

ECSC E-NEWSLETTER



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GREETINGS FROM THE CHIEF JUSTICE

It is with great enthusiasm that I look forward to greet you every month. June was a month filled with activities again as we move forward with the reform process. Our reforms include the modernization of our Court Offices, computerizing our record keeping and tracking procedures and expanding our office personnel. The installation of the Judicial Effective Management System [JEMS] and training of the staff is continuing.

June found me quite refreshed since it was the first time for the year that I was able to spend the entire month at home base. Being at one location for such a long period enabled me to put into effect my theory that diet plus exercise equal weight loss. I ended the month feeling in much better health and I must add, modestly, with an aggregate weight loss of some thirty- five (35) pounds.

On June the 28th and 29th our Judges and Masters participated in a two-day symposium sponsored by the World Intellectual Property Organization, the St. Lucia Attorney General's Office and our Court. The symposium examined the practice in intellectual property cases.

The month ended with Judges and Masters meeting on 30th June in conference where they discussed a number of issues *inter alia* the implementation of the new rules. As we prepare to enter the final month of the law year I can only hope for the positive enthusiasm of the judiciary to continue.

EASTERN CARIBBEAN SUPREME COURT NEWS

Family Law and Domestic Violence Judicial and Legislative Reform

The Family Law and Domestic Violence Judicial and Legislative Reform Project recently completed phase 1 of the project. This part of the project consisted mainly of legal research on family law, research on domestic violence and the first regional advisory committee meeting. During phase 1, a research review was held to report on the findings of the research and to discuss the way forward for the project.

During the proceedings it was recognised that further research is needed so that a more conclusive piece of legislation will be produced. Further research is needed on the following topics.

- Status of Children
- Child Protection (Abuse)
- Succession Rights (Testacy and Intestacy)
- Baseline study on the practice within Divorce proceedings and how ancillary matters are resolved
- Data to be collected on the quantities of awards done in the Magistrates Court
- The relationship between poverty and family law

It was decided that the reports would be circulated to the following organizations and Ministries for verification and feedback.

- Organisation of Eastern Caribbean States (OECS)
- Eastern Caribbean Supreme Court (ECSC)
- UNICEF (CAO)
- NCH Action for Children UK
- Attorneys General of the OECS

Timeframes for the following activities

- The time frame in which the verification should occur is within a period of three weeks from July 9th to July 31st 2001. The reports will be circulated to the respective individuals during the first week of July.
- The reports will be handed over to the OECS, the ECSC and the funding agencies at the end of August 2001. The above organizations and agencies are also accountable for the reports.
- The completion date for the Social Services research by NCH is July 30, 2001.

Upcoming Activities

- In August of this year there will be a researchers meeting for the synthesis of the reports and input into the national consultations. This synthesized report's expected completion date is September 2001.
- The proposed date for the Regional Advisory Committee meeting is October 2001.

Please note that a more detailed report of the research review meeting will be produced by July 2, 2001, which will include a synopsis of the research presentations.

Annual General Meeting of the BVI Bar Association

The BVI Bar Association at its Annual General Meeting on June 13th 2001, elected its first female President, Mrs. Helene Anne Lewis. Mr. Paul Dennis of O'Neal Webster O'Neal Fletcher & Gordon was elected First Vice President. Ms Dawn Smith and Ms Valerie Georges were elected to the post of secretary and treasurer respectively.

Mrs. Lewis has been in the British Virgin Islands for eleven years and has served on the Bar Council as Secretary for seven years and First Vice President for the last two years. She succeeds Mr. Paul Webster who gave up the position to act as High Court Judge in St. Vincent this year. The incoming Council of the Bar Association will serve for one year.

NEW DEVELOPMENTS IN THE COURT



Mr. Leon Chaku Symister
Executive Assistant to the Chief Justice

On 2nd July 2001 Leon Chaku Symister joined the staff of the Eastern Caribbean Supreme Court as the Executive Assistant to the Chief Justice, Sir Dennis Byron.

Mr. Symister a national of Antigua & Barbuda resided in the United States of America before taking up his new position. He holds a B. A. with double majors in Political Science and Speech & Theatre from Herbert H. Lehman College, City University of New York, a *Juris Doctor* degree from Rutgers Law School, Newark, and an M.A. International Relations from Rutgers University.

Associate Professor at the City University of New York where he lectured in American Government, Criminal Justice and Business Law.

He also lectured at Seton Hall University in New Jersey from 1990-1997 in Political Science, the American Judiciary and Methods of Social Research.

Mr. Symister is admitted to practice in New York, New Jersey, the United States Virgin Islands and before the United States Supreme Court.

Mr. Symister is also a published Poet, author and playwright.

In his new position with the Court, Mr. Symister will be required, on the behalf of the Chief Justice to conduct studies of the organization, operations, programmes, practices and procedures of the judiciary, including the legal and business aspects. He will participate in court planning, assist in the development and implementation of general court reform and specific reform projects and programmes and assist in the implementation of policies and standards established by the Chief Justice.

Mr. Symister will also investigate complaints on behalf of the Chief Justice and prepare recommendations for his consideration.

The Eastern Caribbean Supreme Court extends a hearty welcome to Mr. Symister and wishes him a productive and successful stint with the court.

Establishment of a Structure for the Judicial Education Institute

The Court is in the throes of major reform. The reforms are of such scope and depth that judicial educational programmes are or will become extremely important in ensuring the success of these reforms or at least in helping to smoothen the transition from the old to the new.

The work of the Judicial Education Institute will therefore be guided by the nature and timing of the various reforms that are taking place throughout the Court. Much of the work of the Institute will have to be taken up with fashioning effective responses to needs created by the reform programme. While long range planning of the work of the Institute should be encouraged, given the dynamic situation created by the reform programme, the Institute should be able to devise appropriate programmes to fill particular unforeseen needs at short notice.

Structure of the Institute

Policy-making and Advisory Board

It is recommended that a Policy-making and Advisory Board be created to support the Judicial Education Institute of the Eastern Caribbean Supreme Court. The proposed terms of reference of this body are to:

- Establish policy guidelines for the work of the Institute;
- Identify suitable areas as subjects for judicial education;
- Advise on strategies that can be pursued by the executive committee in carrying out its work;
- Oversee generally the work of the Institute.

Three Judges, two Registrars, two Magistrates, the Judiciary Human Resource Administrator of the Eastern Caribbean Supreme Court and representatives of the OECS Bar, Council of Legal Education, OECS Conference of Attorneys' General and OECS Legal Unit have been invited to serve on the Board with the Chief Justice serving as Chairman.

Executive Body

The Board would be responsible for overseeing the work of an Executive Body comprising:

- Hon. Chief Justice
- Justice Adrian Saunders
- Chief Registrar
- Senior Magistrate
- Judiciary Human Resource Administrator

This Body will be responsible for devising and implementing the programmes of the Institute as well as liaising with local personnel who wish to obtain the assistance of the Institute in devising or implementing local programmes.

JUDICIAL AND LEGAL SERVICES COMMISSION

Legal Appointments

Commonwealth Of Dominica

- [1] Mr. Anthony Commodore, State Attorney has been appointed to act in the office of Senior State Attorney, Attorney-General's Chambers, for the period 15th June

to 28th August, 2001 vice Mrs. Heather Felix-Evans, who was granted vacation leave.

- [2] Miss Helen Anita Ali has been appointed to act in the office of Chief Magistrate for the period 1st June to 31st August, 2001.
- [3] Mr. Reginald Winston, State Attorney to act in the office of Registrar, Registrar General and Provost Marshall for the period 23rd July to 24th August, 2001 vice Ms Evelina Baptiste, who will be proceeding on vacation leave.

St. Vincent and The Grenadines

- [1] Mr. Roger Gaspard has been appointed on contract as Director of Public Prosecutions for a period of two (2) years.

CONFERENCES, SEMINARS AND WORKSHOPS

Judges' Conference

On the 30th June 2001 members of the Eastern Caribbean Supreme Court Judiciary met at the Bay Gardens Hotel Conference Centre for a full day of discussion on a range of topics. Also attending the conference were Justice Hugh Laddie of the Chancery Court in the United Kingdom, Justice Sandra Oxner of the Commonwealth Judicial Education Institute and Mr. James Quashie-Idun, Director, Cooperation for Development Section of the World Intellectual Property Organisation. The Meeting was chaired by the Hon. Mr. Justice Adrian Saunders, pro tem Chairman of the Judicial Education Committee.

The Hon. Chief Justice, Sir Dennis Byron, welcomed the participants. He informed the gathering that the *Civil Procedure Rules 2000 [CPR 2000]* will be delivered by the publishers in St. Lucia on 1st July 2001 and will be distributed by the end of that week. He also introduced Mr. Leon Chaku Symister who joined the Court of Appeal Office as Executive Assistant to the Chief Justice with effect from 1st July 2001.

Justice Denys Barrow, SC gave an overview of civil litigation in St. Lucia. He informed the group that Justices Saunders and d'Auvergne and Masters Pemberton and Rawlins had contributed significantly to the introduction and use of the *CPR 2000* during the transition period. As a result, the Bar had become more au courant with the practice and procedure under *CPR 2000*. Justice Barrow further informed the Meeting that pre-trial directions have been given for 400 cases, that more than 50 cases have been tried and approximately 75 cases have been settled or struck out at the pre-trial review stage. Fixed trial dates have been set for the rest of the calendar year.

Justice Barrow indicated that the Rules have placed case management squarely in the hands of the judiciary. As a result, the litigation process will be expedited thereby bringing a greater efficiency to the civil justice system in the OECS. He noted that the attitude of the St. Lucia Bar is now one of optimistic embrace.

The Chief Registrar, Mrs. Ianthea Leigertwood-Octave made a presentation on the Appeals Procedure under *CPR 2000* and how it is expected to improve case flow.

Mr. Gregory Girard, gave a demonstration of the Judicial Effective Management System (JEMS) case management software. JEMS has been installed in most of the High Courts in the territories.

Justice Sandra Oxner of the Canadian Bench, gave a presentation titled "*Quality of Judges*". She focused on issues of judicial reform and its inherent problems including but not limited to attitudes to change and reluctance in embracing reform. Justice Oxner also provided us with her insights on the selection process of judges, promotion, judicial ethics, discipline and judicial education.

The Hon. Chief Justice addressed the Meeting and discussed the establishment of a Judicial Conference, and a Judicial Council to provide for better Court governance. This was one of the recommendations of the "*Lipscher Report*." The Judicial Conference is expected to take place on 2nd August in St. Lucia.

Justice Ian Mitchell, QC, resident judge in St. Vincent and the Grenadines gave his views on conditions in the prisons and the impact on imposing custodial sentences on offenders. Justice Brian Alleyne, SC gave a report on the Judge's Retreat 2001 hosted by the Judiciary of Trinidad and Tobago, which he attended. As expected, the discussions following these presentations were lively and informative.

The Conference concluded with a unanimous sense of satisfaction.

The World Intellectual Property Organization (WIPO), the Eastern Caribbean Supreme Court and the Ministry of the Attorney General of St. Lucia host Symposium for Judiciary

On 28 and 29 June 2001, the World Intellectual Property Organization (WIPO), the Eastern Caribbean Supreme Court, and the Chambers of the Attorney General of St. Lucia hosted a Symposium on Intellectual Property Law and Practice for the Judiciary of the Eastern Caribbean Supreme Court at the Bay Gardens Hotel, St. Lucia. The Symposium was attended by the Judges and the Masters from the entire jurisdiction of the Court, Honourable Justice Sandra Oxner of the Commonwealth Judicial Education Institute, the Chief Registrar and the Administrative Assistant to the Chief Justice.

The speakers at the Opening ceremony were Mr. James Quashie-Idun, the Director, Cooperation for Development (Intellectual Property Law) Department, WIPO, who made introductory remarks, Ms. Louise Blenman, the Solicitor General of St. Lucia who made

welcoming remarks on behalf of the Attorney General of St. Lucia, and the Honourable Chief Justice, Sir Dennis Byron who made the feature presentation. In his presentation, the Chief Justice put the various branches of Intellectual Property Law into their modern perspective.

The Chief Justice stated the view that of the international regimes that create rights in this area of the law, the TRIPS Agreement (the Agreement on Trade-Related Aspects of Intellectual Property Rights) is perhaps of greatest significance to the judiciary, which must now deal with the new rights and obligations, which it creates. He noted that the Agreement does not only prescribes increased minimum standards for the protection of the rights which it creates, but further, mandates the enforcement of these standards by member states. It also specifies the procedures for enforcement, and requires a member state, which infringes the Intellectual Property rights of another member states to submit to the disputes settlement procedures of the World Trade Organization (WTO).

The Chief Justice drew attention to the fact that the TRIPS Agreement does not in and of itself create a universal patent system, so that multinational companies which seek patent protection throughout the world, still depend upon the patent office of each country to facilitate their interests in these rights. They also depend upon their judicial, customs and police services to enforce these rights. He further reminded participants that in order to render its provisions effective in its creation of rights and obligation in each country, the Agreement requires member states to make the necessary legislative and administrative changes in their municipal law.

For the main sessions on Thursday 25 June 2001, presentations were made by Mr. Quashie-Idun, by Mrs. Christine Castro-Hublin, Head of the Copyright Law Section, WIPO, as well as Honorable Justice Hugh Laddie of the Royal Courts of Justice, London and Judge Joachim Bornkamm of the Federal Supreme Court Germany.



Left to right: His Lordship, the Hon. Chief Justice Sir Dennis Byron, Hon. Justice Hugh Laddie and Judge Joachim Bornkamm

The presentation by Mr. Quashie-Idun was made on International Treaties in the field of Industrial Property. Mr. Quashie-Idun gave an overview of the provisions on Trademarks, Industrial Designs, Patents and microchips, which are contained in the relevant international instruments. He also gave a brief outline of the enforcement and the Criminal Procedure provisions under Part III and Article 61 respectively, of the TRIPS Agreement. His main focus was on the obligations which have been created in the

field of Industrial Property under the TRIPS Agreement, which came into operation on 1 January 1995. He also considered relevant provisions contained in Paris Convention, 1967, the Berne Convention, 1971, the Rome Convention, 1961 the GATT 1994 and the WTO Dispute Settlement Understandings, 1994.

Mrs. Christine Castro-Hublin spoke on recent trends in the area of the protection of Copyright and related rights provided by International Instruments. She made particular reference to the TRIPS Agreement, the WIPO Copyright Treaty (WCT) (1996) and the WIPO Performance and Phonograms Treaty (WPPT) (1996). She stressed that in the area of Copyright, the law seeks to protect not only original ideas simpliciter. It really seeks to protect the expression of original ideas, affording protection to the right to reproduce and control the distribution of ideas through the selling, translation, adaptation, broadcasting, and transmission of original work.

Justice Laddie and Judge Bornkamm highlighted critical issues that usually arise in litigation in the areas of Patents, Industrial Designs, Copyright and related rights. They expressed the view that it may be helpful for practitioners to approach these rights from the perspective that they create mini-monopolies for their owners. Thus, for example, they describe Patents and Registered Designs which protect inventions as “full-blooded” monopolies. One aspect of the protection of these rights is that the owner may sue a person who in his view has infringed the right, even without any knowledge on the part of that person that he or she has infringed the right.

Justice Laddie and Judge Bornkamm indicated that for the purposes of litigation, the critical questions that are usually raised for determination are:

1. Whether the right which the plaintiff claims is valid; and
2. On the assumption that the right is valid, whether there is an infringement of the right which brings the defendant within the scope of the claim by the Claimant.

On Friday 29 June 2001, Justice Laddie and Judge Bornkamm continued their presentations on issues which arise in litigation in Intellectual Property Law, with specific reference to Trademarks (Article 15 of TRIPS Agreement) and Geographical Indications (Article 22 of TRIPS Agreement). These areas are concerned with aspects of Intellectual Property that are designed to protect goodwill in the presentation of goods on the market. They also spoke on litigation with reference to Layout-Designs of Integrated Circuits.

During the Friday sessions, the presenters also touched briefly upon the provisions which relate to Unfair Competition that are contained in Article 10 bis of the Paris Convention, and Article 39 of the TRIPS Agreement which also provides for the protection of Undisclosed Information (trade secrets).

One of the highlights of the presentations by these Judges was concerned with the remedies which have been provided for the enforcement of Intellectual Property rights. For this, they spent some time on Part III and Article 61 of the TRIPS Agreement.

The Symposium ended with a brief closing ceremony, which followed a very enlightening discussion, which focused primarily upon the enforcement provisions and practice in Intellectual Property.

WRITTEN JUDGMENTS

Court of Appeal Judgments

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

Commonwealth of Dominica

Leroy Langford et al v The State

Commonwealth of Dominica

Crim. App. Nos. 8/00 & 9/00

Delivered: 05/06/01

Matthew JA

Grenada

The Commissioner of Police v George Worme et al

Grenada

Civ. App. No. 19/00

Delivered: 05/05/01

Redhead JA

Saint Lucia

Loopsome Portland v Dennis Sinclair DaBreo

Saint Lucia

Civ. App. No. 5/01

Delivered: 05/06/01

Archibald, J A (Ag.)

Saint Vincent and The Grenadines

Da Silva's Motors Limited v Hudson Soso

Saint Vincent and The Grenadines

Civ. App. No. 39/00

Delivered: 05/06/01

Redhead J A

High Court Judgments

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

Antigua and Barbuda

Building contract – Construction of dwelling house – Works incomplete – Time of the essence – Agent instructed – Failure to complete – Breach of contract – Whether plaintiff entitled to damages – Assessment of damages.

Winifred Jarvis v Stephen Payne

Antigua and Barbuda

Suit No. 378/94

Delivered: 26/01/01

Moe J

South West Trading Company Ltd. v Antigua Public Utilities Authority Ltd.

Antigua and Barbuda

Suit No. 256

Delivered: 27/02/01

Moe J

Ownership of property – Purported transfer a nullity – Occupation by infant – Trespass – Distribution of property – Power of Attorney – Land Register.

Joseph Matthew v Eustace Peters Jnr. And Sandra Matthew v Joseph Matthew et al

Antigua and Barbuda

Suit No. 7/00 & 25/00

Delivered: 01/06/01

Moe J

Building in course of construction – Negligence – Railings badly and defectively installed on 4th floor – Injury to employee – Liability of owner of premises, employer, contractor and subcontractors – Proportionate liability – Assessment.

Sean James v Williamson Sinclair et al

Antigua and Barbuda

Suit No. 32/99

Delivered: 22/06/01

Moe J

Building contract – Breach of contract – Exclusion of certain materials and labour – Termination of plaintiff's services – Employment of another contractor to finish work – Defendant see alternative accommodation for herself and clients – Site meeting arranged by architect – employment of sub-contractors.

Sylvester Joseph v Brigitte Berhost

Antigua and Barbuda

Suit No. 5/94

Delivered: 29/06/01

Moe J

Trevor Bailey v Bank of Nova Scotia

Antigua and Barbuda

Suit No. 235/92

Delivered: 29/05/01

Allen J (Ag.)

Callward Nicholas et al v Davis Jarvis et al

Antigua and Barbuda

Suit No. 346/95

Delivered: 11/06/01

Allen J (Ag.)

George Lewis v Denfield Morris

Antigua and Barbuda

Suit No. 146/94

Delivered: 15/06/01

Allen J (Ag.)

Jo-Anne Naffouj v Fouad Naffouj

Antigua and Barbuda

Suit No. 102/99

Delivered: 19/06/01

Allen J (Ag.)

Donna St. John v James St. John et al

Antigua and Barbuda

Suit Nos. 196/99 & 101/00

Delivered: 26/06/01

Allen J (Ag.)

British Virgin Islands

Parker S. Quillen et al v Harney Westwood & Riegels

British Virgin Islands

Suit No. 33/97

Delivered: 28/06.01

Benjamin J

Grenada

Agnes Jean Deane (also called Yvonne Deane) v Raymond Roy Deane

Grenada

Civ. Suit No 103/97 (D)

Delivered: 12/06/01
Alleyne J

Gordon Charles (aka Augustus James Alexis) v Clarie Holas
Grenada
Civ. Suit No 151/96
Delivered: 27/06/01
Alleyne J

Cecelia John v David John et al
Grenada
Civ. Suit No 177/00
Delivered: 27/06/01
Alleyne J

Saint Christopher and Nevis

Colin Walters v Peter Crane et al
Saint Christopher and Nevis
Civ. Suit No. 20/98
Delivered: 26/06/01
Bruce-Lyle J

Saint Lucia

Heirs of Avril Africain aka Jean Baptiste Joseph et al v Estate of the late Adrienne Felicien represented by Antoinus Ralph Felicien, Executor
Saint Lucia
Suit No. 718/97
Delivered: 15/12/00
Hariprashad–Charles J

Daniel Girard v Rick Wayne et al
Saint Lucia
Suit No. 614/93
Delivered: 03/04/01
Barrow J (Ag.)

Curtis Naitram v Victor Alexander et al
Saint Lucia
Suit No. 90 /94
Delivered: 10/04/01
Barrow J (Ag.)

Corneil JnBaptiste v Gonzague Richard et al
Saint Lucia
Suit No. 1042 /98
Delivered: 26/06/01
Barrow J (Ag.)



EASTERN CARIBBEAN SUPREME COURT

As at 30th June 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

His Lordship, the Hon. Justice Joseph Archibald [Ag.] – Tortola

High Court

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

His Lordship, the Hon. Justice Ephraim Georges [Ag.] – Antigua & Barbuda

His Lordship, the Hon. Justice Dunbar Cenac – Dominica

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

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

His Lordship, the Hon. Justice Adrian Saunders – Saint Lucia

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

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

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

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

His Lordship, the Hon. Justice Paul Webster [Ag.] – Saint Vincent & The Grenadines

His Lordship, the Hon. Justice Kenneth Allen [Ag.] – Antigua & Barbuda

His Lordship, the Hon. Justice Othneil, Sylvester, QC [Ag.] – Grenada

Master Charmaine Pemberton

Master Hugh Rawlins

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