NEW CITY CHAMBERS

CHAMBER READING

ISSUE 2 • DECEMBER 2018

NEW CITY CHAMBERS NEWSLETTER

IN THIS ISSUE

THE SECOND EDITION

BY PETRA RICHARDS

New City Chambers is a boutique law chambers located in downtown Port-of-Spain, minutes walk away from the courts.

Welcome to the second edition of the Chamber's Newsletter, Chamber Reading.

NEW CITY CHAMBERS

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ISSUE 2 • DECEMBER 2018

We aim to provide an easy to read yet informative short-newsletter which broadly covers some of the areas we have been active in, in recent times.

Chambers was formed in 2017 to provide a client focused, research driven approach to the practice of law. We have grown from strength to strength serving a broad range of clientele, which includes other professional service providers to lay persons in a variety of contentious and non-contentious areas.

With the recent addition of Ms. Crystal Paul, who is a winner of the Anand Ramlogan SC Prize and a top graduate of Hugh Wooding Law School, and Guyanese-based attorney Glendon Greenidge, we expand our chambers.

We hope you enjoy our second edition of Chamber Reading.

New City Chambers Team

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ILLEGAL IMMIGRANTS ARE NOT CRIMINALS

BY MATTHEW GAYLE

Described as a “formidable advocate”, Matthew’s work encompasses a variety of civil litigation and some criminal defence.

While Matthew accepts work in a broad range of areas, many of Matthew’s cases have a constitutional and/or administrative law dimension. He has appeared as counsel in a number of recent important cases including **Isioma Loveth Eze v The AG**

Markarchbald v the Trinidad and Tobago Defence Force

Jimdar Caterers v The BIR

Climate Control Limited v CG Construction Limited.

On the 29th August 2018, Madame Justice Donaldson-Honeywell handed down one of the most re-assuring and progressive local human rights / immigration rulings of the year Ezenwa –and- The Chief Immigration Officer Cv2018-027023x. In that decision a Nigerian national, Chukwudum Kingsley Ezenwa, had been detained in the Immigration Detention Centre (the “Detention Centre”) for almost one thousand (1,000) days.

Following an order of deportation in 2016, he then languished at the Detention Centre until July 2018 when an application was made to the High Court for his release. It is unclear under what moral or legal authority the State used to justify this inexplicable and inhumane detention.

Indeed, the conditions at the Detention Centre were no better than a local prison. It is unthinkable that someone would be detained under such conditions with no meaningful idea as to their release or status.

In her decision, Justice Donaldson-Honeywell expressed deep concern about the frankly xenophobic nature of these indefinite detentions. According to her:

"Another disturbing aspect of this rationale expressed by the [Chief Immigration Officer] is that it appears to betray a discriminatory bias for treatment of persons of the African Continent being kept in detention…"

The judge's analysis exposed how weak the justification for the continued and indefinite detention really was. The question is often raised as to why the Government of Trinidad and Tobago should pay for the repatriation of so-called "illegals" who chose to come here. But as the Judge observed:

"[Mr. Ezenwa's] ticket would cost $34,000.00… for a period of 1,000.00 days in detention … the cost [of detention] would be in the vicinity of $350,000.00 and continuing…"

The Government of Trinidad and Tobago pays that. At some point when the period of detention comes to an end, the Government would likely have to pay the cost of the flight too.

Another reassuring aspect of the judgment, which hopefully will encourage change in the attitude and treatment of so-called illegals, was the Court's cognizance of the prison-like conditions he had to endure. As Justice Donaldson-Honeywell noted:

"The conditions in which the detained person was being kept – That there was no dispute regarding poor ventilation, structural defects and leaking roof over periods of time, that there were no proper reading materials, no effective communication afforded to the detainees and no legislated rules governing how the detainees are treated, their entitlement etc."

The judge was perhaps moved to consider those factors following her commendable site visit. Indeed, at the very least, the Court showed Mr. Ezenwa the basic courtesy and 'common humanity' that he had been denied for nearly one thousand (1,000) days.

On the 29th November 2018, Mr. Justice Rahim handed down a similarly enlightened decision. In Gerard Scott -and- The Chief Immigration Officer CV2016-04122, the judge treated the Chief Immigration Officer's contention that Mr. Scott wanted to be detained with the contempt it deserved:

"… to find that the Claimant did not really want to be released or that he must have been hiding from someone… would be an exercise in speculation on the part of the court not to mention that in the absence of any evidence in support the contention seems downright implausible and borders on the ridiculous."

Mr. Scott, who maintains that he is a Trinidad and Tobago citizen, was arrested and was held as a suspected "illegal" for six (6) months, before being released by officials. He had served a term in prison previously and while incarcerated had given his place of birth as Dominica. On his release from prison, immigration officials arrested him and kept him until his national ID was eventually uncovered.

In Scott, the judge also considered the prison-like conditions of his detention when considering the level of award to make for false imprisonment:

"He was… taken to the Detention Centre where he remained until December 21, 2015. During the period of his detention, he was given an orange uniform to wear and had restricted privileges such as one hour airing per day and one phone call per week. He slept in a dormitory with thirty..

other persons. He gave evidence that during his period of detention, there were numerous fights at the Detention Centre, a fire and at least one inmate was shot. He further gave evidence that Detention Centre was locked down for over a week and he was given food through a hole in the cell door which was a very-dehumanizing experience for him."

These cases and others shed light on Trinidad and Tobago's appalling treatment of so-called illegals. The Courts have rightly considered the inhumane conditions of the respective claimants' detentions and saw fit to highlight the sheer illegality of those conditions in no uncertain terms.

In the end, so-called illegals do not come to Trinidad and Tobago to commit crime. They come to improve their basic standard of living. The Government of Trinidad and Tobago can, and must, do better to ensure that such persons are treated with a common humanity including the minimization of unnecessary periods of detention and improving the conditions where detention is, in fact, necessary. This "othering" and deplorable treatment must stop.

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THE SUPREME COURT OF CANADA DECISION IN VICE MEDIA: LESSONS FOR TRINIDAD & TOBAGO

BY DR. EMIR CROWNE

One of the region's leading experts in Intellectual Property and Sports Law, Dr. Crowne is a Tenant at New City Chambers in Port-of-Spain, and the Founder of Crowne Sports Law, an international sports litigation practice.

He is a Barrister, Attorney-at-Law and Intellectual Property Agent with a wide-ranging and extensive practice in the following areas: Administrative Law, Complex Litigation & Dispute Resolution, Constitutional Law, Contracts (Drafting & Negotiation), Corporate/Commercial Law, Human Rights, Intellectual Property, International Trust Law, Labour Law (Union Side), Professional Discipline, Sports & Entertainment Law, Telecommunications Law and Technology Law.

On November 30th, 2018 the Supreme Court of Canada released their decision in R v Vice Media Canada Inc., 2018 SCC 53 ("Vice Media"). The case examined the constitutional tension between freedom of the press and police search warrants and production orders. Given the constitutional

similarities between Canada and Trinidad & Tobago (at least with respect to entrenched rights), the decision has important implications for the local press and police alike. In this article, I highlight some of those implications.

In Vice Media, the media house in question communicated via Kik with a suspected Islamic State of Iraq and Syria ("ISIS") sympathizer and supporter, Mr. Farah Mohamed Shirdon. Based on those communications Vice Media ran several stories about Mr. Shirdon and his connection to ISIS. In turn, the Royal Canadian Mounted Police obtained an ex parte production order for the screenshots of Mr. Shirdon's communications with the journalist from Vice Media.

The Supreme Court issued two sets of concurring reasons which upheld the production order. The majority reasons (five judges) were penned by Justice Moldaver, while the concurring minority reasons (4 judges) were penned by Justice Abella. I shall focus on Justice Abella's reasons because they are particularly poignant and relevant to our local landscape.

Canada's Charter of Rights of Freedoms (the "Canadian Charter") like the Constitution of Trinidad & Tobago ("Trinidad's Constitution") enshrines certain fundamental rights. Only in very limited circumstances can these rights be limited or infringed.

Sub-section 2 (b) of the Canadian Charter protects "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication". Whereas Trinidad's Constitution is a bit more direct: it specifically enumerates "freedom of the press" as an independently enshrined right (sub-section 4 (k)).

The majority of the Supreme Court in Vice Media declined "to recognize freedom of the press as enjoying distinct and independent constitutional protection under s. 2 (b)" whereas the minority concurring opinion saw "no reason to continue to avoid giving distinct constitutional content to the words "freedom of the press" in s. 2 (b). The words are clear, the concerns are real, and the issue is ripe." (ibid., paras. 105 and 109). This is why the minority concurring opinion is relevant to us. Unlike in Canada where freedom of the press is subsumed within a larger constitutional right concerning thoughts and belief, "freedom of the press" is a distinct constitutional right in Trinidad & Tobago.

Justice Abella went to great lengths to emphasize the importance of press freedom in her concurring reasons. Her words are worth repeating: *"A strong, independent and responsible press ensures that the public's opinions about its democratic choices are based on accurate and reliable information.* ***This is not a democratic luxury - there can be no democracy without it…*** *Strong constitutional safeguards against state intrusion are a necessary precondition for the press to perform its essential democratic role effectively. As these reasons seek to demonstrate, s. 2 (b) contains a distinct constitutional press right which protects the press' core expressive functions - its right to gather and disseminate information for the public benefit* ***without undue interference****." (ibid., paras. 110 and 112) (emphasis added)*

This is why seemingly innocuous pieces of legislation like cybercrime, data protection and whistleblowing must be scrutinized. The erosion of press freedom is not only unconstitutional, but an attack on democracy itself.

Indeed, as Justice Abella further put it: "A vigorous, rigorous, and independent press holds people and institutions to account, uncovers the truth, and informs the public. **It provides the public with the information it needs to engage in informed debate. In other words, it is the public's "right to know" that explains and animates the distinct constitutional protection for freedom of the press…** The right to convey information to the public is fragile unless the press is free to pursue leads, communicate with sources, and assess the information acquired. Newsgathering activities form an "integral part of freedom of the press" because they are an indispensable part of the right and the ability to tell the public the facts and ideas that make up the story… **Without protection from undue interference in newsgathering, public access to the fruits of the media's work is diminished, as is the public's ability to understand, debate and form opinions on the issues of the day, thereby impairing its ability to participate meaningfully in the democratic process."** (ibid., paras. 125 and 127) (emphasis added) However, the State has a countervailing interest in investigating crime. The importance of which cannot be diminished. In examining whether a production order or search warrant should be issued for media documents, communications and/or equipment Justice Abella indicated that the Court must enter a "proportionality inquiry". Namely, whether the "salutary effects of the production order outweigh the deleterious effects." (ibid., para. 142)

Interestingly, the minority of the Court held that two constitutional rights were engaged, the freedom of the press provision, alongside section 8 of the Canadian Charter – which entrenches the "right to be secure against unreasonable search or seizure" – but which the Court considered to be the "privacy rights" of the press (ibid., paras. 112, 139, 141 and 145). A similar such privacy right is also entrenched in Trinidad's Constitution and covers the "right of the individual to respect for his private and family life" (sub-section 4 (c)).

According to Justice Abella the fact that two entrenched rights are triggered plays heavily into the proportionality analysis in deciding whether or not to issue the production order or search warrant. According to her: *"A harmonized approach means that among the considerations authorizing judges would weigh are: the media's reasonable expectation of privacy; whether there is a need to target the press at all,* ***since "[t]he media should be the last rather than the first place that authorities look for evidence";*** *whether the evidence is available from any other source, and if so, whether reasonable steps were taken to obtain it; and whether the proposed order is narrowly tailored to interfere with the media's rights no more than necessary…*
… an obvious collateral impact on the press of being required to comply with a production order is a chilling effect not only on the particular press being targeted, but on the press generally. *The extent of the chill may vary from case to case, but its existence can hardly be questioned." (ibid., paras. 144 and 147) (internal citations omitted) (emphasis added).*

Justice Abella also took issue with the ex parte nature of production orders and search warrants involving the media (an ex parte proceeding is one where the responding party has neither been notified nor is present; and is usually justified on the basis of urgency, or where destruction or removal of property or monies are likely).

Although a majority of the Court saw nothing intrinsically wrong with ex parte production orders involving the media, that very majority also did not view the case as triggering two distinct constitutional rights. Justice Abella, on the other hand, noted that there:

"are strong rationales for providing notice to the press in cases like this. If the authorizing judge lacks evidence and submissions from the party exclusively in possession of the information needed for the balancing - the innocent media third party whose [constitutionally protected] rights are engaged - then there is nothing to balance. And the authorizing judge would have no way of knowing some highly relevant facts, such as the nature of the relationship between a source and a journalist." (ibid., para. 153)

Given the fact that Trinidad's Constitution specifically enumerates freedom of the press as a distinct, entrenched right, the issuance of a search warrant or production order against the local media would indeed trigger two constitutionally protected rights in Trinidad & Tobago (press freedom and privacy). Justice Abella's reasoning should, therefore, have greater sway among the local judiciary in any such analysis in my respectful view.

In the end, both concurring opinions of the Court held the production order to be constitutionally valid. According to the Court, Mr. Shirdon was never a confidential source. In fact, he wanted his identity to be known. As Justice Abella put it: *"It bears repeating that Mr. Shirdon was not a confidential source, or even one who so much as intimated that he wished Mr. Makuch to conceal his identity. On the contrary, he went to Mr. Makuch with the express purpose of broadcasting his extremist views to the public. Crucially, Mr. Makuch's lengthy, detailed affidavit contains no suggestion whatsoever that anything Mr. Shirdon said was intended or understood to be "off the record", and Vice Media has never argued otherwise." (ibid., para. 165)*

That a free and independent media underpins our democracy is often lost on readers as mere hyperbole. But it is the truth. A vibrant and independent media is vital to our ability to make informed decisions, especially in a society marred by corruption, nepotism and indifference. All too often, however, personal dislike of certain journalists is extrapolated to cover the entire profession. This must stop. No more than a surgeon who negligently kills a patient represents their entire profession, so too the work of journalists (as a whole) must not be characterized by a few missteps in a sea of otherwise responsible reporting. Reporting that is essential to our democracy and collective good governance.

Dr. Emir Crowne*
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** The views expressed in this article are personal and do not necessarily represent those of New City Chambers, its personnel, its clients, or others.*

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CIVILIAN OVERSIGHT OF LAW ENFORCEMENT

BY CRYSTAL PAUL

Crystal Paul is a recent graduate of Hugh Wooding Law School and winner of the 2018 Anand Ramlogan SC Prize for best performance by a student from Trinidad and Tobago.

She has appeared in a variety of Courts in Trinidad, from the Court of Appeal through to sports tribunals. The current holder of a Bachelor of Laws Degree (Hons) from the University of the West Indies, Crystal also graduated on the Principal's Roll of Honour from the Hugh Wooding Law School.

With the drastic increase in the crime rate of Trinidad and Tobago, Commissioner of Police, Gary Griffith, has seen it fit to declare "war" on the criminals. While we all can agree that our country needs a more robust justice system to adequately deal with crime, there is a legitimate fear that the police officers will abuse their powers in the execution of their duties.

Many citizens have expressed a lack of confidence in the police force as there are a number of allegations regarding the corruption in the police service as well as countless stories regarding police officers' involvement in gangs and other unlawful activities. Additionally, videos posted on social media reveal police officers unlawfully arresting individuals, using obscene language or using unreasonable force in unwarranted circumstances.

From some of the comments posted under these videos, it is obvious that there are persons who approve and seek to justify the unlawful actions of police on the basis that it is needed to invoke fear in criminals. However, despite our frustration with the rogue elements in our country, we must recognize that the proper administration of justice demands that the rights of every citizen be preserved. Thus, police officers must exercise their powers within the parameters of the law regardless of whether or not they perceive an individual to be a "troublemaker".

Police officers must be held accountable for their actions. They must follow the proper procedure, conduct thorough investigations into the criminal activities of the suspect and obtain the necessary evidence to aid in his/her prosecution. Police officers should never be the judge, jury and executioner in any matter.

It is for this reason that the Police Complaints Authority ("PCA") was established by virtue of the Police Complaints Authority Act, Chapter 15:05 to independently investigate complaints against police officers involved in criminal offences, police corruption and serious police misconduct. It is noteworthy that police officers are not the ones determining complaints made against their own. Therefore, the probability of victimization of the complainant and/or the complaint remaining unresolved is reduced.

That is not to say that the body is not without its challenges. In the Police Complaints Authority's SEVENTH Annual Report, Mr. David West, Director of Police Complaints Authority, highlighted the need for legislative amendments in relation to the Act, as well as the cooperation of both the police associations and citizens to efficiently and effectively perform their functions.

Nevertheless, the PCA must be commended for its efforts to engage and educate the public in understanding the importance of civilian oversight of law enforcement. Currently, the PCA has a Facebook page which includes a weekly "Know Your Rights" segment. Additionally, there is a PCA mobile app which allows citizens to upload photos, videos and audio directly to the PCA from their phone, submit reports, offer feedback to the PCA and receive the latest updates, news and releases in real time.

It cannot be emphasized enough that maintaining the integrity of the Police Service is a matter of public interest. Therefore, it is our duty to ensure that justice is not only done but seen to be done and it must begin with the persons mandated to protect and serve us!

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LETTER-TO-THE-EDITOR:

BUT DID YOU ADD SALT?

BY ANONYMOUS IN SOUTH

Have you ever tried to make a 5-Star main course meal or even a simple fruit chow without it? Ask that person that gave you "good food." They'll tell you that the right amount of salt takes food from basic to Michelin. Law is the salt in the food, that is our lives.

Imagine you are pursuing a degree in Music, Economics or even Environmental Science and Sustainable Technology without even a basic understanding of the legal aspects associated with these respective fields.

After you have spent at least three years falling ‘head over heels’ for the job of your choosing that a small infraction can cost you your dream. It would be hurtful, and you may even ask yourself, “Why didn’t they advised me on this while I was in the process of getting my degree?”

In my view everyone should get a taste of Law, and like food at a potluck there is a lot to go around. Exposure should be granted even in the uncommon types as well not just Criminal or Civil. They can be seen as the Turkey of Thanksgiving and the Ham of Christmas, everyone knows about it and expects to partake.

We should impart knowledge on Admiralty Law, as we are a sister isle and have Maritime affairs; Entertainment Law and Intellectual Property Law, and their relations; Health Law, furthering obligations and representation for first responders; Tax Law, and all its dynamics associated; and with the on goings around the world, including our little sister isle, Immigration Law should be on the discussion table.

Gone should be the days where there is a strict line separating the knowledge from the impressionable. As a result of this line some, rich or poor, young or old, are mistreated and allow themselves to be mistreated by allowing things to pass because they are unaware of the availability of resources and information to them.

LETTER-TO-THE-EDITOR:

ISSUES IN THE LEGAL SYSTEM IN THE CARIBBEAN

BY DWAYNE JACOB

The republic of Trinidad and Tobago formerly a British Colony is a now an Independent member of the British Common Wealth. The Caribbean twin island nation was originally discovered by Christopher Columbus in 1498 and occupied briefly by the Spanish until it was captured in 1798 by the British who brought African slaves to Trinidad and Tobago under the crown colony system from 1831 to 1925. Under this system advised by a resident legislative council rule the island for the British government. By 1956 Trinidad and Tobago had established a form of self-government under colonial rule, but it was not until 1976 Trinidad and Tobago became a self governing republic.

Law has become a popular profession in Trinidad and Tobago. There was a point in time to study

law was quite difficult because the university fees were only accessible by a certain segment of society. In recent times things have changed in the legal world, law has become easily accessible due to the fact that institutions have made a decision to educate the public in legal education with a cost attached to it but in many ways payment plans can be made arrange so individuals wouldn't feel the burden. The Process to become an attorney is to complete the LLB degree then move forward to attain the practicing certificate from Hugh Wooding Law school, the Norman Manley Law School and the Eugene Dupuch Law School, outside students, as stipulated by the Council of Legal Education, are expected to sit a Bar entrance examination. The Treaty of Chaguaramas, established that the vocational Law Schools provides for automatic admission of students graduating from the Faculty of Law at the University of the West Indies (UWI). The candidates pay US$150 to the Council to sit the exam and are tested in five subject areas of law or you can go abroad and complete the LLM or LPC and return to the Trinidad and Tobago where you can work (Internship) under an attorney who has been practicing law for at least 10 years.

The issue is not studying law with various institutions but rather obtaining the practicing certificate which allows you practice Law as an attorney. In Trinidad and Tobago and the 16 other English speaking countries from CARICOM you have to be attending the University of the West Indies in order to get accepted into the Hugh Wooding Law School. If you are studying law with an institution or privately the chances are very slim for you to have access into law school, you will have to undergo an examination competing with a fair estimate of 200 to 400 students for limited space. In recent times Despite the fact that over 400 non-UWI students sat the entrance examination for a chance to be enrolled at the Norman Manley Law School, the institution only admitted seven for the 2015/2016 academic year. With the emergence of different tertiary institutions offering law at the undergraduate level and the recent expansion of the law faculty at the University of the West Indies (UWI), the competition to be offered a space at the prestigious institution is fierce. Non-UWI law students from across the Caribbean all have to compete for entry into the Norman Mandy Law School, to complete requirements to receive their legal education certificate. "We only have space for seven," principal of the Norman Mandy Law school, Carol Aina in a press release.

Law in the Caribbean has been perceived to be open to all but to what extent?
Article Three of the treaty outlines that every person with a Bachelor of Laws (LLB) degree from UWI will be eligible for admission to the three law schools in the region. It states that every person with a degree from another university or institution recognized by the Council as being equivalent to the University of the West Indies LLB degree will, subject to the availability of places and to such conditions (if any) as the Council may require, be eligible for admission to the law schools. Do you think this is acceptable in the 21st Century? That the governing bodies of these institution giving the impression that law is open to all but in reality they have only made one part of it accessible, deceiving the majority.

What I have discovered also because law at one point in time was mainly studied by the high class society manly high ranking individuals would like to keep the profession in a small setting. For instance lets take the Norman Manley Law School for example who denied over 393 students access into the law school and that's just in Jamaica so you can imagine 16 English speaking countries who have students trying to get access to three law schools in the Caribbean, not only that but let's just say, hypothetically speaking if students were able to have access to these

vocational law schools they won't have access to part time studies but only full time, this is quite difficult for students who are independent and rely on their jobs to support them financially and academically.

There is a false perception on studying law with the emergence of different tertiary institutions offering law at the undergraduate level and the recent expansion of the law faculty at the University of the West Indies (UWI), the competition to be offered a space at the prestigious institution is fierce. Norman Mandy which is one of three law schools within the region trains prospective lawyers to practice within the profession in the Commonwealth Caribbean territories When asked about the lack of space despite the recent construction of a new NMLS building on the UWI Mona campus, the principal maintained that there was no space to accommodate additional students.

This Situation in the legal profession has to change, you have individuals who have their LLB but don't have access to get the practicing certificate or don't have the financial support to go abroad as well and most of them settle for working in Legal departments in companies assisting attorneys, being Barrister's clerk, a chartered legal executive, secretary, a Detective and or Paralegal just to name a few. All those careers but becoming a practicing attorney which is totally unfair to the common man.

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CHANGES IN CHAMBERS

• Crystal Paul and Glendon Greenidge join New City Chambers

• Sheriza Khan leaves Chambers

CHAMBERS ROUND-UP

• Matthew Gayle and Dr. Emir Crowne appear in the CCJ, **READ MORE HERE**

• Alexandre Bien-Aime is named YBM Lawyer of the Year – Criminal and Penal Law by the Jeune Barreau de Montreal, **READ MORE HERE**

• Dr. Emir Crowne launches Sports Law Clinic, **READ MORE HERE**

• Crystal Paul is called to the bar, **READ MORE HERE**

• Matthew Gayle successfully blocks deportation order on Jamaican client, **READ MORE HERE**

• Dr. Emir Crowne and the Media Association of Trinidad and Tobago meet with Police Commissioner Gary Griffith, **READ MORE HERE**