

Why dual qualify?

The Caribbean advantage

Caribbean-qualified counsel **Karen Gough** took the plunge, got the international edge and benefitted her whole practice

When I tell people I work in the Caribbean or that I am going to the Caribbean to work, you can just imagine the kind of smart remarks I get. People generally take the view that being a member of the English Bar is a sufficiently rarefied occupation for a woman of my generation without the added gloss of a Caribbean practice.

As a large part of my work is international, I strive to maintain a global view of developments and best practice in my specialist areas. Frankly, clients expect nothing less. When you hold yourself out as an international practitioner, and in an information age, clients are entitled to expect that when you take on work in a particular jurisdiction on their behalf, in front of local tribunals, often alongside locally trained lawyers and experts, that you understand not just what you are dealing with, but who you are dealing with and how to make the best of a case.

International advocacy is highly competitive, and to succeed you need an edge. In my view, particularly when appearing as counsel, you get that edge by understanding both the legal regime you are working under and the culture of the people with whom you are instructed to work.

Immersing yourself effectively in any new culture is a challenge. When I am working in any other jurisdiction, I try to read something of the history of the people, and their literature, and I always read the local newspapers when I am there. Understanding something of the culture in the Caribbean (and it varies between islands) helps me to understand the people I am working with, to get the best from them and to give of my best to them. It makes a huge difference not just to the way in which I work within the team on a case but also to the way I argue a case. The ambition is always to lead the winning team.

What's not to love? Jamaica, Runaway Bay

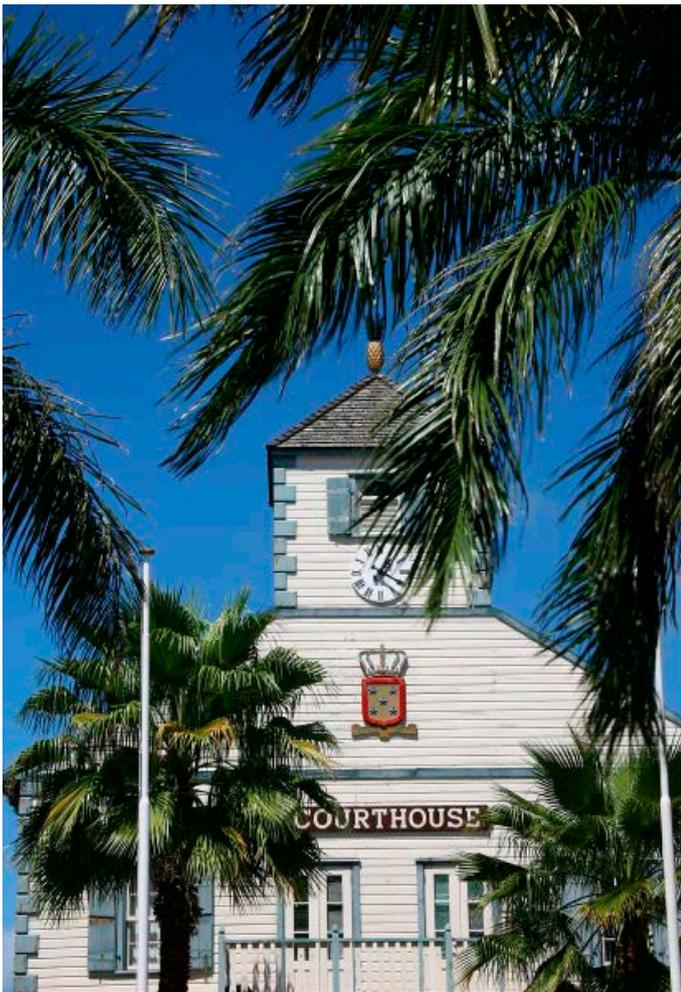
Not everyone in the Caribbean will welcome English counsel with open arms. After hundreds of years of colonial rule (and all that that entailed), I can hardly be surprised if some people view me with suspicion and don't go out of their way to make me welcome. That said, I find that if I make the effort with them, it is always more than repaid by my Caribbean colleagues.

A Caribbean practice by chance or design?

As with many aspects of professional development, the kind of work you do, and where you do it, is often as much down to chance as design. I don't recall ever thinking that it would be a plan to develop my practice so that I could work in the Caribbean. On the one hand, what's not to love about the Caribbean, with its amazing people, lovely islands, and fantastic climate (well, most of the year). The opportunity was there and it seemed like the natural 'next step' at the time, which was in late 2014.

I have worked in the Caribbean for more than a decade and twice been admitted ad hoc to the Bar in Trinidad and Tobago to advocate cases arising from arbitration proceedings where I was counsel in the arbitration. But until very recently, even that limited scope for admission was not possible in Jamaica and I had been doing a lot of consultancy work there as counsel both in arbitration and litigation cases. If I was in court at all in Jamaica, I had to sit behind local counsel.

In 2006-2007, I found with only a few notable exceptions, that arbitration practice in the Caribbean was very far behind the majority of modern UNCITRAL based arbitration codes with



The pineapple atop the Court House at Philipsburg, St Maarten, Caribbean is a symbol of welcome

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which I was familiar. By way of examples, arbitration laws and practice in both Jamaica and Trinidad and Tobago were based on the English system as it was pre the 1950 English Arbitration Act. (Jamaica now has a modern, UNCITRAL based arbitration law, and admission to the Bar is possible for the limited purpose of dealing with consequential arbitration applications. Trinidad's arbitration law is still archaic.) Although most Caribbean islands are signatories to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, my experience was that many practitioners in Jamaica and Trinidad had limited exposure to arbitration and regarded it as a process which sometimes had to be endured before the case could be referred to or appealed to the court for a trial and judgment on the merits. And of course, once in court, a case could become lost in the annals of time, or at least in the local Registry! My dispute resolution skills were therefore in high demand.

The CPR in Jamaica and indeed in Trinidad, was/is broadly the same as the English CPR. However, as an English practitioner, unless you checked the rules and saw for yourself, litigation as practised bore almost no resemblance to its counterpart in London, specifically not in respect of the management and litigation of commercial or construction cases with which I habitually dealt. So, my litigation skills were also attractive to local litigants.

How to qualify: embrace the experience

My senior clerk had suggested I think about qualifying in Jamaica so I could actually appear in court as counsel some time ago but, without looking into it, I had dismissed it as probably not worthwhile.

Then a while later my principal Jamaican client asked me what it would take for me to qualify locally and whether I was prepared to do it. Only then did I look into it and realise the value of the Legal Education Certificate (LEC) which I would need to obtain to be admitted to practice. In fact, obtaining an LEC entitles the holder to admission to practice across the wider Caribbean, not just in any single Island jurisdiction. As I worked in Jamaica and Trinidad on a regular basis, I concentrated my efforts there but the scope for work on the other islands was equally attractive. In addition to the direct Caribbean advantage, some of the large cases I did elsewhere on behalf of parties from the Far East, often also had corporate structures with links in the Caribbean, which provided a further professional incentive to obtain the Caribbean qualification.



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I had to go and live in Jamaica for a university year and attend a six-month course at the Norman Manley Law School. Residency and study within the jurisdiction were requirements of the course. Given the status of some of my clients, there wasn't really any scope to apply for exemptions without attracting adverse comments from people in authority, so I just did as they asked, attended all the lectures, and completed all the assignments and practical assessments.

That short experience could be an article by itself. Even though it was hard to balance study with ongoing practice demands, it was interesting, rewarding and at times just hilarious. I readily accept that it certainly would not be for everyone, but I just embraced the whole experience and in the event, it embraced me. Once I gained the LEC, it was an equal challenge to work through the formal procedures for admission to practice just in Jamaica and Trinidad. It's not a process for the faint hearted.

Was it worth it? Absolutely. And surprisingly, it impacts positively on almost every aspect of my practice. When I look at a dispute, I do so from different perspectives gained from working in different jurisdictions, with different legal regimes and cultures. The diversity of my practice is a source of constant interest and enquiry from existing and prospective clients, both in the Caribbean and elsewhere. In early October I had to undertake a weekend course to complete my 2018 Jamaican CLPD (continuing legal professional development). How many of us get to do that in a small community of welcoming, intelligent professional colleagues, and who are committed to a process of self-improvement through knowledge acquisition and the exchange of professional practice experiences – all undertaken in warm, brilliant sunshine, in a hotel overlooking the beautiful blue Caribbean Sea in a place called Runaway Bay? ●

Karen Gough



Karen, 39 Essex Chambers, practises in the fields of construction and commercial disputes. She is a past President of the Chartered Institute of Arbitrators, a Chartered Arbitrator and accredited Adjudicator for Construction Disputes. She is also a past Chairman of the ICAEW's Insolvency Licensing Committee.