



**EASTERN CARIBBEAN
SUPREME COURT**

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E-Newsletter

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MESSAGE FROM THE CHIEF JUSTICE

Dear Readers:

The month of September marks the beginning of the Law Year and we open this new term with an ever steady resolve to progressively pursue the Court's reform agenda and deliver justice fairly and efficiently.

As is customary, the year commences with a special service of prayer and thanksgiving, to be followed by the Chief Justice's address delivered via simulcast to our nine jurisdictions. The address, delivered from St. Lucia, reviews the accomplishments of the year past and provides an overview of the Court's work-plan for the year ahead.

In terms of achievements, we are especially pleased that relevant amendments to the St. Lucia Criminal Code and the St. Lucia District Courts Act have recently been passed. These amendments lay the foundation for effective implementation of the Criminal Division pilot project and the Court Structures Project. Work continues assiduously to enable the Supreme Court (St. Lucia) (Criminal Division) Rules and the Criminal Procedure Rules.

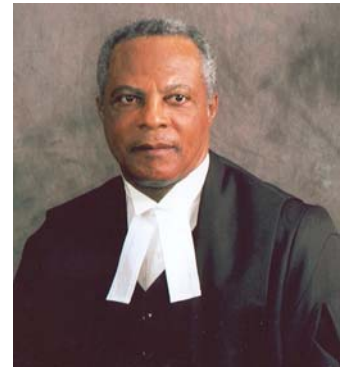
This year's work programme will focus on rationalising and consolidating the many reforms which have been brought on stream in the past ten years. We look forward to the support of the bench, the bar, governments and civil society to ensure the full and effective implementation of these programmes.

The OECS Bar Association's 5th Regional Law Fair will be held at the threshold of this new law year. An excellent programme of lectures and panel discussions have been organized, which will certainly prove most edifying. As is now well-established practice, the Fair features a law book exhibition. Two works of momentous significance to the Court will be show cased: "Eastern Caribbean Supreme Court: Model Regional Court" and "The Caribbean Civil Court Practice."

"Eastern Caribbean Supreme Court: Model Regional Court", the brainchild of Sir Brian Alleyne, SC, KCN, was authored by leading academic and legal practitioner, Dr. Francis Alexis. He had the editorial assistance of Professor Velma Newton of the University of the West Indies. The book documents the Court's growth and development over the past 40 years and provides enormous insight into the Court's jurisprudence in areas, including, Criminal Law Practice and Procedure and Public Law and Human Rights.

"The Caribbean Civil Court Practice" is a practitioners' text which contains the key civil procedure rules and practice directions from Caribbean jurisdictions, including our own. The text includes a practical commentary to aid the interpretation and application of these rules. This one-stop civil practice text will provide ready access to recent cases from this jurisdiction as well as that of Barbados, Jamaica, Trinidad & Tobago, the United Kingdom and the Caribbean Court of Justice. I have no doubt that this will prove most useful to members of the bench, the bar and students of the law.

We are also pleased that this year's OECS Bar Association's Law Fair includes a joint symposium by the Judicial Education Institute and the Association. The symposium will discuss the Civil Procedure Rules 2000, and in particular, Part 17 on Interim Remedies and Parts 64 and 65 on Costs. I anticipate stimulating and fruitful deliberations and discussions on these topics over the two days of the Law Fair and Symposium.



Hon Hugh Anthony Rawlins

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INTERLOCUTORY APPEALS – PROCEDURAL APPEALS – A LAWYER’S NIGHTMARE

Is this a procedural appeal? Is this an interlocutory order? Do I need leave to appeal? These questions have plagued the minds of legal practitioners throughout the length and breadth of the OECS Member States and Territories. But perhaps there is a glimmer of light at the end of the tunnel with the recent Court of Appeal judgment of **Craig Reeves v Platinum Trading Management Limited St. Christopher and Nevis Civil Appeal No. 22 of 2007 delivered on February 25, 2008.**

In this case, the interpretation and application of Rule 62.1 of the **Civil Procedure Rules 2000** have been further elucidated by Honourable Denys Barrow SC, Justice of Appeal. The Craig Reeves case dealt with the issues of interlocutory appeal, procedural appeal, whether the direction of the Court is required for a procedural appeal to proceed as such, whether leave is required, time limits for filing notices of appeal, sanctions for non-compliance, Rule 62 of the Civil Procedure Rules and section 31 (3) of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act No. 17 of 1975.

The procedural appeal is new and particular to the Civil Procedure Rules (CPR 2000) there being no parallel in the English Civil Procedure Rules (CPR), from which our rules derived-see **Oliver Mcdonna v Benjamin Wilson Richardson St. Christopher and Nevis Civil Appeal No 3 of 2005.**

Rule 62 .1 of Civil Procedure Rules 2000 (CPR 2000) defines a “procedural appeal” as an appeal from a decision of a judge, master or registrar which does not directly decide the substantive issues in a claim but excludes –

- (a) any such decision made during the course of the trial or final hearing of the proceedings;
- (b) an order for committal or sequestration of assets under Part 53;
- (c) an order granting any relief made on an application for judicial review (including an application for leave to make the application) under the relevant Constitution;
- (d) an order granting or refusing an application for the appointment of a receiver; and
- (e) the following orders under Part 17 – (i) a freezing order; (ii) an interim declaration or injunction; (iii) an order to deliver up goods; (iv) any order made before proceedings are commenced or against a non-party; and (v) a search order.”

FACTS—CRAIG REEVES CASE

The appellant appealed against the decision in the court below which dismissed its forum challenge. The respondent applied to strike out the appellant’s appeal on the ground that the appellant had not filed and served written submissions with the notice of appeal in accordance with the requirements of Part 62.10 of the **CPR 2000** which governs procedural appeals. The ground of the respondent’s strike-out application was that an appeal against such a decision is a procedural appeal and the appellant did not comply with the requirement of

Part 62.10 (1) of the **Civil Procedure Rules 2000 (CPR 2000)** that he must file and serve written submissions in support of the appeal with the notice of appeal. The appellant did not file and serve written submissions with his notice of appeal but did so some 14 days later; after the respondent had filed the application to strike out the appeal.

Counsel for the appellant argued that it was not intended by the rules to be automatic that such an appeal should proceed as a procedural appeal, that this appeal was not suited to proceed as such in that it raised important and complex issues, and that insofar as this was an interlocutory appeal requiring leave, Part 62.10 could not apply. Counsel for the respondent argued that the judge’s order on the forum decision was an interlocutory order, that the appellant needed leave to appeal such an order, and that an appeal from such an order was a procedural appeal. In their written and oral arguments counsel for the appellant agreed that the order appealed was an interlocutory order and that the appellant needed leave to appeal, which he had obtained.

Counsel made reference to three previous single-judge decisions of the Court of Appeal, to wit, **Maria Hughes v The Attorney General of Antigua and Barbuda**, Antigua and Barbuda Civil Appeal No. 33 of 2003 (judgment of Gordon J.A. reissued 13 April 2004) **Nevis Island Administration v La Coppoprete Du Navire J31** St. Christopher and Nevis Civil Appeal No. 7 of 2005 (judgment of Rawlins JA delivered on 29th December, 2005) and **Oliver Mcdonna v Benjamin Wilson Richardson**, which he posited took different views on the relationship between procedural appeals and interlocutory appeals, and left the law in a state of confusion that required clarification. Counsel argued, in particular, that the different views taken in the first two of those cases as to the different time limits for filing a procedural appeal and an appeal for which leave was required marked the difference between these two categories of appeal, and “once an appeal falls to be treated as an interlocutory appeal requiring leave ... then it **cannot** proceed thereafter to be dealt with in accordance with Part 62.10 which is specific to procedural appeals only.”

The Hon. Justice Barrow at paragraph 21 of the judgment stated that the confusion that counsel for the appellant thought attended the matter whether there exist two categories of appeal, as counsel thought Rawlins JA found in the Nevis Island Administration case, or three different types of appeal, as counsel suggested is the case, is dispelled by a full consideration of what Rawlins JA stated in the Nevis Island Administration decision. Rawlins JA as he then was referred to the time limit of 7 days after the date of the decision that is being appealed to file a notice of appeal in the case of a procedural appeal for which no leave was required, and 14 days after leave was granted to file a notice of appeal in the case of a procedural appeal for which leave to appeal was required. This distinction between a

procedural appeal that may be brought without leave and a procedural appeal that may be brought only with leave is crucial. In the case of the former the notice of appeal must be filed in 7 days. In the case of the latter the notice of appeal may only be filed after leave is granted but then it must be filed within 14 days.

Justice Barrow held that the general rule is that a procedural appeal is to be considered on paper by a single judge of the court and consideration of the appeal, in that event, must take place not less than 14 days or more than 28 days after filing of the notice of appeal. However, rule 62.10 (5) states the judge may direct that the parties be entitled to make oral submissions and may direct that the appeal be heard by the court. Any oral hearing must take place within 42 days of the filing of the notice of appeal. It is therefore the fact that the judge may decide -- and there is nothing to prevent counsel for the parties from seeking such a decision and a consequential direction -- that a particular procedural appeal is complicated and unsuited for the normal mode of determination and, instead, should be heard by the court.

TIME LIMITS FOR FILING NOTICES OF APPEAL

With reference to the time limits for filing of notices of appeal, Justice Barrow at paragraph 26 stated "mindful of the observation in the **Oliver McDonna** decision that categorisations of appeals within Part 62 vary according to the purpose for which the categorisation is made, rule 62.5 may now be better appreciated. Sub-paragraph (a) of that rule, which sets a 7 days time limit, addresses one category of appeal, a procedural appeal which does not require leave. Sub-paragraph (b), which sets a 14 days time limit, impliedly addresses in the category of appeals which require leave, two types of appeals: a procedural appeal which needs leave and an interlocutory appeal which needs leave. Sub-paragraph (c), which sets a 42 days time limit, impliedly addresses in the category of "other appeals", among others, two types of appeals: interlocutory appeals that do not need leave (because exempted by the Act) and appeals from final decisions of the High Court that do not need leave (because they lie as of right pursuant to the Act).

DECISION

Held, refusing the application to strike out the appeal but awarding costs to the respondent:

(1) Once an appeal falls within the definition of a procedural appeal, the rules require that it should proceed as such and in accordance with the procedure laid down in the rules. There is no need to import into the rules any requirement that the court should first direct an appeal to proceed as a procedural appeal.

Oliver McDonna v Benjamin Wilson Richardson Saint Christopher and Nevis Civil Appeal No. 7 of 2005 followed. **Dolitte's Limited v The Attorney General (of St. Lucia)** St. Lucia Civil Appeal No. 5 of 2002 considered.

(2) Procedural appeals are a subset of interlocutory appeals, or in

other words, a procedural appeal is both an interlocutory and a procedural appeal. There are two categories of procedural appeals -- those which require leave and those which do not. Rule 62.10 of the **CPR 2000** regulates such appeals whether or not leave is required.

(3) In the case of a procedural appeal which may be brought without leave, the notice of appeal must be filed in 7 days. In the case of a procedural appeal for which leave is required, the notice of appeal must be filed within 14 days of the grant of leave. The present case falls within the latter category. Leave having been obtained and the notice of appeal having been filed, rule 62.10(1) operated to mandate the appellant to file and serve written submissions in support of the appeal with the notice of appeal.

Maria Hughes v The Attorney General of Antigua and Barbuda Antigua and Barbuda Civil Appeal No. 33 of 2003 considered and not followed. **Nevis Island Administration v**

La Copproprete Du Navire J31 St. Christopher and Nevis Civil Appeal No. 7 of 2005 (judgment of Rawlins JA delivered on 29th December, 2005) explained and followed.

(4) Notwithstanding the failure by the appellant to file written submissions in support with the notice of appeal, the appeal is a live appeal. The notice of appeal does not depend for effect on being accompanied by written submissions.

(5) It is not every instance of non-compliance that will result in sanctions, express or implied. And where there is a sanction it will not usually be dismissal of the appeal, which must be an exceptional course, because the object of the rules is to bring cases to trial rather than to deny them a trial. It will sometimes be the case that non-compliance is so trifling that the court is justified in rectifying the error in a summary manner, as rule 26.9 permits, without resorting to the provisions and criteria in rule 26.8. Non-compliance in this case does not attract a sanction and in accordance with rule 26.9(3) the court should make an order to put matters right.

Dominica Agricultural and Industrial Development Bank v Mavis Williams Dominica Civil Appeal No. 20 of 2005, **Ferdinand Frampton v Ian Pinard** Dominica Civil Appeal No. 15 of 2005, **Richard Frederick v Owen Joseph** Saint Lucia Civil Appeal No. 32 of 2005, and **Nevis Island Administration v La Copropriete Du Navire J31** St. Christopher and Nevis Civil Appeal No. 7 of 2005 (judgment of Barrow JA delivered on 3rd April, 2006) distinguished.

EASTERN CARIBBEAN SUPREME COURT NEWS

NEW CHIEF

The Hon Hugh Anthony Rawlins, on Wednesday, August 13, 2008, received notice from the Office of the Lord High Chancellor, Honourable Jack Straw, confirming his appointment as Chief Justice of the Eastern Caribbean Supreme Court. He also received Letters Patent issued by Her Majesty Queen Elizabeth II on 30th May 2008 which conferred the appointment of the Office.

Chief Justice Rawlins assumed office initially in an acting capacity from 28th April, 2008, having previously held office as a Justice of the Court of Appeal. Chief Justice Rawlins joined the ECSC in 2000, at a time when the procedural reforms of the Court moved into high gear with the passage of the Civil Procedure Rules (CPR) 2000. He first held the office of Master and thereafter moved up through the judiciary, first holding the position of High Court Judge and later Justice of Appeal of the Court.

Chief Justice Rawlins, having been a participant in the implementation of the reforms, has demonstrated his desire to continue with the restructuring of the Court into the specialized divisions of Commercial, Criminal, Civil, and Family. Since assuming office we have seen the passage of the Criminal Delay Reduction Rules. Also, high on the agenda of Chief Justice Rawlins is the revision of the CPR 2000 through the Rules Revision Committee, the integration of the Magistracy and the construction of suitable facilities for housing the courts throughout the nine (9) Member States which form part of the ECSC.

NEW FACES

The Eastern Caribbean Supreme Court welcomes Ms. Ethel Jn Baptiste and Ms. Genevieve Francis, who joins the Court as Statistician and Secretary respectively at the Court's headquarters in Castries, Saint Lucia.

Ms Jn Baptiste joined the Court on June 1, 2008. She has worked with the Statistics Department in Saint Lucia, and comes to the ECSC with over thirty years experience in the field. She has attended several related workshops – qualitative data analysis, data collection protocols and research techniques, etc.

Chief Justice Rawlins is a regionally recognized legal scholar, and has authored and co-authored several papers in various areas of law, which have been published in regional and international law publications.

The Eastern Caribbean Supreme Court congratulates Chief Justice Hugh Anthony Rawlins on the confirmation of his appointment.

MEDIATION

Court-connected mediation has been accepted as a more favourable alternative to many who previously held that litigation was the only way to have disputes settled. Within the OECS mediation has played a significant role in the resolution of disputes, and this success can be attributed to having trained mediators. Within the next two months, the Regional Mediation Coordinator, Mr. Francis Compton, in collaboration with the JEI will be continuing the round of training in mediation in two Member States. During the period November 17 – 21, Grenadians who are interested in being Mediators will have the opportunity to participate in a one-week session; and a refresher program is scheduled to be convened in Anguilla earlier in the same month.

Prior to joining the Court in June 2008, Ms. Francis was employed to the Sir Arthur Lewis Community College in the capacity of Secretary within the Registry. She holds an Associate Degree in Office Administration from the same institution.

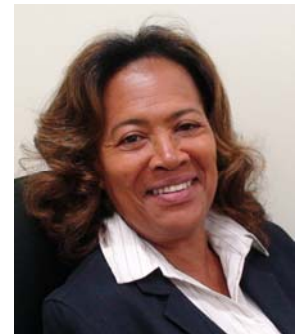
Ms. Ethel Jn Baptiste (top) and Ms. Genevieve Francis (bottom)



Chief Justice Hugh Anthony Rawlins proudly displays the Letters Patent issued by Her Majesty Queen Elizabeth II



Justice Anthony Ross congratulates Chief Justice Rawlins, while Ms. Agnes Actie, Deputy Chief Registrar (left) and Justice Ola Mae Edwards look on.



JUDICIAL EDUCATION CORNER – UPDATES ON THE LAW OF EVIDENCE: JUSTICE OLA MAE EDWARDS

The 2007 Magistrates' conference was held in the Commonwealth of Dominica, 27th November. Below is the text of a presentation by Justice Ola Mae Edwards.

INTRODUCTION

The law of evidence establishes rules to determine what facts may be proved in a trial; and what evidence may be called to prove these facts. Some of these rules and principles may exist in the Evidence Acts for each island: [Act No. 5 of 2002 Saint Lucia and amendments; Act No.15 of 2006 British Virgin Islands; Chapter 92 of the Laws of Grenada as amended; Chapter 157 of the Laws of Saint Vincent and the Grenadines (1990) as amended ;Chapter 2.08 of the Revised edition (2002) of the Laws of Montserrat; Chapter E 65 of the Revised Statutes of Anguilla (2000); Chapter 155 of the Laws of Antigua and Barbuda; Chapter 64 of the Laws of the Commonwealth of Dominica (1990); Chapter 166 of the Revised Laws of St Christopher Nevis and Anguilla (1964)].

Where no such rules and principles exist in your legislation, they are adopted or derived from English statutes or common law. Usually, there is some statutory basis for the reception of the English rules and principles. In the case of St Vincent and the BVI the statutory basis is the all-embracing sections 3 and 12 of their Evidence Act respectively. They provide in substance, that matters relating to evidence, including the admissibility and sufficiency of documentary or other evidence, and the competency or obligations of witnesses to give evidence, which are not provided for by the Act or any other law, must be decided according to the law and practice administered for the time being in England, with such applicable and necessary modifications.

In the case of Anguilla and Montserrat sections 13 and 12 respectively have provided for the adoption of the English law now in force and in future, relating to the admissibility of DOCUMENTARY EVIDENCE in civil and criminal proceedings. Section 12 of the Montserrat Act provides;

"Every document which by any law in force or hereinafter to be in force, is or shall be admissible in evidence in any Court of Justice in England, shall be admissible in evidence in the like manner, to the same extent, and for the same purpose, in any Court in Montserrat, or before any person having by law, or by consent of parties, authority to hear, receive and examine evidence".

Similar provisions exist in section 12 of the relevant Acts for St Christopher (St Kitts) and Nevis, Antigua and Barbuda, and Dominica. For Grenada, it is section 167 of their original Act that states:

"Unless this Act otherwise provides, any question which shall arise in any action, suit, information, or other proceeding whatsoever in or before any Court of Justice, or before any person having by law authority to hear, receive and examine evidence touching the admissibility or the sufficiency of any evidence, or

the swearing of a witness or the form of oath or of affirmation to be used by any witness or the admissibility of any question put to any witness or the admissibility or sufficiency of any document, writing, matter, or thing tendered in evidence, shall be decided according to the law of England for the time being in force"

THE DOMINICA DILEMMA

Despite section 12 of the 1876 Dominica Evidence Act.

There is also section 12 of the Interpretation and General Clauses Act Cap. 3:01 which provides:

"Where any written law passed before the 3rd November 1978 and in force on that date applied the Law of England or the U.K. to the Commonwealth of Dominica and such application is expressly or by implication qualified by words of an ambulatory nature, including words "from time to time in force" or "for the time being in force, THE SAME SHALL BE CONSTRUED AS APPLYING THE LAW IN FORCE IN ENGLAND ON 2ND NOVEMBER 1978."

This provision in the Dominica Interpretation Act provides fuel for argument that Dominica may not be able to validly adopt, receive or apply any English statute or common law concerning the admissibility of documentary evidence that was enacted or decided after the 2nd November, 1978, without legislative intervention or law reform, similar to that reflected in the Evidence Acts of St Lucia, BVI and to some extent Grenada. For now, it would seem that whenever a Magistrate is required to consider the admissibility of a written statement made by a defendant in a criminal trial, you should bear in mind that the ambulatory effect of section 12 of your Evidence Act has been curtailed by section 12 of your Interpretation and General Clauses Act, thereby ending your walk along the highway of English law, forcing you to stop at 3rd November 1978 Parkway, there your journey ends. It was the common law rules, the Criminal Evidence Acts 1965 and 1967, and in the case of civil cases, the Civil Evidence Act 1968, which governed the admissibility of documentary evidence in England in November 1978.

The Criminal Procedure Acts or other statutes for the various Islands may also contain provisions allowing for matters of procedure including evidence which is not expressly provided for, to be regulated by the laws of England, common law, and the practice of the Superior Courts of England. Section 48 of the British Virgin Islands (BVI) Criminal Procedure Act: Cap. 18 states: "All other matters of procedure, not herein nor in any other Act expressly provided for, shall be regulated as to the admission thereof by the laws of England, and the practices of the Superior Courts of Criminal Law in England." Section 39 of the Interpretation and General Clauses Act Cap. 3:01 of Dominica provides: "All other matters of procedure not herein nor in any other Ordinance expressly provided for, shall be regulated, as to the admission thereof, by the law of England, and the practice of the Superior Courts of criminal law in England."

UPDATES ON THE LAW OF EVIDENCE ... CONTINUED ON PAGE 7

Before the 1992 Criminal Code (St Lucia) was repealed, section 913 provided that: "Subject to the provisions of this Code and of any other statute, the practice and procedure of the Court shall be the same as the practice and procedure for the time being in force in criminal causes and matters in the High Court of Justice, and the Courts of Assize created by Commission of Oyer and Terminer of Goal Delivery, in England, so far as such practice and procedure are applicable to the circumstances of the State. (2) Subject also as herein provided, the law of evidence administered in the Court shall be the same as the law in evidence in criminal causes and matters administered for the time being in the said Courts in England". However, sections 5 and 1083 of the new Criminal Code 2004 state:

"5. Without prejudice to section 1083 where no provision is made in this Code with respect to the procedure concerning any criminal proceedings before a Court such procedure at common law as appropriate shall be applied with such modification or... adaptation as may be necessary.

1083 (1) The Chief Justice may make rules of practice for regulating proceedings in criminal proceedings in criminal causes and matters, whether in the High Court or District Court, and in all matters of criminal procedure not provided for by this Code or any other enactment.

(2) Without prejudice to subsection (1) in all cases of procedure not provided by this Code or any rules of practice or form in matters of criminal proceedings shall be such as may be directed or approved for the purpose and occasion by the Judge in the case of the High Court or by the Magistrate in the case of a District Court."

The new Evidence Act of St. Lucia does not contain any provision, that permits the application of the rules and principles concerning the admissibility of documentary, or other evidence in English statute law in force after this Act came into operation, or in the future, absent a domestic statutory provision. However, existing provisions in the Criminal Procedure Acts for each island, similar or comparable to section 48 of the BVI Criminal Procedure Act, or section 39 of the Interpretation Act and General Clauses Act of Dominica, or sections 5 and 1083 of the Criminal Code (2004) of St. Lucia, arguably are elastic, and the word "PROCEDURE", may include evidence, despite the absence of a statutory definition of the word "procedure". At paragraph 1 of PHIPSON ON EVIDENCE, it is stated that "The rules of *PROCEDURE* regulate the general conduct of litigation; the object of *PLEADING* is to ascertain for the guidance of the parties and the court the material facts in issue in each particular case; *PROOF* is the establishment of such facts by proper legal means to the satisfaction of the court and in this sense includes disproof. The first mentioned term is, however, often used to include the other two."

Apart from this, where local legislation exists in the same or comparable terms as an English statute which has been construed by a

Superior Court in England, such construction is usually adopted by our Courts, subject to any necessary modifications.

LAW REFORM

At common law the first question is to determine if the evidence sought to be adduced is in fact hearsay or not. It is hearsay when John tells you the Magistrate what Mark wrote or told him out of Court and the object of this evidence is to establish the truth of what is contained in this statement. This rule was relaxed in civil proceedings with the introduction of the Civil Evidence Act 1968. Section 2 of this Act provided for the admissibility of out of court statements made by a person whether orally or in a document or otherwise, regardless of whether that person is being called as a witness in civil proceedings, to be evidence of the facts stated therein of which direct oral evidence would be admissible, subject to certain statutory conditions, and in some cases with the leave of the court. The Act also provided for hearsay evidence to be admissible by agreement of the parties. By this Act statements produced by computers were also made admissible.

At common law hearsay evidence is inadmissible in criminal proceedings, unless it falls within one of a number of common law or statutory exceptions. The chief justification for the exclusion of hearsay is that since the evidence is presented to the Court second hand by someone other than the original statement maker or eye witness, there is no opportunity for the other side to test the reliability of the evidence by cross-examining the original statement maker or eye witness as to what was actually said or seen or heard. Some of these common law hearsay rules were enacted in the Evidence Act of Grenada. See for example section 58 of their original Act, Cap.92. Regrettably, I have not been able to obtain a copy of the amendment to this Act at the time of preparing this paper. I have been reliably informed by brother Judges that it introduced some reforms to the hearsay evidence law for Grenada, including admissibility of "first hand hearsay" documentary evidence.

The common law hearsay rules of evidence obviously are to be applied by Judges and Magistrates to all other forms of evidence, that cannot be regarded as documentary evidence under section 12/13 of the Evidence Acts, for the islands of Anguilla, Montserrat, Antigua and Barbuda St Kitts and Nevis.

A major criticism of the hearsay rule is that it is too strict and inflexible, and very often it results in the exclusion of evidence which by ordinary every day experience, we would regard as reliable and accurate. Also, the numerous exceptions to the rule are usually uncertain, obscure and complex. There is widespread perception from litigants, witnesses, the society, and even legal luminaries that far too often the guilty are acquitted, and justice works in favour of the least deserving, and the unjust because of technicalities, and impractical evidential requirements. It was such concerns among others that eventually spar-

THOSE WHO SERVE—MS. NATACHA JAMES

Ms. Natacha James was born and raised in the small community of Darcetin in the Quarter of Choiseul, Saint Lucia. She attended the Choiseul RC Primary School; was successful in the Common Entrance Examinations and moved on to the Vieux-Fort Comprehensive Secondary School [VFCSS], where she studied Secretarial and Business subjects. She says, "I was never a fan of the Sciences."

While attending Secondary School she participated in on-the-job training, with the St. Lucia Air and Sea Ports Authority Office in Vieux-Fort where she was exposed to the secretarial and office administration areas of the business environment, and thus fostered her love. She was awarded "Most Outstanding Student" in Office Procedures on graduation from the VFCSS. She then went on to pursue studies in Secretarial / Office Administration at the Sir Arthur Lewis Community College.

April is a good month for Natacha. She remembers April 2001 with great animation; because it was then she began her association with the Eastern Caribbean Supreme Court. Her first experience exposed her to general secretarial work, including assisting the Court of Appeal Judges with the typing of Judgments. She also provided secretarial support at conferences and workshops which the ECSC hosted e.g. the Annual Judicial Conferences, JEMS Conferences, etc. July 2004 was a turning point, Ms. James was appointed to serve as secretary to the then Chief Justice [Ag.], Justice Adrian Saunders. "It

was a pleasure working with Justice Saunders but it was a short stint as he moved on to the Caribbean Court of Justice in April 2005. I then worked with Chief Justice [Ag.] Sir Brian Alleyne, SC, KCN until he retired in April 2008." Natacha currently serves as Administrative Assistant to Chief Justice Hugh Rawlins. April 2001, April 2005, April 2008 ... what of April 2009? Only time will tell.

Her impression of working as it were in the innards of the Court: "It has been such a rewarding experience working at the Eastern Caribbean Supreme Court and serving three Chief Justices (with three different personalities and three different management styles). The knowledge and skills acquired have been tremendous. I enjoy what I do, but I have to be honest, the workload can be very exhausting at times."

However, in spite of the rigours and demands of being Administrative Assistant to the Chief Justice,

Natacha keeps a smiling face and a pleasant demeanor. She states with great fervor, "I am proud to be a part of the Eastern Caribbean Supreme Court Family."



Ms. Natacha James, Administrative Assistant to the Chief Justice

UPDATES ON THE LAW OF EVIDENCE ... continued on page 8

ked the evidence law reforms in England and other Commonwealth States.

Several common law jurisdictions have from time to time recognised the need for a fairer evidential process, and have over the years made piece-meal amendments to the law of evidence both in civil and criminal proceedings. It took the House of Lords decision in MYERS v DPP[1965] AC 1001 for Parliament to provide for certain records of trade or business to be admissible, only when direct oral evidence of the recorded facts was unavailable for specified reasons, by enacting the Criminal Evidence Act 1965. The Courts in England grappled with the undefined words: "TRADE", "BUSINESS", and "RECORD" in the Act, and its applicability to documents stored in machines. These words have been the source of many appeals for nearly 20 years. I note that section 23 of the Evidence Act of St Vincent, is a replica of section 1(1) of the Criminal Evidence Act 1965 [See CROSS ON EVIDENCE 5TH EDITION at page 570-571 where this provision is reproduced]. The 1965 Act was replaced by section 68 of the Police and Criminal Evidence Act 1984 (PACE).

The Criminal Justice Act 1988 has also made significant contribution to the reform process. It repealed section 68 of PACE, replacing it with sections 23 and 24 which have effectively broadened considerably the scope of admissibility of documentary hearsay evidence in criminal cases. This Act has made hearsay statements contained in documents generally admissible for the first time, in cases where it would be impossible, impracticable or pointless to call the maker as a witness. There are also provisions in the Act which provide a cross-examiner with methods for attacking the credit of the maker of the statement. The Court has latitude to exclude admissible hearsay evidence. There are provisions dealing with weight of hearsay evidence, and also corroboration.

It would seem that the ongoing reform process in England has been conveniently ignored by some if not most of the practicing lawyers in our relevant Courts. They object to documentary hearsay statements as a matter of course, having no regard to section 12/13 of the relevant Evidence Acts. It is business as usual, and the common law hearsay rules are still being systematically applied by some of our Courts in civil cases in the absence of specific statutory provisions covering the matter, with scant regard for the applicable English law that hearsay documentary statements are admissible, and that the Court has the duty to see to it that the conditions required for their admissibility under the Civil Evidence Acts 1968, 1972 (in the case of Dominica), and The Civil Evidence Act 1995, are satisfied. Except for the islands which have comprehensive Evidence Acts or express provisions dealing with the admissibility of hearsay evidence in criminal cases, issues relating to the admissibility of documentary hearsay statements in criminal proceedings should be determined with reference to the relevant provi-

UPDATES ON THE LAW OF EVIDENCE

sions in PACE 1984, and the Criminal Justice Acts 1988 and 2003.

Now St Vincent enacted sections 1 to 5, and 7 to 9 of The Civil Evidence Act 1968 as sections 46 to 55 of their Evidence Act. Section 50 of the St. Vincent Act covers documents produced by computers. The Civil Evidence Act 1968 has now been repealed by the Civil Evidence Act 1995." After some years of experience with it, a consensus developed that the continuation of the rule against hearsay was probably unnecessary in civil cases, and following a recommendation by the Law Commission the rule was abolished in civil cases by the Civil Evidence Act 1995..." (MURPHY ON EVIDENCE by Peter Murphy 6th ed. at page 189). Hearsay statements are generally admissible in civil proceedings in England as evidence of the truth of any relevant matter stated in them regardless of any other evidential value they may have, subject of course to certain statutory restrictions and exceptions.

PACE IN ST. VINCENT

Section 3 of the St Vincent Evidence Act provides: "Whenever any question shall arise in any criminal or civil proceedings whatsoever in or before any court, court martial or tribunal, or before any person having by law, or by consent of parties, authority to hear, receive and examine evidence, touching the Admissibility or sufficiency of any evidence, the competency or obligation of any witness to give evidence, the swearing of any witness, the form of oath or affirmation to be used by any witness, the admissibility of any question put to any witness, the admissibility or sufficiency of any document, writing, matter or thing tendered in evidence, such question shall, except as provided for in this Act, be decided according to the law and practice administered for the time being in England with such modifications as may be applicable and necessary in Saint Vincent and the Grenadines."

In the Vincentian case of THOMPSON (EVERSLEY) v R (1988) 52 WIR, the Judicial Committee of the Privy Council held that this provision in the Evidence Act provided the basis for admissibility of confessions in St Vincent to be governed by sections 76 and 78 of PACE. They held that Code C of the 1984 Act (dealing with detention, treatment and questioning of persons) did not apply to the questioning of suspects which was governed by local Regulations 86 and 155 of the Police Regulations 1948, as amended. The Court of Appeal further held in THOMPSON that a judge (Magistrate) in St. Vincent must consider the relevant provisions of PACE and the Codes, with applicable and necessary modifications when determining the applicability of confessions. The Court of Appeal also stated that modifications are easily identifiable and determinable by a trial judge, and should be undertaken at the time the law and practice in England are being applied and in time case law will build up. It was held that in determining the admissibility of the written confession of the Appellant who was convicted for murder, the common law test of voluntariness was inapplicable. The test to be applied where PACE is the governing law is embodied in section 76 (2) of PACE, that is, the judge has the duty to rule on whether the confession has been or may have been obtained by oppression, or in consequence of any

thing said or done which was likely to render it unreliable. It was accepted by the Court of Appeal in TYRER (1990) 90 Cr App R 446 at page 449, that the prosecution may discharge its burden of proof under section 76(2) by showing that there is no causal link between the confession and things said or done by the police officers which might have been conducive to unreliability. Since the preparation and presentation of this paper, it has been brought to my attention that there have been statutory changes in the St Vincent Evidence Act recently so that PACE may now have limited applicability.

In another very recent decision on appeal from St Vincent, the appellant alleged that he was denied the right to consult with a Solicitor before a caution statement was obtained from him, and so the caution statement should have been excluded based on section 78 of PACE 1984. Further, that a police officer had hit him with a fire extinguisher and another had threatened to detain his daughter, if he did not admit his involvement in the robbery for which he was in custody, before the statement was extracted from him. At the *voire dire* the judge applied the common law test of voluntariness instead of PACE. Applying the approach of the Privy Council in THOMPSON, the Court held that in ruling that the appellant had not been beaten or threatened and that the caution statement was voluntary, the judge was ruling on the issues which she would have had to consider if she had appreciated that the issue of admissibility was governed by section 76(2) (a) and (b) of PACE. The Court also opined that: "At the *voire dire* the learned trial judge should have considered: (a) whether or not the prosecution had proven beyond a reasonable doubt: that the police officer did not hit the appellant with the fire extinguisher; that Corporal Jack did not threaten the appellant to detain Indra if the appellant did not own up to the robbery; that the appellant did not make any request to Cpl Maloney to consult a lawyer privately at any time; that the police did not prevent the appellant from communicating with the lawyer at any time; (b) where there was doubt or the prosecution had not discharged this burden of proof, the court should have gone on to consider whether the prosecution had discharged its burden of proof by showing that there was no causal link between the caution statement and the things that were said and done, or may have been said and done by the police officers which might have been conducive to unreliability; (c) where the prosecution was found to have discharged its burden of proof: whether the admission of the appellant's caution statement would have such an adverse effect on the fairness of the proceedings that justice required the evidence to be excluded." (GREGORY DURRANT v THE QUEEN Cr App. No. 21 of 2005 delivered October 29).

IS VOIRE DIRE MANDATORY IN MAGISTRATES' COURT?

The question sometimes arises as to whether it is necessary for a Magistrate to hold a *voire dire* at a summary trial when the statement of the defendant is challenged. I refer you to BLACKSTONES CRIMINAL PRACTICE 2001: paragraph F1.27. There

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it is said in relation to a Court that is obligated to apply PACE, that Magistrates are bound by the terms of section 76(2) of PACE 1984 to hold a trial within a trial. Per Russell L.J. in *Liverpool Juvenile Court, Ex parte R* [1988] QB 1:

"(a) During the course of a summary trial, if the defense, before the close of the prosecution case, make a representation to the court that a confession made by the defendant was or may have been obtained by either of the improper methods set out in s. 76(2), the magistrates must hold a trial within a trial and make a ruling on the admissibility of the confession during or at the end of the prosecution case. (If the defense make an alternative submission based on the PACE 1984, s.78, this should be examined at the same trial within a trial at the same time: (HALAWA v FEDERATION AGAINST COPYRIGHT THEFT [1995] 1 Cr App R 21).

(b) In such a trial within a trial, the defendant may give evidence to the question of admissibility.

(b) At this stage, the magistrates will not be concerned with whether or not the confession is true.

(d) If the defense does not make a representation before the close of the prosecution case, the defendant may raise the question of the admissibility or weight of the confession at any subsequent stage at the trial.

(e) At this later stage, however, although the court retains an inherent jurisdiction to exclude the confession, as well as the power to exclude by virtue of the PACE1984, s. 78(See F2.13), it is not required to embark on a trial within a trial....Where the defense make a submission that the Magistrates should exercise their discretion to exclude evidence under s. 78 of the 1984 Act, they are not entitled to have that issue settled as a preliminary issue in a trial within a trial (VAL v CHIEF CONSTABLE OF NORTH WALES (1987) 151 JP 510. In HALAWA..., it was held that the duty of a magistrate, on an application under s. 78, is either to deal with the issue when it arises or to leave the decision until the end of the hearing, the objective being to secure a trial that is fair and just to both parties. Thus in some cases the accused will be given the opportunity to exclude the evidence before giving evidence on the main issues, because if denied that opportunity his right to remain silent on the main issues will be impaired, but in most cases it is better for the whole of the prosecution case, including the disputed evidence, to be heard first, because under s. 78 regard should be had to "ALL THE CIRCUMSTANCES" and fairness to the prosecution requires that the whole of its case, in this regard, be before the court. In deciding the court may take account of the extent of the issues to be raised by the evidence of the accused in the trial within a trial. A trial within a trial may be appropriate if the issues are limited, but not likely to be protracted and to raise issues which will need to be re-examined in the trial itself."

The section 3 provision of the St. Vincent Act, unlike Section 12 of the Dominica Interpretation Act, is ambulatory, dependent on what the current law of England is at the time you are resolving admissibility issues arising under section 3, absent domestic law. So if such a matter arose today concerning the admissibility of hearsay evi-

dence in a criminal case in St. Vincent, in the absence of a local statutory provision in St. Vincent covering same, a Magistrate would probably also be applying The Criminal Justice Act 2003. This Act since the 4th April 2005 has even more radically changed the law concerning hearsay, and bad character.

The explanatory notes for this Act states that the purpose of this reform is that the "Rules on evidence will be changed...to allow the use of reported (hearsay) evidence where there is good reason why the original source cannot be present or where the judge otherwise considers it would be appropriate".

The new definition of hearsay, I gather from sections 114(1), 115(2) and (3) is that hearsay is a representation of fact or opinion made by any means, not made in oral evidence in the proceedings, and that it may be admissible if it relates to a something said, or shown, or illustrated, and one of the purposes, of the person saying, or showing, or illustrating, what they did, was to cause someone, or something, to believe it, or act on it, as if it were accurate or correct. One of the 4 bases for admissibility under section 114(1) is that a party who is relying on what the Act now regards as hearsay may succeed where he/she persuades the court that the evidence should be received in the interests of justice. First hand oral hearsay is now automatically admissible where a witness is unavailable under section 116, and this applies to both fact and opinion.

The reforms have changed the common law that we have been legally socialised to accept and apply for most of our professional lives. Apart from the changes under the Criminal Justice Act (2003) the reforms have abolished the "best evidence rule, and made 'first hand hearsay', documentary records, business records, expert reports, labels, computer documents, micro films, and telecommunications admissible. They have also impacted several aspects of the evidential landscape, including the rules governing admissions and confessions, affidavit evidence and witness statements, evidence of children, evidence of vulnerable witnesses, and identification evidence. There are new statutory guidelines in some cases for excluding admissible evidence. Corroboration rules have been abolished and unreliable evidence warnings put in place.

THE GRENADA EVIDENCE (AMENDMENT) ACT

Act No. 26 of 2000 was passed on the 22nd September, 2000. It defined the word "document" in terms of the 1968 Civil Evidence Act. It re-affirmed the admissibility in evidence of a statement of any fact stated therein by existing common law rules. It made a person's written statements be admissible as their direct oral evidence in criminal proceedings under certain statutory notice conditions and also where the person is either dead, unfit, cannot be found, abroad and it is not reasonably practicable to secure their attendance, or will not attend through threats of bodily harm. First hand hearsay was made admissible in civil proceedings where statutory notice conditions are satisfied, and

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where the person is unavailable for similar reasons as in criminal proceedings. Section 36F provides for the admissibility of business documents in civil and criminal proceedings under certain statutory conditions where the person who supplied the information or made the statement for similar reasons as stated before is unavailable.

There are provisions establishing the criteria for estimating the weight to be attached to a statement admissible in criminal proceedings among other related provisions. Section 26G establishes the prerequisites for computer hearsay documents to be admissible. Section 36H provides that where a statement contained in a document produced by a computer does not constitute hearsay, such a statement is admissible where certain statutory conditions are satisfied. There are credibility related provisions concerning the unavailable maker of admissible statements.

THE ST LUCIA AND BRITISH VIRGIN ISLANDS EVIDENCE ACTS

I will be very selective in my comments on these Acts. They both limit their applicability to proceedings in which the hearing commenced prior to the date that each Act came into operation. Sections 14(5) and 52(1) of the BVI Act are unique provisions. They provide that where a witness who was competent at the time he gave incomplete testimony subsequently dies, or becomes incompetent while testifying, that witness' incomplete evidence is not rendered inadmissible unless, in the interests of justice the Court decides otherwise.

Section 18 of the BVI Act provides for a child under 16 years to give un sworn evidence where a Court conducts the preliminary inquiry according to the stipulated criteria but determines that the child is not competent to know the nature and consequences of giving false evidence and to know that it is wrong to give false evidence, but understands that he/she should tell the truth. In such a case the child should be permitted to give un-sworn evidence upon stating: "I PROMISE TO TELL THE TRUTH". This un-sworn evidence is to be regarded as a deposition. With a similarly stated criteria, section 15 of the St Lucia Act makes a distinction between a child 12 years old and more, and a child less than 12 years. Only a child over 12 years old can give sworn testimony where competency is presumed, subject to the judge having reason to believe that this child is unable to understand questions or provide intelligible answers. Children under 12 years cannot be sworn but if that child meets the same criteria set for saying 'I PROMISE TO TELL THE TRUTH' under the BVI Act, that child's un-sworn testimony may be taken.

There is a vulnerable witness provision in the St Lucia Act which may be compared with sections 18(7) and 27(3) in the BVI Act. Section 29 of the St Lucia Act contains provisions which define who is a vulnerable witness, and the exceptional manner in which such a witness may be permitted to testify. A child under 12 years is a vulnerable witness. A child over 12 years who is a complainant in a sexual offence case may be afforded treatment as a vulnerable witness. Pursuant to Section 29(3) a vulnerable witness may be allowed to testify while being screened off from the defendant; or tes-

tify from a place outside the court room either in St Lucia or elsewhere, by means of technology (i.e. live television link) which allows for such witness to see and hear certain relevant persons in the court room. In either case, such a witness must be seen and heard in the court room by the following relevant persons: THE JUDGE, JURY, COUNSEL FOR DEFENDANT AND PROSECUTION, THE INTERPRETER, and OR THE PERSON APPOINTED TO ASSIT. This vulnerable witnesses' provision reflects the common law combined with provisions under section 32 of the U.K. Criminal Justice Act 1988 and section 54 of the U.K. Criminal Justice Act 1991. A word of warning: a judge or magistrate has to be very careful in implementing this vulnerable witness exercise, as the defendant has a constitutional right to confront the witness against him, and be able to cross examine witnesses effectively, and must have a fair trial without prejudice. So in situations where the defendant is unrepresented, the exercise may prove very difficult to implement. On the other hand, the effect of section 18(7) and 27(3) of the BVI Act is that a child under 16 years of age may give evidence in any manner permitted by the court, including by means of technology, such as a video or television link that permits the virtual presence of the party or witness before the court and that permits the court and the parties to hear, examine and cross-examine the witness.

Section 31 of the BVI Act allows a police officer in criminal cases to give evidence in chief by reading or being led through a written signed statement prepared contemporaneously, provided there is timely disclosure. St Lucia does not have this provision.

Both Acts contain elaborate provisions that substantially abrogate the common law hearsay rule. Sections 48 to 59 of the St Lucia Act and sections 55 to 62 of the BVI Act make former hearsay documentary evidence, the statement of an unavailable witness who previously made an out of court statement, the out of court statement of an available witness while testifying, expert reports and oral opinion evidence all admissible where the relevant requirements under the statute are met. These provisions reflect a combination of the law mainly in section 69 of PACE, and section 24 of The Criminal Justice Act 1988. I note that though "document" is defined by both Acts, the BVI provision does not require the creator of the document to be acting under a duty for the document to be admissible.

Sections 76 and 78 of PACE and their relevant Codes are mirrored in the provisions dealing with the admissibility of admissions, and the reliability of confessions of defendants, made during official questioning and interviews. These provisions lay out the criteria for admissibility in keeping with requirements under relevant PACE CODES. They are sections 70 to 72, and 75 of the St Lucia Act, and sections 82 to 84 of the BVI Act.

From sections 72 (2) (c) and 73 in the St Lucia Act, and sections 84 (4)(c) and 85 in the BVI Act, it is quite clear that the

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unsigned record of an interview or official questioning, are not admissible in criminal proceedings as evidence of an admission by the defendant. It appears from section 73(2) in St Lucia Act, and section 85(2) of the BVI Act that a tape recording and a transcript of the tape recording of an unsigned record of an interview or official questioning may be admitted in evidence since these are not included in the definition of "document" under sections 73(1) and 85 (1) of the respective Acts.

It would seem from the relevant provisions in the Acts that where a defendant in response to being cautioned by a police officer, blurts out an oral admission, that this may not be regarded as an interview or official questioning. It could be argued that such an admission would be excluded from considerations under section 72(5), (6) of the St Lucia Act, and section 83(5), (6) of the BVI Act. SEE THE QUEEN vs. GEORGE LABADIE, RULING ON VOIR DIRE 12/6/06: Edwards J (St Lucia) in connection with this point.

Sections 153 of the St Lucia Act and section 156 of the BVI Act both provide for written statements of persons to be admitted in evidence in criminal proceedings, once the statutory criteria under those sections are satisfied. Subsection (5) of those provisions state that although the statement may be admitted, the court may of its own motion or on the application of any party to the proceedings, require that person to attend before the court and give evidence. The Consolidated Criminal Practice Direction Supreme Court Manual [2002] 1 WLR pages 4 and 5, paras.1-6 provide guidance as to how such statements must be prepared or edited where necessary, in order to be admissible.

Section 116 of the St Lucia Act (section 125 BVI) deals with matters which come to light as a result of contravening the law, or as a result of an excluded confession. At common law the method by which evidence is obtained is strictly irrelevant, and evidence improperly obtained is admissible: KURUMA v R (1955) 1 ALL ER 236. At common law evidence obtained as a result of an inadmissible confession must be fully and satisfactorily proved by the prosecution without referring to any part of the excluded confession from which such evidence may have been derived: R v WARWICKSHELL (1783) Leach 263; and the only exception to this rule is where the account given by the defendant in his testimony is different from the account in his excluded confession, which, allows the prosecution to use the excluded confession to challenge the account in his testimony: BLACKSTONE'S CRIMINAL PRACTICE 2005 para17.39.

Section 116(1) St Lucia and 125(1) BVI have now modified this common law where these provisions state that improperly obtained evidence or evidence obtained in contravention of a law or as a result of impropriety shall not be admitted in proceedings unless the probative value of the evidence outweighs the prejudicial effect, or in the words of the BVI provision, "unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the manner in which the evidence was obtained". Further subsections elaborate on the extent of the modification of the common law and lay down what considerations the

Court must take into account in determining whether to exclude such evidence.

Finally, the provisions dealing with evidence relating to identification of defendants in criminal proceedings: they are section 100 to 102 of the St Lucia Act, and sections 110 to 112 of the BVI Act which are much clearer than the St Lucia provisions. Section 112 of the BVI Act enacts the TURNBULL criteria for summing up directions to the jury, while St Lucia has unclear provisions. Both Acts identify the several matters to be taken into account by a court in determining whether it was reasonable and practicable to hold an identification parade. It must be noted that section 100 (1) [110(1)BVI] start off with excluding identification evidence unless an identification parade was held, or it would not have been reasonable to have held one, and the identification was made without the person who made it having been intentionally influenced to make it.

In THE QUEEN v SHERVON RAMSAY and others for murder, (Saint Lucia) Cases numbers SLUHCR 0068, 0069, 0071 of 2005 delivered 26th July 2006. The trial judge at paragraph 36, after considering the implications of section 100(1) stated: "In my opinion therefore, the prosecution would have to lead evidence in the absence of the jury for the

Court to determine whether or not the criteria in section 100 has been satisfied. This inquiry should apparently take the form of a *voire dire* ...The police officer's opinion as to the need for holding an identification parade is relevant for the purposes of the *voire dire*, and should be canvassed therefore at the *voire dire* in my view. Ultimately however, it is not the police officer's subjective views that matter. In my opinion the Judge has to apply an objective test in determining whether it was reasonable to hold an identification parade having regard to the criteria. 37. The requirements in section 100 were never met in this trial. I inadvertently allowed the prosecution to lead the identification evidence without any objection from either Counsel without first determining whether or not the identification evidence was admissible. The Court must be watchful to ensure that the provisions in the Act are complied with and that there are no procedural irregularities in future trials."

Subject to appellate correction therefore, paragraphs 38 of this judgment may be a useful guide when holding the *voire dire* to determine whether to admit the identification evidence which the law states initially is inadmissible. The burden of proof at the *voire dire* is "on a balance of probabilities" for the prosecution; (section 144 BVI; section 134 St. Lucia). Magistrates may be guided also by the Court of Appeal decisions in: GERALD JOSEPH v THE QUEEN Cr App No, 2 of 2006 (St Lucia) 15th January 2007; paragraphs 37 to 43; URBAN ST BRICE v THE QUEEN Cr App No. 4 of 2006 (St Lucia) October 2007: paragraphs 49 to 50. The appellate court did not agree with Edwards J in her interpretation of section 102(3) of the Act which has now been amended in 2007 by deleting the word 'and' and

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substituting the word "OR" at the end of section 102 (3)(a). The BVI does not have a provision as section 102 (4) of the St. Lucia Act which seems to mandate the trial judge or the magistrate, to acquit the defendant where there is no evidence of special circumstances that tend to support the identification evidence, and it is not reasonably open to find the defendant guilty except on the basis of identification evidence.

CONCLUSIONS

Reliance only on the provisions in the Evidence Acts of the OECS islands, which allow these islands to adopt the evidence law of England continuously, is potentially problematic in identifying what the evidence law for each island is. This does not promote a thorough understanding of the rules of admissibility at any given time. In the preface to Murphy on Evidence it is stated that Cases are probably won and sometimes lost because of evidential acumen, or the lack

of it. As we all know the law of evidence presents problems from time to time in our court rooms without warning. Let us anticipate that the long overdue reforms that are necessary for the islands of St Kitts, Antigua, Montserrat, Dominica, and St Vincent will be implemented soon. This should greatly improve the quality of the administration of justice that our courts deliver in these islands.

EASTERN CARIBBEAN SUPREME COURT NEWS ... CONTINUED

DEVELOPMENTS WITHIN THE CRIMINAL DIVISION, SAINT LUCIA

One of the major law reform initiatives of the Eastern Caribbean Supreme Court has been the establishment of a Criminal Division which will encapsulate all criminal proceedings whether at the District Court or High Court level. The concept is in keeping with the projected integration of the magistracy.

Saint Lucia, the site of the pilot project, is presently preparing for the imminent change in how criminal matters are handled under the justice system. With the District Court (Amendment) Act and the Criminal Code (Amendment) Act coming into force on 11th August 2008, it is apparent that the new Criminal Procedure Rules and the accompanying Supreme Court of Saint Lucia (Criminal Division) Rules shall be promulgated shortly.

Arrangements are therefore being made for the smooth transition from the present status quo to proceedings under the new Rules. Meetings have therefore been held with stakeholders to determine the IT requirements for connectivity which would enable officials at the Director of Public Prosecutions Office for example to see the status of their matters by viewing the Court's database.

Other matters which are being addressed are the staffing and accommodation requirements of the Division. An immediate change which persons will observe is that trials will no longer be held at Manoel Street but shall be reverting to the main courtroom in the High Court Building on Peynier Street.

As mentioned in the last newsletter, the Criminal Division Implementation Committee members, chaired by Justice Kenneth Benjamin, Presiding Judge of the Criminal Division, Saint Lucia,

and ably assisted by Ms. Kit-Juelle Frank-Amoroso have been working alongside other Court officers to finalize procedures manuals which shall be utilized in the coming weeks for the training of personnel. This will prepare the staff for the implementation of the new Rules.



JLSC APPOINTMENTS FOR THE PERIOD MAY 1–AUGUST 31, 2008

HEADQUARTERS

Mr. Dane Hamilton to act as Justice of Appeal, Eastern Caribbean Supreme Court for the period 19th to 23rd May, 2008 and 2nd June to 11th July, 2008.

Mr. Tyrone Chong, QC to act as Justice of Appeal, Eastern Caribbean Supreme Court for the period 19th to 23rd May, 2008.

Mr. John Carrington to act as Justice of Appeal, Eastern Caribbean Supreme Court for the period 1st June to 30th August, 2008.

Ms. Ethel Jn. Baptiste as *Statistician*, Eastern Caribbean Supreme Court on contract for a period of six [6] months with effect from 1st June, 2008.

His Lordship, the Hon. Justice Errol Thomas as High Court Judge of the Eastern Caribbean Supreme Court, Antigua for the period 1st May to 31st July, 2008.

His Lordship, the Hon. Justice Albert Redhead as High Court Judge of the Eastern Caribbean Supreme Court, St. Kitts & Nevis for the period 1st to 30th June, 2008.

Ms. Jennifer A. Remy to act as a High Court Judge, Eastern Caribbean Supreme Court with effect from 4th to 30th June, 2008.

Mr. Michael Gordon, QC to act as Justice of Appeal, Eastern Caribbean Supreme Court for the period 6th to 12th July, 2008.

Ms. Ann Henry as a High Court Judge, Eastern Caribbean Supreme Court with effect from 3rd to 25th July, 2008.

Mr. Kelvin John as a Master, Eastern Caribbean Supreme Court with effect from 23rd June to 5th July, 2008.

Ms. Sardia Cenac to act as Executive Legal Assistant to the Chief Justice for the period 26th June to 15th October, 2008.

Mr. Dane Hamilton, QC to act as Justice of Appeal, Eastern Caribbean Supreme Court for the period 13th July to 12th August, 2008.

Her Ladyship, Hon. Justice Indra Hariprashad-Charles to act as Justice of Appeal for the period 8th September to 31st December, 2008.

Her Ladyship, Hon. Justice Ola Mae Edwards to act as Justice of Appeal for the period 1st August, 2008 to 15th March, 2009.

His Lordship, the Hon. Justice Albert Redhead to act as High Court Judge, Eastern Caribbean Supreme Court for the period 13th to 15th July and 8th September to 31st December, 2008.

His Lordship, Hon. Justice Errol Thomas to act as High Court Judge, Eastern Caribbean Supreme Court for the period 1st August, 2008 to 15th March, 2009.

Ms. Zannia Plummer as Receptionist (Temporary), Eastern Caribbean Supreme Court for the period 1st August, 2008 to 31st January, 2009.

Mrs. Sandra Augier to act as Records and Archives Clerk, Eastern Caribbean Supreme Court for the period 1st August 2008 to 31st

January, 2009.

Mrs. Francisca Polius to act as Records and Archives Officer, Eastern Caribbean Supreme Court for the period 1st August, 2008 to 31st January, 2009.

Ms. Agnes Actie to act as Chief Registrar, Eastern Caribbean Supreme Court for the period 11th August to 9th September, 2008.

Mr. Francis Compton as Regional Mediation Coordinator, Eastern Caribbean Supreme Court for a period of one [1] year with effect from 1st July, 2008.

Ms. Lenore St. Croix as Office Manager/Mediation Coordinator, Eastern Caribbean Supreme Court on contract for a period of two [2] years with effect from 16th September, 2008.

Mr. Craig Gabriel as Registry Clerk, Eastern Caribbean Supreme Court with effect from 1st September, 2008.

ANTIGUA & BARBUDA

Ms. Jasmine Wade, as *Crown Counsel II*, Legal Aid and Advice Centre with effect from 1st March, 2008.

Mrs. Cecile Hill, as *Registrar of Lands*, Lands Registry Division on contract for a period of two [2] years with effect from 2nd February, 2008

Mr. Kayode Ofori O'Marde as *Crown Counsel II*, Office of the Director of Public Prosecution on contract for three [3] years with from 1st June, 2008.

Ms. Mildred Lovell as Magistrate with effect from 26th May, 2008.

Mr. Keith Thom as Magistrate on contract for a period of two [2] years with effect from 3rd May, 2008.

Mr. Keith Thom to act as Registrar, Registry's Division for the period 3rd to 10th July, 2008 vice Mr. Charlesworth Tabor who proceeds on vacation leave during the said period.

Ms. Luann De Costa as Crown Counsel II, Ministry of Legal Affairs with effect from 1st September, 2008.

Ms. Ricki Camacho as Registrar of Intellectual Property with effect from 1st August, 2008.

COMMONWEALTH OF DOMINICA

Mr. Ossie Walsh, Deputy Registrar/Magistrate to act in the Office of Registrar, Registrar General and Provost Marshal for the period 22nd May to 11th July, 2008.

Continuation of temporary appointments: *Ms. Kathy Buffong*, *Ms. Eunica Anthony*, *Ms. Joanna Commodore* and *Mr.*

JLSC APPOINTMENTS FOR THE PERIOD MAY 1–AUGUST 31, 2008

Wayne Norde in the Office of State Attorney, Ministry of Legal Affairs and Immigration for the period 1st July to 30th September, 2008 in vacant posts; *Ms. Sherma Blaize*, in the office of State Attorney, Ministry of Legal Affairs and Immigration for the period 1st July to 30th September, 2008 vice Ms. Roseanne Charles on no pay study leave.

Ms. Bernadette Lambert in the Office of State Attorney, Ministry of Tourism and Legal Affairs for the period 1st July to 31st December, 2008 in a vacant post.

Mr. Glenworth Norris Emmanuel to the position of Magistrate for the period 1st January to 29th February, 2008.

Mrs. Candia Carrette to the position of Magistrate for the period 19th May to 18th August, 2008.

Mrs. Candia Carrette to act in the position of Magistrate for the period 19th August to 31st December, 2008

GRENADA

Mrs. Dionne Lawrence-Pivotte as Legal Counsel, Office of the Director of Public Prosecutions on contract for a period of two [2] years with effect from 15th June, 2008.

Mr. Henry Paryag as Magistrate (Temporary) in the Southern District and as an Additional Magistrate to the Northern, Eastern and Western Districts vice Mr. Jerry Seales who will be proceeding on three [3] months no-pay leave with effect from 1st September, 2008.

ST. LUCIA

Mr. Andy Glenn Daniel as Magistrate II, Second District Court on contract for a period of two [2] years with effect from 26th May, 2008.

Mr. Dwight Lay as Registrar, Registry of Companies with effect from 14th July to 7th August, 2008.

Mrs. Christine Emmanuel-Phulchere as Magistrate II, First District Court on contract for a period of two [2] years with effect from 29th July, 2008.

Ms. Ann-Marie Smith as Magistrate II, First District Court on contract for a period of two [2] years with effect from 3rd August, 2008.

Ms. Sally Ann Cotter to the post of Deputy Registrar, High Court of Justice on contract for a period of one [1] year with effect from 30th October, 2008.

Ms. Sally Ann Cotter to act as Registrar of the High Court of Justice with effect from 6th July, 2008 until further notice.

ST VINCENT & THE GRENADINES

Ms. Michelle Fife as *Crown Counsel II*, Attorney General's Chambers with effect from 1st April, 2008.

Mrs. Zoila Ellis-Browne as Magistrate on contract for a period of two [2] years with effect from 1st July, 2008.

Mr. Lester Caesar as Magistrate on contract for the period of one year with effect from 15th July, 2008.

JUDGMENTS DELIVERED DURING THE MONTHS OF MAY–AUGUST 2008**COURT OF APPEAL****GRENADA**

The Attorney General et al v Peter Charles David et al
HCVAP 2006/034

Gordon, J.A.

Delivered: 02/06/08

Volker Stevin Construction Europe BV v VOS Ltd

HCVAP 2007/013

Barrow, J.A.

Delivered: 02/06/08

ST. KITTS & NEVIS

The Attorney General et al v Kaleel Jones

Case No 06 of 2008

Barrow, J.A.

Delivered: 02/06/08

ST LUCIA

Cyril Mathurin et al v Anthony Augustin

HCVAP 2007/041

Barrow, J.A.

Delivered: 02/06/08

St Lucia Estates Ltd et al v James Curry

HCVAP 2007/042

Barrow, J.A.

Delivered: 24/06/08

ANGUILLA

Dwight Liburd v The Queen

HCRAP 2008/003

Barrow, J.A.

Delivered: 28/07/08

ANTIGUA & BARBUDA

Next Level Engineering v Attorney General et al

HCVAP 2007/017

Rawlins, J.A.

Delivered: 14/07/08

BRITISH VIRGIN ISLANDS

Elena Collongues v Andrew Lych et al

HCVAP 2007/001

Edwards, J.A.

Delivered: 14/07/08

ST. VINCENT & THE GRENADINES

Michelle Andrews v The Director of Public Prosecutions

HCVAP 2008/003

Chong, J.A. [Ag]

Delivered: 14/07/08

ST. LUCIA

Curvin Isaie v The Queen

HCRAP 2006/006

Alleyne, C.J. [Ag]

Delivered: 14/07/08

JUDGMENTS DELIVERED DURING THE MONTHS OF MAY–AUGUST 2008**HIGH COURT****ANGUILLA**

Charles Hickox v Leeward Isles Resorts Ltd
Claim No AXAHCV 1998/0097
George-Creque, J.
Delivered: 08/07/08

ANTIGUA & BARBUDA

Heather Michael v Romig Michael
Claim No ANUHCV 2006/0347
Blenman, J.
Delivered: 18/06/08

Bridgette Neipp v Gloria Watt
Claim No ANUHCV 2005/0163
Blenman, J.
Delivered: 18/06/08

English Haven Ltd v The Registrar of Lands et al
Claim No ANUHCV 2007/0277
Blenman, J.
Delivered: 23/06/08

The Queen v Jhonnaly Garabito
Criminal Case No. 2008/0013
Blenman, J.
Delivered: 09/07/08

The Queen v Queisha Geiger
Criminal Case No. 2007/0016
Blenman, J.
Delivered: 09/07/08

The Queen v Theodore Horsford
Criminal Case No. 2008/0010
Blenman, J.
Delivered: 09/07/08

BRITISH VIRGIN ISLANDS

The Queen v Franklyn Smith et al
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Hariprashad-Charles, J.
Delivered: 06/05/08

The Queen v Brian Walters
Case No 03 of 2008
Hariprashad-Charles, J.
Delivered: 27/05/08

Enmetek International Corporation v China Environment Fund 2002 LP et al
Claim No BVIHCV 2008/0005
Ross, J. [Ag]
Delivered: 30/05/08

Kantilal Chonan, In the Estate of
Claim No. BVIHCV2008/0024
Ross, J. [Ag]
Delivered: 04/06/08

Michael Wilson & Partners Ltd v Temujin International Ltd et al
Claim No. BVIHCV2006/0307
Charles, J.
Delivered: 20/06/08

GRENADA

Capital Bank International Ltd v Keith Mitchell
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Henry, J.
Delivered: 07/05/08

Louise Mathias v Lennie De Gale
Cumberbatch, J.
Delivered: 13/06/08

Mt Hartman Bay Estate Ltd v Ashok Bhawnani
Claim No GDAHCV 2006/0423
Henry, J.
Delivered: 02/06/08

Kathlyn Olive v Francis Olive
Claim No GDAHMT 2005/0020
Henry, J.
Delivered: 26/06/08

ST. KITTS & NEVIS

The Attorney General of St Christopher & Nevis et al v Anthony Wiltshire et al
Claim No SKBHCV 2003/0100
Belle, J.
Delivered: 02/06/08

St Kitts Development Corporation v Golfview Development Ltd et al
Claim No SKBHCV2000/0123
Belle, J.
Delivered: 06/06/08

JUDGMENTS DELIVERED DURING THE MONTHS OF MAY–AUGUST 2008**The Director of Public Prosecutions v Sheldon Isaac et al**

Claim No SKBHCR 2008/0047

Redhead, J. [Ag]

Delivered: 15/07/08

Reginald Thomas v Attorney General et al

Claim No SKBHCV 2007/0309

Belle, J.

Delivered: 31/07/08

ST. LUCIA**Bernadicte St Luce et al v Luciana Lewis et al**

Claim No SLUHCV 2007/0031

Mason, J.

Delivered: 03/06/08

Gemya Norville v Attorney General

Claim No SLUHCV 2004/0362

Mason, J.

Delivered: 05/06/08

Reuben Smith v Celestine Smith

Claim HMT 2003/0009

Mason, J.

Delivered: 10/06/08

Rachel Calixte et al v Ayrton Sargusingh

Claim No 507/2004

Mason, J.

Delivered: 24/06/08

Jerome Montoute v Attorney General

Claim No SLUHCV 2007/0901

Cottle, J.

Delivered: 10/07/08

Windward Islands Banana Dev and Exporting Co Ltd v St Lucia Banana Corp

Claim No SLUHCV 2008/0448

Cottle, J.

Delivered: 10/07/08

Bertha Francis v First Caribbean International Bank (B'dos) Ltd

Claim No 0583/1998

Mason, J.

Delivered: 03/07/08

Veronica St Luce et al v Allan Thomas et al

Claim No 2007/0385

Mason, J.

Delivered: 09/07/08

Cosmos William v Attorney General

Claim No SLUHCV 2006/0259

Mason, J.

Delivered: 29/07/08

ST. VINCENT & THE GRENADINES**Bethamous Hutchinson v Thomas Gellizeau**

Possessory Title Application No 27 of 2007

Matthew, J. [Ag]

Delivered: 06/05/08

Gweneth Shallow v Carmina Williams

High Court Claim No 51 of 2006

Matthew, J. [Ag]

Delivered: 09/05/08

Evans Jackson v Margaret Williams-Jackson

Possessory Title Application No 22 of 2007

Matthew, J. [Ag]

Delivered: 09/05/08

Sylvanus Leslie v Brian Cullen

High Court Claim No 4 of 2004

Matthew, J. [Ag]

Delivered: 09/05/08

Beatrice Antoine v Edward John

High Court Claim No 9 of 2007

Matthew, J. [Ag]

Delivered: 16/05/08

Caribbean Banking Corporation Ltd v Francis Michael

High Court Claim No 560 of 2001

Matthew, J. [Ag]

Delivered: 16/05/08

Beatrice Gumbs v Lloyd Samuel

High Court Claim No 202 of 2005

Matthew, J. [Ag]

Delivered: 16/05/08

Egan Dublin v Pearl Warren et al

High Court Claim No 37 of 2005

Thom, J.

Delivered: 14/05/08

David Balcombe v Vaughn Lowman

High Court Claim No 375 of 2006

Thom, J.

Delivered: 27/05/08

**EASTERN CARIBBEAN
SUPREME COURT**

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MISSION

To serve its Member States by providing access to a system of justice that is accountable and independent, and administered by officers in a prompt, fair, efficient and effective manner.

ECSC JUDICIAL OFFICERS AS AT 31ST AUGUST 2008

THE CHIEF JUSTICE

His Lordship, the Hon. Chief Justice, Hugh Rawlins – Saint Lucia

**JUSTICES OF
APPEAL**

His Lordship, the Hon. Justice Denys Barrow, SC – Saint Lucia

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

HIGH COURT

His Lordship, the Hon. Justice Kenneth Benjamin – St Lucia

Her Ladyship, the Hon. Justice Indra Hariprashad-Charles – British Virgin Islands

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

His Lordship, the Hon. Justice Davidson Baptiste – Commonwealth of Dominica

Her Ladyship, the Hon. Justice Rita Joseph-Olivetti – British Virgin Islands

Her Ladyship, the Hon. Justice Janice George-Creque – Anguilla

Her Ladyship, the Hon. Justice Louise Blenman – Antigua & Barbuda

Her Ladyship, the Hon. Justice Clare Henry – Grenada

His Lordship, the Hon. Justice Francis Belle - St Christopher & Nevis

Her Ladyship, the Hon. Justice Gertel Thom - St Vincent & the Grenadines

Her Ladyship, the Hon. Justice Sandra Mason, QC - Saint Lucia

Her Ladyship, the Hon. Justice Ianthea Leigertwood-Octave – St Christopher & Nevis/ Commonwealth of Dominica/ Montserrat

His Lordship the Hon Justice Brian Cottle—St Lucia

His Lordship the Hon Justice Courtenay Harris—Antigua & Barbuda

His Lordship the Hon Justice Francis Cumberbatch—Grenada

His Lordship the Hon Justice Anthony Ross, QC [Ag] —St Lucia

His Lordship the Hon Justice Albert Matthew [Ag] - St Vincent & the Grenadines

His Lordship the Hon Albert Redhead [Ag] —St Lucia

His Lordship the Hon Justice Errol Thomas [Ag] - Antigua & Barbuda

Master Cheryl Mathurin – Antigua & Barbuda

Master Pearletta Lanns—St Christopher & Nevis

Mrs. Kimberly Cenac Phulgence, Chief Registrar - St Lucia

Ms Agnes Actie, Deputy Chief Registrar— St Lucia