SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

Claim No.SLUHCV2003/0499
consolidated with
Claim No. SLUHCV2003/0537

MARTINUS FRANCOIS

Claimant

-and-

THE ATTORNEY GENERAL
[sued herein by virtue of Section 13(2) of the Crown Proceedings Ordinance Chapter 13 of the Revised Laws of Saint Lucia 1957]

Defendant

Appearances:

Mr. Martinus Francois in person. With him is Dr. Nicholas Frederick.
Mr. Anthony Astaphan S.C. for the Defendant. With him are Ms. Jan Drysdale, Mr. Dwight Lay and Mr. Rene Williams.

2003: October 17, 20
November 28

CONSOLIDATED CLAIM UNDER THE CONSTITUTION AND PART 56.7 FOR DECLARATION THAT STATUTORY INSTRUMENT WAS ILLEGAL AND CONTRARY TO LAW...FINANCE (ADMINISTRATION) ACT 1997...WHETHER GOVERNMENT GAVE A 'GUARANTEE' WITHIN THE MEANING OF SECTION 41 OF THE ACT...WHETHER WHAT GOVERNMENT GAVE WAS 'CONTINGENT' GUARANTEE...WHAT IS A GUARNTEE...WHETHER PARLIAMENTARY APPROVAL WAS OBTAINED...WHETHER GUARANTEES ARE BINDING ON THE GOVERNMENT..SECTION 39 AND ITS EFFECTS ON THE CONSOLIDATED FUND...SECTION 78 OF THE CONSTITUTION...WHETHER GOVERNMENT COULD HAVE ENTERED INTO GUARNATEES WITHIN THE MEANING OF SECTIONS 39 AND 41 OF THE ACT...WHETHER THE FILING OF THREE CLAIMS ON THE SAME ISSUE IS AN ABUSE OF THE PROCESS... LOCUS STANDI.

JUDGMENT

1. HARIPRASHAD-CHARLES J: Mr. Martinus Francois, an Attorney-at-Law seeks the assistance of the court in his capacity as a citizen, a taxpayer and an elector. He brought this consolidated claim against the Attorney General alleging that there was a procedural impropriety in the Parliament of Saint Lucia authorizing the Minister of Finance to enter into a Fixed Rate Bond facility with the Royal Bank of Trinidad & Tobago Merchant Bank Ltd (RBTT) for the purpose of refinancing Government's obligations in respect of the former Hyatt Hotel. He also alleges that Statutory Instrument No. 4 of 2003 dated 6th 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.

Background Facts

2. In order to render the judgment intelligible and clinical, I think that it is necessary to rehearse briefly some of the core facts.

3. The genesis of this claim goes back to 1997 when Rochamel Construction Company Limited (Rochamel Construction), a Company duly incorporated under the Companies Act, commenced the construction of the former Hyatt Hotel (the Hotel). It appears that discussions for the construction of the Hotel started before the St. Lucia Labour Party Government under the Honourable Dr. Kenny D. Anthony was voted into power. On 20th March 1997, the former Cabinet under Dr. Vaughn Lewis approved a number of concessions on behalf of Rochamel Development Company Limited (Rochamel Development). On 12th June 1997, the Cabinet of St. Lucia under Dr. Anthony accepted that the construction of the Resort Complex was in St. Lucia's best interest. So, the Cabinet endorsed the concessions granted on 20th March 1997 by the previous Cabinet.

4. However, a number of new requests were made by Rochamel Development. It informed the Government that RBTT required a cost over-run and debt service guarantee before it would agree to finance the construction of the Hotel. As a result, Cabinet appointed an

Inter Ministerial Sub-Committee (the Sub Committee) to hold discussions with Rochamel Development on the new request and to make representations to Cabinet. The Sub-Committee held discussions with the representatives of Rochamel Development and it was agreed that the Government should assist and provide to the Company cost over run and debt service guarantees up to the sum of US$ 8.5 million and US$ 4.0 million respectively.

5. So, on 17th December 1997, the Government of St. Lucia represented by Dr. Kenny Anthony, Prime Minister and Minister of Finance (the Government) entered into the Development and Concession Agreement with Rochamel Development represented by Gavin French, Pigeon Point Hotel represented by Gavin French, Hyatt Hotels of St. Lucia represented by Scott D. Miller and Rochamel Construction represented by Gavin French whereby the Government undertook to enter into a Guarantee and Indemnity Agreement with the RBTT on the following terms and conditions:

   (A) <u>Debt Service Guarantee</u>

   The Debt Service Guarantee by Government is to be capped at a maximum liability of US$ 4.0 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 Government would be issued redeemable preference shares in the Hotel Company, to the appropriate value, by way of security.

   (B) <u>Cost Over-Run Guarantee</u>

   (i) Government agrees to provide a Cost Over-Run Guarantee capped at US$ 8.75 million during the construction phase of the Hotel Resort.

   (ii) The Developer confirms that this would be a last resort guarantee payable only after the substantial contingency provided by The Developer is exhausted.

(iii) Should this guarantee be called upon the amount of Government's contribution will be converted into equity in The Hotel Company by the issue to it of redeemable Preference Shares to the appropriate value by way of security.

6. On 13th February 1998 and 13th September 1999, the Government represented by Dr. Anthony executed Deeds of Guarantee and Indemnity with RBTT. And on 18th February 2000 and 30th June 2000, the Government signed two Put Option Agreements with RBTT (collectively marked Exhibit KDA 1).

7. Rochamel Construction began the construction of the Hyatt Hotel on or about January 1998. Unfortunately, the construction and subsequent operation of the Hotel encountered a number of difficulties which led to it experiencing serious financial problems. During the construction phase, there was a strike. Considerable damage was caused to the property and equipment by fire and other acts. These events caused substantial disruption to the construction of the Hotel and exacerbated Rochamel's financial position.

8. Sometime in or about 2000, the Government was informed by RBTT that the Hotel needed additional capital. The investors in the Hotel had already invested approximately US$ 37.0 million and had no more money to invest in it. The Hyatt Group had already invested US$16.0 million and they were not prepared to invest any more. So the Government agreed that RBTT should activate the promise to provide the debt service guarantee in terms of the Put Option Agreement which was signed on 30th June 2000. It was also agreed that the amounts which may become due under the debt service guarantee should be serviced initially by the hotel occupancy tax generated by the Hotel. This idea was to enable RBTT to make funds available to the Company for it to continue to operate the hotel.

9. The Hotel became operational under the Hyatt Hotels of Saint Lucia Limited in 2000 and by 2001, it was already running into financial difficulties. Then the tragic events of September 11, 2001 occurred with the terrorist attack on the World Trade Centre in New

York City. These events caused major disruption to the world of travel and tourism. September 11 caused a dramatic decline in tourist arrivals to St. Lucia and the already financially strapped Hotel was heading to failure. The Hotel's Secured Creditor, RBTT put the Hotel up for liquidation and sale. The Hotel was put into receivership on 12th December 2001 and was eventually sold to Sandals on 26th March 2003. The Hotel is now named Sandals Grande and is fully operational. No doubt, it employs many St. Lucians and provides significant revenue to the island.

10. On 17th December 2002, the Honourable Prime Minister and Minister of Finance submitted a resolution to the House of Assembly for its approval. The resolution, among other things, authorizes the Minister of Finance to enter into a Fixed Rate Bond facility of US$41.0 million with RBTT for the purposes of financing Government's Capital Works Programme and for refinancing Government's obligations in respect of the former Hyatt Hotel.

11. After debate in the House of Assembly, the resolution was unanimously approved by the House. Three days later, it was unanimously approved by the Senate. The members of Her Majesty's Opposition supported the resolution in the House and in the Senate of St. Lucia (Exhibit KDA2).

12. No money was raised or paid by the Government to RBTT for or in respect of the former Hyatt Hotel prior to the approval of the said resolution. Once the resolution was approved by the Parliament, the Government entered into a fully written Fixed Rate Bond facility of US$41.0 million with RBTT for the purpose of financing a number of different capital projects and the Government's obligations in respect of the former Hyatt Hotel. No mention was made of the specific sum which represents the amount of the Government's financial obligations to RBTT for the Hyatt Hotel Project because as the Minister of Finance alleges there existed a difference of opinion between the Government and RBTT over the interest charges payable by the Government and secondly, it was agreed that the proceeds from the hotel accommodation tax would be used to pay off the debt of US$4.0 million under the debt service guarantee. Therefore, unless those two matters were resolved, it was not possible to identify the specific and quantified sum actually due to RBTT.

13. Mr. Francois challenged the resolution contained in Statutory Instrument No. 4 of 2003. He alleged that the said Statutory Instrument is void and/or illegal and/or contrary to law insofar as it purports to authorize the Minister of Finance to enter into a Fixed Rate Bond facility with RBTT for the purpose of refinancing Government's obligations in respect of the former Hyatt Hotel in that the said obligations are in respect of a guarantee given by the Government to the said RBTT within the meaning of Section 41 of the Act and the said guarantee was not given in accordance with an enactment or approved by a resolution of Parliament as required by Section 41 and as such the said guarantee is not binding on the Government within the meaning of Section 41 and/ or the Minister of Finance had no power under Section 39 of the said Act to borrow money in order to refinance the Government's said obligations in respect of the former Hyatt Hotel and/or Parliament had no power to authorize such borrowing under Section 39 when it passed the resolution contained in Statutory Instrument No. 4 of 2003.

14. The Defendant's case is that Parliament in fact authorized the Minister of Finance to enter into a Fixed Rate Bond facility with RBTT to meet certain financial obligations in respect of the Hyatt Hotel. According to the Defendant, the resolution was published in the Official Gazette on 6th January 2003 as Statutory Instrument No. 4 of 2003 and now has the force of law. No payment was made to RBTT before the resolution was submitted by the Minister of Finance and approved by the Parliament and as a result, the Defendant is entitled to succeed on the basis of Parliament's approval.

15. The Defendant next argued that Section 39 is an independent enabling provision. It is not dependent on Section 41 and does not require, as a parliamentary or legal condition precedent, a pre-existing guarantee approved by Parliament before it can be invoked or relied on by the Minister of Finance or Parliament. Therefore the Minister of Finance was at liberty to submit the resolution to Parliament for authorization to enter into the Bond facility to meet the Government's obligations in relation to the Hyatt Hotel at any time prior to the borrowing or expenditure of moneys from the Consolidated Fund for the same.

16. The Defendant further argued that Mr. Francois' suggestion that the Minister of Finance could not submit the resolution and that Parliament could not approve it simply because 'the guarantee' was not earlier approved by Parliament is contrary to law, tautologous and flies in the face of the facts and proper construction of Sections 38 to 42 of the Act and Section 78 of the Constitution.

The Issues

17. In his Order dated 17th July 2003, Shanks J. (ag.) ordered that the issues to be resolved under the consolidated claim are as follows:

    (1) Whether the Government gave any guarantee within the meaning of section 41 of the Finance (Administration) Act 1997 in respect of the former Hyatt Hotel;

    (2) Whether such guarantee was approved by resolution of Parliament;

    (3) Whether such guarantee is binding on the Government;

    (4) Whether the Minister of Finance has power under section 39 of the 1997 Act to borrow in order to refinance the Government's obligations in respect of the former Hyatt Hotel;

    (5) Whether Parliament had power to authorize such borrowing under section 39 of the 1997 Act when it passed the resolution contained in Statutory Instrument No. 4 of 2003.

    (6) Whether the withdrawal of any moneys from the Consolidated Fund to meet the Government's obligations in respect of the former Hyatt would or has breached Section 78 of the Constitution of Saint Lucia;

    (7) Whether the Claimant has sufficient interest within the terms of section 105 of the Constitution to raise any of the matters with the Court;

    (8) Whether, even if otherwise valid, the Claimant should not be allowed to proceed with his claim on the grounds that it is an abuse of process because of the number of claims already filed by him relating to the same subject matter.

(i) Whether Government gave any Guarantee within the meaning of section 41 of the Act?

18. Section 41 of the Act reads as follows:

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

19. The issue whether the Government gave any guarantee within the meaning of section 41 in respect of the former Hyatt Hotel was answered with a brief and emphatic "no" by the Defendant while the same issue was answered in the affirmative by Mr. Francois. 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 teapot. Rather, I see the case as 'a battle of guarantees.'

20. Before this court it has been forcefully argued by well-abled Counsel for the Defendant, Mr. Astaphan that the Government did not provide a guarantee which incurred any financial liability to pay contrary to the provisions of section 41 and no payment or withdrawal was made from the Consolidated Fund without parliamentary approval. What the Government agreed to do was to promise to provide 'contingent' guarantees for cost over runs and debt service to RBTT which could only be triggered if two default events occurred [Clause 2 (2) of the respective Put Option Agreement]. Once the 'contingent' guarantees were triggered and the Government's liability was established and quantifiable, the Prime Minister and Minister and Finance sought and obtained the Parliament's approval to enter into the Fixed Rate Bond facility of US$41.0 million to meet the Government's financial obligations in respect of capital projects and the Hyatt Hotel.

21. The Defendant argued that the Development and Concession Agreement and Put Option Agreements are central to the proper understanding and determination of the issues in this case. The Put Option Agreements (together with Clause 2.02 of the Development and Concession Agreement) show that what the Government in fact did was promise contingent guarantees which required certain facts to occur before they could be triggered and then only as "last resort guarantees." As I scrutinized the respective agreements, I do not see what relevance the Development and Concession Agreement has to the present claim. Nobody is challenging any concessions that the Government may have extended to

Rochamel Development. This case revolves around 'guarantees' entered into by the Government and RBTT.

22. Mr. Astaphan submitted that Clause 2 (2) of the Put Option Agreements required that a default event must occur followed, if necessary, by a demand on the Government by the Bank before the Government's promises or contingent guarantees could be triggered. Prior to the trigger of those events, the Government was not exposed to any financial liability under the Deeds of Guarantee and Indemnity.

23. Mr. Francois, on the other hand vociferously argued that the operative words are "financial liability." And the word "any" means just what it says: "any". So the phrase "any financial liability" refers to "now, present, future or contingent. A guarantee, he asserted is a contingent liability on the Consolidated Fund.

24. Mr. Francois next argued that the Minister of Finance himself admitted signing Deeds of Guarantee and Indemnity and Put Option Agreements. He referred to the affidavit in reply sworn to by the Minister of Finance on 19th September 2003, At paragraph 12, Dr. Anthony deposed:

> "On 13th February 1998 and 13th September 1999, I executed Deeds of Guarantee and Indemnity with RBTT. And on 17th December 1999 and 30th June 2000, I signed the Put Option Agreements with RBTT. At all material times, I acted in accordance with the decisions of the Cabinet of St. Lucia and in my capacity as Prime Minister and Minister of Finance for and on behalf of the Government of St. Lucia. True copies of all of the said documents are produced and shown to me and are exhibited herewith in a bundle marked 'KDA 1'."

25. Mr. Francois submitted that there is nothing called 'contingent' guarantees because all guarantees are contingent. According to him, it matters not what name you ascribe to it, be it Deeds of Guarantee or Put Option Agreements. They are essentially the same because they both involve contingent financial liability which arises if and when a default has taken place.

26. To my mind, the issue of whether the Government gave or did not give any Guarantee within the meaning of the Act may best be answered if we know what is a 'guarantee', a 'contingent' guarantee and a 'put option agreement.'

27. Richard Millett in his treatise "Law of Guarantees", 3rd Edition 2000 defines a contract of guarantee as ' a contract whereby the surety (or guarantor) promises the creditor to be responsible, in addition to the principal, for the due performance by the principal of his existing or future obligations to the creditor, if the principal fails to perform those obligations'.

28. In *Wardens and Commonalty of the Mystery of Mercers of the City of London v New Hampshire Insurance Company*[1], Phillips J. cited with approval the following definition of a guarantee which is given in Halsbury's Laws of England (4th ed. 1993 reissue) at para.101:

> "A guarantee is an accessory contract by which the promisor undertakes to be answerable to the promise for the debt, default or miscarriage of another person whose primary liability to the promisee must exist or be contemplated."

29. The liability of the guarantor has been defined as a liability not only to perform himself if the principal fails to do so, but to procure that the principal performs his obligations.[2] However, given that in practice the guarantor is rarely in a position to compel the principal to perform his obligations, it is probably more accurate to describe the guarantor's promise as the promise that the obligation will be performed, in the sense that the guarantor will be personally liable for the debt, default or miscarriage of the principal. Therefore, even if the guarantor has not in terms guaranteed the payment of damages to the creditor, he will normally be liable in damages to the same extent as the principal for breach of the latter's obligations.

[1] (1991) 3 J.I.B.F.L. 144
[2] Moschi v Lep Air Services Ltd (1973) A.C. 331 per Lord Diplock at 348-349.

30. Further, there is no liability on the guarantor unless and until the principal has failed to perform his obligations (my emphasis). In *Lakeman v Mountstephen* [3], Lord Selbourne put the matter succinctly:

> "There can be no suretyship unless there be a principal debtor, who of course may be constituted in the course of the transaction by matters *ex post facto* and need not be so at the time, but until there is a principal debtor there can be no suretyship. Nor can a man guarantee anybody else's debt unless there is a debt of some other person to be guaranteed."

31. Thus, a contract of guarantee has been described as a contract to indemnify the creditor on the occurrence of a contingency, namely the default of the principal debtor.[4]

32. In my considered opinion, I see insignificant differences between a Put Option Agreement and a Guarantee. They both involve contingent financial liability which requires certain facts to occur before they could be triggered. And this is exactly what Mr. Francois is saying. At paragraph 13 of his affidavit in reply, Dr. Anthony seems to be saying the same thing. He said:

> "The terms of the Development and Concession Agreements, Put Option Agreements and Deeds of Guarantee and Indemnity entered into by the Government of St. Lucia show that what the Government in fact agreed to do, was promise to provide contingent guarantees for cost over runs and debt service to RBTT. The Put Option Agreements are central to an understanding of the promises and agreements made by the Government. They provide for and require two events to occur before the Government's promise of the guarantees could be triggered. The first event was an ability to pay the RBTT and default on the part of the Company. The second was a demand to the Government by RBTT under the provisions of Clause 2 (2) of the Put Option Agreements. And, if the Government were called upon to give the guarantees and pay pursuant to the default of the Company and RBTT's demand, the Government would in return receive preferential redeemable shares as security. However, if no default event or demand occurred, the Government would not be under any obligation to provide a guarantee or exposed to any financial liability."(My emphasis)

33. I am afraid that I cannot agree with the argument advanced by Mr. Astaphan that what the Minister of Finance signed on behalf of the Government were 'contingent' guarantees. As I

[3] (1874) L.R.7 H.L. 17
[4] Sampson v Burton (1820) 4 Moore C.P. 515, 129 E.R. 891

said before, all guarantees are contingent guarantees which require certain facts to occur before they could be triggered. Prior to the trigger of those events, no one (including the Government, as in this case) is exposed to any financial liability under the said Guarantee.

34. In my respectful view, there is nothing called a 'contingent' guarantee in the eyes of the law. There are different types of guarantees such as bipartite and tripartite guarantees, continuing and limited guarantees and demand guarantees.

35. It is quite obvious also, that a guarantee, by its very nature, only triggers off on the occurrence of a contingency namely the default of the principal debtor. On that basis, it seems to me that this issue has to be answered in the affirmative and that what the Government, represented by the Minister of Finance entered into were in fact 'guarantees' within the meaning of section 41 of the Act and I so find.

(ii) *Whether such guarantee was approved by resolution of Parliament?*

36. The second issue which arises is whether such guarantee was approved by resolution of Parliament.

37. Mr. Astaphan submitted that the answer to this question is that section 41 does not require the Minister of Finance to obtain parliamentary approval prior to entering into or executing the Development and Concession Agreement, the Put Option Agreements or the Deeds of Guarantee and Indemnity. I understand Mr. Astaphan to be saying that it does not matter whether such guarantee were approved or not approved by resolution of Parliament because, in the first place, the Minister of Finance does not need any parliamentary approval to execute any guarantee on behalf of the Government. This submission seems irrational, illogical and far-fetched because the Minister of Finance is not signing in his personal capacity but as the representative of the Government.

38. Although Mr. Astaphan argued that section 41 does not require parliamentary approval, I am of the view that the Minister of Finance knew otherwise. At paragraph 12 of his affidavit, the Minister of Finance stated:

> "On 13th February 1998 and 13th September 1999, I executed Deeds of Guarantee and Indemnity with RBTT. And on 17th December 1999 and 30th June 2000, I signed the Put Option Agreements with RBTT. At all material times, I acted in accordance with the decisions of the Cabinet of St. Lucia and in my capacity as Prime Minister and Minister of Finance for and on behalf of the Government of St. Lucia." (my emphasis)

39. There is the Minister stating in no uncertain terms that he acted in accordance with the decisions of Cabinet when he entered into these Agreements.

40. Mr. Astaphan continued his ingenious plethora of submissions. He argued that section 41 does not create a condition precedent to the making or validity of a guarantee. It speaks only to the guarantee not being 'binding'. This presumes the existence of an otherwise valid guarantee. Therefore, section 41 prohibits payment or the enforceability of a guarantee given without parliamentary approval and no more. I do find merit with this argument. In support of his submission, Counsel cited the judgment of the Privy Council in *Kidman v The Commonwealth of Australia*[5] and *Spencer v Attorney General of Antigua & Barbuda and Others.*[6] With all due respect to Learned Counsel, I do not think that either of these two cases are applicable to the present issue. *Kidman's* case seems more relevant when the third issue comes up for consideration.

41. Mr. Francois, on the other hand, argued that the guarantees and other agreements executed by the Government could not have been approved by resolution of Parliament because they were made long before 17th December 2002.

42. I am in agreement with Mr. Francois that these guarantees were not approved by resolution of Parliament on the dates that they were executed. The resolution was approved by the House on 17th December 2002 and passed in the Senate 3 days later. The guarantees were made on 13th February 1998 and 13th September 1999 respectively while the Put Option Agreements were made on 18th February 2000 and 30th June 2000 respectively so they could not have been approved by resolution of Parliament unless the resolution passed on 17th December 2002 had retroactive effect.

[5] [1926] "The Argus" Law Reports Volume XXXII 1
[6] (1999) 3 LRC1

(iii) *Whether such Guarantees are binding on Government?*

43. Mr. Francois argued that under section 41, "no guarantee …shall be binding upon Government UNLESS that guarantee is…approved by resolution of Parliament."

44. His arguments, stripped to 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.

45. Mr. Astaphan, on the other hand submitted that this issue does not arise because of the following:
    (a) No guarantee within the meaning of section 41 was given.
    (b) Section 41 is irrelevant.
    (c) No attempt was made to enforce any of the contingent guarantees and therefore no issue as to whether or not any guarantee was binding arose and
    (d) The Parliament of St. Lucia approved the resolution submitted to it by the Minister of Finance under section 39 and thereby authorized him to enter into a Fixed Rate Bond facility in order to, amongst other things, meet the Government's financial obligations in respect of the Hyatt Hotel.

46. The law is that a Government may contract with a person or authority and the Attorney General, suing on its behalf, has always been able to enforce a contract so made. Likewise, the Government can be sued on a contract made by it. See: *J.E. Verreault & Fils Ltd v Attorney General of Quebec*[7] and the Crown Proceedings Act Chap.13.

47. As Mr. Astaphan correctly submitted, the common law power to enter into contracts or guarantees relating to the development of St. Lucia is vested in the Minister of Finance. An aspect of that power is recognized by the provisions of sections 39 (2) and 41 of the Act.

[7] (1975) 57 D.L.R. (3d) 303

48. It is settled that common law (and the law of Saint Lucia) recognizes a distinction between the validity or constitutionality of a contract and the need for parliamentary approval for expenditure which may arise under or as a result of the contract made by a Minister: *Kidman v The Commonwealth of Australia*. That distinction was identified and applied by Saunders J. (as he then was) in *Baldwin Spencer v The Attorney General of Antigua & Barbuda et al.*[8] At page 27 of that judgment, Saunders J. declared:

> "A government contract is not unconstitutional because it provides for payment to be made at some future date and at the time the contract is entered into Parliament has not yet approved the required expenditure. Invalidity would only arise if parliamentary approval had not been obtained by the time the monies were due and payable. For this purpose an express appropriation is not required. See: *New South Wales v Bardolph."*[9]

49. In *Chitty on Contracts,* the Learned authors after referring to *New South Wales v Bardolph* had this to say at para. 10-006, page 521:

> "The provision of funds by Parliament was simply a condition which must be fulfilled before actual payment by the Crown; and did not go to the formation, legality or validity of the contract. Moreover, it seems that an express appropriation is not required; it is sufficient if provision has been made for class of transaction to which the contract belong."

50. 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. 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, and 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

[8] High Court Civil Suit No. 295 of 1997 (Antigua & Barbuda) (unreported)
[9] (1934) 52 CLR 455

failure to make the contracted payment will be a breach of contract: *New South Wales v Bardolph.*

51. 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 his reasons. I say so against the background that the Minister of Finance himself stated at paragraph 22 of his affidavit in reply:

> "Once the resolution was approved by the Parliament, the Government of Saint Lucia entered into a fully written Fixed Rate Bond Facility of US$41.0 million with the RBTT for the purposes of financing a number of different Capital Projects and the Government's obligations in respect of the Hyatt Hotel."

52. As I see it, this issue is now moot.

(iv) *Whether the Minister of Finance had power under section 39 to borrow in order to refinance the Government's obligations in respect of the former Hyatt Hotel*

53. The fourth issue to be considered is whether the Minister of Finance had power to borrow under section 39 of the Act in order to refinance the Government's obligations in respect of the former Hyatt Hotel.

54. Mr. Astaphan contended that the Minister of Finance had the unequivocal power to borrow as there is no limitation, qualification or fetter on the Minister's powers under section 39. He next contended that Section 39 is an enabling provision which enables the Minister to submit a resolution to Parliament for approval to raise or borrow money to meet, amongst other things, the Government capital and recurrent expenditure. Section 39 does not create or impose any qualification or condition precedent on the Minister's ability to submit a resolution to Parliament. Nor, is it dependent, conditional or fettered by section 41 of the Act. Section 39 stands independently of section 41.

55. Mr. Astaphan argued that once Parliament was satisfied that the money were required for the purpose prescribed by section 39 (my emphasis) and authorized the Minister by resolution to borrow the money, no justiciable issue arises in any way or at all.

56. Mr. Francois approached this issue by giving a lengthy preamble to the Latin maxim of '*ultra vires*.' He next plunged his attack on Statutory Instrument No. 4 of 2003. He noted that it is from the Finance Act that S.I. No. 4 of 2003 derived its authority. Therefore, the Statutory Instrument had no business in purporting to override the express terms of sections 41, 42 (2), 8 (1) (a) and 8(2) of the Act and section 78 of the Constitution in purporting to refinance Government's obligations in respect of the former Hyatt Hotel if the said obligations are in the form of guarantees which are null and void. Mr. Francois argued that these obligations do not exist in the laws of St. Lucia by the operations of Sections 41, 42(2), 8(1)(a) and 8(2) of the Act and section 78 of the Constitution. He asserted that it is clearly *ultra vires* section 39.

57. Mr. Francois submitted that power must be exercised for a proper and not for an improper purpose. And that there are four specific purposes in which the Minister of Finance may borrow under section 39 (1) and 'refinancing government's obligations in respect of the former Hyatt Hotel' is surely not one of those purposes.

58. Section 39 (1) of the Act states as follows:

"The Minister may, by resolution of Parliament, borrow from any bank or 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; or

(d) making advances or payments to public officers as authorized by any enactment or the Staff Orders."

59. In my view, there could be no clearer bit of legislation than section 39. The section specifically refers to the purposes for which the Minister of Finance could borrow from any

bank or financial institution. As Mr. Francois so rightly suggested, 'refinancing of Government's obligations to the former Hyatt Hotel is not one of those purposes.'

60. 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.

(v) *Whether Parliament had power to authorize such borrowing under Section 39?*

61. 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 the Minister independently of the cause or source of the financial obligation incurred by the Government once it is satisfied that the resolution related to one of the purposes specified under section 39(1) (a) to (d) of the Act.

62. 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.

63. 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.

(vi) *Whether withdrawal of any moneys from the Consolidated Fund would or has breached Section 78 of the Constitution?*

64. Section 78(1)(a) of the Constitution states that 'no moneys shall be withdrawn from the Consolidated Fund except to meet expenditure that is charged upon the Fund by this Constitution or by any law enacted by Parliament.'

65. It is argued for the Defendant that payments and withdrawals from the Consolidated Fund were made under the authority of a resolution approved by the Parliament under section 39. Therefore any payment or withdrawal from the pursuant to or in furtherance of the resolution would be consistent with section 78(1) (a) of the Constitution.

66. In the light of my previous findings that 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, the only logical conclusion that could be reached is that section 78 of the Constitution would have or was breached. The Constitution, like the Finance Act is clear and unambiguous " no moneys shall be withdrawn…except to meet expenditure that is charged upon the Fund …"

67. Once again, I find myself agreeing with Mr. Francois 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.

(vii) *Abuse of the process*

68. Mr. Francois filed three separate claims. One was brought under the Constitution. The second claim was an application for an administrative order under Part 56.7 and the third was an application for leave to apply for judicial review made 'without notice.' At the First Hearing, Mr. Francois withdrew his application for leave to apply for judicial review. The two other claims were consolidated.

69. Insofar as this issue is concerned, the Defendant's answer is that the consolidated claim brought by Mr. Francois is totally misconceived and fails to disclose any contravention of sections 78 (1) (a) and 120 of the Constitution or reasonable grounds for bringing the claim and is an abuse of the process of the court.

70. Mr. Francois in answering that question relied solely on section 105 (6) of the Constitution which states:

> "The right conferred on a person by this section to apply for a declaration and relief in respect of an alleged contravention of this Constitution shall be in addition to any other action in respect of the same matter that may be available to that person under any other law."

71. It is so obvious that on a proper reading of this section, the supreme law of the land gives every person the constitutional right to bring as many claims as may be available to that person in respect of the same subject matter. No Court can interfere or take away that right. In any event, I fail to think that a court of law would shut out a person from proceeding with his claim on the ground that he has filed three of them. It is to be noted that the Notice of Application for leave to apply for Judicial Review was made without notice.

72. In my judgment, there is absolutely no evidence to support any finding of an abuse of process. There is a consolidated claim before the court and nothing else.

(viii) *Whether the Claimant has sufficient interest within the terms of section 105 of the Constitution to raise any of the matters with the Court;*

73. So far, Mr. Francois has succeeded on all issues excepting one. The last remaining straw that the Defendant has to clutch on tightly to in order to score a victory is the much debated and highly controversial issue of *locus standi*. It is with little wonder that both parties were extremely lengthy in their submissions and supplied a generous number of judicial authorities on this crucial issue.

74. I begin with the claims filed by Mr. Francois. He filed two claims which were later consolidated. One of the issues identified by Justice Shanks at the First Hearing is whether Mr. Francois has standing to bring the action under the section 105 of the Constitution. No mention was made in respect to Mr. Francois' standing as it relates to the Declaration that he seeks under Part 56.7 of the CPR 2000, which in my view may involves a different test.

75. Under the Constitution, Mr. Francois must show that he has a 'relevant' interest. The cases of *Gordon v Minister of Finance* [10] and *Spencer v The Attorney General of Antigua & Barbuda* are good authorities on this point. Under Part 56.13 (1) of the Rules, on which the second action is grounded, the test on standing is that the Claimant must have a 'sufficient' interest in the subject matter of the claim. The Defendant is of the opinion that that test applies only to applications for judicial review under Part 56.2 and not for a Declaration under Part 56.7.

76. It is therefore necessary to deal with this issue on two prongs namely:
    (a) Whether the Claimant has 'relevant' interest within the terms of Section 105 of the Constitution to raise any of the matters herein and
    (b) Whether the Claimant has 'sufficient' interest under Part 56:13 in the subject matter of the claim.

77. At the trial, I allowed both Mr. Astaphan and Mr. Francois to address me fully on this important aspect of law.

Locus Standi under the Constitution

78. Both Counsel argued the locus standi issue under the Constitution in great details. I think that I need not examine all of the submissions. Mr. Astaphan contended that Mr. Francois had no 'relevant' interest under section 105(1) of the Constitution as he is unable to identify which of his fundamental rights have been or are being contravened.

79. Mr. Francois conceded that he did not have a 'relevant' interest under the Constitution to satisfy the test of standing. He made attempts to withdraw this claim, albeit late but Mr. Astaphan was adamant about the oral application for a withdrawal so late in the day.

80. Having examined the case law on locus standi under the Constitution, I am of the view that Mr. Francois has not satisfied the test of 'relevant' interest. He cannot prove that any of his

[10] (1968) 12 W.I.R. 416

fundamental rights and freedoms have been or are being contravened. His claim under the section 105 (1) of the Constitution must therefore fail.

Locus standi under Part 56 of CPR 2000

81. The Defendant argued that Mr. Francois has no standing under Part 56.2 of the Rules. The authorities[11] suggest that the issue of standing should not be decided as a preliminary issue without regard to the evidence and merits of the case. The Court must firstly make a determination on the factual matrix and merits before considering the issue of standing.

82. Mr. Astaphan submitted that if Mr. Francois fails to establish that the documents signed by the Minister are "illegal" or "void" and that the Minister of Finance and Parliament violated the Act when Statutory Instrument No. 4 of 2003 was unanimously approved by Parliament, he will also fail to establish that he has standing. I agree entirely with Learned Senior Counsel. Standing must be related to the subject matter of the proceedings.

83. Further or in the alternative, the Defendant contends that if Mr. Francois fails on the merits and the Court finds that there are no reasonable grounds for bringing the claim or that the claim is an abuse of the process of the Court because, for example, Mr. Francois has wholly misapplied the law on the capacity of the Crown/ Executive branch of Government to enter into contracts and guarantees and/or misconstrued the provisions of sections 39, 41 and 42 in that neither sections 41 or 42 affects the capacity of the Crown/ Government or validity of the documents signed, the Court ought to exercise its' discretion and hold that Mr. Francois has no standing. In other words, Mr. Francois ought not to be given standing in a case without merit.

84. So far, Mr. Francois has succeeded in all of the issues excepting one. As Mr. Astaphan himself observed, and to use his language: " Issue (3) does not arise because…" Essentially, Mr. Francois has not failed on the merits of the case to deprive him of standing. But the matter does not end here.

[11] Spencer v Attorney General of Antigua & Barbuda and Inland Revenue Comrs v National Federation of Self-Employed and Small Businesses Ltd [1981] 2 All ER 93.

85. In support of his case on standing, Mr. Francois in his affidavit filed on 20th June 2003 in Claim No. SLUHCV2003/0499 averred at paragraph 1:

> "I am a citizen of Saint Lucia and a person lawfully entitled to vote and I am also a person entitled to pay income and other taxes to the State."

86. In a supplemental affidavit filed on 16th October 2003, he said:

> "1. That my status as a taxpayer and therefore contributor to the Consolidated Fund of Saint Lucia, payment out of which is the subject matter of this consolidated claim, is relevant to the issue of locus standi.
>
> 2. That I hereby put in evidence in this case a letter from the Inland Revenue Department dated 7th October 2003 in respect of my tax liability to the said Inland Revenue (Exhibit M.F. 1)."

87. The Defendant's argument is that Mr. Francois relies exclusively on his status as 'a taxpayer' for standing. This is wholly inaccurate. In his affidavit filed on 20th June 2003, Mr. Francois states that he is a citizen of Saint Lucia and a person lawfully entitled to vote and he is also a person entitled to pay income and other taxes to the State." This evidence is uncontroverted except where the Defendant alleged that Mr. Francois is a tax defaulter and not a 'taxpayer.'

88. The Defendant relies heavily on the fact that since Mr. Francois is a tax defaulter, he does not have the right to bring an action before the Court. On a proper reading of the affidavit of Mr. Francois and the letter from the Inland Revenue Department, I did not get the impression that Mr. Francois is a tax defaulter. Rather, I came to the conclusion that Mr. Francois is not a taxpayer in good standing. In my view, he is still a taxpayer.

89. In addition, the Defendant alleges that no Member of Parliament or Public Accounts Committee or body of St. Lucia's civil society who may have been directly affected or aggrieved by the Parliament's resolution instituted or participated in these proceedings. And that the Court should take judicial notice of the fact that Mr. Francois has regularly instituted proceedings against the Attorney General without success and has had costs

awarded against him on each occasion except perhaps when Counsel appearing for the Attorney General may not have asked for Costs.

90. Further the Defendant submitted that Mr. Francois' bona fides and standing is put into question by the delay in bringing the proceedings.

91. Part 56 expressly recognizes that an application for judicial review, relief under the Constitution and a Declaration are separate applications: Part 56.1 and 56.7. Mr. Francois had previously sought an application under Part 56.2 for judicial review. This was withdrawn at the first hearing. The sole application remaining under the Rules is for an administrative order for a declaration which is grounded under Part 56.7 (1) (a).

92. Mr. Astaphan is correct to say that there is no application for judicial review before this court whether in respect of a prerogative remedy or declaration. Consequently, the test prescribed under Part 56.2 does not assist Mr. Francois in relation to his application under the general law. As a result, if Mr. Francois is to establish standing, he must do so under some other test than the test of 'sufficient' interest under Part 56.2. Mr. Astaphan contended that the only test of standing now available to Mr. Francois is the test enunciated in *Gouriet v Union of Post Office Workers and Others.*[12]

93. I do not agree with Mr. Astaphan. Mr. Francois has applied for a Declaration under Part 56.7. Under that section, in respect of standing, he will have to satisfy the test as laid down in Part 56.13 (1) which reads as follows:

> "At the hearing of the application the judge may allow any person or body which appears to have *a sufficient interest in the subject matter of the claim* to make submissions whether or not served with the claim form."

94. It is not disputed that Mr. Francois spoke extensively of private law remedies but in his oral submissions to the Court, he stated that the test he has to satisfy is "sufficient" interest under Part 56:13. He further stated that the test of legal rights and interests under the

[12] [1970] 3 All ER 70

Gouriet principle is 'completely destroyed by all the Law Lords in *National Federation* case."

95. In my opinion, all that Mr. Francois has to do is to satisfy the Court that he has a sufficient interest in the subject matter which he claims affects him as a citizen, as a tax payer and a contributor to the Consolidated Fund and as an elector.

96. The Defendant submitted that Mr. Francois does not have sufficient interest for the following reasons:

    (a) He has not been adversely affected by the resolution approved by the Parliament or payments in relation to the Government's obligations to the Hyatt Hotel. The Resolution did not impose any taxes on him. On the contrary, the evidence of Dr. Anthony reveals that the hotel, now Sandals Grande, is generating employment and revenue for the Consolidated Fund in terms of hotel accommodation tax.

    (b) He is not part of any body or group and is not acting on any person whose interests have been adversely affected by the approval of the resolution.

    (c) He is not part of any body or group and has not brought this case on behalf of members of any body or group.

    (d) He is not a body or group and therefore cannot be a body or group with any expertise in the subject matter of the application.

    (e) He is not a statutory body and

    (f) He has no express or implied right to be heard under the Act.

97. Mr. Francois relied on a plethora of judicial authorities in respect of standing. He submitted that there are two different schools of thought on the issue of standing: the liberal approach: *R. v. Greater London Council, ex parte Blackburn*[13] and the restrictive approach: *Inland Revenue Comrs v National Federation of Self- Employed and Small Businesses Ltd.*

98. In the *Blackburn* case, it was held that the applicants, as citizens, ratepayers and parents within the Council's jurisdiction have sufficient locus standi to apply for a prerogative order

[13] [1976] 1 WLR 550

to prohibit a public authority from acting unlawfully. It was suggested that Mr. Blackburn has no sufficient interest to bring these proceedings against G.L.C. It is a point which was taken against him by the Commissioner of Police. Lord Denning at page 558 had this to say:

> "On the point, I would ask: who then can bring proceedings when a public authority is guilty of the misuse of power? Mr. Blackburn is a citizen of London and his wife is a ratepayer. He has children who may be harmed by the exhibition of pornographic films. If he has no sufficient interest, no other citizen has. I think he comes within the principle which I stated in Mc Whirter's case[14] which I would recast today so as to read:
>
> > "I regard it as a matter of high constitutional principle that if there is a good ground for supposing that a government department or a public authority is transgressing the law, or is about to transgress it in a way which offends or injures thousands of Her Majesty's subjects, then any one of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced, and the courts in their discretion can grant whatever remedy is appropriate."

99. In the *National Federation* case, the National Federation of Self Employed and Small Businesses was a well-recognized body or organization which was concerned and dealt with the tax affairs of their members and tax matters of public importance. The Claimant was concerned that the amnesty granted to taxpayers was unfair and would have adversely affected their members and/ or the Treasury. The Federation applied for judicial review seeking a declaration and an order of mandamus, but the Revenue opposed the application on the ground that the Federation did not have sufficient interest in the matter. The Divisional Court upheld the Revenue's opposition but on appeal, the Court of Appeal by a majority reversed that decision (Lord Denning and Ackner L.J. dissenting). The Revenue appealed to the House of Lords. The reasoning of the majority could be encapsulated as follows. They held that Order 53 is designed to stop technical procedural arguments and to introduce flexibility. Therefore any of the remedies can be granted according to the needs of a particular case. More importantly, under the new procedure, declarations and injunctions are merely alternative remedies.

[14] [1973] 1 All E.R. 689

100. What this case seemed to be saying and it makes good logical sense, is that the test of standing for judicial review should be no different whether the application is for an injunction or declaration. This, to my mind fortifies the reason why under Part 56.2 (judicial review) and Part 56.13 (application for administrative order including declarations), the test to be satisfied is 'sufficient' interest in the subject matter of the application.

101. To determine whether the requirement of standing under Part 56.13 is met, the Court has to base its determination on a consideration of the relationship between the Claimant and the "matter to which the application relates." Standing therefore could not be considered as an isolated preliminary point but is inextricably wrapped up with the facts and evidence in any particular case.

102. Mr. Francois alleged that this is a case of exceptionally grave illegalities – the illegal payment out of the Consolidated Fund of massive sums of money. The exact amount is still not quantifiable.

103. Mr. Francois referred to the case of *Regina v Her Majesty's Treasury, ex parte Smedley.*[15] In that case, the Applicant, a British taxpayer and elector applied for judicial review challenging the allocation of public funds to the European Community. It was held that in the light of the relaxation of the rules as to locus standi illustrated by *Reg. v Inland Revenue Commissioners, Ex parte National Federation,* there appears to be no doubt as to the applicant's "sufficient interest" within the meaning of R.S.C., Ord. 53 to make the application.

104. It was further held that, while Parliament was entirely independent of the courts in its freedom to enact parliamentary legislation, subordinate legislation such as by Order in Council (and Statutory Instruments) was subject to a degree of judicial control in that it was within the jurisdiction of the courts to hold that particular examples were not authorized by statute or by the common law and so were without legal effect; and that in the circumstances, notwithstanding that no Order in Council in the terms of the draft had been

[15] (1985) 1 Q.B. 657

made or could be made, it was proper for the court to consider the questions of law which would arise if Parliament were to approve the draft and that such consideration would not involve any usurpation or encroachment upon the functions of Parliament.

105. In yet another case it was held that though a journalist lacked standing for an order (of mandamus) that the chair of the justices should reveal the names of a magistrate who had heard a particular case, but that he did have standing for a declaration that a policy of not disclosing the names of justices who heard certain types of cases was contrary to the public interest and unlawful: *R v Felixstone Justices, ex parte Leigh.*[16]

106. Based on the facts and the authorities including the Saint Lucian case of *Lionel v The Attorney General of Saint Lucia* which is still good law, I am of the opinion that Mr. Francois has 'sufficient' interest in the claim before the Court. It would, in my view, be a grave lacuna in our system of public law if Mr. Francois as a Saint Lucian citizen, an elector and a public spirited taxpayer (or even as a tax defaulter), were prevented by technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and to get the unlawful conduct stopped or to prevent future occurrence. It is not in my view, a sufficient answer to say that judicial review or an application for an administrative order of the actions of Members of Parliament is unnecessary because they are accountable to Parliament for the way in which they carry out their functions. <u>They are accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only judge; they are responsible to the court of justice for the lawfulness of what they do and of that the court is the only judge (my emphasis).</u>

107. Finally, if Mr. Francois as a Saint Lucian, an elector and a taxpayer cannot bring this claim, there is no one else who can.

108. There were a few issues raised by the Defendant which are not contained in the Order of Shanks J. I do not think that they are relevant to the outcome of the case.

[16] [1987] Q.B. 582

Conclusion

109. On the whole, I find the arguments advanced by Mr. Francois to be more compelling. Indeed, for much of the hearing I was of the view that the defendant's case could not be sustained as the guarantees which form the subject matter of this claim were not approved by resolution of Parliament, 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 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.

110. In the premises, I hereby declare that Statutory Instrument No. 4 of 2003 insofar as it purports to authorize the Minister of Finance to enter into a Fixed Rate Bond facility with the Royal Merchant Bank of Trinidad & Tobago for the purpose of refinancing the Government's obligations in respect of the former Hyatt Hotel is void and illegal and contrary to law.

111. I will dismiss the Amended Originating Motion for relief under Section 105 (1) of the Saint Lucia Constitution Order 1978 and make No Order as to Costs.

112. The issue of Costs arises in respect of the Declaration. Part 56:13 governs the award of costs in an administrative action. Under Part 56:13 (4) and (5) the judge may make such orders as to costs and if the judge makes any order, the judge must assess them in accordance with Rule 65.11 and 65.12. I therefore assess costs to Mr. Francois at $20,000.00. I take judicial notice of the oral judgment of the Court of Appeal in *Martinus Francois v The Attorney General of St. Lucia (unreported) Civil Appeal No. 8 of 2002* which case was not as involved and complex as this one.

113. Two final comments. There is no doubt in my mind that the Honourable Prime Minister and Minister of Finance agreed to assist the Developer in order to ensure that the construction of the Hyatt Hotel was completed. Saint Lucia is heavily dependent on tourism

and Hyatt represented an internationally recognized hotel which would lure any Prime Minister. Our Courts have consistently recognized that employment in the development of tourism are legitimate public purposes and in the public interest. See: *Williams v The Government of St. Lucia*[17].

114. I think that I should also say a few words about the respective roles of Parliament and the courts. The legislature and the Judiciary are independent of one another and it is necessary for the courts to observe the paramount need to refrain from trespassing upon the province of Parliament. But, it is not an interference with Parliament for the court in a proper case to pronounce on the legality of a Statutory Instrument: it may in fact assist Parliament.

INDRA HARIPRASHAD-CHARLES
High Court Judge

[17] (1964) 14 W.I.R. 177 P.C.