

40 Years of the Eastern Caribbean Supreme Court

- A Personal View

By Don Mitchell CBE QC

A Speech delivered at the Multipurpose Cultural Centre,

Perry Bay, Antigua, on Thursday 15 March 2007.

Honourable Chief Justice acting, Brian Alleyne; Justices of Appeal Michael Gordon, Denys Barrow and Hugh Rawlins; High Court Judges Errol Thomas and Louise Blenman; Registrar Charlesworth Tabor; Distinguished guests.

Thank you, Mr Attorney-General Justin Simon QC for the kind words of introduction.

I am very pleased to have been invited by the 40th Anniversary Celebrations Committee to address you tonight on the topic "40 Years of the Eastern Caribbean Supreme Court - A Personal View". I would like to sincerely thank you for indulging me by inviting me to address this distinguished audience on a favourite topic of mine. As an ex-judge, I am in the enviable position of being able to speak my mind, without having to worry too much about consequences. With your permission, I intend to take full advantage of the liberty thus won.

When I began my practice in the year 1971, the Eastern Caribbean Supreme Court was a mere four years old: a toddler. Today, at age 40 years, it is fast approaching middle age. What are some of the changes that have taken place during that time? My talk tonight will revolve around a very personal view of this history. It will reflect my own interests and concerns. I do not pretend that it will be a scholarly study of the really important developments that have taken place and of the changes that have occurred.

First, to remind us of some background. With the break-up of the West Indies Federation in 1962, the “Little 8”, as the Leeward and Windward Islands¹ were known, reverted for a few years to colonial status. By the year 1967, Britain had agreed with them on an intermediate status: not colonies, and not yet fully independent. This was known as Associated Status. Each island became an Associated State². Her Majesty was pleased, following the Indian precedent, to confer upon us written Constitutions. Enshrined in these constitutions was our Bill of Rights, or a recitation of our Fundamental Rights. Associated Status was not to last long. Independence soon followed for 6 of the larger island colonies. Grenada was the first to go into independence in 1974. Closely following was Dominica in 1978, St Lucia and St Vincent and the Grenadines in 1979, Antigua-Barbuda in 1981, and St Kitts-Nevis in 1983. Today, even the 3 remaining British Overseas Territories of Montserrat, Anguilla and the Virgin Islands³ enjoy written Constitutions. Members of the public and the media, not to forget to mention lawyers and judges, are now grown up in an understanding of what it means to be governed by a written Constitution. It has not been a steady passage over those 40 years.

The Eastern Caribbean Supreme Court, as we now know it, began life in the year 1967 as the West Indies Associated States Supreme Court⁴. Its predecessors were the Court of Appeal of the Windward Islands and Leeward Islands⁵ and the Supreme Court of the Windward Islands and Leeward Islands⁶. The Chief Justice of this earlier Court of Appeal was assisted by two puisne judges from the High Court. Magisterial appeals were heard by two judges, often both from the High Court⁷. Only appeals from High Court decisions went to the full bench of three judges.

The first Chief Justice of the West Indies Associated States Supreme Court in 1967 was Allen M Lewis⁸ of St Lucia. He was now assisted by two appointed Justices of Appeal. The first two were Justices Keith Gordon of St Lucia⁹ and Percy Lewis¹⁰ of St Vincent. The first judges of the High Court were Elwyn St Bernard of Grenada, Allan Louisy of St Lucia, Eric Bishop of Barbados, Eardley Glasgow of St Vincent, and Neville Peterkin of St Lucia¹¹. I had the privilege of appearing before all of them at one time or another. These judges are famous among lawyers over a certain age. We remember them with affection.

We can get a feel for who the leading lawyers of the day were by looking at their names in the West Indian Reports. These are our publications of judgments of the Court of Appeal, and occasionally of our High Courts. The names of the lawyers who appear in each case are listed. Among the prominent Antigua practitioners who have now passed away we first find mention in 1959 of the late Claude Earle Francis¹², Egbert Ewart Harney¹³, Wilfred E Jacobs¹⁴, and Cosmos OR Phillips¹⁵; J Rowan Henry¹⁶ first appears in 1964; and Cecil E Hewlett¹⁷ in 1967. Among the old-timers of the Antigua bar who are still with us, Louis Lockhart¹⁸ first appears in 1959, Sydney Christian¹⁹ in 1968, and Bernice Lake²⁰ in 1970. Ken Allen²¹ appears for the first time in 1964, and John Kelsick²² in 1969. The last two both practice mainly in Montserrat.

When you look through the West Indian Reports you are struck by the fact that the Judges of both the High Court and of the Court of Appeal were from the beginning all West Indians. In earlier years there used to be British colonial judges. But, for many years now, our judges have been West Indians.

There is a story best told by Joseph Archibald²³ about the last of the old colonial British judges, who served in St Kitts. The judge had a great fondness for his brandy. He called it his medicine. He was accustomed to have his Registrar take

a small flask into court with him. At intervals throughout the day, he would ask for a little of his “medicine”. A particular murder trial went on into the night before the jury reached a verdict. Frank Henville of St Kitts was prosecuting. The judge had frequent sips of his “medicine”. By the time the jury came back, he needed assistance from two police officers to get up to his bench. The jury returned a verdict of Guilty of Murder. The judge turned to the prosecutor and solemnly put on his black cap. Then, he said, “Frank Henville, the jury has found you guilty of the most heinous crime of murder. It is now my sad duty to pronounce the only sentence which this court can impose on you.” By this time, as you can imagine, Frank Henville was literally shaking in his boots. I can tell this joke on him because he was my uncle. The Registrar had to quickly signal the two officers to help the judge from his seat and carry him back to his Chambers. He returned the following morning to impose the sentence on the right person. He was the last of the old colonial English judges appointed to our courts.

The first two Constitutional cases to be reported from the Associated States are both found in Volume 10 of the West Indian Reports. They are the applications of Pearnell Charles²⁴ and Dr William Herbert²⁵ for bail. They both arose out of the State of Emergency imposed on 30 May during the Anguilla Revolution of 1967. The Charles case was an application for a writ of *habeas corpus*. He had been arrested under a section of the Emergency Powers Regulations 1967 which permitted the Governor²⁶ to detain him. He applied for the issue of a writ of *habeas corpus*. The High Court refused the application, holding that the 1967 Regulations were a law enacted by the legislature authorising the taking of such measures. It went to the Court of Appeal. The appeal raised the question of the validity of the detention order having regard to the fundamental right to personal liberty guaranteed by section 3²⁷ of the Constitution. Allen Lewis CJ gave the principal judgment of the Court of Appeal. He held that the

Regulations offended against section 3 of the Constitution and, accordingly, the detention order in respect of the appellant was invalid and his detention unlawful. The appeal was allowed²⁸, and it was ordered that a writ of *habeas corpus* was to issue, that the applicant be forthwith discharged, and the respondents to pay his costs²⁹. In this case, while the High Court was willing to uphold a restrictive and anti-democratic law, the Court of Appeal was more generous in its interpretation of the Constitution.

An early example of the liberating effect of the court is to be found in both the High Court and the Court of Appeal decisions in the case of Marguerite Brisbane and her television set³⁰. In September 1967, St Kitts was still smarting under the emergency created by the Anguilla Revolution of May in that year. The St Kitts government was concerned that TV sets might be used by its citizens to acquire information that was not in accordance with the permitted version of events that were being broadcast by the State controlled radio. TV sets were required to be imported by licence, but none were being issued³¹. Baggage and private effects were exempted³². Mrs Brisbane, on a trip to Montserrat, acquired a TV set. She brought it into St Kitts as her personal baggage. It was confiscated as having been imported without a licence. She appealed to the High Court for a ruling whether it was exempt as being her private baggage. The Attorney-General argued that “baggage” meant such articles of necessity or personal convenience as are usually carried by passengers for their personal use. He submitted that a TV set could not be baggage and was, in fact, an item of furniture. Justice Glasgow in a reserved judgment ruled that it was “baggage and private effects” and, accordingly, exempt. The sole ground of appeal was “that the learned judge was wrong in law in finding that the TV set was part of Mrs Brisbane’s baggage. The Court of Appeal upheld Justice Glasgow’s decision. The Chief Justice agreed that the TV set fell within the meaning of “baggage and personal effects”, and could accordingly be imported without a licence.

Other cases arising out of the Anguilla Revolution, and the resulting state of emergency in St Kitts, include the freedom of information and freedom of movement cases of Michael Powell and Warren Thomas³³. By this time, the High Court was beginning to flex its constitutional muscle in protecting the rights of citizens. The muscle was in these early days but poorly developed, and the ball was frequently dropped. This was a case where Justice Glasgow declared that a law which required police permission for all meetings and gathering of persons except for genuine religious assemblies was unconstitutional. It was the beginning of many forensic contests between the two trial-greats of St Kitts of the time, Dr William V Herbert and Lee Llewellyn Moore. Lee argued that as the charges had been brought the day before the Constitution came into effect, the Constitution did not apply to the defendants. He also argued that the Constitution guaranteed the right to assemble freely, and that the impugned law only restrained the right to assemble freely in a public place. The Constitution, he argued, did not guarantee the right to assemble freely in a public place, it only guaranteed the right to assemble freely. Lee often took extremely authoritarian positions in his legal arguments. More often than not, Billy's more libertarian arguments won the day. They did not entirely do so on this occasion. Justice Glasgow decided that the impugned law did contravene the Constitution, but that did not affect the offences charged against the defendants as they were committed before the Constitution came into effect. So, it was a Pyrrhic victory. He partly won the case, but still lost his freedom. Not a satisfactory outcome for anyone.

The Powell and Thomas case also demonstrates the extremely narrow attitude adopted by our judges at the time when it came to the types of legal authorities they would permit to be cited before them. Then, our courts only recognised English cases, and, reluctantly at first, West Indian cases. The report notes³⁴ that

Lee Moore had to seek the court's permission, which he received, before he could refer the court to the learning in a number of cases on the Constitution of India³⁵. Contrast that with today, when an attorney can refer the court to any learning that might help the court.

Our court has gone a long way from the situation revealed by the 1968 High Court decision in the case of Marie Dib³⁶ of Dominica. Mrs Dib was the 73 year-old widow of Ayub Dib, who had been a Lebanese merchant of some substance in Roseau. When he died in 1963, Mrs Dib was entitled under his will to certain properties and an interest in his business in Dominica. She was illiterate. She was only able to sign her name. Mrs Dib gave Mr Karam a general power of attorney. She handed over control of her financial affairs to him. He collected rents. He compromised law suits. He put up her property for sale. He got her to sign deeds transferring her property to him allegedly for cash. In fact, no money was paid. The following year, she sued for the recovery of her properties. She claimed that she had signed the transfer documents under a mistake as to their nature. She had understood that they related to the rental of the properties and the management of the business. She claimed that Mr Karam had abused her confidence in him and had influenced her to sign documents that were injurious to her. She claimed that he took an undue and unconscientious advantage of her. He denied her allegations of fraud and of undue influence. He claimed that the sale to him had been made on her proposal. The documents had been read and explained to her by the solicitor who prepared them. She had signed with full knowledge of their contents and as her voluntary act. Quite amazingly, in my view, the High Court found that Mr Karam had taken no advantage of his position or of the confidence reposed in him, and that the transactions were entered into in perfect good faith and after full disclosure. The Court of Appeal happily reversed the High Court. Sir Allen Lewis and Keith Gordon JA delivered substantive judgments. They agreed that the appeal must succeed, and

the transfers would not be allowed to stand. These were early days in the development of trust law in the ECSC.

The Ben Jones³⁷ case coming out of Grenada in 1968 was another example of the narrow and restricted way in which the High Courts of that early period exercised the jurisdiction given by our Constitutions to protect our freedoms. In that case, Ben Jones was an unsuccessful candidate in general elections in Grenada. He was appointed to the Senate by the Governor. Successful members of our parliaments are notoriously reluctant to see candidates who have not succeeded entering parliament in whatever capacity. There have been other similar cases in our region. The members of the successful party objected to Jones' nomination. They were supported by the President of the Senate. The President ruled that Mr Jones was not qualified to be sworn as a Senator. Jones brought a case in the High Court. Section 37 of the 1967 Grenada Constitution³⁸ gave the High Court jurisdiction to determine whether any person had been validly appointed a Senator. The section said³⁹ that the legislature might provide for the powers, practice and procedure of the High Court in relation to any such application. No such provision had been made by the legislature. The legislature had not set out the powers, practice and procedure of the High Court. But, then, it had not constrained them either. Section 103 is the section that grants the High Court the general power to give citizens the widest relief for breaches of the Constitution. The wide powers of the court under this section expressly⁴⁰ did not apply to questions of appointment to the Senate under section 37. Ben Jones came before the High Court seeking a declaration and various orders that would have compelled the President to swear him in. The President's counsel argued that the High Court's ordinary powers and remedies did not apply. The court was a special court established by the Constitution. As such, it only had such powers as the legislature gave it. As the legislature had not given the High Court any powers, it had none. The High Court judge agreed. He

decided that the High Court's ordinary powers and remedies did not apply as the court was a special court established by the Constitution and only had such powers as the legislature gave it. But, as the legislature had not given the High Court any powers, it had none. The court could only answer the question put to it. Ben Jones had been validly appointed a Senator. But, the court could not grant him any relief. Respectfully, I do not agree with that interpretation. I would hope that it would not be repeated today. Section 103 does not give the High Court jurisdiction to hear section 37 questions. It is section 37 that gives the jurisdiction⁴¹. It sets out certain rules of practice and procedure⁴². It then gives the legislature the power to regulate the powers, practice and procedure of the High Court. It does not follow that until the legislature does so, the court is powerless. The section does not say, nor in my view does it inevitably follow, that if the legislature fails to make provision then the Court has no power to grant relief. In my view, this case is one of the early examples of the initial timidity of our courts in protecting the rights and freedoms of our citizens under the Constitution.

The test of constitutional validity of legislation and executive conduct was first crafted in 1973 by Percy Lewis CJ [Ag] in the *Antigua Times*⁴³ case. He it was who first laid down that:

There is a presumption of constitutionality of impugned legislation, the viability of which must be weighed as follows:-

Once a prima facie case is made out by the applicant that the legislation or the executive conduct violates a fundamental right, then there is a burden on the State to show that the legislation or the executive policy or conduct comes within the permissible limits allowed by the Constitution, and that its enactment or implementation was reasonably required.

The doctrine of proportionality that he laid down in that case was temporarily set back by the decision of the Privy Council. But, it has at last triumphed in the DeFreitas⁴⁴ case, the Antigua Observer⁴⁵ case, the John Benjamin⁴⁶ case, and Brown v Stott⁴⁷.

We have had our share of judges who have taken shelter under silly technicalities in order to avoid possibly embarrassing the government. We have come quite a long way since the days of the decision of our Court of Appeal in Tim Hector's case⁴⁸. All Antiguan will remember that that case was one in which Hector and the Outlet Newspaper were charged with an offence of "printing of false statements likely to undermine public confidence in the conduct of public affairs". Justice Matthew had declared that those words⁴⁹ were unconstitutional. The Chief-Justice held that he was wrong, and his fellow Justices of Appeal agreed with him. That reactionary decision was happily corrected by the Privy Council⁵⁰. Lord Bridge of Harwich in delivering the opinion of the Board said⁵¹,

In a free and democratic society it is almost too obvious to need stating that those who hold office in government and who are responsible for public administration must always be open to criticism. Any attempt to stifle or fetter such criticism amounts to political censorship of the most insidious and objectionable kind. At the same time it is no less obvious that the very purpose of criticism levelled at those who have the conduct of public affairs by their political opponents is to undermine public confidence in their stewardship and to persuade the electorate that the opponents would make a better job of it than those presently holding office. In the light of these considerations their Lordships cannot help viewing a statutory provision which criminalises statements likely to

undermine public confidence in the conduct of public affairs with the utmost suspicion.

Nor can we be proud of the 1990 St Vincent High Court decision in Egerton Richards' case⁵². There the judge threw out for mere technical breaches a very serious constitutional issue of great public importance. It concerned whether the Governor had the right to appoint opposition senators when the government had won all the seats at an election. We can be confident that our High Court Judges would today be very reluctant to shy away from coming to a decision in such an important matter.

The more recent decision of the Court of Appeal in Anguilla in John Benjamin's case was undoubtedly a temporary setback to the progress that our courts have made. Government had closed down a popular call-in programme on the island's sole government-owned radio station, because of criticism on it of government action. In the High Court, Adrian Saunders J [as he then was] had ruled that Government's action was unconstitutional. It was a contravention of the Applicants' right to freedom of expression guaranteed and enshrined in the Constitution. He called it an arbitrary or capricious withdrawal of a platform which had been made available by the government. The members of the Court of Appeal were persuaded to set aside his orders. They rejected the argument that a radio station could be a public place where there was a right to express views. They held that, on the contrary, it was "property which is not by tradition or designation a forum for public communication." Fortunately, the Privy Council was able to restore Justice Saunders' original decision. They held that he had been entitled and right to find here that there had been a contravention of Mr Benjamin's rights to freedom of speech and expression protected by the Constitution.

Undoubtedly, one of the High Court decisions that the court can feel proud about is the decision of Albert Redhead J in the Barbuda Council⁵³ case. All Antiguanians will be familiar with the case. In 1992, Ephraim Georges J had granted an injunction against a sand mining company from taking sand from a beach in Barbuda. The Minister of Agriculture in the Government of Antigua arranged with the officers of the sand mining company for the company's trucks and bulldozers to be rented to the government. The Minister hired the drivers, and the mining continued. The trucks the Minister had rented from the sand mining company delivered the sand to the company at the barges drawn up on the beach. The Barbuda Council applied to Justice Redhead in the High Court for the Minister and those involved in the continuing mining to be committed for contempt of court. The Minister was completely unrepentant. He argued that he did not have to obey the injunction as it had not been served on him personally. He argued that Ministers of the Crown cannot be proceeded against for contempt of court, even if they give and break a personal undertaking to the court. Justice Redhead rejected all the Minister's excuses. He held that once the Minister knew of the injunction and its terms, as the Minister did in this case, and once he aided and abetted the mining company in breaching the terms of the injunction, as he did in this case, he was guilty of contempt. He found the Minister's actions to be a gross interference with the order of the Court, a challenge to the independence of the court, and an affront to the rule of law. He sentenced the Minister and the company officials to one month's imprisonment. It is no fault of the court, or of Antigua and Barbuda's legal system, that the Governor General was persuaded by the government to grant a full pardon the same day.

There was a time, not so long ago, when judges all over the Commonwealth were universally held in high esteem. And, they were comfortable with their status. As Lord Hewart put it to the guests assembled at the Lord Mayor's banquet in London in 1936⁵⁴:

His Majesty's judges are satisfied with the almost universal admiration in which they are held.

Similarly, Lord Devlin suggested in 1979 that:

The English judiciary is popularly treated as a national institution . . . and, like the navy, tends to be admired to excess.

Lord Donaldson, a former Master of the Rolls, summed up the commonly held view of judges and accountability with this statement:

The essence of my job is that I am responsible to the law and to my conscience and to no one else.

This attitude extended to and was shared throughout the West Indies. This has all changed over the years. Our judiciary is now much more open to criticism. Judges are no longer sacrosanct. Especially since our judges have been asked to interpret the Constitution, and to rule on governmental action, there has been increased public attention to the work that judges do. When an important case is tried, there is hardly a newspaper that does not carry a story on it. The call-in radio programmes sometimes seethe with comment, pro and con. In my view, this is a healthy development. It reflects the changing role that the courts play in a modern society. This has happened not only in our society. John Mortimer, the English lawyer and writer wrote of the United Kingdom,

Many years ago, when I first took up the law, proceedings in court were shrouded in myth. In those days the country at large believed that trial invariably came to the right conclusion, that police officers told nothing

but the truth, and that judges were miraculously conceived and were born unencumbered with the usual human luggage of preconceived ideas, knee-jerk reactions, prejudices, failures of the imagination, inability to admit mistakes, or pure bloody-mindedness.

These myths have now, no doubt to the regret of many members of the legal profession, gone the way of witchcraft and the Flat Earth Society. Trials have, despite energetic whitewashing by appeal tribunals, been shown to have gone horribly wrong. Police evidence is now taken by juries with large helpings of salt. And the pronouncements of some judges, before and since retirement, have gone beyond endearing eccentricity to give some cause for alarm.

But, as the Right Honourable Beverley McLachlin, Chief Justice of Canada, put it⁵⁵, if judges are more and more the subject of critical scrutiny, the truth is that the public has never held our judiciary in higher esteem. This is proved by the fact that it turns to the judiciary more and more for the resolution of its problems. It is not so much agreement with the court's decisions, but a result of faith in the judicial process. Our people appear to share a profound belief that when other institutions fail, one can count on the fairness of the courts.

Those of us who have been around the courts for many years have observed that the courts are going through change on several fronts. Not so long ago, it was thought that it was the House of Assembly that made the law, and it was for the judge to apply it to the case, and that was the entire story. It is now realised that it is not so simple. From time immemorial, judges have interpreted and incrementally changed the law. The judge is obliged to play the role of law-developer in resolving disputes fairly. This role has now dramatically expanded. Judges are now obliged, given the increasing scope of disputes that are brought

before them, to develop the law in the domain of social policy. The increasing awareness of human rights helps drives this process. When our citizens bring issues of wrongful deprivation of property, liberty, or freedom of movement, before the court, then our judges, unqualified as they are, are forced to venture into the area of social policy. When our legislatures are reluctant to deal with pressing social issues such as women’s rights and family property, then the courts are, whether they like it or not, obliged to resolve these issues. Judges are called on to be ever more sensitive to a broad range of social concerns. The ivory tower no longer suffices as the residence of choice for judges. At the same time, the judge must strive for objectivity. It requires both an act of imagination and an attitude of “active humility.” Fortunately, we can be confident that our judges of the Eastern Caribbean Supreme Court, both at first instance and in the Court of Appeal, are equal to the task.

¹ The term “Little 8” included Barbados, but not the Virgin Islands. The latter opted not to participate in the West Indies Federation, believing that its future lay in association with the USVI.

² Well, not quite each island. Anguilla and Nevis were dependencies of St Kitts, until Anguilla broke away in a bloodless armed revolution in 1967, while Barbuda was and remains a dependency of Antigua.

³ The “Virgin Islands” is the historically correct designation of Tortola, Virgin Gorda et al. It is St Thomas, St Croix and St John that are the “United States Virgin Islands”. The Virgin Islands with increasing frequency over the years began to be referred to as the “British Virgin Islands”.

⁴ By virtue of the **West Indies Associated States Supreme Court Order, SI 1967 No 223**.

⁵ Established by the **Windward Islands and Leeward Islands (Courts) Order in Council, SI 1959 No 2197**, which came into force on 1 January 1960.

⁶ The high court in Antigua and Barbuda was then described as the “Supreme Court of the Leeward Islands and Windward Islands (Antigua Circuit)”, for example. See: **Catherine Herbert v R (1959) 1 WIR, 470**; and **John Bramble v R (1959) 1 WIR, 473**; and **R v Maynes (1959) 1 WIR, 368**.

⁷ See, for example, the decision in **Watts v COP (1967) 10 WIR, 530** where the appeal was heard by AM Lewis CJ and St Bernard J; or **Spencer v Superintendent of Police (1967) 10 WIR, 541**, where the appeal was heard in the High Court of Antigua by Louisy J and Berridge J (Ag).

⁸ Knighted the following year, and officially styled to as Sir Allen Montgomery Lewis. His biography and those of various other Chief Justices can be found on the ECSC website at <http://www.eccourts.org/aboutecsc/history.html>

⁹ These island origins I have inserted from memory, and one or more of them may be mistaken. My apologies to any one who is offended by an error.

¹⁰ See the first reported judgment of the court in **Lesmond v R (No 1), (1967) 10 WIR, 252**, a murder appeal from St Lucia.

¹¹ See the lists of the judges of the various courts in 1967 at page vi of 9 WIR.

¹² Who first appears in **Bramble v R (1959) 1 WIR, 473**.

¹³ Who first appears in **Joseph v R (1959) 1 WIR, 365**.

¹⁴ Who first appears in the **Joseph** case supra.

¹⁵ Who first appears in the **Joseph** case supra.

¹⁶ Who first appears in **Crown Attorney v Mercer (1964) 6 WIR, 354**.

-
- ¹⁷ Who first appears in **Babb v Half Moon Bay Ltd (1967) 12 WIR, 294.**
- ¹⁸ Who first appears in **Martin v Greenaway (1959) 3 WIR, 439.**
- ¹⁹ In **Margetson v A-G (1968) 12 WIR, 469.**
- ²⁰ Dame Bernice Lake QC, as she is now more correctly styled, first appears in the West Indian Reports in the case of **Joseph v Lockhart (1970) 14 WIR, 444.**
- ²¹ In **Agard v Asst Sup of Police (1964) 7 WIR, 245.**
- ²² In **Wade v Chief of Police (1969) 14 WIR, 173.**
- ²³ Properly, Dr Joseph Archibald QC, of Tortola.
- ²⁴ **Charles v Phillips and Sealey (1967) 10 WIR, 423.**
- ²⁵ **Herbert v Phillips and Sealey (1967) 10 WIR, 435.**
- ²⁶ Sir Fred A Phillips, the first respondent.
- ²⁷ 3(1). No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases . . .”
- ²⁸ The decisions turned principally on whether the **Leeward Islands (Emergency Powers) Order in Council 1959** was “a law enacted by the legislature”, and whether it was an “existing law” for the purposes of the transitional provisions of the Constitution.
- ²⁹ Charles F Henville QC, Crawford with him, appeared for the Charles, while Malcolm Butt QC of Trinidad, Frederick Kelsick, Jenner Armour and Earl Francis appeared for Dr William Herbert. JS Archibald, Senior Crown Counsel, appeared for the respondents.
- ³⁰ Reported as **A-G of St Christopher Nevis Anguilla v Brisbane (1968) 11 WIR, 525.**
- ³¹ By section 3 of the **External Trade Ordinance.**
- ³² By section 4.
- ³³ **Chief of Police v Powell and Thomas (1968) 12 WIR, 403.**
- ³⁴ At page 410.
- ³⁵ These included **Keshavan Madhava Menon v The State of Bombay (5) (1951)** reported at p.2 of **Basu’s Cases on the Constitution of India, 1950-1951**; and **Chiranjit Lal Chowdhury v The Union of India and Others (6)** reported at p.18.
- ³⁶ **Dib v Karam (1968) 11 WIR, 499.**
- ³⁷ Reported as **Jones v Gibbs and Knight (The Attorney-General Intervening) (1968) 12 WIR, 311.**
- ³⁸ **Grenada Constitution Order 1967 (SI 1967 No 227).**
- ³⁹ At section 37(5).
- ⁴⁰ By section 37(7) which said, “Nothing in this section shall confer jurisdiction on the High Court to hear or determine any such question as is referred to in s.37 of this Constitution.”
- ⁴¹ In s.37(1) when it says, “The High Court shall have jurisdiction to hear and determine any question whether (a) any person has been validly appointed as a Senator; . . .”
- ⁴² For example at s.37(2) where it says that an application to the High Court “may be made by any person registered in a constituency as a voter in elections of members of the House of Representatives or by the Attorney General . . . and if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.”
- ⁴³ **Antigua Times v A-G** in the Court of Appeal, cited by **Dame Bernice V Lake QC** in her 2003 address: **Prioritizing Socio-Economic Issues and Democratization in the Caribbean** which is to be found at: <http://cavehill.uwi.edu/bnccde/antigua/conference/papers/lake.html>; and see her address to the *Fifth Annual Caribbean Media Conference on The Caribbean Court of Justice: Public Confidence and the Role of the Media* which can be read at <http://www.caribbeancourtjustice.org/papersandarticles/ccj-lake.pdf>.
- ⁴⁴ **DeFreitas v A-G, Civil Appeal 42 of 1997, Antigua and Barbuda.** [Unreported]
- ⁴⁵ **Observer Publications Ltd v Matthew et al [2001] UKPC 11.**
- ⁴⁶ **Benjamin and Others v Minister of Information [2001] UKPC, 8; [2001] 4 LRC, 272; [2001] 1 WIR, 1040.**
- ⁴⁷ **Brown v Stott [2003] 1 AC, 681; [2001] 2 WLR, 817; [2001] 2 All ER, 97.**
- ⁴⁸ **A-G v Tim Hector (1987) 40 WIR, 135.**
- ⁴⁹ Under the **Public Order Act 1972** as amended by the **Public Order Amendment Act 1976.**
- ⁵⁰ **Hector v A-G (1990) 37 WIR, 216.**
- ⁵¹ At p.219.
- ⁵² **Richards v A-G, No 484/1989, St Vincent.** [Unreported]

⁵³ **Barbuda Council v A-G et al, Suit No 456 of 1988, Antigua & Barbuda.** [Unreported decision of Redhead J on 10 September 1993]

⁵⁴ The following quotations and observations are taken from the remarks of the Rt Hon Beverly McLachlin PC on **Judicial Accountability**, presented at the *Law and Parliament Conference*, Ottawa, November 2, 2006, and which can be found at http://www.scc-csc.gc.ca/aboutcourt/judges/speeches/Ju_Resp_e.asp

⁵⁵ In her remarks at the *Fourth Worldwide Common Law Judicial Conference on The Role of Judges in Modern Society*, May 5, 2001 found at http://www.scc-csc.gc.ca/aboutcourt/judges/speeches/role-of-judges_e.asp