



# Three Wise Men

Supreme Court Judges Rule -Page 2



Justice Redhead



Justice Saunders



Justice Rawlins

# VINDICATED



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# Prime Minister Vindicated by OECS Appeals Court

Prime Minister of St. Lucia, Dr. Kenny D. Anthony and his Government have been vindicated by an OECS Appeals Court ruling on an undertaking to guarantee debt service for a local hotel resort developer. Dr Anthony had been accused by a local human rights lawyer of acting outside of the law in giving the guarantee without first going to parliament.

A civil case had been brought against Attorney General Senator Petrus Compton by the complaining attorney-at-Law, Martinus Francois, claiming Dr Anthony had breached both the island's Constitution and the Finance Act.

The case was heard by Justice Indra Harriprasad-Charles in the High Court in Castries late last year and the learned Judge ruled in favour of Mr Francois.

Following the ruling of the High Court, which the Attorney General appealed, the government came under intense criticism and there were even calls in some quarters for the Prime Minister to resign.

However, the Court of Appeal on March 29, 2004 quashed the earlier High Court ruling.

In a rare act, all three Justices of the Appeals Court wrote separate judgments that took the High Court judge to task on several counts.

The OECS Court of Appeal quashed all the claims by Mr Francois and upheld the grounds of appeal by the government's team of lawyers, which was led by Dominican Senior Counsel Anthony Astaphan.

Mr Astaphan was assisted by a team from the AG's office including Crown Counsels Jan Drysdale, Dwight Lay and Rene Williams.

The respondent, Mr. Martinus Francois was accompanied by Mr. Clarence Rambally and Dr. Nicholas Frederick. Watching brief for RBTT were, Mr. Anthony Mc Namera, Q.C. and Mr. Stephen Singh.

The appeal was heard by Acting Chief Justice of Appeal Hon. Mr. Albert Redhead, Justice of Appeal Hon. Mr. Adrian Saunders and Acting Justice of Appeal Hon. Mr. Hugh Rawlins.

**Justice Redhead said in his 19-page summation: "The learned trial Judge erred in law and/or misdirected herself when she held that the Minister of Finance acted ultra vires in even seeking a resolution from Parliament, and further that the Parliament acting ultra vires in approving that resolution, presumably on the erroneous basis that the said resolution did not concern or relate to the Government's capital or recurrent expenditure and which in any event was not pleaded by the respondent".**

Justice Redhead cited several examples where he found that Justice Harriprasad-Charles had "erred in confusion", had made "no critical analysis" of some of the claims by Mr Francois and said he had "difficulty in

appreciating the judge's argument or reasoning" on some issues.

According to Justice Redhead, the High Court Judge had "fallen into error" as she had "failed to distinguish the difference between the ability of the Executive in entering into a contract and the performance of that contract..." The other two Justices concurred with Justice Redhead and also offered several grounds on which they felt the High Court Judge ought to have dismissed the case brought by Mr Francois.

Prime Minister Anthony's Press Secretary Earl Bousquet said: "The Prime Minister was seriously vilified by politicians and media personnel. Some even asked that he be made to pay back the sums owed as a result of the guarantee from his own pocket."

Bousquet continued: "The Prime Minister will not gloat about this victory, but suffice to say the judgement of the appeals court reflects what he has always said – that he followed the law and acted within the law at all times."

The resort in question was the former first class, 300-room Hyatt property in the north of the island, next to the world-famous Pigeon Island National Park, home of the world famous St. Lucia Jazz Festival. The prop-

erty has since been taken over by Gordon "Butch" Stewart's Sandals Resorts International chain and is currently being run successfully, with average occupancy of over 70 per cent.

Since the issuing of the Appeals Court's Judgement on Monday (March 29), Mr Francois has poured scorn on the judgement, claiming appeals court judges in the Caribbean operated under the political influence of governments. He said that was "one reason why we oppose the establishment of the proposed Caribbean Court of Justice" and indicated that he had already indicated his intention to appeal to the British Privy Council, although he admitted that he still had not read the Judgement of the Appeals Court Justices.

Attorney General Petrus Compton says Mr Francois "would be free to pursue that constitutional right," but doubted "whether he would get leave from the court to do so." According to the AG, "the findings and rulings of the three Appeals Court judges were so clear-cut that there may simply be no grounds left for appeal." "But if Mr Francois was to go to the Privy Council," Senator Compton said, "we would have no problem with that because another victory for us at that level would be even sweeter than that which derives from the ruling of the three learned Appeal Court Justices."

## Follies of High Court Judge, Harriprasad-Charles

"fallen into error" as she had "failed to distinguish the difference between the ability of the Executive in entering into a contract and the performance of that contract..."

"The learned trial Judge erred in law and/or misdirected herself"

Judge Harriprasad-Charles had "erred in confusion", had made "no critical analysis" of some of the claims by Mr Francois



High Court Judge, Harriprasad-Charles

# Land Use Policy Coming

The Ministry of Physical Development, Environment and Housing has embarked on the formulation of a National Land Policy. This new Policy will provide guidance on land use, land markets, land management and land administration in the country. It will be an important policy statement that will impact on all sectors of society and economy, and that will lead to important changes in the way we use and manage land in Saint Lucia. This article is the third in a series of six articles that present the rationale for this National Land Policy, and the main issues that it seeks to address.

## Land, a scarce and fragile resource.

The way we use and manage the land is determined, to a large extent, by environmental factors. The main characteristics of land in Saint Lucia are a rugged terrain and a limited land space. In several parts of the island, the agricultural potential is limited, because of risks of erosion, low fertility, stoniness and acidity of soils, and dangers of land slippage. In many areas, steep slopes and drainage patterns also render access and infrastructural development difficult.

**More than 90% of Saint Lucia's terrestrial areas occur on slopes of more than five degrees. Two thirds of Saint Lucia's best agricultural lands are located in four valleys: Canelles, Cul de Sac, Mabouya and Roseau.**

In Saint Lucia, as in most tropical islands, the natural ecosystems are fragile and small. This means that activities occurring in one area can have negative environmental impacts on the ecosystems around it. This is particularly true for environmental changes occurring in upper watersheds, which can impact negatively on all ecosystems in the lower parts of the watersheds and in the coastal zones. At the same time, geographic and environmental factors increase Saint Lucia's predisposition to risks associated with the impacts of natural disasters.

Saint Lucia's terrestrial and marine areas support a rich biological diversity, with over 1,300 known species of plants, over 150 species of birds and approximately 250 reef fish species. We also have several different ecosystems, with tropical rain forests, dry forests and scrubs, mangroves and other coastal woodlands, reefs and seagrass beds. Most natural habitats have been transformed as a result of the expansion of human activities, and there remain only small areas where natural ecosystems have not been disturbed. Some of these are home to endangered and locally important species, including some that exist nowhere else in the world

## Land degradation, the main issues

Many of our development practices result in the degradation and destruction of land, with negative impacts on people and on the environment. Changes in land use are of course unavoidable, in order for us to establish and expand towns and villages, in order to build roads, schools and sporting facilities, and in order to develop our agriculture, our tourism and our manufacturing industry. But these changes have to be made carefully, otherwise we run the risk of losing all our good agricul-



Roseau Valley - one the best Agricultural Lands in the Island

tural lands, of allowing our soils to erode and become unproductive, of destroying the beauty of our landscapes, and of reducing the overall quality of the environment in which we live.

One key issue is water conservation. Water is one of the country's most precious natural resources, and there is a strong relationship between water and land management. As a result of deforestation and the removal of vegetation cover, the productivity of our watersheds has been reduced. At the same time, population growth and the concentration of settlements and tourism development in the north of the island have resulted in a high demand for water for domestic, industrial and commercial uses, while transformations in the agricultural production systems and the need to increase yields have augmented demands for water for irrigation. Inappropriate land uses and land use practices, and incidences of abuse of agrochemical pollutants, are responsible for water pollution and contamination. Urban development and changes in land use have provoked changes in drainage patterns and increased risks of flooding. All these factors contribute to increases in the costs of water collection and distribution.

There is a direct link between land use and the conditions of coastal resources, including ecosystem health, coastal water quality and habitat productivity. Sedimentation impacts negatively on tourism and fisheries through the destruction of reef habitats and the reduction of water quality. Pollution coming from human settlements, agriculture and industry also affects water quality, posing a threat to human health and tourism development. Everything we do on the land will eventually impact on the resources of the coast.

**There is also a direct link between land use and management on the one hand, and the dangers of natural disasters on the other. In some areas, inappropriate land uses have increased vulnerability to disasters, and especially to the impacts of flooding and landslides. In the past, disaster planning has focused more on post-disaster mitigation than on prevention and minimisation of impacts, and there is now a need for closer linkages between disaster management and the national land**

policy framework, and for the use of specific disaster management tools, such as hazard mapping.

## Land conservation, what can we do?

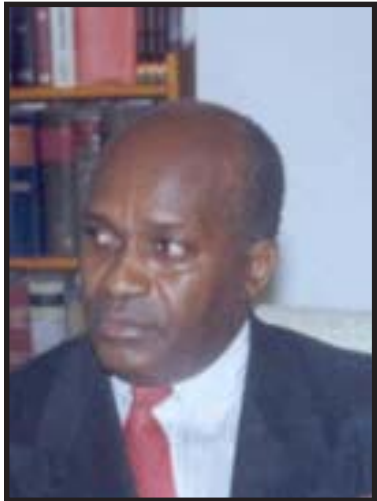
There are many things that could and should be done to conserve land resources and to ensure that environmental considerations are included in decisions that affect land management and development. Government, for example, has already put in place a number of planning instruments and regulations, including the conduct of Environmental Impact Assessments and the establishment and management of protected areas such as Forest Reserves, Marine Reserves and Wildlife Sanctuaries. Initiatives such as the establishment of the Pitons Management Area or the inclusion of green spaces in land subdivisions precisely aim at conserving some of our most precious land resources. This new National Land Policy will identify a number of other measures that will help in these efforts.

**But land conservation is not only the responsibility of the Government, and we all have a role to play in making sure that this most precious and fragile resource is not wasted. Farmers, for example, should use good farming practices that prevent soil erosion and loss of fertility. Land developers should reduce the environmental impacts of their activities, particularly those coming from the removal of vegetation cover. Planners and investors must ensure that environmental considerations are taken into account when designing and implementing development projects.**

At this crucial moment in our development, it is only through our collective involvement and through a change in our attitudes and habits that we will be able to maintain and enhance this most vital resource: our land.

Ideas, views, questions and information related to land policy should be sent to: [landpolicy@planning.gov.lc](mailto:landpolicy@planning.gov.lc) or National Land Policy Sustainable Development Section Ministry of Physical development, Environment and Housing Graeham Louisy Administrative Building Waterfront, Castries

# The Rochamel Case:



**Justice Redhead**

[1] **REDHEAD, J.A. [AG.]:** On 19<sup>th</sup> December 1992 Dr. the Honourable Kenny Anthony, Prime Minister of Saint Lucia and Minister of Finance entered into an agreement on behalf of the Government with Rochamel Development Company Ltd. (the

Developer).

[2] Clause 1 of the agreement states:

## “UNDERTAKINGS OF THE DEVELOPER

[10] The Developer agrees to:

[G] Provide all necessary funding for and to carry out the construction of a first class three hundred (300) room hotel resort hereinafter called the “Hotel Resort” on 15 acres of land ... and to furnish layout and fully equip the Hotel Resort as a first class hotel resort within two years from the 1<sup>st</sup> January, 1998.”

[3] Clause 2.02 of the Agreement provides:

## “UNDERTAKINGS OF THE GOVERNMENT

The Developer has obtained funding for the construction of the hotel resort from the Royal Merchant Bank of Trinidad & Tobago and Caribbean Banking Corporation Ltd. of Saint Lucia. A requirement of this funding is that Government enter into a guarantee and indemnity Agreement with the Royal Merchant Bank of Trinidad & Tobago and the Government agreed to do so on the following terms and conditions.

### (A) Debt Service Guarantee

The Debt Service Guarantee by the Government is to be capped at a maximum liability of US \$4 million.

[i] The Debt Service Guarantee will provide a maximum contingent liability over a three (3) year period of initial hotel trading after which period the liability ceases.

[ii] In the event that Government should be called upon to honour the Guarantee at any time, then the Government would be issued redeemable preference shares in the Hotel Company to the appropriate value, by way of security .....

[4] On 17<sup>th</sup> December, 2002 the Prime Minister and Minister of Finance presented a resolution to House of Assembly for approval in the following terms:

WHEREAS it is provided by Section 39[1] of the Finance (Administration) Act 1997 No. 3 that the Minister for Finance may by Resolution of Parliament borrow from any bank or other financial institution for capital or recurrent expenditure of Government.

AND WHEREAS the Minister for Finance considers it necessary to enter into a fully under-written Fix Rate Bond facility of US \$41,000,000.00 or its equivalent in Eastern Caribbean dollars at an issue price of 100% per value with the RBTT Merchant Bank Ltd for the purpose of financing Government’s Capital works programme and for refinancing Government’s obligations in respect of the former Hyatt Hotel; ...

Be it resolved that Parliament hereby authorizes the Minister for Finance to enter into a Fixed Rate Bond facility of US \$41,000,000.00 with the RBTT Merchant Bank Ltd. for the purpose of financing Government’s Capital Works Programme and for refinancing Government’s obligations in respect of the former Hyatt Hotel.”

[5] This resolution was unanimously approved by the Parliament of Saint Lucia.

[6] Mr. Martinus Francois, the Respondent, is an Attorney-at-Law in Saint Lucia. The learned trial Judge encapsulated his action before the High Court in the following terms:

“[He] Seeks the assistance of the court in his capacity as a citizen, a tax payer and an elector. He brought this consolidated claim against the Attorney General alleging that there was a procedural irregularity in the Parliament of Saint Lucia authorizing the Minister of Finance to enter into a Fixed Rate Bond facility with Royal Bank of Trinidad & Tobago Merchant Bank Ltd (RBTT) for the purposes of refinancing Government’s obligation in respect of the former Hyatt Hotel. He also alleges that statutory instrument No. 4 of 2003 dated 6<sup>th</sup> January, 2003 which purported to be made under the authority of Section 39 of the Finance (Administration) Act No. 3 of 1997 (the Act) is illegal, void and of no legal effect. He therefore seeks relief in accordance with Section 105(1) of the Saint Lucia Constitution Order 1978 as well as a declaration under Part 56 of CPR 2000.”

[7] The learned trial Judge in granting the relief to the Respondent found that the Minister of Finance had no power under Section 39 of the Finance (Administration) Act 1997 to borrow in order to refinance the Government’s obligations in respect of the former Hyatt Hotel, held that the Minister of Finance acted ultra vires the Act in even seeking a resolution of Parliament to borrow moneys from the consolidated fund to refinance such a project, and that Parliament acted ultra vires the Act to authorize such borrowing when it passed the resolution contained in Statutory Instrument No. 4 of 2003.”

[8] The learned trial Judge said at paragraph 62 of the judgment: “As far as I am concerned both the actions of the Minister of Finance and Parliament in respect of refinancing the Government’s obligations in respect of Hyatt Hotel are ultra vires the Act. Therefore, Parliament did not have the requisite power to authorize such borrowing under section 39.”

[9] The learned trial Judge said that “the withdrawal of any moneys from the Consolidated Fund to meet Government’s obligations in respect of the former Hyatt Hotel would have or has breached section 78 of the Constitution.”

**[10] I make this observation. With the greatest of respect to the learned trial Judge, I do not understand what is meant by “Parliament acted ultra vires the Act to authorize such borrowing when it passed the resolution contained in Statutory Instrument No. 4 of 2003.”**

**[11] As I understand it, if Parliament enacts legislation which does not confirm with previous legislation then the latter legislation repeals the former. One does not speak in terms of the latter**

legislation being ultra vires a subsequent legislation.

**[12] Unfortunately I am of the view that that confusion was implanted in the learned trial Judge’s mind when she erroneously opined at paragraph 63 of her judgment “that in matters of delegated legislation such as statutory instruments, Parliament is not Supreme ...”**

[13] The logical conclusion of this, in my view, is that once Parliament has passed delegated legislation Parliament cannot repeal it or at least cannot do so unless by a special procedure.

**[14] The only authority which is higher than Parliament in our system is the constitution and even that Parliament can change provided that it follows, particularly in entrenched provisions, certain procedures.**

[15] The Appellant is dissatisfied with the learned trial Judge’s ruling and has appealed to this court.

[16] In his Notice of Appeal the Appellant filed 23 grounds of appeal. In my opinion it is not convenient or necessary to refer to all of the grounds of appeal for a resolution of this appeal.

[17] Ground 4.11 to my mind encompasses the first ground of appeal in its entirety; **“4.11 the learned trial Judge erred in law and/or misdirected herself when she held that the Minister of Finance acted “ultra vires” in even seeking a resolution from Parliament and further that the Parliament acting (sic) “ultra vires” in approving that resolution/, presumably on the erroneous basis that the said resolution did not concern or relate to the Government’s Capital or recurrent expenditure and which in any event was not pleaded by the Respondent.”**

[18] The case for the Respondent at trial and that which he tried to maintain on appeal is that there is a condition precedent as contained in Section 4 of the Finance (Administration) Act. This according to him, mandates the Minister of Finance before he enters into any binding contract to first obtain the approval of the Parliament of Saint Lucia.

**[19] Unfortunately in my view the learned trial Judge accepted this argument without a critical analysis of the important issue e.g. what was the purpose of the guarantee e.g. was it for recurrent expenditure? Instead she classified it as a “battle of the guarantees” when she said: The Defendant argued that the issue of “guarantee” and whether or not “the guarantee” was approved by Parliament are wholly irrelevant to the case as this is a classic case of a political storm in a small judicial teacup. Rather I see the case as a battle of guarantees”.**

[20] It appears from the judgment of the learned trial Judge that she partially accepted the legality of the guarantee when she said: “It is clear from an analysis of these judicial authorities that the guarantees which were executed by the Minister of Finance on behalf of the Government are binding on the state. However I agree with Mr. Astaphan that the issue as to whether the guarantees are binding or the Government does not arise in the present case. But I do not agree with his reasons ... As I see it this is now a moot point.”

**[21] I have some difficulty in appreciating that the guarantee could be binding on the Government and not on the state. I do not understand why the**

# The Judgement Part I

issue is a moot point. Is it the issue of the guarantee? Or is the issue of the Government being bound by the guarantee a moot point? If it is the former, it cannot be a moot point because it is the focal point of the dispute.

[22] The learned trial Judge in accepting the submission of learned Counsel Mr. Francois that statutory instrument No. 4 of 2003 was ultra vires Section 39 (1) of the Finance Act, said: "I agree entirely with the submissions advanced by Mr. Francois on this aspect of the case and I find that the Minister of Finance acted ultra vires the Act even in seeking a resolution of Parliament to borrow moneys from the consolidation Fund to refinance such a project."

[23] Section 39 (1) of the Finance Act provides as follows: "The Minister may by resolution of Parliament, borrow from any bank or financial institution for any of the following purpose:

- [a] the capital or recurrent expenditure of the government;
- [b] the purchase of Securities issued by any Government agency;
- [c] on lending to any statutory body or public corporation or
- [d] making advances or payments to public officers as authorized by any enactment or staff orders.

[24] The Appellant's case as articulated by learned Counsel Mr. Astaphan, SC is that the guarantees entered into by the Government of Saint Lucia authorized the Minister to borrow money and withdraw from the Consolidated Fund to meet the Government's obligation in financing capital and recurrent expenditure.

[25] Mr. Astaphan, SC argued that the test as to whether the expenditure is of a capital or recurrent nature is to look not at the form of the expenditure but the purpose for which the expenditure is undertaken. He contended that expenditure by the Government in promoting tourism and employment, as is this case, Hyatt Hotel, must be regarded as a public purpose.

[26] **Moreover, as I see it the members of the Parliament of Saint Lucia must have known what they were voting on. The Resolution was before them. The Resolution speaks quite clearly of borrowing to finance capital and recurrent expenditure and also for financing Government's capital works programme. The members of Parliament must be taken to understand what are capital and recurrent expenditures and what is capital works programme. If the members of Parliament did understand and, in my view, they must have, then when they voted unanimously on the Resolution they were passing a resolution for Government to borrow to finance capital and recurrent expenditure and for financing Government's capital works programme.**

[27] Is it the business of the Court to determine what are capital and recurrent expenditures? I think not. I say so for the following reasons.

[28] The executive through its budgeting measures always makes allocations towards capital and recurrent expenditures. Suppose, for argument, the executive makes such an allocation to a particular head of item of expenditure can the Court declare that that particular item does not properly come under recurrent expenditure? I entertain great doubt about that because so far as I am

aware there is no legal definition of what is capital or recurrent expenditure.

[29] Mr. Astaphan in his submission argued that although this case does not concern expenditure in the field of taxation some guidance may be obtained from tax cases in which the court considered the question as to whether expenditure by a taxpayer was a capital or recurrent expenditure.

[30] Mr. Astaphan contended that the cases show that expenditure is either capital or recurrent and that in order to determine whether the expenditure is capital or recurrent, the court has to look beyond the form or legalism of the transaction or financial agreement and ascertain the purpose of the expenditure. I agree.

[31] In *Commissioner of Inland Revenue v Wattie*<sup>1</sup> Lord Nolan said at page 536: "It is well settled that in



**Justice Redhead**

considering whether a particular item of receipt or expenditure is of capital or revenue nature the approach to be adopted should be that described by Dixon J in *Hallstroms Pty Ltd. Federal Commissioner of Taxation*<sup>2</sup> where he said that the answer to the question: ".....depends upon what the expenditure is calculated to effect from a practical and business point of view, rather than upon the juristic classification of the legal rights if any, secured, employed or exhausted in the process."

[32] See also *B.P. Australia Ltd. v Commissioner of Taxation of the Commonwealth of Australia*.<sup>3</sup>

[33] I am firmly of the view that having regard to what I have said and in view of the authorities the Guarantee was for the funding of, or providing for the means by which finance could be obtained for the financing of capital or recurrent expenditure.

[34] I now turn to what I consider to be the most vexed question of this appeal. That is whether the contract of guarantee by the Prime Minister/ Minister of Finance on

behalf of the Government on 11<sup>th</sup> December 1997 before the agreement received Parliamentary approval is valid

[35] Mr. Martinus Francois, Learned Counsel strenuously argued before us and evidently before the Court below that the agreement by the Minister of Finance was null and void, not worth the paper it was written on, not having received Parliamentary approval.

[36] At paragraph 20 of his written submission Mr. Francois argued that: "where there is a statutory condition precedent to be satisfied, observed or complied with [such as in this case, [Section 41 of the Finance Act] Before the making of such a government contract the "contract" shall not be valid or binding on the Government if the condition precedent is not satisfied, observed or complied with and that such a contract is ultra vires- not worth the paper it is written on."

[37] The learned trial Judge agreed with this argument when she said, Mr. Francois argued that under section 41 "no guarantee " shall be binding upon Government UNLESS that guarantee is approved by resolution of Parliament. The learned trial Judge then went on to say: "His argument, stripped of its bare essentials is that the Minister of Finance lacked the capacity to contract when he entered into these agreements because he did not have Parliamentary approval."

[38] Later on in her judgment at paragraph 50 she said: "It is trite law that the Crown has the power of a natural person to enter into contracts, it is a fundamental Constitutional principle that all expenditures of public funds must be authorized by statute. "The requirement of a legislative appropriation applies to an expenditure by the crown to perform a contract no less than an expenditure for any other "purpose."

**[39] I am of the opinion that is where the learned trial Judge fell into error when she said: "The requirement of a legislative appropriation applies to an expenditure by the Crown to perform a contract no less than an expenditure for any other "purpose" because in my judgment, as the authorities show the Minister can enter into a contract which involves expenditure from the Consolidated Fund without legislative appropriation. What the authorities clearly state and establish is that if the Minister enters into such a contract without Parliamentary Appropriation, when it comes to the performance of the contract if by then the contract is not ratified by Parliament it is unenforceable. Because in order to satisfy or perform the contract payment must be made, and payment cannot be made from the Consolidated Fund unless approved by Parliament."**

[40] In my opinion that is why S41 of the Finance Act is couched in those terms.

[41] The learned trial Judge continuing went on to say: "Therefore when a payment under a contract falls due, there must be an appropriation of funds in place to authorize the payment. If there is no appropriation then the payment cannot be made, then the Crown will be in breach of its contractual obligation. Despite some dicta to the contrary it is now well established that the absence of an appropriation does not excuse the Crown, from performance. On the contrary the Crown's failure to make the contracted payment will be a breach of contract *New South Wales v Bardolph*.<sup>4</sup>

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# EDITORIAL

## Traffic Accidents: The Costs are Staggering

“Road safety is no accident”, the theme for this year’s World Health Day, reminding us that road safety does not happen by chance.

The Ministry of Health, Human Services, Family Affairs and Gender Relations and the Ministry of Communications, Works, Transport and Public Utilities have collaborated with a committee to plan activities for World Health Day. Both Ministers are due to address the nation on that day, April 7, 2004.

**As a sign of awareness both for drivers and pedestrians, all drivers are asked to have their lights turned on all day whilst driving, and to have a black flag attached to their antennas.**

**Every one in the nation is exhorted to wear the colours black, white, mauve or grey as a sign of solidarity with all the victims of road accidents in St. Lucia. Other activities will continue during the month.**

Achieving and sustaining safety on the roads requires deliberate action from many sectors of society, said UN Secretary-General, Kofi Annan in his World Health Day Message.

Despite enormous improvements in road safety in some countries over the past few decades, he said nearly 1.2 million people are killed every year in road traffic crashes around the world. Most of these deaths, each of which is a personal tragedy, occur singly and draw no attention from the world’s media. About 90 per cent happen in developing countries, most of them among pedestrians, bicyclists, motorcyclists and passengers of public transport. Between 20 and 50 million more people are seriously injured in such incidents every year, often resulting in disability.

**According to Mr. Annan, beyond the human suffering they cause, road traffic injuries result in considerable additional costs to societies. Globally, more than half of all victims are between the ages of 15 and 44, the age at which they would be most able to contribute to the livelihood of their families and communities. This loss of breadwinners has enormous implications for the security of families. And estimates show that road traffic injuries cost nations as much as two per cent of their gross national product (GNP).**

Yet, Mr. Annan said, most of this loss can be prevented by tackling dangerous driving, such as speeding and driving under the influence of alcohol; by promoting the use of helmets and seat belts; by ensuring that people walking and cycling are more visible; by improving the design of roads and vehicles; by enforcing road safety regulations; and by improving emergency response services. The key to successful prevention lies in the commitment of all relevant sectors, public and private - health, transport, education, finance, police, legislators, manufacturers, foundations and the media - to make road safety happen.

Road safety is a crucial concern for both public health and development, and this year’s observance of World Health Day has generated much interest and enthusiasm. As another component of the campaign for road safety, the World Health Organization and the World



**Hon. Felix Finisterre, Minister of Communications, Works, Transport and Public Utilities**



**Hon. Damian E. Greaves, Minister of Health, Human Services, Family Affairs and Gender Relations**

Bank have issued a world report on road traffic injury prevention. Parallel advocacy efforts are under way in the United Nations General Assembly. Building on this momentum, hundreds of groups around the world are focusing attention on the dreadful consequences of road

traffic injuries, stressing that they are avoidable and calling for action to prevent the millions of needless deaths and injuries. So, on this World Health Day, let us join together to rededicate ourselves to that mission, Mr. Annan said.



**Fast Moving Mini-bus: Several lives have been lost**

# Justice Redhead Rules

*Continued from Page 5*

It is clear from an analysis of these judicial authorities that the guarantees which were executed by the Minister of Finance, on behalf of the Government are binding on the State. However, I agree with Mr. Astaphan that the issue as to whether the guarantees are binding on the Government does not arise in the present case. But I do not agree with the reasons. I say so against the background that the Minister of Finance himself stated at paragraph 22 of his affidavit in reply: I see this is a now moot. “

[42] After reviewing all the authorities the learned trial Judge found: “ I agree entirely with the submissions advanced by Mr. Francois on this aspect of the case and I find that the Minister of Finance acted ultra vires the Act in even seeking a resolution of Parliament to borrow moneys from the Consolidated Fund to refinance such a project.

The Defendant’s contention is that Parliament has the power to authorize such borrowing under Section 39. Section 41 does not impose any Statutory fetter on Parliament’s power under Section 39 to approve a resolution submitted by the Minister of Finance.

**Parliament has the power to approve a resolution submitted to it by a Minister independently of the cause or source of the financial obligation incurred by the Government once it is satisfied that the resolution [is] related to one of the purposes specified under section 39 (1) (a) to (d) of the Act.**

I believe that this issue is somewhat duplicitous bearing in mind the issue which was just raised. As far as I am concerned both the actions of the Minister of Finance and Parliament in respect of refinancing the Government’s obligations in respect of Hyatt Hotel are ultra vires the Act. Therefore Parliament did not have the requisite power to authorize such borrowing under Section 39.

I will end on this note that in matters of delegated legislation such as statutory instruments Parliament is not supreme. The enabling Act is supreme and the Constitution.”

**[43] Unfortunately the above quoted passages reveal a lot of confusion in the learned trial Judge’s mind. My understanding of constitutional law is that the only authority which places a fetter on Parliamentary Legislative Authority is the Constitution. In that any legislation which conflicts with any constitutional provision, the legislation is void to the extent of the conflict and the Constitution prevails. That is why the Constitution is regarded as being supreme. Delegated legislation, in my judgment could never be superior to Parliamentary, Legislative power. So it is not correct to say in matters of delegated legislation Parliament is not supreme. To say that is to elevate delegated legislation to status of the Constitution.**

[44] To take that argument to its logical conclusion it must mean that once Parliament passes delegated legislation, Parliament cannot repeal it or at least can only do so by special procedure. I know of no such protection afforded to delegated legislation. I also have great difficulty in appreciating how and in what sense Parliament could act ultra vires with respect to a previous Act passed by Parliament. As I understand it if Parliament passes legislation which conflicts with a previous Act,

the subsequent Act, may by implication overrule the former Act, if there is a conflict in the provisions of the two Acts.

[45] I now look at the Finance (Administration) Act No. 3 of 1997 Section 38 [1] provides; “The Minister may, by resolution of Parliament, borrow money from a Bank or other financial institution by means of advances to an amount not exceeding on aggregate the sum specified for the purpose in the resolution, to meet current requirements, and such resolution shall not have effect for any period exceeding six months.

(2) where, by resolution in accordance with this section or pursuant to any enactment, power to borrow money by means of advances from a bank is conferred on the Minister that may be exercised by means of a fluctuating draft.

39 (1) The Minister may by resolution of Parliament, borrow from any Bank or other financial institution for any of the following purposes:

- a. The capital or recurrent expenditure of Government;
- b. The purchase of securities issued by any Government or Government Agency;
- c. on-lending to any statutory body or public corporation
- d. making advances or payment to public officers as authorized by any enactment or the staff orders.

39 (2) The Minister may, in writing authorize the Director of Finance or Head of a Foreign Mission to sign on his or her behalf any loan agreement or guarantee make under Section 38 or 39.

**S41 No guarantee involving any financial liability shall be binding upon the Government unless that guarantee is given in accordance with an enactment or unless approved by resolution of Parliament.**

S42(1) There shall be charged upon and paid out of the Consolidated Fund all debt charges for which Government is liable

For the purposes of this section, debt charges include interest, sinking fund charges and other charges related to repayment or amortization of loans and advances or in satisfaction of any obligation arising from a guarantee given in accordance with Section 41”.

[46] Mr. Francois argued that statutory Instrument No. 4 authorising the Minister of Finance to raise the funds to finance the project was ultra vires section 39 of the Finance

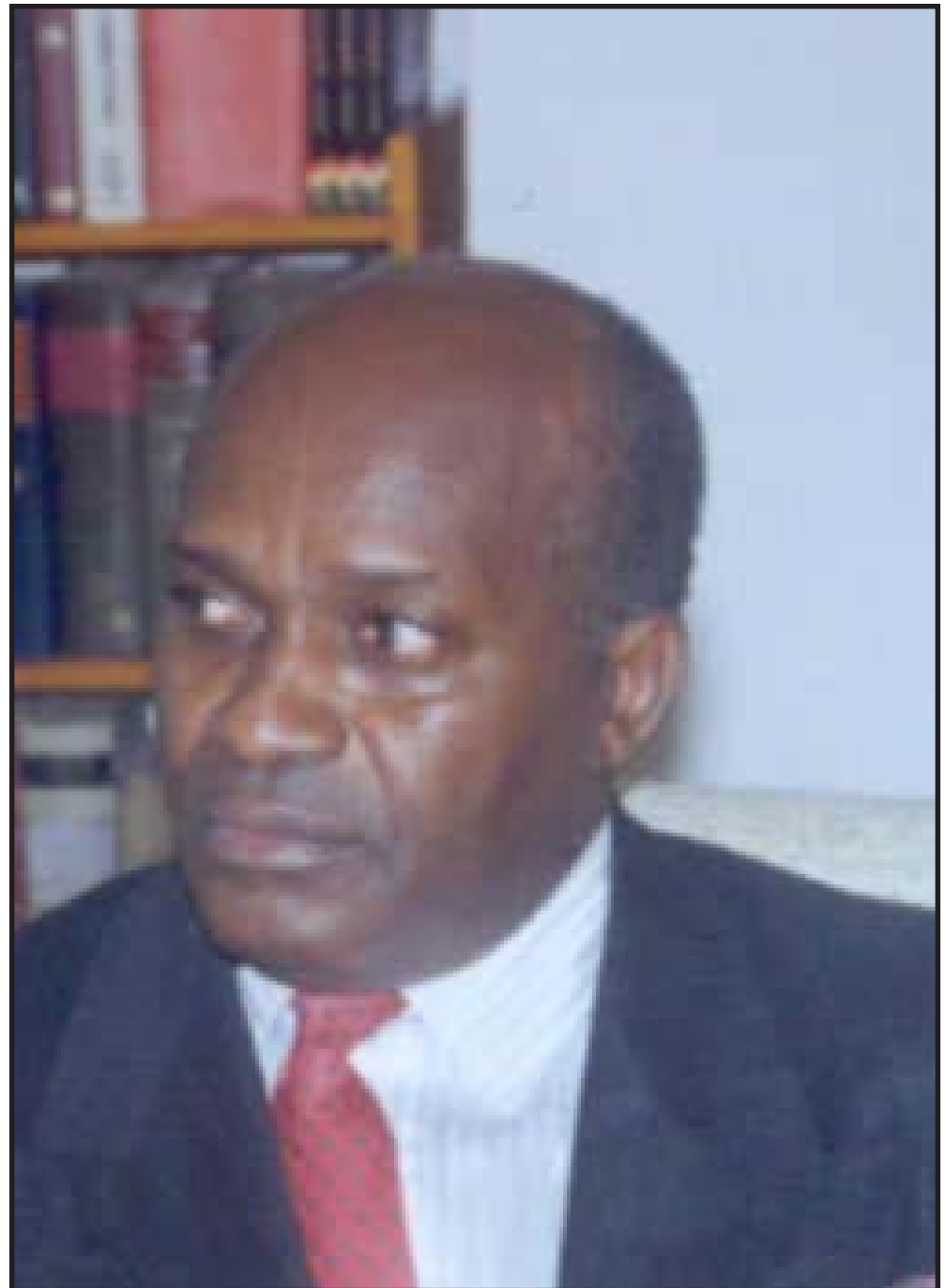
Act. He argued that statutory instruments No. 4 refers to two purposes, “financing Governments capital works programme and refinancing Government’s obligations in respect of the former Hyatt Hotel.”

[47] Mr. Francois contended that the second purpose cannot be capital works because the first would be superfluous, and it refers to a guarantee which is given to a private company by Government.

**[48] I do not understand what Mr. Francois meant when he said that the second purpose cannot be capital works because the first would be superfluous. Both can be independent of each other. The question is whether they are for capital works programme. Counsel’s second point seems to me to be based on the fact that because the guarantee is given to a private company, which undertakes the development, it cannot be classified as capital works programme because it is not undertaken by Government.**

[49] In *Spencer v Attorney General*<sup>5</sup> Dennis Byron C.J. said at page 16: “When one applies the principles to the instant case not only is it abundantly clear that the stated purpose of the development of Tourism in Antigua & Barbuda is a public purpose but the principle has already received Judicial approval.”

*To be continued in the next issue*



**Justice Redhead**

# Criminal Justice System Under Reform in Saint Lucia

A move by the Eastern Caribbean Supreme Court (Court of Appeal) could see better and swifter justice being dished out in St. Lucia and the rest of the region, as the OECS Court of Appeal holds a Public Consultation on the Establishment of a Criminal Division in St. Lucia.

The forum, which will be held on Wednesday, April 7, 2004 at the National Insurance Corporation (NIC) Conference Centre on the 5<sup>th</sup> Floor of the Francis Compton Building, The Waterfront, Castries, is consistent with the wish of Prime Minister, Dr. Kenny Anthony and his counterparts to address problems of the Criminal Justice System in order to make it more efficient and effective.



**Hon. Chief Justice Sir Dennis Byron**

As part of the process of broad judicial reforms underway throughout the region, the Eastern Caribbean Supreme Court has commenced a pilot project leading to the establishment of a Criminal Division here.

The project has been designed with the assistance of Robert Lipscher, a Court Management Consultant from the United States. The pilot project promises to afford a unique and far reaching opportunity to transform the present Criminal Justice System.

At the Consultation, various speakers, including the principal design architect of the project, Mr. Lipscher, and the Hon. Chief Justice, Sir Dennis Byron will outline details of the project. The public will be afforded an opportunity to express their views, particularly on the issue of sentencing and the offering of pleas to accused persons.

In February this year, a two-day workshop was hosted by the Eastern Caribbean Supreme Court (ECSC) in St. Lucia under the theme "Transforming Criminal Justice Administration".

The workshop discussed criminal justice administra-

tion reforms and the steps to be taken to establish a Criminal Division as a pilot project in Saint Lucia. This endeavour is a part of the Eastern Caribbean Supreme Court Justice Reform Project spear-headed by the Honourable Chief Justice Sir Dennis Byron. It is hoped that a successful pilot in St. Lucia will lead to the implementation of similar reform measures in the other states and territories served by the ECSC.

A Criminal Division would bring the Magistrate's Courts and the Criminal Division of the High Court under one administrative umbrella.

Some 30 participants representing various government ministries, the judiciary, magistracy, public and private Bar, police, corrections and probation personnel attended the workshop the goal of which was to seek consensus on the way forward.

At the conclusion of the workshop, there was unanimous support for the following conclusions:

- [1] The system of criminal justice administration is dysfunctional, some say even broken. It is in need of immediate reform.
- [2] A Pilot Project should be implemented in St. Lucia immediately to test the reform measures.
- [3] The stakeholders in the Pilot Project are: The public, accused persons, court staff, defence counsel, prosecutors, judges, police, government, investors, probation, parole, and corrections personnel.
- [4] The common expectations of stakeholders are: Efficiency, effectiveness, transparency and accountability in criminal justice administration; Timeliness i.e. speedy resolution of matters; Cost effectiveness; Fairness; Accurate information; and Competence.
- [5] Reorganization of the criminal courts is desirable, and this should include a merger of the Magistrate's Courts and the High Court.
- [6] The elimination of a magistrate's court level preliminary inquiry would be a positive step.
- [7] Judicial supervision of indictable matters from the time of laying a charge to conclusion will lead to a system in which the Bar and the public have greater confidence; disclosure will be better managed under a system supervised by a judge; there are benefits to be gained from getting rid of informal plea-bargaining and having it institutionalised and supervised by the court in order to protect the rights of all concerned – the public interest and the accused.
- [8] Computerization of court offices (which has already begun) is essential.
- [9] Bottlenecks and delay points must be identified and new systems and procedures designed to overcome them.
- [10] Specific rules of court are required to support the new processes.

- [11] There is an urgent need to establish a Legal Aid system, as legal aid is an important aspect of transforming criminal justice administration.
- [12] Case management is an integral part of the reformed trial process.
- [13] The new administrative structure will include a Trial Court Administrator, Division Managers, Team Leaders as well as managing and presiding judges.
- [14] Any deficiencies that are identified in supporting structures - the police, the prosecution unit, the defence bar, and the corrections and probation systems - must be addressed as part of the reform process.

The public forum on the establishment of the Criminal Division is expected to be very beneficial for the implementation of the project.



## THIS WEEK ON NTN

Highlights: Week of April 9 - April 18, 2004

- ◆ **Songs for Good Friday** – Friday April 9<sup>th</sup> – 8 p.m.
- ◆ **Television Pioneers: Keats Compton** – Saturday, April 10<sup>th</sup> - 6:30 p.m.
- ◆ **Songs for Easter Sunday 8:00 p.m.**
- ◆ **Global Movement for Children** – Mon. April 12<sup>th</sup> – 8:30 p.m.
- ◆ **Governor General H.E. Dame Pearlette Louisy addresses the "St. Lucia Conference Studies"** – Mon April 12<sup>th</sup> – 9 p.m.
- ◆ **Global Movement for Children – Part 2** – Tuesday April 13<sup>th</sup> – 8:30 p.m.
- ◆ **Professor Mansfred Kremser addresses the "St. Lucia Conference Studies"** - Tuesday April 13<sup>th</sup> – 8:30 p.m.
- ◆ **KiddCrew.com** – Thursday April 15<sup>th</sup> – 8 p.m.
- ◆ **St. Lucia Jazz Festival 1995** – Thursday April 15<sup>th</sup> – 9p.m.
- ◆ **The GIS speaks with officials of the St. Joseph's Convent** – Saturday April 17<sup>th</sup> - 8 p.m.
- ◆ **The GIS speaks with Dr. Stephen King on issues pertinent to road safety** – Sunday April 18<sup>th</sup> – 8:30 p.m.

### Remember to tune in for:

- ◆ **GIS News Breaks and Kweyol News** daily from 6:30 pm
- ◆ **Issues & Answers/Mondays** at 8:00pm:
- ◆ **Interview/Tuesdays** at 6:15pm :
- ◆ **Konsit Kweyol/Tuesdays** at 8:00pm (Kweyol Discussion)
- ◆ **Your Right to Know/Thursdays** at 6:15 p.m. (Min. of Ed. Prog).
- ◆ **Take 2/Fridays** at 6:15pm (Week in Review)
- ◆ **Weflechi/Fridays** at 6:40pm - (Week in Review—Kweyol)

For the complete programme guide, log on to our website at [www.stlucia.gov.lc](http://www.stlucia.gov.lc) and then click on the NTN icon.

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