



LAW ASSOCIATION OF TRINIDAD AND TOBAGO

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NEWSLETTER – March 2008 [Vol 22-1]

Martin Daly SC is new Association President

The Association's 22nd Annual General Meeting was convened on 14th March 2008 at the Convocation Hall, Hall of Justice, Port-of-Spain. Close to 370 Attorneys came out to vote at what has been regarded as a keenly contested election. 14 persons vied for the 10 posts of senior ordinary member (9 of whom were incumbent) and 9 persons vied for the 5 posts of junior ordinary member (4 of whom were incumbent).

For the first time in a number of years there were contests for the Presidency and the Vice Presidency. The incumbent President, S Russell Martineau SC opted to step down after 4 terms. Both Martin Daly SC and Ian L Benjamin sought to replace him. Only the post of Treasurer went unopposed.

After the votes were tallied, the following persons were elected to from the 22nd Council of the Law Association: **President – Martin G Daly SC; Vice-President – Hendrickson RM Seunath SC; Treasurer- Gregory MC Armorer; Senior Ordinary Members – Alvin K Fitzpatrick SC, Darryl P Allahar, Andre G des Vignes, Patricia Dindyal, Kemrajh Harrikissoon, Nadia S Kangaloo, Vasheist V Kokaram, Bijili L Lalla, Lesley-Ann C Lucky-Samaroo and Ravi Rajcoomar; Junior Ordinary Members – Sushma Gopeesingh, Gregory Pantin, Brandon VF Primus, Haran Ramkaransingh and Anand R Singh** Additional to these, **S Russell Martineau SC** will continue as a member of Council in the post of *Immediate Past President* pursuant to rule 2 (1)(a) of the First Schedule to the *Legal Profession Act Chap 90:03*. The post of *Honorary Secretary* will be voted on at Council's first meeting. Also at the Annual General Meeting, the report of the then Honorary Secretary Ms Patricia Dindyal was presented, the audited accounts were received and accepted. _____ were appointed as Auditors for the new term.

In this Edition:

- Council delegation met with Hon CJ Archie [see '*Council Activities & Up-coming Events*']
- Amendments to Legal Profession Act before Parliament [see '*Legislation Update*']
- Attorneys not yet entitled to judgment in personal Court matter [see '*Recent Judgments*']
- US Judge rhymes his reason for flipping egg out of Court [see '*On the Lighter side*']



Council Activities & Up-coming events:

- Following upon a decision made at the regular Council meeting of 11th February 2008, the Hon Chief Justice Archie was written to, with respect to a concern about the administration of justice. At His Lordship's request, a delegation from the Council met with him on 22nd February. Members reported that His Lordship was open and accommodating. He outlined a plan of action with respect to the concern and promised to provide feedback. Council was pleased to note this and looks forward to a cordial and productive relationship with His Lordship.

- The 21st Council met on retreat— at member’s own expense—in Tobago on 2nd and 3rd March 2008. Members discussed the Sir Ellis Clarke Draft Constitution and possible amendments to the *Legal Profession Act Chap 90:03*. Sub-Committees were formed and reports are expected in due course;
- The 21st Council held its last regular meeting on 11th March 2008—three days before the AGM. At this meeting it was decided, among other things that a professional education seminar should be held in May 2008. Arrangements are to be finalised;
- A draft of the report of the Building Committee (with respect to No 20, Haynes Street, St Clair) was shown at this meeting. It has still yet to be approved by the Committee and formally tabled;
- The Association’s website [www.lawassociationtt.com] has been revamped. The aim was to make it such that it could be modified by the Secretariat or in-house staff, without recourse to an external consultant. There are now sections for publications, downloads, events and press releases. At present most of these pages are empty, but over the coming months data and information will be added;
- The special 20th Anniversary Edition of ‘The Lawyer’ has been sent to the printers;
- The Disciplinary Committee plans to go on retreat, at member’s own expense. One of the topics to be discussed is a revision of the Code of Ethics. Date and venue are to be finalised.



Legislation Update:

Legal Profession (Amendment) Bill, No 1 of 2008.

Photo: Mace of the Senate. Copied from www.ttparliament.org

The Legal Profession (Amendment) Bill, No 1 of 2008 was introduced into the Senate on 15th January 2008 by the Hon Minister of Legal Affairs. At the same time, the Legal Profession (Amendment # 2) Bill, No 10 of 2007, which the Hon Minister had presented on 17th December 2007, was withdrawn. Both Bills sought to amend the *Legal Profession Act Chap 90:03* [the LPA] so as to allow Trinidad and Tobago to conform to its obligation under the revised Treaty of Chagauramas. In particular, Art 37 of the Treaty mandates member states to abolish discriminatory restrictions on the provisions of services within the Community in respect of Community nationals. The Caribbean Community [CARICOM] now included Suriname and Haiti. Citizens of these countries would be excluded from being admitted to practice law locally by virtue of LPA s. 15(1) which lists as one of the requirements for admission that the person seeking same must be a ‘Commonwealth citizen’. The Bill sought to amend the Act by adding add after those words, the words ‘or a CARICOM national’, and to add a new sub-section to define CARICOM national as meaning “a person who-

- (a) is a member of a CARICOM member state; or
- (b) has a connection with that State of a kind which entitles the person to be regarded as belonging to, or if it be so expressed, as being a native or resident of the State for the purpose of the law thereof relating to immigration.”

Prior to 2007 Bill being laid, the Council of the Law Association, was asked to comment. After deliberation, concern was expressed about the definition of ‘CARICOM national’: It was felt to be too vague, too confusing and too wide, and that ‘our courts will now be put in the invidious position of having to decide if a person belongs to or is a resident of a foreign state in accordance with the immigration laws of that state when our courts would not ordinarily know those laws.’ Thereafter it was drawn to Council’s attention that the definition used was the same as in the Revised Treaty and in various regional statutes. Council’s respectful response was that the fact that an unfortunate and incongruous definition has found its way into that Treaty and in various statutes is no justification for the perpetuation of this incongruity. Despite these objections, the Bill was laid in 2007 and again in 2008. On 4th March 2008 the latter Bill was passed in the Senate. It is now currently before the House of Representatives.



Recent judgments:

Copies of the following judgments are available on the Supreme Court's website
[www.ttlawcourts.org]

Civil—Practice & Procedure—CPR/ Part 13.3 — Setting Aside, Judgment in default

Knolly John v. Mahabir, Kissoondan & Ors [CV 2005-0866, Judgment of Hon Moosai J dated 30th Jan 08]: In July 2007 the Court entered judgment for the claimant against five of the six defendants in default of appearance. In September 2007 one of these Defendants applied to have the judgement against him set aside pursuant to CPR Part 13.3. Under this part he was required to show that he had a realistic prospect of success, and that he acted as soon as reasonably practicable when he found out that judgement had been entered against him. The Court held that he satisfied both requirements. On the first, the Judge noted that he had to show that he had a claim that was better than merely arguable, but did not have to show that his case will probably succeed at trial. The Court had to consider the evidence that could be reasonably expected to be available at trial, but did not have to engage in a microscopic assessment of the evidence or in a mini-trial. The Judge found that the defence advanced was neither fanciful nor merely arguable, and also that the Defendant acted as soon as was reasonably practicable.

Civil—Practice & Procedure—Judgment on admissions, Declaration, Malicious Procurement of a warrant

Claude & Donna Denbow v. The Attorney General, Trevor Paul & Ors [CV 2005-0740, Judgment of Hon Ms Pemberton J dated 28th Jan 08]: Police officers had obtained a warrant to search the claimant's law chambers, but had decided to abandon that exercise. The claimants brought action for among other things, a declaration that said warrant was unconstitutional and illegal and damages for malicious procurement of a warrant. In the Defence it was averred that the officers understood that the warrant was obtained unlawfully because of the failure to properly depose to the facts and matters that gave rise to their reasonable suspicion. Based on this, the claimants applied for judgment on admission. The court refused. Firstly the Judge noted that to get a declaratory judgment based on admissions the claimants would have to show things like no possible defence or no factual disputes, and an injustice if the relief is not granted, which they have not done. Secondly, the Judge noted that the tort of malicious procurement of a warrant, like the tort of malicious prosecution, required proof of both a lack of reasonable and probable cause and malice. These were matters of evidence. To get a judgment by summary means or based on admissions required facts that were clear and obviated the need for a trial. The admission relied on did not amount to this. The Judge dismissed the claimant's application with costs fit for silk, to be assessed.

Criminal—Appeal—Summing-up, Judge's comments, words "inherently improbable", allegation of oppression

Winston Phillips Jr v. The State [Crim Ap 23/2006, Coram: Hamel-Smith JA, John JA and Mendonça JA, judgment handed down by Hon Hamel-Smith JA on 26th Feb 08]: WP appealed against a conviction for receiving a stolen motor car on the grounds that the trial judge's comments in his summation that his evidence was 'inherently improbable' was unbalanced and that in his summation, the trial judge might have unwittingly transferred on him the onus of proving oppression at the time of giving his confession statement. He also appealed against his sentence of 5 years with hard labour on the grounds of severity. On the second ground the Court noted that the accused is not allowed to merely suggest that there was oppression and throw the onus on the prosecution to show that there was none. He must at least provide some evidence for the State to answer, and in this case, the Judge correctly observed that his evidence did not support his allegations. On the first ground, the Court noted that the Judge's duty is to place the Prosecution and Defence's case faithfully and accurately before the jury. This meant that the Judge should fairly state and analyse the cases for both sides. This does not involve covering up the weaknesses, inconsistencies and deficiencies of the defence, but it does not mean that the defence should be belittled or ridiculed or that the Judge should convey that he favours the prosecution's case. In this case the Court felt that the Judge's summing up, taken as a whole, provided the jury with an adequate summary of both the prosecution and defence's cases. Although his comments were at times inappropriate, it did not undermine WP's case or make his trial unfair. As such, no substantial miscarriage of justice occurred. Finally, the Court found the sentence to be reasonable, giving the prevalence of car stealing in society today.



On the lighter side:

Some food for thought: US Federal Magistrate tosses egg case with a poetic scramble.

Charles Jay Wolff v. New Hampshire Department of Corrections [*US District of New Hampshire Civil No 06-cv-321-pb*]: CJW, a 61-year old man of Jewish persuasion, was convicted in 2006 of sexual assault on a 7-year old girl, and is serving a 10 to 20 year sentence. In September 2006 he filed a complaint against prison officials demanding that he be fed a kosher diet, based on his religious beliefs, health and age, and sought US\$10m in damages. His case is scheduled for hearing in June 2008. He placed a hard-boiled egg in a manila envelope and filed it as part of his preliminary injunction request, saying, among other things that he cannot tolerate hard-boiled eggs. Ruling on the acceptability of this evidence, Federal Magistrate James Muirhead, drawing inspiration from "*Green Eggs and Ham*" by children's author Dr Seuss (pseudonym of Theodore Seiss Giesel) handed down the following opinion on 18th September 2007:

He began by indicating his disapproval of the evidence:

*"No fan I am// Of the egg at hand
Just like no ham// On the kosher plan*

*This egg will rot// I hid you not
And stink it can// This egg at hand"*

He then ruled it inadmissible:

*"There will be no eggs at court// To prove a clog in your aort
There will be no eggs accepted// Objections all will be rejected."*

Should the claimant require clarification, the Judge directed that he contact his support staff:

*"From this day forth// This court will ban
Hard-boiled eggs of any brand,// And if you should not understand
The meaning of the ban at hand// Then you should contact either Dan,
The Deputy Clerk, or my clerk Jan"*

He continued with his disapproval of the evidence:

*"I do not like eggs in the file.// I do not like them in any style.
I will not take them fried or boiled. // I will not take them poached or broiled.
I will not take them soft or scrambled// Despite an argument well-rambled."*

Finally, the Judge then ordered the egg destroyed:

*"No fan I am// Of the egg at hand.
Destroy that egg! //Today! Today! Today I say!
Without delay!*

His unorthodox ruling has drawn mixed reviews. Most persons had little sympathy for the prisoner, especially given the nature of his crime. Some felt the ruling refreshing and funny. Others felt that it glossed over what may be the prisoner's genuine complaint that his religious rights and dietary obligations were being infringed.

What do you think? Please send us your thoughts via e-mail to lawassoc@tstt.net.tt; we will consider it for publication in a future edition. As well, please feel free to send us your comments, observations or suggestions. Please put 'newsletter' in the caption so that the Secretariat would forward your e-mail accordingly.

Newsletter Sub-Committee: This Newsletter was published through the kind efforts of Ms Sushma Gopeesingh, Mr Brandon Primus and Mr Haran Ramkaransingh.