

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

**SLUHCVP2020/0027
FORMERLY SLUHCVP2018/0012**

BETWEEN:

[1] ORGANISATION OF EASTERN CARIBBEAN STATES

Appellant

[2] MAXINE ALEXANDER NESTOR

Second Defendant

and

BARBARA VARGAS

Respondent

Before:

The Hon. Mde. Vicki-Ann Ellis
The Hon. Mde. Esco L. Henry
The Hon. Mr. Eddy D. Ventose

Justice of Appeal
Justice of Appeal [Ag.]
Justice of Appeal [Ag.]

Appearances:

Ms. Marie-Ange Symmonds for the Appellant
The Respondent appearing in person

2023: November 8;
2024: March 7.

Interlocutory Appeal – Immunity from suit or legal process – Whether the OECS enjoys immunity from suit or legal process in Saint Lucia - International Obligations - Article 21 of the Revised Treaty of Basseterre establishing the Organisation of Eastern Caribbean States Economic Union 2010 – Organisation of Eastern Caribbean States Act – The Vienna Convention on Diplomatic Relations – The International Organisations and Overseas Countries (Immunities and Privileges) Act - The Secretariat Agreement - Whether the trial judge erred in law and/or misdirected himself when he failed to adequately apply the presumption in law that requires the OECS Act to be interpreted and applied in a manner that does not infringe Saint Lucia's international obligations under the Revised Treaty and the Secretariat Agreement - Legitimate Expectation – Whether a legitimate expectation arises that the OECS would be granted immunity from suit - Whether the trial judge erred

in law or misdirected himself when he concluded that the appellant was to be likened to a corporation – Customary International Law – Whether there exists a rule of customary international law that could confer immunity on an international organisation such as the OECS – Service - Whether the trial judge erred in law when he concluded that there was no need to consider whether service was properly effected on the appellant

The issues in this case arose from proceedings in which the respondent claimed against the Organisation of Eastern Caribbean States (“the OECS” or “the appellant”) and Ms. Maxine Nestor, the second defendant, damages for breach of a consulting contract and defamation. The claim was never served on Ms. Nestor, so the matter proceeded only against the OECS. After being served with the claim form, and filing an acknowledgement of service on 9th May 2017, the appellant filed on 24th May 2017, an application seeking a declaration that the court had no jurisdiction to try the claim against the appellant (the “Jurisdiction Application”). In that application, the appellant’s main contention was that the OECS is an international organisation established under the **Revised Treaty of Basseterre establishing the Organisation of Eastern Caribbean States Economic Union 2010** (the “**Revised Treaty**”) and is immune from every form of legal process in Saint Lucia. The Jurisdiction Application came on for hearing before Smith J on 8th December 2017 who, with the agreement of counsel for the parties, decided the Jurisdiction Application on the papers and gave his written judgment on 5th March 2018 in which he held that the OECS does not enjoy immunity from suit or legal process in Saint Lucia.

Being dissatisfied with the decision of the judge, the appellant, on 8th May 2018, filed a notice of appeal to this Court on the following grounds: (1) that the trial judge erred in law and/or misdirected himself when he held that the appellant does not enjoy immunity from suit or legal process in Saint Lucia; (2) that the trial judge erred in law and/or misdirected himself when he failed to adequately apply the presumption in law that requires the **Organisation of Eastern Caribbean States Act** (the “**OECS Act**”) to be interpreted and applied in a manner that does not infringe Saint Lucia’s international obligations under the **Revised Treaty** and the Agreement between The Government of St. Lucia, The Government of Antigua and Barbuda and The Organisation of Eastern Caribbean States regarding The Secretariat of the Organisation (the “**Secretariat Agreement**”); (3) that the trial judge erred in law or misdirected himself when he concluded that the appellant was to be likened to a corporation which meant that the appellant enjoyed separate legal personality from that of the Director General of the OECS; and (4) that the trial judge erred in law when he concluded that there was no need to consider whether service was properly effected on the appellant.

Held: dismissing the appeal, affirming the decision of the learned trial judge and ordering that costs in the appeal be costs in the cause, that:

1. An international organisation can only have immunity that has been expressly granted to it by domestic legislation. Article 21 of the **Revised Treaty** does not expressly provide the OECS with immunity from any form of legal process. Moreover, none of the articles of the **Revised Treaty** can implicitly be read, even with the most generous interpretation, as providing any such immunity as the appellant contends. The statement in Article 21.3 of the **Revised Treaty** that the OECS shall be represented by the Director-General in the exercise of its legal

personality simply means that the Director-General is the person who shall exercise the powers and rights of the OECS. The immunity granted to the Director-General is not specifically spelt out in Article 21 but arises by virtue of Article 21.4 since the Director-General is one of the members of the OECS Commission whose immunity and privileges is the same as those of members of a diplomatic mission under the **Vienna Convention on Diplomatic Relations** ("VCDR"). The OECS, as the umbrella organisation, cannot derive immunity, in its capacity as an international organisation in Saint Lucia, from the immunity granted by the **Revised Treaty** to a member of one of the five (5) organs through which the OECS is to carry out its functions under the **Revised Treaty**.

Article 21 of the **Revised Treaty of Basseterre establishing the Organisation of Eastern Caribbean States Economic Union 2010** applied; **The Vienna Convention on Diplomatic Relations** (adopted 18th April 1961, in force 24th April 1964, United Nations Treaty Series, vol. 500, p. 95) applied.

2. Although the Parliament of Saint Lucia enacted the **International Organisation and Overseas Countries (Immunities and Privileges) Act** (the "**International Organisations Act**") to enable international organisations to be granted immunities and privileges by order of the Governor General, no such order has been made by the Governor General granting any immunities and privileges to the OECS. The only conclusion one can reasonably draw from this absence is the intention of the Parliament of Saint Lucia not to provide the OECS with immunity from any form of legal process. Consequently, the OECS has not been granted immunity from suit or legal process under either: (a) the **Revised Treaty**, the **VCDR** and the **OECS Act**; or (b) any other domestic legislation, including the **International Organisations Act**.

The **International Organisation and Overseas Countries (Immunities and Privileges) Act**, Chapter 10.07 of the Revised Laws of Saint Lucia 2021 applied; **The Organisation of Eastern Caribbean States Act**, Chapter 10.07 of the Revised Laws of Saint Lucia 2021 applied.

3. The **Secretariat Agreement** has no relevance in determining the scope of any immunity that may be enjoyed by the OECS under the **Revised Treaty** which forms part of the laws of Saint Lucia. Moreover, since the **Revised Treaty** neither expressly nor impliedly provides the OECS with immunity from any form of legal process, the **Secretariat Agreement** cannot be marshalled by the appellant in aid of its argument for immunity for the OECS that is not provided for under the **Revised Treaty**.

The Agreement between The Government of St. Lucia, The Government of Antigua and Barbuda and The Organisation of Eastern Caribbean States regarding The Secretariat of the Organisation applied.

4. The first aspect of establishing a legitimate expectation is to identify a "promise" or "representation" that is made by a public authority which is "clear, unambiguous and

devoid of relevant qualification". The appellant fails on this hurdle because the OECS has not shown any "representation" or "promise" made by the representatives of the state of Saint Lucia concerning any immunity to be granted to the OECS. A legitimate expectation is not necessary since such legitimate expectations arise when legal rights end. Ratification alone of an international treaty (for example, the ratification by Saint Lucia of the **Secretariat Agreement**) would be insufficient to create a legitimate expectation. To create such an expectation, more would be needed, for example, positive statements by the representatives of the state of Saint Lucia or an established practice by Saint Lucia of recognising immunity from all forms of the legal process for the OECS.

United Policyholders Group and others v Attorney General of Trinidad and Tobago [2016] 1 WLR 3383 applied.

5. At present there is no rule of customary international law that confers immunity on international organisations. The exclusion of the OECS from the scope of Article 21 of the **Revised Treaty** militates against the contention of the appellant that such immunity can be established by customary international law. Additionally, the existence of section 3(2)(a) of the **International Organisation (Immunities and Privileges) Act** by which the OECS could be granted immunity from suit and legal process by order of the Governor General suggests that the grant of any such immunity in Saint Lucia requires action by the Governor General rather than recognition by this Court of a rule of customary international law relating to immunity of international organisations.

Article 21 of the **Revised Treaty of Basseterre establishing the Organisation of Eastern Caribbean States Economic Union 2010** considered; Section 3 of **United Nations and Specialised Agencies (Privileges and Immunities) Act** Chapter 10:08 Revised Laws of Saint Lucia 2021 applied; Edward Chukwuemeke Okeke, **Jurisdictional Immunities of States and International Organizations** (OUP 2018) at pg 269 considered; **Amaratunga v Northwest Atlantic Fisheries Organization** 2013 SCC 66, [2013] 3 S.C.R. 866 considered.

6. The question of whether the OECS was properly served is a separate one from the question of whether the court has jurisdiction to try a defamation claim against the OECS, assuming it was properly served. Immunity from service does not relate to or concern immunity from jurisdiction. It is not necessary for this Court to determine whether there was proper service because the issue concerning service was one of the grounds of the Jurisdiction Application. It was not one of the declarations sought in the Jurisdiction Application; the only declaration sought by the appellant was that the court had no jurisdiction to try to claim against the OECS. The appellant did not put before the court below adequate evidence as to service to establish the mode of service or seek a declaration that there was no proper service on the OECS.

Rule 9 of the **Civil Procedure Rules 2000** applied; **Al-Malki and another v Reyes (Secretary of State for Foreign and Commonwealth Affairs and another intervening)** [2019] AC 735 applied.

JUDGMENT

- [1] **VENTOSE JA [AG.]**: This is an appeal from the decision of Smith J dated 5th March 2018 in which he held that the Organisation of Eastern Caribbean States (“the OECS” or “the appellant”) does not enjoy immunity from suit or legal process in Saint Lucia. This issue arose from proceedings in which the respondent claimed against the appellant and Ms. Maxine Nestor, the second defendant, damages for breach of a consulting contract and defamation. The claim was never served on Ms. Nestor, so the matter proceeded only against the OECS. After being served with the claim form, and filing an acknowledgement of service on 9th May 2017, the appellant filed on 24th May 2017 an application seeking a declaration that the court has no jurisdiction to try the claim against the appellant (the “Jurisdiction Application”). In that application, the appellant’s main contention was that the OECS is an international organisation established under the **Revised Treaty of Basseterre establishing the Organisation of Eastern Caribbean States Economic Union 2010** (the “**Revised Treaty**” or “**RTB**”) and is immune from every form of legal process in Saint Lucia.

The Judgment Below

- [2] The Jurisdiction Application came on for hearing before Smith J on 8th December 2017 who, with the agreement of counsel for the parties, decided the Jurisdiction Application on the papers and gave his written judgment on 5th March 2018, as mentioned above. After considering the provisions of: (1) Article 21 of the **Revised Treaty**; (2) section 3 of the **Organisation of Eastern Caribbean States Act**¹, (the “**OECS Act**”); (3) Articles 22, 29 and 31 of the **Vienna Convention on Diplomatic Relations**² (the “**VCDR**”); (4) Article V of the Agreement between The Government of St. Lucia, The Government of Antigua and Barbuda and The Organisation of Eastern Caribbean States regarding The Secretariat of the Organisation (the

¹ Chapter 19.12 Revised Laws of Saint Lucia 2021.

² Adopted 18th April 1961, in force 24th April 1964, 500 U.N.T.S. 95.

“**Secretariat Agreement**”); and (5) section 3 of the **International Organisations and Overseas Countries (Immunities and Privileges) Act**³ (or the “**International Organisations Act**”), Smith J held that none of these confer on the OECS immunity from suit or legal process in Saint Lucia.

- [3] Smith J explained that: first, the **Secretariat Agreement** would have to be given the force of law through enactment in Saint Lucia, or, the necessary Order would have to be made under the **International Organisations Act** for any immunity of the OECS from any form of legal process to arise; second, it was clear from the authorities such as **Standard Chartered Bank v International Tin Council and others**⁴ [and **R v Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No 3)**⁵] that what international organisations enjoy is not sovereign or state immunity but rather organisational immunity; and (3) he was not persuaded that service of legal process on the OECS could only have been effected through personal service on the Director-General of the OECS by operation of Articles 2.2 to 2.4 of the **Revised Treaty** and the **Diplomatic and Consular Services (Immunities and Privileges) Act**⁶ which outlines the Articles of the **VCDR** which have the force of law in Saint Lucia. Consequently, Smith J refused the appellant’s application for a declaration that the court has no jurisdiction to try the defamation claim.

The Appeal

- [4] Pursuant to leave granted on 24th April 2018, the appellant filed on 8th May 2018 a notice of appeal against the decision of Smith J in refusing to grant the declaration sought, in summary, on the following grounds: (1) that the trial judge erred in law and/or misdirected himself when he held that the appellant does not enjoy immunity from suit or legal process in Saint Lucia; (2) that the trial judge erred in law and/or misdirected himself when he failed adequately to apply the presumption in law that

³ Chapter 10.07 Revised Laws of Saint Lucia 2021.

⁴ 1987] 1 WLR 641.

⁵ [2000] 1 A.C. 147.

⁶ Chapter 10.04 of the Revised Laws of Saint Lucia 2021.

requires the **OECS Act** to be interpreted and applied in a manner that does not infringe Saint Lucia's international obligations under the **Revised Treaty** and the **Secretariat Agreement**; (3) that the trial judge erred in law or misdirected himself when he concluded that the appellant was to be likened to a corporation which meant that the appellant enjoyed separate legal personality from that of the Director-General of the OECS; and (4) that the trial judge erred in law when he concluded that there was no need to consider whether service was properly effected on the appellant.

The Treaty and Legislative Framework

The Revised Treaty

- [5] The OECS was established by the **Treaty of Basseterre** in 1981 (the "**1981 Treaty**"). The **1981 Treaty** was revised in 2010 and was replaced with the **Revised Treaty**. Article 2 of the **Revised Treaty** preserves and continues the OECS and Article 3 provides for the membership of the OECS, which comprises full membership and associate membership. Article 4 outlines the major purposes of the OECS, including: (1) establishing the Economic Union as a single economic and financial space; (2) promoting cooperation among the Member States and at the regional and international levels having due regard to the Revised Treaty of Chaguaramas and the Charter of the United Nations; (3) maintaining unity and solidarity among the member states and the defence of their sovereignty, territorial integrity, and independence. In achieving the purposes of the OECS, member states shall implement decisions of the OECS under the **RTB** and otherwise endeavour to co-ordinate, harmonise and undertake joint actions and pursue joint policies particularly in the fields of: (a) mutual defence and security (including police and prisons); (b) the judiciary and the administration of justice; (c) external relations including overseas representation; (d) international trade agreements and other external economic relations; and (e) financial and technical assistance from external sources, among others.

- [6] Member States of the OECS are obligated to carry out their obligations arising from the **Revised Treaty** or from decisions taken by institutions of the OECS (Article 5). Article 6 names the institutions of the OECS as follows: (a) the Eastern Caribbean Supreme Court; (b) the Eastern Caribbean Central Bank; and (c) the Eastern Caribbean Civil Aviation Authority. Article 7 establishes the following as Organs of the OECS: (a) the Authority of Heads of Government of the Member States; (b) the Council of Ministers; (c) the OECS Assembly; (d) the Economic Affairs Council; and (e) the OECS Commission. Articles 8-12 outline the composition and functions of each of those Organs of the OECS. Article 13, which establishes the position of Director-General of the OECS, states as follows:

“ARTICLE 13: THE DIRECTOR-GENERAL OF THE ORGANISATION

13.1 There shall be a Director-General of the Organisation who shall be the Chief Executive Officer of the Organisation and shall have responsibility for the day to day administration of the Organisation. The Director-General shall be appointed by the OECS Authority to serve in that capacity for a term of four (4) years and shall be eligible for re-appointment.

13.2 The Director-General shall in the performance of the Director-General's functions be responsible to the OECS Authority, to the OECS Commission, and through the OECS Commission to the Council of Ministers and to the Economic Affairs Council. The Director-General shall be responsible for the general efficiency of the OECS Commission's administrative service, for co-ordination of the activities of the Organisation and for the operation of the administrative apparatus in general. The Director-General shall similarly be responsible through the OECS Commission to any Organ established by the OECS Authority pursuant to Article 7.2 of this Treaty.”

- [7] Article 21 of the **Revised Treaty** is directly relevant to the issue under consideration as it provides for legal personality, privileges and immunities as follows:

“ARTICLE 21: LEGAL PERSONALITY, PRIVILEGES AND IMMUNITIES

21.1 The Organisation, as an international organization, shall enjoy legal personality.

21.2 The Organisation shall have in the territory of each Member State -
(a) the legal capacity required for the performance of its functions under this Treaty; and

(b) power to acquire, hold or dispose of real or personal, moveable or immoveable property.

21.3 In the exercise of its legal personality under this Article, the Organisation shall be represented by the Director-General.

21.4 The privileges and immunities to be granted to the members of the OECS Commission and to the senior officials of the Organisation at its headquarters and in the Member States shall be the same accorded to members of a diplomatic mission accredited at the headquarters of the Organisation and in the Member States under the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961. Similarly the privileges and immunities granted to the OECS Commission at the headquarters of the Organisation shall be the same as granted to diplomatic missions at the headquarters of the Organisation under the said Convention. Other privileges and immunities to be recognised and granted by the Member States in connection with the Organisation shall be determined by the OECS Authority.”

THE OECS ACT

- [8] The **Revised Treaty**, as an international treaty, can only have the force of law in Saint Lucia by legislation passed by the Parliament of Saint Lucia. This was achieved by section 3 of the **OECS Act** which provides as follows:

“3. Treaty and Protocol to have force of law

The Treaty of Basseterre Establishing the Organisation of Eastern Caribbean States Economic Union and the Protocol of the Eastern Caribbean Economic Union to the Treaty of Basseterre Establishing the Organisation of Eastern Caribbean States Economic Union, the texts of which are set out in Schedule 1, have the force of law in Saint Lucia.”

The effect of section 3 of the **OECS Act** is to make all the provisions of the **Revised Treaty** part of the laws of Saint Lucia.

The VCDR

- [9] The **VCDR** is an international treaty that attempts to codify the rules that are applicable for the exchange of missions or embassies among States. The purpose of such privileges and immunities, as noted in the preamble of the **VCDR**, is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States. The **VCDR** arises for consideration because Article 21.4 of the **Revised Treaty** expressly states that the privileges and

immunities to be granted to members of the OECS Commission and to senior officials of the OECS at its headquarters and in the Member States shall be the same accorded to members of a diplomatic mission accredited at the headquarters of the OECS and in the Member States under the provisions of the **VCDR**. The articles of the **VCDR** applicable to members of a diplomatic mission are as follows:

“Article 22

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.
2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

Article 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

Article 31

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:
 - (a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
 - (b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
 - (c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.
2. A diplomatic agent is not obliged to give evidence as a witness.
3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.
4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.”

The Secretariat Agreement

- [10] In the preamble to the **Secretariat Agreement**, it is stated that its articles were agreed, first, having regard to the **1981 Treaty** which provides that the OECS as an international organisation shall enjoy legal personality and have, in the territory of each Member State, the legal capacity required for the purpose of its functions under the **1981 Treaty** and with the power to acquire, hold or dispose of moveable or immovable property; and, second, desiring to regulate, by the **Secretariat Agreement**, all questions relating to the establishment of the Secretariat of the OECS in accordance with paragraph 4 of the **1981 Treaty**. Paragraph 4 provides for the grant of privileges and immunities to the senior officials of the OECS at its headquarters and in Member States on the same basis as that accorded to members of the diplomatic mission accredited at the headquarters of the OECS and in member states under the provisions of the **VCDR**.

- [11] The following are the applicable articles of the **Secretariat Agreement**:

"Article III

Facilities, Privileges and Immunities

- (a) The Secretariat at the Headquarters of the Organisation shall be granted by the Governments of Saint Lucia and Antigua and Barbuda, respectively, the privileges and immunities provided for in Article 17 of the Treaty.

...

2. Officials of the Organisation who are members of the diplomatic staff shall enjoy in Saint Lucia and Antigua and Barbuda the following immunities and privileges: -

...

- (c) Immunity from legal process of any kind in respect of words spoken or written in their official capacity and of all acts performed by them in their official capacity and such immunity shall continue notwithstanding that the persons concerned have ceased to be officials of the Organisation.

...

3. Nothing in paragraph 2 of this Article shall be construed as limiting the privileges and immunities of senior officials of the Organisation as provided for in Article 17 of the Treaty and, for the purpose of the said Article 17 and this Article, senior official of the Organisation shall be the Director-General, and those other officials of the Organisation designated as such by the Director-General and approved from the Government.

Article V
Archives and Property

...

2. The Secretariat, and its property wherever located and by whomsoever held shall enjoy immunity from every form of legal process except in so far as the Secretariat may have expressly waived its immunity in specific cases. It is however, understood that no waiver of immunity shall extend to any measure of execution.
...”

The International Organisation (Immunities and Privileges) Act

[12] Section 3 of the **International Organisation and Overseas Countries (Immunities and Privileges) Act**, states as follows:

“3. Immunities privileges and capacities of certain international organisations and connected persons

- (1) This section applies to any organisation declared by order of the Governor General to be an organisation of which Saint Lucia or the Government thereof and one or more overseas countries or the Government or Governments thereof are members.
- (2) The Governor General may by order—
 - (a) provide that any organisation to which this section applies (hereinafter referred to as “the organisation”) have the legal capacities of a body corporate and also have, to such extent as may be specified in the order, the immunities and privileges set out in Part I of the Schedule;
 - (b) confer upon—
 - (i) persons who are representatives (whether of governments or not) of any organ of the organisation or are members of any committee of the organisation or of any organ thereof,
 - (ii) such number of officers of the organisation as may be specified in the order, being the holders of such high offices in the organisation as may be specified,

- (iii) such persons employed on missions on behalf of the organisation as may be so specified,

to such extent as may be specified in the order, the immunities and privileges set out in Part II of the Schedule;

- (c) confer upon such other classes of officers and servants of the organisation as may be specified in the order, to such extent as may be so specified, the immunities and privileges set out in Part III of the Schedule;
- (d) confer upon the technical cooperation personnel of the Commonwealth Secretariat who are not nationals of Saint Lucia, the immunities and privileges set out in Part V of the Schedule; (Inserted by Act 5 of 2000)
- (e) confer upon an OPCW inspector the immunities and privileges set out in Part VI of the Schedule, (Inserted by Act 15 of 2001)

and Part IV of the Schedule shall have effect for the purpose of extending to the staffs of such representatives and members as are mentioned in paragraphs (b)(i) and to the families of officers of the organisation, any immunities and privileges conferred on the representatives, members or officers under that paragraph except in so far as the operation of the said Part IV is excluded by the order conferring the immunities and privileges.

However, the order shall be so framed as to secure that there are not conferred on any person any immunities or privileges greater in extent than those which, at the time of the making of the order, are required to be conferred on that person in order to give effect to any international agreement in that behalf."

- [13] Section 3(2)(a) states that the Governor General may by order provide that any organisation to which this section applies have the legal capacities of a body corporate and have, to such extent as may be specified in the order, the immunities and privileges set out in Part 1 of the Schedule. Section 1 of Part 1, entitled "Immunities and Privileges of the Organisation", provides for immunity from suit and legal process. To date, the Governor General has made no order granting any immunities and privileges to the OECS under section 3(2)(a) of the **International Organisation (Immunities and Privileges) Act**.

Immunity of the OECS under the Revised Treaty

The Appellant's Submissions

- [14] The appellant submits that the OECS enjoys immunity from suit and legal process in Saint Lucia on a proper construction, and having regard to the combined effect, of the provisions of the **OECS Act**, the **Revised Treaty**, the **VCDR** and the **Secretariat Agreement**. The appellant also submits that the **OECS Act**, by its incorporation into the domestic law of Saint Lucia the provisions of the **Revised Treaty**, provides immunity for the OECS Commission, and that this is the same immunity granted to diplomatic missions at the Headquarters of the OECS. The appellant contends that the OECS is further immune from suit and legal process by virtue of its legal representative being the Director-General. The appellant further contends that the effect of Article 21.3 of the **Revised Treaty** is that the appellant is not to be taken as a separate legal person, because the **Revised Treaty** was specific in its language that “[i]n exercise of its legal personality under this Article, the Organisation shall be represented by the Director-General”.
- [15] The appellant submits that the OECS and its Director-General cannot be separated and that the OECS is a juristic person with legal personality conferred upon it in a specific manner. The appellant further submits that this must, therefore, mean that any privileges and immunities granted to the Director-General in his personal capacity shall extend to the OECS as they are one and the same for the purposes of “legal personality”. The appellant contends that the OECS cannot, therefore, exercise any legal function without that action being that of the Director-General. The appellant also contends that by the nature of the relationship between the Director-General and the OECS which arises on a proper construction of Article 21.3 of the **Revised Treaty** the Director-General is, *ipso facto*, the OECS.
- [16] The appellant contends that the Director-General is the only vehicle by which the OECS can exercise its legal personality and that it can only be concluded that the Director-General and the OECS are indistinguishable. The appellant further contends that if the makers of the **Revised Treaty** intended to shield the Director-

General in his personal capacity from the legal process without shielding the OECS this would be adverse to the independence of the OECS and its status as an international organisation and would lead to an absurdity. The appellant submits that the trial judge, therefore, erred when he accepted that the Director-General, as a diplomatic agent, is accorded immunity from both the civil and criminal jurisdiction of the courts of Saint Lucia, but failed to recognise and accept that by virtue of the Director-General being the vehicle by which the OECS exercises its legal personality, the OECS should not be given the same immunities and privileges afforded to the Director-General in his personal capacity.

The Respondent's Submissions

- [17] The respondent submits that the appellant acknowledges that the OECS has not been expressly granted immunity from suit in Saint Lucia but rests its case on the view that the OECS is entitled to immunity from suit that is granted to the Director-General by virtue of the provisions of the **OECS Act**, the **Revised Treaty** and the **VCDR**. The respondent further submits that an international organisation only has immunity that is expressly granted to it by legislation. The respondent contends that the appellant's reliance on an immunity that is not expressly granted to the OECS, acknowledges that the OECS has not been granted immunity, and that this warrants dismissal of the appeal. The respondent further contends that Article 21 of the **Revised Treaty** deals with immunities, but it does not confer immunity from suit on the OECS. The respondent submits that the only immunity that Article 21 gives to the OECS is to make its premises inviolable. The respondent further submits that Article 21 only confers diplomatic immunity under the **VCDR** to the members of the OECS Commission and to senior officials of the OECS.
- [18] The respondent contends that without an express grant of immunity from suit by legislation in Saint Lucia, the OECS has no immunity from suit. The respondent contends that under municipal law, an international organisation only has the capacities and privileges that it has been granted by domestic legislation. The respondent submits that a corollary is that an international organisation does not

even exist under municipal law unless granted legal personality by domestic legislation - *a fortiori* it has only privileges and immunities to the extent granted by the domestic legislation. The respondent further submits that the Parliament of Saint Lucia passed the **OECS Act** implementing the **Revised Treaty**, but that the **Revised Treaty** did not give the OECS immunity from suit. The respondent states that the Parliament of Saint Lucia enacted the **International Organisation (Immunities and Privileges) Act** to enable international organisations to be granted immunities and privileges by order of the Governor General but that no such order has been made by the Governor General granting immunities and privileges to the OECS. The respondent concludes that the OECS has not been granted immunity from suit under either: (a) the **Revised Treaty**, the **VCDR** and the **OECS Act**; or (b) any other domestic legislation, including the **International Organisation (Immunities and Privileges) Act**.

[19] The respondent submits that the argument that the OECS is immune from suit based on the immunities from suit conferred on the Director-General by the **Revised Treaty** is without basis in law and is untenable. The respondent further submits that the first paragraph of Article 21.1 confers legal personality on the OECS in plain words and that by doing so a corporate body with separate legal personality is created once the **Revised Treaty** is given legal effect domestically. The respondent contends that the consequences at common law (in Saint Lucia the equivalent is the Civil Code) of being a legal person/body corporate are that the OECS has certain legal capacities similar to a natural person. The respondent also contends that since the OECS is a fictional person, a natural person is required to exercise these capacities on behalf of the OECS so that representation of the OECS in the exercise of legal personality: (1) refers to representation in the exercise of these legal capacities; and (2) does not equate to the legal personality that is only exercised through the Director-General as the appellant alleges.

[20] The respondent submits that the ordinary meaning of Article 21.3, which is confirmed by its context and the purpose of Article 21 is that it merely identifies the

individual that is to represent the legal person (the OECS) in exercising its legal capacities (because establishing a legal person is incomplete without this), while identifying the individuals that the OECS is authorised in law to have to carry out its administrative, technical and diplomatic activities merely by class (for example, staff or ambassadors). The respondent further submits that a proper interpretation of Article 31 of the **VCDR** is that the immunity from suit conferred on the Director-General by Article 31 relates only to criminal, civil or administrative proceedings against the Director-General where the Director-General is a party to these proceedings. The respondent also submits that the Director-General's diplomatic immunity from suit ousts the court's jurisdiction only in actions where the Director-General is a party and faces personal liability. The respondent contends that the immunities provided by Article 31 cannot be appropriated by the OECS which the Director-General represents in proceedings brought against the OECS. The respondent also contends that the OECS must have its own immunity from suit – organisational immunity – to oust the jurisdiction of the court in proceedings against the OECS.

- [21] The respondent contends that there is no “presumption of law” requiring the court to give effect to Saint Lucia's international obligations that is applicable here. The respondent also contends that it is a well-established principle that the legal consequences of treaties are not justiciable in domestic courts. The respondent submits that Article 21.4 of the **Revised Treaty** does not grant the OECS immunity from suit which means that Saint Lucia has no international obligation to give immunity to the OECS. The respondent also submits that, first, it is not a question of interpretation of the **OECS Act** because the **OECS Act** merely incorporates by reference the **Revised Treaty**; second, it is a question of the interpretation of the **Revised Treaty**; and third, Article 21.4 of the **Revised Treaty** incorporates by reference Article 31 of the **VCDR** which on proper interpretation does not grant the OECS immunity from suit.

Discussion and Analysis

- [22] The question of whether the OECS enjoys immunity from suit in Saint Lucia must start with a determination of whether any law of Saint Lucia confers on the OECS immunity from every form of legal process as the appellant alleges. Section 3 of the **OECS Act** states that the **Revised Treaty** as an international treaty has the force of law in Saint Lucia. Since the **Revised Treaty** is part of the law of Saint Lucia, the articles of the **Revised Treaty** must expressly or by implication provide immunity to the OECS from any form of legal process. The applicable article of the **Revised Treaty** relating to immunities and privileges is Article 21 to which reference has already been made above.
- [23] Article 21.1 states that the OECS, as an international organisation, shall enjoy legal personality. This simply means that the OECS has rights and responsibilities as outlined in the **Revised Treaty**. Article 21.1 outlines the legal capacity and the powers that the OECS has in each Member State of the OECS. Article 21.3 states that in the exercise of its legal personality under Article 21, the OECS shall be represented by the Director-General. The legal personality of the OECS and immunity that might be granted to the OECS are distinct concepts, so these provisions do not assist the appellant.
- [24] Article 21.4 states that the privileges and immunities accorded to members of the OECS Commission and senior officials of the OECS shall be the same as those accorded to members of the diplomatic mission under the **VCDR**. The OECS Commission itself shall have the same privileges and immunities accorded to diplomatic missions under the **VCDR**.
- [25] The issue that needs to be decided is whether Article 21.4 provides, expressly or impliedly, any privileges and immunities to the OECS. The appellant effectively concedes, as the respondent claims, that the OECS does not enjoy any express immunity from every form of legal process because the appellant insists that such immunity arises, not from any specific text in Article 21 or any other Article of the

Revised Treaty but arises from a proper construction and having regard to the combined effect of the provisions of the **OECS Act**, the **Revised Treaty**, the **VCDR** and the **Secretariat Agreement**. In other words, there is no express grant of immunity to the OECS, but this arises by implication deriving from an interpretation of the treaty and legislative provisions. The appellant does not properly or adequately explain the manner in which the combined effect of the **OECS Act**, the **Revised Treaty**, the **VCDR** and the **Secretariat Agreement** achieves that result. The OECS can achieve its functions without the grant of immunity from every form of legal process.

- [26] However, it is accepted that to prevent any undue interference in the operations of the OECS, the **Revised Treaty** that establishes the OECS or the state of Saint Lucia should have provided the OECS, as an international organisation, with certain privileges and immunities. That is a matter for the Member States of the OECS generally and for the state of Saint Lucia in particular. In fact, the OECS has existed for over 40 years and it cannot be said that the lack of immunity has prevented it from achieving its functions as outlined in Article 4 of the **Revised Treaty**. The appellant states further that the immunity that the OECS Commission enjoys is immunity under the **VCDR**. However, the immunity of the OECS Commission is not the same as immunity enjoyed by the OECS as an international organisation. The OECS Commission, as mentioned above, is one of the principal organs of the OECS. It does not follow that the immunity that the OECS Commission possesses under the **Revised Treaty** can be transferred to and be enjoyed by the OECS. Article 21.4 of the **Revised Treaty** makes specific provision for the immunities and privileges to be enjoyed by: (1) the members of the OECS Commission and the senior officials of the OECS by reference to the immunities and privileges to be enjoyed by *members of the diplomatic mission* under the **VCDR**; and (2) the OECS Commission by reference to the immunities and privileges to be enjoyed by *the diplomatic mission* under the **VCDR**. None of these refer to or concern any immunity from legal process that the OECS might possess as an international organisation under the **Revised Treaty**.

- [27] The appellant also submits that the OECS is further immune from suit and the legal process by virtue of its legal representative being the Director-General. According to the appellant, since the OECS is represented by the Director-General in the exercise of its legal personality according to Article 21.3 of the **Revised Treaty**, any privileges and immunities granted to the Director-General in his personal capacity shall extend to the OECS as they are one and the same for the purposes of “legal personality”.
- [28] I do not agree. The statement in Article 21.3 of the **Revised Treaty** that the OECS shall be represented by the Director-General in the exercise of its legal personality simply means that the Director-General is the person who shall exercise the powers and rights of the OECS. The immunity granted to the Director-General is not specifically spelt out in Article 21 but arises by virtue of Article 21.4 since the Director-General is one of the members of the OECS Commission whose immunity and privileges is the same as those of members of a diplomatic mission under the **VCDR**. The OECS, as the umbrella organisation, cannot derive immunity, in its capacity as an international organisation in Saint Lucia, from the immunity granted by the **Revised Treaty** to a member of one of the five (5) organs through which the OECS is to carry out its functions under the **Revised Treaty**.
- [29] The appellant is not correct in its assertion that since the Director-General is the only vehicle by which the OECS can exercise its legal personality it can only be concluded that the OECS and the Director-General are indistinguishable. Clearly the OECS, according to Article 21.1, has legal personality as an international organisation. To achieve some of its functions, Article 21.2 makes clear that the OECS shall have the capacity required to carry out those functions and power to acquire, hold or dispose of real or personal, moveable or immoveable property. However, the OECS, as an international organisation, cannot achieve some of those functions without acting through an individual. The **Revised Treaty** properly appreciates this and provides that the **Director-General** is the individual through

which the OECS shall exercise its legal personality. This does not mean that the Director-General and the OECS are indistinguishable as the appellant asserts or that *all* the powers of the OECS can only be exercisable through the Director-General. The entire scheme of the **Revised Treaty** providing for the five (5) organs through which the OECS can carry out its functions will be severely undermined if the contention of the appellant were accepted. The analogy of a corporation accepted by Smith J was merely to emphasise that a corporation (like the OECS) enjoys its own legal personality separate from that of its directors who represent it in its various legal capacities (like the Director General who represents the OECS).

- [30] I agree with the respondent that an international organisation can only have immunity that has been expressly granted to it by its treaty obligations and domestic legislation. In **Amaratunga v Northwest Atlantic Fisheries Organization**,⁷ the Supreme Court of Canada explained that:

“[29] In the case of international organizations, unlike that of states, the prevailing view at present is that no rule of customary international law confers immunity on them. International organizations derive their existence from treaties, and the same holds true for their rights to immunities: H. Fox, *The Law of State Immunity* (2nd ed. 2008), at pp. 725-26. Such an organization must operate on the territory of a foreign state and through individuals who have nationality and is therefore vulnerable to interference, since it possesses neither territory nor a population of its own: Fox, at p. 724. This reality makes immunity essential to the efficient and independent functioning of international organizations. It also shapes the immunities and privileges that are granted to international organizations. **Such immunities and privileges are created through a complex interplay of international agreements and the national law of host states.**” (Emphasis added)

- [31] Article 21 of the **Revised Treaty** does not expressly provide the OECS with immunity from any form of legal process. Moreover, none of the articles of the **Revised Treaty** can implicitly be read, even with the most generous interpretation, as providing any such immunity as the appellant contends. I agree with the respondent that although the Parliament of Saint Lucia enacted the **International Organisation (Immunities and Privileges) Act** to enable international

⁷ 2013 SCC 66, [2013] 3 S.C.R. 866.

organisations to be granted immunities and privileges by order of the Governor General, no such order has been made by the Governor General granting any immunities and privileges to the OECS. In my view, the only conclusion one can reasonably draw from this absence is the intention of the Parliament of Saint Lucia not to provide the OECS with immunity from any form of legal process. The importance of the *grant of immunity by the host state* was emphasised by the Supreme Court of Canada in **Amaratunga** where it stated that:

“[1] International organizations are active and necessary actors on the international stage. Although they are subjects of international law, they have to operate on the territories of sovereign states with political and legal systems of their own. To avoid undue interference in the operations of an international organization, the treaty that establishes it will recognize certain privileges and immunities. If not, the host state will promise to do so. In this regard, some form of immunity from legal process in domestic courts is critical, **and commonly granted.**” (Emphasis added)

- [32] Consequently, I can only conclude, in agreement with the respondent, that the OECS has not been granted immunity from suit or legal process under either: (a) the **Revised Treaty**, the **VCDR** and the **OECS Act**; or (b) any other domestic legislation, including the **International Organisation (Immunities and Privileges) Act**. In my view, Smith J was correct in holding that that the OECS has no immunity from suit or legal process in Saint Lucia.

Immunity of the OECS and the Secretariat Agreement

The Appellant's Submissions

- [33] The appellant contends that the trial judge erred in law when he determined that Article V of the **Secretariat Agreement** conferred no immunity on the OECS but that Article V, “at best, it creates a binding obligation in international law on the part of the Government of Saint Lucia to implement domestically the obligations created in [the Secretariat Agreement]”. The appellant further contends that it is not necessary for Saint Lucia to have enacted domestic legislation in relation to the **Secretariat Agreement**. In support of this statement, the appellant cites the

decision of **Salomon v Commissioners of Customs and Excise**⁸ for the principle that where the terms of legislation are not clear but are reasonably capable of more than one meaning, the treaty itself becomes relevant, for there is a *prima facie* presumption that Parliament does not intend to act in breach of international law, including specific treaty obligations, and if one of the meanings which can reasonably be ascribed to the legislation is consonant with the treaty obligations and another or others are not, the meaning which is consonant is to be preferred.

- [34] The appellant submits that if there is any ambiguity as to the effect of section 3 of the **OECS Act**, which gives force of law to the **Revised Treaty** (which incorporates the privileges and immunities provided in the **VCDR**), with respect to immunity of the OECS, by virtue of the presumption, the provisions concerning the privileges and immunities conferred should be interpreted in a manner which adheres to Article V of the **Secretariat Agreement** which, although not incorporated into municipal law, provides absolute clarity with respect to the issue of immunity. The appellant further submits this is because Article V of the **Secretariat Agreement** stipulates that the OECS Secretariat (now referred to as the OECS Commission) and its property shall enjoy immunity from every form of legal process, except in so far as the OECS Secretariat may have expressly waived its immunity in specific cases. Therefore, the provisions of the **Secretariat Agreement** ought to be taken into account when considering the extent of the immunity enjoyed by the OECS and should not to be construed in a way that disregards Saint Lucia's international law obligations and the presumption which exists with respect to international law.

The Respondent's Submissions

- [35] The respondent submits that the **Secretariat Agreement** was not given the force of law in Saint Lucia and that the **Secretariat Agreement** implements the **1981 Treaty** that no longer binds the state of Saint Lucia. The respondent further submits that the grant of "immunities and privileges provided for in Article 17" is devoid of content because, as Article 17 is no longer binding, it does not provide for immunities and

⁸ [1966] 3 WLR 36.

privileges. The respondent contends that the word “Secretariat” is used to mean two different things, namely: (1) the entity or the mission; and (2) the buildings or the headquarters. The respondent also contends that immunities and privileges were conferred on the entity or the mission (comprising the Director-General and such other staff as the OECS may require) in respect of the buildings or the headquarters. The respondent submits that Article 2 of the **Revised Treaty** preserves and continues the OECS but does not preserve and continue the OECS Secretariat.

- [36] The respondent explains that, on the contrary, Article 12.2 of the **Revised Treaty** establishes a different mission, the OECS Commission, comprising the Director-General and one Commissioner of Ambassadorial rank named by each Member State. The respondent submits that there is no headquarters agreement implementing the **Revised Treaty** granting privileges and immunities to the new mission neither in respect of its headquarters nor to its senior officials and the Commissioners. The respondent also submits that the immunities from legal process and words spoken are conferred on senior officials of diplomatic rank and that the defamation claim concerns words spoken by a member of the technical staff who does not have diplomatic rank. The respondent explains that immunity from process imposes restrictions on the manner in which court process can be served but it does not affect the jurisdiction of the court.

Discussion and Analysis

- [37] The **Secretariat Agreement**, signed by Saint Lucia, Antigua and Barbuda and the OECS, provides greater detail in respect of the privileges and immunities granted to the senior officials of the “Secretariat” by reference to the provisions of the **VCDR**. The appellant submits, as noted above, that Article V of the **Secretariat Agreement** stipulates that the OECS Secretariat (in its view, now referred to as the OECS Commission) and its property shall enjoy immunity from every form of legal process, except in so far as the OECS Secretariat may have expressly waived its immunity in specific cases.

[38] Article V, Section 2, of the **Secretariat Agreement** states, in summary, that the Secretariat and its property shall enjoy immunity from every form of legal process except where such immunity is waived. The **Secretariat Agreement** is binding on the state of Saint Lucia as an international law obligation, but the **Secretariat Agreement** has not been given the force of law in Saint Lucia in the same way the **Revised Treaty** is given the force of law in Saint Lucia by virtue of section 3 of the **OECS Act**. The appellant submits that it is not necessary for Saint Lucia to have enacted domestic legislation in relation to the **Secretariat Agreement**, having regard to the decision in **Salomon**. In that decision, the High Court of England and Wales noted that the claimant sought to rely on a convention that the United Kingdom had ratified in aid of the interpretation of the words “buyer” and “seller” in the **United Kingdom Customs and Excise Act 1952**. Megaw J explained that “the convention could only be referred to if there were an ambiguity in the Act, and [...] only then, if the convention had been expressly referred to in, or scheduled, to the Act”.⁹ There is no applicable presumption that the **OECS Act** is to be interpreted in accordance with the **Revised Treaty** or the **Secretariat Agreement** because the **OECS Act** merely incorporates the **Revised Treaty** into the domestic law of Saint Lucia. The presumption to which the appellant refers only applies where domestic legislation is intended to give effect to an international treaty but uses language that differs from the text of the international treaty so where there is any ambiguity in the words used in the domestic legislation the court can have regard to the text of the international treaty to resolve that ambiguity.

[39] There is no ambiguity in section 3 of the **OECS Act** as the appellant alleges. What it does expressly and simply is to make the **Revised Treaty** part of the law of Saint Lucia. Nothing could be less ambiguous than section 3 of the **OECS Act**. The appellant argues that the provisions of the Secretariat Agreement should be taken into account when considering the extent of the immunity enjoyed by the OECS. In other words, the appellant is suggesting that in interpreting Article 21 of the **Revised Treaty** (that does not expressly or impliedly grant immunity to the OECS) which is

⁹ [1966] 3 WLR 36, 45.

part of the law of Saint Lucia by virtue of section 3 of the **OECS Act**, regard must be to Article V, Section 2, of the **Secretariat Agreement**, which provides immunity in international law to the Secretariat from every form of legal process. The first difficulty that the appellant faces with that argument is that there is no ambiguity for which this approach is necessary. There is no ambiguity in either section 3 of the **OECS Act** or Article 21 of the **Revised Treaty**. The second difficulty is that even if either section 3 of the **OECS Act** or Article 21 of the **Revised Treaty** were ambiguous, there would be no basis to use any of the terms of the **Secretariat Agreement** to interpret any of them.

[40] Article 21 of the **Revised Treaty** did not originate from any article or provision of the **Secretariat Agreement**. In fact, the Secretariat Agreement by its preamble was meant to regulate all questions relating to the establishment of the Secretariat of the OECS in accordance with Article 17.4 of the **1981 Treaty**. Article 17.4 of the **1981 Treaty** is identical to Article 21.4 of the **Revised Treaty**. Article V of the **Secretariat Agreement**, to the extent that it expands on the privileges and immunities found at Article 17.4 of the **1981 Treaty** or Article 21.4 of the **Revised Treaty**, cannot be used to expand on the immunities and privileges found in Article 21.4 of the **Revised Treaty** which is part of the laws of Saint Lucia.

[41] The appellant also faces yet another hurdle in its attempt to use Article V of the **Secretariat Agreement** to ground its claim for immunity of the OECS. Article V relates to the Secretariat of the OECS under the **1981 Treaty**. Article I(l) of the **Secretariat Agreement** states that “the Secretariat” means “the buildings or parts of the buildings and the land ancillary thereto, irrespective of ownership used for the purposes of the Secretariat”. It is immediately clear that the word “Secretariat” is being used in two senses. The first is “the buildings”. The second is “the administrative centre of the OECS”, which is also called the Secretariat. Article I(l) of the **Secretariat Agreement** states that “the Headquarters of the Organisation” means all premises occupied by the Secretariat. I agree with the respondent that the word “Secretariat” is used to mean two different things in the **Secretariat**

Agreement namely: (1) the entity/mission; and (2) the buildings/headquarters. This is fortified by Article 10 of the **1981 Treaty** which states as follows:

“ARTICLE 10

The Central Secretariat

1. The Central Secretariat (hereafter referred to as the ‘Secretariat’) shall be the principal institution responsible for the general administration of the Organisation.
 2. The Secretariat shall comprise a Director General and such other staff as the Organisation may require.
- ...”

[42] The **Secretariat Agreement**, in my view, has no relevance in determining the scope of any immunity that might be enjoyed by the OECS under the **Revised Treaty** which forms part of the laws of Saint Lucia. Moreover, since the **Revised Treaty** neither expressly nor impliedly provides the OECS with immunity from any form of legal process, the **Secretariat Agreement** cannot be marshalled by the appellant in aid of its argument for immunity for the OECS that is not provided for under the **Revised Treaty**. In my view, this ground of appeal has no merit.

Unincorporated Treaties and Legitimate Expectations

The Appellant’s Submission

[43] The appellant submits that in **R v Secretary of State for the Home Department, ex parte Ahmed and Patel**,¹⁰ Lord Woolf M.R. explained that unincorporated treaties can give rise to legitimate expectations that the executive will act in accordance with the treaty. The appellant further submits that the proper construction of the legislative provisions and articles of the **Revised Treaty** ought to have warranted a consideration of Saint Lucia’s overarching international obligations in that the OECS, whose headquarters is stationed in Saint Lucia, ought to have the benefit of the immunities conferred under the **Secretariat Agreement**, independent of any failure on the part of the state of Saint Lucia to enact domestic legislation. The appellant contends that any contrary conclusion would lead to an

¹⁰ [1998] INLR 570.

undermining of the intent and purpose of the OECS, the **Revised Treaty** and the related policy considerations.

- [44] The appellant contends that the OECS has a substantive legitimate expectation, by reason of Article 21.4 of the **Revised Treaty** that it will be granted the same immunity from legal process and suit that is granted to diplomatic missions in Saint Lucia under the **VCDR**, which substantive legitimate expectation is further buttressed by Article V of the **Secretariat Agreement**. The appellant also contends that the OECS has a procedural legitimate expectation that international treaties which are ratified by Saint Lucia will be incorporated into domestic law by the passing of appropriate legislation by the Parliament of Saint Lucia. The appellant submits that until such time as legislation is passed, the failure to ratify should not undermine the OECS which forms the foundation of the states of the Eastern Caribbean. The appellant also submits that by applying the reasoning enunciated in **ex parte Ahmed and Patel** the logical conclusion is that although the **Secretariat Agreement** is not expressly incorporated into the laws of Saint Lucia, the court, in interpreting section 3 of the **OECS Act**, should have regard to unincorporated treaties, namely, the **Secretariat Agreement**, which can provide clarity on the issue of the nature or extent of the immunity that the OECS has from legal process.

The Respondent's Submissions

- [45] The respondent contends that legitimate expectations is a ground of review in administrative law in actions against the Government or their agents, based on past behavior, to require them to act in accordance with the legitimate expectation. The respondent also contends that these proceedings are not against the Government and that no past behavior creating an expectation of similar treatment is alleged. The respondent submits that, even if there was a legitimate expectation, the appellant would only be entitled to bring legal proceedings against the Government for failure to give effect to the legitimate expectation. The respondent also submits that this is not a defence in court, requiring the court to grant that which the appellant expected to receive from the Government.

Discussion and Analysis

[46] It is correct that in some very narrow cases, international treaties may give rise to what are known as legitimate expectations.¹¹ However, even before that issue is explored the question of whether a legitimate expectation properly arises first needs to be considered. The Judicial Committee of the Privy Council in **Paponette and others v Attorney General of Trinidad and Tobago**¹² and **United Policyholders Group and others v Attorney General of Trinidad and Tobago**¹³ has considered the scope of legitimate expectations in public law. Lord Neuberger of Abbotsbury, giving the leading judgment of the Privy Council in **United Policy Holders Group**, explained the current state of the law as follows:

“The law on legitimate expectation

36 .. it is appropriate to summarise briefly the Board’s understanding of the law relating to legitimate expectation.

37 In the broadest of terms, the principle of legitimate expectation is based on the proposition that, where a public body states that it will do (or not do) something, a person who has reasonably relied on the statement should, in the absence of good reasons, be entitled to rely on the statement and enforce it through the courts. Some points are plain. First, in order to found a claim based on the principle, it is clear that the statement in question must be “clear, unambiguous and devoid of relevant qualification”...

38 Secondly, the principle cannot be invoked if, or to the extent that, it would interfere with the public body’s statutory duty: see eg *Attorney General of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629, 636, per Lord Fraser of Tullybelton. Thirdly, however much a person is entitled to say that a statement by a public body gave rise to a legitimate expectation on his part, circumstances may arise where it becomes inappropriate to permit that person to invoke the principle to enforce the public body to comply with the statement. This third point can often be elided with the second point, but it can go wider: for instance, if, taking into account the fact that the principle applies and all other relevant circumstances, a public body could, or a fortiori should, reasonably decide not to comply with the statement.

39 Quite apart from these points, like most widely expressed propositions, the broad statement set out at the beginning of para 37 above is subject to

¹¹ *Minister of Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273.

¹² [2012] 1 AC 1.

¹³ [2016] 1 WLR 3383.

exceptions and qualifications. It is, for instance, clear that legitimate expectation can be invoked in relation to most, if not all, statements as to the procedure to be adopted in a particular context: see again *Ng Yuen Shiu* [1983] 2 AC 629, 636. However, it is unclear quite how far it can be applied in relation to statements as to substantive matters, for instance statements in relation to what Laws LJ called “the macro-political field” (in *R v Secretary of State for Education and Employment, Ex p Begbie* [2000] 1 WLR 1115, 1131), or indeed the macro-economic field. ...”

- [47] Lord Carnwath, in a concurring judgment, summarised the applicable principles as follows:

“121 In summary, the trend of modern authority, judicial and academic, favours a narrow interpretation of the Coughlan principle, which can be simply stated. Where a promise or representation, which is “clear, unambiguous and devoid of relevant qualification”, has been given to an identifiable defined person or group by a public authority for its own purposes, either in return for action by the person or group, or on the basis of which the person or group has acted to its detriment, the court will require it to be honoured, unless the authority is able to show good reasons, judged by the court to be proportionate, to resile from it. In judging proportionality the court will take into account any conflict with wider policy issues, particularly those of a “macro-economic” or “macro-political” kind.”

- [48] The first aspect of establishing a legitimate expectation is to identify a “promise” or “representation” that is made by a public authority which is “clear, unambiguous and devoid of relevant qualification”. The appellant fails on this hurdle because the OECS has not shown any “representation” or “promise” made by the representatives of the state of Saint Lucia concerning any immunity from legal process to be granted to the OECS. For the following reasons, the OECS can have no substantive legitimate expectation under Article 21.4 of the **Revised Treaty** that it will be granted the same immunity from legal process and suit similar to those granted to diplomatic missions in Saint Lucia under the **VCDR** or under Article V of the **Secretariat Agreement**. First, Article 21.4 of the **Revised Treaty** is part of the law of Saint Lucia. A legitimate expectation is not necessary since such legitimate expectations arise when legal rights end. As mentioned above, the OECS has no legal right to immunity from any form of legal process either expressly or impliedly based on Article 21 of the **Revised Treaty**. Second, given the specific grant of immunity and privileges to the OECS Commission and senior diplomatic officials, to

the exclusion of the OECS, it follows that the grant of privileges and immunities was not intended for the OECS. Third, a plethora of decisions in the Commonwealth Caribbean¹⁴ and the wider Commonwealth¹⁵ have emphasised that, except in rare cases, ratification alone of an international treaty (for example, the ratification by Saint Lucia of the **Secretariat Agreement**) would be insufficient to create a legitimate expectation. To create such an expectation, more would be needed, for example, positive statements by the representatives of the state of Saint Lucia or an established practice by Saint Lucia of recognising immunity from all forms of legal process for the OECS.

- [49] It is not necessary to decide whether a legitimate expectation can be claimed in proceedings that do not involve the State or a public authority. That will have to wait another day. The appellant has therefore not established the existence of a legitimate expectation to ground its claim for immunity from suit and legal process in Saint Lucia.

OECS Immunity and Customary International Law

The Appellant's Submissions

- [50] The appellant submits that immunity of international organisations is a feature of customary international law. The appellant also submits that the immunity of international organisations from suit is particularly established in the context of administrative claims, because there are specific mechanisms which are reasonable alternative methods to settle disputes between international organisations and their employees such as Article 18 of the **Revised Treaty**. The appellant cites the statement of Lord Millet in **Ex parte Pinochet Ugarte (No 3)**¹⁶ that "customary international law is part of the common law" and is, therefore, automatically incorporated into domestic law without the need for any legislative pronouncement.

¹⁴ Attorney-General and Others v Joseph (Jeffrey) and Boyce (Lennox) (2006) 69 WIR 104.

¹⁵ Malone v Metropolitan Police Commissioner (1979) Ch 344; Neville Lewis v Attorney General of Jamaica [2001] 2 AC 50.

¹⁶ [2000] 1 A.C. 147.

[51] The appellant contends that, first, immunity of international organisations is based on functionality so that immunity is needed for the execution of all official functions and activities of the international organisation; and second, this immunity is a custom and is intended to ensure the independence of the international organisation from any state, which is necessary to enable the international organisation properly to function. The appellant also contends that the United Nations, which, like the OECS, is an international organisation, enjoys immunity from suit in each of the territories of its members. The appellant submits that the representatives of the Member States of the United Nations and officials of the United Nations similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the United Nations.

[52] The appellant submits that the OECS, as an international organisation, similarly enjoys privileges and immunities in each of the territories of its Member States, which is required for the independent exercise of its functions. The appellant also submits that the OECS should enjoy such immunities and should not be subject to any suit or legal process which could hinder it from independently undertaking its functions. The appellant contends that this is heightened by the fact that the headquarters for the OECS is located in Saint Lucia, where the issue arose, and the OECS ought to enjoy immunity from legal process at its headquarters, as it would in other Member States of the OECS. The appellant urges this Court to accept that the immunity of an international organisation is part of customary international law, based on treaties globally conferring immunity on international organisations.

Discussion and Analysis

[53] The appellant is correct in stating that once customary international law is established it will be recognised by the local courts as part of domestic law. The question essentially is whether the immunity of international organisations is a feature of customary international law as the appellant contends. The appellant has provided no basis or evidence for this assertion. However, a leading monograph providing an exhaustive examination of the immunities of international organisations

states that “[p]resently, it is unsettled whether international organisations enjoy immunity on the basis of customary international law in addition to treaties”.¹⁷ This was also judicially recognised by the Supreme Court of Canada in **Amaratunga** where it stated that, unlike states, “the prevailing view at present is that **no rule of customary international law** confers immunity on [international organisations]”.¹⁸ The appellant has, therefore, failed to provide evidence of any established customary international law to the effect that international organisations have immunity in domestic law. The established learning in this field suggests that the position in relation to immunity of international organisation is not yet settled.

[54] Article 21 of the **Revised Treaty** provides for privileges and immunities for the members of the OECS Commission and senior officials by reference to the **VCDR**. The exclusion of the OECS from the scope of Article 21 of the **Revised Treaty** militates against the contention of the appellant that such immunity can be established by customary international law. Additionally, the existence of section 3(2)(a) of the **International Organisation (Immunities and Privileges) Act** by which the OECS could be granted immunity from suit and legal process by order of the Governor General suggests that the grant of any such immunity in Saint Lucia requires action by the Governor General rather than recognition by this Court of a rule of customary international law relating to immunity of international organisations.

[55] Contrary to the submissions of the appellant, the immunity that the United Nations enjoys in Saint Lucia is by virtue of section 3(1) of the **United Nations and Specialised Agencies (Privileges and Immunities) Act**,¹⁹ which states that the Articles set out in Schedule 1 (being Articles of the General Convention) have the force of law in Saint Lucia. Schedule 1 includes the following:

¹⁷ Edward Chukwuemeke Okeke, *Jurisdictional Immunities of States and International Organizations* (OUP 2018) at 269.

¹⁸ 2013 SCC 66, [2013] 3 S.C.R. 866 at [29] (emphasis added).

¹⁹ Chapter 10.08 Revised Laws of Saint Lucia 2021.

“Article II

PROPERTY, FUNDS AND ASSETS

Section 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.”

[56] The **Revised Treaty** does not contain an equivalent to section 2, by which the United Nations, as an international organisation enjoys immunity from every form of legal process in Saint Lucia by virtue of section 3 of **United Nations and Specialised Agencies (Privileges and Immunities) Act**. The immunity of the United Nations from every form of legal process in Saint Lucia was expressly provided for by the Parliament of Saint Lucia. The immunity that the United Nations enjoys in Saint Lucia is not based on any rule of customary international law.

[57] Accordingly, given the current state of the law, this Court cannot declare that immunity of an international organisation, like the OECS, is a rule of customary international law. In my view, the appellant, therefore, cannot ground its claim to immunity from suit or legal process in St. Lucia on any rule of customary international law. Consequently, this ground of appeal cannot succeed.

The Secretariat Agreement and Service on the OECS

The Appellant’s Submission

[58] The appellant contends that by virtue of the **OECS Act**, which gives the **Revised Treaty** that incorporates Article 22(1) of the **VCDR** the force of law in Saint Lucia, the premises of the mission shall be inviolable. The appellant also contends that Article 22(1) means that the premises of the OECS Commission are inviolable. The appellant submits that, given that the premises of the mission are inviolable, and the agents of the receiving State may not enter the premises except with the consent of the Head of the Mission, the respondent and her agents could not legally have entered the premises of the OECS without the consent of the Head of the Mission to serve the claim form.

- [59] The appellant submits that the entry by the respondent's process server was without consent, and the service of any document was, therefore, invalid. The appellant also submits that, given that the legal personality of the OECS is exercisable through the Director-General, the Director-General should have been personally served with the claim form as opposed to the claim form being left at the Headquarters of the OECS. The appellant contends that the determination of whether service was properly effected was crucial, because service is an essential element in properly instituting any claim and that if service and or the originating process is defective there is no claim to be considered.

The Respondent's Submissions

- [60] The respondent submits that the inviolability of premises of the OECS Commission is not the same as immunity from suit and it does not oust the jurisdiction of the court. The respondent also submits that this specific immunity merely restricts the manner of service of legal process: legal process can be served by post; or if there is consent, by the usual means provided by law.

Discussion and Analysis

- [61] The appellant contends that Smith J erred in law when he concluded that there was no need to consider whether service was properly effected on the OECS. The grounds of the Jurisdiction Application included the following: (1) service of the claim form and statement of claim in the proceedings has not been effected on the OECS; (2) the claim form and statement of claim were left at the headquarters of the OECS; and (3) the legal personality of the OECS is only exercisable by the Director-General who is immune from any legal process. However, in its submissions filed on 4th December 2017 in support of the Jurisdiction Application, the appellant mentions at paragraph 6 in a section entitled, "Essential Facts for Notation", that the claim "was delivered (sic) left at the headquarters of the [OECS] and in that way brought to the attention of the [OECS]". The appellant submitted that the OECS exercises legal authority through the Director-General so that any legal process could only be

served on the OECS through the Director General who is immune from any form of legal process in accordance with Article 31 of the **VCDR**. The appellant also submitted that there was no jurisdiction exercisable by the court for any form of legal process served on the OECS. The appellant contended that, in accordance with Article 31 of the **VCDR**, the headquarters of the OECS is inviolable and that, consequently, no form of legal process can be served on the headquarters of the OECS.

- [62] The respondent in her submissions filed on 5th December 2017 did not address the issue of service of the claim form but in submissions in reply filed on 30th January 2018, the respondent submitted that the inviolability of the headquarters of the OECS does not protect the OECS from the jurisdiction of the court and does not prevent service of process from being effected on the OECS. The respondent also submitted that inviolability of premises of the mission does not prevent all modes of service of process, for example, it does not prevent service by post, citing paragraphs [14] and [16] of the decision of the United Kingdom Supreme Court in **Al-Malki and another v Reyes (Secretary of State for Foreign and Commonwealth Affairs and another intervening)**.²⁰ Lord Sumption in **Reyes** stated as follows:

“Service of process

13 A preliminary question arises on this appeal as to whether the claim form was validly served on the Al-Malkis. A number of modes of service were attempted, but the only one which is now relied on is service by post to their private residence in accordance with rule 61(1)(a) of the Employment Tribunals Rules of Procedure 2004. It is said on the Al-Malkis' behalf that the rule cannot authorise service on a diplomatic agent because this would violate his person contrary to article 29 of the Convention and his residence contrary to article 30. I can deal shortly with this point, because it has failed at every stage below and has been dealt with by the Court of Appeal [2016] 1 WLR 1785 in terms with which I am in substantial agreement.

14 The starting point is that we are not at this point concerned with the question whether the diplomatic agent is immune from jurisdiction in respect of the particular proceedings. Other articles of the Convention deal with that. Those articles recognise that the jurisdictional immunity of a diplomatic

²⁰ [2019] AC 735.

agent will not apply to all proceedings: they may relate to a matter within an exception, or the immunity may have been waived. The present question is whether there is an immunity from service, or from certain modes of service, implicit in the inviolability of a diplomat's person and private residence. This immunity is distinct from and additional to his immunity from jurisdiction. If it applies, then articles 29 and 30 of the Convention, being unqualified, must prevent service by post in all proceedings whether or not there is any jurisdictional immunity in respect of them. Indeed, it would also apply to other communications by the state which have nothing to do with legal proceedings, such as demands for rates or tax assessments on a diplomat's private income, notwithstanding that these may be properly demanded under article 34 of the Convention.

15 In the case of states, the mode of service is prescribed by section 12 of the State Immunity Act 1978. Service must be effected on a state by the transmission of the document through the Foreign and Commonwealth Office. Article 22 of the United Nations Convention on the Jurisdictional Immunities of States, when it is in force, will require service of process on states to be effected on states through diplomatic channels in the absence of agreement on any other mode of service. There is, however, no corresponding provision relating to service on diplomatic agents either in the Diplomatic Privileges Act 1964 or in the Vienna Convention on Diplomatic Relations. According to the Secretary of State, a practice has become established of serving process on diplomatic agents through diplomatic channels on the foreign state or its mission in the United Kingdom. But there is no statutory basis for this practice. Nor, now that the law on diplomatic immunity has been codified, is there any basis for it in international law, unless service violates the diplomatic agent's person or residence. Moreover, in the absence of some basis in domestic law, it is not even a legally effective mode of service, since there is no way that the foreign state can be required to accept service on behalf of the diplomatic agent, if it chooses not to do so.

16 The person of a diplomatic agent is violated if an agent of the receiving state or acting on the authority of the receiving state detains him, impedes his movement or subjects him to any personal restriction or indignity. It is arguable that personal service on a diplomatic agent would do that, although it is not an argument that needs to be considered here. Premises are violated if an agent of the state enters them without consent or impedes access to or from the premises or normal use of them: see article 22 relating to the premises of a mission, which is applied by analogy to a diplomatic agent's private residence under article 30(1). The delivery by post of a claim form does not do any of these things. It simply serves to give notice to the defendant that proceedings have been brought against him, so that he can defend his interests, for example by raising his immunity if he has any. The mere conveying of information, however unwelcome, by post to the defendant, is not a violation of the premises to which the letter is delivered.

It is not a trespass. It does not affront his dignity or affect his right to enter or leave or use his home. It does of course start time running for subsequent procedural steps and may lead to a default if no action is taken. But so far as this is objectionable, it can only be because there is a relevant immunity from jurisdiction. It is not because the proceedings were brought to the diplomatic agent's attention by post. Otherwise the same objection would apply to any mode of service which starts time running, including service through diplomatic channels as proposed by the Secretary of State."

[63] The respondent submitted that, first, the authority of the Director-General to represent the OECS in the exercise of the legal personality of the OECS does not mean that service of legal process on the OECS can only be effected through service on the Director-General personally. Second, Article 31 of the **VCDR** does not give the Director-General immunity from personal service but rather concerns a diplomatic agent's immunity from the jurisdiction of the court in Saint Lucia which is separate and distinct from service of legal process. Third, the immunity from jurisdiction granted to a diplomatic agent under Article 31 of the **VCDR** belongs to the diplomatic agent and not the OECS which has separate legal personality. Fourth, the **VCDR** does not grant immunities to international organisations but only to its officers in mission and the mission's premises. The respondent also submitted that legal process may be served by post on the OECS despite the inviolability of the premises of the OECS.

[64] After various hearings, the Jurisdiction Application came up for consideration before Smith J on 16th February 2018 where the parties agreed that the Jurisdiction Application should be determined by the court on the papers and that the appellant be given an opportunity to respond to the respondent's submissions by 19th February 2018. The appellant filed its further submissions on 19th February 2018, as ordered by Smith J, in which it stated that since the OECS is not a company the ordinary rules of service do not apply.

[65] In relation to service of the claim form, it is necessary to set out in full the following paragraphs in the judgment of Smith J where he dealt with this issue considering the manner in which it arose in the proceedings in the court below:

[36] I am therefore not persuaded that service of legal process on the OECS could only have been effected through personal service on the Director-General. If that were indeed the finding, it is perhaps arguable that personal service on the Director General would be a violation of his person. But since that is not the finding of this Court, we need go no further on that.

[37] Strictly speaking, the OECS did not seek any declaration from the Court that proper service was not effected on the OECS. What the OECS sought was a declaration that the Court had no jurisdiction to try the claim. The question of whether the OECS was properly served is a separate one from the question of whether this Court has jurisdiction to try a defamation claim against the OECS, assuming it is properly served. The point was made by Lord Sumption in the Al-Malki case when he said:

“The present question is whether there is an immunity from service, or from certain modes of service, implicit in the inviolability of a diplomat’s person and private residence. This immunity is distinct from and additional to his immunity from jurisdiction.”

[38] While the question of service of legal process on the OECS at its headquarters arose in the arguments as to jurisdiction, I feel unable to make any finding, in this particular application, as to whether there was proper service of process on the OECS. I am prepared to accept that Al-Malki is good authority for the proposition that delivery by post of a claim form at a diplomatic mission or residence does not violate the immunity of the mission or residence. As Lord Sumption put it:

“The mere conveying of information, however unwelcome, by post to the defendant, is not a violation of the premises to which the letter is delivered. It is not a trespass. It does not affront his dignity or affect his right to enter or leave or use his home.”

[39] In the case at bar, however, service was not by post. The claim was delivered at the headquarters of the OECS. I am not aware of the manner of the delivery of the claim or who delivered it. The Court was not addressed on these matters. I therefore make no finding on whether there was proper service on the OECS.”

[66] Since the parties had agreed that the matter should be heard on the papers, it is not surprising that Smith J was not addressed on these matters since the parties were not before him making arguments. I agree with the statement of Smith J that the

question of whether the OECS was properly served is a separate one from the question of whether the court has jurisdiction to try a defamation claim against the OECS, assuming it was properly served. Additionally, the issue of service would require evidence which Smith J noted was not before him, so he was not able to make a finding on whether there was proper service on the OECS.

[67] In the affidavit of service filed by the respondent on 28th April 2017 it is stated that the claim form and statement of claim were served personally on Mr. Dwight Lay by Police Constable Claude Pelage at 11:48 a.m. on 24th April 2017. In the appellant's acknowledgment of service filed on 9th May 2017, the appellant expressly states that the claim form was left at the headquarters of the OECS on 25th April 2017 and that the appellant disputes that service of the claim form and statement of claim has been effected and disputes the jurisdiction of the court to determine the claim. However, in the Jurisdiction Application, the appellant sought only one order, namely, that the court declares that it has no jurisdiction to try to claim against the OECS. In the grounds of the Jurisdiction Application, the appellant states, as mentioned above, that: (1) service of the claim form and statement of claim in the proceedings has not been effected on the OECS; (2) the claim form and statement of claim were left at the headquarters of the OECS; and (3) the legal personality of the OECS is only exercisable by the Director-General who is immune from any legal process. In the affidavit in support of the Jurisdiction Application, it was averred that the claim form was left at the headquarters of the OECS and that the Director-General was not personally served with the claim form and statement of claim.

[68] While the issue of service on the OECS was mentioned in the Jurisdiction Application, it was clear that the focal point of the Jurisdiction Application was that the court did not have jurisdiction to try the claim against the OECS because the OECS is immune from suit.

[69] Moreover, the appellant filed an acknowledgment of service on 9th May 2017. The Jurisdiction Application was made pursuant to rule 9.7(1) of the Civil Procedure

Rules 2000 (“CPR”) which states that a defendant who disputes the court’s jurisdiction to try the claim may apply to the court for a declaration to that effect. The filing of the acknowledgement of service by the appellant was necessary as CPR 9.7(2) states that a defendant who wishes to make an application under CPR 9.7(1) must first file an acknowledgement of service. CPR 9.6 states that a defendant who files an acknowledgment of service does not by doing so lose any right to dispute the court’s jurisdiction. CPR 9.7(6) states that an order under CPR 9.7 may also: (a) discharge an order made before the claim was commenced or the claim form served; (b) set aside service of the claim form; and (c) strike out a statement of claim. The appellant has to date not filed an application disputing service of the claim form and statement of claim on the basis of immunity from service.

- [70] There was evidence before Smith J as to the manner of the delivery of the claim form, the person who delivered it, and to whom it was delivered. All this information was contained in the affidavit of service filed by the respondent on 28th April 2017. However, the evidence of the appellant was that the claim form and statement of claim were left at the headquarters of the OECS with no further details being provided except that it was not served personally on the Director-General. Like Smith J, I am of the view that it is not necessary to determine whether there was proper service because, in my view, the issue concerning service was one of the arguments made by the appellant in support of its contention that the OECS is immune from every form of legal process in Saint Lucia. The issue concerning service on the OECS was not one of the declarations sought in the Jurisdiction Application; the only declaration sought by the appellant was that the court has no jurisdiction to try to claim against the OECS. As Lord Sumption in **Reyes** explained, there is a distinction between immunity from jurisdiction in respect of particular proceedings (about which this appeal is concerned) and immunity from service, or from certain modes of service, implicit in the inviolability of a diplomat’s person and private residence. Lord Sumption explained that immunity from service is distinct from and additional to immunity from jurisdiction. Immunity from service does not relate to or concern immunity from jurisdiction. The issue of service of the claim form

and statement of claim does not arise in these proceedings because the appellant did not put before the court below adequate evidence as to service to establish the mode of service. The appellant did not seek a declaration that there was no proper service on the OECS but included the issue of service as one of several grounds for seeking the declaration that the court had no jurisdiction to try the claim against the OECS.

Disposition

[71] Based on the foregoing, the appellant has not succeeded in persuading this Court that the learned trial judge was wrong in refusing the declaration sought. Accordingly, I would dismiss the appeal, affirm the decision of Smith J and would order that costs in the appeal be costs in the cause.

[72] I am grateful for the assistance provided by counsel for the appellant and the respondent as a litigant in person who made submissions in response to the appeal.

I concur.

Vicki Ann Ellis
Justice of Appeal

I concur.

Esco L. Henry
Justice of Appeal [Ag.]

By the Court

Chief Registrar