, 2013; Tremblay, 2016) mediator and entrepreneur among other facets of his or her practice (Jack and Wroldsen, 2016; Jamadar, 2017). On a social and cultural side, the liberal arm of legal education has also developed postcolonial studies leading to a movement towards the indigenisation of law and legal education. The independence of colonial territories and their acquisition of the status of nation states has led to the demand for an acknowledgement of their inherent identity and the culture of their peoples which, in turn, has given rise to the indigenisation of law as seen in a study of customary law in Africa (Himonga and Diallo, 2017), the original peoples of Canada (Chartrand, 2015; Hewitt, 2016) and New Zealand (Wilson, 2010). In trying to craft a legal system for these new societies, there was a tension between the desire to transfer (or impose) the known system of the coloniser (Harrington and Manji, 2003) and the emerging conviction that an indigenous system should be forged (Manteaw, 2008).

New legal theories of the role of law in the society and the missions of law schools have emerged based on the liberal approach of viewing the impact of law on the society in which it operates and the rapid development of society in the twentieth and twenty-first centuries (the impact of globalisation, the technological revolution, decolonisation),. They have taken the form of emancipation and decolonisation theories in law (al Attar and Tava, 2009), law and development (Sagaris, 2010; Ohnesorge, 2006), and legal education (Macdonald and McMorrow, 2014). As noted before, Lazarus-Black (2008) saw the Caribbean model of vocational legal education as unique for its time and a forerunner of many of the topical debates in legal education by being international, regional and dealing with multiple legal systems to produce an indigenous lawyer who would be able to develop an indigenous jurisprudence.

## 2.4 The Research Missions

Clancy and Dill (2009) have dated the rise of the research mission of the university which is "the systematic production of knowledge", from reforms adopted at the University of Berlin in the late eighteenth century. This manifests itself in the belief that professors were researchers and advanced scientific research was central to a great university (Fallis, 2004). In fact, it was felt that the duty to research and publish was as, or even more important than the teaching role of professors. In America, this viewpoint found a welcoming environment at Harvard University in the late nineteenth century where the culture of pursuing law as a science was deeply entrenched. This approach would quickly become a characteristic of American academic culture (Appleman, 2005; Clark, 1987). In legal studies, legal research has taken root in areas of black-letter law, the study of the impact of law on the society and the international dimensions of law on trade, politics and globalisation (Tan, 2010). These legal research topics have fitted quite neatly into

the academic environment even though there are areas of dissonance as to its detrimental impact on the teaching role of the university (Postlewaite, 2000; Elson, 1989).

Another avenue for legal research is in the field of empirical legal studies which positions research into areas of legal practice as opposed to theory and dogma (Eisenberg, 2011). Legal research as a science has been developed in American and Australian law schools based on empirical investigation, verification, and inductive logic that were the hallmark of German scholarship (Appleman, 2005). There has also been significant empirical research in E&W (Kemp and Hodgson, 2017) in clinical legal education (Marson, 2005) and in law school education (Williams, 2005). This empirical approach is based on social, economic or political factors and can be manifested through case studies and analysis or arguments for law reform. Legal science is most manifest in the testing of legislation or a legal principle against how it is actually experienced when applied to life.

While legal science is not the most popular form of legal research (doctrinal research still being preferable with academics with an insular perspective), Bell (2016) has found that, in comparison with universities in the USA, E&W and the Caribbean, Australian law schools have developed a depth and breadth into non-traditional areas of inquiry. In developing societies, research is critical to understand the existing law in the context of social reality to facilitate an indigenous jurisprudence and reform of law away from traditional western studies and towards research into Comparative African law and legal systems, (Fombad, 2014; Manteaw, 2008; Ndulo 2002). It is this area of empirical legal research that is the most attractive source of exploration for IVPLE in that it can equip graduates with the skill to not only assess the impact of law on the society but also to assess how the practice of law is meeting principles of equity, fairness and justice. From an institutional perspective, a vocational/professional legal education

institution engaged in this type of research can use research findings to inform its curriculum with a practical application which will be of benefit to graduating students, the legal profession and the society at large. It can also be used as a form of continuing legal education. From a judicial perspective, it can provide useful insight into the operation of the courts and the biases (implicit and explicit) of judicial officers and other stakeholders in the system. The question is whether structural vocational/professional legal education of IVPLE is equipped to engage in such a study.

## 2.5 The New Mission (Re-imagining Legal Practice and Re-creating Legal Education in the Face of Disruption)

I have so far dealt with how legal education has modified or even extended its missions to deal with historical and social changes. However, in this section, I will be addressing the disruptive forces which can either threaten the existence of the legal profession or launch it into a new adaptive era of innovative, creative growth. For the latter to happen, I see the need for a new mission for legal education – to anticipate such challenges and equip graduates to re-create the profession so as to adapt to them. I will, therefore, be looking at the issues of disruption and innovation, the changing economy, the technological revolution, the reorganisation of the profession and the response of legal education. It is my argument that the response to such disruptions is piecemeal, reactionary and lacking the context to be truly fundamental and transformative. I will argue instead that the appropriate response requires a new mission for legal education.

### 2.5.1 Disruption and Innovation

Disruption occurs whenever a new transformative innovation, technology or event/s enter into a traditional, conventional marketplace which refuses to acknowledge its presence or adapt to the changes it will bring (Christensen, Craig and Hart, 2001). The chronology and history of legal practice and legal education in E&W discussed in section 2.1above and in Appendix One illustrate its inexorably slow historic progression from the thirteenth to the twentieth century. However, the effects of two World Wars that opened up the world to globalisation, and quantum leaps in technology in the twentieth and the beginning of the twenty-first centuries have been disruptive forces which are creating fundamental changes in legal practice and legal education. Globalisation has not only affected legal practice by opening up more opportunities for firms to expand and compete internationally, but it has created a demand for a better-prepared graduate who can work in this area (Silver, 2013).

Certainly, the first two decades of the twenty-first century may prove to be the most transformative and disruptive to legal education (apart from the 2007 reforms). From an economic perspective, the 2008 global recession and economic crisis put pressure on law firms across the world to be more frugal in their expenditure and made clients more conscious of getting value for money for legal services (Remynse, 2014; Thies, 2009). This automatically had an immediate effect on legal education as the profession, particularly the large commercial law firms in the USA (resenting the need to do the traditional in-house training of new recruits) started demanding more practice-ready graduates from the law schools (Campbell, 2014; Condlin, 2014; Dilloff, 2010). Within the same time frame, the world saw the rise of the digital economy, continued and accelerated globalisation formalised through international treaties like the GATS and the GATT which impacted both the legal services industry and legal education

creating the need for greater specialisation while also creating more opportunities for expansion (Robertson, Bonal and Dale, 2002; Terry, 2010). This required a call to action, not only in the developed world, but also in developing countries (Adewumi, 2016; Flood, 2012; Hall, 2012; Hoekman, Horn and Mavroidis, 2009). In the developed world, it stimulated commerce. Law firms developed a character of increasing corporateness of legal practice fuelled by the entry of new players in the legal services industry (Barton, 2012; Williams, Platt and Lee, 2015). The increasing power of the consumer and demands for better professional services also hastened the deregulation of the profession on both sides of the Atlantic (Trabucco, 2018; Winston and Karpilow, 2016). With deregulation came an increasing role for new legal service providers (Caserta and Madsen, 2019; Kritzer, 2002; Remus and Levy, 2017; Wulf, Blohm, Leimeister and Brenner, 2014) and the unbundling of legal services (Fisher-Brandveen and Klempner; 2001, Katz, 2011; Kimbro, 2013). These new services have placed increasing pressure on traditional legal professionals to be more efficient, economical, flexible, client-oriented and incorporate technology into their daily practice. This, in turn, has had an effect on legal education which is discussed at section 5.3 infra. In order to compete and reduce costs, increased outsourcing of legal services to overseas suppliers in countries like India and Pakistan with competent legal professionals who could be paid at a lower cost became a feature of big law ('big law' means 'big law firms' or, in the USA, the nation's largest law firms (Friedman, 2018; Ribstein, 2010, 2014; Robbins, 2014)). The effects of the disruption described above are almost universally acknowledged while the response to it, particularly regarding legal education has been contentious.

### 2.5.2 Response of the Legal Profession

While the above paints a mixed picture for the development of legal services, the profession and legal education, the greatest disruptor has come in the form of ICT, Artificial Intelligence (AI) virtual reality (Cho, Jung, Macleod and Swenson, 2021; Nesenbergs, Abolins, Ormanis and Mednis, 2021), robotics and the Internet of Things. These five technologies have created their own ecosystem in propelling society, the economy and the professions to places it had scarcely dreamed of at an unprecedented rate. One of the first persons to warn about the catastrophic effects of disruption in the legal profession and advocate for systemic change was Susskind (1998, 2000, 2010, 2018) who predicted that unless the legal profession (and legal education) adapted to change, it might well go the way of the farrier and queried in his book title whether we were seeing "the end of lawyers." (Susskind, 2010). All this has prompted scepticism as to whether the legal profession and legal education are up to the task of responding to it. In 2016, the International Bar Association, through its Legal Policy and Research Unit, recognised the effects of disruptive innovation and the emergence of new models of legal practice (International Bar Association, 2016) and even the Law Society of England and Wales issued a report detailing the actual use of technology at the time including finding business solutions, potentially predicting the outcome of cases, documentary analysis and delivery, contract analysis, legal adviser support and public legal education (Solicitors Regulation Authority, 2018). One of the greatest developments to receive the most attention is AI where many law firms are replacing associates with programmes and robots like Ross that can perform better at documentary review and legal writing than the associates they are replacing (Bigda, 2017).

The advance of technology has raised calls for the re-education of lawyers to embrace the new technology and an expanded view of legal competence where Carrel (2019) recognises the utility

of the model of the T-shaped lawyer whose competence is not only related to a specialised field of expertise and skills but an understanding of data, technology, project management and process improvement. She then introduces the Delta model which adds the requirement of emotional intelligence in decision-making and problem-solving. There is also the O-shaped model which advocates that lawyers should be - open (openminded and willing to experiment), opportunistic (willing to try new ways and take risks), original (being creative thinkers and problem solvers), take ownership of their work (accountability); and optimistic by working with clients to be enablers of their projects (Kayne, 2020; Mottershead, n.d). Serious ethical issues also arise in many cases where machine technology performs functions regarding the confidentiality of client data and communications (Hriciks, Morgan and Williams, 2018; McPeak, 2018; Stockdale and Mitchell, 2019). It also arises where a machine now makes decisions in circumstances where a lawyer would have had the duty to apply legal ethical rules that require the exercise of the lawyer's professional and moral judgment when acting on behalf of clients (Nunez, 2017). A third situation arises where law firms may use machines to draft legal documents do research or give advice among other things. In these circumstances, there is an ethical and legal duty to ensure that the firm has a primary duty of care to ensure the confidentiality and competence of associates and other staff it employs. Similarly, the duty arises with the employment of machine intelligence to perform these tasks. This requires a certain level of competence in technology in the decision-maker of the firm to be able to make these employment decisions (Segal, 2018; Shope, 2021; Simshaw, 2018). The ABA has, in fact, set standards requiring that lawyers must be technologically competent in evaluating the benefits and risks associated with legal technologies (American Bar Association, 2020; Jackson, 2013). Internationally, the growth in technology has also generated the need to reconsider the regulation of the profession not only on

a national basis but transnationally as well (Terry, Mark and Gordon, 2012). These concerns have led to efforts to develop AI laws of robotics and Mokhtarian (2018) has proposed a "Bot Legal Code" to ensure that machines comply with legal ethical requirements. All this to say that the legal profession finds itself in a brave new world where it must virtually recreate legal education from the ground up while it is still actively engaged with the existing system. This can potentially lead to conflicts between the two activities which can potentially lead to chaos.

### 2.5.3 The Law School Response

In advocating for a new mission of legal education (both academic and vocational/professional), I draw reference primarily to my discussion on the teaching mission of legal education which is conflicted and needs greater clarity to create the systems which will produce the best lawyers for the society's development. Equally so, I will also be factoring in the disruptions I have just discussed in sections 5.1 and 5.2 of this Chapter. This section, therefore, seeks to show how law schools, particularly American law schools have responded to both the challenge of mission and disruption. This discussion is of comparative value and relevance to Caribbean legal education (especially IVPLE) which has been called to be and was, in its initial founding years, innovative and creative crossing both the academic and vocational/professional divide.

In response to the challenge posed to its teaching missions, legal education, particularly in the USA, has sought to adapt, infuse and reverse engineer into its existing JD programme, the clinical and experiential approaches which have been common features of Commonwealth vocational/professional legal education. They have done so by innovative forms of clinical and experiential programmes incorporated into its current three-year teaching programme

(Chanbonpin, 2015; Millemann and Krants, 2015). Three such programmes are **(a) Developments in Legal Aid Clinics (LAC)** which provide free or subsidised legal services to those who cannot afford such services in the marketplace. Their primary mission is as a teaching facility for students to get that level of practical training which has been lacking in the traditional law school ( Nicholson, 2016; Wilson, 2004). However, to be fully effective, several adjustments will have to be made to the governance and administration of American law schools to be able to embrace the necessary type of organisation that can simulate a law office managerially and to enable students to perform ethically (Borden and Rhee, 2011). This challenge is peculiar to American law schools which have to operate under a university governance system as opposed to other law schools or institutions in the Commonwealth which have a different governing model or structure and where the vocational/professional training is independent of the academic training. A useful model for American law schools to consider is the LPP training in Ontario which has been discussed at section 2.1 of Chapter 3 infra. **(b) The adoption of training models** from the training of other professions such as the problem-based and clinical approaches of medical education as well as the teaching of ethics and professional formation (Hamilton, 2008, 2013; Hardaway, 1981; Holmboe and Englander, 2018**).** Further, the residency programme has been used as a model for the incubator programmes for several law schools (Kren and Young, 2016). **(c) The Law School Incubator** (Sherman, 2013), (Pokorak, Seidman and Slater, 2013) and legal start-ups (Linna, 2016) emanate from the rise of the entrepreneurial university (see section 2.5 of Chapter 2) and are other forms of clinical training common in Commonwealth law schools. Not only does it seek to influence skill, but fundamentally attempts to transform how lawyers see themselves, not only as professionals, but as business facilitators and innovators (Brescia, 2016; Kren and Young, 2016).

In response to the challenge posed by disruption, as I previously indicated, technology is arguably the most disruptive element in legal practice and education and ranges from **(a)** the content of legal education with emerging and unsettled fields of enquiry arising each day in computer law, artificial intelligence, internet law and jurisdiction, and even legal technology (Hirsh and Miller, 2003; Janoski-Haehlen and Starnes, 2019); **(b)** how legal practice will be transformed and what kinds of skill sets will be necessary and relevant (Bloom and Sobelsohn, 2014); **and (c)** how are these knowledge/skills sets are to be taught (Fox, 2017; Johnson, 2013). Of the many forms of innovation in legal education, I have selected three categories (distance education, virtual worlds and digital literacy) to illustrate how transformative such changes can be and how they threaten to impact governance and administrative structures.

**Distance education** has been available internationally for years, initially through air and surface mail, (Zan, 2008.) and more recently with the advent of ICT, through different electronic and social media platforms. Modern developments in distance education have accelerated its use to replicate many of the features and activities that can be conducted in a face-to-face classroom environment (Jones and Lucassen, 2019; Nichol, 2013). When used in a blended learning environment it may significantly reduce or ultimately eliminate the physical classroom (Huffman, 2015). Massively Open Online Courses (MOOCs) pose a threat whose potential or peril is yet to be determined in the wider realm of higher education (Lentell, 2014) and legal education (Colbran and Gilding, 2013; Schrag, 2014). It can make legal education available to all who wish, thereby overturning the elitism of the profession and academy while reducing the cost of legal education and the large student-loan debt. **Online simulations** have also been extremely useful in professional legal education through the use of SimPLE, an e-learning platform developed in E&W which has spread to Australia (Chow and Firew, 2013; Maharg,

2007, 2017). **Virtual Worlds** is typified by Second Life where providers can provide online simulations to train students on real-world situations without the risk of damage to clients ((Nesenbergs, Abolins, Ormanis and Mednis, 2021; Sanson, Ireland and Rogers, 2009). Virtual towns, cities and countries can be replicated and all legal processes in administration, litigation, attorney-client interactions can be simulated (Barnett and McKeown, 2012; Butler, 2012; Cho, Jung, Macleod and Swenson, 2021).

**Digital Literacy for Lawyers** involves a range of technological innovations which are transforming legal practice as clients demand greater efficiency and lower costs and is only now starting to be understood by the legal fraternity (Ching and Maharg, 2020). Artificial intelligence (AI) and predictive coding are being used in data management, court processes and litigation, and almost every aspect of law firm work (Katz, 2012). Several commentators have endorsed the necessity for teaching coding in law schools (Contreras and McGrath, 2020) and some law schools have already started introducing students to the language of coding and are encouraging hackathons and involvement in the blockchain revolution (Fenwick, Kaal and Vermeulen, 2017). In many cases internationally, there have been calls for a holistic review of legal education for the inclusion of technology (Janoski-Haehlen and Starnes, 2020). Volini (2020) has even proposed a core curricular for American law schools that include the fundamental concepts of coding, networking and programming.

In reviewing the law school response to disruption, I see certain structural adaptations in American law schools which try to introduce vocational/professional legal education within their existing structures. In attempting to do so certain ethical and governance challenges arise when such training expands beyond the walls of the law schools and may add critical new areas of training which can go beyond the limits of the existing three-year programme such as with the

incubator progrmames. Internationally, the technology has also redefined the modality of delivering legal education from within the confines of brick and mortar structures to a variety of online, electronic and blended learning methods. Then there is the phenomenon of AI and associated technologies which require a response based on fundamental technical competency, ethical responsibility and an inventive capacity to engineer new solutions to clients' problems. All this has to be done to prepare law school graduates to meet the dynamics of a changing profession. It is my contention that the changes which are required to be made to adequately respond to these factors, cannot be sustainable in a traditional structural response but requires a fundamental restructuring of legal education that not only looks at legal education and training as a discrete study, but looks at the structure, dynamics and potential changes in legal services industry to derive a system of education and training that is capable of meeting these needs as well as the more traditional missions of legal education. I call this reconstruction a new mission for perhaps introducing an integrated form of legal education spanning both the academic and the vocational/professional.

### 2.5.4 My Case for a New Mission for Legal Education

In making the case for a new mission for legal education I would like to contest certain established beliefs in the academy – the first being that there is or ought to be a clear division between academic and vocational/professional legal education both from the E&W and American perspective. The fact that American law schools are now incorporating vocational elements into their teaching (see discussion at section 5.1 to 5.3 of this Chapter) is proof that engaging in experiential learning allows the student to better understand relevant principles in their lived context and consequently, be better able to understand it from a theoretical perspective. On the English side, while the LL.B. seeks to be more liberal to prepare graduates

for a variety of career opportunities, it cannot do so at the expense of vocational/professional elements of legal education as it is still required to provide graduates with the basic knowledge for legal practice (Boon, 2002). Duncan (2011) sees the university as also having an integral role in the incorporation of legal ethics in the undergraduate programme which infuses in it an element of professionalism. He further advocates for broader curricula reform to ensure the well-being of students (Duncan, 2020). Unless the university transforms itself into an ivory tower where it is self-sustaining and does not have any connection to the outside world, its graduates (including law graduates) must seek further education and training to equip them to adapt to the world of work – whether it be in university teaching, research or some form of consultancy. In fact, this is directly in keeping with the traditional third mission of the university for being of practical community relevance. Why should the university discriminate against legal practice as an avenue for its graduates with a law degree as opposed to graduates who wish to become university lecturers? The same is true for graduates seeking to become researchers or consultants – there will be a period of further training to develop the skill sets to excel in those fields. What is therefore needed is a rethinking of the role of the university law school which can be facilitated by much of the technology discussed above. It should be noted that over the last 25 years, legal training for barristers and solicitors in E&W have effectively 'franchised' their professional examinations to the universities which have innovated in their offerings by, in some cases, offering a specialty Masters programme along with the professional training to add value to their service. It is not inconceivable that where both academic and vocational programmes are being undertaken under the same roof that there will be even greater synergy and integration. In the Caribbean, the founding fathers of the CLE had initially designed their first plan for legal education specifically with this in mind (University of the West Indies, 1965).

As if reconciling all these phenomena were not enough for a traditionally conservative profession, there are the disruptive elements of the twentieth and twenty-first century that I have discussed under 'Disruption and Innovation' and 'Response of the Legal Profession' in section 5.3 of this Chapter. There is a very real threat that the legal profession may dissolve into legal services provided by automated machines giving advice, drafting legal documents, preparing legal opinions and arguments and predicting legal outcomes. What then would be the use for lawyers in providing such services which can be done more economically, efficiently and with better outcomes with machine intelligence? Once the legal profession is under threat, legal education is also under threat, whether you consider yourself a practitioner or an academic - AI, like a virus, is no discriminator of who it displaces. When one looks at the increasing skill sets and competencies needed to address some of the disruptive factors discussed above, it is mind-blowing to think that conventional legal education can equip the practitioner of today with the skills necessary to be even competent – especially from a technology perspective. It is purely from a perspective of self-interest that legal education needs to assist the profession in re-imagining legal practice and re-creating legal education for the future. For this purpose, the university law school is ideally placed. It is part of a community of knowledge, skills and expertise that spans every aspect of the disruptions that threaten it. It can engage its empirical research capacity to determine the type and extent of technology use in legal practice and assess its effectiveness from public legal education to judicial decision-making. It can then harness computer science, engineering, management and every conceivable skillset to collaborate with, understand and design a response that can convert the disruptive threat into managed disruptive innovation. This synergy of forces within the university, to add value to its external community,

is the epitome of the university's third mission in living reality (Kirby, 1971; Maker, Offergeld and Arstein, 2018; Sylvester and Hall, 2018).

Once this argument is accepted then the re-creation of legal education may well go beyond the teaching function to a re-creation of governance and administrative arrangements where mission drives governance, as should be the case. I have already discussed the changes that have started in E&W and may accelerate in the future. In the USA, for instance, the incubator model engages an organisation external to the university; has its own ethical and professional boundaries; has to act independently; and may pose challenges to the law school's control of such a programme if it is to be incorporated under the conventional university framework. These developments have raised several issues in the context of law school governance and management as it incorporates an external business enterprise model into the university academic tradition (Salkin et al., 2015). The necessary competencies for current legal practice with specialties and sub-specialties going down several levels and adding the technology competencies into the equation suggest the need for fundamental reform of governance and administrative structures in American legal education.

I believe that in this re-creation exercise, all sectoral interests and biases must be rejected and, for the moment, all historical and current structures and systems must be put aside. The reconstruction must be designed bearing in mind that professions were made to serve society and not created to provide a livelihood for professionals. A viable design can be achieved once service to the society is put at the forefront of the design and disassociates the designer from the current structures which must now be seen as tools or building blocks in re-creating the new design for the legal profession and legal education – whether all or parts of the existing systems are used; or perhaps something entirely new; or a combination of old and new emerges from the

discussion. The designers must then ask what other elements are necessary to create a sustainable model of legal education for the present and the future, do we need engineering, IT sciences, management skills - and then they must get to work.

## 2.6 Conclusion

In this chapter the discussion started with the relationship between mission and governance in higher education. I then explored the various missions of legal education and the contests that rage within them. Into this milieu, I threw the phenomena of disruption and innovation that threaten both the legal profession and legal education. I finally called for a new mission for legal education designed to re-imagine the legal profession (over which the legal education academy has no control) and reconstruct legal education over which it does (combined with the profession). Finally, I considered the possibility that change in mission may require a change in governance and administration which leads me directly into my consideration of the governance structure of legal education in the next chapter.

# Chapter 3. Literature Review: The Governance and Administration of Vocational/Professional Legal Education

## 3.1 Governance of Higher Education

### 3.1.1 Introduction

In the previous chapter, I explored how legal education embraced various missions depending on historic circumstance, geography, country, culture and political circumstance to better understand how the CLE has seen its mission during its existence. In many cases, the mission evolved as the institutions of legal education evolved as was the case in E&W. In other cases, as with the PCMs, the mission was pre-determined and actually shaped the governance structure of the IVPLE. In critiquing the governance structure of IVPLEs, therefore, the mission/s of the institution is critical to determine the effectiveness of the governance system.

This chapter focuses on IVPLE governance and administration. As I have indicated previously, there is little literature on the governance arrangements of this model of legal education. Consequently, I have had to explore the issue of governance and administration from a more generic level. I start with an exploration of the fundamental principles of democratic governance in higher education (section 1.2) with an examination of how they apply to the two major models of university governance (shared and managerial governance). These then provide critical insights into the governance of IVPLEs and PCMs. I discuss the similarities and differences of these two models in section 2. Section 3 provides the evidence for establishing the PCM model with a comparative look at the features of three different jurisdictions – New Zealand (NZ), Kenya and the Caribbean. Sections 4 and 5 focus on the broad principles of

governance and administration in the PCM where specific issues of governance and administration are taken from higher education and applied to the PCM model with a comparative analysis of how they apply in relation to each other and to the theoretical framework of this study that I have identified.

### 3.1.2 Governance of Higher Education (Principles and Models)

While the concept of governance was originally used in a purely political context, this term has grown to mean the exercise of authority (power) to maintain order and meet the needs of the public. The purpose of governance is to regulate citizens' activities through different systems and relations to maximise the public interest (Keping, 2018). Regardless of the context, the major critical components of good governance consist of accountability, efficiency and effectiveness, openness and transparency, participation, and the rule of law (Doeveren, 2011). Others have included characteristics of fairness and inclusivity as well as a consensus-oriented approach ( De la Harpe, Riken and Roos, 2008; Karpen, 2010). These principles are equally applicable to corporate governance and higher education as they are to civil society and nation state government (Goedegebuure and Hayden, 2007; Marginson and Considine, 2000). A core component of good governance is the exercise of power, power relations and structures whether in national government or higher education (Bótas and Huisman, 2012).

When applied to higher education, the seeds of modern governance structures were sown in the establishment of the medieval universities of Paris (by students) and Bologna (by former clerics and scholars) in the eleventh century (Dmitrishin, 2013). Over time these two systems merged, creating a form of governance which is now known as shared governance which means the representation and active participation of both the traditional faculty and students as well as

other stakeholder groups in the management and governance of the university (Boggs, 2010). Shared governance is the process by which various constituents (traditionally governing boards, senior administration, and faculty; possibly also staff, students, or others) contribute to decision-making of the college or university policy (Simplicio, 2006; Association of Governing Boards of Universities and Colleges, 2017b). Shared governance has been institutionalised by stakeholder interest groups dedicated to its preservation such as the American Association of University Professors (AAUP) which works with the American Council on Education (ACE) and the Association of Governing Boards of Universities and Colleges. The American Higher Education Program and Policy Council (HEPPC) has also articulated six principles which reflects the American and international perspective. These principles advocate (a) that faculty and professional staff set academic standards and curriculum; (b) adherence to the principles of academic freedom; (c) that faculty and professional staff should have primacy in decisions on academic personnel and status; (d) participation in shared governance should be expanded; (e) union representative assemblies and faculty senates all can have significant roles in shared governance; and (f) accrediting agencies should support fully the concept of shared governance in their standards (HEPPC, 2002). This shared model of university governance accords well with the stewardship and stakeholder theories of governance. In the United Kingdom (UK) the Committee of University Chairs (CUC) publishes a Code of Governance which prescribes the primary elements of higher education governance and sets out the fundamental principles of allocation of power and control (Committee of University Chairs, 2020b).

Stakeholder theory aligns with the new market orientation of most universities to be responsive to its primary stakeholders – its students. When theory aligns with mission, governance and administration are tasked with identifying the interests and networks of interests

within its community to forge strategic plans to implement its institutional mission. (Chapleo and Simms, 2010). Stewardship theory, on the other hand, seeks to embrace all of the internal stakeholders in the organisation's environment and is responsive to a higher ethical calling as opposed to a more transactional, commercial orientation (Key, 1999). Stewardship theory applied to higher education is also an ideal fit in conceptualising higher education's response to its third mission of interacting with its community, thereby going beyond its traditional stakeholders. The concept of shared governance which requires much comity nurtured through both formal and informal structures and a collegial culture of respect to be viable, has come under increasing challenge. In modern times, shared governance has been juxtaposed with the rise of the managerial/corporate approach to university governance in an environment where governance is often seen as a choice between one form or the other (Gallos, 2009).

The corporate model of university governance has arisen primarily due to the changing external environment where the university increasingly relies on funding from governments and business. It, therefore, must respond to these demands for greater external participation. In this model, there have been claims of the dominant role being exerted by administrators over the academic faculty, claims of excessive bureaucracy and burdensome consultation and the stifling of innovation (Miller and Kats, 2004). Birnbaum (2004) characterises this conflict as a struggle between 'hard' (rational systems based on calculations of costs and benefit to maximise desirable outcomes) and 'soft' (achievement of institutional objectives based on the interaction of people and their interaction over time in shaping the institution) governance. "Corporatism" provides priority to the external stakeholders of the university such as government, business and the community in which it resides as opposed to its traditional internal stakeholders (Harris, 2014). Corporatism further embraces management principles of leadership, management and strategy

with increased focus on fundraising, financial planning and industrial relations (Marginson and Considine, 2000; Monyoncho, 2015; Silva and Armstrong, 2011). This philosophy of governance has found favourable acceptance by many governments which have incorporated the related principles into the governance arrangements of higher education institutions as conditions for funding (Harris, 2014). Thornton (2005) sees this 'new managerialism' and corporatism in university governance as arising due to a move towards quasi-privatisation of higher education (where the user pays) and the dominance of a consumer culture where education is no longer free, but it must be profitable to meet diverse interests. This has been bolstered by the creation of a range of new for-profit universities. She sees the move from the traditional university to a hybridised system of higher education as challenging *'our understanding of what a university is, not just how it should be governed.'* (Thornton, 2005, p. 4).

It is my view that there is a dialectic between shared and corporate governance with advocates on each side arguing their interests. While there is merit in the efficiency which corporate governance provides, effective governance in an environment of learning that can be sustainable for the public good, requires academic independence. Each institution will have to define its objectives and values and, most of all, the price it is willing to commit to achieve this. This managerial model is consistent with the agency theory of governance where the principal seeks to ensure that the agent operates in his interest by restraining his powers through institutional control mechanisms like audit committees, strategic planning and quality assurance.

Apart from teaching and research, the third mission of universities (Predassi, 2012) comprises wider participation, social engagement and the contribution of the university to the society and economy in which it resides - has recently taken on new significance (Nedeva, 2013). This fuses the business model of governance with a business/economic mission for the

university (Etskowits, Schuler and Gulbrandsen, 2000; Watermeyer, 2015). This regime places control of course structure, admissions criteria, assessment standards, teaching, assessment and the standards for various types of qualifications – all of which lie at the core of a university's activities - into the hands of external bureaucrats (Harris 2014). Several writers have commented that this mission is nothing new but is simply a reconfiguration of its traditional social mission (Nedeva, 2013, Roper and Hirth, 2005; Rubens et al., 2017). A critical element of the entrepreneurial university is a commitment towards devising a practical, solutions-based service to and partnership with its community (Trencher, Yarime, McCormick, Doll and Kraines, 2014; Shore and Mclauchlan, 2012). This business model of the university has run into opposition to its traditional mission as a seeker of scientific excellence and truth (Pinheiro, Langa and Pausits, 2015b) thereby undermining the internal university community (Pinheiro, Langa and Pausits, 2015a). This tension is magnified in developing societies where the commercialisation of university resources often come at the price of citizen participation and social justice (Cross and Ndofirepi, 2016). This new orientation of the university is now pervasive even affecting the ultra-conservative confines of the law school (Evans and Gabel, 2015; Thornton, 2014). In terms of legal education, disruptive changes in legal practice have spawned a movement calling for the creation of a new type of student who, upon graduation, (Jack and Wroldsen, 2016) is more entrepreneurial and transactional to provide value to law firms, clients and even, perhaps, create new forms of legal services within which they can fit (Millemann and Krants, 2015; Phillips, 2014). As I discussed earlier, law schools have already started responding to these challenges.

## 3.2 Governance of Legal Education: the IVPLE and PCM Models

I have examined the role of mission and its relation to governance and administration in legal education. I have also reviewed two models of university governance (shared and managerial) which, by definition, apply to academic legal education. I now move to an examination of the IVPLE system.

The governance and the administration of vocational/professional legal education is not as straightforward as that of academic legal education where it is governed by the various faculties of law within the context of the university structure. While governance of academic legal education at the universities have conformed to the model and structure of university governance, when it comes to the training of vocational/professional legal education, the situation is quite different. I have identified two distinct institutional structures (IVPLEs, and PCMs, both examined in sections 2 and 3 of this Chapter respectively) which have similar characteristics but are quite distinct from each other. IVPLEs are more traditional in nature, following the model of vocational/professional E&W adapting to the diversity of the countries which adopted the E&W model.

In the next section, I discuss IVPLEs and will then move on to an introduction of the PCM which has similar features to the traditional IVPLE but makes a sharp divergence from it so as to be justifiably seen as a new model of legal education. The vast diversity of programmes between countries in both models is one of the unifying factors as seen in a comparative review of nine countries (including all those within this literature view in each model) by Muchiri (2020).

### 3.2.1 Features of IVPLEs

Table 1 which follows illustrates the similarities between three countries which I have selected to discuss the features of IVPLEs – E&W, Canada and the USA.

**Table 1: Comparable IVPLE features of the UK, Canada and USA**

| **England and Wales** | **Canada** | | **USA** |
|---|---|---|---|
| **(Barristers and Solicitors only)** | **Ontario** | **British Columbia** | |
| The BPTC has been phased out and replaced by one of three options:<br>• A course in one part, which may be full-time over a year or part-time over a longer period, similar to the old Bar Professional Training Course (BPTC).<br>• A course in two parts, which may involve face-to-face teaching for both parts or may involve self-study only for one of the parts, and<br>• A longer course which combines study of the subjects of the vocational component with an undergraduate degree in law.<br>Aspirants to the Bar must also pass the Bar Course Aptitude Test (BCAT) and join an Inn of Court (Bar Standards Board, n.d.). | **The Bar Admissions Course** here is administered by the Law Society of Ontario (LSO) and consists of **online self-study** in real estate, wills and estates, business law, professional responsibility, family, criminal, civil and constitutional law. Two exams are required (barrister's and solicitor's) each is open book for seven hours (Law Society of Ontario, 2021). | **The Professional Legal Training Course** (PLTC) is the parallel course operating by the Bar admission course of the Law Society of British Columbia (LSBC). It consists of a full-time, **10-week course**. Classes are held three times a year at the Law Society offices in Vancouver, and once a year at Camosun College in Victoria. (Law Society of British Columbia, 2021). | Admission to practise law is governed by individual states which administer Bar exams set and administered by their respective Bar associations. A prerequisite of the Bar is (normally) a J.D. degree which is the practical equivalent of the LL.B. plus the relevant vocational/ professional qualification. Admission to the J.D. programme requires a first degree prior to admission to any law school.<br>National standards for law schools are governed by standards set by the ABA |

| | | | |
|---|---|---|---|
| | | | accreditation process. (Akhtar, 2021) |
| From Sept 1, 2021, to become a solicitor, aspirants must:<br>• have a degree or a qualification or experience which combines on the job experience and training;<br>• pass both stages of the SQE assessment - SQE1 focuses on legal knowledge and SQE2 on practical legal skills and knowledge;<br>• 2 years' full-time (or equivalent) qualifying work experience;<br>• pass the character and suitability requirements (Solicitor Regulations Authority, n.d.). | **A 10-month articleship** with a supervising attorney. There is a mid-term assessment when the supervisor reports to the Law Society. Candidates must also complete an online examination. (Law Society of Ontario, 2021b);<br>Finally, there is an alternative route which is discussed in the section on Canada below. | **Articling for 9 months** (Law Society of British Columbia, 2021b) | The J.D. is normally a 3-year programme and is assessed by a range of methods depending on the nature of the course.<br>Bar exams are administered as a high-stake testing method focusing on the laws and practice of the particular state. (Akhtar, 2021). |

As can be seen from the above, IVPLEs are all cut from the same cloth but have been tailored to suit the circumstances of each country and region. All are modelled on the legal profession in E&W. Such training is governed by the governing branches of the profession and require some formal training which has to be undertaken in an institution governed by the profession. The training may include some clinical training and there must be some apprenticeship/articling arrangement for a specified time which is also governed directly by the professional body. Apart from these common factors, there is a great deal of divergence based on country, historical precedence and social forces evidenced by the tremendous variation in how the profession is

structured and how legal education is undertaken. In examining this model, I will provide an introduction to the training programmes in the traditional IVPLE models of E&W and Canada. I have also included the USA in this model because it does have many similar features although it does not have a separate formal vocational/professional training programme or an apprenticeship programme.

### 3.2.2 England and Wales

As this study deals with legal education in the common law Caribbean, a review of the evolution and characteristics of legal education in England, the source of the system is critical for its analysis. While the legal profession in E&W now comprises eight different regulated professions - barristers, solicitors, chartered legal executives, notaries public, licensed conveyancers, costs lawyers, trademark and patent attorneys (Boon, 2011), I will be confining my analysis of IVPLE to the solicitor and barrister professions as these are the ones on which the training of the Caribbean CLE is focused.

In my discussion in section 2.1 of Chapter 2 on "The Vocational Mission', I recounted the historic development of legal education up to the advent of the first attempt to regulate the solicitor training in 1729. For barristers, it was not until 1852 that a Council of Legal Education was established together with the Inns of Court School of Law and compulsory Bar examinations instituted in 1872. For solicitors, the Law Society opened its first School of Law in 1903. However, it was not until Ormrod Report of 1971 (Ormrod, 1971) that a comprehensive review of legal education was conducted that sought to engage both the academic and vocational elements of legal education. To put English legal education in context, for almost six centuries, legal education was intrinsically vocational with an abhorrence of the idea that law could be

taught in a university (Dicey, 1883). Then in the middle of the nineteenth century, there were modest efforts to regulate the training for both professions as seen with the formation of the Law Society (1823) and the Council of Legal Education (1852). It is in this context that the Ormrod Report (Ormrod, `1971) became the most significant review in legal education since these two events. Indeed, Boon and Webb (2008) identifies the period 1200 – 1970 as comprising one era of English legal education. Paradoxically, the next fifty years (1971 – 2020) have seen an avalanche of reform commissions, reports, reviews and legislation for both branches of the profession - in 1971 (the Ormrod Report); 1979 (Benson Report); 1986 (Marre Report); 1988 (Law Society's Consultation Paper); 1990 (Law Society's TTS Consultation Paper); 1991-1996 (Proceedings and Report of the ACLEC); 1999 (Access to Justice Act); 2001-2007 (Training Framework Review of the Law Society); 2006 (creation of the Bar Standards Board (BSB)); 2007 (the promulgation of the LSA and formation of the Solicitors Regulatory Authority (SRA) and the Legal Services Board (LSB)); 2007 – 2013 (consultation and publication of the LETR). This second period of E&W legal education development seems bent on making up for the first phase identified by seeking to reconcile the historical trends of weaving education for two professions utilising the several modalities in which legal education has been conducted and identified in what is termed the "Ormrod settlement" (the academic, professional and the apprenticeship components (the three apprenticeships identified in the Carnegie Report (Sullivan, et al., 2007) and adding the further component of continuing legal education - to create a flexible, adaptable, market-driven tool to respond to changing environment (Boon and Webb, 2008; Twining, 2018).

Over the last six years, the BSB and the SRA have published and are promoting drastic policy statements regarding entry requirements into these respective professions, how they

should be taught, assessed, managed and quality controlled. Much criticism has been generated, particularly in the area of assessment (Brannan, Purtill and Stec, 2018; Gibbons, 2017). The deregulation by the BSB and SRA of the conversion course for non-law graduates seeking to qualify as solicitors and barristers in E&W, by encouraging diversity and increased quality in the profession, is also seen as an untested ideal (Leighton, 2014; Koo, 2020). Bugatti (2019) believes that these also challenge university law schools to reassess their role in legal education by incorporating a more vocational/professional approach to prepare students for the SQE (which does not require an academic pre-qualification) or by incorporating traditional 'vocational' programmes such as clinical legal education programmes. This leaves room for the valid criticism that such changes are taking place too rapidly, and their actual practicality as details of content, implementation and supervision are lacking (Fletcher, 2016; Leighton, 2021; Twining, 2014). There are also lessons to be drawn from the element of apprenticeship which has several problems, not only in E&W but internationally as well (Ching, 2012). However, even five years after the fact, the full impact of these proposals and reforms are still unable to be fully assessed (Ching, Maharg, Sherr and Webb, 2018; Hall, Hodgson, Strevens and Guth, 2019). As if these changes and an analysis of their effects were not tasking enough, there is the further prospect that a further and deeper review may be necessary if one takes seriously Roux-Kemp's (2021) call for a radical transformation of the undergraduate programme to address current and projected skills gaps to ensure greater mobility of law graduates between different legal jurisdictions, within one jurisdiction and performing different roles. While his focus is directed to the undergraduate degree, the implications of his predictions must affect every stage of legal education.

From a governance/theoretical perspective, it is challenging to analyse the structure and development of the system for legal education in E&W. The historical biases between the

universities and the profession are issues that must be navigated, and commentators seem to suggest that this is a bridge on which several commissions seem to tread warily (Burrage, 1996; Boon and Webb, 2008; Twining, 2014). Another issue is that developments in English legal education seem to have taken place reactively and not proactively (except for perhaps the LETR) and even this has made drastic changes to accommodate the market in a relatively short space of time. Boon and Webb (2008) have noted that the Legal Services Board exercises regulatory authority over both the BSB and the SRA and that each has redesigned their committee structures to make regulation more efficient especially regarding education so as to ensure minimum standards. Further, they have increased academic representation among their new lay membership. The LSB is also required under the LSA 2007 to include in its membership a person knowledgeable in legal education and training. In my conclusion at section 6 I will comment on this governance arrangement in light of the literature developed in section 5 and my theoretical framework.

### 3.3.3 USA

In Chapter 2, I discussed the foundations of American legal education from the Wythe experiment in 1779, the emergence of the Socratic method at Harvard in 1869 and later in the twentieth century, the impact of the Carnegie Report. In 1878, The ABA was formed and one of its first committees was the Committee on Legal Education and Admissions to the Bar tasked with setting out the requirements of candidates for admission to the Bar throughout the country. By 1921, the ABA resolved that every candidate for admission to the bar should be a graduate from a law school complying with set standards set by itself; such graduates should be subjected to an examination by a public authority to determine his fitness; and it should occasionally publish the names of the law schools which complied with its standards (White, 1987). Since

then, while admission to the Bar need not be from an ABA accredited law school, the persuasive impact of such accreditation is tremendous and the ABA's influence extremely pervasive to the extent that it has been subject to much criticism as stifling the innovation and creativity of law schools to find new solutions to modern challenges in legal education (Critchlow, 2014; Van Zandt, 2008; Vest, 2000). Standard 204 of the ABA provides that governing boards may establish general policies for the law school, provided they are consistent with a sound educational programme while Standard 205 acknowledges the responsibility of the dean and faculty of the law school *"... for formulating and administering the program of the school including such matters as faculty selection, retention, promotion and tenure, curriculum, method of instruction, admission policies and academic standards for retention, advancement and graduation of students."*

The fourth column of Table 1 outlines the requirements to be admitted to practise law in the USA. Law school graduates are required to sit and pass the Bar examination of the particular state in which they wish to practise except for the state of Wisconsin where the diploma privilege still applies (Markovic, 2021). Indeed, many law schools now offer their graduates some level of tuition for their respective state bar examinations. In the context of vocational/professional legal education, it is my view that the bar examination administered by state law associations do not qualify as vocational legal education as it does not have a supervised period of training or a curriculum designed to teach or assess skill sets for legal practice. Rather, it seeks to assess the applicant's ability to identify legal issues in a statement of facts, to engage in a reasoned analysis of legal issues and come to a logical solution through the application of legal principles (National Conference of Bar Examiners, 2021). In 2005, various stakeholder interests in New Hampshire established the Daniel Webster Scholar Honors Program

which eliminated the two-day bar examination by offering an alternative licensing programme during the last two years of law school (Tokarz, Lopez, Maisel and Seibel, 2013). Both the Wisconsin and New Hampshire situations can be seen as exceptions to established practice although they raise the possibility of a viable alternative for a more specialised form of vocational/professional training. It should be pointed out, however, that until recently, the BVC and its examination in E&W were considered very academic (Boon and Webb 2008). The reason I have included the USA as a model of vocational training is that - while it does not have the formal institutional approach to vocational legal education in the three-year J.D. programme and while it has been the paradigm of conservatism in black-letter legal education, there is a revolution underway that seeks to address these deficits with more innovation and creativity than the other systems combined (Flood and Robb, 2018; Caserta and Madsen, 2019). We can learn from these approaches. One interesting difference with this system is the reach of the legal profession into the university process where the ABA is involved in legal education from inception (by accrediting law schools and mandating entrance requirements to law schools whereas in other jurisdictions, such involvement comes in the vocational portion of the legal training) to end. This is contrary to the English position where professional bodies have traditionally taken a hands-off approach to university education.

### 3.3.4 Canada

The Canadian common law (as opposed to its civil law) model, in structure, follows the bifurcated form of the E&W version of the academic training for solicitors and barristers through the attainment of a LL.B. or J.D degree. Since 2015, in order to enter law society admission programmes throughout Canada, graduates of all universities must meet the National Requirement for competencies and skills as prescribed by the Federation of Law Societies of

Canada (Federation of Law Societies of Canada, 2018). This is followed by a period of vocational training that varies greatly from province to province. However, this system is as diverse as there are provinces in Canada as each provincial Law Society governs the requirements of entry into their profession and more specifically the vocational/professional training and articleship programme. I have selected the provinces of Ontario and British Columbia at Table 1 to illustrate the diversity of approaches in Canadian professional legal education.

Professional/vocational training more resembles E&W and Commonwealth training with a period of professional training (varying from province to province) and a period of apprenticeship. These last two elements are rigorously controlled by the legal profession of each province through their respective law societies. In recognition of the difficulties of securing competent supervision for the articleship programme and its attendant costs, there has been much experimentation in recent years as evidenced by the four optional approaches for admittance to legal practice considered by the LSO (Wardle, Horvat, Vespry, Braithwaite and Bredt, 2018). Of significance is the option to continue the current system which comprised either the traditional programme described in Table 1, or the Law Practice Program (LPP) which is a collaboration between the LSO and Ryerson University (Law Society of Ontario, 2021b). It comprises an online four-month program centred around a virtual law firm practice of four students and a mentor/supervising lawyer together with a four-month articleship period. The LPP replaces the both the traditional programme and the articleship programme (Ryerson University, 2020). In a six-year review of this programme by Ryerson, it found that the programme was innovative in its adoption of the virtual law firm/simulated practice; technology; intensive trail advocacy programme, alternative dispute resolution; innovation in law and firm business planning; in-

house counsel practice; and client simulations (Ryerson University, 2020). It should be noted that while this report may be seen as self-serving, I could find no other critical report on the conduct of the programme as a comparator. The Ryerson model is very interesting because, being a pilot project between the LSO and Ryerson University, it seems to straddle the gap between IVPLEs controlled by professional legal bodies, on the one hand, and PCMs in which institutional education, clinical training and, most importantly, apprenticeship are the domain of one body, on the other. It is unclear and should be the subject of further research as to the level of control that the LSO has ceded to Ryerson University. It may be that it has delegated to Ryerson some of its functions and in my research I could not determine this factor. It does, however, demonstrate that there is need for greater innovation for the provision of flexible, adaptive and relevant vocational/professional legal education to respond to the demands of a disruptive environment.

### *Summary*

Based on the above discussion, it can be stated that major features of the traditional IVPLE can be summarised as follows. First, there is little or no critical review of their governance and administrative structure (when compared to academic university legal education). Second, there is a tremendous diversity around the world as to how these institutions are structured between countries and even within countries (Canada). Third, they all had their origins, out of necessity, in the practical apprenticeship system of 'learning by doing' before more formal programmes and training facilities were available. Fourth, they are all governed and controlled by the legal profession of the country (or in Canada, the province) in which they are located (except for the USA which does not have a formal IVPLE programme). Fifth, they all normally require (a) an academic law degree (LLB or JD) or an approved conversion

programme for admission (except for the USA which requires an undergraduate degree to enter its JD programme); or (b) some form of practical work experience which may be supplemented by academic qualifications as is the case in E&W. Sixth, they all require a period of compulsory vocational/professional training and they still embrace some form of apprenticeship programme which is supervised by the legal profession. The exception to this in this classification of IVPLEs is the USA which does not have such a programme. Since the Carnegie Report (Sullivan et al., 2007) and Best Practices (Stuckey et al, 2007), many US law schools have now embraced experiential vocational training into their formal programme as seen from the discussion on their response to disruption in section 5 of Chapter 2. Finally, and most importantly, regardless of the nature of the IVPLE, each country and institution is challenged by parallel and sometimes conflicting missions as discussed in Chapter 2. This position is best illustrated in the report of a 2016 Conference of primary stakeholders in Canadian legal education, especially law school deans and the elected leaders of the various law societies (Federation of Law Societies of Canada, 2016). In a summary of the conference proceedings, it was noted that there was a tendency to view legal education in discrete silos comprising the law school (university) law society and CPD phases which made each group look inward.

Based on the diversity of approaches outlined above, it can be seen that the analysis of governance and administrative arrangements in vocational/professional legal education poses tremendous difficulties and is a new area of research which this study seeks to introduce for further analysis.

## 3.3 A Comparative Review of PCM Governance

A comparative look at the origins and development of PCMs (at least of the three jurisdictions under review) is revealing. They all started as postcolonial enterprises with the establishment of a Council which was mandated to provide practical training in legal skills yet they all display significant differences among themselves.

### 3.3.1 Features of the PCMs

The postcolonial model is a term of my creation to describe a distinct system of IVLE that has similar characteristics of the traditional IVPLE systems outlined above but is structurally different from them. One interesting feature that it shares with the traditional IVPLE is that the foundations of their legal education lay in a system of learning by apprenticeship out of necessity (Council of Legal Education, 1973; Manteaw, 2008; McLay, 1999; Ojwang, 1989). The first significant feature of this model derives from the name of the model that situates it as being postcolonial in nature created after colonial territories of Britain attained their independence and sought to establish legal education systems to train their nationals with the same intent as the Caribbean did – to replace England as the primary training ground and to create an indigenous jurisprudence, system of law and a legal system that was derived from its people, administered by its people and for the benefit of its people (Harrington and Manji, 2003; Manteaw, 2008). Whereas all the above systems are managed by national professional bodies governing the legal profession and have evolved through time, the postcolonial model does not have a historic antecedent but was statutorily established with deliberative intent to manage IVPLE. It features a governing board that is comprised of a range of stakeholders (mostly external to the institution) that vary in number and skillsets. This model is followed to a greater or lesser extent in countries throughout the Commonwealth (other than Canada) where the common law has been

introduced. One of the marked differences with this model, is that while it incorporates most or all elements of legal education already mentioned, it is one system where the profession does not directly control entry into the profession. In this model, statutory bodies are comprised of a diversity of stakeholder interests, to regulate the qualifications for entry into the profession; to set standards and a programme of study; and to certify that graduates are competent in practical skills for this purpose. Entry requirements into legal practice consist of the three-tier system seen in the traditional IVPLE comprising the academic entry qualifications (LL.B.); the professional training qualification (which includes a clinical training element); and a period of apprenticeship or articleship. However, in the case of the PCM, all three elements are under the control of a statutory governing body of the institution created to govern vocational/professional training. This body, in all cases, is respectively called the 'Council of Legal Education'.

While my conception of the postcolonial model is influenced by the E&W model, countries using it, all seek to establish a system of legal education which will inform their national development within their respective jurisdictions (Kaunda, 1971; Ramsahoye, 1973). A great deal of diversity exists in how these postcolonial intuitions are structured, their curricula designed and how they deal with apprenticeship and its corollaries. Such systems can be found throughout the Commonwealth. In conducting this research, I looked at systems in Nigeria, Ghana, Zambia, New Zealand, Kenya and the Caribbean but have selected the last three to demonstrate the core similarities and fundamental differences which underpin these systems. In examining these systems, I have employed two comparative tables in Appendix 2. The first table provides a side-by-side comparison of the governance arrangements and the second table provides a comparison of their administrative arrangements. These tables will be used for the baseline comparisons from which my analysis of each system flows for each country in relation

to their mission, governance and administration. I will also reference any published or critical research on these systems to aid my analysis. Finally, as I examine these various systems, because they vary in structure and methods and because the writing on their governance arrangements are not fully developed, I will employ the general principles and models of governance articulated in section 1 above as well as structures from university governance which have been well developed and tested to fill any gaps which may exist. This analysis will also be informed by my theoretical framework.

### 3.3.2 New Zealand (NZ)

The NZ Council of Legal Education (NZCLE) was formally established in 1930 to oversee the course of professional legal education and was finally incorporated in 1961. Legislative enactments and amendments between 1961 to 2008 have moulded the Council into its present form (Asher, 2011; McLay 1999; New Zealand Council of Legal Education, 2020; Spiller, 1993). It should be noted that while its Council has predominantly acted in relation to establishing and managing its professional training programme, it also has had a historic role and a current statutory obligation to advise the government on legal education issues and generally to supervise NZ legal education. It does so through the approval of changes in the curriculum of university law schools, the establishment of new schools and on general issues of legal education policy (Asher, 2011; McLay 1999; Spiller, 1993). Like the USA, NZ does not have a compulsory apprenticeship system to qualify for admission to practice and the last recommendation to this effect was rejected by the NZCLE as being impractical and burdensome to administer (New Zealand Council of Legal Education. 2020).

While I will deal with the mechanics of governance later, it is important to note that each country's system is moulded by its history and particular circumstances. For instance, NZ has been active in addressing the issue of 'settler postcolonialism', the relationship between indigenous peoples and white settlers, (Prentice and Devadas, 2008), through the provision of higher and legal education with the establishment of the University of Waikito and its Faculty of Law (Wilson 2010; 2019). Another feature of the NZCLE is its evolution from operating its programme through its Institution for Professional Legal Studies (IPLS) which is a sub-committee of the Council without any independent legal standing. In fact, NZ's IPLS is managed by a National Director who is appointed by and reports to the Chief Executive. In 2003, a memorandum between the Council and the IPLS established certain delegations from the Chief Executive to the National Director with reserve power in the Chief Executive (New Zealand Council of Legal Education, 2020). The IPLS is mandated to provide the Professional Legal Studies Course (PLSC) which qualifies graduates to practise law in NZ (Asher, 2011). In 2003, the NZCLE also extended the reach of the PLSC by revising its regulations to make the PLSC more generic and not specific to the IPLS, thereby giving it the ability to license the College of Law (a private overseas legal education provider) to also offer their version of the PLSC (Asher, 2011, Council of Legal Education, 2020). I discuss the implications of this framework further at section 5.2 infra.

### 3.3.3 Kenya

Modern vocational legal education came to Kenya with the Advocates' Ordinance (No. 34 of 1961) establishing its Council of Legal Education (KCLE) which was vested with power to exercise general supervision and control over legal education in Kenya and to advise the government on these issues. At the same time, the Kenya School of Law (KSL) was also

established as the institute by which vocational legal education was to be delivered (Gakeri, 2016). For several years these two institutions shared physical space, staff and resources and operated virtually indistinguishably from each other in spite of several legislative efforts to separate their roles – almost similar in practice to the NZ situation. It was not until the recommendations of the Mungai Report (Mungai, 2005) were incorporated into the current Legal Education Act and the Kenya School of Law Acts (both of 2012) that the Council was responsible for regulating and training of legal education (inclusive of university training); licensing, supervising legal education providers; recognising organisations in which pupillage may be served; and advising the Government on all matters related to legal education and training. Appendix 2 outlines the functions of the KCLE.

Under the Kenya School of Law Act, (Republic of Kenya, 2012) a comprehensive regime for the sustainability of the KSL was established as a separate entity from the KCLE with its own governance and administrative scheme. It provided for a Pre-Bar Examination for persons seeking to enter the Advocates Training Programme (ATP). Gakeri (2016) sees this as an inadvertent good whose rationale was never articulated. Some critical features of the Kenyan system of IVPLE are that it (a) separates licensing and accreditation (responsibility of the KCLE) from actual legal training (responsibility of the KSL); (b) the KCLE has broad accreditation powers over all legal education providers including universities and their programmes; (c) additionally, the KCLE has the power to independently provide legal education and training programmes for the judiciary, the legal profession and conduct any other type of legal training it thinks necessary; and (d) advises the government. Another unique feature of the Kenyan system is the establishment of the Legal Education Appeals Tribunal to hear appeals from anyone aggrieved by decisions of the Council to refuse to grant a licence, impose conditions on the

granting of a licence or to suspend or revoke a licence. This process has been employed to good effect by students challenging the KSL's rejection of their application to be admitted to the school (Legal Education Appeals Tribunal, 2020 a) and challenging the award of assignment grades in a course which affected their overall course assessment at the KSL (Legal Education Appeals Tribunal, 2020 b). The Tribunal also seems to have extended its jurisdiction over the Kenya National Qualifications Authority in the exercise of its power to make any other order as it may consider just (Legal Education Appeals Tribunal, 2019). This independent appeals mechanism provides a level of accountability which is not seen in any of the jurisdictions I reviewed in this research including those that I have singled out for discussion. Such a mechanism can be valuable in a novel model such as the PCMs.

### 3.3.4 The Caribbean

The Caribbean system is different, and I have described its main features in my introductory chapter. It should be noted that instead of a single-state system as New Zealand or Kenya, it is a multi-state organisation involving several legal systems. I will deal with the Caribbean Council in my findings and analysis in Chapter 5. I will now attempt to analyse the main features of the above systems with the tools of established governance theory and management practices in higher education.

## 3.4 The PCM: Principles of Governance

In a survey of governance practices of New Zealand's tertiary education sector, Locke, (2001) identifies certain procedures as key drivers for effective governance. They must (a) define the responsibilities of council members, the CEO and institutional staff; (b) include regular reporting on performance (in relation to targeted objectives), financial information,

planning (in relation to strategic and operational planning) and processes (benchmarking processes against 'best practice') to determine their quality.

I have used Locke's criteria as a starting point to examine the effectiveness of the PCM which I will examine based on four pillars –(a) the role and composition of the council or board of governors which sets policy and makes governance decisions; (b) the governance committee structures that are most common in higher education; (c) democratic principles of governance; and (d) institutional leadership. I have deliberately excluded from this study, an examination of the operational management of the Law schools because this raises another layer of complexity which operates in its own ecosystem and failures at the top will invariably affect every element of the institution at the bottom. As this is an exploratory study, it was critical that I laid a solid foundation upon which other, more targeted research could be constructed. Having said this, I will be referencing the relationship between the governance structure at the top with the governance elements of the law schools to determine how supervision is exercised in this relationship.

## 3.5 The PCM: Structures of Governance

### 3.5.1 The Role of the Governing Board

In virtually all instances in higher education, control of the institution is exercised through the establishment of the board of governors (the Council). It is the Council which makes decisions on institutional policy and the structural functioning of the organisation through the appointment of its executive officers and the monitoring and review of their performance. This Council is headed by a Chairman or Chancellor who would have the powers designated to him in the university charter or empowering instrument. In 2004, the American Council of Trustees and

Alumni produced a report on the role of trustees for a new era (Schmidt, 2014). Among the broad recommendations were (a) Articulating the institutional mission which undergirds every decision the board makes, its strategic plan, its allocation of resources, and performance goals for its President; (b) Protecting academic freedom and intellectual diversity; (c) Setting the educational strategy: ensuring a coherent and rigorous general education program and insisting on program review; (d) Demanding transparency in performance and results; (e) Improving the presidential selection process and (f) Strengthening trustee selection and education ( Schmidt, 2014). In E&W, the Committee of University Chairs has also promoted a code consisting of six elements of governance for higher education institutions – accountability, sustainability, reputation, inclusion and diversity, effectiveness and engagement (Committee of University Chairs, 2020b).

In NZ, Edwards (2003) reiterates these responsibilities and adds elements which are relevant to PCM which are publicly funded such as the need to have:

a. clear articulation of the respective roles, responsibilities and accountabilities of the Minister, Council, Chair, Council members, Chief Executive and Academic Board;
b. effective and balanced leadership through a strong Chair, a strong Chief Executive and a strong Academic Board;
c. specific governance arrangements aligned to sector-wide strategic objectives as well as individual TEI objectives and circumstances;
d. the protection of institutional autonomy and academic freedom;
e. Ministerial powers sufficient to ensure efficient, effective and accountable operations and the longer-term viability of TEIs;
f. close stakeholder engagement, especially in setting strategic direction;

g. sufficient flexibility in size and composition of governing bodies to ensure a breadth and depth of expertise to meet objectives;
h. regular assessment and monitoring of the performance of the Chair, Council and of individual members; and
i. high ethical standards applied to decision-making and governance.

In the UK, Board members and institutions are guided by similar principles and a code of conduct drawn from the Seven Principles of Public Life in the UK - selflessness, integrity, objectivity, accountability, openness, honesty and leadership (Committee of University Chairs, 2020). These responsibilities and values are also reflected in the guidelines for many HEIs internationally ( Association of Governing Boards of Universities and Colleges, 2010; Leslie and Mac Taggart, 2008; SCOP, 2006) and many universities and higher education institutions publish their own training guides for their board members, chairs and CEOs (University of West London, 2018). In the USA, the Association of Governing Boards of Universities and Colleges (AGB) has taken a leadership role in providing guidance on almost every aspect of university governance and has paid particular attention to the ethics of trusteeship and meeting public expectations (Leslie and Mac Taggart, 2008). Apart from the duties of the board, modern governance increasingly depends on how relationships and the exercise of power (politics) between different agencies and personalities within the university work (Rytmeister and Marshall, 2007). In such circumstances, Sonnenfeld's (2002) call, based on a stewardship theory, for the importance of the human element is important including - the creation of a climate of trust and candour; fostering a culture of open dissent; utilising a fluid portfolio of roles; ensuring individual accountability; and evaluating the board's performance. Consequently, good governance does not only depend on structures and systems, but also on ethical behaviour of

board members which should be clearly defined and articulated with the best practice utilising publication for general consumption.

When applied to the PCM, all the countries I have studied have generic objectives that are focused on the delivery of vocational/professional legal education to produce lawyers within an empowering provision to allow the Councils to do all that is necessary to achieve the stated objectives. This last provision would allow the Councils to articulate policies and regulations as well as establish procedures which would define how it intends to operate similar to principles enunciated by the Committee of University Chairs (Committee of University Chairs, 2020). This would be especially useful, for instance, in multicampus universities where policy needs to be clear across various campuses which have local circumstances to address. Unfortunately, I could find little material in the statutes, policy documents or critical writings that could point me to such governance policies. In relation to New Zealand, however, Wilson (2019) does comment on the seeming failure of the deans on the NZCLE to be proactive in the debate of the impact of managerialism on the delivery of critical legal education commenting that these deans *"... have accepted the inevitability of the changes and have not provided an opportunity to collectively evaluate their influence on legal education."* (p. 626). This comment is significant in light of the observation I make infra at section 5.2 concerning representation of internal and external stakeholders.

In the case of Kenya, its KCLE has a Strategic Plan 2014-18 which has been published (Council of Legal Education, 2014). In 2019 the Council advertised for a consultant to *"review the CLE 2014-2018 Strategic Plan, Evaluate Key Result Areas, Strategic Objectives, Key Performance Indicators/ Monitoring Outcome, Responsibilities, Timeframe, achievements (successes/failures), challenges, lessons learnt and submission of the detailed report."* (Council

of Legal Education, 2019, p. 2). However, there has been no further commentary regarding the implementation, effectiveness, analysis or recommendations of this Strategic Plan. In fact, it is not clear whether such a consultant had been actually engaged or not. Muchiri (2020) sees the KCLE as being responsible for ensuring that regulation of legal education progressively advances the objectives and expected outcomes of legal education in the Legal Education Act 2012 while keeping pace with changing circumstances regionally and internationally. However, he believes that the KCLE has not measured the impact of regulation in legal education which has prevented it from developing appropriate regulations, standards or policies especially in relation to curriculum, teaching and learning methods, remedial programmes and overall strategy relating to the direction and standards of legal education and training.

Unfortunately, except for the Caribbean (for which this study hopes to lay a foundation (see Chapter 5), I could find no independent data, apart from the legislation, which further articulate these powers or the mechanisms by which these Councils plan to exercise them. In none of these countries have I found a Code of Conduct for Council members nor have I found any policy document/s that deal with any of the issues advanced by the American Council of Trustee and Alumni above (Schmidt, 2014). This failure in itself, points to a lack of transparency and accountability on the part of the institution to the public (see section 5.4 infra).

### 3.5.2 Features of the Governing Board

Board effectiveness consists of several factors such as - the selection process of its members; the number of members; the nature of its membership; the qualifications and expertise of members relating to the objectives of the institution; the stakeholder interests of members; the training and orientation of members to the responsibilities of their office and the institutional

mission; frequency of meetings; devolution of functions to sub-committees; and their relationship to each other and to the CEO. With increased managerialism in governance, there has been a trend towards a reduction in the size of councils, a diversity of stakeholder interests tending to distract from institutional mission towards stakeholder self-interests, together with a concomitant increase in the number of meetings (Fielden, 2010).

**Selection and Composition:** Saint (2009), in a study of 132 universities in 74 countries noted that university governing boards have great diversity regarding their size, configuration, mandate and procedures. These choices often determine whether a board will be autonomous, responsive, innovative, conservative or have elements of these characteristics. Selection of board members is also critical depending on the nature of the institution so that under a purist shared governance model, most members are elected by various internal constituencies inside the university. In Saint's (2009) study, he found that there were generally four ways of appointing external board members which are rarely applied literally but in combination with each other. These are appointment by (a) the Head of State directly; (b) the Minister of Education; (c) a formula whereby various stakeholders or constituencies elect representatives on the board; and finally, (d) board members may choose their own replacements through a self-perpetuating process. By virtue of the nature of the selection process, Saint (2009) also found that while board members were encouraged to act in the best interest of the institution, they were torn by their loyalty to the stakeholder interests which selected them.

All PCMs under review use the formula at (c) above with stakeholders coming from governments through their respective Attorneys-General, members of the judiciary, representatives of the legal profession and members of external faculties of law (from outside the Council). None of them have representation from internal faculty. Neither the presence of

faculty deans in the New Zealand model nor the Director in Kenya can be said to be faculty representation as they seem to be operating more in their administrative capacity than in representing faculty/academic interests. The expansion of the PLSC to the College of Law creates another stakeholder in this system yet neither the National Director nor the College of Law is represented on the NZCLE while the six deans of law faculties which are not internal stakeholders are. It is a further curiosity that the Chief Executive is a member of the Council and so the IPLS may claim some indirect representation on the Council – a privilege which is not accorded to the College of Law. This contradicts the fundamental tenet of fair and equitable treatment on which democratic governance is based. According to Asher (2011), the College of Law attracted slightly more than 50% of students enrolled in the PLSC. Despite this, the College of Law does not have a single place at the table of the NCLE while six law school deans do. It may well be argued that the College of Law has a greater right to be represented than the IPLS or even the deans of the law schools whose interests can well be represented by one of their number. There are some parallels on the issue of representation of the College of Law with the situation in the Caribbean concerning the UG, the prospect of the University of Technology (Utech) in Jamaica seeking to offer the LEC; and graduates of the external LL.B. programme from foreign universities who are stakeholders in vocational/professional legal education but are not represented. This issue is discussed more fully in section 3.2 of Chapter 5.

In many institutions, **both students and faculty** still play an active role depending on the governance structure of the institution (Bartley, Dimenäs and Hallnäs, 2010). Not only are students legitimate stakeholders, but their involvement creates a link between university administrators and students - encouraging an appreciation of other's point of view thereby reducing friction (Committee of University Chairs, 2020; Obiero, 2012). It is worth noting that a

study of student participation in university governance in Kenya found that, in theory while university charters allowed for student participation through all governance sectors, in practice students were more visible in lower levels of decision-making in both public and private universities. The researchers were of the view that while in principle the system encouraged democratic governance, in practice they leaned towards an authoritative paternalistic model of governance (Mulinge, Arasa and Wawire, 2017a). When applied to the PCM, it can be clearly seen that in relation to Kenya and the Caribbean, there are no student representatives on their councils, but it is unclear (due to lack of information) as to whether there is such representation lower down in the Kenyan system. If there is (and this may only occur at the level of the KLS) then Mulinge's observation about the participation of students in the governance structure may only apply at that level as with his findings with other higher education institutions in Kenya. The issue of student participation in the Caribbean will be further discussed in Chapter 5. New Zealand, on the other hand, does provide for two student representatives on its Council although there is no evidence of their participation in the process or how information is transmitted down to the various colleges which are affected by the Council's decisions.

Included in modern university boards is the **presence of lay persons.** Increasingly, as the university gets involved in the society and impacts its environment, it is important that institutional governance is aware of its effects on and the desires of the community in which it operates (Dearlove, 2001). Consequently, the involvement of lay persons on university boards has become important. In the UK, it is now accepted that university councils should have a lay majority, meaning a majority of members who are not staff or students of the university but will typically include officers of the university, members appointed by the court, members appointed by the senate, co-opted members, local authority representatives, elected staff members and

student representatives (Committee of University Chairs, 2020). While such representation is important, it is critical to articulate the stakeholder interests they represent and ensure that their role is clearly defined to maximise their participation and effectiveness (Hogg and Williamson, 2001). If one were to adopt an agency perspective to the selection of board members, then there should be a certain percentage of board members who would have expertise or experience in the skills needed in higher education such as technology, financial and human resource management and pedagogy that can hold the academic and administrative elements of the institution accountable. However, if one were to take a stakeholder approach to governance, then the board should reflect all internal (faculty, students, staff, unions) and external stakeholder interests (government, business, community). The modern presence of lay persons on boards may also be reflective of the stewardship approach which broadens the network of interests of the university to create a sustainable environment in which the university can flourish. Of the three jurisdictions under review, only New Zealand has lay representation on its Council.

Regarding the **size of the board**, it has been found that this can affect a board's flexibility and efficiency. In Saint's (2009) study, he found that in countries such as Austria, Cambodia, Chile and Malaysia board sizes were less than ten while in countries such as Argentina, Brazil and Spain there could be boards comprising fifty members or more. The trade-off in opting for one approach or another tends to be between breadth of representation and diversity of viewpoints on the one hand, and cost-efficiency and homogeneity of perspective on the other. Of the PCM countries I have studied, there were seventeen (17) members on the NZ board, eleven (11) members on the Kenyan board and forty-two members on the Caribbean board. The Caribbean board is an outlier because each of its thirteen jurisdictions has to have representation from its Attorney-General, judiciary and legal profession. If it were to be

considered as one jurisdiction and there was one representative from each stakeholder group (where there is currently one representative per group), then by its size would be a minimum of eight (8) members making it the smallest Council in the group. When the number of members in these jurisdictions is compared to the numbers discussed above in other sectors of higher education internationally, it seems that the PCM has opted for a conservative approach on the issues of diversity of viewpoints and the breath of representation. In relation to the Caribbean which has greater numbers on its Council, such numbers still speak to a homogeneity of perspective with no greater diversity in representation even for stakeholders like the UG, whose graduates have some level of access to the Council's law schools, or the non-UWI law schools whose graduates do not have any right of access to the Council's programme but are yet more numerous in number than UWI applicants.

Another element of board efficiency is the **frequency of its meetings**. Fielden (2010) found that in the UK only three meetings a year were considered necessary while in the US the AGB suggests that there should be ten meetings a year for public universities. Saint (2009,) found that *"frequency of required board meetings can give an indication of which role is expected for a board and how closely they may be monitoring institutional performance."* (p. 11). In cases where boards met once a year, it was found that they mainly received annual reports and approved the next annual budget while, where they were required to meet perhaps six times a year, they were more involved in the main activities of the institution. Saint (2009) also noted that governing boards in Argentina, Colombia and Mauritius are required to meet on a monthly basis suggesting that they may be playing a more executive function than a governing one. He notes that in the US, boards generally meet four times a year. In Canada, university boards have six regularly scheduled meetings annually (Chan and Richardson, 2012). Of the

PCMs I have studied, I have found that the NZ and Caribbean Councils are mandated to meet at least once per year (it should be noted that the NZCLE met twice in 2018 according to its 2018 Annual Report) while the KCLE is mandated to meet four times a year (perhaps attributable to its wider mandate). It would seem that based on the literature explored in this area, the PCM seem to take a hands-off approach in relation to governance in favour of executive action.

**Training and Orientation:** In situations where there is a constant or rapid turnover of board members, many countries have opted for training and orientation programmes for new board members. Michael and Schwartz (1999) find that the criteria and orientation process for Board selection is pivotal to the Board's effectiveness which can lead to two outcomes (a) poorly selected board members cannot be improved by a good orientation process; and (b) potentially excellent members can be underutilised if there is not a robust orientation process to acclimatise them to the Board. In Canada, Chan and Richardson (2012, p. 47) found that *"as new board members are recruited, formal orientation and continuing educational programs are put in place to assist board members and the board to fulfil their roles and responsibilities with updated information on university affairs."* Unfortunately, I have found neither a requirement for training, nor orientation, nor information, nor critique regarding the training or orientation programmes for council members of the countries under review except for the Caribbean which will be dealt with in Chapter 5.

### 3.5.3 Committee Structure

While ultimately all power rests in the Council, that body cannot, on its own, manage all the complexities of modern university life and there has been a need to delegate its powers to committees comprising both internal and external members who may have expertise in the areas

assigned to the committee. I have selected three of the most important committees which are common to virtually all universities and institutions of higher education to get a sense of their operation to form a basis for comparison with the PCM. They are the Executive, Academic and Audit Committees.

*The Audit Committee*

Most modern tertiary institutions are required by statute or their own internal policy framework to establish such a body and many outline its composition and functions (Committee of University Chairs, 2008). It should be a small, authoritative body consisting of at least three members of the governing body who do not have an executive responsibility for the day-to-day management of the institution - nor should they serve on any of the institution's committees dealing with planning, finance or resources. At least one member of the committee should have a background in finance, accounting or auditing, and the committee should be able to co-opt members with particular expertise. It should have the financial expertise to rigorously examine the institution's finances, spending practices, detect any indication of corruption or fraud, and must be prepared to make recommendations for the more efficient use of the institution's resources which includes the effectiveness of the institution's risk management, control and governance arrangements, and the arrangements to promote economy, efficiency and effectiveness (Committee of University Chairs, 2020). In a recent report on the role of audit committees in UK higher education, the report found that (a) Only 82% of universities had such committees. (b) Levels of accountability and transparency were generally low among members together with an inconsistent understanding of their monitoring and oversight functions. (c) While understanding of risk management was well-established, how it was applied varied greatly. (d) Organisational understanding of the audit committee's effectiveness was either

informal and symbolic. (e) The extent of the committee's influence on their institutions varied with more focus on regulatory compliance and less on core academic activity (provision of courses, portfolio of offerings, efficiency in use of academic staff time and delivery of courses) (Ntim, Soobaroyen and Broad, 2017).

It is to be noted that I could find no evidence of an audit committee in any of these jurisdictions as part of their formal structure. It is always open to any Council to establish such a committee. However, the failure to reference such a committee and the lack of discourse on it in any of the scant literature in any of the jurisdictions suggests that there is no such committee. An examination of the KCLE'S Strategic Plan shows no reference to an audit committee or to an Executive or Academic Committee. The functions of such a committee would be critical to effective governance for public institutions. NZ only seems to have a financial audit which is supervised by Audit NZ (New Zealand Council of Legal Education, 2018). Under Kenya's Legal Education Act (section 28 (2)), the Council is required to submit its accounts to the Auditor-General together with relevant financial statements. Regarding the Caribbean, its Council is required to keep accounts and have them audited annually by an independent, qualified accountant. It is suggested that an audit committee that annually oversees, not only financial compliance, but performance alignment to institutional objectives is critical for these institutions once they learn from the lessons and correct the deficiencies identified in the systems discussed. I would like to suggest that despite the criticisms made by Ntim, Soobaroyen and Broad (2017) above, a properly functioning audit committee will be extremely valuable to the PCM which is emerging, employing a new system of governance that has not been tried and tested and, therefore, needs a structural, dedicated mechanism to hold it to account financially, administratively and academically to its mission and purpose. The absence of such a committee

and the benefits which it can bring to the institution leads to deficit on the issue of transparency, accountability and ultimately trust in the system.

*The Executive Committee*

While the Executive Committee is a critical element in university governance, there is not much literature devoted to it. Many of the handbooks and guides on board governance may mention this committee in passing (Alleyne et al., 2006) (University of Scranton, 2018) or not at all (University of West London, 2018) but almost every university has such a committee (also known as a steering committee). However, we know from corporate practice that the purpose of this committee is to manage the day-to-day activities of the institution through strategic and operational planning, policies, procedures and budgets. It is also required to drive and monitor the institution's operation and performance as well as prioritise the allocation of its resources. It would seem, therefore, that in the absence of an audit committee, the executive committee has to be tasked with this responsibility. The American University has a clearly-articulated and accessible description of its executive committee which is useful (American University, 2020). Its committee is comprised of the Board Chair and Vice-Chair, Academic Affairs Committee Chair, Finance and Investment Committee Chair, Audit Committee Chair, two at large trustees and the President who is a non-voting member of the Committee. It is appointed by the Board to exercise the powers of the Board between its regularly scheduled Board meetings except those functions reserved exclusively for the Board. Included in its functions is the power to ratify an action that is needed to protect the university's interest which would be compromised by delay and any action that is administrative in nature, necessary for the university's efficient functioning and does not compromise any significant interest or prerogative of the Board (American University, 2020). This committee is one more pillar in the edifice of accountability and

strategic planning that is expected of good governance. Consequently, there has to be good synergy between it and the Audit Committee (Al-Matari, Al-Swidi and Fadsil, 2014). This merges effectively into the supervisory role of the Board or Council (Al-Matari, Al-Swidi and Bt Fadsil, 2014).

NZ does have an Executive Committee comprising the Chair, the Chief Executive of the Council and two other Council members (New Zealand Council of Legal Education, 2020). However, the report does not give any further information on its functions. The Caribbean system does include an Executive Committee along the lines discussed above relating to university structures. This is explored more fully in Chapter 4. This is another area in which critical research is needed by researchers closer to these areas of activity.

*The Senate or Academic Committee (AC)*

While legislatively the Council was the dominant governing body of the university, the traditional driver of university activities was the Academic Committee (AC) or Senate dominated by its faculty. This was premised on the academic programme being the primary determinant of the university's existence and, consequently, determined its direction (Shattock, 2012). The traditional role of this committee is, among other things, to determine academic policy and strategy, academic standards, quality assurance and programme and course approvals.(Rowlands, 2013). It is also responsible for the promotion of research, appointment of examiners, policies and procedures for assessment, criteria for admission and student discipline (Committee of University Chairs, 2020). Based on the collegiality principle, traditionally, all faculty members were once entitled to membership of this Committee. However, through greater managerialism and the diminution of its power, membership has shrunk (Fielden, 2010). Increasingly, there is a demand for faculty governance to re-engineer itself to a model that focuses on the knowledge

society and monetising its vast amount of knowledge capital towards an income-generating machinery (Kwiek, 2008).

It seems that while the NZCLE has been given the authority to operate training institutions to provide professional training, it has decided to do so through the IPLS and the College of Law. It does not, therefore, seem to have the same responsibilities as a higher education institution because it operates effectively as a licensing and accreditation agency as can be seen from its committee structure. The only traditional committee it has is an Executive Committee which oversees the IPLS reporting to the Chief Executive. One curiosity is that the IPLS does not have an AC and much of the work done in developing curricula and standards is done by part-time consultants (New Zealand Council of Legal Education, 2018). This may be due to the nature of the teaching programme which is between 13-18 weeks, employing part-time practitioners and operating from various locations. From a stakeholder theoretical perspective, it would seem that the College of Law which is a critical and primary stakeholder in legal education does not have the same or any representation that may be equivalent to that of the IPLS which seems to have an unfair advantage over it. Further, when compared to the status of the College of Law, the role of the IPLS and the NZCLE seems somewhat incestuous. There is no independent critique of these arrangements though there are periodical reviews commissioned by the NZCLE. This may also constitute a fruitful area of comparative research to determine the efficacy of the NZ system which is conducted over such a short period with part-time lecturers with online options versus similar PCM programmes of longer duration (9 – 24 months) with permanent, full time staff.

With regards to the Kenyan system, because the KCLE has much broader powers, its committee structure is much more robust. But again, because they do not have operational

control over the Kenyan Law School, they, like the NZCLE do not have the academic structure of the traditional university and consequently, there may be no need for an AC. It is unclear from my research whether there is an AC for the KSL as I could find no reference to one in the parent Act or in its Strategic Plan 2018 – 2022 (Kenya School of Law, 2018). It is suggested that more research needs to be done in this area. The KCLE is, however, the accrediting agency for the KSL and therefore, should be able to exercise some quality control over the academic programme of the KSL. Sitati (2017) notes that the Kenyan CLE has established a department dealing with quality assurance, licensing and curriculum development although he does not provide information on how it performs its functions. There seems to be a lacuna in this area especially in the absence of any apparent quality control mechanism at the level of the KSL. This is another issue in need of critical research.

### 3.5.4 Transparency and Accountability

In a survey done by Rothchild (2011), he found that accountability was delivered through strategic planning, state funding, institutional accreditation and system. I have also mentioned the role of the Audit Committee in ensuring accountability for the financial affairs of the institution. However, modern governments rely on the articulation of institutional strategic planning and review to ensure that the institution has clear strategic and measurable outcomes in terms of how it pursues its mission and achieves desirable outcomes. Quality assurance mechanisms and review by independent accreditation agencies also provide accountability for academic performance and standards.

*The Principles and Practices of Institutional Transparency*

Based on the maxim that 'sunlight is the best disinfectant" there has grown, particularly in the USA, a movement towards mandated openness in governmental activity based on sunshine laws which are statutes that mandate openness and transparency to the public and stakeholders of all information relating to the institutions to which they apply (Cleveland, 1985; McLendon and Hearn, 2010; Singell, Stater and Tang, 2018). Applied to public higher education, they tend to promote academic honesty, fiscal soundness, institutional effectiveness and equity in decision making. They also impact every material part of campus life including board deliberation, presidential search and selection, policy formulation and resource allocation (McLendon and Hearn, 2006, 2010). A critical challenge of the impact of sunshine laws is balancing the public's legitimate right to know, protecting individual privacy, and serving the public good where institutions have to thread carefully. In other countries, while sunshine legislation may not be specifically enacted, the demand for transparency in governance takes other forms. In Germany and Australia benchmarking is used to compare their national higher education laws to find the best practice and in OECD countries, a common practice is to publish governance arrangements. In the UK and Ireland, higher education institutions are required to employ self-monitoring procedures that make their own performance visible every five years (Hénard and Mitterle, 2010). In the UK, there are clearly articulated Principles of Openness and Transparency in the Operation of Governing Bodies that prescribe (a) Students and staff of the institution should have access to information about the proceedings of the governing body; (b) The institution's annual report and financial statements should be made widely available outside the institution with mechanisms for the public to comment on them; (c) The annual report should include key information to a common standard including material on governance; (d) Governing bodies

should review both their own effectiveness and the institution's performance at regular intervals and report within and outside the institution. (Committee of University Chairs, 2020).

Further, the difficulty in finding any literature on how these governance systems work in all three jurisdictions points to a failure to implement the Principles of Openness and Transparency in the Operation of Governing Bodies (Committee of University Chairs, 2020) relating to transparency such as the unavailability of the institution's annual report and financial statements and the lack of published periodic self-assessments of the governing body's effectiveness and the institution's performance. These basic tools are the foundation upon which a vibrant critical body of literature can be built. It is therefore suggested that greater effort needs to be made by these institutions in implementing these systems and providing the relevant information. As already noted, the NZCLE does produce an annual report which is to be transmitted to the Minister. However, this requirement does not meet the standards of public accountability to all stakeholders because there is no mandate for publication as discussed above. Commendably, the NZCLE does see fit to publish its annual reports and regulations on its website but critical reviews which inform its decisions are missing and cannot be located on an electronic search such as the 2003 and the 2013 Review (both extensively referenced in its annual report (New Zealand Council of Legal Education 2020). A granular examination of its annual reports from 2014 to 2019 shows a generic framework within which these reports are modified from year to year. There has been no strategic plan for the Council during these years and there is no evidence of any strategic plan prior to this period. Consequently, while the reporting requirement is a good start unless it is accompanied by a strategic framework within which its effectiveness can be viewed, it still leaves more to be done to ensure these new governance models fulfil their objectives.

*Strategic Planning*

Going back as far as 1999, many in higher education realised that higher education needed strategic planning to survive in light of the increasing demand for higher education, reduced government funding, changing student demographics and the need to adapt to new models of higher education. While not explicit, strategic thinking has always been an integral part of university governance depending on the nature of the institution going back to medieval times and adapting based on the character and location of the institution (Bratianu and Pinzaru, 2015). In a review of strategic planning as a business concept adapted to university governance in its early years, Lerner (1999) identifies the following benefits of this process as (a) creating a framework for determining the direction a university should take to achieve its desired future; (b) providing a framework for achieving competitive advantage; (c) allowing all university constituencies to participate and work together towards accomplishing goals; (d) encouraging reflectivity and creativity among participants on the past and future direction of the institution; (e) allowing the dialogue between the participants, improving understanding of the organisation's vision, and fostering a sense of ownership of the strategic plan, and belonging to the organisation; (f) aiming to align the university with its environment; and (g) allowing the university to set priorities.

Unique aspects of strategic planning for higher education that are different from a business model is that it is normally contemplated for five years; is built around stakeholder consultation and consensus in keeping with collegiality traditions; and seeks to foster institutional values (Lerner, 1999). Strategic management and planning have their foundation in the mission and vision of the institution and are designed to create a system that ensures adherence to the objectives and values articulated in those statements (Özdem, 2011). These

statements are, therefore, invaluable to guide leadership (top management, principal and faculty) of the organisation in ensuring that all strategic planning, policy formulation, action plans, as well as its systems for evaluation and monitoring of these activities are guided by these values and aspirations (Aithal, 2015). In a recent study of the impact of strategic planning at the College of Business Administration in King Saud University (KSU-CBA), Saudi Arabia, the authors found that internal stakeholders had positive perceptions regarding the value of strategic planning as important particularly when it involved as many stakeholders as possible. Further, it was most useful in incorporating institutional goals into departmental objectives. Finally, while it might be difficult to implement fully, it had positive impact on the image and identity of the institution (Nataraja and Bright, 2018).

When these principles of strategic planning are applied to the PCM, there is no requirement for, nor does there seem to be a movement towards, strategic planning for the NZCLE itself although it does have what it calls "strategic HR plans" which it is constantly refining (New Zealand Council of Legal Education, 2018, p. 35). The KCLE has a Strategic Plan 2014-2018. However, I could find no commentary on its implementation and effectiveness so my commentary on the need for implementing these systems of reporting stands. In fact, the Council advertised for the appointment of a consultant in 2019 to review the work of the Strategic Plan but I could find no more information on this initiative, nor could I find a follow up Strategic Plan following 2018. I will address the Caribbean situation in Chapter 4.

*Quality Assurance (QA)*

The real measure of an institution's effectiveness is whether the institution can fulfil its institutional mission and respond to the increasing demands being placed on it (Aghion, Dewatripont, Hoxby, Mas-Colell and Bas, 2010). In this regard, the importance of modern

quality assurance systems cannot be overstated and provide a critical measure to determine whether an institution is fit for such purpose. In this way, it forms another measure of accountability on which governments rely, not only to meet national goals but also to engage their nationals on the international market for services in a globalised world. Internationally, the move towards quality assurance systems in higher education has caused national accreditation boards and stakeholder interest groups to articulate various standards to be reached by national institutions to be accredited (Billing, 2004) and their graduates recognised (in many cases, as a precondition to funding). They include setting standards for institutional governance and policy-making (Hénard and Mitterle, 2010). QA is also critical to establish certainty and validity of standards across a multi-campus institution such as the CLE (Dao, 2015). At the heart of quality assurance in the development of higher education in an era of change is the issue of governance (Kennedy, 2003). Governance responsibility is placed in the highest body of the institution which, either by legislation, the institution's charter or founding instruments, defines where ultimate governance and management of the institution reside. In most countries, quality assurance councils have articulated what are acceptable standards for governance and administration. There are specific and standard responsibilities which are expected of them (Areen, 2010). Consequently, these standards are critical in measuring governance and management arrangements in the absence a well-developed literature of critique in the area.

Further, they provide an international guide on best practices which allows graduates from different systems the potential to move and offer their services and expertise across different education systems once the requisite international agreements are in place such as the GATS. Such measures are highly adaptable and even provide measurements for the quality of the student experience (Gift and Bell-Hutchinson, 2007), vocational university governance

(Nugroho and Surendro, 2005), professional bodies (Webley, 2010) and legal education (Fadsil, 2004).

A review of the annual reports from NZCLE suggests that there are elements of a quality assurance system that are in place to monitor the Council's programme. It does so through its regulatory framework and committee structure. Its Professional Legal Studies Course Assessment and Standards Regulations 2002 sets out the aims of the programme and course content with the usual information on course outcomes, delivery and assessment methods and the weighting of components within the course. The Professional Legal Studies Course Accreditation Regulations 2002 (reviewed in 2006) deal with the accreditation process for providers relating to financial viability, proposed teaching methods, staff and related matters together with detailed monitoring provisions. The Accreditation committee is charged with providing recommendations to the Council on all providers and the status of their programmes. I could find no formal structures for the KCLE although the enhancement of quality assurance is a recurring theme in the Strategic Plan 2018–2022 of the KSL. It is also clear that the Council does have the regulatory role as the accreditor for the KSL and, thereby, can set quality standards (Sitati, 2017; Muchiri 2020). I have already commented on Muchiri's (2020) observation that the KCLE has not fulfilled its duty to provide an adequate regulatory framework for a variety of issues they are required to supervise (see section 5.1 above). A difficulty arises with Muchiri's (2011) critique of the KCLE because of the very great purview it has, not only over the KSL but also all law schools and legal education programmes in Kenya. Muchiri (2020) focuses a great deal of attention on the inadequacy of the university law school programmes which feed into the ATP and the KSL but does not adequately treat the KCLE's relationship with the KSL. This is

understandable in light of the fact that the university schools comprise the majority of the institutions under the KCLE's jurisdiction.

I will address the situation of the Caribbean CLE in my Chapter 5 analysis and apply the learning discussed above to the various themes arising in that review.

### 3.5.5 Institutional Leadership

Institutional leadership is more than simply the roles and responsibilities of Chairman and CEO. It often involves the effectiveness of the working relationship between the CEO and the Chair and the Board who have a critical role to play in his/her employment and tenure (O'Meara and Petzall, 2007). However, I shall restrict this discussion to the institutional roles of the Chairman and the CEO.

*Chairman*

The chairman of the board of governors is normally appointed by the board from an election among its members. Where legislation incorporates a public institution, it may designate a person holding a specific office to be the chairman, as in the case of the NZCLE. The chairman is responsible for the management of the council and to manage its meetings effectively in accordance with all statutes, regulations and policies which may be designed for that purpose. It is critical that the chairman work with the CEO to ensure that there is a merger between policy formulation on the one hand and its implementation and review on the other hand. Consequently, the chairman must be careful not to involve himself in the executive operations of the institutions and usurp the functions of the CEO (Committee of University Chairs, 2020). While the above reads like the resumée of the Chair, organisational politics often plays a great role in ascribing to the Chair more influence (as might be expected) to make

governance effective (Bott, 2007) such that a study examining the functions of the Board to appoint a university president found that the Chair exercised a predominant role in the selection process (O'Meara and Petzall, 2007). From a more practical perspective, the governing body may delegate authority to the chairman to act on its behalf between meetings on routine issues which would not have merited discussion at the board meeting. Where such delegation occurs, it should be defined in the governing body's standing orders. (Committee of University Chairs, 2020). Here again, due to lack of information and critique of institutional governance arrangements of these respective institutions, there is little to go on regarding how effective leadership systems operate in PCMs.

*President (CEO)*

The chief executive officer (going by several names such as provost, vice-chancellor, director) is also critical to the governance of the institution as he sits on the Council and interacts with its members. The role of the CEO and his relationship with the Board and its Chairman is critical to the functioning of the Board and the effective management of the university. The President (CEO) is normally responsible for:

a. making proposals to the board of governors about the educational character and mission of the institution, and for implementing the decisions of the board of governors;
b. the organisation, direction and management of the institution and leadership of the staff;
c. the appointment, assignment, grading, appraisal, suspension, dismissal, and determination – within the framework set by the board of governors – of the pay and conditions of service of staff other than the holders of senior posts

d. the determination, after consultation with the academic board, of the institution's academic activities, and for the determination of its other activities;

e. preparing annual estimates of income and expenditure, for consideration by the board of governors, and for the management of budget and resources, within estimates approved by the board of governors;

f. the maintenance of student discipline and, within the rules and procedures provided within the articles, for the suspension or expulsion of students on disciplinary grounds and for implementing decisions to expel students for academic reasons (Committee of University Chairs, 2020).

The CEO also has a responsibility to the governing body to (a) implement its decisions through the relevant institution's management structure; (b) initiate consultation with stakeholders concerning the institution's future and report proposals to the governing body; and (c) fulfilling the obligation as what would equate to the responsibilities of the chief financial officer to alert the governing body of any actions or policy which would be incompatible with any relevant financial policies (Committee of University Chairs, 2020). Saint (2009) suggests that the role of a university's CEO is defined in direct relationship to the role of the governing board. He further suggests that weak boards produce strong institutional leaders with the converse being true. In determining the strength and influence of a leader's position, Saint (2009) points to four indicators – (a) the process of selection and the accountability relationships that arise in that process; (b) the extent of the leader's control of the institutional agenda by chairing the main decision-making committees; (c) the leader's power to appoint subordinate management staff; and (d) the institutional model involved in making critical institutional decisions – whether it is collegial and spread out among the constituent elements of the

institution or whether it is more managerial and focused on a small management team headed by the leader. Finally, Saint (2009) offers an innovative management style such as the three-person Executive Board in The Netherlands that brings a corporate team approach to management. Saint seems to focus his discussion on institutional leadership exclusively on the CEO and does not address the role of the Chairman of the governing board and his description of the administrative position of a strong executive chairing committees often flies in the face of the statutory requirement of the Chair of such bodies taking these governance roles.

Unfortunately, I have not been able to come across any literature which deals with issues of leadership selection or the roles of the CEO and chairs of these PCMs. The issue of institutional leadership is one which needs to be reviewed with a new lens when more concrete research is done in this area especially the relationship between the Chair and the CEO in light of the institutional culture. An approach based on an agency theory of governance may demand a strong board and a CEO who does not have much initiative whereas a stewardship or stakeholder's approach may give the CEO more leadership and initiative to work towards the good of the entire organisation. This is an area in which further research is required.

### 3.6 Conclusion

The above discussion demonstrates that regardless of the historical vintage, geographical diversity or institutional culture, IVPLEs face traditional challenges in their governance system due to the several factors which make them unique as well as the modern disruptions that threaten their existence and demands not just a change in structure but a new mission which I described in Chapter 2. At the heart of their challenge is the duty of transparency and

accountability which is common to both IVPLEs and PCMs. In the following chapter, I will discuss the approach I took in pursuing my research and the factors which shaped it.

# Chapter 4: Methodology

## 4.1 Introduction

To gain a better understanding of evidence-based practices in higher education governance and legal education, the previous chapter, presented the literature related to mission and governance in higher education and IVPLEs. This methodology chapter is outlined beginning with my positionality and reflections as an insider researcher. Next, I provide an explanation of the methodological approach used for data collection and analysis. In doing so, I provide a detailed rationale for selecting a case study and a discussion of the limitations of case study research. Afterward I describe in detail the procedures for participant and document selection. I end the chapter by describing some of the challenges I encountered during the research process.

### 4.1.1 Research Questions

To determine whether the governance system of the CLE was adequate to respond to change, I focused on answering the four research questions that guide this research.

1. Has the original mission of the CLE changed over the last 50 years?
2. What are the drivers of change in the governance and administrative system of the CLE?
3. What are the barriers to change in the governance and administrative system of the CLE?
4. Is the governance and administrative system of the CLE capable of fulfilling its current missions in light of an ever-changing environment?

### 4.1.2 Positionality

As a researcher I wanted to be objective in my methodological approach but found great difficulty ignoring my lived experience and institutional knowledge of the CLE as well as knowledge and experience gained externally. While exploring the literature on designing research and reflecting on my position as a researcher, I learnt that even pure scientific research is not totally objective and dispassionate of the researcher (Griffith, 2010). Galt (2008) explains that any instance of social inquiry is based upon the dual fundamental principles of the researchers' ontological views of reality and epistemological understandings of knowledge and values that make them who they are. This understanding helped me embrace my ontological position that I needed to be part of this research and not independent of it. The process of exploring the literature and reflection on my research position led me to discover that I am a pragmatist. Creswell (2013), discusses pragmatism as research that focuses on practical implications, emphasising research to find out what works. This research is aimed at finding out how decisions are made, how they are implemented and their implications. In search for what works Patton (2002) states pragmatics favour appropriateness of methodology over orthodoxy when judging methodological quality. My review of the literature indicated to me that there were several novel areas of research which had not been previously explored, for example, a critical analysis of the governance and administration of IVPLEs. Further, what I now term to be the PCM was not identified as a distinctive governance model for legal education. In searching for an appropriate way to approach this research, I opted for using the existing literature as a general guide but at the same time, using a logical approach to sorting and analysing the data as it presented itself. I believe that what has resulted from this exercise is a framework of analysis for the PCM which has not existed previously, and it allows for a more critical analysis of this new model.

### 4.1.3 Insider Research

Understanding my positionality made me more conscious of my insider research status (Costley, Elliott and Gibbs, 2010). As an insider, I felt I was in a unique position to study the governance and mission of the CLE in depth with access to people and information that could inform my research. This was not the case. Early in the research process I reviewed literature on the matter of insider researchers to better understand the protocols that should be observed. According to Saidin and Yaacob (2016) the insider researcher has the benefit of understanding the issue being investigated, the ability to flow with the social context and to extract data from participants because of the level of familiarity. Conversely, Smyth and Holian (2008) caution that the position of the researcher in an organisation may also act as a constraint, limiting who is willing to participate and what is revealed. I found this to be true in my case as I had difficulty in getting responses from persons to whom I had access but who presented different excuses so as not to participate. I believe there was some suspicion that the research would be critical of the CLE and they did not want to be seen as being associated with it. I was also cautious of the inherent risks and perceived bias that the researcher is being either subjective or generating questionable research objectives (Savvides et al, 2014). I found this to be also true because of my critical writing and positions on governance and curriculum review since I became a member of staff.

The familiarity of the insider also has additional drawbacks, as the possibility exists for sensitive information to be revealed, or not mentioned due to assumptions of shared knowledge and experience (Turnbull, 2000). Further, the ease of access to information sometimes results in overlooking confidentiality and sensitivity (Floyd and Arthur, 2012; Smyth and Holian, 2008). I was acutely mindful of this during the research process and used various data collection methods to triangulate information. In the case of documents, I erred on the side of exclusion over

inclusion of documents to which I had access if I found that they were not publicly available to a researcher in the field. An example of how I tried to take myself out of the research was in relation to the Secretariat of which I was one of three officers. The Director died in 2008 and there was only one other officer, apart from myself, who could provide information directly from the perspective of the Secretariat. He is my key informant regarding the abeyance of the Secretariat and the only person I could find to speak to this issue. Failing his data, I would have been forced to leave the 'abeyance' of the Secretariat to rational speculation. As an insider, I was exposed to all elements of the institution – from being a member of faculty, as a member of all consequential committees on curriculum reform including the Curriculum Implementation Committee, the Strategic Planning Committee, Academic Committee and the Secretariat. While this gave me a 'front row seat' at all of the major events at the Council over the 20 years I served as an officer and access to all of the major players involved, I found that it did not serve me in engaging the stakeholders I wished to interview the most – Council members. While I felt I had extensive knowledge of the CLE, there were several new insights gained through the research process. I experienced many of the issues noted by authors about insider researchers and hold the view that while more likely to be identified as having a biased agenda, the inside researcher is still best suited to investigate an insider problem.

## 4.2 Methodological Approach

### 4.2.1 Why A Case Study

The study was both descriptive and exploratory aimed at uncovering meaning while simultaneously gaining descriptive information about the governance of IVPLEs and their various impacts on the training of lawyers. The answer to the first research question is

descriptive in that it provides information on the historical development of the governance and administrative system of the CLE over the last 50 years. The other research questions provided an opportunity for an exploratory analysis to identify barriers to and drivers of change. Given the answers to these questions, the last research question advanced the study further by exploring the adequacy of the CLE's current structure and its ability to fulfil its mission in a changing environment. It was also exploratory in that I had identified the PCM of governance and I wanted to determine whether the CLE conformed to this model and how effective the model was in reviewing the actual workings of the CLE. These research interests, according to Creswell (2009), Patton (2002) and Yin (2009), make qualitative case study an appropriate design for the research. These authors recommend a qualitative approach when the focus is on in-depth exploration of a system, a phenomenon, an activity, a process, or one or more individuals, bounded by time and activity (Creswell, 2009; Patton, 2002; Yin, 2012).

Case studies have been espoused by Rowley (2002), as a useful research approach for such endeavours to look at a phenomenon in depth and in context. Creswell (2013) and Yin (2009) describe case study as a qualitative methodological approach in which a real-life bounded system or systems are researched over time using multiple sources of information. The CLE focused on vocational/professional legal education in the Caribbean is a bounded institution and, as such, can be investigated as a case study.

Qualitative case studies begin with the intent to either illustrate a unique case (intrinsic case) or to understand a particular issue, problem or concern (instrumental case) (Stake, 2000). The CLE case was considered both intrinsic in that its approach to legal education and training is unique through the monopoly which it enjoys, and instrumental in that its governance structure and its ability to respond to change was the concern under investigation. Research questions

two, three and four sought to understand the effect that the governance and administrative structure of the CLE had on the fulfilment of its institutional missions. Other defining characteristics of case studies include the presentation of in-depth understanding of the case through multiple forms of data. In this study data were collected through archived documents, semi-structured interviews, a survey and focus groups. In selecting a case study, I was mindful of the limitations of the research approach.

### 4.2.2 Limitations of Case Study Research

According to Hodkinson and Hodkinson (2001) there are several limitations to case study research. These include lack of ease in analysing the extensive amounts of data, being expensive to implement on a large scale, not easily represented numerically, not being generalisable, and while strongest when researcher expertise and intuition are maximised, raises doubts about their "objectivity". The context specificity of case study and not being capable of general application are limitations also noted by Stake, (2002) and Yin, (2012). Additionally, while case studies generate hypotheses, Flyvbjerg (2006) notes there is difficulty in using them for theory building. While I agree with these limitations, they do not outweigh the value case studies bring to exploring a new phenomenon which could add context for later investigation. The study of governance of higher education is not new, however the study of the governance structures of IVPLEs and PCMs have not received much attention in the literature. On the issue of generalisation, Hodkinson and Hodkinson (2001) argue that ideas generated in case studies have validity that can be transposed to other studies. Taken together there are strengths and weaknesses to case studies. It is the duty of the researcher to make a strong justification for use of case study and be vigilant in sourcing the highest quality data and present solid arguments

related to the areas of investigation. These are key to all research designs and not peculiar to case studies.

### 4.2.3 Selecting Participants

Given the research questions under investigation, participants were purposefully selected. Purposeful sampling is widely used in qualitative research for the identification and selection of participants with in-depth knowledge of the questions at hand (Patton, 2002). In addition to being knowledgeable, Bernard (2002) notes that availability and willingness to participate in the research are additional features of purposeful sampling. Given that the research was focused on a bounded period of the CLE history and focused on answering questions related to mission, governance and administration, participants were selected from amongst stakeholders who were knowledgeable of the issues, available and willing to participate. Having reviewed the documents which raised questions and left gaps in information, I decided to select members of the Council of the CLE and its administrators; current or former faculty; current students and unsuccessful applicants to the CLE's law schools; and CLE graduates who were practicing law. Scheduling difficulties, geography, and lack of willingness to participate plagued the selection process. Only twelve (12) members fitting the criteria agreed to participate.

Among my interview participants were **key informants** who are individuals with special knowledge about the research subject and can bring their knowledge, either from expertise or experience to bear on the research phenomenon. (Cossham and Johanson, 2019). Trembley, (2015) identifies five criteria to make a good key informant. They must have a role in society that positions them to have access to the knowledge required; must be imbued with the knowledge themselves; be willing to share that knowledge with the researcher; to do so in an

intelligible manner; and he must be impartial with no bias or if so, it must be disclosed to the researcher. One key advantage of this approach is the quality of the data collected in a limited period. It can also be used as an isolated research technique or together with other research methods. Disadvantages include their inability to be representative of the majority view of the community; the identification of who are key informants may, itself, be misinformed; they may only provide information that is politically correct (Marshall, 1996). In my profile of interview participants, I have identified four persons I consider to be key informants. One of them did not actually participate in an interview but was willing to respond to a specific issue in writing which he alone was able to provide. I have, therefore, identified him as KI01 in my description.

## 4.3 Data Collection Methods

### 4.3.1 Documents

To answer the research questions, I found it necessary to analyse several documents. According to Stake (1995) and Yin (1994) document analysis is applicable as a research method for case studies as the method allows for rich description. According to Bowen (2009) *"documents provide background and context, additional questions to be asked, supplementary data, a means of tracking change and development, and verification of findings from other data sources"* (pp. 30-31). In this study, the documents provided rich description of the CLE. Documentary analysis allowed me to better understand the CLE in context over time utilising physical and electronic documents from the Council, other organisations and newspapers (Patton, 2002). Tregidga and Milne, (2006) refer to document analysis as a 'keyhole,' through which insights on the case being studied could be accessed. The legal documents, reports, and policies of the Council were used as a 'keyhole' through which insights were provided into the

CLE's conception of its governance model and the approaches to achieving its mission. To answer my research questions, I also needed to understand the CLE reporting and accountability mechanisms - document analysis is noted by scholars (Boomsma, 2013; Patton, 2002; Bowen, 2009) as a suitable strategy for this type of inquiry.

### 4.3.2 Interviews

To gain a better understanding of issues that arose during document analysis and to hear from actual stakeholders of legal education, I conducted semi-structured interviews. Further the interviews provided an additional data source to help answer the four research questions. This data collection method is well known in qualitative research (Creswell, 2013; Denzin and Lincoln, 2000; Kvale and Brinkmann, 2009; Willis, 2015), and considered suitable for researchers who wish to investigate participants' understanding of reality and perceptions of particular phenomena in specific contexts. In this research I was interested in exploring the participants' perceptions and understanding of the CLE's effectiveness in implementing its original mission in the Caribbean region and its ability to adapt to the changing environment.

To truly capture participants' perceptions and understanding of the CLE's response to change over time, I employed a semi structured interview protocol. This protocol was developed from the themes which emerged in the literature review and questions that lingered after the document analysis. To supplement each interview question and ensure rich descriptive responses, probes were developed. Using semi-structured questions, I was able to ensure that questions which arose from document analysis were addressed, while allowing participants to freely share their perspectives and understandings that may have differed from my own (Boomsma, 2013; Patton, 2002). A significant disadvantage of interviews which affected the

research was the lengthy time commitment for identifying participants, scheduling the interviews, conducting the interview and then transcribing the interviews.

### 4.3.3 Focus Groups

Given that students are a key stakeholder in education and there is no student representation on the Council of the CLE although the literature indicates the importance of student representation, I was interested to learn from student stakeholders their perceptions and understanding of the CLE. Thus, in addition to the one-on-one interviews, I also conducted two focus groups to gather additional data to assist in answering the research questions. Focus groups, similar to semi-structured interviews, allow for exploration of peoples' perceptions and knowledge. A key difference between the semi-structured interviews and focus groups is the ability to note the interactions between members of the group (Dudovskiy, 2018). According to Patton (2002), *"focus group participants get to listen to each other's responses and to make additional comments beyond their original responses as they listen to what other people have to say"* (p. 385). The focus groups allowed me to note, not only students' perceptions of the CLE, but also their views on student representation and the collaboration between students' groups across Law schools. The use of focus groups had several advantages. First, it allowed for multiple perspectives regarding the same problem without necessitating consensus; next it was cost effective; and third it cut down the time for multiple interviews. Additionally, I believe it enhanced the quality of the data (Dudovskiy, 2018; Longhurst, 2003; Nyumba et al., 2018; Patton 2002).

### 4.3.4 Questionnaire/Survey

Because governance and administrative structures were critical areas of research, it was important to me to get as many perspectives from members of Council as possible. However, as I approached the end of research and began to write up, I felt it important to make another effort and was directed to the questionnaire survey method. I thought that a questionnaire would be an appropriate approach to address the issue of anonymity, the busy schedules of members and collect the widest cross-section of views possible. The advantages of survey research are that it produces data based on real-world empirical data covering a wide variety and great number of persons and therefore can be applied broadly; finally it can provide a large amount of data in a short period at economic costs within a defined period of time (Kelley, Clark, Brown and Sitzia, 2003). The disadvantages include a lack of detail and depth of the topic being researched, the volume of data can be hard to analyse especially when it is done manually and the significance of the data might be lost if the research focuses too much on the range of coverage and do not give enough attention to the implications of the data (Kelley et al., 2003). I eventually opted for a questionnaire with five closed questions which covered specific areas of interest that had arisen from my literature review and my previous research data - the mission of the CLE and the impact of certain specified factors on the CLE's mission - policy formulation, implementation, monitoring and review, and financial management. The questions were designed to be answered on a Likert scale from which responses to the same question by different stakeholders could be analysed.

## 4.4 Data Collection Procedures

Data collected included documents, semi structured interviews, focus groups and a questionnaire survey. The collection period ran from May 2015 to December 2020. The

protocols and procedures for data collection were included as part of the approval of my thesis proposal.

### 4.4.1 Document Collection

To answer the research questions which dealt with mission and governance the research focused on documents that addressed CLE's origin, legislation, laws, regulations and guidelines, annual reports and official documents. Documents used in this exercise were sourced from the online library of the CARICOM Secretariat, the HWLS Library, and online. Other documents included newspaper articles from various jurisdictions; documents which were in the public domain, for example, Council regulations for students, the Strategic Plans and Quality Management Policy 2008; by direct request from persons delivering papers at CLE events; and as a result of member checks. The card indexing system of the library was used to identify relevant documents.

Bowen (2009) has stated that while documents can be rich sources of data, they must be viewed by researchers with a critical eye to determine relevance to the study, authenticity, credibility, accuracy, and representativeness. This filtered approach as shared by Caulley (1983) allows for targeted document search. The founding documents of the CLE and those that emanated from the CLE served as empirical data for this case study. To address the issue of relevance, I skimmed documents and selected only those which referenced mission, administration and governance of the CLE. I determined documents authenticity and credibility by arranging and skimming them in chronological order, noting if there was mention in subsequent documents. Additionally, I employed the assistance of the Librarian at the HWLS to assist in identifying authentic documents. By selecting documents from a variety of sources I

ensured a broad representation on the issues of the CLE's governance structure and the barriers and drivers of change. In total 80 documents were reviewed. The documents were categorised into the following five classes. Appendix 3 lists the documents used, their author, publication year, the full name and abbreviations used in the text, their class and their location.

**Class 1:** This comprised the treaty (the Agreement) establishing the CLE and other legislation incorporating the CLE into the domestic law of the participating countries. I sampled five countries to ensure that there was consistency as to how various countries went about this process. Because these documents represent the highest form of law locally and regionally, their validity, being derived from the legislative sources, is established. They are also credible in relation to their contents and form the foundation for the critique of any issue relating to the issues of mission, governance and structure of the CLE. Five documents were selected and used.

**Class 2:** These are official documents emanating from the CLE that constitute policy and operating procedures of the institution. These included its student regulations; press releases, statements, reports of internal reviews or workshops conducted by or on behalf of the CLE and the UWI that focused on its operations. It did not include other law schools or other Caribbean universities. They possessed the best credibility of what they contained after legal documents once they are certified as being authentic and the best way of doing so is by accessing them through the repository for the institution – its library. In determining their worth to this study, I looked at the contemporary nature of the document, the purpose for which it was written and its intended audience, the type of publication in which it is presented, the author (if disclosed and his or her credibility), the actual content of the document and how it measured up to the legal infrastructure and other contemporary documents relating to the same matter (if such documents

were available), and any references to other material on which the content might have been based to put it in context. Of 23 documents selected, 21 were used.

**Class 3:** This consisted of transcripts of my semi-structured interviews and focus group discussion which were now documented data sources. I have dealt with participant selection and analysis under Participant Selection. Of the 15 interview and focus group transcripts available, 14 were used.

**Class 4:** These included periodicals, reports and reviews emanating from outside of the CLE's governance and administrative structure coming from all stakeholder interests such as its student body, graduates, individuals or NGOs, regional bodies like the CARICOM, or external agencies like IMPACT Justice (Improved Access to Justice in the Caribbean, 2018). Under this class, I looked for the same factors as under Class 2 documents. I also considered the nature and the agenda of the individual or institution conducting the study or commenting as it might disclose implicit or explicit bias in their motivations for engaging in a study of the institution. Of 10 documents available, 9 were used.

**Class 5:** These included unpublished papers, newspaper articles and public commentaries. Again, these are measured by the factors applied to Class 5 insofar as they are relevant. I also looked at the individual making the comments and any bias that might be exhibited in their commentary. While it is important to consider perceived bias, it is also important to recognise that such a bias may be reflective of a valid underlying concern which may not be captured in any other way; and might be measured by the frequency of the concern articulated; and how widespread it is (regional in scope). Of the 180 documents, 163 were newspaper articles downloaded from internet from across the region that appeared to be related to themes identified.

The duration of this research took place from 2014 to 2020. On further examination, I found 23 documents that were credible in relation to selected and emergent themes. Of 180 documents available, 23 were used.

### 4.4.2 Semi-Structured Interviews

Scheduling interviews was not a smooth process and was spread over four years. Most of the interviews were done between 2014 to 2016. After 2016 professional and personal challenges arose which made it difficult to be consistent in my research and I had reason to request extensions of my termination date to complete my research. As I started writing up, I reviewed the currency of my data and, while I thought that most elements were still valid and current, there were two areas which I felt needed refreshing, particularly in light of the Covid pandemic – student views from across Law schools and the voice of Council members. The first process after I had selected my interview participants (IPs) was to send both the Participant Information Sheet (Appendix 4) and the Consent Form (see Appendix 5) to each participant before the interview. Each participant read, signed the forms, and received a signed copy prior to either a face-to-face or online interview. In the case of online interviews these documents were scanned and emailed to the participants who printed, signed, scanned, and return to me via email. All interviews lasted approximately one and a half to two hours and were recorded using two different recording sources to ensure a full and complete record in the event of machine or human failure during the process. In the case of the student in another Law school, I had difficulty with the connection and it took longer than expected and, in fact, we had to postpone the meeting by mutual agreement. In the case of IP10, who was one of my key informants, his information was so rich, detailed and analytical (without prompting), that another interview was done to get through the themes I wished to address with him.

While time consuming, I manually transcribed all the interviews and focus group meetings shortly after the meeting using Microsoft Word so as to ensure accuracy in the event there were any distortions in the recording. The transcribed text was placed by me in a tabular format with five columns. The first column was used to number the paragraphs of the text for ease of reference if I needed to point to a particular part of the text with my participant. The second was used to record themes and codes as they emerged from the interview. I used the third column for the actual transcribed text, the fourth for any comments or questions I might have for the participant in my member check and the fifth, for any response the participant may wish to provide. I placed each paragraph in a separate row. I also used this opportunity to reflect on my contemporaneous notes and memories of the meeting to add any further observations I may have had from the interview. All audio recordings and documents related to the research were stored on an external encrypted data drive and placed in a secure location to which only I have access.

### 4.4.3 Focus Groups (FGs)

During the research period, I held two FG meetings. The first was on May 25, 2015. I initially wrote the Students' Representative Council (SRC) of the HWLS requesting their assistance in selecting students to participate in a focus group discussion. I expressed my desire that they be (a) gender and country representative; and (b) selected among students who had sat their final examinations and would be leaving the law school. They would, therefore, not be intimidated by my position of power over them as I did not teach the second-year class. Six students were selected by the SRC from a process in which they emailed over 337 students providing information on the research. On the day of the interview four students turned up coming from three different jurisdictions in the Caribbean. There was one female and three male

participants. Prior to the meeting, they had been given the Participant Information Sheet and had filled out and signed the consent forms which they returned to me on the day. The meeting was held after our annual examinations so there were no students and scarcely any faculty around. I held the meeting in the staff common room which had a relaxed ambiance and I had arranged for refreshments to be available for the meeting. The discussion took about 90 minutes.

As I was writing up my thesis in 2020, I realised that most of my research went back to 2015 and was limited in the ways previously described. I, therefore, wanted to ensure that the findings from that research were still valid as close to submission as possible. Consequently, I thought it to be opportune to engage another focus group to update the data previously collected focusing on the issues of governance and administration from a student's perspective. I, therefore, invited the current SRC representative at the HWLS to participate in a semi-structured interview and she suggested that I convert that to a (focus) group discussion with the student representatives of all three law schools. She assisted in putting me in touch with these students and encouraged their participation. Before the meeting, I provided them with the Participant Information Form and Consent Form that they all filled out, signed and returned to me. The meeting took place on December 4, 2020, from 8 – 10 p.m. over Google Meetings. After the meeting, I reviewed the tape and made detailed notes of the discussion and for those areas in which I had a particular interest, I did an exact transcript of those areas. I later sent this to the participants for their review. The Survey Questionnaire which follows was another method I employed to update and validate the data from Council members on the effectiveness of Council's governance and administration.

### 4.4.4 Survey Questionnaire

This survey was designed to be administered to current or former Council members. I initially focused on the contact information I had previously used when I initially solicited their participation for semi-structured interviews in 2015. In most cases, office holders had changed and such contact information was not functional. I then made efforts to get contact information for all those whose information was not available to me through public sources – either via the Internet or directly calling their office where I was able to identify a relevant contact number. Of this number, 11 invitees had generic emails and telephone numbers which, when called, did not provide access or lead to usable information for further contact. I was eventually able to send out invitations to 27 invitees to participate based on the information I had. I received an automatic non-delivery notice from two invitees, and I determined that 14 invitees had received the email but failed to acknowledge or respond to my invitation. I received responses and promises to participate from three (that were not fulfilled), and four declinations. There were four invitees who responded to the invitation and participated. Participants were given five days to respond initially and this was then extended by a further seven days due to a lack of initial response (except for one participant). The usual process for securing their informed consent previously described was followed in these cases.

## 4.5 Participant Profiles

The criteria for Council members were current or past Council members with at least 12 or more years on Council. These persons would hold rich institutional knowledge either as members of Council or holding an administrative position at Council meetings. I used a 12 year or more cut-off period to ensure that participants had knowledge of the Strategic Plan 2004. Fifteen (15) persons fitted the criteria and efforts were made to recruit all fifteen. Two were

Council members and the third was an administrator who had six years' experience on Council but otherwise fitted the criteria and agreed to participate. Faculty were selected as enablers of the CLE mission based on the criteria of being a graduate from any CLE law schools, having six or more years teaching experience, having served in that time on the Academic Committee and/or as a staff representative on the Council. Over the three jurisdictions 45 persons fit the criteria. I experienced great difficulty gaining responses and agreement to participate from persons outside my home law school. Four faculty members who fitted the criteria agreed to participate. Three students were purposefully sampled to represent different sections of our student population from at least two law schools. I also engaged two focus groups consisting of students – the first from my home law school and the second from student representatives from all three law schools. Persons in legal practice were selected if they fitted the criterion of having graduated from one of the CLE law schools within ten (10) to fifteen years prior to the research. Of the over 2500 graduates, I contacted those with whom I was in communication and three agreed to participate. In addition to the semi-structured interview protocol, I created a Participant Interview Datasheet (Appendix 6) which allowed me to keep a profile of the participants in front of me, with a column for my own observations during and immediately after the interview. I then compiled this information in a tabular form to be able to do a comparison between participant responses.

In total 24 persons were involved in this research. Of these, 12 were interview participants, seven were members of the two focus groups and four were respondents to my questionnaire (QPs) and one was a key informant with whom I communicated with via email.

### 4.5.1 Interview Participants

Even though jurisdictions are wide apart, the various members of Council, especially in areas of teaching and administration are familiar with each other, within and across jurisdictions. To protect the identity of participants, information provided in these profiles is deliberately vague to avoid accurate tracing but close enough to the truth in relation to the objectives sought. All participants are referred to in the masculine gender.

**Participant 1 (IP1)** was a member of the Council for over 30 years. During this time, he served as Chairman of the Council for at least two three-year terms and on the Selection Committee and Admissions Board. He graduated from one of the CLE's law schools and has over 30 years of legal practice. Because of the length and depth of his experience on and with the Council, I have used him as a key informant.

**Participant 2 (IP2)** graduated from one of the CLE law schools and had over eight years of legal practice before coming on the faculty as an associate tutor then a full-time tutor in the Legal Aid Clinic. He was a member of faculty for over 5 years at the time of the interview.

**Participant 3 (IP3)** was a CLE graduate for over 12 years at the time of the interview. Upon graduating he focused on commercial law and international trade with an avid interest in renewable energy. He is a member of several NGOs and trade associations.

**Participant 4 (IP4)** was a CLE graduate and a legal practitioner for about two years at the time of the interview. He entered the law school with specialties in higher education and management and has continued providing consultancies in these areas since graduating. He also held membership on several corporate boards and committees.

**Participant (IP5)** was a member of the senor administrative staff at one of the CLE's law schools with a specialty in technology and higher education management. He attended Council meetings as a member of the administrative staff of the CLE.

**Participant 6 (IP6)** was a student entering the six-month programme of the CLE as a Caribbean citizen and legal practitioner qualified to practice in a non-Caribbean jurisdiction. He came to the law school with experience as a law school faculty member with specialties in intellectual property and entertainment law.

**Participant 7 (IP7)** was a graduate of law school, legal practitioner and Council member for over 15 years.

**Participant 8 (IP8)** was in practice for over ten years before entering one of the three Legal Aid Clinics operated by the Council as a tutor.

**Participant (IP9)** was a CLE graduate for over 30 years at the time of the interview. He was also a tutor in the Legal Aid Clinic in one law school and a senior faculty member in another. He had been an employee of the CLE for over 25 years at the time of the interview.

**Participant (IP10):** was a senior member of academic and administrative staff. At the time of the interview, he had over 20 years' experience in legal practice where he performed in a managerial function at a large regional law firm and served on the boards of several public and private corporations. I have used him as a key informant as he has a unique 'seat at the table' and experience on the issues of curriculum reform, governance and administration at the CLE.

**Participant (IP11)** was a member of the Association of Caribbean (ACSEAL), an NGO that represents non-UWI students seeking equal access admission to the CLE's law schools. He is

now a practising attorney-at-law in T&T. I count him as a key informant on the views of this stakeholder interest in the Caribbean.

**Participant (IP12):** He was a student from another law school. At the time of the interview, he was in second year and had written commentary in an online publication about his views of the CLE curriculum. He came from a family of practitioners and business people and was interested in the more entrepreneurial aspects of practice.

**Key Informant (KI01)** did not agree to an interview but, was an officer of the Secretariat who could provide direct data on its termination. He agreed to answer providing whatever information he felt comfortable with via email correspondence.

### 4.5.2 FG Participants

**FG 1:** There were four students in this group. One was a graduate of a non-UWI programme, a second transferred from another law school, a third was a UWI Faculty of Law (Mona campus) graduate and the fourth was a UWI graduate from the Cave Hill campus. Three were about to graduate from second year and one was about to leave the first-year programme.

**FG 2:** Three students represented students in each of the CLE's law schools. They were selected by their respective SRCs. Two were in their final year while the third was in his first year of law school. Their ages ranged from 21 to 28 years.

### 4.5.3 Questionnaire Participants

Because of the obligation to protect the anonymity of the questionnaire participants, I structured the responses in a manner so that I could not identify which response belonged to a particular participant. The only data I have as to my actual participants came from the return of the consent

forms showing that two were chief justices, one was a law school Principal and the other a Bar representative.

### 4.6 Pilot Survey

Yin (2016) explains that *"pilot studies help to test and refine one or more aspects of a final study such as its design, fieldwork, procedures, data collection instruments or analysis plans"* (p. 36). As I came to the late stages of my research and had started writing up, I felt that especially in mission, governance, policy formulation and financial management, I needed to get a greater input by Council members on these issues especially as the literature review and data that I had uncovered were revealing fundamental challenges within the CLE. Consequently, I decided to adopt the survey approach to address some of the difficulties such as complaints about scheduling meetings, the time it took to conduct an interview and to ensure consistency of the issues raised to gauge participants' responses. I also took the decision to conduct the survey online due to my previous experience of trying more conventional approaches. The online approach allowed me to reach more potential participants than conventional methods would, especially because I was now operating under stricter time constraints. The impact of the Covid pandemic also made face to face meetings more challenging, and in overseas jurisdictions, impossible. I conducted a pilot test of the questionnaire utilising the same system I intended to use for actual participants to test the time it took to fill out and submit the survey, and the clarity of the questions used. Participants for the pilot came from previous retired colleagues at the CLE (none of whom were research participant otherwise). I contacted them via email and phone sending them the link to the survey and requesting that they go through the survey paying attention to the areas of clarity and timing in which I was interested. I also requested them to email their feedback. In the case of timing, all participants found that it took them less than 15 minutes to complete and submit the form and regarding the

clarity of the questions, they provided a few suggestions which were helpful, and which were incorporated into the final questionnaire. With the feedback I received, I was confident that my participants would be more comfortable and responsive than using any other method that might have been practically available.

### 4.7 Member Checking

Member checking is done to ensure validity, accuracy and trustworthiness of qualitative research (Miles and Huberman, 1994; Richards, 2003; Yin 1994). Through member checking the researcher *"... seek[s] views of members on the accuracy of data gathered, descriptions, or even interpretations"* (Richards 2003; p. 287). Member checking was conducted after interviews and focus groups discussions. The process, according to Stake (1995), allows participants of both the semi-structured interviews and focus groups the opportunity to reflect on their responses, make minor changes or provide additional detail or clarification to their original responses. Schwartz-Shea (2006) states that member checking can be achieved by simply giving the participant the opportunity to verify the accuracy of the transcript or through a more complex process that extends the engagement with the participant. After transcribing the interviews, I found it necessary to ask certain participants (particularly my key informants) to provide more detail on specific points or to clarify others. I emailed the transcript along with questions asking for more detail or clarification.

This process proved extremely valuable as I was able to get new layers of data and insights which were not initially presented. In two cases, I was able to get access to documents which I could not have otherwise used in the research. While the process of member checking was time consuming it allowed me to gain a better understanding of the mission and governance of the CLE and how it was responding to change.

## 4.8 Challenges Collecting Data

The biggest challenge in collecting data was accessing Council members. In my initial thesis proposal, I had identified interviews with Council members to be the main source of data whereby I could get information about Council policy. I was also interested in how they viewed their role as members of the board of governors and their views on their roles and responsibilities. Critical to me was filling in the gaps in decisions relating to executive structure. I approached this task by securing the approval of the Chairman to lay the groundwork and inform Council members that I would be contacting them. I have already discussed the difficulties with this approach. Fortunately, I was able to use my good standing with two members of Council to secure the interviews in this group. Another challenge I encountered was the difficulty of securing interviews with faculty colleagues. A major factor in this, to which I can attest because it also affected me, was the tremendous stress and time constraints imposed on faculty with additional duties that have been increasing exponentially due to the increase in student numbers, changes in classroom sizes, faculty hours and assessment responsibilities. This posed difficulties in scheduling interviews. While I acknowledge that these factors were real, I believe that my colleagues used these reasons as a fig leaf to cover their fears of expressing their views (in spite of my assurances of anonymity) as doing so might imperil their status or employment at their law school.

I was also challenged by the selection of documents and my access to them. I made it a point that even though I had direct access to the most sensitive Council documents, I applied a procedure which was available to any legal researcher who, by virtue of their professional status, had access to the reserve section of the HWLS Library where the Council documents were located. Having accessed and copied the documents, I used all that I had because (a) of the

paucity of the available documents; (b) because this class of documents were mainly Council documents, and they disclosed Council's position not only by what they contained, but almost as importantly, by what they did not contain or what type of documentation was missing, for example, annual reports, summary of Council meetings and decisions which, under transparency protocols, are normally required for disclosure. Member checking also presented a few challenges with participants who had received the transcripts of their interviews not responding to certify that they had received them and I had to follow up with phone calls to verify orally that they had done so.

## 4.9 Approach to Data Analysis

### 4.9.1 Deductive Thematic Analysis

Thematic analysis identifies, analyses and reports patterns within data and helps to organise describe and even interpret that data (Braun and Clarke, 2006). It can be inductive where the data is analysed from the ground up or deductive, from the top down using overarching principles to interpret the data. Yin (2014) advocates the use of deductive qualitative analysis of data for case studies. Deductive thematic analysis uses theory as its primary tool of analysis to identify themes from a review of the literature; and codes from an analysis of the data (Pearse, 2019). The approach to this analysis can include the consideration of sample and design issues; developing a code manual; validating the reliability of the code; summarising data and identifying initial themes; applying the template of codes; connecting the codes and identifying themes; and corroborating the coded themes (Pearse, 2019). However, it must be borne in mind that, in spite of these guidelines, the process of thematic analysis is challenging (Robert, Dowell and Nie, 2019; Braun and Clarke, 2020). In my design, I followed

the phases of thematic design advocated by Braun and Clarke (2006) to (a) familiarise myself with my data; (b) generate initial codes; (c) search for themes; (d) reviewing themes; (e) defining and naming themes and (f) producing the report. My reality was that this process did not play itself out in the chronology above but was both iterative and recursive especially in developing the Data Analysis Spreadsheet to achieve the desired results in relation to phases (c) to (e).

My preliminary research on governance structures in IVPLEs did not provide much material or research in the area from which I could draw, especially when it came to the PCM which was most relevant to my research. I, therefore, thought it prudent to adopt a deductive approach to the issue of mission, governance and administration which are the three major themes reflected in my literature review. I could then apply the learning distilled from this research to my data findings to make greater sense of them. Mission became the critical theme because it is the only yardstick by which the effectiveness of governance and administration can be judged.

**Appendix 7** is a table of the themes and codes used in my analysis. Column 1 sets out the three major themes of mission, governance and administration. Column 2 lists the sub-themes related to each of them while Columns 3 and 4 goes into deeper levels on the respective themes and sub-themes which actually intersected with the codes emanating from the data. Firstly, I looked at the traditional mission of legal education and found a highly-contested debate as to how it was implemented - whether it was academic, vocational, professional or liberal (Puchalska, 2004). The research mission also drove my inquiry especially from a postcolonial perspective as espoused by several African writers (Fombad, 2014; Ndulo 2002; Manteaw, 2008). Similarly, I realised that legal education has been evolving to suit the needs of society in areas of social justice, postcolonialism and internationalisation (Himonga and Diallo, 2017). In

approaching the issue of governance and structure, I realised from a very early stage that the CLE did not conform to the traditional systems of higher education governance recognised in the literature. I, therefore, had to go back to basic democratic principles of governance (Doeveren, 2011) and explore how these principles applied to higher education (Fielden, 2010) as a framework with which to judge this emerging system of legal education. In doing so I paid special attention to frameworks being utilised in other developing countries like New Zealand (Edwards, 2003). Finally, I did a comparative analysis of the documents to which I had access from three jurisdictions with similar systems to try and determine certain underlying principles of the PCM. With this framework of knowledge, I was then able to approach the research data.

The themes derived from Columns 1 and 2 were critical in developing the questions and issues that informed my interview and focus group sessions, my survey questionnaire and my document analysis. They also provided a unifying framework with which to compare and contrast data from these various sources thereby providing a richer and more comprehensive level of analysis. Columns 3 and 4 were more granular in relation to their relevant themes and intersected with the codes developed in the document analysis. The success of this approach can be seen by a level of consistency between the pre-determined themes and the codes identified in the data analysis. In fact, there were only two emergent themes in the data analysis which were not pre-determined. Those were (a) a collaborative scheme of legal education and (b) sufficiency of accommodation.

To manage the data. I used Microsoft Excel, an extract of which is reproduced at **Appendix 8**. This approach allowed me to match each data source expressed in each row (interview transcripts, questionnaire response and documents), in relation to the various matrices of analysis in columns. Consequently, columns included the name of author/interviewee or

document, the type of document, date it was accessed/interviewed, key words or brief selection, significant texts, themes, sub-themes, codes and my comments on each. I could also input additional levels of themes which eventually became codes as the data became more granular. The advantage of using Excel was that it allowed me to sort my data in a variety of ways depending on what issues I was addressing – whether it was one of governance or tracking where an emergent theme was discussed. This led to the format of how my data findings are presented. It is thematically-structured with a discussion of each theme informed by the literature review with more granular evidence presented in the actual coded data from a multiplicity of sources and extracted texts. Where emergent themes were identified which were not addressed in the literature review, I sought to provide some theoretical context for the analysis. By following this process, I was able to eventually produce my report (Chapter 5 on my Data Analysis Findings) thereby completing the six phases of thematic analysis identified by Braun and Clarke (2006).

### 4.9.2 Document Analysis

Analysis began with the earliest documents and proceeded along the timeline which often served to detect continuing themes across the years. All the documents (including interview transcripts) were scanned into an electronic format and stored in two locations on an encrypted external hard drive at my home office to which I alone have access and an encrypted flash drive which I use when mobile. Putting them in an electronic searchable format also allowed me to use search features as an additional layer to verify or supplement my thematic examination of these documents. The use of Adobe Acrobat Reader allowed for easy transportation and use of documents in almost any environment along with its ability to highlight, enter notes and comments and search documents at will. To synthesise data contained in documents, I engaged in an inductive iterative process of carefully reading and rereading the documents. Although

rather time-consuming, *"this process yields data—excerpts, quotations, or entire passages—that are then organised into major themes, categories, and case examples"* (Bowen, 2009, p.28). I read each of the documents initially skimming them through and then taking a more detailed and thorough read. This process assisted in identifying information pertinent to the research questions and separating what was not pertinent (Corbin and Strauss, 2008). When conducting the more detailed read of the documents, I approached that reading with the predetermined codes and themes tagging the text that represented those codes and themes (Appendix 7). I then reread the document to note any emerging themes and categories related to mission and governance. I then inputted relevant data into my Data Analysis Spreadsheet (Appendix 8) where I was able to match themes and codes across all data methods used in my research which was subsequently manifested in my data report (Chapter 5) which followed the pre-determined themes selected. Using the more inductive, iterative process described in pulling themes and codes from the data itself, I was able to identify the emergent themes of a collaborative scheme of legal education and sufficiency of accommodation.

### 4.9.3 Qualitative Data Analysis

In conducting the analysis of the interviews, I read the transcripts repeatedly and also listened to the audio. Reading through the transcripts I identified keywords, phrases, and comments from the interviews and focus group that supported investigation and created a special column in my tabular transcription in which I could identify pre-determined themes and codes derived from my literature review (Appendix 7) next to the relevant text which I could highlight for easy reference as described in section 4.2 within.

Because the number of transcripts was relatively small this manual method was manageable. Microsoft Word was used to track the coding, key words and phrases from the transcript. This manual and personal approach allowed me to gain a better understanding and appreciation of participants' views, perceptions, and beliefs about the CLE. The interviews were used to substantiate and gain a better understanding of some of the information in the documents. Thus, there was a need to combine responses to similar core questions for synthesis. Analysis of the data in this way also allowed me to use my understanding of the CLE as I reviewed transcripts. If the data trend did not seem to be in keeping with my assumption, I was able to go back to the documents to probe further. My analysis stopped at this point as my data was saturated.

### 4.10 Ethical Issues

Ethical issues had to be addressed to obtain ethical approval from the University of Sheffield. Apart from the protocol of the consent forms and getting the explicit consent of participants, I had to ensure that I protected them and their identity even when they, themselves, did not appear concerned. As I have indicated previously, the legal profession is a very closed community especially among its leaders and senior members who are the effective decision-makers at the CLE. I would even argue that many structures in the Caribbean still maintain their hierarchical plantation structure where you are expected to "know your place" so that when you move from a familiar position to one that others, particularly in authority perceive you as challenging the status quo, there is a level of discomfort and mistrust (Neckles, 2013). According to Sikes (2006, p.110) *'people considering embarking on insider research have to think very carefully about what taking on the role and identity of research can mean and involve in a setting where they are normally seen as someone else with particular responsibilities and*

*powers'.* This had immediate resonance with me as I came into the CLE as a tutor and, over the 20 years I was there, I constantly wrote, challenged policy I thought was unfit for purpose and sought to combat what I perceived to be a culture of inertia in the face of office holders who may have felt my activities disturbing. I have always felt that pushback to 'know my place' and not make things uncomfortable so that when I started to engage in this research, I believe that there was concern about the findings and recommendations which resulted in a un/conscious lack of cooperation based on a sense of vulnerability. Apart from the personal discomfort which may come from being identified as a participant in this research, I also had to consider its effects on the research and the lessons to be learnt from it. If this research should have any merit which calls for vigorous debate on the future of legal education in the Caribbean and which may require fundamental change, there are persons who may seek to impugn its credibility. In the Caribbean (as with everywhere else) it is easier to attack the messenger when it is difficult to attack the message. I felt that leaving any clue which could identify my participants - especially in a new and sensitive area of research in such a critical institution for the Caribbean - might leave too much open for persons to attack both the message and the messenger. One difficulty of research in small island states is an environment full of cultural, political, micro-political, interpersonal and practical issues (Morrison, 2006) overlaid by the plantation culture to which Fournillier (2010) speaks in the midst of which you are trying not to "rock the boat". Admittedly, it was an issue that I was still grappling with during my research. Ethical issues were also high on my concern list especially when addressing the access to, and use of, documents as an insider. I was, therefore, scrupulous in using only those documents which could be accessible by researchers and left many relevant documents to which I had access aside. As this is exploratory research, my hope is that other researchers will take up where I have left off and be allowed access to

these and other documents which can add further insight into the issues discussed. In dealing with access to participants, I had to be sensitive not to use my position as an insider to exert power over my participants. I, therefore, in purposefully selecting my participants, invited persons who were on my level or above so they would not feel intimidated. The use of the semi-structured interviews was extremely helpful in this regard as it placed them in a relaxed position and allowed them to openly discuss the issues I brought to them.

### 4.11 Limitations

Because this area of research is new, particularly in relation to the governance of IVPLE, I had to return to the fundamental principles of governance and administration as they apply to higher education institutions. In the case of dealing with the PCMs, in order to determine a baseline of their characteristics, I had to do a comparative sampling of two of them. The greatest difficulty in this process was selecting the two. I had surveyed PCMs in an additional five (5) African countries and what was most common to all of them was their diversity in certain particulars from each other. I, therefore, consider my articulation of this governance system a start to the discussion in which much more research and critique is needed. Another challenge was the geographical dispersion of the CLE's law schools. In most institutions, there is a central authority, administrative and physical infrastructure with which to navigate. With the CLE, I had to deal with an institution that was spread across thirteen different nations, three physical law schools and no definitive central executive authority. I, therefore, had to use my access as an insider to navigate some of the institutional challenges that went from large issues of not having access to Council documents which were not in the public domain to arranging for interviews with colleagues from other jurisdictions. Regarding documents that were used, to avoid any ethical dilemma, I excluded anything which was not in the public domain and included anything

which would normally be available to researchers or members of the legal profession under their access privileges to the CLE's libraries. In this regard, I had limited success.

In determining interview participants, there were further challenges with issues of determining samples across jurisdictions, the composition of the sample based on the multitude of legitimate stakeholder interests and the subsets within each interest group, for example, size of firm, sole practitioners, area of practice, and practice experience within an area. After finally settling on specific participants, I found that the very characteristics which made them highly valued participants in my research were the very factors which made them difficult to get to interview, even among the most willing – such as Attorneys-General and members of the judiciary. I have tried to explain the highly dynamic environment in which I operated at times, especially in trying to secure high-level interviews. Finally, I think that while my interview list was relatively short, it was highly valuable to the extent that, I found it challenging in the selection of data to use to support my findings. Not only did the participants support each other even though they came from several different interest groups with different perspectives, but they added thick detail to issues which I had not previously detected. I needed to be selective based on space constraints and to be disciplined so as not to infuse too much into the discussion so as to stray from the central themes. Other limitations included the difficulty of access to Council members of which I have already spoken. Perhaps the greatest frustration and opportunities for further research laid with the incomplete data and critical writings in the areas of IVPLE and PCM legal education. I have pointed out these areas as I have progressed in the hope that others may take up this research or that I may be able to collaborate with others who are closer to these systems to advance knowledge in these areas.

## 4.12 Conclusion

In this chapter I sought to show the methodology by which I answered my research questions. I determined that a qualitative, single case study was the most appropriate methodology to investigate the adherence of the CLE to fulfil its mission through its governance and administrative structure. I identified governance and organisational theories of higher education as the foundation upon which I would ground this research and develop the thematic codes through which I would analyse my data. I will now move on to apply the theoretical framework discussed in Chapter 1 together with the data analysis tools discussed in the following chapter.

# Chapter 5: Data Analysis, Findings and Discussion

## 5.1 Introduction

In this chapter, I report my research findings based on the following research questions:

(1) Has the original mission of the CLE changed over the last 50 years?

(2) What are the drivers of change in the governance and administrative system of the CLE?

(3) What are the barriers to change in the governance and administrative system of the CLE?

(4) Is the governance and administrative system of the CLE capable of fulfilling its current missions in light of the changing environment?

While Questions 2 and 3 are constructed around the themes of drivers of and barriers to change relating to the governance and administration of the CLE, it should be noted that barriers and drivers of change also occur as themes in its institutional missions which I have addressed in my response to Question 1. The answer to Question 4 encompasses a discussion of the issues arising in Questions 1 to 3.

### 5.1.1 Structure of this Chapter

This analysis is divided into themes and sub-themes as *"without classification, there is chaos and confusion"* (Patton 2002, p. 496). Themes include pre-conceived themes derived from the literature review and new themes emerging from the data which are then presented firstly under my documentary data followed by my data from other sources. While I tried to keep the

presentation of data for each method separate, I sometimes found that impossible where an explanation for the documentary data was found in the live participant data and it made more sense to fill the gap in the documentary data at that point to create greater flow in my narrative. Finally, after each major theme, there is a summary of data and findings relevant to the literature and theory in the area. For ease of reference, all documents used in this research are listed in Appendix 3 according to five classes. Because many reports have long names, I have listed in the table their original names and the more familiar names by which they appear in this chapter.

## 5.2. Has the original mission of the CLE changed over the last 50 years?

To examine the process of change over time, I examined 23 documents listed in Classes 1 and 2 of Appendix 3 to determine what was the CLE's original mission and whether there were any changes to it over time. I began by reading the Agreement which established the Council in 1971 and chronologically compared it to all relevant CLE documents accessible from then to the last public CLE document – the Quality Management Policy (QMP).

I then examined my literature review and found that there were great similarities with the international missions of legal education and with the CLE's missions. I read other documents, both internal and external to the CLE and reviewed my interview, focus group and survey data to give greater meaning as to how these missions were executed in practice. The documentary analysis revealed that the final version is not the same as it was 50 years ago in form or in practice. As a result of this examination, I have decided to present this data under the following headings used in the literature review and to contextualise such themes as they emerged in the Caribbean context – *(1) The teaching mission: academic, vocational, liberal and professional; (2) A Caribbean postcolonial enterprise; and (3) The research mission.* Emergent themes from the data guided me to add *(4) A collaborative scheme; and (5) Sufficiency of accommodation.*

### 5.2.1 The Teaching Mission - Academic, Vocational, Liberal and Professional

*Documentary Analysis*

Between 1971 and 2004, I could not find any articulated mission statement of the CLE but elements of mission could be drawn from several documents I examined during this period.

The first statement I examined came from the Preamble of the Agreement directing that Caribbean legal education would consist of

> "a University course of academic training designed to give not only a background of general legal principles and techniques" (academic) but "an appreciation of relevant social science subjects including Caribbean history and contemporary Caribbean affairs" (liberal) and the CLE (to be established) would provide "a period of further institutional training directed towards the study of legal subjects, having a practical content and emphasis, and the acquisition of the skills and techniques required for the practice of law" (vocational/professional).(CARICOM, 1971, Preamble).

Additionally, the powers of the Council listed in Article 3 specifically required the Council to establish law schools to undertake *"the practical professional training of persons seeking to become members of the legal profession"* .(CARICOM, 1971). The academic component is evident in the UWI Law Faculty's syllabus which identifies elements of its mission as *"providing a rich intellectual academic foundation in law for legal practitioners …to engage in legal research and publication to contribute to a high calibre worldwide jurisprudence and more specifically, further the goal of building an indigenous jurisprudence."* (The Faculty of Law, 2020).

I also examined an additional 31 CLE documents (Class 2 of Appendix 3) from 1971 to the present and 24 of them reconfirmed this mission. The mission of the CLE was next articulated in the CLE Report 1973 (Council of Legal Education, 1973) which provided a comprehensive review of the creation of the system of Caribbean legal education going back to 1963. In its preface, the CLE author described the kind of graduates the CLE expected as:

> … skilled in the practice of the law (vocational); but this he should be able to do with compassion (humanist) and with an acute awareness of the anatomy of his West Indian condition (regionalist); with the vision and hope of the law reformer and most importantly, with a deep sense of service to the law, to his client and to his community (professional). (Council of Legal Education, 1973). Text in italics are mine.

In this one phrase, the CLE demonstrated the integration of all of the various elements of legal education in one programme that was traditionally contested (Puchalska, 2004). These ideals were again articulated in the Ramsahoye Lecture, 1973 where Ramsahoye (1973) articulated the ideals of Caribbean legal education as to (a) train lawyers with the broadest educational background with a sound academic education and with competent training in professional skills; (b) assist in the provision of Caribbean legal materials; (c) train lawyers with high standards of morality and professional rectitude, (d) inculcate a sense of obligation to the development of the law; (e) to uphold democratic values; and (f) encourage persons of scholastic promise to enter the profession.

A student's perspective of the CLE's adherence to its mission came as early as 1977 from both the HWLS and the NMLS. HWLS students enthusiastically supported the mission of legal education as having a socio-economic goal, the creation of an indigenous jurisprudence and

the need to be more creative in solving regional problems. It affirmed that *"Legal education should be undertaken in a context of a close inter-relationship between Faculty and Law School. Policy decisions should be taken jointly."* (Curriculum Research Committee, 1977, p. 6). On the other hand, students from the NMLS focused their commentary on the consistency of the professional legal education programme with the mission of educating a skills-based lawyer. They found that while the CLE's programme was deemed to be skills based, there was a great deficiency in the training, *"in that the "practical emphasis" in many of the courses, is greatly lacking. This, we view as a major problem. The view is commonly held that the course of study, as it exists now, is too academic oriented"*(Curriculum Committee, 1978, p. 4).

By 1977 it was clear that there were challenges with the attribution of curriculum content between the CLE and the UWI and the Legal Education Workshop of 1977 (Council of Legal Education, 1977) resolved that both institutions continue to provide an integrated programme of legal education and practical training and develop the machinery to do so; and the UWI and the CLE undertake a manpower survey for the need for lawyers in individual territories so as to formulate an admission policy for legal training; and steps be taken by the CLE to provide opportunities for students to make appearances in court under professional supervision. In 1981, the Marshall Report (Council of Legal Education, 1981) recognised the importance of the socio-economic grounding of students in liberal subjects at the UWI and made recommendations to further the UWI/CLE collaborative engagement. It recommended the continuation of that Committee as a standing committee of both institutions to advance the integration of the activities of the bifurcated system of legal education. Another change to evolve from this report included the establishment of a Curriculum Committee comprised of faculty from the Faculty of Law and the CLE to deal specifically with issues of integrating the

curriculum of both institutions. These recommendations were designed to provide some structural foundation for the implementation of the teaching missions of both institutions to produce the 'ideal' attorney. One critical remark of the Committee was that it had considered the issue of whether the law schools should be expanded to cater for increased demand for places and rejected this as being unnecessary 'for the foreseeable future' although it made a renewed call for the Caribbean manpower survey of the legal profession.

After 1981, there were no reviews, reports, consultations that I could find relating to the CLE's activities until the Barnett Report 1996 which recommended that *"... law students be trained in a system which recognizes the importance of law as an instruction of social change and development."* (p.66) and that the law schools focus on the *"training of professionals who possess the skills, knowledge and professional attitudes which are necessary to produce competent legal practitioners."* (Council of Legal Education, 1996, p.70). Indeed, another recommendation was that the CLE document a mission statement. This recommendation was implemented in the Strategic Plan 2004 which was the first CLE document that articulated a codified mission, vision and institution's core values. This mission statement read:

> To facilitate the development of competent legal practitioners for the Region who, appreciating their responsibility as members of an honourable profession and recognising the needs of their socio-economic environment, are inspired in the pursuit of excellence, the maintenance of high ethical standards, the promotion of social justice and the strengthening of the rule of law.
> (Council of Legal Education, 2004, p.9)

The significance of this mission is that the Plan, for the first time, provided a scientific implementation system through the articulation of strategic goals linked to specific targeted

strategies with timelines and performance indicators. This was followed by the QMP 2008 which sought to amplify the mission through quality assurance practices in both academic and administrative mechanisms. See section 4.1 infra for further discussion of the QMP.

*Other Data*

In response to Question 1c of my survey which asked whether participants agreed that the mission of the CLE was to produce graduates who have the practical skills to perform the legal tasks of the attorney-at-law, there was, almost unanimous, strong agreement that it did. Considering the clear language of the preamble and Article 3 of the Agreement, I expected this to be indisputable. My interview participants corroborated the missions I articulated in my document analysis but questioned whether they applied in practice. IP10, one of my key informants, felt there was some blurring of the lines between what was considered vocational versus professional. *"But that also means that it should be clear as to what it means, how do you gear your whole content and delivery to suit that and making sure that the persons who are offering that are also equally trained…."* This failure has had its impact on the curriculum, its delivery and assessment going to the heart of the implementation of the CLE's mission to produce competent attorneys. All faculty participants agreed that the curriculum had not seen substantial changes over the period that they had been teaching at the law schools (spanning between them over 15 years and in the case of IP1, over 30 years) – some going back to their student days. This is also borne out by my analysis of the CLE regulations from 2000 to 2016. IP2 found that in the eight years between leaving the law school as a student and returning as a tutor *"… in some instances the same types of questions were being asked in assignments and examinations. The teaching style had not changed. The attitude of the administration towards students had not changed in particular with respect to students' needs."*

The focus groups representing students were divided on this issue. FG1 thought that the teaching programme was sufficient in that education would give you the basics to be able to research and be competent in new areas of practice. However, they were critical about the current methods of assessment with an over-reliance on the end of year examinations and too many assignments which made it difficult to focus on understanding the law. Conversely, all FG2 participants initially thought (to some extent or the other) that this issue of the curriculum, its delivery and assessment was good and additionally, were positive about the ability of the CLE to adapt to changes as may be necessary. As the discussion developed, there was recognition that there was need for greater flexibility to broaden options to reflect modern practice and the inclusion of technology. Both focus groups agreed that increased technology was a game-changer. FG2 especially considered the impact of the Covid pandemic when the law schools had to change their methods of delivery and assessment. One student noted: *"In summary, there is need for an adaptation of new technological platforms, the incorporation of technology in new teaching styles, and have technological literacy for graduating students, allowing students to find their niches as soon as possible."*

### 5.2.2 A Caribbean, Postcolonial Enterprise

*Documentary Analysis*

Two interrelated elements of this mission stand out significantly – it being a Caribbean project, and as a postcolonial exercise. Every CLE document I examined between 1971 to 2008 affirmed the Caribbean nature of legal education as fundamental though by 2004 the prominence of postcolonialism had waned. As a Caribbean enterprise, the Wooding Report found the need for Caribbean legal education to rest on five elements: (a) the promotion of respect for the rule of

law; (b) the interrelatedness of Caribbean territories with each other legally, economically, culturally and in other ways; (c) that Caribbean law and legal history are worthy of study in their own right; (d) the growing need for trained lawyers to serve as advisers in all aspects of public and commercial life; and (e) the need to provide more adequate and relevant legal education for those who intend to practise law in the Caribbean (Council of Legal Education, 1973). There was also the recognition that Britain was weaning itself away from providing training to its former colonies and it was necessary to fill the training gaps when this occurred (University of the West Indies, 1965). Pollard argues that legal education was a critical component of the pan-African movement seeking the liberation of African peoples across the diaspora.

> At the time, one of the attractions for the heads was an opportunity to replicate the new spirit that had first flowered at London University in the 1950s, where young students from around the Third World met, exchanged ideas, and forged lasting bonds that would endure to their countries' benefit upon their own accession to high office in their respective native lands. Cave Hill was seen as an ideal crucible in which to smelt and forge a new Caribbean identity and nationality (Pollard, 2014).

This sentiment was eloquently captured by Professor Marshall:

> …our West Indian jurisprudence, when it comes, will be an amalgam of many elements, some taken from our former colonial masters, some from our fellow former colonials, some from systems other than the common law, and some indigenous. What is more, it will not rise up like a Phoenix from the ashes of colonialism, but will have to be consciously created and industriously nurtured to the point where its content matches the description which we give it in anticipation of its fulfilment – a West Indian jurisprudence. – Dr. O. Roy Marshall. Extracted from Denman, (1980)

Perhaps the strongest enforceable aspect of Caribbean regionalism occurs in Article 5 of the Agreement which demands that the governments of participating territories recognise any person holding the Legal Education Certificate (LEC) that had graduated from any of its schools and that any person not holding such a certificate would be prohibited from being admitted to practise in their jurisdiction. The Agreement has the effect of imposing extra-territorial obligations on states based on one common matriculation standards set by the CLE. The closest that any such effort has ever been made between nations was the move towards common educational standards in the European Union under the Bologna process.

These lofty ideals are also reflected in the current vision of the CLE:

> To be a world leader in higher education through innovation, creativity and relevance in a system of practical legal education that is rooted in our history as a Caribbean people and is designed to enhance the practice of law and the jurisprudence of the Caribbean; to empower our people; and develop our societies throughout the 21st century. Vision Statement extracted from the CLE's Quality Management Policy 2008 (Council of Legal Education, 2008b).

While the lofty dreams of the founders were well articulated in the Council's early documentation, it lacked effectuation– at least up to 1990 where one commentator found that after 19 years *"… with the exception of a few areas of statutory reforms to certain English common law principles, the aspirations for the evolution of an Anglo-West Indian jurisprudence, have been dashed"* (Malcolm, 1994, p.2).

It appeared that there was little change to this expectation even in recent times. In delivering an address to the CLE's distinguished lecture series, Justice Jamadar chose to focus on the "Caribbeanisation of Legal Education" (Jamadar, 2017). He reviewed two legal decisions in

which he was involved in the Court of Appeal and how he, as a jurist, sought to *"use the social sciences methodologically in the process of legal argumentation, for the purposes of social and economic transformation in the Region."* (Jamadar, 2017, p.9) calling for the formal *"incorporation into legal education of social science insights, including literary and cultural expressions, into the interpretation and application of law"* (Jamadar, 2017, p. 18). Another CLE graduate, Justice Vasheist Kokaram, one year later at the same forum, was advocating for a more 'humanistic' graduate (Kokaram, 2019). Participant P10G2, in referencing the statements of both judges, queried whether any innovations in jurisprudence in which they were involved or for which they advocated, was because of their CLE training, or in spite of it. I, therefore, mark this as an area for further research.

*Other Data*

In response to the survey question as to whether the CLE's mission is to provide an integrated, regional approach to legal education for the region, all four QPs strongly agreed with this proposition. There was also very strong agreement among all my interview participants. IP2 felt that the UWI focus on Caribbean law and interaction with other Caribbean students there made them partially formed Caribbean lawyers: *"... so the law school perhaps did not have to do as much work with us in terms of turning our eyes toward our jurisprudence and engendering a sense of pride in our jurisprudence because we had that."*

FG2 students felt that among themselves and their various councils, there was strength in unity especially in recent years and particularly in response to the crisis of the Covid pandemic. Surprisingly, even P11, the representative of ACSEAL, supported the Caribbeanisation of legal education. *"We are dedicated to the region and it was about us having access to the CLE programme and to be part of the CLE's vision of law being a vehicle for social, economic and*

*political progress for all our people."* Students from both focus groups reiterated this point but felt this exposure was variable, based on the student's willingness to engage with the material; and on the administration's part, by how students were placed in seminar groups. "*I would say that we have an awareness of our WI roots. It depends on what class you are in."* - (the HWLS representative). Both groups felt that segmenting students into classes based on their jurisdiction detracted from engaging with each other's laws and the social interaction needed to develop the sensitivity needed to their local conditions. Of the four faculty members, there was a concern by all about a trend in the law schools to teach students the law and practice of their home state exclusively in response to students' demand to learn only about the law in the jurisdiction in which they expected to practise. As IP6, who is an educator himself, said in relation to the demand of students to only learn the law of their jurisdictions *"... we construct our teaching methods around trying to satisfy students in that regard.…Every year there is a shift between (that and) wanting to embrace the vision of the Council that we should produce a Caribbean attorney."*

As I went through these interviews, it seemed that the insularity demanded by students above, was repeated at the Council level. IP1 in relation to governmental commitment to regionalism stated that *"over the years instead of coalescing around a regional approach to education where the governments entrench that vision, virtually every government in its own way seems to shift away from its commitment."* This divide among Caribbean governments is evident in their response to the issue of accommodation for non-UWI students which is further examined in section 2.5 of this Chapter.

### 5.2.3 The Research Mission

*Documentary Data*

While this mission is not specifically mentioned in the Agreement, it forms a fundamental part of the early documentation. The Wooding Report (University of the West Indies, 1965) recognised that research had to be a critical element of legal education " as *"…West Indian law and legal history are worth studying in their own right and not merely as an appendix to the history of the common law and civil law in the motherlands."* (Council of Legal Education, 1973, p. 9), Support for the research mission of the CLE also recurred in the 1977 Workshop and the 1981 review but little was done to articulate its role in relation to the CLE's law schools. The 1996 Barnett Report speaks to the responsibility of faculty to do research and publications. The type of research is not defined nor is its weight in assessing the merit of faculty. The failure has led to uncertainty and mistrust among faculty who see this as arbitrary and ill-conceived for a professional law school.

> My understanding is that this is a vocational law school where you are engaged in the practice of law - not really academia. Therefore, the weighting that is put on research and publication is something that was not, at one point in time, considered as a major component and other times it becomes the most important factor to determine whether you get tenure or not. P10

Research is not elevated to the level of the creation of new knowledge as is seen in law schools in the USA where most law schools have several journals dealing with specialised areas of the law. Further, there are law schools that encourage student journals, some of which are peer-reviewed, and are competitive in context and recognition with the most prestigious publications. In 1977 the CLE acquired the Jamaican Law Journal and renamed it the West

Indian Law Journal. It was published bi-annually from October 1977 to October 2013 by the NMLS which was the last publication that the HWLS Library has in its holdings. An email requesting further information to the contact person listed on its website was neither acknowledged nor responded to. By contrast, the UWI which published the Caribbean Law Review has successfully managed this publication to the point of making a Call for Papers for Issues 1 and 2 of 2022 (University of the West Indies, 2021a and b). The Strategic Plan 2004 formed a pivotal point when a rational approach to research could have been embarked upon. Goal 6 called for the CLE to (a) develop a research focus aligned to the existing and emerging needs of the region; (b) a capacity to compete effectively for sponsored research projects; (c) position the law schools as the institutions of choice to conduct/coordinate funded research into changes in the legal environment resulting from international treaties; (d) use research and publication activity to contribute to the development of Caribbean jurisprudence; and (e) ensure that the law schools remains on the cutting edge of legal developments, regionally and internationally. There is no evidence in the data that any of these targets have been attempted or achieved. Again, it should be noted that these strategic goals are aligned with the international movement towards empirical research particularly among developing countries that I discussed in section 4 of Chapter 2. This perceived lack of consistency in publication together with an articulate role for the mission of research in the CLE, is an impediment to innovation and the CLE attaining this mission objective.

### 5.2.4 A Collaborative Scheme

*Documentary Analysis*

The genesis of this scheme came from an initial proposal of the Wooding Committee (University of the West Indies, 1965). which initially recommended a five-year training programme – the first three years providing academic training and the final two years providing the professional and vocational training, the latter being administered by the Faculty of Law. There would be a CLE which would have oversight of legal education and the qualifications for legal practice in the West Indies. It would have persuasive input into the LL.B. programme to ensure it prepared students for practical training ahead but would be more closely concerned with the programme of the fourth and fifth years of training. This approach provided for an even more integrated system of legal education focused on the Faculty of Law. Eventually, the bifurcated system reflected in the Agreement found favour and is reflected in its preamble which was further reinforced by Article 1 (3) with the inclusion of the Dean and one member of the Faculty (Article 1 (1) (a)) on the Council and by its overall composition– comprising of government, judicial and law association representatives of each participating state. In examining these missions, it is important to note that, while I discussed them under three distinct heads, there is a continual overlap between them using a chronological, narrative approach. Each CLE document, review and consultation reiterated this ideal and sought to achieve it through many of the proposals already discussed in relation to its teaching mission.

The discussions relating to the Legal Education Workshop of 1977 (Council of Legal Education, 1977) and the Marshall Committee Report of 1981 (Council of Legal Education, 1981) at section 2.1 supra is a propos here. Apparently little was done to advance the collaborative scheme between 1981 and 1996 when the Barnett Report noted that in spite of

several areas of collaboration between the institutions, the call for the rationalisation of curriculum was a challenging one because the UWI "*... as an academic institution the Faculty has wider and less specific objectives and there has been concern that its graduates are in some areas inadequately prepared for essentially practical instruction at Law School."* (Council of Legal Education, 1996, pp. 21-58).

*Other Data*

In response to Question 1a which asked the extent to which participants agreed that the CLE provides an integrated, regional approach to legal education for the development of the Caribbean, QPs 1 strongly agreed with this while the other QPs agreed with it. I would, therefore, conclude that there was a very high degree of agreement for this proposition. IP11, representing the interests of an association of the non-UWI graduates (ACSEAL), felt that their qualifications were equal to that of the UWI graduate and any barrier to their access was artificial, constituting unfair, unequal and discriminatory treatment. Consequently, the Association sought the repeal of the UWI graduate's monopoly of admission to the CLE law schools in favour of an open system of competition. They argued that any advantage that UWI students may have in relation to regional law could be offset by additional training of non-UWI students before admission. This argument may have some merit in light of the evidence from all interview participants who strongly believed that there had been a tremendous deconstruction of the collaborative scheme in practice over the years – both in terms of articulation and structural enablers. Participant IP10 observed that

> At UWI the academic training is no longer harmonised with the subsequent professional training at the CLE. Consequently, there are challenges in what is taught, how it is taught and then the transition into the law school and what is done and how it

> is done there. This is seen in the challenges that students face in transitioning into a law school environment and what that entails.

In addition to the issue of transitional courses between the UWI and the Faculty, there is a suspicion that the UWI is seeking to displace the CLE or compete with it in the provision of vocational legal education. IP10 felt that when the UWI Faculty of Law built its Debe campus funded by the government of T&T to house the faculty, it appeared to be designed for a professional law school and not one focused on academics. In reflecting on this theory, I was reminded about the efforts by a particular government in T&T to establish a parallel vocational programme to the CLE which is discussed in the following section. The problems associated with the transitioning of students were also supported by both focus groups and were best expressed by one student in FG1.

> Maybe there were some courses which were needed or which would have been useful to have transitioning to NMLS but students have the option of opting out and doing some other courses that you would not necessarily see again, for example, I did EU law; I would not see anything EU law related at NM.

If the IP data that the UWI/CLE relationship has fragmented is taken at face value, then the arguments of ACSEAL for a new policy of admission to the CLE's law schools may well be justified. In fact, the model of Kenya in having a standard entrance examination for all applicants may be a useful consideration (see section 3.2 of Chapter 3).

### 5.2.5 Sufficiency of Accommodation

*Documentary Analysis*

The main objective of the Agreement was to make the CLE the sole entity for producing and licensing the legal practitioners for the region. All of Council's documents going back to the Wooding Report document the need to fill the need for legal practitioners for the region. By limiting accommodation to only what it thought it could provide (without doing the manpower audit recommended since 1977) it is unclear on what basis the actual accommodation quota was arrived at for fulfilling this mission. Without a current needs assessment or a plan to address future growth in the legal profession, the Marshall Report is the first documented evidence of the Council's unwillingness to accept the possibility of change and its failure to adequately address this issue

After 1981, I could find no publicly accessible documents dealing with the CLE until the Barnett Report. During this period, the CLE replaced its CEO, the Director with what effectively were Principals (see discussion of this later at section 4.4) but apparently did nothing to deal with the unanticipated increase in demand for places at its law schools which is reflected in my analysis of the Barnett Report. **The Barnett Report 1996** provided a scathing assessment critiquing the CLE's activities in relation to its mission to provide vocational legal training for the Caribbean. By this time, it was evident that, in spite of the overly optimistic posture of the 1981 Committee, no effort had been made to respond to challenges for space from non-UWI students and students from the UG (Council of Legal Education, 1996, p. 19). The plea for a manpower audit to determine a rational admissions policy had still not been done and by the 1990s it was clear that there was insufficient space to accommodate all qualified applicants. There was also a proposal from the government of The Bahamas to locate a law school there as a

means of alleviating the pressure from the other schools. Following the recommendation from the Barnett Report, The Bahamas government established a law school in 1997. Based on another recommendation, the CLE instituted an entrance examination (EE) to sift out the best applicants to accommodate them in the limited space available after it had accommodated all UWI law graduates.

The above steps still proved unsatisfactory and in 1998, a Task Force commissioned by the government of T&T (Task Force on Legal Education, 1998) recommended that admission to the law schools of the CLE be on a merit basis with a minimum entry requirement of a Lower Second degree which would apply to all CLE applicants including non-UWI degree holders. This proposal would have been in direct violation of the Agreement envisioning the collaborative regime between the UWI and the CLE. In that same year, Attorney-General Maharaj at an address to the Law Association of T&T launched an attack on the Council stating that "*Since its establishment in 1972 the Council has failed to keep abreast of the needs of the participating territories."* (Maharaj, 2000). He also informed the meeting that the Cabinet had approved in principle a proposal for an alternative programme to provide the Legal Practitioners' Course under the management of the College of Law to run parallel with the CLE programme. Later that year, the Legal Profession Act was amended to allow non-UWI graduate holders of the LL.B. who had qualified to practise law in that jurisdiction to be eligible to practise in T&T once they had completed an apprenticeship programme with a local attorney. This was also in direct violation of the Agreement. No further action was taken on this front until 2012 when another government of T&T pursued the idea of introducing a professional legal education programme along the same lines (Bagoo, 2012).

*Other Data*

In response to Question 1d which asked the extent to which participants agreed as to whether the CLE provides graduates to meet the need for legal services for the Caribbean, there was substantial agreement with this view. There was some division with the data from other sources. Often participants from faculty and graduates/practitioners feared there might be an oversaturation of lawyers in the Caribbean based on the number of persons seeking entry into the law schools. However, on closer examination this was only a perception and not based on any empirical research or data on the issue. This was particularly true among practitioners who feared that the increasing number of graduates entering the profession would lead to a dilution of quality and increase unethical practices resulting from intense competition. When I challenged them with the prospect that increased numbers might result in greater subject area expertise in areas that were lacking in modern legal practice, they conceded that perhaps not enough information has been available to come to that conclusion and more research needed to be done. When pressed interview participants identified areas of expertise that were lacking such as - intellectual property, entertainment, oil and gas, sports, computer and programming, environmental studies, urban planning, off-shore banking and finance. This ambivalence is fuelled by the reluctance of the CLE to fund its own manpower needs research in the Caribbean since it was first proposed in 1977 as IP10 observed after narrating the several efforts of the AC to undertake curriculum reform.

Apart from the demand for places from the increasing number of UWI graduates and graduates of formal institutions in Guyana (UG), and Jamaica (UTech), one voice that has been affected most is that of the non-UWI graduates. P11, the representative of ACSEAL provided information about its membership of which

> 70% were students who were changing professions, had a degree or two from another area or would have been mature candidates who were professionals already, 25% would be students who came from UTech from Jamaica (who wanted their own law school). Another 5% who were high school students transitioning to law wanting to know whether they should go to UWI or try another path. Many of the UTech students were mature students as well as UTech offered a much more flexible system of teaching for persons who were working. He estimated that there were about five to six thousand qualified graduates who could not gain admittance to the CLE's law schools.

They found the experience of attempting to advance themselves frustrating and depressing, the process as a lottery, the system as unfair, uncertain and lacking transparency and accountability, and denying them (and the Caribbean public) the opportunity to advance themselves in their careers based on the expertise they already had. This was aggravated by the failure of these institutions to offer flexible learning opportunities which foreign universities afforded through distance education thereby depriving the region of valuable foreign currency. They further felt that this failure was a violation of the CLE's mission of providing training to satisfy the need for legal services across the Caribbean.

### 5.2.6 Summary of Findings - Mission

Caribbean legal education was born out of innovation that was inconceivable to the rest of the world at the time. It took 50 years after the vision establishing the CLE was founded that certain elements of it were actualised in other parts of the world. It sought to be postcolonial in

perspective, regional in scope, integrated in application, transformative in reach, humanist in spirit and modern in context. As Lazarus-Black (2008) observes, it was a postcolonial, multinational, indigenous, cross-system enterprise *"... producing students who were global before that concept held currency"* (p. 39). This approach which was adopted in the Caribbean in the 1970s was way ahead of the literature of legal education's modern mission that I explored in section 2.2 of Chapter 2. Even though the articulation of its mission was dispersed in nature, it was clear, articulate, and ultimately codified and amplified in 2004 to meet current and future trends. However, there appears to have been a dialectic at work in the CLE between the visionaries who created it and re-created its 2004 mission on the one hand, and persons to whom charge was given to bring it to life on the other. The history of the CLE demonstrates a faltering mission by 1977 when recommendations had to be made to create the structures that would sustain it. Nevertheless, the persons charged with charting that course and provisioning that vessel seemed to have ignored all calls for supporting the mission except for the period 1996 to 2009 so that the data shows no tangible advance in mission, but instead a deterioration in the CLE's capacity to fulfil its mission from then to now. The failure to meet these missions further impacts on the mission of the collaborative scheme and Caribbean regional integration in failing to fulfil the demands of Caribbean nationals for training. I will now move on to discuss what could have been the drivers and impediments to change that might have contributed to this situation.

## 5.3 Research Questions 2: What are the Drivers of Change in the Governance and Administrative System of the CLE?

According to Damanpour and Schneider (2009) the drivers of innovation or change are referred to as the overarching factors or underlying causes which create the fundamental impetus

for adoption and implementation of innovations. In this section, I will deal with democratic principles of governance as potential drivers of change.

### 5.3.1 Democratic Principles – Accountability

I examined the concept of accountability in higher education in two contexts. The first is the broad conceptual notion that persons given authority to do something or to govern, are accountable or answerable to the governed for their actions. I also deal with accountability through what I term, the 'mechanics of accountability' meaning, strategic planning, state funding, quality assurance and institutional accreditation (Rothchild, 2011) which is dealt with as administrative systems later under section.4.1.

### 5.3.2 Democratic Principles – Composition and Representation

I have already established in sections 4 and 5 of Chapter 3 that the PCM is not the traditional shared governance system in higher education. In some cases, it might represent something of a managerial model but that depends on the composition, quality and type of representation on its governing board which is what I am about to examine.

*Documentary Analysis*

Based on the Agreement, the governing organ of the CLE is its Council whose stakeholder interests are represented in Column 1, and the number of representatives for that interest in Column 4 of Table 2.

**Table 2: Comparative table of composition of Board of Governors of select PCMs - NZ, Kenya and the Caribbean - extracted from Appendix 2**

| **Stakeholder Interest** | **NZ** | **Kenya** | **Caribbean** |
|---|---|---|---|
| Chairman | CJ from judiciary | Ex officio | Selected by membership |
| Judiciary | 3 | 3<br>Chief Justice (included) is Chairman | 7 |
| Legal Profession | 5 | 5 | 17 |
| External Faculty | 6 | 2 | 2 |
| Internal Faculty | 0 | 0 | 0 |
| Students | 2 | 0 | 0 |
| Political | 0 | 1 (AG) | 13 |
| Governmental | | 1 (PS) | 0 |
| Layperson | 1 | 0 | 0 |
| Chief Executive (Ex officio) | 1 | 1 | 0 |
| Other | 0 | 0 | 3 Principals |
| Total | 17 | 11 | 42 |

This has not changed since inception although the Strategic Plan 2004 called for a *"review the composition of the membership of the Council and its sub-committees, taking into account, as well, the frequency of meetings".* The outcomes of this action were to be monitored. The only document relating to membership on Council is the Strategic Plan 2004 whose strategic

goal was to *"... reform the structure of the Council of Legal Education".* To do so, it recommended the review of Council and its sub-committees, and staff representation on both the Council and Executive Committee (ExCo). For greater efficiency, it sought the review of the frequency of meetings, the promotion of optimum effectiveness in policy-making, follow-up action and the monitoring of outcomes. (Council of Legal Education, 2004).

**Staff Representation:** Council members, administrators and IP10 have confirmed that the Council has invited staff representation at its meetings. Even though the Council does have complete authority to determine the composition of the ExCo and mandate staff and/or student representation, it has not done so to date - despite its decision to do so through the acceptance of this Plan in its entirety (Council of Legal Education, 2008a). There was agreement among my interview participants in Groups 1 and 2 that full faculty representation at both Council and ExCo was critical. IP1, a former Chairman of Council noted that he had approved the introduction of faculty representation on the Council since 1999 and it still had not been done. IP10 did not feel that there was an appetite to pursue it at present as it would interfere with the hegemony and unfettered power which Principals now wield over their schools, the Chairman and the Council. He noted:

> Faculty representation on the Council is good for optics but substance is wanting…. Maybe due to status of representation as being observers so any comments at grace of Chairman, comments placed as one of last items on agenda when members are exhausted and want meetings to end or several members may have left. Input of staff not as highly regarded as it should be. was a concern I had when I served. All point to a lack of sensitivity of what staff do and the contribution they make…. Conversely, Council is seen by members of staff as

> this abstract body that is all-pervasive and all powerful but very little is known about it by the staff of the law school in terms of its composition, its functioning and so on save and except that they meet at some random place where there is lack of involvement but high-powered officials attending.

**Student Representation:** Responses from my student focus groups were limited as students are excluded from the major governance bodies of the CLE. However, I did raise the issue of student governance and representation and there was total agreement with the perception at the local law school level there is total representation of students on all committees and students felt they had an opportunity to express their views and they felt they were listened to and treated with respect. As FG2, the HWLS representative expressed: *"My Principal thinks that student participation is very important and that filters down to the Senior Tutor and the Registrar and administration. They take us into consideration at every juncture and we receive information promptly*." However, they did feel the need to be represented at the higher levels of governance as the EDLS representative expressed. *"I am all for student representation at any level so if they give us representation at the highest level, I will take that. I believe that our voices are valuable anywhere."*

IP10 felt that student representation was more important at the ExCo level and supported student representation on Council only if Council were reconstituted to focus on policy.

> If you look at a typical Council meeting, 90% of it is a waste of time if you ask me. To subject a student to that might leave them going away more disenchanted. If an agenda is set that deals with policy then a student

representative should be there. You have to balance in making a real presence as opposed to increasing numbers and making meetings more unwieldly.

This perception of the levels of student representation has been explored in the literature and similar findings regarding the level at which student representation is effective have come out of research in Kenya (Mulinge, Arasa and Wawire, 2017b).

**Lay Representation:** Both the literature and the practices of the other two PCMs I have reviewed (this is practised to different degrees in both NZ and Kenya), support the inclusion of lay representation on the governing boards of higher education institutions. Of the Council members I interviewed, I got the impression that the issue of faculty representation was enough of a concession. I sensed a fear that the size of the Council and the diversity of its composition had already made it unwieldly and to add lay representation was a bridge too far. However, among other interview participants, this idea was welcomed. IP10 who had experience on both public and private corporate boards thought *"... that your employer input should be on the Council. Definitely, a civil society input should be there as lawyers serve civil society and employers or potential employers should be able to say persons are fit for purpose."* IP4 felt that in every institution such as the Judicial and Legal Services Commission where lawyers or judges are being selected, there is a need to have people from civil society on those bodies to keep lawyers "honest and grounded" - similarly for the CLE. He felt that having people from civil society was critical to problem-solving once the organisation is *"open to new and different ideas and approaches."*

**Special Expertise:** Council members and faculty were all open to the idea of special expertise to guide the Council, either as direct members or operating in some form of advisory capacity

although IP7 was not convinced that much change needed to take place regarding the Council's composition. However, among non-Council members IP10 and IP4 were both of the view that, as currently structured, the Council as a governance board *"was not fit for purpose"*. They both felt there was need for speciality skills in higher education to advise the board and other committees of Council as required and these would include management of tertiary education, pedagogy, technology, finance and accounting.

**Attorneys-General:** These are generally seen as the representatives of their respective governments on the Council. Unfortunately, without direct access to Council minutes, it is difficult to ascertain their contribution at Council meetings. The financial infrastructure of the CLE provides for a multiplicity of funding sources for its activities although government funding is the primary one. It would seem that there was a deliberate effort to broaden funding sources away from purely government resources and ensure that governments never had a numerical dominance of the Council by firstly, ensuring that once all members of regional law associations acted together, they could outnumber the Attorneys-General (even if you could actually get them to work in concert with each other). Further, any coalition of the other stakeholder groups could also outnumber this governmental interest. However, a review of newspaper articles and public statements of regional Attorneys-General on legal education reveals no commonality of interests or an effort to act in concert to achieve a common goal. In spite of this, there is evidence of a common goal in expanding legal education to accommodate non-UWI law graduates starting with the T&T efforts (see section 2.5 supra). This was followed by years of public advocacy by the Guyanese government to get the CLE to establish a new law school in Guyana, and failing that, initiating action to establish its own law school (iNews Guyana, 2017) and quite independently in the same year, by similar action in Jamaica (Patterson,

2017). It has to be a subject of further research to determine how three of the most powerful Caribbean governments, all sitting on the CLE with control of its purse strings, can all want an expansion of accommodation of its facilities but apparently cannot get this approved by the Council to the extent that they have to go outside the Council to achieve their national objectives. This seems to be some evidence that they are not as powerful as Council members as they appear, or there is a very deep division on the Council on the issue of expansion which would be strange as such a discussion from a policy perspective should be informed by data from a manpower survey which has not yet happened. The agency principle may not be useful as it is difficult to see which of these can be seen as the principal. However, they are all stakeholders with conflicting agendas with each other and perhaps with the Bar representatives so that both the stakeholder and stewardship theories may be useful to examine this conflict.

**Principals:** There is no documentation regarding the role of Principals that I have found outside the provisions of the Agreement. All data come from my interview participants and is explored in section 4.4 infra. In summary, they are seen as filling the void left (a) by the removal of the office of the Director, (b) of a clear and articulate policy framework and (c) of an effective, accessible record keeping system. They also represent (apart from the UWI faculty) any semblance of higher education expertise on the board. This last is extremely quixotic because (assuming they have the diverse levels of expertise required) they are the only ones with any competency to judge (as board members) or oversee their own actions (as institutional executives) constituting a blatant conflict of interest.

**Stakeholder Interaction:** One area of agreement for all interview participants was that most members of the Council were transitory because of their ex officio status. Almost on an annual

basis, law association representatives could change and Attorneys-General could also change after every national election. IP1 noted:

> … each time the Council meets you have a set of people who don't really know what you're talking about and are very happy to say let's put it till next year. And then that problem perpetuates itself. So it needs a special project, I think, to get those things done because with the change in the composition of Council we are going to keep kicking those things down the road for another twenty years.

It is only in the PCMs that you find diversity of stakeholder interests in legal education governing bodies– and this can be a good thing once conflict can be managed to achieve a sustainable result for the society. However, as P10 pointed out, there is potential and actual conflict within certain stakeholder groups especially those representing states' interests where *"…you have each state trying to promote a certain amount of self-interest. It becomes a huge negotiating table and very little gets done. Add to that the input of the UWI and the CCJ."* This conflict can be further expanded between groups where

> The AGs will be pushing a political agenda but are mindful of the economics so they want to expand legal education but are unwilling to contribute more financial resources. Bar associations may be resistant so while they may get more members due to increasing number of graduates, there is a conflict with members who see a threat to their turf due to increasing competition.

**Meetings:** There has been a constant complaint by all participants about the repetitive nature of Council meetings with no substantive advancement on policy items which is reflected in the one

optional comment made by one of my QPs *"The annual meetings achieve very little beyond the certification of examination results. Agenda items keep reappearing and, in the absence of a permanent, properly resourced secretariat, it is unlikely that the animated discussions will ever bear fruit."* This frustration is understandable in light of the research done by Saint (2009) which reveals that the frequency of meetings can be an indicator of the effectiveness of the board (see discussion at under section 5.2 of Chapter 3). The Council's compliance with its statutory minimum of annual meetings (one) allows it to simply receive annual reports and approve the next budget without the ability to implement change in the absence of a central executive officer unless it takes more executive authority on itself which will require more meetings (see Frequency of Meetings under section 5.2 of Chapter 3)

*Summary of Findings: Composition and Representation*

The most critical analysis of Council composition was given by IP10.

> The composition of the Council would have been 'state of the art' 50 years ago. It is no longer fit for purpose. It is now obsolete, inefficient, a dinosaur in need of euthanising. Many of the approaches that have been viewed as progressive have been from a bottoms-up approach because people who are in the trenches have realised that it is no longer fit for purpose and have agitated for the change.

Table 2 demonstrates the lack of internal stakeholder interests does not provide a countervailing view to the preponderance of external interests especially when there is no expertise in higher education management to mediate with their expertise or advise the Council on proposed decisions and policy. Further, the lack of a lay person or civil society that

represents the interest of the general public fails to balance the Council to one of its critical stakeholders which would be demanded of it under both the stakeholder and stewardship theories of governance. Based on my analysis of governing boards of PCMs, the Council is the least representative board opting for less diversity of viewpoints and breadth of representation (Saint, 2009). Even in this environment, conflicts among external stakeholders are evident on the data presented. This conflict, uninformed by institutional mission, internal stakeholders, experts in higher education, or members of civil society to keep it grounded, may be one of the reasons why there is difficulty in articulating, implementing, monitoring and reviewing institutional mission and policy. Further, the failure to expand representation, reduces its impact as a driver of change as, at the end of the day, all stakeholders are lawyers and may put their own interests ahead of any public interest which may be represented by civil society. Having reviewed the above, my view is that its composition and representation are barriers to change.

### 5.3.3 Democratic Principles: Transparency

In analysing transparency at the CLE, I will use the four factors of institutional transparency articulated in the Principles of Openness and Transparency in the Operation of Governing Bodies (Committee of University Chairs, 2020).

a. Students and staff of the institution should have access to information about the proceedings of the governing body through its minutes and papers considered subject to confidentiality issues.
b. The institution's annual report and financial statements should be made widely available outside the institution.
c. The annual report should include key information to a common standard including material on governance, a corporate governance statement and the constituencies to which the institution reports.
d. Governing bodies should review both their own effectiveness and the institution's performance at intervals.

The literature also reveals that other systems of transparency include institutional benchmarking or to publish governance arrangements (Hénard and Mitterle, 2010). There may be a challenge to find a similar institution globally with the characteristics of the CLE against which one can benchmark the CLE's performance – the closest being the E&W system but the system of governance is different. The Kenyan or the Ghanian system may be close but there is insufficient information with which to do so. However, it is reasonable to benchmark it against the operations of faculties of law of worldwide universities based on its vision to be *"... a world leader in higher education through innovation, creativity and relevance...."* (Council of Legal Education, 2008b). It has set a very high marker for itself and it is against this that, it is suggested, any benchmarking should take place.

*Documentary Analysis*

Data on this issue was collected, not so much from what documents existed, but what did not. Indeed, I found an almost total absence of documentation on the CLE's operations. Article 9 (5) (c) of the Agreement mandates that the "*Council shall in each year ... cause to be prepared and transmitted to each contracting party a report dealing generally with the activities of the Council."* Were this mandate to have been carried out, it would have been possible to construct a more complete historical record of the CLE's governance structure and its functions. However, I could find no such record. The NZCLE also has a similar duty to report annually to its Minister of Justice (Parliament of New Zealand, 1982) who has a duty to lay it in Parliament. It is then published on the NZCLE's website annually. The documentation of CLE policy can only be seen in an analysis of the historical record of the institution because of the paucity of publicly available institutional documents.

The period 1973 to 1981 marks what can best be described as 'the era of transparency' in the CLE's history. The public documentation available during this period is presented in the documentary review at section 2.1 above. There was nothing that is publicly available for the next 15 years until the Barnett Report in 1996. This Report, in fact, is the only internal review report of the CLE that is available online. It is ironic that the only publicly available document of the CLE (without going to a library) is the one that is the most critical of its record keeping revealing its poor record of transparency. It admitted that since formation, the Council had *"... formulated many recommendations the Committee had become "acutely aware of the need for these decisions, conclusions and recommendations to be readily accessible. Council has on several occasions requested its officers to furnish their Reports in a common format."* (p. 65)

The following Strategic Plan again argued for a system of record keeping. The only other documented attempt at transparency came in the QMP which mandated that the Quality Policy be *"... posted on a prominent public location at each facility owned and operated by Council for public viewing and shall be posted on Council's website".* Here, again, is another directive of Council being ignored by the Council itself as this document has not been posted as required. It is significant that the Orientation Brief 2008 lists as an accomplishment of the Secretariat that it was able to develop policies for the archiving of Council documents and other draft policies, as well as developing policy papers for Council's deliberation on globalisation and curriculum reform. It also noted that it was in the process of collating Council's documents with a view to being able to access Council's decisions. It is concerning that for an institution which at that time was 37 years old, it apparently did not have a process to be able to access its documents 12 years after the Barnett Report made this call.

Based on the above, I have no documentary evidence as to access of students and staff to minutes and papers of the Council or any of its committees. There is no evidence in its 50 years of operations that the CLE has published or made widely available any annual report of its activities either inside or outside the institution. In fact, the evidence of my research participants indicated that there are no annual reports of the CLE that measure up to the international standards discussed in section 5.4 of Chapter 3. In the history of the CLE, there are only three documents which can meet these requirements. These are (a) the CLE Report 1963-71, (b) the Strategic Plan 2004 and (c) the QMP 2008. Finally, the requirement that the institution review its own effectiveness is a critical element of the QMP. However, there is no documentary evidence that such review has been done or published. Actually, the QMP articulates a CLE policy of transparency that seems to have been ignored (see extract of the QMP under Quality Assurance at section 4.1 infra)

A review of all documents publicly available and emanating from the Council has been conducted in this research. The one class of document which is most easily available from the Council is in the form of press releases which are few and far apart. They come when a significant Council event is about to take place – like a Council meeting in a particular jurisdiction or the establishment of the Secretariat (Sobion, 2006). They may also come in the form of a statement by the Chairman or a Principal of a law school in response to a crisis or public criticism of the Council or the law school which cannot be ignored as in the case of the current Chairman responding to criticisms of Council's admissions policy in 2017 (Armour, 2017). They are never consistent and scarcely proactive or thematic in relation to Council's role. The failure of public reporting is perfectly understandable considering the failure of the Council to statutorily report to the governments which fund its operations.

*Other Data*

From the survey in which four Council members participated, three QPs, in response to the issue as to whether they agreed that the CLE had been in the practice of providing member governments with annual reports on its activities in accordance with Article 9 (5) (c) of the Agreement, agreed that it had been effective in this regard while one was not sure. This does not seem to be a difficult thing to ascertain simply because any report emanating from the Council in one year ought to be laid before the next meeting the following year. Further, it ought to be distinguishable from a report to the Council as it would, I presume, incapsulate the substance of those reports; Council's deliberations and decisions on their contents; a report on Council's strategic initiatives to address ongoing problems; any risk assessments which Council feels it may be exposed to in the pursuit of its mission; and any recommendations on which member governments are requested to act. This would be a significant 'state of play' document which will actually have to be reflexive in gestation, realistic in expectations and visionary in scope. Of the interview participants in a position to know about this issue (members, officers and faculty observers of Council), no one could confirm that there had ever been a specific report prepared by the Council to regional governments. When questioned about this, the most senior Council member interviewed, IP1 proffered an explanation that because the Attorneys-General of each state was a member of Council, it was assumed that the respective governments would be informed about its activities. P5, while confirming there had never been such a report prepared during his tenure at the CLE, also offered a similar explanation. There are several troubling issues here. First, reports coming into Council cannot constitute a subsequent report of Council. Second, it cannot be assumed that the good offices of one office holder can replace the treaty and statutory obligation of an institution. A public annual report is a fundamental principle of transparency and good governance – it should not need to be legislated.

Good international practice supports such a report, for example, the NZCLE is required by law to present an annual report to the Minister of Justice where it is to be later laid in Parliament. There is no requirement for publication but every year these reports are published on the NZCLE's website.

QPs were also asked whether they agreed that the CLE was providing students and staff of the institution with access to information about its proceedings. Information about its proceedings is not defined and can range from full minutes of the meeting to a press release indicating who attended, what decisions were taken and when the next meeting would take place. Such information is not confidential and actually builds a rapport with the public and gives it an understanding of the institution and its role and activities. Two QPs were in agreement that the CLE was effective in this regard while one was not sure and one disagreed. I would, therefore, conclude that the scales are in favour of Council members agreeing with this proposition. The response of P10 reflects the views of other stakeholders on this issue that there are no annual CLE reports to stakeholders and the circulation of Council minutes (minus confidential information) is not done formally. QPs were then asked whether they agreed that the CLE was effective in making the institution's annual reports and periodic reviews and financial statements widely available to the public outside the institution. One QP strongly disagreed with this proposition, another disagreed, the third was not sure and the fourth agreed that the CLE was effective in this regard. I would, therefore, conclude that the scales are in favour of Council members disagreeing with this proposition.

### 5.3.4 Summary of Findings: Democratic Principles

Democratic governance is seriously challenged in the CLE. It lacks effective representation of critical stakeholders who can provide feedback on potential policy before it is decided and real time feedback on how it is implemented and what may need to change so the institution does not get to the stage of crisis before understanding the implications of its policy positions. There are no experts in critical areas of governance to guide it or to exercise informed control over its executives allowing these executives unrestricted control over the assets, employees and students of the institution as well as exercising undue influence over the deliberations of the Council itself. Competing interests over the same subject-matter are not resolved inside the Council chamber where informed deliberations and a disciplined, strategic vision could be employed to resolve differences instead of having Council members air their grievances in public to the disadvantage of, and in an antagonistic manner to the CLE.

Regarding transparency in its operations, I can conclude that almost every element that is designed to foster transparency in the CLE is absent. Without opening itself up to public scrutiny, it does not make itself accountable to the stakeholders who fund the organisation or to public scrutiny. In these circumstances, it may be that the 15-year gap in institutional reviews (1981-1996) bears a direct link to the decline in governance structure and executive effectiveness (the removal of the post of Director); the unchecked exponential increase in student numbers; and the continued inability to implement structural and management policies agreed to since 1977. Democratic principles which should be a key driver of change have instead become barriers to change.

## 5.4 Research Question 3: What are the barriers to change in the governance and administrative system of the CLE?

In contrast to drivers, barriers to innovation are defined as impediments that delay agencies to adopt or implement innovations successfully (Demircioglu, 2018). Governance and administrative structures are designed to enable an institution to fulfil its promise. However, when the design is poor or the system, though well-designed is poorly administered, they then become barriers to innovation. Under governance systems I will be looking primarily at the Council, its mechanics of accountability (financial management, strategic planning and quality assurance), the roles and responsibilities of its board members, its committee structure and leadership.

### 5.4.1 Mechanisms of Accountability

Accountability is the term used to discuss a mechanism or procedure by which an organisation assigns responsibility for implementation of certain actions as well as how it determines their effectiveness. In higher education it is related to efficiency, effectiveness and performance evaluation (Kai, 2009). It goes beyond the mechanisms of financial accounts to ensuring that persons, committees or organs of the institution assigned to perform certain tasks are properly resourced to do so, understand their mission and perform their duties. Such functions are performed by an audit committee that reviews financial management, strategic planning and quality assurance to determine how such functions are implemented, monitored and reviewed. The CLE has no audit committee. It is not contained in the Agreement, nor in its accessible records from inception to now. The QMP envisaged the establishment of audit committees from within Council to monitor its quality management systems. It also provided for both internal and external audit of both the academic and administrative structure from time to

time (Council of Legal Education, 2008b). What might have been the work of this committee, may comprise functions performed by ExCo (section 5.3 of Chapter 3) which I will address in section 4.4 infra. The other mechanisms of accountability are addressed through financial management, strategic planning and quality assurance in this section.

*Financial Management*

**Documentary Analysis**

Clause 9 of the Agreement provides that its revenue shall be derived from contributions from the participating governments, grants, donations and student fees. The Council further has the power to invest monies in stocks, funds and other securities and shall govern its finances, investments, property and business and to appoint bankers or agents as it deems fit. The Barnett Report is the first Council document which speaks to the funding mechanisms of the Council from which the following elements are drawn. The Council's operations are financed almost exclusively by the contributions of the participating governments. The only other sources of revenue are the economic fees charged for students from non-participating countries and minor fees payable by students and clients at the Legal Aid Clinics. These funds are managed by the UWI bursars who are identified in the Barnett Report as acting as the CLE's financial advisers for a fee of 10% of budgeted recurrent expenditure. The practice has been for the UWI Bursars, in consultation with the Principals, to prepare an annual budget which is submitted to ExCo for approval after which the participating governments are requested to pay their proportion of the costs. This system worked initially because (a) the number of students and staff initially increased marginally over the years and (b) these expenses were tied to the UWI's system, as governmental approval was more easily obtained. Finally, the Report proposed the adoption of

supplemental funding by suggesting that software packages, legal precedents and litigation guides could be developed and sold to practitioners (Council of Legal Education, 1996).

However, over the years with the increase in student population, decreased governmental revenues and other public policy priorities, governments had fallen behind in their funding obligations, leaving it little choice but to increase student fees or, in the case of the 2014 graduating class from NMLS, threaten to withhold the LEC from students until their fees were paid (Johnson, 2014). This same article recounted that the Jamaican government owed the Council US$8M with several other regional governments in debt of over US$5M. The Strategic Plan 2004 and the Orientation Brief also advanced ideas for supplemental funding. However, to date, there has been no documented evidence of any such initiatives being implemented.

**Other Data**

When asked whether they agreed that the Council as a governing body, exercised direct control of the monetary contributions of various governments for its operations, two QPs were not sure, one agreed and one disagreed. On the issue of the extent to which they agreed that the Council had an independent budget for its governance and administrative functions (separate from the funds required for the management of its law schools), one participant agreed, one was not sure and two disagreed. Finally, on the issue of whether the Council had pursued alternative funding mechanisms for its operations, one agreed, two were not sure and one disagreed. Overall, I would say that there was a high level of ambivalence by Council members on Council's funding mechanisms and practices that based on the duty of governors to know, suggests a high level of ignorance. This data cannot be taken in isolation as it is not a

representative sample, but it does give us cause to inquire further into exactly what Council members know about the financial arrangements of the CLE.

All participants in Groups 1 and 2 confirmed that the CLE does not have an independent bank account from which it can draw. Consequently, for the Council to fund any activity for itself, like a Council meeting, those expenses have to be incorporated into the budgets of the law schools which are controlled by the Principals. In such a situation it is uncertain how it can be affirmed that the Council has direct control over its operations as an individual Principal can theoretically refuse to release funds. An example of the Council being unable to fund its own operations can be seen in the establishment of the Secretariat where it is recounted that, for the entire period of its existence, there was a failure to provide the human, physical and financial resources to establish its office and get its employees under one roof. It operated with the Director in Jamaica at the NMLS and the two other officers assigned to it, operating from the HWLS under the good graces of its Principal. (Council of Legal Education, 2008a).

**Alternative Funding:** All participants in Groups 1 and 2 endorsed the idea of alternative funding. In response to this issue, IP10 pointed out that the time was well past when contributing governments could afford to pay the financial costs of all their students wanting to study law. He proposed that arrangements could be changed allowing governments to indicate the extent of their financial contribution thereby leaving the Council free to raise funds from direct student fees and other mechanisms. IP4 raised the issue of equity of access if only students who could afford to pay were admitted thereby prejudicing more deserving candidates who could not. IP10 was of the view that this was not so much an issue of funding as a lack of strategic vision linked to the management of priorities; equity in the distribution of resources

within the organisation; and transparency in Council governance which did not allow for representation, thereby fostering mistrust. He drew a direct line between accountability for public funds and accountability to stakeholders including members of staff. An example he gave related to savings which staff felt were generated because of expenses which were no longer incurred because of the Covid pandemic. However, when proposals were made for funding in areas that staff were concerned about, they were told that no funds were available. He felt that not being around the table or having access to the rationale behind funding decisions, engendered mistrust and feelings of inequity which was fostered by other types of administrative action. He further suggested a financing arrangement like the trust fund used by Caribbean governments to fund the CCJ.

Out of the four interviewees who were canvassed on the importance of government funding, three were of the view that nothing could be done without it. IPs1 and 7, were of the view that funding laid at the heart of most, if not all, of the Council's problems. IP4 was of the view that *"he who pays the piper calls the tune"* and so Attorneys-General ultimately are the ones who fund the Council. He found that they seemed disengaged from it often sending representatives in their places. This was supported by IP1:

> So while it's clear that the governments have plainly indicated that they want us off their payroll, so to speak, it's less clear how we will plug the gap. Increasing school fees obviously is one method, but not without its inherent limitations in societies/economies such as ours. And I have no doubt that that's the real cause of the policy incoherence of which I've spoken – no one at all, us included, seems to know what the answer is or should be!

What struck me in the contributions from both Council members was a sense of helplessness in the absence of government funding which seems to be characteristic of traditional Council members. It is reflected in the Morrison Report (D. Morrison, 2014) and the address of Lady Walrond to the Barbados Bar Association (Walrond, 2017). In both instances, there was a clear articulation of the problems and some pathways forward, but in neither case was an innovative mechanism to find alternative funding, cost sharing to solve the problem articulated. IP10 took a different view:

> It is a monopoly with a deficient structure…. If, however, my salary is dependent on my revenue streams, I will be looking at revenue streams, management structure, funding arrangements etc. The UWI has developed different streams of revenue and investment sources and they are on that road to development. We have been left behind because we don't have that level of interest and commitment being shown at the leadership level. It is ironic that persons on the ground see it and speak to it and call for it because we have a vested interest in this but the persons making the decision don't.

In this regard, it is noteworthy that the Barnett Report identifies the UWI Bursars as being the 'financial advisers' of the CLE and that they sit in as observers on Council meetings. These are the same financial officers of the UWI who have actively participated in the transformation of the UWI's funding model with the creation of an active alumni funding mechanism, property management initiatives, a positive branding exercise and a variety of funding innovations that have reduced its level of reliance on regional governments. However, in spite of the Strategic Plan and Orientation Brief pointing the CLE in this direction, it seems that it has not taken advantage of its 'financial advisers'. Students in the focus groups were not

in a position to comment on the broader issue of Council financing. However, on the issue of student governance, FG2 did feel that student advocacy for a reduction of fees consequent on the Covid pandemic was successful as a result of the collaborative efforts of students from all three campuses and spoke to the strength in unity.

*Strategic Planning*

**Documentary Analysis**

Strategic Planning came to the CLE in 2003 with the establishment of a Strategic Planning Committee *"…to review the weaknesses in Council's structure and to develop a comprehensive approach to address the challenges facing us as we move into the future"* (Council of Legal Education, 2004). This Plan was approved by Council in 2004 with the recognition that after 30 years, *"…the legal education system must undergo fundamental change and be refocused to ensure that it is responsive to changing social and economic conditions in the regional as well as the global environment.".* An analysis of this Plan shows the product of a consultative, transparent process; carefully thought out; rational and proactive; disciplined and crafted with professional managerial expertise. It linked mission to articulated goals, each of which was further broken down into specific strategies with a work schedule of what needed to be done and assessment indicators to determine whether the goal had been achieved or not. It was especially significant because it demonstrated the influence of dedicated, professional, specialist management skills which was absent from all previous proposals for reform. At the heart of the Plan was the proposal to create a permanent Secretariat under the direction of a full-time Executive Director 'to perform executive duties and to define its functions and organisational structure. The following strategic goals were identified:

a. Reform the structure of the CLE.

b. Entrench continuous improvement of quality.

c. Strengthen information technology capabilities.

d. Offer students a superior educational experience,

e. Increase opportunities for legal training.

f. Build research capacity and increase our involvement in research activity.

g. Expand and deepen strategic collaboration with other institutions.

h. Achieve greater financial independence.

i. Build institutional capacity for effective administration (Council of Legal Education, 2004).

While the Strategic Plan 2004 can be said to be the result of a consultative process, the following **Strategic Plan 2008- 13** itself acknowledges that no consultation took place and that its authors came to the conclusion that the factors considered in 2002-3 were still extant at the time of its formulation. It did not provide any documentation or reports on which such a determination was made (Council of Legal Education, 2008c, p. 2). A comparative analysis of the content of both plans reveals identical content except for the Preface and the implementation dates of targeted initiatives for the nine strategic goals (Council of Legal Education, 2008c) and (Council of Legal Education, 2004). I can, therefore, state that, based on the data in the Orientation Brief and the existence of the Secretariat, the Strategic Plan 2004 was implemented in part, mainly through the establishment of the Secretariat in 2006. When the Secretariat expired in 2009, any semblance of the 2004 Plan expired shortly thereafter and it is not apparent that any review of the plan was done (at least in conformity with the necessary consultative process to formulate a new plan). Documentary evidence suggests that the 2008 Plan was never

implemented. Data from my participants in Groups 1 and 2 clearly state that there was no further strategic plan or institutional planning exercise conducted since then and each law school was left to come up with their own plan.

**Other Data**

In responding to whether the CLE had been effective in developing a strategic planning process that included its periodic and continuous articulation, implementation, monitoring and review, two QPs were not sure while one agreed and the other disagreed. The one QP who added optional comments indicated

> I am of the view that the CLE should have a role in establishing (and periodically reviewing) the strategic focus for legal education in the region. Thereafter its role should be monitoring and quality assurance and the Principals and staff be left to run the law schools."

I would, therefore, conclude that there seems to be ambivalence on this point by Council members. Most participants recognised that the ideal of regionalism which was reinforced by the Strategic Plan was not being achieved. IP10 noted:

> There isn't one cohesive or comprehensive document where those plans are tied in as far as I am aware (I could be wrong) to the strategic plan of the Council as a whole. That further fosters the concept of autonomy of each law school, again because of the lack of understanding and appreciation of the need for that and how that should fit in and apply across the board, they have left it up to the various law schools and the Principals of those law schools.

This view is buttressed by P5 who indicated that each law school was responsible for preparing its own strategic plan based on the 2008 Plan which, it was agreed, had not been implemented for the most part. Taking these two statements together with the sentiments of other participants, it is clear that after 2004 the Council did not sustain the principles of strategic planning. The comments on the effects of this Plan must be read in conjunction with the discussion on the Executive Secretariat at section 4.4 infra.

*Quality Assurance*

**Documentary Analysis**

Quality assurance was first identified as a strategic goal of the CLE in the Strategic Plan 2004. Council's Orientation Brief specifically identifies the role of accreditation and international standards in tertiary education; and the increasing demands of regional accreditation agencies as driving the need for quality assurance for the Council (Council of Legal Education, 2008a, p. 9). The QMP was a direct result of the Secretariat's involvement in the registration process of the HWLS with the Accreditation Council of T&T (ACTT).

> The methodology of quality assurance in establishing a quality management system, therefore, is to distribute this Policy within Council's hierarchy from captain to cook for study and comment so that each individual can see that they are an integral part of the quality plan for legal education. It is also expected that this Policy will provide the tools with which each person can measure his contribution and the skills, attributes and resources which he may need to make an even greater contribution to achieve the desired outcome (Council of Legal Education, 2008b, p. 1).

In achieving its objectives, the QMP mandates the CLE to:

a. Benchmark its processes in administration, teaching and learning against the best international practices in the field of practical legal education.

b. Review all its processes and operations considering the above.

c. Continually scan the environment to determine the relevance of its process, content and practice considering changing conditions.

d. Carry out a documented review programme every three to five years.

e. Require each institution, department and committee to review the above principles and align its operations in accordance with them by documenting in writing how and what measures it will use to ensure that these standards are met.

f. Ensure that a committee or individual is assigned the responsibility for quality assurance in accordance with the above principles for each organ or institution of Council's operations.

g. Require continuous record-keeping of all processes that can evidence the processes agreed upon and whether they have been achieved.

h. Make known to each stakeholder its commitment to the above principles and provide every opportunity for their input on a continuing basis (Council of Legal Education, 2008b, p. 24).

Among other things, the QMP specifically sets out a procedure for administrative quality assurance through the self-evaluation of law schools (6C), committees (6D), office holders (6E) and employees (6F) of Council. It also established a quality assurance mechanism for its academic programme through procedures for programme approval (7D), programme monitoring (7G) and programme review (7H) (Council of Legal Education, 2008b). Even though it is the

foundation upon which all quality assurance rests, it does not appear to be in circulation or in use. It is neither published on the Council's nor any law school's website.

In order to determine the closest objective standards especially for the PCM, I have developed a comparative table for three countries at Appendix 9. I could not locate accreditation standards for Kenya but I have reproduced the NZ standards and the standards for two Caribbean countries, T&T and Barbados so as to illustrate the similarities of standards that these Caribbean countries share so as to give the best objective standards that the CLE should aspire to attain. The criteria are further detailed by the standards which I have reproduced for T&T. In relation to governance and administration the T&T standards mandate, inter alia, that these systems promote effective and ethical leadership that is congruent with the institutional mission and purpose, and the institution's system of governance provides for student input in decision making in matters directly and indirectly affecting them. When this data analysis is viewed in its totality, these two standards have been clearly violated in that (a) there is no student representation at the Council or ExCo level where decisions affecting them are made; and (b) a review of my analysis of leadership in section 4.4 below demonstrates a lack of effective and ethical leadership consistent with the institutional missions.

**Other Data**

In response to whether they agreed that the CLE was effective in implementing its QMP, three QPs were not sure that it was while one disagreed. Quality assurance is one of the cornerstones upon which governments rely to ensure accountability for public expenditure and it ensures that key stakeholders, students, are getting what they pay for. It, therefore, satisfies both the agency and stakeholder theories of governance. That three out of four QPs were not sure

whether the Council had implemented its only quality plan for the entire institution is disturbing especially when it was formulated in 2008 and should have undergone several reviews since – all of which should have been published. This has to be of grave concern because the QMP sets out a very clear procedure for its own implementation, monitoring and review and for the Council itself to be subject to the process which would definitely allow for them to know and be involved in the process.

All participants in Groups 1 and 2 acknowledged the importance of quality assurance but staff members interviewed were only vaguely aware of the QMP and definitely did not know about the application of any procedures under it. The two participants with management experience, felt that quality assurance at the CLE was more of a box ticking exercise to conform with the compliance auditing requirements of the ACTT particularly at the HWLS. It is noted that quality assurance is not seen in the same way at all law schools. However, both felt that it had to flow from the top guided by the institutional mission and, as IP4 noted, is "… *part of the feedback loop that allows the organisation to adapt and adjust and even re-strategise. If it's done right, it can be very powerful. Done poorly, it's pretty useless*." In my interview, IP10 explained that a quality assurance unit had been established at the HWLS to respond to the exigencies of registration under the ACTT. Consequently, there are properly documented policies and procedures in place which are not there at other law schools because they do not have similar expertise available to them (with the recent exception of Jamaica). Even accepting such expertise were available, there is an issue of (the lack of) staff training as illustrated by a prior experience where an assessment consultant engaged by the HWLS presented a paper at the AC of all three schools. After her presentation, the NMLS faculty's response was

> Yes, our QA person saw that paper and is in agreement with the recommendations of the paper". That was clearly stated and minuted. Then they come around and said – "notwithstanding that we don't agree" and just shut the whole process down right there. So it really begs the question that QA has to be part of your culture and you have to be trained and you have to understand it. (IP10)

*Summary of Findings: The Mechanisms of Accountability*

Undoubtedly, the operations of the CLE have been impeded by a reduction in funding from regional governments. However, supplemental funding proposals have been advanced since 1996 without any effort at implementation. Even if the CLE had done so and had received desired governmental funding, its operational structure and policy framework indicates that it cannot utilise these funds for any central administrative purpose such as the funding of its Secretariat or even to buy as inexpensive an item as a paperclip. The failure of the Council to act on implementing an independent funding mechanism points to an unwillingness to act as it clearly has the ability (with its proven financial advisers) and a continuing self-professed need to do so. Structurally, the lack of an audit committee, the failure of the ExCo to fill that void and the failure to implement the auditing and accountability mechanisms of its own QMP as well as an unequal application of quality assurance systems across its law schools aggravate this situation. Indeed, it violates even the accreditation standards of regional agencies in relation to its governance structure. The above factors show the CLE's refusal to be guided by expert knowledge; an unwillingness to change and innovate; a rejection of accountability structures, policies and procedures; a misunderstanding of the basic principles of management systems; and most of all, the loss of sight of its institutional mission.

### 5.4.2 Council Governance – Roles and Responsibilities

*Documentary Data*

Article 1 (3) identifies the CLE functions to include the responsibility for the practical training of its students; establishing and equipping law schools; providing postgraduate professional legal training; appoint executive officers; making proper provision for the programme of instruction and its evaluation; appointing committees and delegating such power as it thinks fit to them; and to making regulations and doing everything necessary to achieve these objectives. This is not unusual as it provides the flexibility for the institution to establish its own standards and change them with changing circumstances. Institutions then promulgate byelaws and regulations to govern themselves and their procedure to ensure stability, certainty, accountability and equity of process. I have examined all publicly available documents and have found no other document which expands on these powers or any policy statement that one would normally find relating to the conduct of its meetings, the responsibilities of its major officer holders, a code of ethics for its governors and staff, an orientation training manual (except for the Orientation Brief), an explanation of its governance structure or even an organisational chart. Based on the failure to locate such documentation, I have resorted to the literature from sections 4 and 5 of Chapter 3 to provide an analytical framework of the actual data that I have collected. (Schmidt, 2014; Edwards, 2003).

**a. The duty to articulate the institutional mission:** This has been explored in section.2 above where I found that the institutional mission was originally articulated in the Agreement and then amplified by various officers and committees of the CLE until 2003 when it was codified into the Strategic Plan 2004. This revised mission is well-articulated on all the

Council's websites and on all documents emanating from the Council including its QMP, and the Regulations governing its law schools.

**b. Setting the educational strategy:** This is dealt with in the discussion of the role of the AC which follows in section 4.3 and demonstrates structural deficiencies in being effective in fulfilling this mission.

**c. Demanding transparency in performance and results:** This was just reviewed in section 3.4 above where it was found that few, if any, criteria on which the principles and practices of transparency rest have been observed by the CLE.

**d. Improving the (executive) selection process:** There was no documentation on this process that I could find except references to a Selection Committee in my interviews. I have, therefore, left this as an item for further research.

**e. Strengthening trustee selection and education:** The Agreement prescribes the composition of the Council and does not leave the Council itself with any discretion except in the selection of the chairman. In the absence of the Council having the discretion to select its members for itself, or as in this case, where there is a rapid turnover of members, there is an even greater need for training and orientation programmes (see discussion on Training and Orientation in section 5.2 of Chapter 3). The Orientation Brief is the only document I have found which seeks to fulfil the role to educate Council members. It was designed by the Secretariat to address the problem of the high rotation of Council members and give them a historic account of the CLE's achievements, its structure and challenges. It then documented proposals which had been raised before or which it considered relevant to address the challenges posed. I have not found an update to this Brief since 2008 as new issues would have arisen as new members of Council were brought in. All IPs were singular about the need to orient new members of Council.

Evidence of the lack of training and knowledge of the CLE's affairs is indicated by the results of the survey, where, while there was a good amount of agreement and knowledge of the mission of the CLE, there was a high degree of ambivalence and/or inaccuracy about the Council's policy framework and effectiveness.

*Other Data*

In the absence of documented policy above, the best evidence came from my survey questionnaire. The following lettered sections are referenced to Question 4 of the Survey Questionnaire which were formulated to understand how Council members saw their role in policy articulation, implementation, monitoring and review especially as it related to their duty to articulate the institutional mission, set educational strategy and demand transparency in performance and results. I have given the results of the survey and have then incorporated responses from my interview participants for greater context. Responses were provided on a Likert scale with ratings – Strongly disagree (1), Disagree (2), Not sure (3), Agree (4), Strongly agree (5).

The questions were formulated to begin with ***"To what extent do you agree that the CLE has been effective in:***

***a. … articulating clear policy and regulations on all aspects of its operations***

Two QPs agreed with this, one was not sure while one strongly disagreed. The articulation of clear policy and regulation on all aspects of its operation is a fundamental responsibility of a board of governors. (See section 5.1 of Chapter 3). That there is a split down the middle by the Council members surveyed as to whether this is so or not, suggests that more needs to be done on member education/orientation especially in the light of my findings on

transparency that this is not the case. My interview participants felt there was a lack of articulation of policy and regulations on CLE's operations which have led to policy inertia resulting in serious deleterious effects. In fact, IP5 affirmed that the CLE did not have a dedicated administrative mechanism to articulate, implement or monitor its decisions. This appears to be true as there is no secretariat under the control of the Council and the Chairman cannot make policy on his own although he can articulate policy decided by the Council. When this is done, such policy ought to be reduced to writing, documented and published. The Principals can do so only within their own law schools but not for the Council.

Participant IP10 reviewed several situations in which policy had failed to be updated (the Academic and Senior Administrative Staff Regulations of 1974) in which the same class of tutor was treated differently at various law schools and even within one law school without any reference to a specific Council decision or rationale for this practice. This is seen most clearly in relation to remuneration and entitlements especially vacation leave where persons holding the same job title (under the existing regulations) are treated differently. The inherent irrationality of this system has been recognised by members of Council. Participant IP10 goes on to recall that in the case of one senior member of Council,

> When he was told of these discrepancies and inequities, he was totally amazed and said that that is unsustainable in terms of industrial relations practice and what the regulations said. Yet he has been chairman of that committee for the past 4 years and, as well intentioned as he is, nothing has happened.

The same applies to the criteria for tenure and the renewal of contracts which varied from year to year depending on the composition of the Selection Committee and their preferences - so

there could be a heavy weighting on publications one year or the current focus on peer review evaluations in another. The lack of central policy he saw as the abdication of Council's policy thereby allowing the Principals to improvise their own policy. This, in turn, has led to inconsistency of policy across the law schools; personal interpretation of what policy was applicable; the implementation of policy in an inconsistent manner; and policy that was unequally and irrationally applied.

> That has compounded the distrust between staff and the administration at all levels. Simple things in the three law schools like remuneration, equity in emoluments, vacation, who is entitled to vacation or not (and that is a very, very vexing issue) remains unresolved. (IP10)

A significant element that corroborated this participant's perspective, was the failure by Council to adhere to the principles of transparency discussed in section 3.3 supra.

***b. … monitoring its policies and regulations to ensure their enforcement?***

Two QPs agreed, one was not sure while one disagreed. It is axiomatic that you cannot monitor what you do not have. The above section indicated a failure of policy formulation and review especially regarding HR policies of the CLE. The ambivalence of QPs on this issue is truly curious. Participants in FGs 1 and 2 indicated that this was another fundamental failing of the Council and one which the Strategic Plan and the Secretariat were designed to achieve. IP4 tried to explain it this way:

> So you are right and what you reflected there is symptomatic of a kind of behaviour of West Indians in understanding that when you create an institution, that institution needs to be refreshed. It needs to be restructured based on changing

> circumstances. And very often I think we wait too late until it reaches crisis before we start taking action to correct those type of changes.

***c. … reviewing its policies and procedures to ensure their optimal effectiveness?***

Two QPs disagreed, one was not sure and one agreed. This shows an acknowledgement by most members that the CLE is not effective in policy review. Documentary evidence supports this failing as well as data from participants in FGs 1 and 2. Participant IP10 referenced this issue regarding discussion on the reform of the AC:

> So whereas we would say, for example, that the redesigned AC should have as its main focus the question of curriculum review, reform and quality assurance, then that view was opposed by saying that that power should not reside with AC in a full sense but quality assurance should be independent so that AC could be audited to determine whether it was operating properly and a whole host of reasons being put forward and eventually, by attrition, you become frustrated by the process and you put your hands up in the air and say "OK. Let's just go!". (Participant IP10)

When one looks at the documentary analysis of the CLE's QMP (section 4.1 supra, Quality Assurance) in which there are specific provisions and procedures for policy articulation, monitoring and review for both academic and administrative quality assurance issues, the responsibility for academic matters is placed unequivocally in the AC. IP10 was sure that there had been no effort to implement this policy or that anyone involved in these discussions knew or raised the provisions of the QMP. This, consequently, appears to be a situation where the right hand does not know what the left hand is doing.

***d. … implementing its decisions based on recommendations of its various review committees and its own deliberations***

Three QPs agreed while one was not sure. I would, therefore, conclude that there is general agreement on this proposition by Council members. However, when one looks at historical record of non-implementation of CLE policy decisions taken since 1977 to 1981 to 1996 to 2004 to 2008 to the IMPACT Justice Report (Improved Access to Justice in the Caribbean, 2018), there is a documentary record of 41 years that puts the lie to this assertion. In fact, Council's Orientation Brief specifically identifies the Secretariat as being designed to address this lack of implementation. It then begs the question; what do Council members really know about the institution that they are supposed to govern? IP1 attributed this failure to policy incoherence and a lack of governmental funding.

***e. … providing adequate resources (financial, human and material) to its committees to function***

One QP strongly disagreed another disagreed, one was not sure and the final one agreed with this proposition. I would, therefore, conclude that QPs were in greater disagreement on this proposition. From documentary data, section 5(h) of the Orientation Brief 2008 recognised that the weaknesses in the system *"... do not focus the resources of Council in a way to best manage its human, physical and knowledge resources."* (Council of Legal Education, 2008a, p. 14). All IPs in FGs 1 and 2 agreed that there was a great failure in this area. I have already addressed the dissatisfaction of faculty regarding remuneration and entitlements. Participant IP8 felt aggrieved that there were not sufficient resources for the Legal Aid Clinic at the HWLS to function on par with one of its sister schools, the NMLS, which had brand new facilities. Participant IP10, in

providing information on Council's executive structure following the disbandment of the Secretariat, indicated that the Council had created the post of Assistant Registrar to the Council with *"one person trying to do the job of the Secretariat. That's crazy!"* IP10 spoke of no central quality management or human resource centre for the law schools yet the HWLS had a quality assurance department in 2008 while the NMLS only recently (at the time of the interview in 2020) employed a quality assurance officer although the EDLS had none. At the same time, the NMLS had employed a HR officer but neither of the other schools had. As a consequence of this, HR policies devised at NMLS were sometimes transmitted to the other law schools without consultation or consent creating even greater problems. The suggestion by IP10 was that a centralised Secretariat could have employed these skilled practitioners to devise, implement and monitor policy in their respective areas across all law schools thereby rationalising the use of resources.

***f. … monitoring and reviewing the work of its committees in line with specific objectives and articulated goals***

Two QPs were not sure, one agreed and another disagreed. I would, therefore, conclude that there is a high degree of ambivalence on this point. This is actually a quality assurance mechanism which is set out in the QMP. There is no evidence that this Policy was ever implemented and none of my interview participants in FGs 1 and 2 could speak to any experience in which they were involved as an individual officer (except for faculty peer review) which required self-evaluation or peer evaluation as an individual or as a committee or organ of the Council. Further, I could find no documentation or public reports of an institutional review taking place after 2003. It should be noted that from 1977 to 1981 there was an active period of review then a gap of 15 years to the Barnett Report followed by the Strategic Planning

Committee. However, the fact that the same recommendations which were accepted on each occasion were never implemented, attest to the fact that these goals were never achieved and so monitoring and review constitute a weakness in governance.

*Summary of Findings – Council Roles and Responsibilities*

At the heart of Council's roles and responsibilities regarding policy there needs to be a mechanism to articulate, implement, monitor, review and modify policy. The recommendations of the Barnett Report and the Strategic Plan specifically prescribed for policy articulation. From the data presented, it is clear that the CLE does not have such a mechanism yet the views of Council members are rather ambivalent on this. The QMP actually provides a graphic of its quality cycle at Figure 1 which, as far as the evidence suggests, was not implemented across the entire CLE.

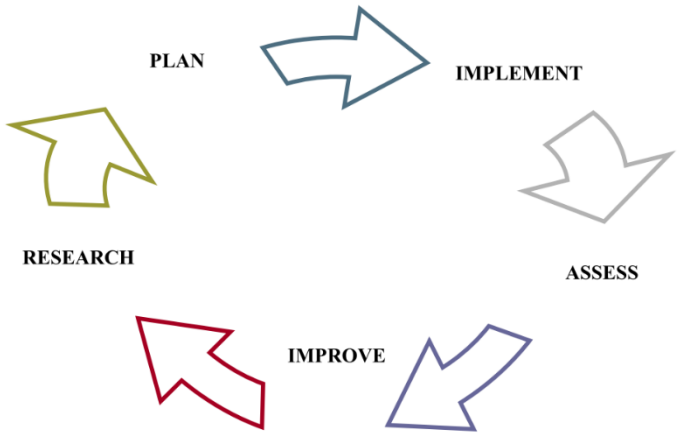


*Figure 1: Quality Cycle of the CLE extracted from its QMP*

The failure of the CLE to deal with policy issues raises the element of the collective intent of the Council – is this situation being knowingly, wilfully, recklessly perpetuated? These are issues which I feel must be raised and addressed by further research in this area.

### 5.4.3 Council Governance – Committee Structure

I will start with Council's original committee structure as it is described in the CLE 1973 Report consisting of the Regional Committees, the ExCo and the AC as its ascendance and demise has much to say about CLE governance. While other committees were added (and there are side references to such from time to time), these are the core committees around which the major missions of the CLE revolve.

*The Regional Committees*

**Documentary Data**

Council's second meeting accepted that the Council would determine general policies in relation to financial matters, organisation, curricula and syllabus, the structure and operation of the law schools, acting where permissible through a Regional ExCo. Further, that each law school would have its own ExCo which would be concerned with the implementation of those policies for that law school and for its financial administration, and its own AC. (Council of Legal Education, 1973). There was also to be a Regional AC for each law school. The only reference in the documented history of the CLE is here. It should be noted that the regional committees were purely voluntary and persuasive, having no binding authority over the law school to which they were assigned. In my interviews with participants in Groups 1 and 2, no one could remember such a council, its existence, its activities or its demise. What is clear is that by 1973 when the first students entered the respective law schools, it had either never come into existence or had

been terminated. Figure 2 illustrates my own rendition of what this original structure would have been like in a truly decentralised structure with a central Council at the top with a central executive committee and AC, and the same system replicated at each law school. The disappearance of these committees was the first in a series of unaccounted for executive losses in the history of the CLE where its establishment was well-documented but its demise was a total mystery.

**Other Data**

In my interview with IP1 he was unaware of this Regional Committee structure. I later sent him a copy of the material speaking to the formation of this committee in an effort to jog his memory. It did not, but in his response, he speculated that the reason it may have been abandoned might have been due to its expense and bureaucracy.

*CLE Organisational Charts*

The following two charts are my attempt to extrapolate the CLE's governance structure from inception to the present time. There are no official organisational charts that are publicly available that I have found. The first includes the Regional Committees described above and would have been the structure (minus these committees) from 1971 to 1984 when the Office of Director was abolished. The second reflects the new structure of the CLE from 1984 to the present time and includes the other standing committees of Council which were established sometime later.

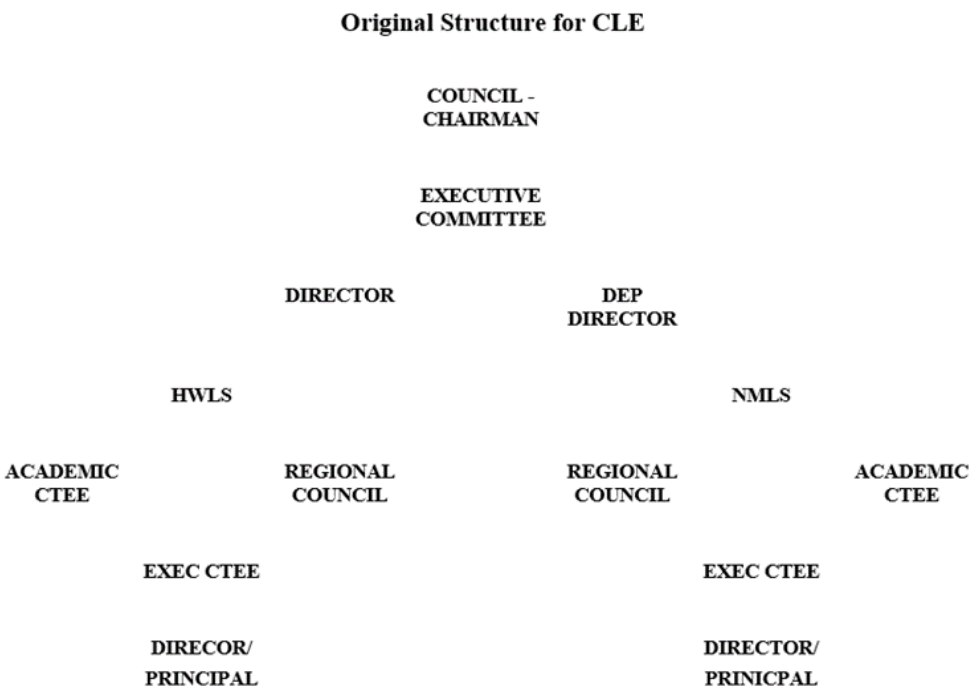


*Figure 2* Original structure of the CLE as determined by the Second Meeting of the Council in 1972 (University of the West Indies, 1965)

Figure 3 below illustrates the current configuration of the CLE organisational structure inclusive of the period for 2006 – 09 when the Secretariat was operational. At the apex is the Council and its Chairman. There is then a string of standing committees (Executive, Academic, Selection, Admission) which perform functions on behalf of the Council that affect the law schools. There is the Secretariat which falls in the middle and has reporting lines to each of the committees above it and consulting relationships with the law schools below it.

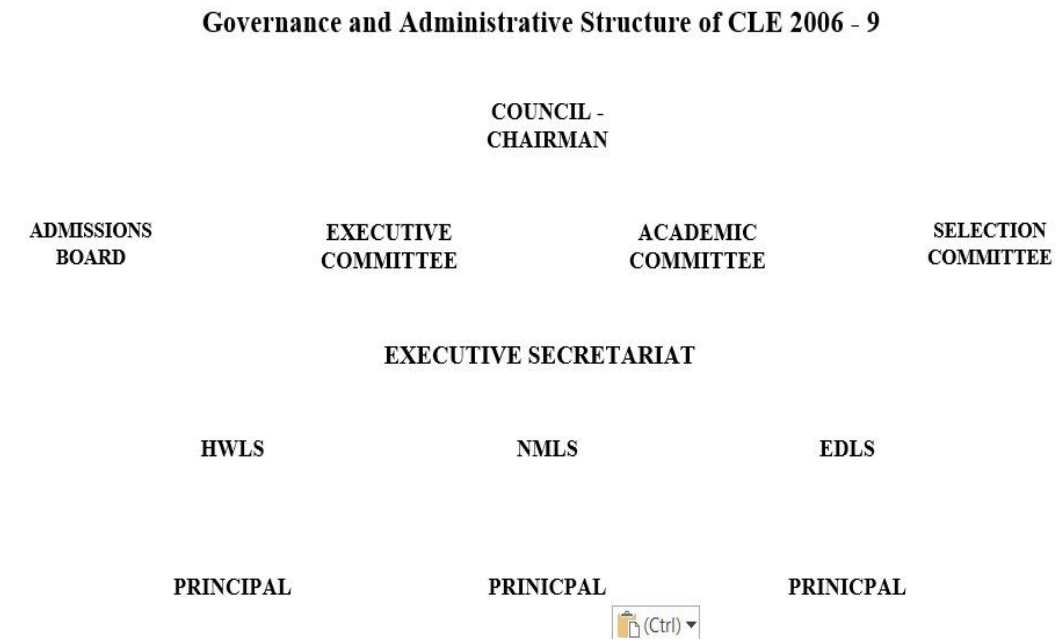


*Figure 3* Organisational Chart for the CLE including location of the Executive Secretariat

The only things that changed between Figures 1 and 2 are (a) the decentralised regional structure established in 1971 had disappeared by 1973; (b) by 1984, the Directors were replaced by Principals; (c) the EDLS in The Bahamas was established in 1997 to ostensibly accommodate more Caribbean students but could only achieve a maximum capacity of 43 by 2014; and (d) the Secretariat that came out of the Strategic Plan 2004 (2006-2009).

*The Executive Committee (ExCo)*

**Documentary Analysis**

This Committee is comprised of the Chairman of Council, the three Principals, the Dean of the UWI Faculty of Law, three Attorneys-General, one head of the judiciary and four representatives from various regional law associations (Council of Legal Education, 1973). There are no internal stakeholder interests represented on this committee. I have been unable to

find any public documents post 1973 that specifically speaks to the role of the ExCo until 2008. It is understandable that before the law schools had opened their doors to any student, that there could be no faculty or student representative on it. However, that situation changed in 1973 and there are still no faculty or student representatives on it while the Dean of the UWI Faculty of Law remains. A review of Council documents reveal that this Committee was responsible for the physical infrastructure of the law schools (Council of Legal Education, 1973, p. 25). The Barnett Report references at least fourteen areas in which ExCo acted in (a) either determining the establishment, modification of the terms of reference of that Review Committee; (b) establishing sub-committees of Council (Council of Legal Education, 1973, p. 36); (c) determining academic standards (Council of Legal Education, 1973, p. 49-50); (d) budget approvals based on proposals submitted by the UWI's bursars in consultation with the Principals (Council of Legal Education, 1973, p. 59); (e) staff assessments and compensation (Council of Legal Education, 1973, p. 77, 121); and (f) cost allocation to be borne by students (Council of Legal Education, 1973, p. 115).

The QMP indicates that this Committee normally meets twice a year and (a) accepts the annual report of the Principals (Council of Legal Education, 2008b, p. 19-20); (b) has supervision over the Secretariat on quality assurance issues (Council of Legal Education, 2008b, p. 24-26); (c) reviews the reports of law schools, the Secretariat and the various committees of the Council on their self-assessment and approves any recommendations for improvement pursuant to the provisions of the QMP 2008 (Council of Legal Education, 2008b, p. 34); and (d) has direct supervision over the AC which reports to it on all issues relating to the academic programme of the law schools particularly regarding programme approval, monitoring and review of Council's teaching programme (Council of Legal Education, 2008b). In theory, it may

be the substitute for an audit committee. However, there are no reports regarding the monitoring and review functions of other committees that one would expect from an audit committee. There appears to be no public reports of this committee nor are their recommendations or activities available through the reports of the CLE. Any further data on this committee comes from my interview participants.

**Other Data**

IP5 advised me that ExCo has the final decision-making authority in certain matters and for others, they would be referred to the Council for decision. He confirmed that the Registrar of the EDLS performs the role of Secretary to the Committee. While I could not get an interview with an actual member of the ExCo, P10 felt that staff members were not given membership on this committee in spite of the 2004 decision of the Council

> … because certain discussions take place there and you are only told if you need to know and then a particular version of it. So those are things that are not desirable. There may be certain confidential matters that should reside with a core group for a certain time but that should not be the norm, it should be the exception and that clearly is something that does not operate right now.

He identified certain problems as to whether any operating procedure for ExCo had ever been properly articulated regarding its procedure, establishment of a budget for its proper performance, a set place for its meetings and a lack of administrative support situations. He indicated that this was a similar situation for many of the other committees of the Council. In other areas of this paper, he referenced the inconsistency of the Selection Committee in determining criteria for appointment and promotion of staff, the Admissions Board for operating

an irrational and inequitable entrance examination and a Review Committee that was ad hoc and lacked a coherent structure or mission. While ExCo, he felt, was better than Council, it was not as efficient or representative as it should be.

*The Academic Committee*

Under a conventional model of shared governance, the AC is one of the most powerful committees in higher education as it is the focus around which the institution's core mission is defined and implemented. In many cases, it may even dominate the governing board through this influence. Because this Committee is integrally involved with policy issues and quality assurance, this section should be read in conjunction with sections 4.1 and 4.2 of this Chapter.

**Documentary Analysis**

The AC was established as a standing committee of Council (Council of Legal Education, 2016). It is comprised of the Principals, senior administrative staff, all tutors, the Directors of the Legal Aid Clinics, the Librarians, Registrars, and student representatives from the three law schools totalling a minimum of 67 which can be more depending on the number of tutors, administrative staff at each law school and any other person the committee deems fit. It is chaired by one of the Principals. It also has a nominee of the Chairman. It meets at least once a year and is mandated to (a) undertake and discharge general responsibility for the practical professional training of persons seeking to become members of the legal profession; (b) make proper provision for courses of study and practical instruction, for the award of scholarships, for holding examinations and recommending the award of certificates at the law schools; (c) formulate rules, regulations and policies relevant to the academic and administrative business of the school; and (c) do all other things necessary to regulate its affairs.

The only other documentary evidence of its activities comes from the QMP which identifies it as being responsible for programme approval, monitoring and review (Council of Legal Education, 2008b, p. 52). The QMP also records the 2001 formation of a Curriculum Implementation Sub-Committee (CIS) of the AC to implement the recommendations of the Barnett Report. That subcommittee reported in 2003 and its recommendations included (a) a survey of graduates and other course stakeholders to inform content on areas of knowledge and skills required for the first five years of practice; (b) curriculum changes informed by periodic reviews; (c) varying the range of assessment methodologies; (d) in-house and external training programmes of teachers at each school, and jointly with other schools; (e) improved communication and coordination between schools; (f) the employment of ICTs; (g) rationalisation of committee structures and in particular the functioning of the AC; and (h) changes in regulations where necessary. There is no record of the implementation of any of these recommendations which were soon superseded by the Strategic Plan that seemed to have had them in contemplation in the formulation of its strategic goals. While the Regulations governing this committee do not articulate to whom it reports, I have been advised by several participants that it does report to the ExCo. The intervention of the ExCo in the reporting line of the Committee to the Council reduces its influence in the very sphere over which it is responsible; creates a filter in the ExCo that has neither the experience nor expertise to address academic matters; impedes the primary duty of the Council to set the educational strategy; and is a disabler of shared governance.

**Other Data**

All interview participants in all FGs spoke on the issue of curriculum reform and criticised the CLE for its outdated curriculum that had not kept up with the times; did not provide

sufficient flexibility to allow diversity in expertise; and not being practical or experiential enough to equip graduates to enter the workplace prepared to operate independently. The report of the CIS above categorically admits this. An insight into such failure may be seen from the comments of IP2, a member of faculty who saw its meetings *"as a waste of time"* because of the perception that the committee did not have the power to do anything about the proposals that were made by faculty. IP9 renamed it *"the Deferral Committee"*. Another view of AC meetings can be seen from the introduction of online meetings to substitute for face-to-face meetings. IP8 regretted that he never had the chance to participate in the face-to-face meetings when they were held rotationally at the three campuses offering staff members the opportunity to view the facilities and modus operandi of their sister campuses. *"I find that to really get the benefit of meeting your counterpart to discuss even something like clinical operations or how you are doing - that is not something that can be done electronically."* IP10 contextualised the role of the AC best:

> To be quite honest, academic power does not wield the type of power that it could or ought to in all aspects. When you get to a position of an AC that deals with timetables and booklists then you know that you have really lost your way and that is where we have gotten to.

**Proposals for Reform:** During my interview, IP10 informed me that he had been part of the reform process for the AC and he shared the following insights with me. The reform process started around 2012. The original proposal called for (a) a reduced central committee of a fixed number of 42; (b) the chairman to be elected from among its Senior Tutors for a two-year term; (c) the AC would be responsible for monitoring and evaluation of quality, programme review and approval; (d) representatives of the AC be invited to attend and participate in meetings of the

ExCo; (e) it should meet annually; and (f) the creation of a Programme Management Committee (PMC) at each law school. The PMC would consist of the Principal, President of the local Law Association; senior academic and administrative staff, all tutors and course directors, the student representative and any other person the committee deems fit. Its purpose was to make meetings leaner and more manageable and to give the AC the authority and expertise it needed. All members of the three PMCs should meet once every two years to allow for benchmarking of standards and presentations on teaching and learning strategies.

After over five years of deliberations, a final agreement was reached and regulations approved which, due to the impact of the Covid, were unable to be published in 2020 as planned. However, certain fundamental changes were made such as staff representation on ExCo which was *"vigorously resisted for reasons unknown. In an effort to get a revamp of the AC that request was taken off by consensus."* The proposal for a Senior Tutor to be elected as chairman was resisted by the Principals until it was removed.

> Now, when you look at the chairmanship of AC, the chairperson of AC is one of Principals of the law schools. So the position of AC has been diluted in terms of the power that it wields and that may have been inadvertent and/or deliberate.

The proposal for the redesigned AC to be responsible for curriculum review, reform and quality assurance was resisted on the ground that it belonged to an independent (non-existing quality assurance) organ. See the comments of IP10 at section 4.2c above and the literature review on the role of academic committees in higher education at section 5.3 of Chapter 3. He indicated that the purpose of the smaller central committee was to engage experts in quality

assurance and pedagogy which would inform policy across all the law schools. It begs the question as to how they follow policy that is not documented.

**Other Committees:** IP10 has indicated that the issues plaguing both the AC and ExCo are the same throughout all of Council's committees. This view seems to be reinforced by the interview data from participants in FGs 1 and 2 and an examination of the QMP that seem to indicate that there is (a) no central document that determines the Committees' terms of reference (either externally or internally); (b) no byelaws that govern their operations and processes; (c) these committees themselves have not themselves set up parameters for their operations; (d) no performance indicators to determine the effectiveness of the committees; (e) Committees can either abrogate powers they do not have (as in the case of ExCo disbanding the Secretariat which was appointed by the Council itself) or not fulfilling the mission they were assigned (as in the case of the AC disengaging in curriculum reform). Further, apart from the AC, there does not seem to be a system for self or external performance assessment. I do not believe that I have sufficient data to make a definitive finding on this so I recommend it for further research.

*Summary of Findings*

I started this section with the Regional Committees and ended it with the proposal to reform the AC by creating local PMCs – the CLE had come full circle in spite of the concerns by IP1 that this regionalisation would have proved to be costly and cumbersome. In the case of the AC, the reform process seems to be driven by the institutional politics rather than committee efficiency and performance. It is incomprehensible that ExCo can perform the functions which have been assigned to it without the necessary expertise in two meetings in one year. According

to Saint (2009, p. 11), the frequency of board meetings provides an indicator as to how effective it is in monitoring institutional performance. The fact that the Council and ExCo have shown a strong record of ignoring and a poor record of implementing their own decisions and neither body has increased their meeting frequency or expertise since their inception – even when they decimated their executive structure (Regional Committees, Directors and Secretariat) several times during this period - is very telling. I find that the CLE has a weak executive structure lacking in expertise with an inadequate meeting schedule with little or no administrative support to be able to function effectively, and most of all, an apparent unwillingness to change. Where in such a case, there would normally be a strong governing board having more meetings and greater expertise to exercise that control, it is even weaker than its executive committee.

### 5.4.4 Council Administration – Leadership

*The Issue of Leadership*

In this section, I deal with the critical leadership roles in the CLE – the chairman, the office of the Director, the office of Principals and the Secretariat by referencing Edwards' (2003) recommendation that there needs to be *"effective and balanced leadership through a strong Chair, a strong Chief Executive and a strong Academic Board."* (p. 24). While leadership has been recognised internationally as one of the greatest driving forces of change (or not), the nature of leadership and the qualities of a leader were not at the centre of my mind when starting this research as I was more focused on structures and procedures of governance. However, as I progressed, particularly with my interviews (and comments made by several key informants), it became clear to me that the quality of leadership had to be addressed.

While I have tackled the various offices separately, based on the data from my participants, it is clear that there is an interaction between them that must be examined. In my interview, IP10 attributed most of Council's problems to a lack of leadership and its role in championing change management.

> Ideally in a situation like this it has to be championed from the top down. You ought not to be relying on your staff members to take the leadership of it. In the absence of that leadership, that is the crisis that we are in now…. People speak to the problem, they speak about the problem, they know what the problems and issues are. There is even the suggestion of real solutions to these problems. But then it stops there. Nobody takes up the mantle to get it done and to fight battles that need to be fought and deal with it.

Another view offered by IP4, a management consultant, analysed the effect of leadership this way:

> Currently, the present Chairman of the Council is obviously a part-time person and somebody who is drawn from one of the Bar associations, I believe, is the Chairman. So you have a part-time board meeting very infrequently without sufficient executive authority, without sufficient skills and competencies on it. That can then lead to situations where all kinds of things can happen at the level of the law schools. *Presumably they haven't happened because they are run by intelligent people to begin, but obviously the potential is there for that to happen.*

*The Chairman*

**Documentary Analysis**

Article 8 of the Agreement provides that the Council shall elect one of its members as Chairman who shall preside at all meetings of the Council and has a casting vote in addition to his original vote (Article 7 (4)). The Strategic Plan proposed that there should be a redefinition of *"...the role and functions of the Chairman with a view to facilitating faster and more efficient implementation of decisions of the Council."* (Council of Legal Education, 2004, p. 14). Later in the document, there is a statement noting that *"that no provision has been made in the projections, as yet, to cater for the proposed appointment of a full-time Chairman and the establishment of a permanent Secretariat." ."* (Council of Legal Education, 2004, p. 34). It is unclear where the idea of a full-time Chairman arose as it seems to prejudge the conclusion of what a redefinition of that office would be when there are other options available. Under the QMP, the Chairman (a) had the power to assign any responsibility to the Secretariat (under the Strategic Plan 2008 ) in keeping with its broad objectives (Council of Legal Education, 2008b, p. 20); (b) had the responsibility to assign a person in each committee of Council who would be responsible for quality assurance (Council of Legal Education, 2008b, p. 24); and (c) was the conduit of the report of self-assessment of the law schools and all committees to ExCo (Council of Legal Education, 2008b, p. 34). I have been unable to find any other references to the Chairman in any documents of the Council.

Based on the Agreement, the role of Chairman was of a non-executive nature because the Agreement had made provision for an independent executive authority, the Director. With the demise of the Office of the Director with no replacement, it may have been seen, by the time of the Strategic Plan, that the reconstruction of the role of the Chairman should be one of an

executive nature. By the time of the QMP, there was a need to assign responsibility for quality assurance and these areas were rightly assigned to the Chairman in the absence of a CEO. In the absence of any clearly articulated policy on the role of the Chairman, I have to assume that there had been delegation by the Council to the Chairman over time, to act on its behalf on routine issues between meetings. Unfortunately, the requirement to define such delegation in the governing bodies' standing orders is not evident. (Committee of University Chairs, 2020).

**Interview Data:** All participants in FGs 1 and 2 involved with the Council indicated that the Chairman's role was of a purely non-executive nature. IP1, a key informant, commented on the transition from Director to Principal and its effect on the role of Chairman:

> But once that happen, there was in fact a bit of a vacuum because, as you say, there was no longer this overarching Director and the potential of the two schools wandering along in slightly different directions. And so much happened then was that what could have changed to accommodate that was the role of the Chairman. But the role of the Chairman remained as if it had ever been as a non-executive Chairman who really, from a day-to-day point of view, couldn't pull together the two strands in the way in which somebody working full time could do…. So the funding that they had available was less. The development that we have already spoken about so well, the shifting from the Deputy Director to the Principals had taken place and the need for a kind of more central role of the Chairman and of Council had emerged. But all of these things were things going in contradictory direction. (SSIP1G1)

IP10's views of a non-executive Chairman were:

> You have a Chairman who is not full time, who is the head of his Bar Association, who is normally a Senior Counsel who is extremely busy and as well-

> intentioned as the Chairman might be, Council's business gets put low down in the pecking order, if anywhere at all.

He further went on to observe that in absence of the attention of the Chairman, active decision-making is driven by the Principals of the law schools so that *"... depending on their relationship with the Chairman, they can direct and even position a meeting of Council in a particular way. The same thing, to my mind, operates at ExCo."*. Much of this has to do with the rotational nature of the chairmanship which is transient as opposed to the more permanent nature of the principalship.

*The Director*

**Documentary Data**

Article 2 of the Agreement provides that

> The Director shall be responsible to the Council for the organization and administration of the Law Schools and of the courses of study and practical instruction and shall exercise such other functions of the Council as the Council may from time to time entrust to him.

The Director was also responsible for calling meetings of the Council (Article 7 (2)). Apart from the CLE Report 1973 which documents the appointment of the Directors, there is no other reference that I could find relating to their role on the CLE. The most significant indication of the primary role of the Director comes from the CLE Report 1973 which, in establishing the existence of each law school's AC directs that it will *"...assist the Director of Legal Education in the control and general direction of instruction, development of curricula and syllabus, examinations, recommendations to the Council of the awards of the Certificate of Competence*

*and all student matters in its School."* (Council of Legal Education, 1973, p. 26) This is a clear indication of the delegation of Council's primary executive function to the Director. Since the removal of this Office, there has been no other person or authority with such executive power. It is reasonable to surmise that between the period 1971 to 1973 the Director would have been responsible for locating and establishing the two schools with staff and other resources for them to function with the assistance of his Deputy Director. These functions were independent of the actual management of the school and demonstrate that the responsibilities of administering the Council's affairs went above that of managing the law schools. After the law schools were established, the Director was put in charge to manage the NMLS while the Deputy Director was responsible for the HWLS. A recurring theme in my interviews with Council members was the difficulty of getting amendments to the Agreement approved by regional governments, for example, the inclusion of faculty representation on the Council. Yet by 1984, the amendment to the Agreement replacing the Directors with Principals was a done deal in spite of the fact that there is no documented reason for this action. None of the Workshops or reviews from 1971 to 1981 addressed the Office of the Director. IP1 was able to fill the gap.

> *I think you're right that at the point when (and this isn't a lament for the old Director, Deputy Director idea). The thing is that whole idea was probably built around the fact that you had one or two very strong people at the time who were highly qualified to fit the bill. And when Aubrey Fraser became the Director, he was a very logical choice to take on that position because of his own personality and background. I don't have any, I don't shed any tears for the demise of that system because it probably only had a short life to go particularly because of the natural aspiration of all parts of*

*the system to be seen to have equal status – and in this case it was the headship of the HWLS which it was important to reflect and be as important as the headship of the NMLS. So that's fine.*

From this I gather that (a) there may have been a personality conflict between the Director and the Deputy Director; (b) there were expectations that the administration of the law schools should be on equal footing and the positioning of the Director at the NMLS and the Deputy Director at the HWLS fuelled a perception that the NMLS was ahead of the HWLS; and (c) what may have been perceived as a personality/power conflict may, in fact, have been an organisational equity issue. These comments seem at odds with the Council's own decisions at its second meeting that a desirable structure for the administration of the law schools should be informed by principles that created a high degree of autonomy in the day-to-day administration of each school and in the financial expenditure and organisational arrangements within a general policy; and a common policy in the educational aims and curricula but a high degree of autonomy in their implementation; and a common policy to students' admission, qualification etc. separately administered by each school. In fact, it was to further these ends that the Council mandated each school to have its Regional ExCo and its own AC. Of course, none of these latter institutions was ever heard of again. The incongruity of these two positions is that there is nowhere in the Agreement that mandates the Director or Deputy Director to take up any administrative role at any of the law schools. In fact, the original Agreement permitted the Council to appoint as many Deputy Directors as it thought necessary. Seeing that there were only two law schools at the time, it clearly could not have been meant to assign the Directors to the management position in the law schools.

*Principals*

**Documentary Analysis**

The Office of Principal was created by the 1984 removal of the Office of Director from the Agreement. It is uncertain whether it was felt that by simply substituting the term "Principal" for "Director" it would, by osmosis, transfer all his powers to the Principals, thereby ensuring some level of continuity of function; or whether this was a deliberate experiment in governance without a clear executive leader. The amendment to the Agreement made them all members of Council (Article 1 (3) with the responsibility to the Council (under Article 2) *"... for the organisation and administration of the Law Schools and of the courses of study and practical instruction and shall exercise such other functions of the Council as the Council may from time to time entrust to him."* Based on this provision, they only have jurisdiction over their own law school as they are all co-equal with each other. A critical review of the Barnett Report demonstrates the Principals being given increasing discretion to determine issues of admission and other issues as they saw fit. This then allowed for further inconsistency of interpretation and application of policy. Everything now boiled down to the management of local law schools under the control of individual Principals with little or no accountability to the Council except for their annual report. The Council itself did not have the benefit of a CEO who could mediate or determine the validity of local decisions in the broader context of Council policy where it existed. This was clearly articulated in the Council's own Orientation Brief.

> Apart from the Principals in each school, Council has no independent executive agency to implement and monitor its policy and decisions. It has relied exclusively on the Principals whose primary responsibility is to manage the day to

> day governance of their own school and this has proven to leave precious little time to broader strategic objectives. (Council of Legal Education, 2008a, p. 11)

**Other Data**

I am advised by my participants who attend Council meetings that the three Principals sit on all committees of Council in addition to rotationally chairing the AC. It has been noted previously that the CLE does not have a policy document on its structure identifying the roles and responsibilities of its officers so that, apart from the provisions of the Agreement, they have an unfettered power over the management of their respective schools and of Council's administrative actions.

> To my mind the Principals of the three law schools exercise the greatest level of leverage on what is done and not done there. You get the impression that they caucus privately and arrive at positions before the fact which appear to be decisions of the entire Selection Committee. (IP10)

IP10 further indicated that there is a strong sense among staff that the Principals are essentially unsupervised and, in the absence of clear policy at a central level, make up policy as they go and as suits them. *"Decision-making power is left to the Principals in spite of HR principles and law of contract."* Further, that power is wielded to keep staff in check so as not to create any discomfort at the level of Council. Once they can do so, it appears that they are given immense latitude.

> You get the impression that staff are generally kept in silos so they are told what they need to know but are not given the whole picture. That lack of line of sight creates a lot of distrust between staff and Council and even staff and ExCo.

In such an environment, there is always the potential for the abuse of power which IP4 spoke to regarding the vacuum of leadership without an executive chairman. After referring to several instances of inequity in administrative practice such as the application of vacation leave, employment of staff, the failure to pay professional fees for certain members of staff, arbitrary and inequitable application of appointment, promotion and tenure criteria, IP10 noted these instances as

> … examples of the inequity based upon the position that you hold (I am sure that if the Chairman of Council is questioned on this, he will have no knowledge of it) and examples of the power which Principals can wield and sometimes you are either the beneficiaries of that power, or sometimes the victims of it depending on which side you fall on. That has been an extremely demoralising issue as far as the law schools are concerned.

I got the clear impression that the Council and its respective chairmen have been held hostage to the institutional knowledge of the Principals in the absence of effective record-keeping and an articulate policy framework.

> The Principals have a very strong influence in the way the affairs of ExCo is conducted. If you appreciate the fact that Chairmen would come and go (they may even serve up to two terms), but the Principals can remain for a decade or even more than that depending on their age so that their knowledge of the working of things and history of things is rather detailed, give them an unfair advantage.

The effect of such uncontrolled power does not seem to have an effect only on staff but also on good administration. Referring to the process for reforming the AC, IP10 relates the level of passion in resisting certain proposals reached the level where *'tantrums were thrown'*

which eventually led to faculty having to back down with the attitude that *"... well OK, we'll take half the loaf than none at all!"* The consequences on administration are that:

> … when you have individuals being able to exercise that type of influence and power … it really tells you that decision-making is done by a few persons who are able to move things around to suit the perceived needs of the institution or the body and that may not always be in accordance with the views of the stakeholders.

**Summary of Findings**

Aristotle is reputed to have coined the phrase "nature abhors a vacuum" and in the world of organisational politics, it may also be true to say the same about power. All of my participants who commented on the role of leadership saw the removal of the Office of the Director, without any replacement or without creating an executive chairman, as creating a vacuum which was filled by the Principals. This effectively created three individual fiefdoms that ran independently but uniting in one common purpose when it suited their interests. While I have focused on the perceptions of IP10, his analysis and fears of the overreaching powers of the Principals do not fall far from the markers of sound analysis. With this unregulated power, the lack of a clear policy framework that defined their power or an administrative mechanism to regulate it, the undue influence they possess, calls to mind the concerns of IP4 that *"... without sufficient executive authority, without sufficient skills and competencies on it that can then lead to situations where all kinds of things can happen at the level of the law schools."*

*The Executive Secretariat*

In addressing the Secretariat, it can be seen that its demise reflects many of the concerns regarding the issues of funding, transparency, accountability and organisational structure which

have already been discussed. This section must be read in conjunction with the section on the Strategic Plan 2004 at section 4.1 above.

**Documentary Data**

The Strategic Plan 2004 felt it important to *"ensure that the duties and functions of the Head of the Secretariat are so defined as to include appropriate areas of decision-making under delegated authority."* The QMP saw the Secretariat as bearing the ultimate responsibility of

> "… ensuring that quality systems work effectively together by reviewing the quality assurance systems of Council, supporting (where needed) those organs in achieving their quality assurance objectives, and reporting on the health of the whole to the ExCo and to Council (Council of Legal Education, 2008b, p. 20).

The only publicly accessible data on the Secretariat is the press statement of its launch (Sobion, 2006) and the Orientation Brief which describes its origin and reports on the work that it had done up to 2008. Having been established in August 2006, it encountered several problems. Unfortunately, the good intentions of this plan were derailed by the failure to adequately provide the necessary human, physical and financial resources as discussed in section 4.1 above. Nevertheless, during this time, it was able to (a) assume the management of Council meetings and employ technology to increase its efficiency; (b) develop draft policies for Council's document management process; (c) develop policy papers on globalisation and curriculum reform; (d) take charge of the process for the HWLS to be registered with the Accreditation Council of T&T; (e) develop a quality management system for the Council and its organs in relation to both administrative and academic quality standards (Council of Legal

Education, 2008b) and develop a phased working plan for the establishment of a permanent Secretariat as mandated in the Strategic Plan 2004 (Council of Legal Education, 2004).

Despite these achievements and the roles envisioned for it in the QMP, at the meeting of the ExCo in 2009, the plan prepared and presented by the Secretariat for a permanent Secretariat was rejected and the Secretariat was "put into abeyance". As with the regional committees and the Directors, there is no documentation that I could find about the rationale for the demise of the Secretariat considering the fact that it was the subject of two Strategic Plans that were accepted by the Council.

**Other Data**

I directly sought out Council members who would have interacted directly with the Secretariat but was unable to get an interview with them for various reasons. IP1 who had a role in its formation, thought that the

> "failure to implement some kind of Executive Secretariat idea effectively and to make it sustainable is one of the big failures of Council over the years… But the inability of Council to secure from Governments a commitment to do something like that is of course part of the wider discussion about the kind of complete incoherence of governments as to what their policy towards Legal Education is – and that's a bigger problem.

P10 in reflecting on the administration of the CLE stated:

> It has to do with the composition, structure, leadership – all of these things combined. Steps have been taken but they are small and too far between. For example, there was once the idea touted about the Secretariat. It was a brilliant

> idea but it fell through. There is even talk now that it should have been continued. What has now happened is that a post has been created of Assistant Registrar to the Council. It is one person with no resources trying to do the job of a Secretariat.

KI01, an officer of the Secretariat responded to my request for information on the Secretariat by confirming that he attended a meeting of ExCo in January, 2009 where it was agreed that the Secretariat would be held in abeyance because there was no commitment from the member territories of Council to fund the operations of the Secretariat although the T&T government had agreed to fund the start-up costs. It is notable that the Secretariat had put forward several recommendations for alternative sources of funding. It was further decided that functions of the Secretariat would be distributed to members of staff of the various law schools under the supervision of the Principals. In reflecting on the successes of the Secretariat, KI01 noted:

> That these efforts were taken seriously was in large measure due to the esteem in which the Head/Executive Director of the Secretariat was held. In my view, his untimely passing, contributed greatly to the demise of the Secretariat. This cemented my long-held view that the Council was a personality driven entity.

This view was corroborated by IP1 who noted

> But I think it is clear enough that, had the Secretariat idea had the complete and committed backing of Council, it wouldn't have died (literally) with the first Executive Director. And that's definitely a lament for the twin loss of the idea and of Keith Sobion, who was probably its strongest proponent.

### *4.4.5 Summary of Findings: Leadership*

It seems clear that current leadership at the CLE has evolved to fill several vacuums. First, a vacuum of central executive authority which is non-existent and cannot be replicated. This has left a situation of three co-equal officers who must survive while reporting to a Board that has created this problem and does not seem to be willing to solve it. Second, is the vacuum of a policy framework within which to function that requires them to fill this void without central approval, supervision or interest. Their response is predictably to make it up as you go along according to their particular circumstances. Third, a lack of leadership from a non-executive chairman who is dependent on them for his institutional information (and not on accurate policy or records). In the face of this, the institution still has to function and, once the Principals can keep the ship afloat, their positions seem secure. Finally, a recurring theme which emerged from the data is that personality appears to be a stronger management tool at the CLE than structure or principle as seen in IP1's comment about the demise of the Secretariat which he felt had been sustained because of the personality of its Executive Director as well as the comment of KI01 who felt that the CLE was driven more by personality than by policy. What I have described as leadership at the CLE and particularly the views expressed by my participants and key informants falls far short of Sonnenfeld's (2002) prescriptions of leadership skills (the creation of a climate of trust; fostering a culture of open dissent; utilising a fluid portfolio of roles; ensuring individual accountability; and evaluating the board's performance) at section 5.1 of Chapter 3). Saint's (2009) observation that wea boards make strong institutional leaders is on point regarding the role of Principals. Again, I did not find sufficient data to sustain a conclusive finding, but it points the way for future research.

## 5.5 Research Question 4: Is the governance and administrative system of the CLE capable of fulfilling its current missions in light of the changing environment?

The answer to this question lies in the application of the answers to Questions 2 and 3 to the mission of the CLE described in Question 1. The data for this discussion has already been presented either in the literature review (in the case of the changing global environment) and in my data presentation above on the CLE missions, its governance and administrative structures. To answer this research question, I now blend these elements together.

When it comes to articulating its missions, the CLE cannot be flawed. It has been a global leader in envisioning itself in a postcolonial world in what was, effectively, a reconceptualisation of legal education. The integration of the academic, liberal, vocational and professional approaches to legal education is still being discussed when the CLE had already resolved this issue by integrating all approaches across the academic/vocational divide by devising the collaborative scheme of legal education between the UWI and the CLE. Its postcolonial yearnings were eloquently expressed on divers occasions by its officers and in its documentation. Admittedly, its research mission remained immature in its articulation, resulting in confusion in carrying it further at the CLE. Its mandate to create competent attorneys for the region was a practical and necessary goal so as to meet the demands of the public. Its Strategic Plan 2004 was again instrumental in recharging the mission of the CLE in codifying its missions and including a global outreach, a technology mandate and a student focus – issues which were just then gaining currency globally. The CLE is conceptually on good ground in understanding its missions and the changing circumstances in which it finds itself. Consequently, part of the answer to this research question is that it understands its current missions and changing

circumstances. I, therefore, must review whether its governance and administrative systems are capable of effectively responding to them.

Even from Day One of its existence, I detect a sign of some structural and leadership issues which would dog the institution to this day and make it impossible, in its current configuration, to respond effectively to its missions and the changing environment. Whatever its merits, the CLE 1973 Report which carefully documented the creation of the Regional Committees and even called on the profession to be willing to sit on its academic and executive committees did not document its demise even though it was published in the same year that both law schools opened. I have already noted that one key informant who was around at the time knew nothing of their existence. This trend continued with the removal of the Office of Director and but for this research, the Secretariat. It almost seems that there has been an institutional culture of contempt in the CLE about the need to explain its executive actions that has spanned its entire existence.

This is then followed by its historic record of failing to implement recommendations relating to the pursuit of it missions since 1977 which have been periodically repeated up to 2018. Then I add the lack of policy articulation and documentation recognised since the Barnett Report of 1996 which has led to the leadership by Principals that I have explored in this section. The lack of policy articulation does not only relate to institutional policy on human resource management, quality assurance practices, document management and other elements of its activities, but to adherence to its own standards under its QMP. An examination of the CLE's committees starting with the Council itself, in the words of FGs 1 and 2 participants, are "not fit for purpose" in relation to composition, funding, resource allocation, subject area expertise, policy formulation and quality assurance review. Institutional governance is also lacking in

adherence to fundamental democratic principles of accountability, representation and transparency. Even the mechanics of accountability - effective financial management, strategic planning and quality assurance - are abysmally poor. What is even more concerning is that most members of Council surveyed did not seem to know much about these issues and for those who thought positively about Council's record on policy, their views were negated by the actual data. While not conclusive because of the small sample size, there is an indication that Council members are unaware of the true state of Council's affairs.

Finally, the lack of leadership is one of the most fundamental flaws in the CLE's effectiveness. I have been unable to find a model of governance that does not have a central executive officer in a diverse, multicampus, multilevel institution. Certainly, the UWI model was not followed here. When all the factors discussed above are considered, the conclusion seems to be that the CLE has replaced governance by policy with governance by personality in situations which manifest themselves in the power of Principals both at central level and at the local school level. All of this has, in my view on analysis, resulted from a failure of effective policy formulation, structural integrity and enlightened leadership.

In these circumstances, I find that while the CLE has a clear and articulate understanding of its missions and the disruptive circumstances in which it finds itself, I believe that I have demonstrated that it has not been able to fulfill its original missions so that it cannot respond to the changing circumstances in which it finds itself and which were prophesied in its Strategic Plan 2004.

## 5.6 Conclusion

This was a very exhaustive review of the CLE's mission and its governance structures. Each of these elements may have been the subject of a separate thesis. In my data presentation and discussion, I sought to describe not only the ideal but the reality of these structures in the lives of the persons they affect. Many of my findings point to further research as not being final and conclusive based on the incomplete access to documents and persons who would have made the research more meaningful. I now go on to place this research in the broader global perspective by engaging in deeper analysis of the literature and my theoretical framework pointing out my concerns, the benefits of the research and my recommendations.

# Chapter 6: Main Findings, Recommendations and Conclusion

This chapter revisits the aim of the research, the methodology and data analysis procedures employed. In presenting and analysing the data, I realised that there were consistent themes which emerged across my research questions from which I derived a deeper level of understanding of the issues. I realised that, depending on how the institution responded to these themes, they became either a driver of or a barrier to change. I will, therefore, discuss my main findings in relation to these themes of mission, democratic governance, institutional structure and leadership. Finally, I will highlight the importance of the research, its limitations and reflect on my findings followed by my recommendations and suggestions for further research.

## 6.1 Aim of the Study

The aim of the research was to determine whether the governance and administrative systems of the CLE have been able to fulfil the institution's missions and are able to adapt to the changing disruptive environment. To pursue this research, I asked the following questions:

(1) Has the original mission of the CLE changed over the last 50 years?

(2) What are the drivers of change in the governance and administrative system of the CLE?

(3) What are the barriers to change in the governance and administrative system of the CLE?

(4) Is the governance and administrative system of the CLE capable of fulfilling its current missions in light of the changing environment?

## 6.2 Methodology and Data Analysis Procedure

To achieve this aim, I used an exploratory case study not only to identify some of the missions and governance issues in Caribbean legal education but also to explore how they have affected the achievement of the mission and the quality of the graduate and other stakeholders in legal education - the legal practitioners, the Bench, the Bar, and society at large. Because the CLE serves as the sole credentialing organisation in the Caribbean and by default has established a monopoly on vocational/professional legal education throughout the Commonwealth Caribbean, a study of legal education in the Caribbean is a study of the CLE. Hence, geography and the topic define and bind the case. Further, because I realised in my preliminary research that there was no previous independent research done on this institution and particularly on its governance and administrative system, this research had to be exploratory in nature. The qualitative approach can provide more detail and rich data for the understanding of the nature of the CLE, how it functions and how its actions affect its stakeholders. The results were used to explain the real-life organisational phenomenon based on my own participatory observation, interviews, two focus group discussions, and a survey questionnaire from critical stakeholders of the CLE. In addition, that observational, interview and survey data were triangulated using an array of other qualitative methods including the analysis of CLE documents, and archival records (Yin, 2013).

## 6.3 Recurring Themes and Comments

The special role and function of the CLE are subject to change from both internal and external pressure. How it responds to these challenges determines whether it will (a) regain its prominence as a key player in the process of adoption, invention and implementation of innovations (Borins, 2006) as it was in the beginning of its life (Lazarus-Black, 2008); or (b)

become obsolete only to be replaced by one or more national institutions performing the same functions which more closely reflects the needs of the local jurisdiction; are more inclusive of the global community; are organised to run more effectively and efficiently; and whose graduates may or may not have the privilege of unrestricted practice across the region as current CLE graduates do. In prosecuting these issues, I found several recurring themes which I wish to discuss – the effect of the postcolonial model; its institutional missions; application of democratic principles of governance; its governance structure and leadership.

### 6.3.1 The Postcolonial Model

This is a useful tool for analysis because it more closely resembles the Caribbean CLE than any other form of IVPLE in spite of its vast variation in application and lack of critical analysis. Firstly, the multiple stakeholder interests represented at the board of governors ensures a diversity of views and moves away from the traditional monopoly which the legal profession has had over vocational/professional legal education as a separate entity from academic training. Wright (1950) discusses the disadvantages of such a monopoly in his historic account of the Ontario Law Society's efforts in legal education. Multiple sectoral interests should ensure a legal education system designed for all societal interests and not for only one sector thereby ensuring the greater objective of the postcolonial yearning for societal development for all.

*New Zealand*

NZ is useful in demonstrating that lay and student representation is viable at the highest level of governance even though its lack of faculty representation may be disquieting to faculty when students are represented without their input. More concerning is the lack of representation of the College of Law while the IPLS may be said to be represented through the Chief Secretary

while six external law faculty deans are full members. The somewhat incestuous relationship between NZCLE and the IPLS poses problems which are reflected in what I perceived to be an ambivalent relationship between the National Director and the Chief Secretary especially when one considers the exclusion of the College of Law from the Council. What if the Council approved two other service providers? Would these service providers be also excluded while the IPLS has a voice through the Chief Secretary on the Council? Kenya seems to have found the answer to the situation both in NZ and the Caribbean, by making the KLS an independent corporate entity over which, as the KCLE, they exercised no greater control than any of the other institutions over which they have jurisdiction. This removes the perception of a conflict of interests, insider dealings or more favourable treatment to certain interests (the IPLS in NZ) as opposed to others and allows the KLS to function independently. I recommend a similar model be adopted in the Caribbean. NZ's engagement with 'settler postcolonialism' seeks to deliberately address the issue of indigenising legal education to embrace the cultural practices of all its people. While I could not specifically locate such an effort at either the KCLE or the CLE, Theodore (1994) advocates that Caribbean jurisprudence could be improved if it were to engage the best of the legal systems and laws of the diverse people represented in its societies – Islamic law, traditional African law and custom, Hindu law and the civil law.

*Kenya*

Conversely, the Kenyan experience of student representation suggests that representation must be meaningful and not merely window dressing or conducted within an authoritarian framework (Mulinge et al., 2017a). The lack of faculty representation, certainly for the Caribbean CLE, is concerning because of the very depressing picture (painted by IP10 and other staff participants some of whom narrated their personal experiences) of leadership, the lack of an

articulate policy framework and the impact of these factors on faculty morale. This should be of concern to all CLEs following the PCM. Such a situation could be ameliorated by the Kenyan appellate procedure against decisions of its CLE which can be also useful to keep the institution accountable for its actions. In this regard, the Kenyan appellate procedure can prove useful to ensure fairness and equity in administration for both students and faculty. Kenya is also attractive because of the diversity in legal education services over which its CLE has jurisdiction - undergraduate legal education, judicial and continuing legal education and any other type of legal training. This deliberately provides a range of alternative funding mechanisms that can be applied to its operations besides the core government funding. Conversely, Muchiri (2020) points out several areas of concern in the programme of the KSL and the KCLE which are very familiar to my analysis of the Caribbean CLE at Chapter 5. He points to problems arising from the overcrowding of the KSL (an issue discussed above), the Remedial Programme which is similar to the Caribbean CLE's six-month programme for lawyers qualified to practise in Commonwealth countries outside the Caribbean; regulating pupillage (which in his view is currently unregulated), the overcrowding of university law schools which fuels the demands on the KSL and the relevance of the law school curricula to meet the needs of the future. Most telling in relation to the Caribbean CLE is his critique of the KCLE as failing *"to develop a strategy with regard to the direction and standards of legal education and training in Kenya"* (page 18). It would be interesting to have the benefit of further research to indicate whether these issues common to the KCLE and the Caribbean CLE are isolated or are symptomatic of the PCMs.

Another area of interest is the contrasting approaches of NZ and Kenya in their supervision over their professional programme. NZ adopts an informal arrangement in the

governance of the IPLS which is like the Caribbean. While Kenya started with this approach, it eventually migrated to legally separating its operational arm (the KLS) from its governance functions as CLE. This is a useful approach as it puts the Council at arm's length from its schools and in a position to exercise independent oversight. NZ, on the other hand, initially started with its IPLS providing professional legal training then it opened this up to representation from the six law faculties. The question then becomes - how do these universities compete with the IPLS at Council level when there still remains an intimate (almost incestuous) relationship between the IPLS and the Council which none of the other law faculties enjoy. Recent newspaper reports (Otieno, 2020; Oduor, 2021) suggest that due to massive failure rates at the ATP (and many of the criticisms highlighted by Muchiri, 2020), the Cabinet of Kenya has agreed, among other measures, to decentralise the ATP to allow more service providers to offer it in addition to the KSL. This development will be interesting as to how it addresses the problems of equity and fairness between providers when compared to the NZ situation. It is also an issue with which the Caribbean CLE will have to grapple if it starts expanding law schools in Guyana, Jamaica and any other jurisdiction which then can make a case for its own law school/s representation on the Council. Will each law school have representation on the Council? If so, when does the proportion of executive officers become toxic to the independent supervisory role that the CLE must have over them? Would the CLE's law schools not have an advantage over other non-CLE schools unless the CLE creates a level playing field for all? That situation will be aggravated by the lack of a CEO who can supervise and ensure quality between the institutions based on an articulated quality policy recognised and implemented by the CLE which is not now the case.

The PCM is also useful for the contrasts in leadership. The Caribbean CLE is the only one which does not have a CEO/Director with central executive authority. Even in NZ which has the most informal approach to governance structure, there is a clear line of authority and accountability for its Executive Secretary who has authority over the National Director. The same applies to Kenya where the institutions are separate, have entirely separate governing arrangements and each CLE has a secretariat to support their respective administrative functions. All, that is – except the Caribbean CLE which has neither a CEO nor a secretariat. One major issue which I observed with all the PCMs under review is that there is a void of information and data emanating from them on a consistent basis on their functions which goes to the issue of transparency. In relation to NZ and Kenya I will soften this criticism somewhat based on the fact that I am operating from the other side of the world and may not have access to all materials which may be available locally. However, it must be noted that in this technological age, all of these institutions have their own websites with the capacity to publish their annual reports, papers and press releases on a continuous basis to allow access to their stakeholders and the general public. This issue of transparency is evident in the lack of information about issues of quality assurance and strategic planning. Even an examination of the situation in NZ which is the most transparent CLE, shows a remarkable similarity in their annual reports for the last 12 years that seemingly follow a template with annual variations based on events of that year. Yet, there is no strategic plan to which to align the organisational objectives so as to measure performance. Except for the Caribbean which I have begun to study, it is recommended that further data be collected and analysed before a conclusion can be reached. In the case of the Caribbean, the data is clear that there has been a continuous failure to observe the fundamental principles of transparency - and even a disregard for the very specific provisions of the

Agreement on which the institution was founded - to present annual reports on its activities to participating governments.

The PCM can also be analysed using the theoretical framework that underpins this research. Stakeholder theory ensures that where there is a diversity of stakeholder interests, all concerns can be contested until a resolution is found that can chart a sustainable strategic direction for the institution that will minimise conflict in the long term (Chapleo and Simms, 2010). While I do not have evidence of competing stakeholder interests in NZ and Kenya, this is clearly the case in the Caribbean situation based on the data. Apart from conflicting stakeholder interests that occur in different classes, there is the additional layer of country conflicts between 13 different jurisdictions competing for the resources of the CLE. In this situation, the stewardship theory of governance, if adopted can be of use to encourage Council members to place the institutional mission before their sectoral interests. At the same time, because of the record of unaccountability, lack of transparency and the host of issues I have identified in response to Research Question 4, the agency theory requiring a focus on accountability must be part of the theoretical discourse in reforming the CLE.

### 6.3.2 Institutional Missions

The CLE's missions were ahead of the traditional missions of legal education in more developed societies. It framed a transformative agenda for legal education to not only train lawyers to serve existing law, but to transform existing law to suit the needs of emerging underdeveloped societies born in a pan-African, postcolonial experience with an eagerness to transform the world (Pollard, 2014). Another area in which Caribbean legal education led was the synthesis of teaching approaches so that when James (2017) sought to mediate what appeared

to be irreconcilable differences between vocational training and academic education under the guise of 'professionalism', the Caribbean took a frontal approach of integrating all approaches – firstly with the academic and vocational programme being run by the UWI with the CLE having control over the vocational element (this proposal was rejected); and secondly, with the two elements of the programme being run distinctly by these institutions. The former proposal foreshadowed the situation that now exists in E&W legal education with several universities continuing their traditional academic programme but also licensed to teach and assess the LPC and BPTC (although this system is being phased out). Not only were its original missions revolutionary for its time, but its Strategic Plan 2004 was visionary in codifying its original missions, predicting future trends in technology, globalisation and outlining the structural transformation that was needed to align mission with achievement of mission through the articulation of its strategic goals and a management-oriented mechanism to achieve them.

However, the CLE has faced challenges with its indigenising mission, maybe because this required a more aggressive, deliberate, integrated approach between several (non-legal) disciplines as has been recognised in South Africa (Ruffin, 2019) together with a clearer articulation of what 'research' means in IVPLE. This failure has had practical repercussions, as has been noted, with the type of criteria set for faculty promotion or tenure where 'research' may need to be redefined away from its traditional academic moorings (what the law is) and publication protocols, to embrace research on how it is practised (Appleman, 2005; Eisenberg, 2011; Bell, 2016). More broadly, the CLE has been challenged by an inability to fulfil its missions at every level (particularly the provision of adequate, competent attorneys for the Caribbean) because of the Council's structural, administrative and leadership flaws which the

Strategic Plan sought to address. It is these governance and administrative failings that provide impediments to change.

### 6.3.3 Democratic Institutional Governance

I found this aspect of the CLE's governance system to be the most troublesome for me as a Caribbean person born in a postcolonial space with a history of slavery, oppression, and power imbalance (where 'might makes right'). It was in this space that we sought equity and socio-economic development based on fundamental principles of democratic governance. Moreover, as an attorney-at-law operating in an institution dedicated to training lawyers with a mission *"... to uphold democratic values, the institutions necessary for the democratic process and the rule of law"* (Ramsahoye, 1973, p. 14), I found the challenges of the CLE in being true to democratic principles of effective representation, accountability and transparency, to be very disturbing. The issue of transparency is most serious and finds its institutional genesis in violation of Article 9 of the Agreement by the CLE failing to provide annual reports to participating governments on its activities. It is also my finding that the CLE may not have ever produced any annual report of its activities and in its first ten years of existence, has only had periodic publication of its activities. Apart from informing stakeholders of its activities to engage them in the process of governance, annual reporting provides an opportunity for the institution to document, absorb, analyse and synthesise its activities during the year and all reports and discussion presented at its annual meeting in the context of how it has advanced since its last report. and to adapt and improve its activities for the following year – hopefully in line with broader strategic goals and its institutional missions. This failure may be one reason for the lack of progress and policy incoherence identified by IP1 and supported by all participants in FGs 1 and 2. Other failings in this regard is the lack of record and rationale for critical decisions like the abandonment/failure

of the Regional Committee structure, the termination of the Directors and the 'abeyance' of the Secretariat – each of which were consequential to the management of the institution.

The issue of transparency must also be considered in the context of the findings of both the Barnett Report and the Strategic Plan which found a failure of proper record keeping by the Council. It is logical to assume that if an institution has a problem with recording its decisions and policy initiatives, it will have problems with their articulation and publication. It is significant that, in an era of eDiscovery where litigants have the right of discovery to all documents, including electronic documents which require policy and procedures for authentication, storage, tracing, management, retrieval, access and destruction –the Council did not have such a records policy not only for its own purposes but if it was called upon to produce documentary evidence in any litigious action. Such policy and administrative failure beg the question: did (and does) the Council know that it was responsible for disseminating information about itself to its stakeholders and to the public? Is it aware of its treaty obligation to report annually to regional governments? Does its refusal to do both result from ignorance, negligence or deliberate policy?

The repeated failure of the Council to follow its own deliberate policy (especially the procedures mandated in QMP and Strategic Plan), adds additional texture to this discussion especially when seen in the context of the 2014 effort to engage an external consultancy (which it could not afford) to do work for which the QMP had already provided a process to effect. While I can make findings on the issue of a failure of the Caribbean CLE to follow democratic principles of governance, there is cause for concern and further research regarding other PCMs based on the lack of information that is publicly available when the technology invites transparency in many different ways. On the issue of governance in conformity with democratic

principles, I find that when this is done properly it can be a driver of change. However, when these principles are ignored or disrespected then they become impediments to change as is the case with the CLE.

### 6.3.4 Governance Structure

While the CLE's governance structure, like its missions, is similar to many others in higher education institutions, the mechanics of how it is operationalised is quite different. The major issue is the lack of policy directive and procedures that define their functions, decision-making and reporting process – issues which might have been addressed with an audit committee. This is extenuated by its lack of compliance with its own quality assurance process contained in its QMP. Even when there appears to be efforts at reform, as with the AC, when uninformed by the QMP or subject area experts in management and higher education, those efforts appear to attract a level of hubris that does not appear to be rational or effective. Most importantly, is perhaps the lack of consciousness that Council administration must be resourced independently of its law schools and be given pride of place and not seen as an appendage of the law schools as it currently appears. After all, it is the centre that gives direction to the extremities and must have the structure, resources (human, financial and material) to function effectively. The lack of such consciousness not only affects the Council itself, but all its committees and organs and is most manifest in the failure of a financial management process for the Council itself. It is interesting that since the Barnett Report documented the CLE's financial challenges and suggested supplemental funding mechanisms, the very activities which needed funding to make the Council more effective, have been ignored and no central financial system established to ensure administrative effectiveness. This placed the CLE in a vicious cycle in

which structure, policy and funding need to be tackled at the same time failing which the inertia that has been evident since 1977 will continue.

Even if such mechanisms could be found in the CLE's system, it would be to nought as the CLE lacks a current, articulate Strategic Plan that is participative in nature; builds trust and engages its stakeholders; which defines its priorities; aligns it with its environment and provides a framework to achieve competitive advantage (Lerner, 1999). This it had in 2004. It then rolled that plan over to 2008 and then apparently abandoned it to its satellite law schools. This action automatically denied the plan any level of cohesion and of being 'strategic' based on all the factors which inform such planning, implementation, monitoring and review. This lack of planning is yet another example of policy incoherence, the vicious cycle of inertia identified which can only be broken by an effective strategic plan that takes all these factors into account. In fact, I would recommend that the CLE revert to its Strategic Plan 2004 which, though not implemented, has all the ingredients required to transform it as an institution particularly regarding the establishment of strategic goals and priorities, aligning these with a more detailed work plan for each, set performance indicators and assign champions for each activity with reporting deadlines. What would be needed, however, is a new round of consultation with a credible assurance of implementation.

### 6.3.5 Board Composition and the Admissions Crisis

A lack of representation in organisations can thwart a Board's effectiveness as such failure denies the board advance insight as to how contemplated policy or structural change may impact on stakeholders and actual feedback as to its effectiveness when implemented (Boggs, 2010). When the constituents' interests are not a priority, external stakeholders' interest tends to move the institution towards those interests and not necessarily towards the institutional mission

especially if there is a conflict. In the case of the CLE, the bulk of the Council members come from legal professional bodies which may be concerned with increased numbers coming into the profession and possibly diluting the profession's identity. Because of this view they may be reticent to encourage any changes which may lead to an increase in enrolment. Yet the one mechanism that can either confirm or allay these fears and inform a coherent admissions policy – a manpower audit – has never been undertaken by the Council.

The failure to include its internal stakeholders on the Council denies the Council the informed views of persons who are more knowledgeable about implementing its policy, and those who are most affected by it. Student and faculty representatives on the Council may, for instance, insist on adherence to mission at its highest level in relation to the work of the Academic Committee in curriculum reform, design, assessment and quality assurance in line with the QMP. It also makes the addition of a lay person attractive to overall governance for the reasons of transparency and accountability to the interests of the ultimate beneficiary of legal education and legal services – the general public. Ironically, it appears that an institutional governing board concerned with setting up policies and regulations for social justice which was at the heart of one of its original missions is not concerned with democratic ideals of equal representation or shared governance.

### 6.3.6 A Leadership Vacuum

The most critical element that pervades overall change in the CLE is the void in central executive authority, either in the form of a chief executive officer, or an executive chairman. The Council was not established to be run by an executive chairman. It was created to have a governing board that would establish policy and ensure adherence to the institutional mission, and a chief executive who would implement the stated mission and would be

accountable to the Council. In removing the Office of the Director without strengthening the role and power of the Chairman to a more executive position, the move rendered the Council powerless to implement its policies and to establish strategic goals and plans to guide its operations. This void in institutional leadership seems to have had a psychological effect on Council members creating in them a sense of impotence that is reflected in the Morrison Report which clearly identified the problems but did not offer solutions. The same can be said of Lady Walrond's address (2017) where she actually highlighted some options but left it to regional governments to find a solution - as though this was not a responsibility of the Council.

The greatest indicator of the lack of leadership at the CLE may be the lack of consciousness of its responsibilities as a board of governors of a higher education institution. Non-governmental Council members blame the regional governments for the lack of funding and the policy incoherence that has resulted, yet the Council has failed to produce any plan to deal, for instance, with the admissions crisis other than the implementation of a flawed entrance examination system that it, itself recognises as being unsustainable, mounting justified criticism from regional governments. Faculty and students blame the Council for lack of direction and institutional inertia. The Council then blames the regional governments. This abdication of authority may be attributed to two major elements - the void in executive leadership created by the removal of the Director, and the failure to engage subject area expertise on the Council to inform it on higher education and management issues which, after 50 years, it should have recognised it was lacking. The Strategic Plan 2004 sought to address the issue of leadership but apart from the short-lived Secretariat, I see no evidence that there has been any effort to revisit the issue of a leadership vacuum in the CLE. Another trend that requires further investigation is the personalisation of leadership that I have already discussed. The failure of a coherent

leadership structure together with a coherent policy framework, a managerial lack of oversight, failure of adherence to principles of accountability and transparency and the lack of strategic planning aligned to institutional mission, has resulted in an abdication of authority away from the centre (the Council) to Principals who are effectively regional governors who make policy and govern as it suits them. Fournillier (2010) reminds us that there is an active plantation which still exists in higher education and the CLE is closer to the plantation of colonial society than we might think - ruled by powerful planters/principals whose decisions were absolute and whose power and influence on metropolitan governments/the Council maintained their power for centuries. It is ironic that the colonial power structure, its culture and influence that the CLE was established to combat now seems to be perpetuated by it in its relationship with itself.

Their power is then reinforced because the rotational structure of Council members guarantees that there are few persons with the institutional memory to contradict their understanding of the institution's activities. This places the Council and its members in even greater reliance on its Principals in the absence of effective policy and record keeping. Indeed, were there to be effective internal stakeholder representation, there might well be a different perspective of the institutional record which might help to triangulate the information that Council receives. It also reinforces the fragmentation of the CLE into fiefdoms governed by its Principals with no central authority and guidance. To date, there has been no proposal (post the Strategic Plan) to address any CLE reform.

### 6.4 Emerging Concerns and Implications

At inception, the CLE was a global leader in legal education in many respects advancing concepts which are now being considered and implemented around the world. Unfortunately, it seems clear that there was failure of mission implementation and governance and administrative

arrangements reviewed in my recurring themes above. In the meantime, the world has not stood still and the disruptive influences of technology, globalisation and a host of other events have caught up with it, posing challenges which demand a response. All of these challenges can result in regional governments taking matters into their own hands and creating national schools alone or in collaboration with external legal education providers as proposed by the government of Guyana or locally as with UTech in Jamaica. What is clear is that the CLE has major challenges with which to deal. At its best, it will require a major and fundamental reconstruction of its governance and executive structure even if it wanted to return to the 2004 era. It will now also have to grapple with the post 2004 world which is disruptive and unpredictable, calling for a level of flexibility and innovation. One proposal is for the CLE to become a licensing and accrediting agency for law schools disconnected from it with a core curriculum for legal practice and offering optional courses depending on each institution's focus (Improved Access to Justice in the Caribbean, 2018). The KSL model is useful by having its own independent legal existence (see discussion at section 3.2 of Chapter 3). In this way it does not have to take on the financial responsibility of managing law schools but can still maintain quality and the missions for which it was established. The law schools will also have the flexibility to cater their offerings to different market strata to make themselves viable and meet the needs of Caribbean people. There are also a variety of options between these poles. In any event, it will require some serious soul-searching and leadership which is not evident at present.

Perhaps the greatest challenge which it may confront is that of its credibility, trustworthiness, and ability to effect change of any kind among its stakeholders. A review of its track record is sufficient to make this point by referencing, inter alia, its failed manpower resource survey, the failed Regional Committees, the decommissioning of the Office of Director,

the demise of the Secretariat and the non-implementation of most of the recommendations of the 1977 Workshop which were repeated and augmented in 1981, 1996, 2003, 2004, 2008 and 2018. Mission-wise, it may have to reconsider its relationship with the UWI and adopt new strategies for opening up its doors to non-UWI students if it does not go the accreditation route while still maintaining its original mission particularly in the areas of indigenisation of the law and legal system and in creating a transformative graduate capable of contributing to Caribbean society.

On the positive side, the CLE still has the advantage of placing its graduates in any participating territory to practise which is a singular advantage. As a sub-region, it can also mount an effective case to counteract the incursion of foreign practitioners who are qualified to practise regionally under the most favoured nation clause of the GATS (Kim, 2014). One of its greatest attributes is its two-year programme which offers a host of opportunities for diverse curricula adaptable to a changing legal services industry in a global world where its graduates can be more marketable regionally and globally. The length of its programme can also enable it to ameliorate the problems of apprenticeship being experienced around the world where it can create a controlled, immersive ecosystem of simulated, experiential and clinical learning (as opposed to teaching) in a way that expresses a student's understanding of the law as well as its application. Finally, it must regain a respect for democratic principles of governance and the rule of law that informs its process and its relationship with its stakeholders. In approaching this discussion, I hope that all elements identified in my theoretical framework will inform the debate. The structural accountability elements of the agency theory are important to an organisation where it seems clear that the agents may have been operating in their own interests as opposed to that of the principal (if we perceive the principal to be regional governments and the Caribbean people). Stakeholder theory must inform the engagement of faculty, students and

staff in governance for the benefit of the institution and finally, stewardship theory has to embrace the diversity of conflicting stakeholder interests between themselves and even within their own interest groups when spread across national boundaries.

## 6.5 Significance of the Study

I believe this study to be significant in identifying several gaps in the research and critique of firstly, the mission of legal education and secondly, IVPLEs in terms of governance and the failure to apply effective governance theory to examine the effectiveness of these models. In relation to the critique of legal education missions, I believe that there is a gap in the failure to recognise that a new mission is needed for legal education which spans all the divides which I have identified in my literature review at Chapter 2 where I have sought to make the case for a new mission - re-imagining the legal profession and reconstructing legal education from the ground up in light of disruptive innovations which I have discussed.

Secondly, from an international/comparative perspective, it focuses on the governance arrangements for vocational/professional legal education in a way that has not been done before and applies governance theories to determine the effectiveness of these structures. It suggests that apart from the PCM, traditional governance structures are monopolistic with practitioners governing both education and entry into the legal profession with little or no other stakeholder interest - a situation which can be tempting for the profession to govern the profession in their own interests (as principals in agency theory) and not necessarily that of the public (as in stewardship theory) and other stakeholders (as in stakeholder theory).

This research further demonstrates a move towards what might well be evolving new governance models in legal education as both professional bodies and universities seek greater

collaboration with each other in the fields of academic and vocational approaches to legal education. The American model is now incorporating experiential/vocational elements which may necessitate changes in the governance structure of the system and the New Hampshire and Wisconsin models need to be more carefully studied; the Ontario model is witnessing a collaboration between the LSO and Ryerson University for the LPP; and in E&W, universities are now teaching and administering the professional programmes. In my concluding remarks to Chapter 3, I advocated for a complete revolution in thinking about the mission and structure of legal education. What this research suggests is that there may be, instead, an evolution in legal education which may well require further changes in governance and administrative structures. I argue that disruptive events require a fundamental response which may be equally disruptive. Unless a clear, rational and organised response is mounted to respond to the challenges discussed, it may be a cure that is too little too late. I believe that there is need for greater research and study of these phenomena particularly as to how the lessons in various jurisdictions can be of use to each other. This research, consequently, challenges traditional legal education to be more inclusive and participative in governance.

Further, it identifies the peculiar type of IVPLE that I have termed the Postcolonial Model, which actually is, in structure, a bit more inclusive and participative than traditional systems. However, as I have pointed out, there is not much data or critique on the actual working of these new systems. This research, while incapable of providing a working theory of such governance systems, may provide a useful comparator or data point for researchers in these systems of governance.

At the CLE, I hope that it might provide a pause for reflection on my research and lead to a recommitment to its original and changing missions as well as a re-evaluation of its governance

and administrative systems in light of its history and experience. Moreover, I would like to see the present administrators of Caribbean legal education see their role to be architects and engineers of a system inherited from the founding fathers who, in articulating their aspirations for a Caribbean jurisprudence noted that it *"... will have to be consciously created and industriously nurtured to the point where its content matches the description which we give it in anticipation of its fulfilment."* – Dr. O. Roy Marshall. Extracted from (Denman, 1980).

Finally, I believe that this research can ignite discussion on the unique Caribbean model of IVPLE, (once effectively modified to suit current needs and adaptable to future demands) as a useful framework in the global and evolving debate on the future of legal education in a disruptive environment, thereby placing Caribbean legal education at the table of international discourse and not in the spectator gallery.

## 6.6 Self-Reflection and Limitations of the Study

In 2010 Susskind wrote about his musings on the future of the legal profession in light of the trades and professions that had failed to adapt to the progress of civilisation and technology and whose existence could only be discerned by their name tags in public places. As he applied this concern to the legal profession, he was dismayed as he thought the failure of the legal profession to adapt to the new realities of technology might well lead to "the end of lawyers". I share Susskind's fears not only in relation to the legal profession globally, but to the existence and particular circumstances of Caribbean legal education (Susskind, 2010). I undertook this study with great trepidation understanding any critique might be considered a negative one if it challenged the status quo and called for the fundamental change I suspected was necessary. My journey was not an easy one in trying to distance myself from my institutional experience so as

not to import my own experiences into the data. I was often overwhelmed by the breadth of the field of governance and was often distracted by the many areas that were so attractive and which I vigorously pursued, only to be reined in by my supervisor and others with whom I shared my thoughts. I also found dealing with the volume of data challenging as there were so many issues I wanted to include which I thought were relevant - but I had to prioritise my selection of data related to my research questions. As has been said on several occasions, a case study can only be limited to the case and cannot be of general application. This is particularly true of this case study which I know cannot guide other studies in similar areas, but I do hope that it will inspire studies in other areas that can build on the comparative approach I have taken here. This research has been a long and arduous road filled with many challenges starting with my newness to this level of research, proceeding to the challenges of working as an insider with intimate knowledge of the institution from which I had to distance myself. It was also filled with tremendous opportunities for growth and personal development where I learnt that many of my previous assumptions had to be supported by evidence and sometimes, what I thought I knew was based on the perspective from which I was viewing the picture.

## 6.7 Recommendations

One factor influencing the impetus for this project stemmed from my initial dissatisfaction with the legal education I received. As a multiple stakeholder in Caribbean legal education, I sought not only to critique but to understand what went wrong. I have to admit to a level of incredulity in how I perceive the CLE in light of the data and analysis. However, I must, in the daze that my research has left me, seek to make recommendations for the CLE to meet its missions. None of the ideas or recommendations discussed below, taken alone, are novel, as scholarship abounds on all of the topics. Considered together, they propound a comprehensive

and holistic approach to legal education reform in the Caribbean. To do so, I would suggest that the emphasis be placed in the following areas:

1. **Reimagine legal education holistically** as an integrated whole, perhaps along the lines of the original Wooding recommendations with the CLE performing the role of accreditation to any institution of higher education that wants to engage in vocational/professional legal training. Allow each law school to have a core curriculum so as to meet the fundamentals of a general legal practice and specialty programmes in specialised areas of the law. This allows for diversity of offerings between schools and allows for complementarity as opposed to competition.

2. **Reform its Curriculum.** Refocus its curriculum design as centring primarily on academic approaches to learning to more experiential approaches of teaching and assessment. Focus the law schools around their respective legal aid clinics and expand the notion of clinical education to include all experiential programmes. Any academic/theoretical knowledge which is needed can be acquired through blended learning methods and research assignments outside the classroom where the level of understanding and application will manifest itself in the actual experiential exercises conducted (as it would in actual practice).

3. **Engage critical theory** to understand where it has come from and the factors which have contributed to its situation. Here agency theory can be useful in establishing an effective relationship between the Council, its executives, and its stakeholders. It may help to also inform who might be the most appropriate 'principals' on the Council to ensure representation. Stakeholder theory would mandate the inclusion of internal stakeholders and define their areas of commonality and differences which can enhance strategic planning. Stewardship theory, by giving priority to the institutional mission, can help to navigate the

conflicts that will occur within the organisation and hold it accountable to the broader community which will demand of the institution greater transparency of its operations and accountability to its widest stakeholders. Finally, postcolonial perspectives should force a re-examination of organisational structure and culture to keep it true to its mission.

4. **Rearticulate the mission of the CLE** in light of modern circumstances and the outline of an accreditation agency suggested above. Demonstrate how the economic viability of such a system of legal education can lead to direct economic benefits to the Caribbean through creating home-grown expertise in emerging areas of law and specialty areas that are peculiarly related to Caribbean interests and activities such as environmental, sport, cultural, and technology law.

5. **Create or reconfigure a new governance structure and administrative system** in line with the initiatives discussed above. Reconstruct a Secretariat with defined lines of authority in the first instance with the expertise to engage in a transition process from where the Council is at present to where it would like to be. Eventually, this Secretariat can morph into a permanent Secretariat for a reconstructed CLE.

6. **Review the QMP 2008** and implement its procedures in both administrative and academic quality assurance and, in particular, perform an internal manpower audit to recognise and employ in-house expertise that already exists in the organisation.

7. **Engage in a continuing education programme and professional development** for all Council members on its history and mission and particularly on the principles that govern higher education institutions, the peculiar challenges of modern legal education and the responsibilities of its Board members.

8. **Establish an Advisory Council** with experts in higher education governance, ICT and AI, financial and human resource management, organisational management, pedagogy and assessment, legal practice, members of which should be available to Council and all its committees (and the Secretariat). This Advisory Council can advise on areas in which their expertise is critically needed and especially on (a) Council's restructuring looking at past reports and research; (b) proposals for franchising the LEC or becoming a licensing/accreditation agency for IVPLEs; (c) resource management (financial, human and physical); and (d) continuing legal education and any other practice-based legal education, for example, paralegal training.

9. **Engage in a review of the curriculum** that is dynamic, innovative, flexible to change and, most of all practical and skills-based. It should be centred around the Legal Aid Clinic and any 'academic' work must be linked to a curriculum of practice so that it becomes meaningful.

10. **Establish an appeals process:** There is a concern that the CLE lacks credibility among its stakeholders and any effort to change may not get buy-in from them. A short-term approach may be to devise an appellate process like the Kenyan model discussed in section 3.2 of Chapter 3.

## 6.8 Conclusion

I hope that this research will once again place Caribbean vocational/professional legal education in the ongoing international debate on the future of legal education and present new ways of thinking about different structures within which legal education can be framed. It promises to be an exciting debate with much innovation and creativity in shaping a new landscape and I hope that I will be engaged in this discussion.

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**Appendix 1: Chronology of Development of Legal Profession in England and Wales and the USA**

Red ink relates to developments and commentary in the USA.

| Year | England and Wales (E&W) | Developments in the USA | Comments |
|---|---|---|---|
| 1292 | Edict of Edward I to find "apt and eager" students to learn the business of the courts (Plucknett, 2005; Smith, 2015; Stein, 2013). | | |
| **13th and 14th centuries** | | | |
| | Development of Inns of Court by student organization around dwellings (Inns – Lincoln, Gray, Inner Temple and Middle Temple) led to the education of barristers. Invited practitioners to dine and give lectures together with court observation, moots and legal debate. (Stein, 2013), Brand, 1987). The Inns also trained solicitors (Boon & Webb, 2008). | | This is illustration that the roots of English legal education were not in academy but in the profession which was able to set their own standards, were self-regulating exercising the full range of guild powers including control over education (Smith, 2015). |
| | Solicitors developed as clerks to the Court of Chancery who aided litigants in the drawing up of papers and eventually to becoming a permanent professional class of lawyers (Stein, 2013). Over time, their training became more formalised through the use of training contracts (Gregory, 1897). | | |
| | | 17th to 19th centuries | |
| 1600 – 1846 | Decline of the Inns of Court in managing legal education of barristers. Lack of interest by lecturers who earned more through practice. Students learned by self-directed study, personal access to practitioners (Smith, 2015).<br>**Act of 1729: Training** by apprenticeship formally established (Stein, 2013). | 1609 – 1779<br>Legal education centred around:<br>• study in England at the Inns of Court;<br>• self-education by reading one or more books on law; or<br>apprenticeship with a member of the legal profession or in the clerk's office of a court | |
| 1753 | Establishment of first legal education programme at Oxford under Lord Blackstone | | Canon law had always been taught at major universities since medieval times. Blackstone's lectures not limited to law students but open to "gentlemen of all ranks and degrees". His efforts were not sustained after his passing. In his view, law could only be taught as part of a broader liberal |

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| | | | education in a university context where it could be combined with study in other liberal pursuits such as the study of logic and reasoning, legal history, philosophy and the classics (Lucas, 1962). |
| 1765 | Publication of Blackstone's Commentaries on the Laws of England | Blackstone Commentaries used as the main source of material for study for law in the US colonies. | Significance to the development of legal education in the USA |
| 1770 - 80 | Blackstone was appointed to the Bench as a Justice of the Court of King's Bench - | **1779 -** Establishment of the law school at the College of William and Mary. The objective of its first professor, Wythe, was to teach law in its wider context allowing students to read legal texts and to look more widely at the political theory, classical literature, civics, history and economics behind the law (Krook 2017, Carrington 1990). | Engaged law students in courtroom by having special seating and questioning them after court about issues of law argued. Otherwise, tuition consisted of professorial lectures offering little on how to apply what had been learnt operating on the assumption that skills training would take place in practice (Sonsteng et al., 2007 p. 323). |
| 1826 | Establishment of the **Law Society** | | |
| 1846 | Report of Parliamentary Investigating Committee.<br><br>*Report of the Select Committee on legal education, H.C.JouR. 686 (August 25, 1846).* | | The Report found training of barristers to be inferior to Europe and USA. Recommendations included:<br>• entrance exams for admission to Inns and bar;<br>• national law college proposed;<br>• common law programmes should be taught at university. |
| 1852 | Establishment of **Council of Legal Education** | | |
| 1852 | Establishment of **Council of Legal Education** and the **Inns of Court School of Law** (ICSL) (Boon & Webb, 2008) | | Initially based at Lincoln's Inn and then at Gray's Inn in London. |
| 1869 | | Rise of the Socratic method and case law as the preferred method of American legal education at Harvard Law School | This method involved students finding legal principles in a case and applying those principles to a new set of factual circumstances then quizzing students about those facts and principles. |
| 1871 | Creation of law faculty at Oxford | | |
| 1872 | Introduction of a compulsory Bar examination by Council of Legal Education | | |

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| 1873 | Creation of law faculty at Cambridge | | |
| 1878 | | Establishment of the American Bar Association (ABA). One of first seven committees was the Committee on Legal Education and Admissions to the Bar (the First Section). (Boyd, 1993)<br>(American Bar Association, n.d.) | |
| 1883 | Can English law be taught at the universities? An inaugural lecture delivered at All Souls College, 21st April, 1883, (Dicey, 1883) | | Here Dicey challenged the efficacy of studying law in universities believing that "nothing could substitute for the apprenticeship model of training or "with the real actual business, and fosters in him (the student) qualities which cannot be produced by any theoretical teaching, however excellent." |
| 1903 | Law Society opens its first School of Law | | |
| 1922 – 1960s | Law Society required all articled clerks who were not law graduates or managing clerks of more than ten years' experience to undertake a full year's study at its School in London or at a recognized institution (Boon & Webb, 2008). | | |
| 1947 | . | Formation of a Law School Admission Test Policy Committee of the Law School Admission Test Board (3 – 22 law school representatives coming together to formulate an admissions test for law schools based on aptitude testing). First test administered in 1948. The Committee grew into the current non-profit Law School Admission Council (LSAC) consisting of law schools in the USA, Canada and Australia (White, 1984) | The LSAC has developed the current Law School Admissions Test (LSAT) which tests logical and analytical reasoning and writing skills. Has been incorporated as a requirement for university admissions policy by the ABA (or similar testing) as well as being used by some Canadian and Australian universities.<br>It has been greatly criticized, among other things, as an invalid predictor of student success at law school (Kinsler, 2001), a test biased against minorities (Espinoza, 1993), not really of economic value to students in world of work (Berkowitz, 1998) |
| 1971 | Report of the Committee on Legal Education. United Kingdom, (Lord Chancellor's Committee on Legal Education, 1971) – **The Ormrod Report** (Ormrod, `1971)**.**<br>The Committee was required to: | | Significance of this Committee was to encourage the movement towards the acquisition of a university law degree as a prerequisite towards entry into the profession so as to provide the student with the essential requirements of the practitioner:<br>• a basic knowledge of the law and where to find it; |

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| | • advance legal education by furthering cooperation between the various bodies responsible for its management;<br>• make recommendations for training and education between the two branches of the profession regarding the contribution of universities, and training by the Law Society and the Council of Legal Education<br>Citation: *Great Britain, Report of the Committee on Legal Education (Ormrod Report) (London: HMSO, 1971) Cmnd 4595*. | | • an understanding of the relationship of law to the social and economic environment in which it operates; and<br>• the ability to handle facts and to apply abstract concepts to those facts.<br>It also recommended a more liberal approach to university legal education by including exposure to other disciplines and techniques and supported such 'mixed degrees' where students starting in another discipline could convert to a law degree programme (Thomas & Mungham, 1972). |
| 1979 | **The Benson Report** - Report of the Royal Commission on Legal Services under Lord Benson (Saunders, 1996; Boon and Webb, 2008) | | Focus was on other aspects of legal services. In relation to legal education, it confirmed much of the recommendations of the Ormrod Report. |
| 1986 | Report of the Marre Committee on the Future of the Legal Profession in the UK (**The Marre Report)** - (Burrage, 1996; Saunders, 1996; Boon and Webb, 2008) | | Committee established by the Bar Council and the Law Society of **E&W** to review the way the legal profession met the needs and demands of the public for legal services. |
| 1988 | **Review of Legal Education, Consultation Paper,** Law Society 1988 (Saunders, 1996) | | The Law Society's response to the Marre Report in undertaking its own review of legal education. |
| 1990 | **Training Tomorrow's Solicitors** - Consultation Paper of the Law Society. (Saunders, 1996) | | The Law Society's response to the Marre Report in undertaking its own review of legal education. |
| 1990 | | **The MacCrate Report**[1] (MacCrate, Martin, Winograd, & Norwood, 1992)**:** This identified 10 legal skills of problem solving; legal analysis and reasoning; legal research; factual investigation; communications (writing and oral); counseling; negotiation; litigation and Alternative Dispute | While it did not specifically identify these skills should be taught by experiential methods, it created the framework to introduce or expand experiential teaching in law schools. |
| 1990 | The Courts and Legal Services Act 1990.<br>The Act effectively delinked the monopoly that various arms of the profession and over certain work, for example, solicitors no longer had a monopoly over conveyancing and barristers no | | Served as a precursor to disrupting the monopoly of the professional bodies over their respective branches and allowed for independent regulatory agencies to be established. |

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| | longer had a monopoly over advocacy in the High Court. | Resolution (ADR); organization and management of legal work; and recognizing and resolving ethical dilemmas. It also recognized four fundamental values of the legal profession to be provision of competent representation; striving to promote justice, fairness and morality; striving to improve the profession; and professional self-development | |
| 1991-1996 | Establishment of **The Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC)** to advise on the education and training of legal service providers with relevance to practitioners and the public. | | Significance of this Report is its recognition of:<br>• changing market forces, more sophisticated and demanding consumers and would drive a 'legal services revolution' characterized by complexity in content, delivery of service and competition;<br>• changes in higher education with greater student populations, more choices or programmes, reduction in public funding all leading universities to create innovative vocational and post-graduate programmes;<br>• need for multiple entry and exit points within legal education in recognition that not all students would go into legal practice;<br>• need for flexibility between academic and professional training so that the first is not necessarily a precursor to the other.<br>It also considered issues of apprenticeship, access and funding, teaching and learning methods at universities, quality control and continuing legal education. |
| 1996 | First Report on Legal Education and Training by the ACLEC | | |
| 1997 | Monopoly on Bar Vocational Course (BVC) ended with demise of the Council | | |
| 2001 – 2007<br>**Training Framework Review of the Law Society** | | | |
| 2001 | Establishment of the City Law School<br>Amalgamation of University of London and the Inns of Court School of Law | | |
| 2006 | **Creation of Bar Standards Board** (BSB) which is an independent regulatory board of the General Council of the Bar (the Bar Council). | | Functions include:<br>• Setting ethical standards for barristers and determining the prerequisites for entry into profession (education and training |

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| | Source: https://www.barstandardsboard.org.uk/media/1353435/ bvc_report_final_with_annexes_as_on_website.pdf | | requirements as well as continuing legal education programmes);<br>• Supervising professional service of barristers to public;<br>Functions were previous performed by the Bar Council itself. |
| 2007 | The Legal Services Act, 2007<br>The objectives include the protection and promotion of protecting and promoting the public interest and that of consumers; promotion of competition in the provision of services; improvement of public legal education and access to justice; diversification of the legal profession and promotion of professionalism.<br>It created the Legal Services Board to establish oversight on legal professional bodies (approved regulators) such as the SRA (which the Act also created) and the Bar Standards Board | **The Carnegie Report**[2] (Sullivan, Colby, Wegner, Bond, & Shulman, 2007)**:** Identified three apprenticeships (the cognitive, the practical, and the ethical-social) which should be integrated throughout the three years of law school with a focus on the role of professional identify formation. When read as a whole with a view to implementation, it calls for greater experiential learning (Thomson, 2014). | This provided a conceptual framework for law schools to create innovative programmes that integrated doctrinal theory of law with more hands-on, practical programmes utilising simulations and experiential learning methods.<br>**The Legal Services Act** separated the regulatory functions of the Law Society over the entry requirements into the profession and ethical standards for solicitors from its representative role and vested them in the SRA. The Law Society continues to be the representative body for solicitors.<br>The services of barristers and solicitors came to be included as services in the 'legal services market' heralding the change towards a more consumer-oriented approach to legal services. |
| 2008 | Publication of the Bar Vocational Course through the publication of the Report of the Working Group ("Wood Report") by the Bar Standards Board. BVC converted to the Bar Professional Training Course (BPTC) in 2010. | | |
| 2010 | Review of Pupillage: Report of the Working Group by the Bar Standards Board | | https://www.barstandardsboard.org.uk/media/1383787/pupillage_report.pdf) |
| 2012 | The SRA published two research reports - Work Based Learning (PDF 67 pages, 1.5MB) and Continuing Professional Development (PDF 110 pages, 2.4MB). | | These fed into the LETR Report of 2013. |

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| 2013 | Conversion of the BVC to the Bar Professional Training Course (BPTC) | | (Bar Standards Board, 2003) |
| 2013 | "Training for Tomorrow: Assessing Competence", Consultation Paper of the SRA.<br><br>Training Trainee Solicitors: Guidance to the SRA Regulations on training contracts | | (Solicitors Regulation Authority, 2013a)<br><br>(Solicitors Regulation Authority, 2013b) |
| 2013 | Publication of "Setting Standards: The future of legal services education and training regulation in England and Wales" by the LETR.<br><br>**The LETR** was jointly undertaken by the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and the Institute of Legal Executives Professional Standards (IPS) as the most substantial review of legal education since the 'Ormrod Report'. Among other things, it addressed issues of:<br><br>Quality of training (professionalism, consistency of training, competency of legal service providers, analysis of data);<br><br>Access and mobility: standards for internships and work experience; increase opportunity for career progression in paralegal work; career guidance;<br><br>Flexibility: require regulators to set equivalency standards; clarity in systems of accreditation of prior learning; remove restrictive and unreasonable training regulations.<br><br>(The Legal Education and Training Review, 2013) | | It was designed to:<br>(a) assess the perceived strengths and weaknesses of the existing systems of legal education and training across the regulated and unregulated sectors in E&W;<br>(b) identify the skills, knowledge and attributes required by a range of legal service providers currently and in the future;<br>(c) assess the potential to move to sector-wide outcomes for legal services education and training;<br>(d) assess the potential extension of regulation of legal services education and training for the currently unregulated sector;<br>(e) make recommendations as to whether and, if so, how, the system of legal services education and training in **E&W** may be made more responsive to emerging needs;<br>(f) include suggestions and alternative models to assure that the system will support the delivery of: (i) high quality, competitive and ethical legal services;<br>(g) flexible education and training options, responsive to the need for different career pathways, and capable of promoting diversity. (Ching, Maharg, Sherr, & Webb, 2015) |
| 2014 | Bar Professional Training Course (BPTC) instituted in place of the BVC | | |

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| 2017 | Policy Statement on Bar Training and<br>Consultation Paper on the Future of Bar Training (Bar Standards Board, 2017) | The ABA (American Bar Association, 2017) set standards for simulation courses, law clinics and field placements. | These were instituted as early as 2007 as referenced by (Thomson, 2014) but those references are no longer available. |
| 2018 | Authorisation Framework for the Approval of Education and Training Organisations (Bar Standards Board, 2018a)<br>Future of Bar Training Policy (Bar Standards Board, 2018b) | | There has been considerable consultation about how these proposed and adopted policies will work out, especially during the transitional period (Capps, Stec, Tighe, & Tinkler, 2018), (General Council of the Bar of England and Wales, 2017). |
| 2018 | The BPTC was phased out and replaced by one of three options:<br>• a course in one part, which may be full-time over a year or part-time over a longer period, similar to the old Bar Professional Training Course (BPTC);<br>• a course in two parts, which may involve face-to-face teaching for both parts or may involve self-study only for one of the parts, and<br>• a longer course which combines study of the subjects of the vocational component with an undergraduate degree in law.<br>Aspirants to the Bar must also pass the Bar Course Aptitude Test (BCAT) and join an Inn of Court.<br>https://www.barstandardsboard.org.uk/training-qualification/becoming-a-barrister/vocational-component.html | | |
| 2021 | From Sept 1, 2021, to become a solicitor, aspirants must:<br>• have a degree in any subject or a qualification or experience that is equivalent to a degree, such as a solicitor apprenticeship which combines on the job experience and training<br>• pass both stages of the SQE assessment - SQE1 focuses on legal knowledge and SQE2 on practical legal skills and knowledge<br>• two years' full-time (or equivalent) qualifying work experience'<br>• pass our character and suitability requirements.<br>https://www.sra.org.uk/students/sqe/ | | |

**Appendix 2: Comparative Table for PCMs**

## Comparative Dedicated Governance and Administrative Structures for Professional Legal Education in New Zealand, Kenya and the Caribbean

# Governance Authority

| | NEW ZEALAND | KENYA | CARIBBEAN |
|---|---|---|---|
| **Themes** | **Council of Legal Education** | **Council of Legal Education** | **Council of Legal Education** |
| **Objectives** | Setting courses of study for the examination and practical legal training of persons wishing to be admitted as barristers and solicitors in NZ.<br>• providing, or arranging for the provision of, those courses of study;<br>• arranging for the moderation and assessment of those courses of study;<br>• assessment of qualifications particularly those of overseas law graduates and legal practitioners wishing to practise in NZ;<br>• arranging for the provision of research as necessary, and tendering advice on legal education;<br>• administering and conducting certain examinations. | (*a*) establish, manage and control such training institutions as may be necessary for organizing and conducting training courses -<br>(i) to impart professional skills for persons seeking admittance to practise law in Kenya;<br>(ii) in legislative drafting;<br>(iii) for magistrates and members of the judiciary, Government officers, paralegals;<br>(iv) continuing legal education courses;<br>(vi) organizing and conducting continuing legal<br>(vii) holding seminars and conferences on legal issues;<br>(viii) such courses as the Council may from time to time prescribe;<br>(*b*) conduct examinations for the grant of such academic awards as necessary;<br>(*c*) award certificates, fellowships, scholarships, bursaries and such other awards. | *(a)* to undertake and discharge general responsibility for the practical professional training of persons seeking to become members of the legal profession;<br>*(b)* to establish, equip and maintain Law Schools, … for the purpose of providing postgraduate professional legal training;<br>*(c)* to appoint a Principal of each Law School….<br>*(d)* to make proper provision for courses of study and practical instruction…<br>*(e)* to evaluate courses of study provided by and to accord appropriate recognition of legal qualifications obtained at other institutions;<br>*(f)* in the exercise of any of the above functions or powers to enter into any such agreements with the University of the West Indies, and the University of Guyana as the Council shall think fit;<br>*(g)* to appoint Committees of the Council |

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|---|---|---|---|
| **Infrastructure** | **Administers a Legal Practice Course through** | | Operates three Law Schools in T&T, J'ca and the Bahamas |
| **Appointing Instrument** | | | Agreement Establishing the Council of Legal Education |
| **Purpose** | • responsible for vocational legal education that includes<br>• defining and prescribing courses of study for the examination and practical legal training of persons wishing to be admitted as barristers and solicitors.<br>• includes the actual courses of study and their assessment. | • train persons to be advocates under the Advocates Act;<br>• ensure continuing professional development, paralegal and other specialized training;<br>• develop curricular, training manuals,<br>• conduct examinations and confer awards. | To manage the Law Schools assigned to them. |
| **Leadership** | **Chairman** | **Chairman appointed 3 years** | **Chairman appointed for 3 years** |
| **Composition** | • two high court judges,<br>• one district court judge,<br>• five practitioner members,<br>• one lay member,<br>• two students and<br>• the deans of the law faculties of the six Law Schools. | • Chief Justice (Chairman);<br>• One Justice of Appeal;<br>• One judge of High Court;<br>• The Attorney-General (Att-Gen) or his rep;<br>• 5 advocates from Law Society;<br>• Head of any approved Faculty of Law in Kenya;<br>• Head of any training institute established by Council;<br>• Senior Counsel appointed by Att-Gen;<br>• Kenyan law teacher appointed by Att-Gen;<br>• Permanent Secretary of ministry responsible for higher education.<br>**Section 3 of Council of Legal Education Act Cap 16A of 2009.** | |
| **Sub-Ctees** | **Executive Committee**: to deal with Council business between meetings | Finance, Planning and Administration; | 1. Executive Committee<br>2. Academic Committee |

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|---|---|---|---|
| | **Credits Committee**: to review recommendations relating to assessment of overseas qualifications | Quality Assurance and Compliance Committee;<br>Human Resource and Administration;<br>Procurement;<br>Information Communication Technology | 3. Selection Committee<br>4. Admissions Committee<br>5. Review Committee |
| **Frequency of Meetings** | Met twice in 2018 | **4 times (Clause 1 of Proceedings of the CLE Regulations.** | Once per year |
| **Additional Comments** | | Desire for new paths in developing a post-colonial society. | Desire for new paths in developing a post-colonial society. |
| **Accreditation** | Council Regulations govern accreditation of providers | | |
| **Term of Office** | 13 weeks | 4 years | Variable depending on stakeholder interest. |

# Administration/Operational Arm

| | NEW ZEALAND | KENYA | CARIBBEAN |
|---|---|---|---|
| **Operational Arms/Depts** | **The Institute for Professional Legal Studies (IPLS)** | **Kenya School of Law** | **Principals of the three Law Schools of the Council** |
| **Chief Executive** | **The Executive Secretary**<br><br>**National Director** | **Director** | No chief executive – only regional managers. |
| **Functions** | The Institute is the Council's provider arm for the delivery of the Professional Legal Studies Course. The Council has a statutory duty to arrange the provision of such a course. and must ensure that it has the ability to do so to ensure that the course is accessible to all students.<br><br>It is managed by the National Director who is appointed by the Executive Secretary. | **Kenya School of Law Act establishes the Kenya School of Law as a body corporate.**<br>**Section 4 prescribes that:**<br>The School shall be a public legal education provider responsible for the provision of professional legal training as an agent of the Government. It is responsible to:<br>(a) train persons to be advocates under the Advocates Act;<br>(b) ensure continuing professional development for all cadres of the legal profession;<br>(c) provide para-legal training;<br>(d) provide other specialized training in the legal sector;<br>(e) develop curricular, training manuals, conduct examinations and confer academic awards; and<br>(f) undertake projects, research and consultancies. | " To facilitate the development of competent legal practitioners for the region who, appreciating their responsibility as members of an honourable profession and recognising the needs of their socio-economic environment, are inspired in the pursuit of excellence, the maintenance of high ethical standards, the promotion of social justice and the strengthening of the rule of law." |

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| **Responsi-bility of Chief Executive** | Responsible for<br>• discharging all statutory responsibilities and duties required by the role pursuant to the Council's operations<br>• efficient operation of the organisation, including the **Institute of Professional Legal Studies**, and must ensure and promote compliance with all statutory obligations imposed on the Council.<br>• ensuring that the Council's operations are conducted in a professional, ethical manner with adequate staff. | The Director shall, subject to the direction of the Board, be responsible for the day-to-day management of the affairs of the School and shall:<br>(a) ensure the maintenance of efficiency and discipline by all staff of the School;<br>(b) conduct examinations in accordance with the Schedule approved by the Board;<br>(c) manage the budget of the School to ensure that its funds are properly expended and accounted for; and<br>(d) perform such other duties as the Board may, from time to time, assign. | No chief executive. |
| **Composi-tion of Board** | | **Governance Board of School comprises:**<br>• The principal secretary of Ministry for legal education;<br>• Principal secretary for Ministry of Finance;<br>• The Attorney-General;<br>• The Chief Justice;<br>• Secretary to the Commission for Higher Education;<br>• Representative of the Law Society of Kenya;<br>2 other persons appointed by the Cabinet secretary – one who teaches law in Kenya nominated by the universities and a | No governing board for individual Law Schools. Original decision was to have regional councils for each of the Law Schools. See explanation and Table 2 in section 2.2 of Chapter 5. |

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| | | curriculum expert who teaches education in a Kenyan university. | |
| **Powers of Board** | | The Board's power includes the duty to:<br>• provide strategic advice and direction to school;<br>• approve study programmes;<br>• monitor the performance of the school and make policy;<br>• administer the property and funds of the School. | |
| **Adminis-trative Structure** | Executive Committee comprising the Chairman, Chief Executive and to Council members. | | Executive Committee;<br>Academic Committee. |
| **Strategic Planning** | No Strategic Plan except for human resource management. | Strategic Plan 2014 -18, for the Council<br>Strategic Plan 2018 – 22 for the School of Law | Lack of documentation on structure and administration; no current strategic plan, |
| **Law School Administration** | IPLS is managed by a National Director | Director of the Kenya School of Law | One principal for each Law School |
| **Certification** | Completion Certificate | | Legal Education Certificate (LEC) |
| **Comments** | | Kenya School of Law Act No 26 of 2012<br>Council of Legal Education Act | Agreement Establishing the Council of Legal Education |

## Appendix 3: Classification of Documentary Data

# Classification of Documents

| No. | Year | Original Name | Familiar Name | Author/Publisher | Location |
|---|---|---|---|---|---|
| | | | | | |
| **CLASS 1 – Legal Documents** | | | | | |
| 1 | 1971 | The Agreement establishing the Council of Legal Education | The Agreement | CARICOM | CARICOM |
| 2 | 1986 | Council of Legal Education Act | CLE Act 1986 | Guyana Parliament | Guyana |
| 3 | 1971 | Council of Legal Education Act | CLE Act 1971 | Jamaica Parliament | Jamaica |
| 4 | 1973 | Council of Legal Education Act | CLE Act1973 | TT Parliament | TT |
| 5 | 1988 | Council of Legal Education Act | CLE Act1988 | Bahamas Parliament | Bahamas |
| | | | | | |
| **CLASS 2 – CLE Documents** | | | | | |
| 6 | 2020 | Undergraduate regulations and syllabuses, Faculty of Law | UWI Syllabus | UWI | TT |
| 7 | 1965 | University of the West Indies committee on legal education report. 1965 | Wooding Report | UWI | HWLS Lib |
| 8 | 1973 | Legal Education in the WI 1963-72 | CLE Report 1963-72 | CLE | HWLS Lib |
| 9 | 1973 | Legal education in the West Indies 1963-1972 – F. Ramsahoye | Ramsahoye Lecture | CLE | HWLS Lib |

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|---|---|---|---|---|---|
| 10 | 1974 | Regulations for full-time academic and senior administrative staff 1974. | CLE Staff Regs | CLE | Personal Doc |
| 11 | 1977 | Report on workshop on legal education in the Caribbean 77 | Legal Education Workshop | CLE & UWI | HWLS Lib |
| 12 | 1980 | Report from the western and eastern Caribbean sub-committees | The Joint Committee Report | CLE & UWI | Barnett Report |
| 13 | 1981 | Report of consultants appointed to assist the Joint Committee on legal education in a review of legal education in the Commonwealth Caribbean | Marshall Report | CLE & UWI | HWLS Lib |
| 14 | 1996 | Report of the review committee on legal education in the Caribbean 1996 | The Barnett Report | CLE | HWLS Library. Originally commissioned in 1991 to study to address the concern of accommodation for non-UWI applicants to its Law Schools. During its tenure, its terms of reference were expanded to include the amendment of CLE regulations to deal with the entry into the six-month programme and then more broadly to examine current developments in technology, trade and global developments and make recommendations regarding the Caribbean scheme of legal education and a scheme for the assessment of academic staff. |
| 15 | 2000 | CLE Student Regs | | CLE | Public |
| 16 | 2003 | CLE Student Regs | | CLE | Public |
| 17 | 2004 | Strategic Plan 2004-9 | The Strategic Plan 2004 | CLE | Public |
| 18 | 2005 | Statement of CLE | | CLE | Public |
| 19 | 2006 | Development in Legal Ed – Press Release | Press Release | | Public |

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|---|---|---|---|---|---|
| 20 | 2008 | Strategic Plan 2008-13 | Strategic Plan 2008 | CLE | Public |
| 21 | 2008 | Quality Management Policy 2008 | QMP | CLE | Public |
| 22 | 2008 | An orientation brief for new members of the Council of Legal Education of the Commonwealth Caribbean on the Council's history, achievements and challenges | The Orientation Brief 2008 | CLE | Public |
| 23 | 2009 | Entering Law School | | Vasciannie | Newspaper |
| 24 | 2009 | CLE Student Regs | | CLE | Public |
| 25 | 2012 | CLE Student Regs | | CLE | Public |
| 26 | 2012 | Student Services Policy and Procedures Manual | | HWLS | Public |
| 27 | 2013-4 | Ad for consultancy | | | Public |
| 28 | 2014 | Report of Review Committee to Council | | Morrison, D | Supplied by author |
| 29 | 2016 | CLE Student Regs | | CLE | Public |
| 30 | 2017 | Press release by Chairman | | R. Armour | newspaper |
| 31 | 2018 | Press Release re the CLE and ExCo meeting | | CLE | Public |
| | | | | | |
| **CLASS 3 – Interview Transcripts** | | | | | |
| 32 | | Interview Participant P1 | | | |
| 33 | | Interview Participant P2 | | | |
| 34 | | Interview Participant P3 | | | |
| 35 | | Interview Participant P4 | | | |
| 36 | | Interview Participant P5 | | | |

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|---|---|---|---|---|---|
| 37 | | Interview Participant P6 | | | |
| 38 | | Interview Participant P7 | | | |
| 39 | | Interview Participant P8 | | | |
| 40 | | Interview Participant P9 | | | |
| 41 | | Interview Participant P10 | | | |
| 42 | | Interview Participant P11 | | | |
| 43 | | Interview Participant P11 | | | |
| 44 | | Interview Participant P12 | | | |
| 45 | | Focus Group 1 | | | |
| 46 | | Focus Group 2 | | | |
| | | | | | |
| **CLASS 4 – External Reports on the CLE** | | | | | |
| 47 | 1977 | HWLS Students Report | | CLE | HWLS Lib |
| 48 | 1978 | NMLS Students Report | | CLE | HWLS Lib |
| 49 | 1998 | Task Force Report into Legal Education in the Caribbean – Government of T&T | | | Public |
| 50 | 1998 | Report to CARICOM | | | |
| 51 | 2016 | IMPACT Justice Report on Opinion of Law Students and Members of the Legal Profession | | | |
| 52 | 2018 | IMPACT Justice Final Report | | | |
| 53 | | Situational analysis of legal education provision in Jamaica | | Dennis Darby | Internet |
| 54 | 1998 | Task Force Report on Legal Ed in Cbean for TT Government | | GOTT | Public |
| 55 | 1998 | Georges Report | | | HWLS Lib |

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|---|---|---|---|---|---|
| 56 | 1980 | Legal Education in the 1970s and 1980s | | WILJ (1980) Vol 3-6 | Public |
| 57 | 1980 | Whither legal education | | The Lawyer | Public |
| 58 | 1984 | Address of CJ Kelsick of T&T - Report on the CLE – p 14 | | Kelsick | Public |
| | | | | | |
| **CLASS 5 – Public Commentary** | | | | | |
| 59 | 1990 | Towards the emergence of an Anglo-Saxon Jurisprudence | | Malcolm, Howard | 18 WILJ (2), 53 |
| 60 | 2000 | The future of legal education and the legal profession | | Maharaj | Public |
| 61 | 2000 | The vision for the legal profession and judiciary in the 21st century | | D. Byron | |
| 62 | 2008 | Of monopolies, entrance exams and healthy levels of lawyering for the Cbean | | Aina | On request |
| 63 | 2012 | Recolonisation by Invitation | | Theodore | Public |
| 64 | 2014 | A proposal to establish a legal practice program in Guyana | | Singh R. | Blog |
| 65 | 2015 | Are law schools in the Cbean discriminating – a look at their admissions policy | | Chung R. | newspaper |
| 66 | 2016 | Fostering social justice orientation through clinical legal education in the Caribbean –stakeholder considerations | | Sylvester, P | Public, Online |
| 67 | 2017 | The future of legal education | | Walrond, Lady | Barbados Bar Asscn |

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|---|---|---|---|---|---|
| 68 | 2017 | Building jigsaw puzzles and the Caribbeanization of legal education | | Jamadar J. | On request |
| 69 | 2019 | The future of Cbean legal education – the search for problem solving tools to humanize our systems of justice | | Kokaram J. | On request |
| 70 | 2014 | If the present law school difficulty is not overcome and the ideal of law programme founders disintegrates, we shall have failed. | | Duke Pollard | |
| 71 | 2017 | Untenable: Vasciannie calls for change to CARICOM legal training pact, law school for UTech | | Vasciannie | Public - newspapers |
| 72 | 2017 | UTech Law Gets Accreditation - Vasciannie Demands End to Discrimination against University's Students | | Vasciannie | Public - newspapers |
| 73 | 2015 | Reflections on legal education | | Vasciannie | Public - newspapers |
| 74 | 2015 | The future of legal education | | Walrond, B | B'dos Bar Asscn |
| 75 | 2014 | Cbean legal education needs comprehensive review - AG | | Nandlall, A.G. | |
| 76 | 2016 | University in Jamaica Gets Cabinet's Nod to Establish Law School | | | Public - newspapers |
| 77 | 2016 | Advocating those legal opportunities | | Vasciannie | Public - newspapers |
| 78 | 2015 | The legal education lottery | | B. Welsh | Public - newspapers |
| 79 | 2017 | Address law school inequity | | C. Harper | newspaper |
| 80 | 2015 | Lawyer takes education council to court | | | newspaper |
| 81 | 2017 | Is monopoly on legal education right? | | | Newspaper |

## Appendix 4: Participant Information Sheet

This fact sheet has been endorsed by the University Research Ethics Committee 1

# Participant Information Sheet

### 1. Research Project Title:

Vocational Legal Education in the Commonwealth Caribbean - A case study of the Council of Legal Education.

### 2. Invitation

You are being invited to take part in a research project. Before you decide it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Ask us if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part. Thank you for reading this.

### 3. What is the project's purpose?

The Council of Legal Education which is charged with the establishment, governance and administration of vocational legal education in the Caribbean is now over 40 years old. The time is therefore appropriate to examine the rationale for its inception, how it has fulfilled its mandate and whether there needs to be any changes so as to meet the needs of Caribbean peoples for future generations in light of the current internal and external factors which may have changed since that time.

The purpose of this study is to examine these factors and to suggest policy changes if the research points in this direction.

### 4. Why have I been chosen?

You have been chosen because you are or have been a policy-maker through your past or present affiliation with the Council or because you represent a critical stakeholder interest whose voice needs to be heard on this issue. You should know that the other interview participants include the earliest policy-makers, Council executive officers and Council members who represent the various stakeholder interests of the Council.

### 5. Do I have to take part?

Participation in the research is entirely voluntary and refusal to agree to participate will involve no loss or prejudice to you in any way if you either refuse to take part or if you initially gave your approval, decided to withdraw from the exercise at any time. If you decide to take part you will be asked to sign the consent form which is attached.

## 6. What will happen to me if I take part?

You will be asked to meet with me at a designated time and place that is mutually-convenient where an informal interview will be conducted looking at the issues on which the research is based. This is a one-time event. The interview will be recorded and should last for approximately one hour.

You will be asked several questions based on your participation with the Council of Legal Education. The questions will be of an open nature which allows you the opportunity to respond as fully and openly as you wish.

The other aspect of the research is a documentary study of Council's policies and decisions which have been determined over its existence. This research will begin prior to and run concurrently with (and even after) the interview. Should any information arise from the documentary research or other interviews at any time which impact on any statement you may make, you will be informed of this statement or information and be given a chance to respond to it whenever it arises.

## 7. What do I have to do?

The designated time period for this research is between January to June 2015.

You will be required to be reflective of the issues raised in Item 13 of this form prior to the interview and consider your position. Your responses should be honest. If you have any documents or evidence which will support your responses (and you wish to do so) you should make copies of these available (costs to be borne by me) and give me express consent to use them if you so desire.

You will then be asked to meet with me at a designated time and place that is mutually-convenient where an informal interview will be conducted looking at the issues on which the research is based. The interview will be recorded and should last for approximately one hour.

## 8. What are the possible disadvantages and risks of taking part?

Apart from associating yourself with the views expressed and having them published, there should be little or no risks to you as the extent to which the information gathered will be used will be solely dictated by you. If anything changes that may affect your situation, you will be immediately advised accordingly and be provided the opportunity to withdraw from the research or withdraw consent for your information being used in the research.

## 9. What are the possible benefits of taking part?

Whilst there are no immediate benefits for those people participating in the project, it is hoped that this work will provide an objective insight into the Council's status, the environment in which it functions and the kind of decisions it needs to make to face the challenges of the future. Your participation in this is vital and can affect the direction of Caribbean legal education in the future.

### 10. What happens if the research study stops earlier than expected?

If the research project stops earlier than expected then you will be absolved from any commitment to participate in this interview.

### 11. What if something goes wrong?

As the primary researcher, if anything goes wrong you should contact me for resolution of any difficulty. If you are dissatisfied with my response or ability to handle your issue, you may contact the Chair of the Ethics Committee, Professor Dan Goodley who will then address the issue through the University's procedures for issues of this kind. His contact information is:
**Tel:** (+44) (0)114 222 8185
**Fax:** (+44) (0)114 222 8105
**Email:** d.goodley@sheffield.ac.uk

### 12. Will my taking part in this project be kept confidential?

If you so desire, all the information that we collect about and from you during the course of the research will be kept strictly confidential. You will not be able to be identified in any reports or publications. However, due to the nature of the research and the very specific pool of candidates from which to choose, it may be impossible to guarantee your anonymity. You should therefore consider this factor carefully in determining whether to participate in this research.

### 13. What type of information will be sought from me and why is the collection of this information relevant for achieving the research project's objectives?

You will be asked about such factors (not exhaustive) as:

- your association with and influence upon policy-making for the Council of Legal Education;
- your views about the Council's original mandate, its governance and administrative functions;
- what factors (internal and external to the Council, the Caribbean and internationally) have changed since inception which may alter the Council's mission and vision, its activities or structure; and
- what are the kinds of changes (if any) that are necessary to ensure the viability of the Council for future generations?

The collection of this information is important to achieve the project's objectives as it will be compared to views of other stakeholder interests and the documentary evidence to provide a complete picture of Council's development and its future direction.

**14. What will happen to the results of the research project?**

The result of your interview, along with that of other participants, will be analysed to determine what factual inferences or assertions can be made concerning the issues discussed. They will then be included in a report on the research process and the data upon which research findings were made.

The resulting information/data/views may be used in conference presentations, journal articles or other publications, further research projects and the final dissertation to be presented for approval by the University. Based on your consent, you will not be identified in any such publications or presentations

**15.** This is an independent study being funded through my personal funds.

**16. Who has ethically reviewed the project?**

This project has been ethically approved via the University of Sheffield's Ethics Review Procedure

**17. Contact for further information**

**Lead Researcher:**

**Michael Theodore**

18 Moses Ave, Lower Santa Crus, Trinidad, W.I.

Tel: 1-868-674-9873, Mobile: 1-868-497-6602

Email: michaeltheo@gmail.com

**Research Supervisor:**

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email:themesa.neckles@sheffield.ac.uk

**18. Will I be recorded, and how will the recorded media be used?**

The audio recordings of your statements made during this research will be used only for analysis and for illustration in conference presentations and lectures. No other use will be made of them without your written permission, and no one outside the project will be allowed access to the original recordings.

**19. What if new information becomes available?**

If additional information becomes available during the course of the research which may affect the information you have given, you will be given the opportunity to access that information and to respond to it if you so wish.

**20. Final Information**

You will be given a copy of this information sheet (the duplicate) and a copy of the consent form which we ask you to sign, both of which you can keep for your personal records.

I wish to thank you for taking the time to read and consider this request and look forward to your participation in this project if you so desire.

## Appendix 5: Participant Consent Form

**Title of Research Project:** A Case Study of Vocational Legal Education in the Commonwealth Caribbean
**Name of Researcher:** Michael Theodore

Participant Identification Number for this project: 032. Please initial box

1. I confirm that I have read and understand the information sheet dated January 31, 2015 explaining the above research project and I have had the opportunity to ask questions about the project. ☐
2. I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason and without there being any negative consequences. In addition, should I not wish to answer any particular question or questions, I am free to decline and if I do, I will contact Mr. Michael Theodore, the researcher at 868-497-6602 or via email at michaeltheo@gmail.com to indicate my change of status. ☐
3. I understand that my responses will be kept strictly confidential (only if true). I give permission for members of the research team to have access to my anonymised responses. I understand that my name will not be linked with the research materials, and I will not be identified or identifiable in the report or reports that result from the research. ☐
4. I agree for the data collected from me to be used in future research ☐
5. I agree to take part in the above research project. ☐
6. I agree to participate in this interview on the basis that the transcript of the interview be made available to me for my review if requested and that no extract of this interview or any subsequent communications on this subject be used for any purpose without my prior review and consent. ☐

_____ _____

Name of Participant Date Signature

(*or legal representative*)

M. Theodore

Michael Theodore _Nov 19, 2015 _____

Lead Researcher Date Signature

*To be signed and dated in presence of the participant*

**Copies:**

*Once this has been signed by all parties the participant should receive a copy of the signed and dated participant consent form, the letter/pre-written script/information sheet and any other written information provided to the participants. A copy of the signed and dated consent form should be placed in the project's main record (for example, a site file), which must be kept in a secure location.*

## Appendix 6: Participant Interview Datasheet

| Partici-pant's Code | Group | Date of Interview | Location | Short Profile |
|---|---|---|---|---|
| IP1 | G1 | Feb 27, 2016 | Skype | Graduate of law school, taught as an associate tutor, member of Council in various capacities for over 30 years. |
| IP2 | G2 | Jan 13, 2016 | My Office | Graduate of law school, faculty member, legal practitioner, specialty/consultant. |
| IP3 | G4 | Dec 28, 2015 | Skype | Graduate of law school, legal practitioner, specialty/consultant. |
| IP4 | G4 | Jan 19, 2016 | Participant's Home | Graduate of law school, legal practitioner, specialty/consultant. Came to law school with specialty. |
| IP5 | G1 | Dec 18, 2015 | Participant's Office | Administrative officer with specialty in management. |
| IP6 | G3 | May 16, 2016 | My Office | Student entering law school with specialty/consultancy in law and higher education. |
| IP7 | G1 | Feb 8, 2015 | Participant's Office | Graduate of law school, Council member, legal practitioner. |
| IP8 | G2 | May 29, 2019 | Skype | In practice for approximately 13 years before coming into the Legal Aid Clinic as a tutor. |
| IP9 | G2 | May 24, 2016 | His Office | A graduate of the first ten-year group of graduates of one of the law schools. Went into private practice on graduation and returned to teach at the law school. |
| IP10 | G2 | November 25, 2020<br>November 27, 2020 | Skype | he had over 20 years' experience in legal practice where he performed in a managerial function at a large regional law firm. He was also on the boards of large corporate enterprises |

| | | | | |
|---|---|---|---|---|
| IP11 | G2 | November 19, 2020 | Skype | Non-UWI graduate and member of an external student association advocating for competitive entry into the CLE law schools. |
| IP12 | G3 | November 19, 2015<br>December 17, 2015 | Skype | He was a student from another law school. At the time of the interview, he was in second year and was interested in the more entrepreneurial aspects of practice. |
| Focus Group 1 | FG1 | May 25, 2015 | Common Room at HWLS | 4 student representatives spanning jurisdictions and gender. |
| Focus Group 2 | FG2 | December 4, 2020 | Google Meeting | Student representatives from each of the three Law Schools. Young with not much experience. One was a non-UWI graduate from an external programme in UK. |
| KI01 | G1 | December 17, 2020 | Email | Administrative officer of one of the CLE's law schools. |

Group 1: Current or former members of Council or law school administrators who attend and perform administrative services for Council (3 persons in group).

Group 2: Current or former faculty members from one or more of the CLE's law schools (3 persons in group).

Group 3: CLE students and non-UWI applicants to the CLE Law Schools.

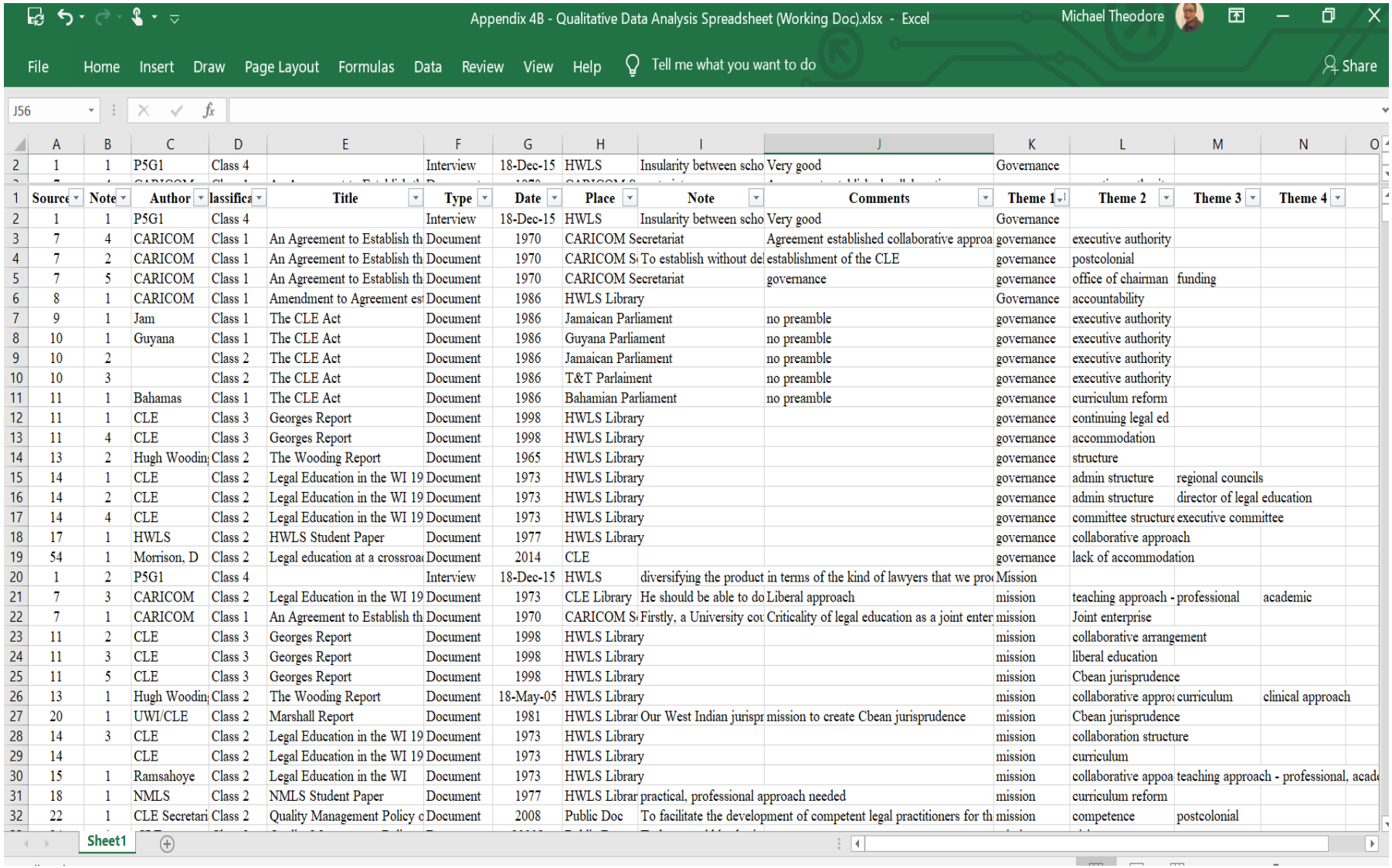
Group 4: CLE graduates and practitioners of between 5 and 15 years in practice.

## Appendix 7: Research Themes used in Coding (based on Literature Review)

| Main Theme | Sub-Theme 1 | Sub-Theme 2 | Sub-Theme 3 | Sub-Theme 4 |
|---|---|---|---|---|
| **INSTITUTIONAL MISSION** | | | | |
| | Sufficient lawyers for the Cbean (legal practitioners to meet regional needs) | Admission policy<br><br>Entrance policy | Guyana<br>T&T<br>Bahamas<br>Alternative structures for law schools<br>ACSEAL | |
| | Competence | Teaching/Learning | Student outcomes | |
| | | Curriculum | Theory vs practice | |
| | | Clinical Education | Legal aid clinic<br>Trial advocacy<br>In-service training<br>ADR | Regular programme<br>Specialist clinics |
| | | Experiential learning | Assessment | |
| | | Assessment | Formative assessment<br>Summative assessment | |
| | Social Justice | | Practical, experiential training | |
| | Indigenous jurisprudence | To meet economic reality | New areas of practice | |
| | | Assessment of executive | | |
| | Producing quality graduates | Responsive to socio-economic needs of society | Student Experience | |
| **GOVERNANCE** | | | | |
| | Governance Model | Shared governance | Faculty participation | |
| | | Managerial governance | | |
| | Meetings and frequency | | | |
| | Composition | Stakeholders interests | | |
| | | Relevant expertise | | |
| | | Duties and responsibilities | | |
| | Committee structure | Executive Committee | | |

| | | | | |
|---|---|---|---|---|
| | | Academic Committee | | |
| | | Selection Committee | | |
| | | Review Committee | | |
| | | Admissions Board | | |
| | Leadership | Office of Chairman | | |
| | | Executive authority – Director/Principals | | |
| | | | | |
| | Responsibilities of Governance | Policy formulation | Responsibility without power | Who holds the purse strings |
| | | | Power without responsibility | Policy formulation |
| | | | | |
| | | Funding | Financial systems | Council vs Schools |
| | | | Funding sources | Exclusively governments |
| | | | Independent Council budget | Alternative structures |
| | | | Independent funding sources needed | Self-funding |
| | | Accountability and Transparency | | |
| | | | | |
| | | Effectiveness | Executive Ctee | |
| | | | Academic Ctee | |
| | | | Review Ctee | |
| | | | Admissions Board | |
| | | | Selection Ctee | |
| **ADMINISTRATION** | | | | |
| | Executive Structure | CEO/Provost | Principals | |
| | | | | |
| | Strategic Planning | | | |
| | | | | |
| | | | | |
| | Quality Assurance | | | |
| | | | | |

# Appendix 8: Data Analysis Spreadsheet




| | A | B | C | D | E | F | G | H | I | J | K | L | M | N | O |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2 | 1 | 1 | P5G1 | Class 4 | | Interview | 18-Dec-15 | HWLS | Insularity between scho | Very good | Governance | | | | |
| 1 | Source | Note | Author | lassifica | Title | Type | Date | Place | Note | Comments | Theme 1 | Theme 2 | Theme 3 | Theme 4 | |
| 2 | 1 | 1 | P5G1 | Class 4 | | Interview | 18-Dec-15 | HWLS | Insularity between scho | Very good | Governance | | | | |
| 3 | 7 | 4 | CARICOM | Class 1 | An Agreement to Establish th | Document | 1970 | CARICOM Secretariat | | Agreement established collaborative approa | governance | executive authority | | | |
| 4 | 7 | 2 | CARICOM | Class 1 | An Agreement to Establish th | Document | 1970 | CARICOM S | To establish without de | establishment of the CLE | governance | postcolonial | | | |
| 5 | 7 | 5 | CARICOM | Class 1 | An Agreement to Establish th | Document | 1970 | CARICOM Secretariat | | governance | governance | office of chairman | funding | | |
| 6 | 8 | 1 | CARICOM | Class 1 | Amendment to Agreement est | Document | 1986 | HWLS Library | | | Governance | accountability | | | |
| 7 | 9 | 1 | Jam | Class 1 | The CLE Act | Document | 1986 | Jamaican Parliament | | no preamble | governance | executive authority | | | |
| 8 | 10 | 1 | Guyana | Class 1 | The CLE Act | Document | 1986 | Guyana Parliament | | no preamble | governance | executive authority | | | |
| 9 | 10 | 2 | | Class 2 | The CLE Act | Document | 1986 | Jamaican Parliament | | no preamble | governance | executive authority | | | |
| 10 | 10 | 3 | | Class 2 | The CLE Act | Document | 1986 | T&T Parlaiment | | no preamble | governance | executive authority | | | |
| 11 | 11 | 1 | Bahamas | Class 1 | The CLE Act | Document | 1986 | Bahamian Parliament | | no preamble | governance | curriculum reform | | | |
| 12 | 11 | 1 | CLE | Class 3 | Georges Report | Document | 1998 | HWLS Library | | | governance | continuing legal ed | | | |
| 13 | 11 | 4 | CLE | Class 3 | Georges Report | Document | 1998 | HWLS Library | | | governance | accommodation | | | |
| 14 | 13 | 2 | Hugh Woodin | Class 2 | The Wooding Report | Document | 1965 | HWLS Library | | | governance | structure | | | |
| 15 | 14 | 1 | CLE | Class 2 | Legal Education in the WI 19 | Document | 1973 | HWLS Library | | | governance | admin structure | regional councils | | |
| 16 | 14 | 2 | CLE | Class 2 | Legal Education in the WI 19 | Document | 1973 | HWLS Library | | | governance | admin structure | director of legal education | | |
| 17 | 14 | 4 | CLE | Class 2 | Legal Education in the WI 19 | Document | 1973 | HWLS Library | | | governance | committee structure | executive committee | | |
| 18 | 17 | 1 | HWLS | Class 2 | HWLS Student Paper | Document | 1977 | HWLS Library | | | governance | collaborative approach | | | |
| 19 | 54 | 1 | Morrison, D | Class 2 | Legal education at a crossroa | Document | 2014 | CLE | | | governance | lack of accommodation | | | |
| 20 | 1 | 2 | P5G1 | Class 4 | | Interview | 18-Dec-15 | HWLS | diversifying the product in terms of the kind of lawyers that we pro | | Mission | | | | |
| 21 | 7 | 3 | CARICOM | Class 2 | Legal Education in the WI 19 | Document | 1973 | CLE Library | He should be able to do | Liberal approach | mission | teaching approach - | professional | academic | |
| 22 | 7 | 1 | CARICOM | Class 1 | An Agreement to Establish th | Document | 1970 | CARICOM S | Firstly, a University cou | Criticality of legal education as a joint enter | mission | Joint enterprise | | | |
| 23 | 11 | 2 | CLE | Class 3 | Georges Report | Document | 1998 | HWLS Library | | | mission | collaborative arrangement | | | |
| 24 | 11 | 3 | CLE | Class 3 | Georges Report | Document | 1998 | HWLS Library | | | mission | liberal education | | | |
| 25 | 11 | 5 | CLE | Class 3 | Georges Report | Document | 1998 | HWLS Library | | | mission | Cbean jurisprudence | | | |
| 26 | 13 | 1 | Hugh Woodin | Class 2 | The Wooding Report | Document | 18-May-05 | HWLS Library | | | mission | collaborative appro | curriculum | clinical approach | |
| 27 | 20 | 1 | UWI/CLE | Class 2 | Marshall Report | Document | 1981 | HWLS Librar | Our West Indian jurispr | mission to create Cbean jurisprudence | mission | Cbean jurisprudence | | | |
| 28 | 14 | 3 | CLE | Class 2 | Legal Education in the WI 19 | Document | 1973 | HWLS Library | | | mission | collaboration structure | | | |
| 29 | 14 | | CLE | Class 2 | Legal Education in the WI 19 | Document | 1973 | HWLS Library | | | mission | curriculum | | | |
| 30 | 15 | 1 | Ramsahoye | Class 2 | Legal Education in the WI | Document | 1973 | HWLS Library | | | mission | collaborative appoa | teaching approach - professional, acad | | |
| 31 | 18 | 1 | NMLS | Class 2 | NMLS Student Paper | Document | 1977 | HWLS Librar | practical, professional approach needed | | mission | curriculum reform | | | |
| 32 | 22 | 1 | CLE Secretari | Class 2 | Quality Management Policy c | Document | 2008 | Public Doc | To facilitate the development of competent legal practitioners for th | | mission | competence | postcolonial | | |

## Appendix 9: Comparative QA Guidelines for Accreditation Councils in NZ, T&T and Barbados

The table below provides a comparative analysis of the most important quality assurance criteria in New Zealand (as a Commonwealth PCM) and Trinidad and Tobago and Barbados (as Caribbean countries). In the case of Trinidad and Tobago, I have included the standards that determines whether a particular. criterion has been met. This is useful to demonstrate the interplay between governance and administration.

| **New Zealand** (TEC, 2015) | **Barbados** | **Trinidad and Tobago** | **Trinidad and Tobago** |
|---|---|---|---|
| **The Governing Board has a duty to ensure that:** | | **Criteria** | **Standards** |
| the institution attains the highest standards of excellence in education, training and research | **Mission and Objectives:** The programme maintains a clear and publicly stated philosophy and specific educational objectives that are consistent with the institution's mission and objectives and are appropriate to post-secondary or tertiary education. | Mission and Purpose: ***The institution's mission and purpose are appropriate to tertiary education and consistent with the policies and practices that guide its operations.*** | 1. The institution has a clear, well-articulated mission that represents the institution'[s purposes and goals.<br>2. The institution has a defined mission and purpose that are appropriate to tertiary education.<br>3. The mission statement reflects the needs of the internal and external stakeholders.<br>4. The mission is communicated to, and supported by, all stakeholders within the institution. |
| | **Governance and Administration:** The programme is supported by appropriate structures for effective policy-making and implementation and the necessary human, physical and financial resources to achieve its objectives and educational outcomes. | **Governance and Administration:** The institution's system of governance ensures ethical decision making and efficient provision of human, material and financial resources to effectively accomplish its educational and other purposes. | 1. The institution's governance and administrative structures and practices promote effective and ethical leadership that is congruent with the mission and purpose of the institution.<br>2. The institution's resource base supports the institution's educational programmes and its plans for sustaining and improving quality.<br>3. The institution has sound policies and the financial capacity to sustain and ensure the integrity and continuity of the programmes offered at the institution.<br>4. The institution's system of governance provides for student input in decision making in matters directly and indirectly affecting them. |

| | | | |
|---|---|---|---|
| The institution operates in a financially responsible manner that ensures the efficient use of resources and maintains the institution's long-term viability: | **Teaching and Learning:** The programme is successful in achieving student learning outcomes and faculty effectiveness that demonstrate that it is achieving its educational purposes and can continue to do so. | Teaching and Learning: The institution provides evidence of student learning outcomes and faculty effectiveness in achieving its educational purpose and demonstrates the capability to continue to do so. | 1. The institution has set mechanisms and/or procedures to undertake academic planning and evaluation of educational programme objectives.<br>2. The institution clearly specifies and publishes educational programmes, and the objectives and entry requirements for each programme.<br>3. The institution values and promotes effective teaching.<br>4. Programmes and courses are designed with mechanisms and/or procedures for the assessment of student learning outcomes.<br>5. The institution's resources support student learning and effective teaching. |
| proper standards of integrity, conduct and concern for the public interest and well-being of students attending the institution are maintained. | | | |
| | **Curriculum Effectiveness:** The programme is effectively designed to ensure relevance and to maintain certification requirements that conform to accepted standards in that profession or field of study. | **Preparedness for Change:** The institution's human, material and financial resources are strategically allocated and employed to respond to the social and economic demands of a rapidly changing global society. | 1. The institution has formal mechanisms and/or procedures to evaluate the achievement of its mission and purpose.<br>2. The institution has set mechanisms and/or procedures to strategically and equitably allocate resources for present and future use. |
| | | | |
| • encourage the greatest possible participation by the communities | **Quality Enhancement:** The programme maintains a systematic approach to assessing educational quality in | **Commitment to Continuous Improvement:** The institution monitors, reviews and improves its Quality Management System | 1. The institution allocates sufficient time and material, human and financial resources to effectively plan, monitor and evaluate its efforts on a continuous basis.<br>2. The institution conducts environmental scanning and draws on the findings to enhance its effectiveness. |

| | | | |
|---|---|---|---|
| served by the institution<br>• acknowledge the principles of the Treaty of Waitangi:<br>• the institution does not discriminate unfairly against any person: | order to improve educational and other outcomes. | through effective planning and evaluation, sustained effort and commitment to quality. | 3. The institution carries out short, medium- and long-term planning consistent with its mission and purpose.<br>4. The institution provides opportunities for its faculty, administrative and other staff to enhance their capabilities. |

**NB:** The Governance Guide for NZ amplifies the meaning of the principles enunciated by the Education Act 1989.