

**ICT**

**The Law &**

**The Citizen**

**1. FREEDOM TO  
COMMUNICATE IDEAS  
AND INFORMATION  
WITHOUT INTERFERENCE  
– AN ENTRENCHED  
RIGHT BESTOWED ON  
ALL CITIZENS**

**10.-(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.**

## **2. NO RIGHT TO DEFAME**

**(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent, that the law in question makes provision-**

**that is reasonably required in the interests of defence, public safety, public order, public morality or public health ;**

**that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television ; or**

**that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.**

# **3. THE BIRTH OF A LEGAL CHALLENGE**

**On February 25th, 2010, in an address titled “Connecting Disparate Events: The Liberalisation of the Telecommunications Sector in St. Lucia”, Dr. Kenny Anthony, the Leader of the Opposition in St. Lucia, recalled an early telephone conversation with a young Dominican Attorney that may very well have sown the seeds for the historic legal challenge to monopoly provision of telecommunication services in the OECS. Dr. Anthony notes:**

**“Sometime in either 1989 or 1990, I received a telephone call from a young Attorney in Dominica. His name was Anthony W. Astaphan. The conversation went something like this:**

**“Dr. Anthony, I need some advice. I have a client in Dominica who wants to file a constitutional action against the state on the ground that his company was denied a telecommunications licence”.**

**“Really, “I responded. “How is that a constitutional breach”.**

**“Well, the State has interfered with my client’s right to freedom of speech and to communicate”.**

**“So, how was your client’s right to freedom of expression breached?”**

**“You see, by the refusal of the State to consider an application from my client to provide public telecommunication services because it believes that an Act of Parliament compels it to protect the exclusive license it has granted to Cable & Wireless.”**

**“So, what are you saying? It is not reasonably justiable in a small country like Dominica with a small population to have one telecommunication provider? Surely, that must be in the public interest.”**

**“Not so,” was the reply from Astaphan. “Not if it breaches my client’s freedom of expression and the right to communicate ideas freely”.**

**4. MARPIN CHALLENGES  
MONOPOLY –  
EXCLUSIVITY CONTRAVENES  
CONSTITUTION**

## **Marpin Telecoms & Broadcasting Company Ltd. v Cable & Wireless (Dominica) Ltd:**

By notice of motion dated October 20, 1998, Marpin sought declaratory and other relief under the Fundamental Rights Provision of the Constitution of Dominica. The proceedings challenged the validity of the Dominica Act and the licence “insofar as the Act authorizes and the licence grants the exclusive licence for Cable & Wireless.” The High Court and later the Court of Appeal, agreed with Marpin that the exclusivity conferred by the licences secured by Cable & Wireless was in contravention of the Constitution. Cable & Wireless appealed to the Privy Council.

**5. THE PRIVY COUNCIL RULES –  
A VALID QUESTION TO BE  
ANSWERED**

On October 30th, 2000, the Privy Council delivered its judgment, which Dr. Anthony describes as “whobbly”. The Law Lords held that “whether or not the results reached in the court below were right, they were reached after an over circumscribed approach.” Therefore, the matter must be remitted to the courts below as the case “is one calling for an appreciation of local conditions” and an “evaluation of the evidence based on the correct principles.” [Page 14].

The Privy Council agreed that there was a valid question to be answered, that is, “whether in authorizing and granting exclusivity, the Act and the licence make provision that is reasonably required for the purpose of protecting the rights and freedoms of other persons.” [Page13].

# **6. ECTEL TREATY – NINE MAJOR OBJECTIVES**

On **May 4th, 2000** a treaty establishing the Eastern Caribbean Telecommunications Authority (ECTEL) was signed in Grenada by five (5) OECS States: St. Vincent & the Grenadines, Dominica, St. Kitts & Nevis, St. Lucia and Grenada. The treaty cites nine major objectives:

- Open entry, market liberalisation and competition in telecommunications of the Contracting States;
- Harmonised regional policies for telecommunications within the Contracting States;
- Universal service, so as to ensure the widest possible access to telecommunications at affordable rates over an efficient and modern telecommunications network;
- An objective and harmonised regulatory regime;

- Fair pricing and the use of cost-based pricing methods by telecommunications providers in the Contracting States;
- Fair competition, discouraging anti-competitive practices by telecommunications providers;
- The introduction of advanced telecommunications technologies and an increased range of services:

- Increased penetration of telecommunications in the Contracting States and the overall development of telecommunications in the Contracting States.

7. On **July 3rd, 2002**, Dr Kenny Anthony, then Prime Minister of St. Lucia, formally declared open for business the ECTEL headquarters in St .Lucia. In his very incisive remarks he emphasised the critical importance of liberalisation to our evolving economies and the need for efficient, competitive information and communication services.

**A. AFFORDABLE, MODERN, EFFICIENT,  
COMPETITIVE AND UNIVERSALLY  
ACCESSABLE TELECOMMUNICATION  
SERVICES**

"This process is not just about rates and dismantling monopolies. It is about universal access to telecommunications services so as to ensure that all persons, businesses, institutions and communities enjoy the freedom to communicate through a wide range of efficient and reasonably priced services. Accordingly, this process is about the provision of affordable, modern, efficient, competitive, and universally accessible telecommunications to the people of the Contracting States...

...the OECS countries, all facing inescapable economic conditions, have seized the option of vigorously developing their service sectors within a competitive environment. A telecommunications scenario in which there is one major service provider is not conducive to such development."

# **B. GATEWAY TO KNOWLEDGE BASED ECONOMIC ACTIVITY**

"...that telecommunications infrastructure within which ECTEL will function as the critical keystone, is the future. It is the infrastructure which facilitates our survival in this information age. It is our conduit to the intellectual capital markets of the world. It is our bridge to the virtual, borderless markets accessed via the internet. It is our gateway to knowledge based economic activity. It is the competitive advantage which is surely needed by both traditional and non-traditional industries. It is therefore indispensable to our future."

**C. THE FUTURE – A WIDE  
RANGE OF SERVICES  
OFFERED AT  
COMPETITIVE AND  
REASONABLE PRICES**

“...We might rightly ask ourselves: what of the future? We see the future as a competitive environment where customers have freedom of choice over well developed telecommunications infrastructure. We see the future as a wide range of services offered at competitive and reasonable prices. We see the future where the OECS shares a modern platform for development of its service sectors, and where the regulation of telecommunications serves as a vehicle for economic development.”