

ECSC E-NEWSLETTER



Volume 1 No.1

On 28th January 2000 the Chief

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GREETINGS FROM THE CHIEF JUSTICE

I am very pleased that we are able to greet the new millennium with the commencement of our electronic newsletter and website. It is intended that these will provide a medium for the more effective dissemination of information and a forum for the exchange of ideas and opinions relative to the administration of justice in our jurisdiction. I am inviting you to participate fully in this activity. Please send any comments, suggestions and contributions to the EC Court newsletter at appeal@candw.lc. Initially we will attempt to publish monthly. Regular features will include a digest of the decisions of the Court of Appeal and electronic access to all written judgments (trial and appellate) delivered during the month. The publication will be exclusively by e-mail and at least initially, will be limited to the judiciary (Judges, Magistrates, Registrars), Attorneys General and Presidents of the OECS Bar Associations.



EASTERN CARIBBEAN SUPREME COURT NEWS

The Chief Justice delivered a lecture at Cave Hill Barbados to Second Year constitutional law students on aspects of the supremacy of the constitution relating to provision for its amendment, on 27th January 2000.

Council of Legal Education at the Rex St. Lucian Hotel as a member of a two man task force of Chief Justice Byron and Attorney General Simmonds. This task force was set up as a result of the IDB consultation on Judicial Reform in the Caribbean to

promote the establishment of a regional center for judicial

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education and reform under the aegis of the Council of Legal Education.

COURT OF APPEAL

British Virgin Islands

The Court of Appeal sat in the British Virgin Islands during the week commencing January 10, 2000. Thirteen (13) matters were listed for hearing. The list was disposed of by mid-week with two (2) decisions reserved.

Saint Lucia

The second Court of Appeal sitting (for the year) was held in Saint Lucia during the week commencing January 24, 2000. Sixteen matters were listed for hearing including one (1) Court of Appeal matter from Antigua and Barbuda. Two (2) reserved judgments from Grenada and one from the BVI were delivered. One (1) civil appeal was adjourned to the next sitting of the Court in Saint Lucia and two (2) decisions were reserved.

HIGH COURT

Antigua and Barbuda

The Criminal Assizes commenced on January 11th 2000 with the Hon. Justice Ephraim Georges presiding.

Eighteen matters were listed for hearing, including two (2) cases of murder, three (3) cases of attempted murder, two (2) of rape, one (1) of unlawful carnal knowledge and two (2) of robbery.

Dominica

The Criminal Assizes commenced on January 11th 2000 with the Hon. Justice Dunbar Cenac presiding. There were twenty-three (23) matters listed for hearing including a case of murder, one (1) of conspiracy to murder, two (2) indecent assaults, one (1) unlawful carnal knowledge and one (1) of bigamy.

St. Kitts and Nevis

The Criminal Assizes commenced on January 11th 2000 with the Hon. Justice Neville Smith presiding. The eight (8) matters listed, includes two (2) murders.

Vacant Positions at The Eastern Caribbean Supreme Court

Advertisements for the following positions, were circulated throughout the jurisdiction:

- Associate Judge/Case Management Master
- Legal Assistant to the Chief Justice
- Information Technology Manager

The deadline date for applications is February 24th 2000. Further information can be obtained from the Secretary [Ag.], Judicial and Legal

Services Commission, at appeal@candw.lc.

Judicial Appointments

The acting appointment of Justice Indra Hariprashad-Charles, as High Court Judge, St. Lucia, has been continued to March 31st, 2000.

His Worship, Magistrate Frederick Bruce Lyle has been appointed to act as High Court Judge, Antigua and Barbuda, with effect from February 1st, 2000.

Mr. Clifford Osborne Lewis has been appointed as Magistrate, Dominica, for a period of one (1) year.

MAGISTRACY

Saint Lucia

On Wednesday January 12th 2000, the Magistrates of the District Courts of Saint Lucia convened to discuss, inter alia, a proper and effective Case Management System for the District Courts.

The new Case Management System includes:

Criminal Cases:

1. A **Plea and Directions Day** in every Court. On this day, the Court will take pleas and give any necessary directives.
2. **Trial Day**
When a Defendant pleads not guilty, his/her case will be set down for trial on the Court's Trial Day. This is a

date agreed upon by all parties in the matter – the Court, of course, controlling and deciding upon the final date.

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3. **Adjournments:** A **No Adjudgment Policy** now exists. Adjournments will only be granted in exceptional cases for example illness, accompanied by a Medical Report.

A trial of the agreed upon system will run during the period 1st-31st March 2000, after which it will be reviewed towards a final system.

..
! ? Question ! ? Task ! ? Problem ! ?

NEW DEVELOPMENTS IN THE COURT

Current Projects

Judicial and Legal Services Commission Task Force

Mr. Reginald Dumas, of the Judicial and Legal Service Commission Task Force, completed the investigative part of his mission. He is engaged in the process of preparing his report and is expected to present it during the month of February.

Mr. Anthony Astaphan Q.C. regretted his inability to undertake service as a task force member due to his workload, and resigned.

Mediation

Ms Deborah Mendes-Bowen, a lecturer at the Hugh Wooding Law School who is pursuing a Fullbright Scholarship program in mediation, has completed her series of interviews into the OECS attitudes to mediation. She is in Boston at present where she will be completing her studies and reporting on mediation program design for the Eastern Caribbean.

Rules Revision

The New Civil Procedure Rules are in the stage of their final draft. The OECS Bar Association has requested an opportunity to present draft rules relating to standards for and discipline of the legal profession for inclusion. Advertisements for Associate Judge/Case Management Master have been published. The return date is 24th February 2000. Once the selection process has been completed there will be a training program which will include assignment with Case Management Masters in Canada. The new Associate Judges will be expected to be involved in case management workshops with the Judges, Registrars, Bar Associations and to participate in public awareness programs.

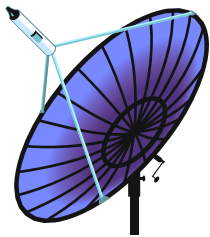


GROUP DISCUSSIONS AND CONTRIBUTIONS

Several requests have been received for judgments of the Eastern Caribbean Supreme Court dealing with Human Rights matters. All judges of the Court are being asked to provide a list of judgments falling in this category. This list should be sent to the Chief Justice at the earliest opportunity.

Court Reporting

Efforts to replace the longhand judicial notebook as the official transcript of court proceedings have been advanced. At the first graduation exercises for OECS Reporters held in the BVI on 29th October, 1999, there were six graduates, Ms Carla A. Ritchie of Anguilla (Valedictorian), Ms Shirline C. K. Harris of Grenada (Salutatorian), Ms Merina Matthew and Ms Rosamund Horsford of Dominica, Ms Brenda Lee Hodge of St. Kitts and Ms Celena McDonald of St. Vincent. Ms Janice Stoutt the head of the BVI Court Reporting Unit and NACR certified trainer of court reporters conducted the course. All the graduates reached a writing speed of 225 wpm and were certified in Computer Aided Transcription (CAT).



Website Development

The Eastern Caribbean Supreme Court is in the process of creating its own website. The website will be tailored to support the wider dissemination of the information relating to the Eastern Caribbean Supreme Court. The first phase of this project will facilitate access to the full-text of all written judgments delivered both in the Appellate and High Court from 1st January 2000.

CONFERENCES, SEMINARS & WORKSHOPS

A luncheon meeting of the Eastern Caribbean Supreme Court Judiciary will be held in Barbados on Friday 10th March 2000, prior to the Lord Woolf Symposium on "Access to Justice."

VISITORS TO THE COURT

Mr. Robert D. Lipscher, Director of the Court Management Association visited the Court in his capacity as an International Development Bank (IDB) consultant visiting the region collecting preliminary information on judicial reform in the Caribbean.

COURT OF APPEAL SITTINGS JANUARY 2000

St. Kitts: January 7: [Chambers]

Coram: Singh J.A.

1. **Thomas v Thomas**
Civ. App. 13/99
By consent: On application of the respondent, appeal allowed.
Judgment of trial judge set aside. Judgment in default entered on July 7, 1998 is also set aside.
Leave granted to the appellant to file his defence in Civil Suit No. 159/92 within 14 days from the date of this order, failing which the judgment in default of July 7, 1998 will stand without further order.
2. **Lotonet International Ltd v Alex Quaglia**
Civ. App. 14/99
Application for leave to appeal dismissed for want of prosecution.

British Virgin Islands - 10th to 14th January 2000

**Coram: Byron CJ
Singh JA
Redhead JA**

1. **Tele Art Inc. [in Liquidation]**
Civ. App. 6/98
Appearances: Mr. Francis Belle for the appellant and Mr. Carrington for the respondent.
Order: In terms of draft presented to Court
Reason: The consent of the parties
2. **Alpha Capital Holdings Ltd. v Johnson et al**
Civ. App. 5/99; 6/99; 7/99
Appearances: Mr. Jack Husbands for the appellant and Mr. William Hare for the respondent.
Order: Leave to appeal dismissed and consequently the orders for stay of execution are set aside. Costs to the respondent to be taxed and paid forthwith.
Reasons: No grounds were advanced to support the application

3. **D. Molyneaux v C. Molyneaux et al**
Civ. App. 9/99
Appearances: Mr. Lewis Hunte and Mr. Jack Husbands
Order: Time to file the record of appeal is extended by four weeks.
Application to strike out appeal is dismissed
Reason: Consent of parties
4. **D. N. Nichols v The Bank of Nova Scotia**
Civ. App. 11/99
Appearances: Mr. Sydney Bennett and Mr. Ian Sandy for the
appellant and Mr. Gerard Farara Q.C. and Ms T. Small
Order: Application for stay of execution withdrawn
Reason: The substantive appeal is ready for hearing at this session.
5. **Fennec Fox Limited et al v Lisa S. A.**
Civ. App. 12/99
Appearances: Mr. G. Phillips and Mr. Jack Husbands for the
appellant and Mr. Mobley-Smith.
Order: Application allowed to stay paragraph 2(ii) of Judges order
until the inter partes hearing or further order. Costs to the applicant
to be taxed.
6. **E. Gairy et al v Attorney General**
Grenada Civ. App. 7/99
Appearances: Mr. Gerard Farara Q.C. holding for Mr. Derek Knight
Q.C. and Ms Carla Card holding for the Attorney General of Grenada
Order: Conditional leave to appeal to Privy Council in terms of draft
order.
Reason: Order settled by consent.
7. **Samuels v Police**
Mag. Crim. App. 2/99
Appearances: Mr. Hayden Douglas for the appellant and Ms Carla
Card for the respondent.
Order: Leave to serve notice of appeal extended to 14th January 2000.
Reason: Unopposed.
8. **Credicom N. V. v Colony Credicom L. P. et al**
Civ. App. 4/99
Appearances: Mr. Gerard Farara Q.C. and Ms T. Small for the
appellant, Mr. Joseph Archibald Q.C. and Mr. Paul Webster for the
respondent.
Decision reserved.

**Coram: Singh JA
Redhead JA
Matthew JA**

1. **Orville Richardson v Commissioner of Police**
Mag. Crim. App. 3/98
Appeal against sentence allowed. Sentences varied to run concurrently instead of consecutively.
2. **Cornel Francis v Commissioner of Police**
Mag. Crim. App. 20/98
Appeal allowed. Sentence varied to time already served.
3. **Kenrick James v Commissioner of Police**
Mag. Crim. App. 3/99
Appeal allowed. Conviction quashed. Sentence set aside:
[Careless Driving]
4. **Kassim Benti -v- Commissioner of Police**
Mag. Crim. App. 16/98
Appeals allowed. Five year sentences reduced to 3 years. All sentences to run concurrently.
5. **Wakima Letson -v- Commissioner of Police**
Mag. Crim. App. 19/98
Appeal allowed. Five year sentences reduced to 2 years. All sentences to run concurrently.
6. **Gourmet Chandler -v- International Motors**
Mag. Civ. App. 10/98
Appeal allowed. Order of the Magistrate set aside. Judgment entered for appellant for \$1,200 with costs in this Court and in the Court below to be taxed if not agreed.
Stop cheque: Virtually a consent order]
7. **Christopher -v- Brathwaite**
Mag. Civ. 12/98
Appeal dismissed for want of prosecution. Costs to the respondent to be taxed if not agreed.
8. **Pasty Lake -v- Gregory Hodge**
Mag. Civ. App 1/99

Appeal allowed. Order of Magistrate varied to include \$6,277 for repairs. Costs to the appellant to be taxed if not agreed.

9. **Nicholas -v- Scotia Bank**
Civ. App. 11/99
Decision reserved.

Saint Lucia - 24th to 28th January 2000

Coram: Byron CJ
Singh JA
Redhead JA
Matthew JA

Judgments Delivered

1. **Grenada General Insurance v Grenada Insurance Services**
Grenada Civ. App. 12/99
Appearances: Mr. Peter Foster holding for Mr. James Bristol and Ms. Isabella Shillingford holding for Mr. Derek Knight Q.C.
Matthew J.A.
2. **E. L. Jemmot v The Commissioner of Police**
Grenada Mag. Crim. App. 4/99
Appearances: Mr. A. George holding for Mr. Anselm Clouden and Mr. Jack, D.P.P. holding for D.P.P. of Grenada.
Singh J.A.
3. **D. H. Nicholas v The Bank of Nova Scotia**
BVI Civ. App. 11/99
Appearances: Mr. K. Foster Q.C. holding for Mr. Sydney Bennett and Mr. M. Gordon holding for Mr. Gerard Farrara Q.C.
Redhead J.A.

Adjournments

1. **R. Laurencin v A. Modeste**
Civ. App. 17/99
Appearances: Mr. Anthony McNamara holding for Mr. Dexter Theodore for the appellant and Mr. Peter Foster for the respondent
Adjourned to next sitting. Mr. Theodore ill.

2. **M. Daniel v A. Daniel**

Mag. Civ. App. 13/99

Appellant in person with her daughters. Leave to withdraw granted.
Appellant old, not too well and not interested in matter anymore.

Coram: **Byron CJ**
 Singh JA
 Redhead JA

1. **J. Goddard et al v C. O. Williams Construction [St. Lucia] Limited**

Civ. App. 4/98

Appearances: Mr. Kenneth Monplaisir Q.C. and Mr. D. Lee for the appellant and Mr. Michael Gordon.

Order: Appeal to Privy Council to stand dismissed unless the record of appeal is filed with the Registry of the Court of appeal within 14 days. Costs to respondent in any event.

Reason: The delay in submitting the record within the time that had been prescribed was due to the fact that the appellant had difficulty in retrieving and collating the exhibits used at the trial from the court. He now had a record which was about ready for transmission.

2. **B. Isidore v C. George**

Civ. App. 12/98

Appearances: Dr. Ramsay for the appellant and Mr. Kenneth Monplaisir Q.C. and Mr. D. Lee for the respondent.

Order: Leave to appeal to the Privy Council dismissed. Costs to the respondent.

Reasons: The judgment against which it was sought to appeal was the refusal of a stay of execution of a writ of possession and as such it was not a final judgment. Consequently, there was no appeal as of right to the Privy Council under section 108 (1) of the St. Lucia Constitution Order 1978. Leave was not granted under section 108 (2) because a dispute about the execution of a writ of possession pursuant to judgment of the court was not a matter of great public importance. Further not only was there no merit in the appeal. The legal principles on the issue of res judicata on which the decision was based are well settled. The continued regurgitation of this litigation, where the respondent initially got judgment in his favour on 19th December 1986 has become an abuse of the process of the court.

3. **J. Daniel v K. Louison**
Civ. App. 19/98
Appearances: Mr. Parry Husbands Q.C. for the appellant and Mr. Kenneth Foster Q.C. for the respondent
Order: Application to reinstate the appeal refused. Costs to the respondent.
Reasons: written reasons to be given.

4. **The Bank of Nova Scotia v D. J. Emmanuel & Associates et al**
Civ. App. 20/99
Appearances: Mrs. Kimberly Roheman for the appellant and Mr. Robert Innocent as amicus curiae.
Order: Leave to withdraw the appeal granted.
Reasons: The subject matter of the litigation had been discharged in full by payment of the alleged debt and there was no longer any dispute between the parties for resolution by the court. It was therefore not permissible for the appellant to invite the court to indulge in the purely academic activity of considering conclusions and obiter of the learned Trial Judge.

5. **M. Albert v Police**
Mag. Crim. App. 6/99
Appearances: Mr. A. George for the appellant and Mr. Jack, D.P.P. for the respondent.
Order: The conviction and sentence is set aside. The court orders that the appellant be reprimanded and discharged.
Reasons: The appellant was convicted of simple wounding. He is a mental patient under permanent care for schizophrenia. He also has a physical deformity which impairs the movements of his left hand and leg. He is thirty years old. He has no previous convictions. He is unemployed and is a ward of the social welfare department. The wound was minor. It was part of an incident which resulted in him being chased into a neighbouring house where he was set upon and beaten severely resulting in severe injuries and hospitalization. The magistrates decision to reject self defence was not reversed because of the finding that the wound preceded and led to the other incident. No proceedings have been initiated in respect of his complaints.

6. **E. Nicholas v Police**
Mag. Crim. App. 11/99
Appearances: Mr. Alberton Richelieu for the appellant and Mr. Norton Jack, D.P.P.(Ag.)
Order: Leave to withdraw granted.

7. **F. Maurice v G. Octave et al**
Civ. App. 6/99
Appearances: Mr. Martinus Francois for the appellant, and Mr. Peter Foster and Mrs. Clare Malaykan.
Order: Decision reserved.
8. **The Bank of Nova Scotia v M. Tohme**
Civ. App. 21/99
Appearances: Mrs. Kimberly Roheman for the appellant and Mr. Kenneth Foster Q.C. for the respondent.
Order: Appeal dismissed with costs to the respondent.
Reasons: The trial judge's decision to dismiss the application for summary judgment was clearly justified on the basis of the defence filed. It raised substantial defences on the facts and on the law. Although no affidavit had been filed in support of the defence, the practice and procedure allowed the court to draw conclusions from perusal of the defence itself. The rule is different when the application is to set aside a default judgment when evidence on the merits of the defence has been held to be an essential pre-requisite. The interests of justice mandated that the respondent have an opportunity to prove his contentions and the interest of the banking industry to effect speedy conclusion of claims for debt collection could not supersede this basic rule of natural justice.

Coram: Singh JA
Redhead JA
Matthew JA

1. **Lansiquot -v- Geest**
Civ. App. 1/99
Decision reserved.
2. **Unicorn -v- Barbuda Council**
Civ. App. 5/99
By Consent: Appeal discontinued. Substantive matter to be given a speedy trial. A.G. to file defence, if he so wishes, within 14 days of today's date. Summons for directions to be filed and possibly heard within 14 days after the time given the A.G. to file his defence has expired. No order as to costs.

WRITTEN JUDGMENTS

Court of Appeal Judgments

The following are written Court of Appeal judgments available for the month of January 2000 :

Grenada

Eric Llewellyn Jemmot v The Commissioner of Police

Grenada

Mag. Crim. App. No. 4 of 1999

Singh, JA

Delivered: 25/01/00

Grenada General Insurance Company Ltd. et al v Grenada Insurance Services Ltd.

Grenada

Civ. App. No. 12 of 1999

Matthew, JA

Delivered: 24/01/00

British Virgin Islands

D. H. Nicholas et al v The Bank of Nova Scotia

British Virgin Islands

Civ. App. No. 11 of 1999

Redhead, JA

Delivered: 24/01/00

High Court Judgments

The following are written High Court judgments delivered during the month of January 2000:

Anguilla

Hubert Benjamin Hughes v Leroy Rogers

Anguilla

Civ. Suits Nos. 99 & 101 of 1999

Saunders, J.

Delivered: 12/01/00

Saint Christopher & Nevis

The Government of the United States of America v Noel Heath et al

Saint Christopher & Nevis
Miscellaneous Suit No. 33 of 1999
Smith, J.
Delivered: 19/01/00

Saint Lucia

Peter Freud v William Edgecombe et al

Saint Lucia
Civ. Suit No. 226 of 1990
Hariprashad-Charles, J [Ag.]
Delivered: 10/01/00

Corneil JnBaptiste v Gonzague Richard et al

Saint Lucia
Civ. Suit No. 1042 of 1998
Hariprashad-Charles, J [Ag.]
Delivered: 27/01/00

Heirs Lucienne Zepherin Mathieu v The Chief Surveyor et al

Saint Lucia
Civ. Suit No. 741 of 1999
Hariprashad-Charles, J [Ag.]
Delivered: 27/01/00

Saint Vincent & The Grenadines

Robert Joseph [Application for an Order of Certiorari] v [The Crown [Sentence of Magistrate]]

Saint Vincent & The Grenadines
Civ. Suit No. 250 of 1999
Adams, J.
Delivered: 07/01/00

Christian J. Phillips v Kingstown Medical College Ltd.

Saint Vincent & The Grenadines

Civ. Suit No. 483 of 1995

Adams, J.

Delivered: 07/01/00

Felix Rogers v Attorney General et al

Saint Vincent & The Grenadines

Civ. Suit No. 211 of 1994

Mitchell, J.

Delivered: 14/01/00

Newlin Dyer v The Public Service Commission

Saint Vincent & The Grenadines

Civ. Suit No. 311 of 1992

Mitchell, J.

Delivered: 17/01/00

Federol Chambers v Randolph Chambers

Saint Vincent & The Grenadines

Civ. Suit No. 517 of 1994

Mitchell, J.

Delivered: 17/01/00

Hilary John aka Cleophas Cupid v Alford Lewis et al

Saint Vincent & The Grenadines

Civ. Suit No. 383 of 1992

Mitchell, J.

Delivered: 24/01/00

Margaret Hazelwood v Martin Laborde et al

Saint Vincent & The Grenadines

Civ. Suit No. 60 of 1993

Mitchell, J.

Delivered: 19/01/00

Arthur Edwards v Enroy Haynes et al

Saint Vincent & The Grenadines

Civ. Suit No. 25 of 1998

Mitchell, J.

Delivered: 24/01/00



EASTERN CARIBBEAN SUPREME COURT

As at 31st January, 2000

Court of Appeal

The Chief Justice

His Lordship, the Hon. Chief Justice, Dennis Byron – Saint Lucia

Justices of Appeal

His Lordship, the Hon. Justice Satrohan Singh – Saint Christopher & Nevis

His Lordship, the Hon. Justice Albert Redhead – Saint Lucia

His Lordship, the Hon. Justice Albert Matthew – Saint Lucia

High Court

His Lordship, the Hon. Justice Odel Adams – Saint Vincent & The Grenadines

Her Ladyship, the Hon. Justice Suzie d' Auvergne – Saint Lucia

His Lordship, the Hon. Justice Ephraim Georges – Antigua

His Lordship, the Hon. Justice Lyle St. Paul, OBE, CBE – Grenada

His Lordship, the Hon. Justice Stanley Moore – British Virgin Islands

His Lordship, the Hon. Justice Dunbar Cenac – Dominica

His Lordship, the Hon. Justice Kenneth Benjamin – British Virgin Islands

His Lordship, the Hon. Neville Smith – Saint Christopher & Nevis

His Lordship, the Hon. Justice Brian Alleyne, SC – Grenada

His Lordship, the Hon. Justice Adrian Saunders – Anguilla/Montserrat

His Lordship, the Hon. Justice Henry Moe – Antigua

His Lordship, the Hon. Justice Ian Mitchell, Q.C. – Saint Vincent & The Grenadines

Her Ladyship, the Hon. Justice Indra Hariprashad-Charles [Ag.] – Saint Lucia

Ms Ianthea Leigertwood, Chief Registrar [Ag.] – Saint Lucia