

ECSC E-NEWSLETTER



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GREETINGS FROM THE CHIEF JUSTICE

The E-Newsletter has survived the year 2000 and is celebrating its first birthday. This milestone started as a fledging effort inspired by a need to provide information about the Eastern Caribbean Supreme Court to the widest possible audience.

In this regard, the Court's Website, another benchmark, has helped to move the E-Newsletter away from the confines of a monthly e-mail sent to a list of recipients, to an electronic document available to anyone with access to the internet.

Let us build on our efforts of the past year, and with our varied contributions from throughout the region, help to develop the E-Newsletter in ways that are meaningful for all who visit our Website. This development will require greater participation by all.

The Eastern Caribbean Supreme Court Civil Procedure Rules came into force on December 31, 2000 breaking new ground with the introduction of Case Management and Mediation.

We have come a long way since January 2000. We would like to spread our wings and soar in 2001.

EASTERN CARIBBEAN SUPREME COURT NEWS

COURT OF APPEAL

HIGH COURT

Saint Lucia

The Eastern Caribbean Supreme Court has a new Acting Judge

Mr. Denys Arthur Barrow, SC. Attorney-at-Law, Belize City was sworn-in by His Lordship the Honourable Chief Justice Sir Dennis Byron, as an Acting High Court Judge of the Eastern Caribbean Supreme Court on Monday 8th January 2001.

Justice Barrow was sworn-in during a short ceremony, attended by members of the Judiciary, the practicing Bar, friends and well wishers, and held at the Headquarters of the Eastern Caribbean Supreme Court, Saint Lucia. Mrs. Panthea Emily Barrow, wife of Justice Barrow, also witnessed the ceremony. Justice Barrow has been assigned to Saint Lucia from 1st January to 11th April 2001.

On Friday January 12, 2000 there was a Special sitting of the High Court to welcome His Lordship Justice Barrow to St. Lucia

Addresses to the Court included the most Senior Queens Counsel, Mr. Winston Cenac; President of the St. Lucia Bar, Mr.

Kenneth Monplaisir; Ms Cheryl Mathurin, Senior Crown Counsel; Representative of the Attorney-General; the Director of Public Prosecutions, Mr. Norton Jack and Hon. Hilford Deterville for the Utter Bar. Mr. Cenac detailed Justice Barrow's extensive career achievements and all speakers including their Ladyships d'Auvergne and Harisprashad-Charles expressed the honour felt by all to have the benefit of His Lordship's experience on the bench in St. Lucia.

Justice Barrow, a national of Belize, graduated from the University of the West Indies and the Norman Manley Law School and was called to the Bar in 1977. He was elevated to Senior Counsel in 1990 and is currently in active practice as a Senior Lawyer in the firm of Barrow & Company in Belize.

Justice Denys Barrow, SC, has served in several positions, including President of the Bar Association in Belize, Member of the Supreme Court Rules Revision Committee and Member of the Attorney-General's advisory group. He has also served in the academic



Chief Justice Sir Dennis Byron (R) with newly appointed Ag. Justice Denys Barrow & Mrs. Barrow

field as a Lecturer in Law with the University of the West Indies Extra Mural Department.

The Court extends a hearty welcome to Justice Barrow.

Saint Vincent and the Grenadines

Retirement of Mr. Justice Odel Adams

On Monday 23 January 2001, at an impressive ceremony in the High Court in Kingstown in the State of St Vincent and the Grenadines, members of the judiciary, the magistracy, and the Bar paid fitting tributes to Odel Adams J. That date marked the day of Justice Adams's retirement from the bench, the day before he arrived at the age of 65.

Among the persons who spoke to express their appreciation were the Hon. Attorney General, Mr. Carl Joseph, Mrs. Margaret Ferrari, the President of the Bar Association, Mr. Othniel Sylvester QC CMG, the President of the OECS Bar Association, Mr. Bertram Commissiong QC, Mr. Arthur Williams, Mr. Emery Robertson, Mr. Victor Cuffy, President of the SVG Human Rights Association, Mr. Parnel Campbell, Mr. John Bayliss-Fredericks, the Hon. Dr. Ralph Gonsalves, Leader of the Opposition in the House of Assembly, and Mr. Errol Mounsey, retired Senior Magistrate.

Justice Adams was originally called to the Bar in London as a member of Lincoln's Inn in 1965. After 4 years in private practice in his native Guyana, he served in the prosecution department for 6 years. He was seconded to the Associated State of St Kitts-Nevis-Anguilla in 1975 as DPP, in which capacity he served for 2 years. Between 1978 and 1981 Justice Adams once again took up private practice in Georgetown, where he served as Vice-President of the Guyana Bar Association.

In 1981, he returned to public service when he was appointed Senior Crown Counsel in Barbados. He was assigned to Grenada as Prosecutor during the Maurice Bishop Murder Enquiry. In 1984 he accepted an appointment as Attorney General of the British Overseas Territory of Montserrat, where he served until 1990. During this period he was also called upon to prosecute in serious criminal matters in the Territory of Anguilla.

In 1990 he was appointed to the bench of the ECSC to serve as a judge in circuit of the Commonwealth of Dominica. Between 1998 and his retirement in 2001, he served in the same capacity in St Vincent and the Grenadines, and from time to time acted on the Court of Appeal. Justice Adams was at the time of his retirement the most senior of the High Court Judges of the ECSC.

Speakers at the ceremony were unanimous in acclaiming the eloquence of Justice Adams in his pronouncements from the bench and otherwise, his refreshing approach to his duties, and his understanding of the situation of the litigants, witnesses, and accused persons who appeared before him. Justice Adams was noted by several of the speakers as

a judge who had combined personal humility with deep intelligence and a continuing respect for the rights of the accused and other persons who appeared before him.

Justice Adams replied to the many speakers. He thanked the speakers for their remarks, and he extended to the Bar of St Vincent and the Grenadines his best wishes for the future. He indicated that though he would not be severing his connections with the West Indies, he and his wife would shortly be taking up permanent residence in Atlanta in the United States of America, the adopted home of their children.

NEW DEVELOPMENTS IN THE COURT

JEMS Case Management Solution – Implementation Update

The Court of Appeal and the St. Lucia High Court have now made payments to PCSS for the purchase of their JEMS Case Management Software. PCSS is in the process of preparing the software to send to us so that it can be installed in the respective courts. It is envisaged that during the early part of February, the software will be available in both St. Lucia High Court Office and the Court of Appeal Office for staff to continue to familiarize themselves while we develop the implementation schedule. It is also expected that during this time that the software is available, the staff who received training in the British Virgin Islands in December 2000, will train some of the other officers in the court offices.

Some of the Registrars and the Masters are completing the exercise to document the customization requirements for the JEMS software. PCSS has reviewed some of the work performed and have indicated that it will greatly assist with the implementation of the software. Once the exercise is completed, we can plan the next phase which is the “go-live” where PCSS will send their representatives to assist as we start using the software for management of the cases filed with the High Court. Once we have completed the first court, we will develop an implementation schedule for all of the remaining courts so that they can be operational with the software as quickly as possible.

Also, USAID has recently indicated that they will provide assistance to the independent islands for the purchase of hardware necessary to implement the JEMS Case Management Solution. It is expected that this equipment will be delivered to St. Lucia during the next few weeks after which arrangements will be made to forward it to the different islands.

Pilot Project - Audio Court Reporting

During the month of January, the ECSC decided to commence a pilot project for the use of audio equipment to record trial proceedings with a view to assist with the process of transcript preparation.

To achieve with this objective, the ECSC Headquarters purchased an Advocate V, four track, dual cassette recorder along with the necessary peripheral equipment to install in the High Court in St. Lucia for use in Civil Trials during the pilot period. The equipment was received during the week of January 22nd, 2001, and arrangements have started to be put in place to commence using it as early as possible in February 2001. It is expected that a pilot project will also be conducted in St. Vincent & the Grenadines during this same period.

The pilot period will run from February – April 2001 during which time specific information will be gathered to prepare a comprehensive report on the project.

USAID has indicated that once the results of the pilot project are available, they would be prepared to review them with a view to providing the necessary equipment to implement the solution in all of the independent OECS territories.

PRESS RELEASE

His Lordship, the Hon. Chief Justice, Sir Dennis Byron Establishes Committee to Advise on Judicial Selection Process

His Lordship, the Honourable Chief Justice, Sir Dennis Byron of the Eastern Caribbean Supreme Court has established a Committee to give guidelines for the recruitment and selection of Judicial Officers, and if time permits for legal officers.

The need to establish the Committee arises out of the recommendations made by Mr. Reginald Dumas who comprised a Task Force to examine the structuring and functioning of the Judicial and Legal Services Commission. Mr. Dumas recommended that procedures for filling such offices must include transparency.

The composition of the Committee is:-

1. Justice Albert Matthew - Chairman
2. Justice Telford Georges - Judicial and Legal Services Commission
3. Ms Jennifer Courtenay - Human Resource Officer, Caribbean Development Bank,
4. Mr. Eldon Mathurin – OECS Secretariat,
5. Mr. Othniel R. Sylvester, Q.C. - Representative of the OECS Bar Association
6. Representative of the OECS Attorneys General
7. Technical Advisor

The terms of reference of the Committee are:

- [1] Developing selection criteria for appointments to the offices of Justice of Appeal, High Court Judge and Magistrate within the judicial service of the Eastern Caribbean.
- [2] Recommending guidelines on the recruitment process for appointments to the stated positions.
- [3] Advising on the content and form of orientation of new appointees to the judicial service.
- [4] If time permits, advising on the selection criteria and recruitment process for appointments to the legal service.

The Committee is sponsored by the Caribbean Development Bank and is to commence work as soon as possible with a view to reporting to the Honourable Chief Justice, Sir Dennis Byron, before the end of March, 2001.

Technology Corner

The VPN:

Short for *Virtual Private Network* is a *network* that is constructed by using public wires to connect computers. For example, there are a number of systems that enable you to create networks using the Internet as the medium for transporting data. These systems use encryption and other security mechanisms to ensure that only authorized users can access the network and that the data cannot be intercepted.

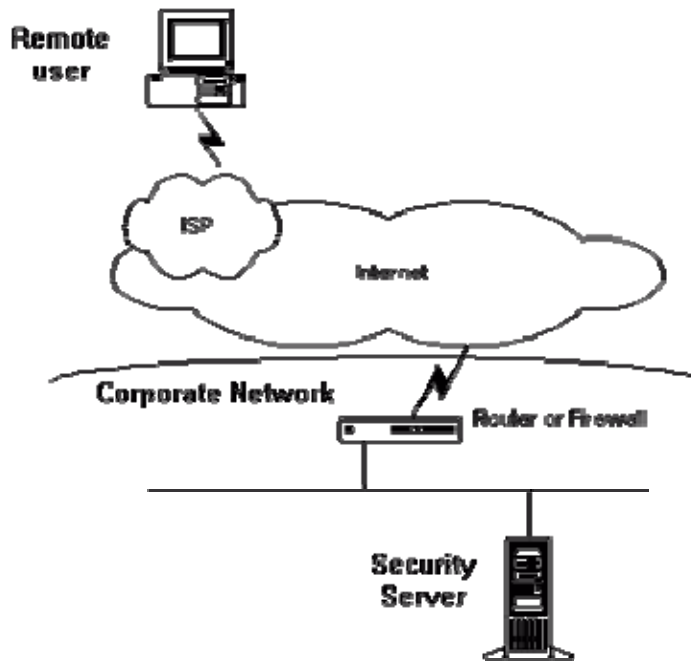
Virtual Private Networks (VPN) can be implemented as an Intranet also and completely replace a private Wide Area Network (WAN). VPN connects both branch offices and telecommuters into an enterprise-wide corporate network via the Internet. This can eliminate all long distance charges, along with the management and security responsibilities of maintaining private networks.

VPN differ from ordinary networks in three ways:

- Virtual Private Networks allow any valid remote user to become part of a corporate central network, using the same network scheme and addressing as users on this central network.
- Each Corporate central network can also be responsible for validating their own users, despite the fact that they are actually dialing into a public network.
- The Internet Service Provider can give each of their customer's a unique dial-up telephone number, which will distinguish their service from any other. But this is dependant on the software that will be used by the remote user.

Why use VPN:

- Secure data transmission with Tunneling Protocol through Internet
- Cost effectiveness with eliminate long distance charges



At the ECSC, the use of the VPN can permit officers of the court to be linked back to a central server, which they connect to from their local offices with internet access, or anywhere with internet access. Services such as electronic mail, accessing shared databases, file transfers, to name a few, could then be accomplished at a fraction of the cost which currently obtains.

We will be exploring this avenue of communications for our offices over the next few months as we continue to look for ways to maximize the use of technology for efficient and cost effective operations.

JUDICIAL AND LEGAL SERVICES COMMISSION

Judicial Appointments

- [1] The Judicial and Legal Services Commission has approved the appointment of His Lordship, the Hon. Mr. Justice Ephraim Georges to act as High Court Judge on contract for the period of 1st January to 11th April, 2001.
- [2] The Judicial and Legal Services Commission has approved the appointment of Mr. Denys A. Barrow, Attorney-at-Law to act as High Court Judge assigned to Saint Lucia from 1st January to 11th April, 2001.

Legal Appointments

Antigua

1. Mr. Asquith Earnsure Riviere's Contract has been renewed for a period of three [3] years as Magistrate effect from 2nd February, 2001.
2. The under-mentioned practitioners have been appointed to act as Magistrates as follows:
 - [a] Mr. Justice L. Simon for a period of six [6] weeks commencing 15th January, 2001 save and except the 15th day of January, 2001 and 1st, 5th, 19th, and 23rd days of February, 2001.
 - [b] Ms E. Ann Henry for a period of six [6] weeks commencing 15th January, 2001 save and except the 19th and 23rd days of January, 2001 and the 2nd and 15th days of February, 2001.
 - [c] Mr. Radford Hill for a period of six [6] weeks commencing 15th January, 2001.
3. The under mentioned persons have been confirmed of their appointment with effect from 1st February, 2001as follows:
 - [a] Mrs. Clare Henry-Wason as Chief Magistrate, Magistrate's Division.
 - [b] Mrs. Maureen Hyman as Senior Magistrate, Magistrate's Division.

Dominica

1. Mr. Bernard Wiltshire has been appointed to continue to act in the office on contract, in the office of the Attorney-General for the period 9th January to 8th April, 2001 vice Mr. Anthony La Ronde, on extended vacation leave.

Grenada

1. Mr. Christopher Nelson Senior Crown Counsel in the office of the Director of Public Prosecutions, has been appointed to act in the position of Director of Public Prosecutions for the period of six [6] months from Magistrate from 1st February, 2001.

St. Lucia

1. Ms. Veronica Cenac has been appointed as Crown Counsel III on contract for two years within the Attorney-General's Chambers for a period of two [2] years from 15th January, 2001.

2. Ms Gillian Vidal-Jules has been appointed as Legal Officer I within the Attorney-General's Chambers for a period of two [2] years from 15th January, 2001.
3. Ms Agnes Actie has appointed as Crown Counsel I on transfer to the Attorney-General's Chambers from 1st February, 2001.

St. Vincent & The Grenadines

1. Dr. Henry L.O.S. Browne has been appointed to act as Director of Public Prosecutions, for a further of period of three [3] months from 1st January to 31st March, 2001.

COURT OF APPEAL SITTING JANUARY 2001

British Virgin Islands Court of Appeal Sitting – 15th to 19th January 2001

Coram: Sir Dennis Byron, Chief Justice
Hon. Albert Redhead, Justice of Appeal
Hon. Albert Matthew, Justice of Appeal

1. **Blettner v Bigler**
H. C. Civ. App. No. 10/99
Appearances: Mr. Archibald, Q.C. and Miss Matthew for the Appellant and Mr. Dennis for the Respondent.
Issue: Application to Dismiss. Failure to file record of appeal within prescribed time.
Result: Application allowed. Case dismissed for want of prosecution. Costs to the Respondent.
Reason: The delay was inordinate, about 18 months. There was no good reason for the delay. The reason given was that the judge was late in giving his reasons for decision. However, these reasons had been given since February 2000, some 11 months ago. The merits did not impress because the appeal was based on the findings of fact. No allegations of unfairness nor of misunderstanding or misapplication of the law were made.
2. **Amesby Limited v Chelsworth Investments Limited [in Liquidation]**
H. C. Civ. App. No.11/00
Appearances: Mr. Hare for the Appellant and Mr. Dennis for the Respondent.
Result: Adjourned to the next sitting of the Court in BVI.
Reason: No available time during the sitting.
3. **Adex International Ltd et al v De Villalaba**
H.C. Civ. App. No.12,17 & 18/00
Appearances: Appellant in person and Respondent in person.
Result: Adjourned to the sitting in Saint Lucia on 31st January 2001.
Reason: No available time in BVI. Parties willing to accept date in Saint Lucia.
4. **Puwry Overseas Trading Company Ltd. v Organizacoes Keide Importacao E**
H. C. Civ. App. No.16/00
Appearances: Mr. Thompson for the Appellant and Miss T. Small for the Respondent.
Issue: Application to set aside conditional leave to appeal on failure to perform condition.
Result: Application allowed. Case dismissed. Costs to the Respondent.
Reason: Leave to appeal had been granted on 27th June 2000 on condition that the sum of \$250,129.07 was paid into court within 7 days. More than 6 months had elapsed and the condition had not been fulfilled.

5. **Fahie v R**
H. C. Crim. App. No.2/00
Appearances: Mr. Archibald, Q.C. and Mr. Ramjeet for the Appellant and Mr. Williams and Mrs. Williams-Roberts for the Respondent.
Issue: Murder.
Result: Decision reserved.
6. **Nam Tai Electronics Inc. v D. Hague et al**
H. C. Civ. App. No.21/00
Issue: Liquidation. Competence of receiver.
Result: Decision reserved.
7. **Dailey v Dailey**
H. C. Civ. App. No.4/00
Appearances: Mrs. George-Creque, Miss Boreland for the Appellant and Mr. Husbands for the Respondent.
Issue: 1. Whether the valuation of business jointly owned should be varied.
2. Whether fixed deposit was jointly owned and husband should pay wife half of same.
3. Whether transfer of property by wife to husband should be set aside on the ground of undue influence.
Result: Decision reserved.
8. **Samuels v The Police**
Mag. Crim. App. No.4/00
Issue: Unlawful possession of cannabis.
Result: Adjourned to next sitting of the Court.
Reason: No available time during the sitting.
9. **Nibbs v Todman**
H. C. Civ. App. No.5/00
Appearances: Mr. Archibald, Q.C. and Mr. Ramjeet for the Appellant and the Respondent in person.
Issue: 1. Whether Respondent was wholly or contributorily negligent.
2. Whether Respondent liable for damages.
Result: Appeal allowed. The judgment of the court below set aside. Appellant at liberty to enter judgment against the Respondent for 30% of his damages to be assessed and for 30% of his costs in both courts.
Reason: The collision resulted from the negligence of both Appellant and Respondent. The Appellant was more to blame because he emerged to overtake when it was not safe to do so and created the hazard. The Respondent was to blame because he was driving at an excessive speed, which contributed to the danger and made it impossible to stop or manouevre his car to avoid a collision. We apportioned liability 70 - 30 per cent. There was no information for an assessment of damages. The Respondent was unrepresented, he expressed interest in negotiating settlement of damages. Counsel for the Appellant undertook not to proceed with assessment until he communicated settlement offer

to Respondent.

10. **The Owners and Other Persons Interested In the Ship Monmar v North South**

H. C. Civ. App. No.6/00

Issue: Extension of time to file record of appeal.

Result: Leave granted to file record of appeal on or before 28th February, 2001. Appellant to give security for costs by paying \$12,000.00 into court on or before 28th February, 2001 in default appeal to stand dismissed. Time for serving notice of appeal extended to 24th May, 2001. Costs in sum of \$1,200.00 to Respondent to be paid on or before 28th February, 2001.

11. **Clarke v Alphonso**

H. C. Civ. App. No.7/00

Appearances: Mr. Archibald, Q.C. and Mr. Ramjeet for the Appellant and the Respondent in person.

Issue: Whether appropriate to order return of a vehicle that had become derelict.

Result: Order of Court below varied to \$2453.75 and costs of \$1,500.00.

Reason: The amount was calculated on the basis of the value of the vehicle less the amount due for repairs.

12. **Rainbows End Limited v Turnbull**

H. C. Civ. App. No.9/00

Appearances: Mr. Archibald, Q.C. and Mr. Ramjeet for the Appellant and Mr. Farara and Miss T. Small for the Respondent.

Issue: Building contract.

Result: Decision reserved.

WRITTEN JUDGMENTS

Court of Appeal Judgments

The following are written Court of Appeal judgments available for the month of January 2001:

Grenada

Revenue law – tax of 10% imposed on the transfer of property other than land to a non-citizen – liability to pay the tax imposed by the statute on the vendor – decision of trial judge that the tax to be paid by another party varied Judgments and Orders – interest on judgment – judgment debt paid into court instead of to the successful party – such payment not justified – finding of trial judge that interest due up to date of payment to party upheld.

Grenada General Insurance Company Limited et al v Grenada Insurance Services Limited

Grenada

Civ. App. No. 8/00

Delivered: 15/01/01

Matthew JA

Saint Christopher and Nevis

Murder – accused making unsworn statement from the dock – direction to the jury that unsworn statement cannot prove facts that have not otherwise been proven by evidence on oath – finding that such direction amounts to a misdirection – finding that the misdirection was minimized by the trial judge’s overall treatment of the case – conviction and sentence affirmed.

Juiancito Gonzalez v The Queen

Saint Christopher and Nevis

Crim. App. No. 2/98

Delivered: 15/01/01

Matthew JA

High Court Judgments

The following are written High Court judgments received during the month of January 2001:

British Virgin Islands

Solomon Douglas v Donald Williams et al

British Virgin Islands

Civ. Suit No. 74/99

Delivered: 31/01/01

Benjamin J

Saint Christopher and Nevis

Parties – locus standi – Plaintiff suing as trustee of deceased – earlier judgment of Canadian court – judgment touching on land in the jurisdiction – Defendant raising objection in limine – ruling that the Plaintiff has locus standi – finding that Defendant has waived his rights by bringing Canadian suit – objection overruled – trial to proceed.

Susan Barbara Dodge et al v Michael Simanic

Saint Christopher and Nevis

Civ. Suit No. 40/99

Delivered: 15/12/00

Bruce-Lyle J

Employer and employee – claim for wrongful dismissal, malicious prosecution, defamation – finding that Plaintiff involved in several infractions of the Defendant employer's rules of operations – claim dismissed.

Wayne Wattle v The Bank of Nova Scotia

Saint Christopher and Nevis

Civ. Suit No. 115/98

Delivered: 12/01/01

Bruce-Lyle J

Saint Vincent and the Grenadines

Running down action – claim against owner and owner's mechanic – mechanic employed to repair brakes of vehicle – mechanic without driving licence – mechanic driving vehicle and colliding with Plaintiff's vehicle – whether owner liable for negligence of mechanic – finding that mechanic employed to repair brakes necessarily had authority to drive vehicle to test the brakes – damages for loss including loss of use.

Honey Bun Bakery Ltd. v Colton Hackshaw et al

Saint Vincent and the Grenadines

Civ. Suit No. 218/93

Delivered: 20/12/00

Adams J

Merle King v Earl Latchman

Saint Vincent and the Grenadines

Civ.Suit No. 72/92

Delivered: 16/01/01

Adams J

Eilett Charles et al v Sandford Mofford et al

Saint Vincent and the Grenadines

Civ. Suit No. 516/94

Delivered: 19/01/01

Adams J

**In the matter of Windward Properties Ltd. and In the matter of the Companies Act
1994**

Saint Vincent and the Grenadines

Civ. Suit No. 563/99

Delivered: 23/01/01

Adams J

Deeds – real property – administration of estates – administrator appointed under a power of attorney – donor of power of attorney subsequently executing a conveyance of land a part of the estate – whether such conveyance valid – preliminary ruling that conveyance invalid – trial to proceed.

Sylvester Tannis v John Caldwell

Saint Vincent and the Grenadines

Civ.Suit No. 200/89

Delivered: 30/01/01

Adams J



EASTERN CARIBBEAN SUPREME COURT

As at 31st January 2001

Court of Appeal

The Chief Justice

His Lordship, the Hon. Chief Justice, Sir 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 [Ag.] - Antigua & Barbuda

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

His Lordship, the Hon. Justice Dunbar Cenac – Dominica

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

His Lordship, the Hon. Neville Smith – Tortola, British Virgin Islands

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 [Ag.] – Antigua

His Lordship, the Hon. Justice Don Mitchell, QC – Saint Vincent & The Grenadines

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

His Lordship, the Hon. Justice Frederick Bruce-Lyle – Saint Christopher & Nevis

Her Lordship, the Hon. Justice Denys Barrow [Ag.] – Saint Lucia

Master Charmaine Pemberton

Master Hugh Rawlins

Mrs. Ianthea Leigertwood-Octave, Chief Registrar - Saint Lucia