



GREETINGS FROM THE CHIEF JUSTICE

Dear Readers:

I do not suppose that it is too late in the year to wish every member in the judiciary and those who are in the judicial system a happy and productive 2004. I would like to welcome Mr. Michael Gordon a Legal Practitioner of longstanding who joins the Court of Appeal as an acting Justice of Appeal.

I feel a great deal of excitement and I have reasons to be optimistic about the reform programme in the judiciary.

We are on the eve of launching a pilot project, designed to reform the Criminal Law System, in St. Lucia. There will be a separate Criminal Division of the High Court with continuous sittings to hear all indictable matters from preliminary hearing stage right up to completion. It is hoped that this will reduce delays and eliminate the chronic backlog, which has plagued the Criminal Justice System over the years. This project, if successful, and I have no doubt that it will be, will serve as a model and will be replicated throughout the OECS.



Side by side with the Criminal Justice Reform, which is taking place in St. Lucia, we are proposing a pilot project in the British Virgin Islands in the establishment of a Commercial Division of the High Court. Again we hope that this will be replicated throughout the OECS.

A workshop and roundtable discussion on matters involving the Commercial Division of the High Court were held in the British Virgin Islands with Mr. Robert Lipsher our consultant as one of the presenters.

Following the sitting of the Court of Appeal in the British Virgin Islands, its members visited the Court Reporters Training School, managed by Ms. Stoutt, where they were privileged to see the trainees, as they impressively demonstrated their skills.

Let us all strive to fulfill our task of serving the public in an efficient and just manner.

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

INSIDE THIS ISSUE

Greetings from the Chief Justice
 p. 1

Eastern Caribbean Supreme
 Court News
 p. 2

Conferences, Seminars
 & Workshops
 p. 6

JLSC Appointments
 P. 10

Written Judgments
 p. 12

EASTERN CARIBBEAN SUPREME COURT NEWS

NEW FACES



Justice Michael Gordon

The Legal and Judicial Services Commission has appointed Mr. Michael Gordon of St. Lucia as an acting Justice of Appeal of the Eastern Caribbean Supreme Court.

Mr. Justice Gordon has been practising law since 1967 when he graduated from Cambridge. He was called to the English Bar at Middle Temple of the Inns of Court in London. On his return home, he was admitted to the St. Lucia Bar and was employed by the law firm of Gordon, Salles-Miquelle, Mc.Namara and Company. In 1973, he became a partner in the new firm of Gordon and Gordon and Company with his father, the late Sir Garnet Gordon, and uncle, the late Sir Keith Gordon.

Mr. Justice Gordon is the current Managing partner of the firm which specializes in commercial law. He was appointed a Queen's Counsel in 2002.

Mr. Justice Gordon co-wrote a suite of financial services (offshore) legislation for St. Lucia between 1999 and 2000. For 10 years he taught law at the Sir Arthur Lewis Community College and has been involved in a number of public and private sector activities.

From 1975 until last year, he was Chairman of the Voice Publishing Company, publishers of the oldest newspaper in the Eastern Caribbean.

STATEMENT ON THE DISMISSAL OF MAGISTRATE HORACE FRASER

The Judicial and Legal Services Commission of the Eastern Caribbean Supreme Court has seen newspaper articles published in St. Lucia dealing with the termination of the services of Magistrate Mr. Horace Frazer. The Commission is saddened by the tone of these articles and the several inaccuracies and assumptions contained therein. In the circumstances, the Commission feels compelled to set the record straight.

We are appalled by claims by Mr. Frazer contained in the published newspaper articles in question that he had no idea why his services were terminated or that no one interviewed him about the nature of the allegations against him.

It is inconceivable that the services of a Magistrate would be terminated and he or she would not know the reason why? As a result of complaints from the public about the conduct of Magistrate Frazer, the Commission felt it imperative to undertake an inquiry, in keeping with its policy of demanding high ethical standards in the Magistracy.

On 10th September 2003, Mr. Frazer attended a meeting with the Chairman of the Commission, Chief Justice Sir Dennis Byron; Commission Member Mr. Justice Albert Redhead; and Senior Magistrate Floreta Nicholas.

The Chairman informed the meeting that he had been accosted by several members of the public, with complaints about Magistrate Frazer. Magistrate Frazer interjected that he too had heard the complaints and that it had become very difficult for him to work as a result.

The Chairman informed the meeting that he intended to ask a retired Judge to come to St. Lucia to investigate the allegations. The task was given to Justice Odel Adams. Magistrate Frazer said he had no objection to Justice Adams whom he did not know. He promised to cooperate fully with anyone who was asked to investigate the matter.

Senior Magistrate Miss Floreta Nicholas said that she too had heard the allegations and welcomed the action by the Chairman. Justice Adams arrived in St. Lucia and conducted the inquiry. Three cases were brought to his attention for investigation. One of these cases dealt with a ruling of Judge Murray Shanks on 9th May 2003 in granting bail to a foreigner Herbert Lloyd Forbes who had been charged along with another man with "possession with intent to supply cocaine", "possession of cocaine" and "possession of ammunition".

Justice Shanks granted bail subject to the condition that the applicant Herbert Lloyd Forbes surrendered his passport to the Clerk of the First District Court. In addition, Forbes was asked to report to the Gros Islet Police Station every Monday and Friday at 9 a.m. The records show that on the charge sheet relating to the defendant Forbes, and in the handwriting of Magistrate Frazer, were the following words: "Travel documents of def. to be returned to him", a complete turnaround of Justice Shanks' order.

The Clerk of the Court told the investigator that the Magistrate knew of the High Court's condition requiring the surrender of Forbes' passport, because he, Magistrate Frazer, was the one who raised the matter. Asked Justice Adams in his report: "Did this Magistrate not know he could not over-ride the Judge's decision as to bail?"

Justice Adams found it strange that the Clerk to Magistrate Frazer, said that submissions were made by Mr. Marcus Foster, an attorney, on behalf of the defendant Forbes, but that the Magistrate himself reminded Mr. Foster that there was a High Court order in existence requiring the surrender of the travel documents. Still Magistrate Frazer ignored the judge's ruling.

It is interesting to note that at the 10th September 2003 meeting referred to earlier, the Chief Justice raised the question of allegations against Magistrate Frazer. Yet nine days later Magistrate Frazer revoked the Judge's order. Justice Adams concluded that there was no acceptable excuse for Magistrate Frazer's behaviour in relation to the matter of bail. He concluded that by his action, Magistrate Frazer had enabled "Forbes to put himself beyond the jurisdiction of the Courts of St. Lucia..." and suggested that the Commission might wish to consider the termination of Magistrate Frazer's service.

On January 5, 2004, the Commission informed the Permanent Secretary in the Ministry of the Public Service of the conclusions of Justice Adams' investigation that Magistrate Frazer's actions amounted to improper conduct that justified the laying of charges that could result in Mr. Frazer's termination. The Commission accepted the recommendation for Mr. Frazer's termination with immediate effect. The Commission must also point out that Justice Adams wrote to Mr. Frazer asking him to provide an explanation in relation to the allegations against him. Mr. Frazer sent in a three-page letter to Justice Adams in which he denied ever being involved in any corrupt practice in the dispensation of his duties as Magistrate.

Mr. Frazer was also critical of the Drug Unit of the Royal St. Lucia Police Force. The Commission wishes to point out that Mr. Frazer's services were terminated for misconduct in that he over-rode the decision of a Judge. This, the Commission concludes, was an act of grave misconduct and indiscipline which

cannot be tolerated. Mr. Frazer was not terminated because of any allegation regarding drugs. The action by the Magistrate Frazer in revoking Judge Shanks' ruling resulted in a person who had been charged with three serious offences involving drugs and ammunition being allowed to leave the country without facing trial when the Judge had ordered him to surrender his travel documents.

We are astonished by the statements purported to have been made by some lawyers, as reported in sections of the press, that Magistrate Frazer's termination was the result of interference in the administration of the judiciary by the government of St. Lucia. This is totally without any foundation.

The fact is that in recent times there have been several public complaints about the functioning of the Courts, Magistrates and lawyers as far as service to the public is concerned. It is for this reason that the Judicial and Legal Services Commission is insisting on the high ethical standards by the Magistrates it appoints to perform public service. To date, this stance of the Commission has resulted in disciplinary action being taken against four Magistrates, one of whom was found to have provided the Commission with misleading information about his professional qualifications that led to his appointment. The Commission will continue to be vigilant and firm in dealing with matters of ethics and discipline among those it appoints to administer justice in the Eastern Caribbean. It is our view that at a time when the public in these islands is clamouring for quality service, we can do no less.

CONFERENCES, SEMINARS & WORKSHOPS

Mediation Workshop

Mediation Coordinators who attended a St. Lucia workshop organized by the Eastern Caribbean Supreme Court Judicial Education Institute, at the end of January were full of praise for the information imparted to them, saying it was of tremendous benefit.

The 10 Coordinators from Antigua, Anguilla, Dominica, Grenada, Guyana, Montserrat, British Virgin Islands, St. Lucia, and St. Kitts were treated to two days of interactive teaching sessions and “live” and recorded sessions of mediations in progress.

The Eastern Caribbean Supreme Court is currently pursuing a programme of reform in the sub-region that includes the use of Appropriate Dispute Resolution (ADR). It has decided to institutionalize Mediation in civil cases as an option for resolving those disputes in the judicial process that do not require formal adjudication by a judge. In addition to providing parties with a satisfying and participatory alternative to traditional trials, it will help in freeing up and reducing the backlog of cases in the court system by removing those cases that can be resolved without a judge’s intervention - freeing up judicial time to be used where it is most required.

The Mediation Programme has already been successfully piloted in St. Lucia and is being taken to the other islands as well.

Sandra Julien, newly appointed Deputy Registrar of Dominica who attended the workshop was happy that she came. She said Dominica was now in the setting up stage for Mediation so the training in St. Lucia was helpful.

Colin Chichester, the Court Administrator/Mediation Co-ordinator of the High Court in Guyana, a trained Mediator employed by the Carter Centre said his Chief Justice was passionately committed to Appropriate Dispute Resolution and he urged Chief Justice Sir Dennis Byron to use his influence to extend any support available to the newly implemented Mediation Programme in Guyana. Chichester said he had learnt quite a lot from attending the two-day workshop which he found “very stimulating and interesting”.

Another participant Sonya Young, Registrar, High Court of Justice, Tortola, BVI, said she had learnt quite a bit from attending the workshop. She was happy that

the training had taken place before Mediation was implemented in earnest in the sub region.

At the closing session Justice Adrian Saunders, Chairman of the Judicial Education Institute of the Eastern Caribbean Supreme Court, which organized the workshop, presented Certificates of Attendance to the participants.

Chief Justice Byron told the participants that he hoped the training of all Mediators would be completed before Easter and that Mediation would be in operation on all the islands. But he said that a lot of that would depend on the participants, the way they pushed the chairpersons of their Committees, the way in which they energized prospective Mediators and the public and were able to persuade the legal profession to accept that Mediation was useful in the litigation process and would benefit their clients and the community at large.

Workshop Activities

As with all JEI programmes, this activity was set within the context of the overall Judicial Reform Movement initiated by Chief Justice, Sir Dennis Byron, and provided participants with the skills needed to enable them to effectively execute their duties in accordance with the Practice Directions and Civil Procedures Rules.

Day one of the workshop opened with registration, followed by welcome and introduction by the Chairman of the JEL, Honourable Justice of Appeal, Adrian Saunders. Sir Dennis Byron then gave a broad overview of the components of judicial reform, and in particular, the major features of the civil justice process. In so doing, Mediation was located within the nexus of the CPR2000. This presentation was entitled "The New Culture Of Reform", which embraces the concept of making procedures simpler, fairer, faster and more cost effective. Sir Dennis stressed that the concepts of judicial management and Appropriate Dispute Resolution should be used to improve the performance of all courts.

This was followed by a presentation of the Role of the Court Office in the Mediation Process, facilitated by Ms. Heather Franklin, Deputy Chief Registrar. This presentation demonstrated the various ways in which the Court manages litigation and assures that the Overriding Objectives are met. The session also identified the responsibilities of the Court office in the mediation process.

Justice Indra Hariprashad-Charles then led participants in a presentation entitled "The Role And Responsibilities of the Judge and Master In the Mediation Process". This part of the programme sought to encourage the resolution of disputes through ADR which offers an honourable way out of disputes for litigants. Justice Hariprashad- Charles went on to establish the principle that judges have a duty to manage cases and to encourage the dispensation of justice through actively initiating and encouraging Appropriate Dispute Resolution (Mediation). Indeed, Justice Hariprashad- Charles argued, "judges are the guardians of mediation".

After demarcating the necessary steps and criteria in the referral of cases to Mediation, Justice Charles outlined what occurs after Mediation. Her ladyship then went on to say that, if a genuine mediation culture was to develop, that it would be wise to extend the activity of mediation during the period before matters are brought before the courts, in particular, through inclusion in contracts.

After the mornings inspiring presentations, participants were given two hands-on training sessions in the use of JEMS (case management) software. These practical sessions aimed to highlight the function of JEMS in the mediation process and the associated duties of the mediation coordinator. They also informed on the report/data requirements of the Mediation Programme for Management decisions.

A tour of the Mediation Center and an observation of a live mediation session in progress was led by Ms. Lenore St. Croix, the local Mediation Coordinator, and Mrs. Avis Burch- Smith, the assistant Mediation Coordinator. In this manner, the full range of activities/responsibilities undertaken by the mediation centre was depicted, and the usefulness of the physical layout of the mediation centre was established.

Day two of the programme opened with a broad-based discussion and presentation by Mrs. Deborah Mendez-Bowen, a Mediation Consultant, on the Roles and Responsibilities of the Mediation Coordinator. An appreciation was given of the role of the mediation coordinator within the context of judicial reform.

Following this, a similar presentation and discussion was given by Mr. Francis-Compton on the Role and Responsibilities of the Regional Mediation Coordinator. Mr. Compton is the recently appointed Regional Mediation Coordinator for the ECSC. Again there was much discussion and sharing of experiences.

Later in the morning, Ms Lenore St. Croix, the Local Mediation Coordinator who led the St. Lucia Pilot on Mediation, discussed in detail a Procedures Manual for Mediators which related to the actual practice in Mediation. There followed much hands on activity, for example, going through the various forms used for a typical Mediation session.

There was a short film of a mediation process. Later in the afternoon, participants were joined by local Mediators who enriched the workshop with their several eloquent testimonies about their practical experiences as mediators.

**Judicial Appointments for the period
January 1 – 31, 2004**

1. ANTIGUA & BARBUDA

The following persons have been appointed:-

- [1] **Mrs. Maureen Payne-Hyman**, Senior Magistrate, Magistrate's Division to act as Chief Magistrate vice Her Ladyship, the Hon. Justice Clare Henry-Wason with effect from 1st January, 2004.
- [2] **Mr. Asquith Riviere**, Magistrate to act as Senior Magistrate vice Mrs. Maureen Payne-Hyman; and
- [3] **Mr. Keith Thom**, Crown Counsel 1, Office of Public Prosecutions to act as Magistrate vice Mr. Asquith Riviere.

2. GRENADA

- [1] **Ms. Denis Campbell**, Attorney-at-Law was appointed to act as Registrar, Supreme Court, Grenada for the period 20th December, 2003 to 29th January, 2004.
- [2] **Ms. Karen Noel**, Attorney-at-Law was appointed to act as Additional Magistrate, Northern and Eastern Districts, Grenada for the period 5th to 30th January, 2004

The following persons have been appointed as follows:-

- 1. [a] **Mr. Hilary B. Samuel**, Magistrate on contract for a period of one [1] year.
- [b] **Ms. Candice Wyllie** as Crown Counsel 1.

3. ST. VINCENT & THE GRENADINES

The following persons have been appointed as follows:-

- 1. [a] **Mr. Hilary B. Samuel**, Magistrate on contract for a period

of one [1] year.

[b] **Ms. Candice Wyllie** as Crown Counsel 1.

2. **Mrs Kaywanah Springer-Martin** to the post of Registrar of Commerce and Intellectual Property with effect from 1st January 2004.

WRITTEN JUDGMENTS

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

COURT OF APPEAL JUDGMENTS

ANGUILLA

Mark Bannister v. Anguilla Connection Limited

Anguilla

Civil Appeal No. 06/1997

Byron, C.J.

Delivered: 12/01/04

ANTIGUA & BARBUDA

Lester Bryant Bird v Joseph Horsford

Antigua & Barbuda

Civil Appeal No. 03/2003

Redhead, J.A.

Delivered: 12/01/04

Lester Bryant Bird v Observer Radio Ltd et al

Antigua & Barbuda

Civil Appeal No. 05/2003

Saunders, J.A.

Delivered: 12/01/04

BVI

RBG RESOURCES V RBG GLOBAL

BVI

Civil Appeal No. 06/2003

Alleyne, J.A.

Delivered: 12/01/04

Ludwis Allen Wheatley v The Commissioner of Police
BVI
Magisterial Criminal Appeals Nos.1 & 2/2002
Saunders, J.A.
Delivered: 12/01/04

Nihon Abbey v The Queen
BVI
Criminal Appeal No. 01/2003
Redhead, J.A.
Delivered: 12/01/04

DOMINICA

MPG Construction v Dominica Social Security
Dominica
Civil Appeal No. 03/2003
Saunders, J.A.
Delivered: 26/01/04

Bernadette Hector et al v Neville Joseph et al
Dominica
Civil Appeal Nos. 06 & 08/2003
Saunders, J.A.
Delivered: 26/01/04

GRENADA

Azim Baksh v John Hopkin (Grenada) Limited
Grenada
Magisterial Civil Appeal No. 02/2002
Byron, C.J.
Delivered: 12/01/04

ST. CHRISTOPHER & NEVIS

Susan Barbara Dodge et al v Michael Simanic et al
St. Christopher & Nevis
Civil Appeal No 15/2003
Byron, C.J.
Delivered: 12/01/04

Theodore Hobson et al v Ira Walwyn et al

St. Christopher & Nevis
Civil Appeal No 11/2002
Saunders, J.A.
Delivered: 12/01/04

ST. LUCIA

Gregory Burton v The Queen

St. Lucia
Criminal Appeal No 01/2002
Georges, J.A. [Ag.]
Delivered: 12/01/04

Claudius Soudine v Septius Jeffrey

St. Lucia
High Court Civil Appeal No. 35/2003
Alleyne, J.A.
Delivered: 20/01/04

HIGH COURT JUDGMENTS

ANTIGUA & BARBUDA

American International Bank Limited v W W I A Q World Wide Investments et al

Antigua & Barbuda

Civil Suit Nos. ANUHCV2001/0352 & ANUHCV2001/0353

Mitchell, J.

Delivered: 13/01/04

Ports Services Limited v Executive Airlines Inc

Antigua & Barbuda

Civil Suit No ANUHCV2002/0065

Mitchell, J.

Delivered: 13/01/04

Danny Bramble v William Danny et al

Antigua & Barbuda

Civil Suit No ANUHCV1999/0160

Mitchell, J.

Delivered: 15/01/04

Monique Kim Barua et al v Lester Bird et al

Antigua & Barbuda

Civil Suit No ANUHCV2002/0542

Mitchell, J.

Delivered: 15/01/04

BRITISH VIRGIN ISLANDS

Ipoc International Growth Fund Limited v LV Finance Group Limited et al

B.V.I

BVIHCV140/2003

d,Auvergne, J

Delivered: 21/01/04

Harry Samuel v Commissioner of Police et al

B.V.I

BVIHCV2003/0144

d,Auvergne, J

Delivered: 28/01/04

ST. LUCIA

The Queen v Thomas Gonzague

St. Lucia
Case No. 27/2003
Edwards, J.
Delivered: 22/01/04

Peterson Cheddi v Regis Martyr et al

St. Lucia
Suit No. SLUHCV 1996/0715
Edwards, J.
Delivered: 29/01/04

Raymond Genevieve Valerie vs Rosemary Valerie

St. Lucia
Suit No. SLUHMT 2003/0055
Edwards, J.
Delivered: 30/01/04

IHM Incorporated Limited v Melchaid Wilson et al

St. Lucia
Claim No. SLUHCV2003/0423
Hariprashad- Charles, J.
Delivered: 19/01/04

Morris Gustave v John Jeremie et al

St. Lucia
Claim No. 558 of 1997
Hariprashad- Charles, J.
Delivered: 20/01/04

Cletus Dolor v Alcide antoine et al

St. Lucia
Claim No. SLUHCV2001/0555
Hariprashad- Charles, J.
Delivered: 30/01/04

EASTERN CARIBBEAN SUPREME COURT

Deleted: ¶
¶

As at 31st January 2004

The Chief Justice

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

Justices of Appeal

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

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

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

South America