

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

MONTserrat TERRITORY
(CIVIL)
A.D. 2003

Claim No. 8 of 2002

Originating Motion

In the matter of an Application for an administrative Orders
for a Declaration and for relief under the Montserrat
constitution Order 1989 pursuant to Part 56 of the Eastern
Caribbean Supreme Court Civil Procedure Rules

Between:

EVERTON GREENAWAY

Claimant

And

**THE ATTORNEY GENERAL OF MONTserrat
THE COMMISSIONER OF POLICE**

1st Defendant

2nd Defendant

Appearances:

Mr. Warren Cassell for Claimant

Mr. Philip St. John – Stevens for 1st and 2nd Respondents.

29th July 2002, 24th March 2003

1 EDWARDS J: By an amended Fixed Date Claim Filed on the 5th July 2002 the relief claimed by the Claimant included the following:

- “1. That the complaint numbered DD 03/02 between the Commissioner of Police and Everton Greenaway be withdrawn since the claimants constitutional right referred to in paragraph two (2) below is likely to be infringed.

2 That it be declared that the right of the Claimant to be presumed innocent until proved guilty or until he has pleaded guilty is likely to be infringed if he is asked to answer to the said complaint having regard to section 7(4) of the Drugs Prevention of Misuse) Act 1989...

4 Any other order as may be necessary or appropriate to secure redress by the Applicant for contravention by the Respondents or either of them of the Fundamental Rights and Freedoms guaranteed to him by Section 57(2)(a) if the Montserrat Constitution Order..."

2 The undisputed facts were that the Claimant was arrested by the Police on the 28th December 2001 and upon being searched by the Police at the Salem Police Station, a green plastic bag was found in his underpants containing 7 aluminum wraps which were not less than 15 grams of Cannabis.

It appears that the complaint DD 03/2002 which charged the Claimant with possession of Cannabis with intention to supply to another; contrary to section 7(3) of the Drug (Prevention of Misuse) Ordinance No. 7 of 1989 may have been the only charge brought against the Claimant.

The fixed date claim form and the supporting affidavit of Everton Greenaway sworn to and filed on the 5th July 2002 are silent as to whether the claimant was also charged with Possession of Cannabis.

3 In his affidavit the Claimant stated

'6 had absolutely no intention to supply and cannabis to another person.

7 I am afraid that the Magistrate will deem that I had the intention because the Police have stated in their evidence that I had more than 15 grams.

8 am therefore asking the court to grant me the relief:

4 The grounds on which the relief was sought were:

"(a) That section 7(4) of the Drug (Prevention of Misuse) Act numbered 7/ 1989 is unconstitutional since it shifts the burden of proof on a defendant.

That the Claimant's right guaranteed under section 57(2) (a) of the Montserrat Constitutional Order 1989 is likely to be infringed if he is asked to answer to the charge."

5 In his affidavit in response sworn to and filed on the 12th July 2002, the Attorney General Mr. Phillip St. John-Stevens denied that Section 7(4) of the Drug (Prevention of Misuse) Ordinance was unconstitutional, and stated that the Claimant's Constitutional right was not likely to be infringed for the following reasons

(a) The reverse evidential burden imposed by section 7(4) of the Ordinance is not in conflict with section 57(2) of the Montserrat Constitution by virtue of section 57(11)(a) of the Constitution and on applying the tests of proportionality, internal rationality and minimal impairment Section 7(4) of the Ordinance would be constitutional.

The provisions of Section 7(4) only assist the prosecution in satisfying the evidential hurdle of an essential ingredients of the offence under section 7(3) as distinct from containing or importing an essential ingredient itself.

The Claimant may be tried for the offence under section 7(3) of the Ordinance without reliance being placed upon section 7(4) of the Act. Since the prosecution may invite that no reliance be placed upon section 7(4) during the criminal trial; and /or the court may "read down" the Drugs (Prevention of Misuse) Ordinance, by excising section 7(4) in furtherance to and in accordance with section 5(1) of the Montserrat Constitutional Order 1989.

6. It is necessary to set out the relevant sections of the Ordinance and the Montserrat Constitution Order 1989 before dealing with the legal authorities relied on by both Counsel and their submissions.

RELEVANT STATUTORY PROVISIONS

Section 7(4) of the Ordinance provides –

“ ... a person found in possession of a controlled drug in quantities that may be specified by Regulations made by the Governor-in-Council shall be deemed to be in possession of such a controlled drug for the purpose of supplying it to another or for drug trafficking unless the contrary is proved the burden of proof being on the accused. “

- 8 Section 2(e) of the Drugs (Prevention of Misuse) Regulations No. 18 of 1989 provides-

“The quantities of drugs specified for the purpose of section 7(4) of the Drugs (Prevention of Misuse) Ordinance are: -

(e) Cannabis – Fifteen grammes and above.”

9. Section 7(3) of the Ordinance states-

“Subject to Section 30, it is an offence for a person to have a controlled drug in his possession whether lawfully or not with intent to supply it to another in contravention of section 6(1).”

- 10 Section 6(1) (b) states –

“Subject to any regulations under section 9 for the time being in force, it shall not be lawful for a person

(a) ...

(b) to supply or offer to supply a controlled drug to another.”

Section 6(3)(a) states-

“Subject to section 30, it is an offence for a person

(a) to supply or offer to supply a controlled drug to another in contravention of subsection (1).”

Section 9 of the Ordinance restricts the production and supply of controlled drugs to certain category of persons specified in Regulations made by the Governor-in-Council which may authorize the production and or supply of controlled drugs by such persons in accordance with the terms of a license issued by the Minister or other authority.

12 Section 30 of the Ordinance provides:

“(1) This section applies to offences under any of the following provisions of this Ordinance that is to say... section ...6(3), section...7(3)...

(2) Subject to subsection (3), in any proceedings for an offence to which this section applies it shall be a defense for the person charged to prove that he neither knew of nor suspected the existence of some fact alleged by the prosecution which it is necessary for the prosecution to prove if he is to be convicted of the offence charged.

[Section 30 (3) is not relevant to the issues in this case]

(4) Nothing in this section shall prejudice any defence which it is open to a person charged with an offence to which this section applies to raise apart from this section.”

13 The Montserrat Constitution Order 1989 provides in section 5(1) that “...the existing laws ... shall be read and construed with such modifications; adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the provisions of the Constitution.”

14 The Constitution secures the presumption of innocence as a fundamental right in section 57 2 (a) which states –

“Every person who is charged with a criminal offence –

(a) Shall be presumed to be innocent until he is proved or has pleaded guilty”

15 This protection in section 57 2(a) is qualified by section 57 (11)(a) of the Constitution which says –

"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of –

- (a) subsection 2 (a) of the section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts."

SUBMISSIONS AND LEGAL AUTHORITIES

- 16. The thrust of Counsel Mr. Cassell's submission was that Section 7 (4) of the Ordinance required the Claimant to disprove that he intended to supply cannabis to another person and this is not covered by section 57 (11)(a) of the Constitution; since he is required to disprove an essential ingredient of the offence under section 7 (3) of the Ordinance.
- 17. Counsel argued that Section 7 (4) of the Ordinance did not fall in the category of exceptions recognized by Lawton L.J. in **Regina v Edwards** (C.A.) [1975] Q B 27 and the fact that what the claimant intended to do with the cannabis is within his knowledge and a fact that only he would know is irrelevant.

At pages 39 – 40 of the Judgment Lawton L. J. states –

"... over the centuries the common law, as a result of experience and the need to ensure that justice is done both to the community and to defendants, has evolved an exception to the fundamental rule of our criminal law that the prosecution must prove every element of the offence charged. This exception like so much else in the common law was hammered out on the anvil of pleading. It is limited to offences arising under enactments which prohibit the doing of an act save in specified circumstances or by persons of specified classes or with specified qualifications or with the licence or permission of specified authorities. Whenever the prosecution seeks to rely on the exception, the court must construe the enactment under which the charge is laid. If the true construction is that the enactment prohibits the doing of acts, subject to provisions, exceptions and the like, then the prosecution can rely upon the exceptions.

In our judgment its application does not depend upon either the fact, or the presumption, that the defendant has peculiar knowledge enabling him to prove the positive of any negative."

8. On examining the provisions of the Ordinance; and in particular sections 7(3), 7(4), 6(1)(b), 6 (3)(a), 9 and 30, I am of the view that section 7(4) does not create a special defence but relates to an ingredient of the offence under section 7(3); placing the onus on the claimant to establish that he did not intend to supply the cannabis to another person. I agree with Mr. Cassell that Sec. 7(4) does not fall in the category of exceptions referred to by Lawton L.J. in the passage cited from the judgment in **Regina v Edwards** (supra).
19. Mr. Cassell urged the court to apply to the instant case the approach taken by Kneller C.J. in **R v Juan Javier Meglas Reina and Juan Jose Crespo Peralta** Supreme Court Gibraltar decision 7th March 1995, when he ruled that section 7B(1) of the Gibraltar Drugs (Misuse) Ordinance is inconsistent with Section 8 (2) (a) of the Gibraltar Constitution.
20. Section 7 B(1) of the Gibraltar Ordinance is similar in effect to section 7 (4) of the Montserrat Ordinance. It states –

"7 B(1) Any person who is proved to have had in his possession a commercial quantity of a controlled drug of a kind specified in subsection (3) below shall, until the contrary is proved be presumed to have had such controlled drug in his possession for the purpose of supplying it to another."

Section B (3) defines 'commercial quantity' as the weight in grams of, for example,

| NAME OF DRUG | WEIGHT IN GRAMS |
|----------------------------|-----------------|
| Amphetamine | 2.00 |
| Cannabis or Cannabis Resin | 20.00 |
| Cocaine | 2.00 |
| Lysergic Acid Diethylamide | 0.002 |

- 2 Section 8 (2) of the Gibraltar Constitution is identical to Section 57 (2)(a) of the Montserrat Constitution; and section 57 (11) (a) of the Montserrat Constitution is identical to section 8 (11) (a) of the Gibraltar Constitution.
- 22 The Ruling of Chief Justice Kneller in **R v Reina and Peralta**. (supra) was based on the Canadian Supreme Court decision in **R v Oakes** [1987] LRC (Const.) 477; [1986] 26 DLR (4th) 200 and the Privy Council decision in **Attorney General of Hong Kong v Lee Kwong – Kut and Lo Chak – Man and Another** [1993] AC. 951
- 23 The Supreme Court of Canada consisting of Dickson C.J.C and 6 Judges in **R v Oakes** supra, dismissed an appeal by the Crown from the decision of a Provincial Court Judge's refusal to convict Oakes on a charge of possessing narcotics for the purpose of trafficking because under section 8 of the Narcotic Control Act; RSC. 170, if the defendant is found in possession of narcotics, the onus rests on him to establish that he was not in possession of it for the purpose of trafficking, and this violated the guarantee to Oakes of the presumption of innocence in section 11 (d) of the Canadian Charter of Rights and Freedoms.
- 24 For the purposes of this judgment it is also necessary to set out the relevant provisions of the Canadian Charter, the substance of section 8 of the Narcotic Act and the reasoning of Dickson C.J.C. in holding that section 8 constitutes a "Reverse onus" clause which violated the presumption of innocence.
- 25 Section 8 of the Narcotic Act in substance provided, that if the Court found the defendant was in possession of the Narcotic –
- “.... he shall be given an opportunity of establishing he was not in possession of the narcotic for the purpose of trafficking”, and where he “fails to establish he was not in possession of the narcotic for trafficking, he shall be convicted of the offence as charged and sentenced accordingly.”
- 26 Section 1 of the Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

- 27 Section 11 (d) of the Charter says that –
“Any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal”
- 28 It appears that the Charter contains no provision comparable to section 8 (1)(a) of the Gibraltar Constitution or section 57 (11) (a) of the Montserrat Constitution.
- 29 In delivering the Judgment of the Privy Council Lord Wolf’s analysis of the Canadian approach is disclosed in the case Attorney General of Hong Kong v Lee Kwong Kut [1993] AC 951 there Lord Wolf at pages 970 - 971 rationalizes the judgment of Dickson C.J.C. in R v Oakes (supra) in the following manner:

“It is, however, important when considering the decision in Regina v Oakes and the cases in which it has been followed to remember that prior to the adoption of the Canadian Charter, Canada had a Bill of Rights and that while the Bill of Rights did not have an express limitation on the effect of its specific provision the Charter does have such limitation in section 1:

“The Canadian Charter of Rights and Freedoms guarantees the rights and freedom set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

Having regard to this express limitation, it is understandable that Dickson C.J.C. in Regina v Oakes at page 233, considered that “it is highly desirable to keep sections 1 and 11(d) (of the Canadian Charter) analytically distinct.” Having adapted a two-stage process it is again understandable that the Canadian Supreme Court had adapted a strict approach as to when there had been a contravention of section 11 (d). This is in contrast to the flexible approach which had been adopted by the Canadian Supreme Court in Regina v Appleby (1971) 21 D.L.R. (3rd) 325 to section 2 (f) of the Canadian Bill of Rights which is the equivalent provision to section 11 (d) of the Canadian Charter. Dickson C.J.C. in Regina v Oakes; 26 D.L.R. (4th) 200, 224 –225 regarded section 1 of the Charter as stating “explicitly the exclusive justification criteria ... against

which limitation on those rights and freedoms (set out in the Charter) must be measured”.... In the passage of his judgment in *Regina v Oakes*, 26 D.L.R. (4th) 200, 222... Dickson C.J.C. regarded presumptions in relation to “an important element” or “an essential element” as offending section 11 (d) of the Canadian Charter.”

- 30 It is to be noted further that Dickson C.J.C. in **R V Oakes** (1987) L.R.C. (const.) at page 492 also said that “Any infringements of the right to be presumed innocent are in Canada only permissible when in the words of section 1 of the Charter they are reasonable and demonstrably justified in a free and democratic society.”
- 31 In any attempt to apply the decision **R v Oakes** supra to the instant case, in my opinion it should be recognized that the absence of a provision similar to section 1 of the Canadian Charter in the Montserrat Constitution, and the absence of a provision similar to section 57 (11) (a) of the Montserrat Constitution in the Canadian Charter, must necessarily lead to the conclusion that the Canadian approach is peculiar to the provisions of the Canadian Charter.
- 32 On the other hand Defendants' Counsel Mr. St. John – Stevens, referred to section 7 (4) of the Ordinance as a provision which established a “reverse legal burden” on the Claimant. Counsel argued that since section 57 11(a) of the Constitution in essence validated a “reverse legal burden” provision then section 7 (4) of the Ordinance should not be regarded as conflicting with Section 57 (2) of the Constitution because no provision in the Constitution has greater force, prominence or pre – eminence than any other provision.
33. Defendants' Counsel further submitted that the “reverse legal burden provision in section 7 (4) only required the Claimant to prove on a balance of probabilities particular facts that he had unique access to namely, that he did not have the cannabis with an intention to supply it to another. That in considering the construction of section 7(4) and whether it falls within section 57 11 (a) of the Constitution the Court should also consider “the minimal impairment of an individual's rights as balanced with the mischief of the offence that the legislation is directed at”. That there was a rational connection between the basic fact of the

possession of the cannabis and the presumed fact of the intent to supply; and the presumption was not “over – inclusive” but proportional in this instant case.

34. Mr. St. John – Stevens relied on the following legal authorities in advancing his submissions: Cox (Michael) and Mitchell (Michael) v R (1977) 55 W.I.R 146; Ong Ah Chuan v Public Prosecution and Koh Chai Cheng v Public Prosecution [1981] AC. 648 (AC); Salabraku v France (1988) 13 EHRR 379; R v Appleby (1971) 21D.L.R. (3rd) 325 Canada Supreme Court.
35. Counsel cited the Ong Ah Chuan case as a case where the Privy Council dealt with “the proportionality of the reverse legal burden and concluded that it was not unconstitutional”. In this case the Appellant among other things challenged the constitutionality of section 15 of the Singapore Misuse Drugs Act 1973 which provided
- “Any person who is proved or presumed to have in his possession more than-...
- (c) 2 grammes of diamorphine (heroin) contained in any controlled drug ... shall, until the contrary is proved be presumed to have had such controlled drug in his possession for the purpose of trafficking therein.”
36. The “presumption of innocence” was nowhere expressly referred to in the Singapore Constitution; but this did not prevent the Appellants from arguing that the Statutory presumption was in conflict with the “presumption of innocence”, which is a fundamental human right protected by the Constitution of Singapore (1980 repl.) by virtue of Articles 9 & 12 of the Constitution which provided –
9. “No person shall be deprived of his life or personal liberty save in accordance with law”
12. “All persons are equal before the law and entitled to the equal protection of the law.”

“One of the fundamental rules of natural justice in the field of criminal law is that a person should not be punished for an offence unless it has been established to the satisfaction of an independent and unbiased tribunal that he committed it. This involves the tribunal being satisfied that all of the physical and mental elements of the offence with which he is charged, conduct and state of mind as well where that is relevant, were present on the part of the accused. To describe this fundamental Rule as “the presumption of innocence” may however be misleading to those familiar only with English Criminal Procedure ... What fundamental rules of Natural Justice do require is that there should be no trial before the court that is logically probative of facts sufficient to constitute the offence with which the accused is charged.

In a crime of specific intent where the difference between it and some lesser offence is the particular purpose with which an act, in itself unlawful, was done, in their Lordships view it borders on fanciful to suggest that a law offends against some fundamental rule of natural justice because it provides that upon the prosecution’s proving that certain acts consistent with that purpose and in themselves unlawful were done by the accused; the court shall infer that they were in fact done for that purpose unless there is evidence adduced which on the balance of probabilities suffices to displace the inference. The purpose with which he did an act is peculiarly within the knowledge of the accused. There is nothing unfair in requiring him to satisfy the court that he did the acts for some less heinous purpose if such be the fact. Presumptions of this kind are a common feature of modern legislation concerning the possession and use of things that present danger to society like addictive drugs explosives, arms and ammunition.” (My Emphasis)

38. The absence of a provision in the Hong Kong Constitution comparable to section 57(ii)(a) of the Montserrat Constitution did not prevent Lord Diplock from coming to the following conclusions.

"In the case of the Drugs Act any act done by the accused which raises the presumption that it was done for the purpose of trafficking, is per se unlawful, for it involves unauthorized possession of a controlled drug, which is an offence under the section 6 (the equivalent of Section 7 (1) and 7(2) of the Montserrat Ordinance dealing with possession simpliciter) No wholly innocent explanation of the purpose for which the drug was being transported is possible. Their Lordships would see no conflict with any fundamental Rule of Natural Justice and so constitutional objection to a statutory presumption (provided that it was rebuttable by the accused) that his possession of controlled drugs in any measurable quantity with regard to specified minime, was for the purpose of trafficking in them.

... [T]he Drugs Act only possess the rebuttable presumption when the quantity of drugs in the possession of the accused exceeds the appropriate minimum specified in section 15. It is not disputed that these minimum quantities are many times greater than the duly dose taken by typical heroin addicts in Singapore; so, as a matter of commonsense the likelihood is that if it is being transported in such quantities this is for the purpose of trafficking. All that is suggested to the contrary is that there may be exceptional addicts whose daily consumption much exceed the normal but the abnormal addicts, if such there be are protected by the fact that the inference that possession was for the purpose of trafficking is rebuttable. [My emphasis] In their Lordships view there is no substance in the suggestion that section 15 of the Drugs Act is inconsistent with the Constitution, at any rate so far as it relates to prove possession..."

- 39 The case **Cox & Mitchell v R** supra is a decision from the Eastern Caribbean Court of Appeal which had to consider a reverse legal burden provision dissimilar to sec.7(4) of the Montserrat Ordinance; and which exists in the Drug Abuse (Prevention and Control) Act 1992 Grenada Section 42 of the Grenada Act states-

- 1) Without prejudice to any other provision of this Act -
 - (b) Where it is proved that a person had in his possession or custody or his control anything containing a controlled drug, it shall

be presumed, until the contrary is proved that such a person is in possession of such a drug;

(d) where it is proved that a person handled within the meaning of section 7 anything containing a controlled drug, it shall be presumed, until the contrary is proved, that such a drug was contained in such a thing..."

- 40 Section 8 (2) of the Grenada Constitution is related to section 57(2) of the Montserrat Constitution; and section 57 (11)(a) of the Montserrat Constitution is the same as section 8(11) of the Grenada Constitution.
- 41 Counsel for the Appellants relied on the decision **R v Oakes** supra in his submission, that section 42(1) of the Grenada Act places the burden on an accused person of proving facts which the prosecution ought to prove in order to secure a conviction, thus making the presumption of innocence guaranteed by section 8(11) of the Grenada Constitution redundant.
- 42 Redhead J.A. in **Cox and Mitchell** (supra) at page 154 of the Judgment, in considering the applicability of **R v Oakes** (supra) to the instant appeal referred to the following passage (at page 202) from the judgment of Dickson C.J.C.

"At a minimum this test [the proportionality test] requires that section 8 be internally rational, there must be a rational connection between the basic fact of possession and the presumed fact of possession with a purpose of trafficking. Otherwise, the reverse onus clause could give rise to unjustified and erroneous convictions for drug trafficking of persons guilty only of possession of narcotics. Section 8 cannot meet this test since possession is of a small quantity of narcotic. In the result section 8 is over-inclusive and could lead to result in certain cases, which would defy both rationality and fairness. Accordingly section 8 of the Narcotic Control Act is of no force and effect " (My emphasis)

43. Redhead J. A. was of the view "that the decision in Oakes must be looked at in relation to its peculiar facts which gave rise to the reasoning...." It was his view "that Oakes has very little or no application to the instant appeal" since most

importantly section 8 (11)(a) of the Constitution of Grenada in his view gives legislative approval to section 42 of the Drug Abuse (Prevention and Control) Act 1992.

- 44 It was held in this case that although section 42 (1)(d) shifts the burden of proof from the prosecution to the defense the provision does not infringe the constitutional presumption of innocence (section 8 (2) (a) of the Constitution of Grenada) as section 8 (11) (a) of the Constitution expressly provided that nothing contained in any law may be held to be inconsistent with (or in contravention of) section 8 (2)(a) to the extent that the law in question imposes upon the accused the burden of proving particular facts on the balance of probabilities.
- 45 Apart from the features of the R v Oakes decision and the Canadian Charter (which have already been mentioned at paragraphs 26 to 30 of this Judgment), another peculiar fact in R v Oakes in my opinion is the “reverse legal burden” provision section 8 of the Narcotic Control Act which was found to be “over – inclusive”
- 46 On applying the Canadian approach to section 7(4) of the Montserrat Ordinance I have concluded that it is not a “reverse legal burden” provision which relates to an “over – inclusive” possession of controlled drugs under section 7(3); since section 7(3) deals with the possession of controlled drugs in a measurable quantity i.e. 15 grammes of cannabis; and the rebuttable presumption in section 7(4) is triggered only when the quantity of cannabis in the possession of the accused person is 15 grammes and over. It appears that Kneller C.J. in Reina and Peralta supra saw no significance in the fact that unlike Section 8 of the Narcotic Act in R v. Oakes, section 7 B (1) of the Gibraltar Drugs (Misuse) Ordinance deals with the possession of controlled drugs in a measurable quantity, i.e. “a commercial quantity” which is defined in section 7 B (3) in terms of a minimum specified weight.
- 47 It is reasonable to conclude that Section 8 of the Narcotic Control Act in R v. Oakes (supra) was found to be “over-inclusive” in that, (applying Lord Diplock’s dicta in Ong Ah Chuan (supra) set out at paragraph 38 of this Judgment) there was no “measurable quantity with regard to a specified minime” which would

trigger the presumption that the defendant was in possession of the Narcotic for the purpose of trafficking.

- 48 Section 7(4) of the Montserrat Ordinance not only satisfies the criteria stated by Lord Diplock in Ong Ah Chuan (supra) for constitutional approval, but it also satisfies the “proportionality test stated by Dickson C.J.C. in R v. Oakes (supra), since in my view there is a rational connection between the basic fact of possession with an intention to supply.
- 49 Even though I have found that section 7(4) of the Ordinance does not fall in the class of exceptions referred to by Lawton L.J. in Reg. v. Edwards [1975] Q.B. 27 at pages 39-40; I am of the opinion that it can be justified as being of the type of presumptions that Lord Diplock in Ong Ah Chuan (supra) spoke about when he said at page 670 (see paragraph 37 of the Judgment)

“Presumptions of this kind are a common feature of modern legislation concerning the possession and use of things that present danger to society like addictive drugs, explosives, arms and ammunition.”

- 50 Most importantly, applying the reasoning of Redhead J. A. in Cox & Mitchell (1997) 55 W.I.R. 146 at page 156, Section 57 (11)(a) of the Montserrat Constitution gives the Legislative Council the authority to legislate as it did under section 7(4) of the Drugs (Prevention of Misuse) Ordinance 1989, to require an accused person to offer proof on a balance of probabilities of essential facts which are rationally open to the accused to prove or disprove as the case may be. This in my view does not violate the presumption of innocence under section 57(2)(a) of the Constitution.
- 51 In concluding, I shall in passing also state my view, that in rebutting the presumption that the possession of the controlled drug was not for the purpose of supplying it to another or trafficking, it is open to an accused as a valid defence, particularly where the quantity of cannabis is within a borderline range of 15 grammes, to prove by virtue of Section 30 (2) of the Ordinance (Set out at paragraph 12 of this Judgment), that he neither knew nor suspected, nor had reason to suspect that the cannabis weighed 15 grammes or more; since it is

necessary for the prosecution to prove the fact that the cannabis had a minimum weight of 15 grammes, if the accused is to be convicted of the offence charged.

- 52 I do not find that the Claimant has acted unreasonably in making this application, and pursuant to Part 56.13(6) of the Civil Procedure Rules 200 in dismissing this application, I will make no order for costs against the Claimant.



High Court Judge