



GREETINGS FROM THE CHIEF JUSTICE

Dear Readers:

In our last issue we reported on the honour bestowed upon Justice Suzie d' Auvergne by her native Saint Lucia on the occasion of that country's 25th anniversary of independence in February.

Today, I want to pay special tribute to Justice d' Auvergne not just for receiving the Saint Lucia Medal of Honour (Gold), but also for the tremendous energy that she has brought to the bench of the Eastern Caribbean Supreme Court in the past 14 years during which she has repeatedly created history in her country.

Indeed, by the time Justice d' Auvergne was made a Judge of the High Court in September of 1990, she had already recorded a string of "first time" achievements in Saint Lucia: first female Magistrate, first female Director of Public Prosecutions and first Solicitor General. In accepting the Saint Lucia Medal of Honour she also became the first serving Saint Lucian Judge to receive national honours.



Justice d' Auvergne's tenure as a judge has been a model of resoluteless that has always been tempered with compassion and fairness. There is no doubt in my mind that she has been a tremendous asset to the administration of justice in the countries where she has served.

The Eastern Caribbean Supreme Court is especially elated by the fact that Justice d' Auvergne was chosen for this honour while still serving. The fact that she received it while giving service away from home also adds to the esteem of the honour.

The Eastern Caribbean Supreme Court, judges and staff, feel a deep sense of pride at her achievements.

Please send comments, suggestions and contributions to the newsletter at appeal@candw.lc

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EASTERN CARIBBEAN SUPREME COURT NEWS

JUDGE HARIPRASHAD-CHARLES PRAISED



High Court Judge Indra Hariprashad-Charles has been complimented for her part in helping to reduce the number of remand prisoners at Bordelais Correctional Facility.

The words of praise came at the close of the February Assizes of the High Court. Deputy Director of Corrections Augustus Small told the closing session that progress was being made in the use of the Facility. "I can announce to you", Small said, " that presently we are visited most Wednesdays by a Magistrate, and of late, the Senior Magistrate, for remand hearings only".

Small said that although to date "no case of substance had been held", Bordelais was hoping that with the impending Judicial Reform pilot programme to be inaugurated in Saint Lucia, that "we at Bordelais Correctional Facility will become accustomed to scheduled Court cases being held at the Facility." He thanked Justice Hariprashad-Charles for "your sincere interest and assistance towards our serious remand population" at the Facility. He urged her to take comfort in the fact that she had not laboured in vain. According to Small, Hariprashad-Charles' efforts had now reduced the remand population by 54 percent to 76.

NEW MAGISTRATES FOR SAINT LUCIA

The Judicial and Legal Services Commission of the Eastern Caribbean Supreme Court has approved the appointment of three new Magistrates to serve in Saint Lucia.

They are Mr. Errol Walker and Ms. Gillian French of Saint Lucia and Ms. Ann Marie Smith of Tortola in the British Virgin Islands.

However, Ms. French has since informed the Commission that she is unable to take up the appointment. The Commission will make another appointment soon.

Mr. Walker has been practising law since 1983. He has served as Crown Counsel, acting Magistrate in the Traffic Court and Director of Public Prosecutions for eight years before retiring on reaching the mandatory retirement age.

Ms. Smith has been employed as Judicial Assistant to the Eastern Caribbean Supreme Court, based in the BVI since August 2002. She lived and worked in the United Kingdom for several years and also worked in Jamaica.

The new appointments take effect from May 1, 2004.

CONFERENCES, SEMINARS & WORKSHOPS

LOCAL

WORKSHOP ON COURT FILING FEES

At a time when considerable investments are being made to reform the OECS Court system, representatives of the OECS Judiciary convened a workshop in Saint Lucia on April 2, aimed at arriving at a regional consensus on the approach to be used in reviewing and readjusting court filing fees. The workshop also sought to make recommendations on new fee levels in cases where the grouping agreed that upward adjustments could be made to the fees' structure of the courts.

Facilitator for the workshop, Financial Adviser Mr. Alick Lazare of Dominica, said the matters tabled at the session were framed by the basic principle that justice should be accessible to all citizens, including the socially deprived. He said: "In keeping with the fundamental right of access to justice, the services of the court should be made affordable. So in looking at any upward revision of fees, we have to bear in mind that people have a right to justice and that it ought not be put out of their reach".

Mr. Lazare pointed out that uniformity in the application of court fees across the OECS should not present any major difficulties, although considerations, such as the cultural and economic conditions of respective member States must be taken into account.

"Some countries appear to be more prosperous than others and that is an important consideration", said Mr. Lazare, arguing that the culture in some countries might be different and that there might be need for differentiation. "For instance", he said, "for certain types of civil cases, some countries are more prone to have litigation concerning land than others, and you may want to differentiate the treatment of land litigation in some countries where the demand for court services may be higher".

Following a 1990 review of court fees, Mr. Lazare has undertaken a more recent exercise and prepared a document of court fees in the sub-region. According to him, legislative changes may be required in each of the six independent OECS States before any changes in court fees can come into effect.

Mr. Lazare's presentation prepared the participants for lively group discussions which focused on the following questions:

1. Cost Recovery, Affordability, and Demand Control were pointed out as three major principles underlying the establishment of filing fees. Can you think of any other principles?
2. Which principle (s) should be relied on most?
3. Should E-filing be encouraged? How?
4. Should filing fees be so structured as to encourage settlement at an early stage?
5. Should fees be made uniform throughout the jurisdiction?

From the answers to question 1, all groups felt that there should be a balance amongst the three overriding principles. Group 3 felt that the cost structure should be based on affordability and not cost recoveries, as the charges would be too exorbitant if based on cost recovery.

In response to question 2, all the groups felt that affordability should be relied on most, since access to justice in a cost effective manner is a fundamental right.

All the groups felt that E-filing should be encouraged, but many said that there needs to be more discussion on the procedure before implementation.

In response to question 4, all groups said yes, and the suggestion to have attorneys deposit funds on an account, which will be managed by the accountant general where funds will be deducted on a monthly basis, was welcomed.

Participants had different views with reference to question 5. Groups 1 and 2 said yes that fees should be uniformed, and Group 3 indicated that the difference in the economic structure/situations in the each state might not allow for this uniformity.

After the tea break, a Panel discussion on Electronic Solutions was held with Mr. Irvin Ferdinand, Accounts Manager ECSC; Mr. Mark Ernest, IT Manager ECSC; Mr. Augustin Barthelmy, Department of Finance; and Mr. Hildreth Laurencin, Department of Finance.

They looked at the possible solutions in the billing and collection of filing fees offered by JEMS, and discussed the measures that would have to be put in place to maintain and strengthen accounting standards in keeping with government's requirements.

Mr. Ferdinand spoke of the two possibilities for automating the process of filing fees.

- i. The use of credit cards by attorneys and firms as a means of payment.
- ii. The implementation of an escrow account with the Government Treasury whereby all attorneys and firms keep a balance on deposit from which filing fees will be drawn as needed.

In his presentation, Mr. Ferdinand stated that the second option is the most possible as the implications for credit card use does not make it a viable one.

Option 2 will allow for lawyers/firms to place a deposit, which would be maintained by the Accountant General. Further, lawyers/firms would get monthly statements of the activity of their accounts. It was noted that the JEMS programme provides an excellent tracking device where transactions are easily accessible.

Mr. Ferdinand concluded by highlighting the benefits of Option 2:

- ✓ Payments are made at the touch of a button
- ✓ Immediate invoice would be available to lawyers so that clients can be billed immediately, thus minimizing 'out of pocket' cash.
- ✓ Added security with minimum use of cash transfers
- ✓ It eliminates the rejection of documents filed by the court for any period of time
- ✓ Documents filed can be traced right through the system up to the disposition of the case

Mr. Mark Ernest's presentation was an illustration of how JEMS can make option 2 a reality.

At the penultimate session of the workshop, a summation of the critical aspects of the days proceedings were discussed and a document with the conclusions was prepared for circulation to all the participants. From these conclusions, a draft document for the case for uniformed Civil Court filing fees will be prepared and circulated to all stakeholders in the OECS region for review and feedback, and later adoption.

The final segment was the evaluation and close. Participants commented on the following questions on a scale of 1 to 5 where 5 represent the highest/best.

- i. How effective did you find the presentations?
- ii. To what extent will the workshop assist you in establishing filing fees?
- iii. Were you allowed sufficient time for discussion?
- iv. Did you learn anything new from the workshop?

- v. What follow up would you like to see take place?
- vi. Would another workshop be useful? After how much time?

In questions 1 and 2 most participants returned scores of 4 and 5 whereas in question 3 participants returned scores of 3 and 2. In question 4 all participants said 'yes' and in five the majority said 'yes another workshop would be useful' and many said 'after two years'.

The following are some of the comments noted by participants:

- a. *Filing clerks and legal clerks ought to have been included in this workshop. I am sure their impact would have assisted us.*
- b. *A reasonable time to request responses from each territory where implemented changes (if any) would be outlined. Possibly if there is a follow-up workshop it should be in the area of E-filing and all the implications thereof. This might be conducted within each territory itself.*

On the question "What follow up you would like to see take place?" participants answered the following:

- i. *A report should be provided which will allow for the hands on discussion by bar representatives, registry, filing clerks, law clerks and other stakeholders.*
- ii. *It would be good to receive the report from the workshop in a timely fashion.*
- iii. *When we go back to our respective countries we should look at the filing fees and fill in the missing slots and send back immediately to ECSC.*
- iv. *Circulation of report on workshop and draft revised fees for comment by stakeholders before submission to governments for urgent action.*

ORIENTATION FOR NEWLY APPOINTED MAGISTRATES

April 30, 2004

ECSC Conference Room

The Judicial and Legal Services Commission of the Eastern Caribbean Supreme Court in April of 2004 appointed three new Magistrates, in the names of Mr. Errol Walker and Anne Marie Smith, with the third appointee to be announced at a later date.

The Judicial Education Institute held an orientation programme for the newly appointed magistrates on Friday April 30, 2004.

The training session sought to encourage Magistrates to be as independent, effective and efficient in the execution of their duties as possible, and to equip them with the knowledge and skills necessary to execute their duties competently.

The new Magistrates were exposed to discussions on a wide range of relevant topics including sentencing, bail, delay reduction, court efficiency and the use of technology to assist in case management.

They were also made aware of the scope and implementation of the Eastern Caribbean Supreme Court's reform programme initiated by Chief Justice Sir Dennis Byron.

The objectives of the workshop were as follows:

- To provide participants with a basic introduction to the role and responsibilities of the Magistrate.
- To explain the role of technology in advancing the work of the Magistracy.
- To heighten awareness of the fundamental concepts of judicial Independence, Accountability and the Ethical responsibilities of a Magistrate.
- To discuss Bail guidelines and Sentencing guidelines.
- To explain the Reforms underway within the judiciary.

From the evaluations received from the participants, it was felt that the training prior to their work on the bench was well appreciated and would provide them with the foundation required to carry out their duties.

INTERNATIONAL

CRIMINAL PROCEDURES AND PUBLIC CRIMINAL PROSECUTION CONFERENCE

The Eastern Caribbean Supreme Court was represented at two seminars which were recently held in Buenos Aires, Argentina, by a delegation of four persons, headed by the Honourable Chief Justice, Sir Dennis Byron. The other members of the delegation were Honourable Justice Mr. Albert Redhead; Ms. Victoria Charles-Clarke, Director of Public Prosecutions from Saint Lucia; and Mr. Gregory Girard, Court Administrator from the ECSC Headquarters. In addition, the Caribbean was represented by Ms. Gloria Richards Johnson from the Caricom Secretariat and Mr. Gilbert Peterson from the Trinidad & Tobago Legal Aid Clinic.

The first Seminar was a presentation of the Results of the Follow-up Study on Criminal Procedure Reform, while the second addressed the topic of Challenges Related to Public Criminal Prosecutions. The Seminars were conducted by the Justice Studies Center of the Americas (JSCA).

At the first seminar presentations were made on the results of the Criminal Procedure Reform in Buenos Aires, Bolivia, Honduras, and Nicaragua, in addition to the workings of the Criminal Justice Systems in the English speaking jurisdictions of Saint Lucia, Trinidad & Tobago, and Jamaica. The preliminary presentation was made by Mr. Andres Baytelman, a consultant engaged by the JSCA. Mr. Baytelman visited the three jurisdictions over the last few months and made a presentation on the preliminary draft of the report which he prepared. (The Court Administrator of the ECSC Headquarters assisted Mr. Baytelman during his visits to the different jurisdictions.)

Mr. Baytelman's presentation was not reflective of the criminal justice systems in the different jurisdictions and it was unfortunate that he did not consult with the ECSC Court Administrator prior to making the presentations.

Other presentations on the Criminal Justice Systems in the English Speaking jurisdictions were made by Ms. Gloria Richards Johnson and the Honourable Chief Justice, Sir Dennis Byron. These presentations sought to clarify some of the erroneous conclusions made during Mr. Baytelman's presentation.

As a follow-up to the seminar, the Honourable Chief Justice expressed the view that before the report on the study could be published, the ECSC Headquarters must have the opportunity to review and correct the document, after consultation with the different stakeholders in the different jurisdictions which would include the Judiciary, the Honourable Attorneys General, and the Director of Public Prosecutions.

For the second seminar, discussions centered around the following themes:

- o The Current State of Criminal Prosecution in Reform Processes in Latin America
- o Criminal Prosecution and Public Safety
- o Organizing and Managing Public Prosecutor's Office
- o Decisions Regarding Prosecution and Prosecutors' Use of New Facilities
- o Criminal Investigation and the Public Prosecutor's Office

The Director of Public Prosecutions from Saint Lucia sat as a panelist on the discussions with respect to Criminal Prosecution and Public Safety.

The discussions were very informative, as they discussed a number of issues directly and indirectly related to the Criminal Justice Reforms currently underway in Saint Lucia. Of particular interest were the views expressed by representatives from the United States.

**Judicial Appointments for the period
April 1 – 30, 2004**

Eastern Caribbean Supreme Court

- [1] **His Lordship, the Hon. Justice Albert Redhead** High Court Judge [Ag.] has been appointed to act as a Justice of Appeal for the period 26th to 30th April, 2004.

Commonwealth of Dominica

- [1] **Mr. Reginald Winston**, State Attorney has been appointed to act in the office of Registrar, Registrar General and Provost Marshall for the period 1st January to 30th June, 2004.
- [2] **Mr. Ossie Walsh**, Legal Officer has been appointed to the Office of State Attorney [Temporary] for the period 30th October, 2003 to 31st August, 2004.

Saint Lucia

- [1] **Mr. Michael Magloire** has been appointed to the post of Magistrate II on a month-to-month basis for the period of four [4] months with effect from 4th January, 2004.
- [2] The following persons have been appointed to serve as Temporary Magistrates in Saint Lucia from 1st April, 2004 on a month-to-month basis:-
- [i] **Ms. Jennifer Remy** - for a further period of two [2] months;
 - [ii] **Ms. Cynthia Combie** - for a further period of two [2] months;
 - [iii] **Mr. Vern Gill** - for a further period of one [1] month;
 - [iv] **Mrs. Andra Gokool-Foster**- for a further period of two [2] months.

- [3] **Ms. Leslie Ann Thomas** has been appointed to the post of Deputy Registrar of Companies and Intellectual Property for a further period of two [2] years with effect from 2nd May, 2004.
- [4] The following persons have been appointed to the post of Magistrate 1 with effect from 1st May, 2004:-
[i] **Mr. Errol Walker**
[ii] **Ms. Ann Marie Smith;** and
[iii] **Ms. Gillian French**
- [5] **Mr. Rene Williams'** appointment as Crown Counsel 1, Attorney General's Chambers for the period of two [2] years from 3rd September, 2003 has been revoked; and
- Mr. Rene Williams** has been appointed as Crown Counsel 1, Attorney General's Chambers for the period of one [1] year from 3rd September, 2003.
- [6] **Ms. Valera Fikile Dlamini's** contract with the Government of St. Lucia as Director of Legislative Drafting, Attorney General's Chambers has been terminated, with effect from 30th April, 2004.

WRITTEN JUDGMENTS

The following are written judgments available for the month of **April 2004**:

COURT OF APPEAL JUDGMENTS

BVI

Nam Tai Electronics v David Hague et al

BVI

Civil Appeal No. 0012/2003

Gordon, J.A. [AG.]

Delivered: 26/04/04

GRENADA

Chanderballi Mahabir et al v Commissioner of Police

Grenada

Magisterial Criminal Appeal No. 06/2003

Alleyne, J.A.

Delivered: 26/04/04

Margaret Joseph v The Attorney General et al

Grenada

Civil Appeal No. 09/2003

Gordon, J.A. [AG.]

Delivered: 26/04/04

The Attorney General v Bernard Coard et al

Grenada

Civil Appeal No. 10/2004

Gordon, J.A. [AG.]

Delivered: 26/04/04

ST. LUCIA

Lorna Farrel v Nathaniel St. Ville

St. Lucia

Magisterial Civil Appeal No 03/2003

Rawlins, J.A. [AG.]

Delivered: 26/04/04

Marie Madeline Egger v Herbert Egger

St. Lucia

Civil Appeal No. 17/2002

Alleyne, J.A.

Delivered: 26/04/04

HIGH COURT JUDGMENTS

ANGUILLA

Bernice Lake et al v The Attorney General of Anguilla et al

Anguilla

Suit No. AXAHCV 2003/0023

Baptiste, J.

Delivered: 05/04/04

Eric Carter v The Attorney General et al

Anguilla

Claim No. AXAHCV 2002/0037

George-Creque, J.

Delivered: 00/04/04

ANTIGUA & BARBUDA

Anne Manfre et al v Edward St. Clair Smith

Antigua & Barbuda

Civil Suit No ANUHCV2001/0135

Mitchell, J.

Delivered: 01/04/04

Astra Holdings v The Attorney General et al

Antigua & Barbuda

Civil Suit No ANUHCV2002/0267

Mitchell, J.

Delivered: 01/04/04

Dayle Naylor v St James' Club Antigua Limited et al

Antigua & Barbuda

Civil Suit No ANUHCV1999/0252

Mitchell, J.

Delivered: 01/04/04

Frances Chapman v Wadadli Cats Limited

Antigua & Barbuda

Civil Suit No ANUHCV1999/0084

Mitchell, J.

Delivered: 01/04/04

Gloria Lake v Antigua Commercial Bank

Antigua & Barbuda

Civil Suit No ANUHCV1999/0123

Mitchell, J.

Delivered: 01/04/04

Ronald Joseph v AS Bryden and Sons (Antigua) Limited

Antigua & Barbuda

Civil Suit No ANUHCV2002/0258

Mitchell, J.

Delivered: 01/04/04

David Carlisle v Conrad Stevens et al

Antigua & Barbuda

Civil Suit No ANUHCV1995/0273

Mitchell, J.

Delivered: 07/04/04

Eva Placide v Colonial Homes and Commercial Properties Ltd

Antigua & Barbuda

Civil Suit No ANUHCV1999/0020

Mitchell, J.

Delivered: 07/04/04

Jean Andrea Simmonds Harris v Bruce Everon Harris

Antigua & Barbuda

Claim No ANUHMT2001/0044

Joseph-Olivetti, J.

Delivered: 06/04/04

ST CHRISTOPHER & NEVIS

Mary Lou Stiebling v National Caribbean Insurance Company Limited

St. Christopher & Nevis

Claim No. SKBHCV2001/0151

Baptiste, J

Delivered: 02/04/04

Pantaleo Giannotti v Roberta Delle Site Giannotti

St. Christopher & Nevis

Claim No. SKBHMT2002/0038

Baptiste, J

Delivered: 02/04/04

ST. LUCIA

Peter Clarke v The Attorney General et al

St. Lucia

Claim No. SLUHCV 1999/0475

Edwards, J.

Delivered: 19/04/04

Michelle Stephenson et al v Lambert James-Soomer and David Black v Lambert James-Soomer

St. Lucia

Claim Nos. SLUHCV 2003/0138; 2003/00453

Edwards, J.

Delivered: 19/04/04

Fabian Jagroop v Clarence Johanne et al

St. Lucia

Claim No. SLUHCV 0537/2002

Edwards, J.

Delivered: 19/04/04

The Queen v Trudy Edward

St. Lucia

Case No. 56/2003

Hariprashad-Charles, J.

Delivered: 07/04/04

Royal Bank of Canada v Benetton (St. Lucia) Limited et al

St. Lucia

Claim No. 143/1995

Hariprashad-Charles, J.

Delivered: 16/04/04

Simon Francis v Irene Serieux

St. Lucia

Claim No. SLUHCV2003/0146

Hariprashad-Charles, J.

Delivered: 29/04/04

ST. VINCENT & THE GRENADINES

AUA Corporation et al v The Owners of and Parties Interested in The Motor Tug "R.V. Glorita"

St. Vincent & The Grenadines
Civil Suit No. SVG/HAD/2003/0003
Blenman, J.
Delivered: 02/04/04

Godfrey Davis et al v Calvert Bushay of Vermont

St. Vincent & The Grenadines
Civil Claim No. 469/2002
Blenman, J.
Delivered: 07/04/04

Vincent Bertram Slater v Charmley Mattis

St. Vincent & The Grenadines
Civil Suit No. 436/2001
Blenman, J.
Delivered: 07/04/04

Chester Clarke et al v The Bank of Nova Scotia et al

St. Vincent & The Grenadines
Civil Claim No. 39/1994
Blenman, J.
Delivered: 08/04/04

Fancy Rotary Village Corporation et al v Garnet Solomon Henderson et al

St. Vincent & The Grenadines
Civil Suit No. 247/2002
Blenman, J.
Delivered: 19/04/04

Dwight Mayers of Arnos Vale v Carl Williams of Arnos Vale et al

St. Vincent & The Grenadines
Civil Claim No. 29/2002
Blenman, J.
Delivered: 20/04/04

Linda Black v Finishing & Furnishing Company Limited et al

St. Vincent & The Grenadines
Claim No. 516/2002
Blenman, J.
Delivered: 30/04/04

D's Services Limited v Joel Pitt
St. Vincent & The Grenadines
Claim No. 212/2003
Blenman, J.
Delivered: 30/04/04

EASTERN CARIBBEAN SUPREME COURT

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As at 30th April 2004

The Chief Justice

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

Justices of Appeal

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

His Lordship, the Hon. Justice Brian Alleyne, SC – Saint Lucia

His Lordship, the Hon. Justice Michael Gordon [Ag.] – Saint Lucia

High Court

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

Her Ladyship, the Hon. Justice Suzie d’Auvergne – British Virgin Islands

His Lordship, the Hon. Justice Kenneth Benjamin – Grenada

His Lordship, the Hon. Justice Don Mitchell, QC – Antigua & Barbuda

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

His Lordship, the Hon. Justice Frederick Bruce-Lyle – Saint Vincent & The Grenadines

His Lordship, the Hon. Justice Hugh Rawlins – British Virgin Islands

Her Ladyship, the Hon. Justice Charmaine Pemberton – Grenada

His Lordship, the Hon. Justice Davidson Baptiste – Saint Christopher & Nevis

Her Ladyship, the Hon. Justice Ola Mae Edwards – Saint Lucia

Her Ladyship, the Hon. Justice Rita Joseph-Olivetti – Antigua & Barbuda

His Lordship, the Hon. Justice Errol Thomas – Antigua & Barbuda

His Lordship, the Hon. Justice Janice George-Creque – Anguilla/Montserrat

His Lordship, the Hon. Justice Louise Blenman – St. Vincent & the Grenadines

His Lordship, the Hon. Justice Clare Henry-Wason – Commonwealth of Dominica

His Lordship, the Hon. Justice Francis Belle - Grenada

Master Brian Cottle – Saint Lucia

Master Cheryl Mathurin – Antigua & Barbuda

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