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THE MB&H CIRCULAR

News & Views from McKinney, Bancroft & Hughes

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Happy International Women's Day from McKinney, Bancroft & Hughes.

McKINNEY, BANCROFT & HUGHES SPONSORS STEP BAHAMAS CONFERENCE 2026.

The firm was proud to have several members participating in key discussions throughout this year's STEP Bahamas Conference, contributing valuable insights across a range of topics.

On Day One, Senior Partner **John F. Wilson KC** joined the panel discussion "*I Declare War: Tactics Used in Hostile Litigation*," while **Justice G. Diane Stewart (Ret.)** presented "*What's Love Got to Do With It: Divorce & Ancillary Matters*." Partner **Sean Moree KC** also took the stage for "*Decisions, Decisions, Decisions – International Case Update*," offering insight into key developments shaping the international legal landscape.

Mr. Wilson KC's panel examined strategies commercial litigators employ when navigating high-conflict disputes and the role lawyers play in guiding clients toward their ultimate objectives. Reflecting on the realities of such matters, he noted that "*oftentimes there are no winners in hostile litigation... you should always attempt to resolve disputes before it gets to that stage.*"



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MCKINNEY, BANCROFT & HUGHES is one of the largest and oldest firms in The Bahamas and conducts an extensive international and domestic practice from its offices in the cities of Nassau and Freeport.

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LexMundi
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During her presentation, Justice Stewart (Ret.) explored the distinction between matrimonial and non-matrimonial assets and discussed the emerging concept of “*matrimonialization*.” As she explained, “*The court looks at ownership and behaviour in determining what is matrimonial and what is non-matrimonial.*” The day concluded with Mr. Moree KC moderating a panel examining three recent cases relevant to the day-to-day practice of trust administration.



Day Two featured a fireside chat between Partner **Erin Hill** and Mr. Ryan Pinder, Attorney General and Senator, exploring the evolving legal and regulatory landscape impacting the financial services industry.



The conference also highlighted the firm’s commitment to supporting the next generation of legal professionals. For the second consecutive year, McKinney, Bancroft & Hughes helped lead a team of students from the Eugene Dupuch Law School to first place in the STEP Bahamas Moot Competition. The team was coached by Partner **Vanessa Smith** and Senior Associate **Theominique Nottage**, with assistance from Consultants **Sir Brian Moree** and **Justice G. Diane Stewart (Ret.)**



In the conference’s closing session, Senior Associate Theominique Nottage was awarded the Anita Bain & Dianne Bingham Scholarship Award, supporting her pursuit of the STEP Diploma in International Trust Management. The firm congratulates her on this outstanding achievement.

McKinney, Bancroft & Hughes was proud to contribute to discussions shaping the future of the financial services and private client sectors.





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ATTORNEY HIGHLIGHT

Senior Associate **Theominique Nottage MCI Arb**, who has a strong background in arbitration and dispute resolution, served as one of the coaches who helped lead the Eugene Dupuch Law School team to victory at the Berry's International Arbitration Moot Competition in Barbados. Congratulations to the talented students on this outstanding achievement.



Senior Associate Theominique Nottage



PARTNER TIMOTHY A. ENEAS, KC PRESENTS ON THE ELECTRONIC COMMUNICATIONS ACT



Partner Timothy A. Eneas, KC recently delivered an insightful presentation on the Electronic Communications Act (*“the Act”*), which, although passed in 2003, has become increasingly important in modern legal practice. Examining both its origins and its practical legal implications, Mr. Eneas explained that the components of the Act are based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce which was designed as a tool to assist states in modernizing their legislation in response to the changes introduced by the digital commercial world.

Structure of the Act

Mr. Eneas outlined how the Act is organized into five parts:

- Part I – Preliminary
- Part II – Legal Recognition and Functional Equivalency of Electronic Communications, Signatures, Contracts and Related Matters
- Part III – Intermediaries and E-Commerce Service Providers
- Part IV – E-Commerce Advisory Board
- Part V – General

The presentation focused in particular on key elements of **Part II**.

Statutory Writing Requirements

A portion of the discussion centered on the Statute of Frauds, which *“requires evidence in writing for many arrangements and contracts.”* Mr. Eneas noted that there were many other instances in the Bahamian statute law where writing and a signature is required and in many instances the Electronic Communications Act renders certain digital communications sufficient to satisfy the statutory requirements.



Electronic Communications and the Common Law

Turning to the evolution of communication methods, Mr. Eneas discussed developments under the common law and the guiding legal authorities, noting that: *“Under the common law, and because of widespread use of email and instant messaging, Courts have been required to consider whether electronic communications of that nature could satisfy a Statute of Frauds type provision.”*

Mr. Eneas considered the legislative intent behind the enactment of the Act (*long titled - An Act to provide for the legal recognition of electronic writing, electronic contracts, electronic signatures and original information in electronic form in relation to commercial and other transactions and to provide for the facilitation of electronic transactions and related matters*) and discussed the mechanics by which that intent is achieved through the adoption of machinery giving effect to the *“functional equivalent approach,”* whereby certain electronic communications are treated as being on the same footing as paper documents.

Exclusions from the Act

The Act does not apply to any rule of law requiring writing or signatures in connection with certain specified matters. Section 4 of the Act expressly excludes the creation, execution, amendment, variation, or revocation of wills and testamentary instruments, as well as trusts. It similarly does not extend to conveyances of real property or the transfer of any interest in real property. Court orders, notices, and official court documents required to be executed in connection with court proceedings also fall outside its scope. Additionally, enduring powers of attorney concerning the financial affairs or personal care of an individual, and all other deeds and documents described in section 3 of the Registration of Records Act, are excluded from the operation of Part II.

Where these exclusions apply and the Act’s provisions are not operative, the common law retains its full utility. Courts may still be called upon to determine, on established common law principles, whether a particular form of electronic communication satisfies a writing or signature requirement in those excluded areas.

Key Definitions

The presentation examined the statutory definition for “*electronic*,” which is defined as “*relating to technology and having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.*” Particular attention was given to the definition of “*electronic communication*,” which means “*information which is communicated, processed, recorded, displayed, created, stored, generated, received or transmitted by electronic means.*” This broad definition encompasses a wide range of modern forms of communication, including emails, text messages, WhatsApp messages, PDFs, audio and video files, and voice notes reflecting the Act’s intention to keep pace with the rapid evolution of digital technology.

The Functional Equivalent Framework: Sections 7, 8, and 9

Mr. Eneas considered sections 7, 8, and 9, which form the core of the Act’s functional equivalent framework. Section 7 provides that an electronic communication shall not be denied legal effect, validity, admissibility, or enforceability solely because it is in electronic form. Section 8 addresses writing requirements, providing that where information is required by law to be in writing, that requirement is satisfied by an electronic communication so long as the information is accessible to, and capable of retention by, the intended recipient. Section 9 deals with signature requirements, stipulating that where the law requires a signature, the requirement is met in relation to an electronic communication if a method is used to identify the person and to indicate that the person intended to sign or otherwise adopt the information. Mr. Eneas opined that together, these provisions give legislative effect to the functional equivalent approach, ensuring that electronic communications enjoy the same legal standing as their paper-based counterparts, subject to the exclusions discussed above.

Practical Implications for Practitioners

Beyond the evident benefits of conferring legal recognition on covered electronic communications, he noted that the Act introduces practical challenges that warrant careful attention.

Given the operation of the Act and the potential for informal electronic communications to satisfy certain writing requirements, Mr. Eneas discussed the importance of the need for express qualifications to avoid unintended legal consequences, such as binding arrangements inadvertently coming into existence through informal exchanges. This concern is acute for transactional and litigation lawyers alike.





Admissibility and Evidential Weight

Mr. Eneas also noted that the Act addresses the admissibility of electronic communications in court proceedings. Section 12 provides that an electronic communication shall not be denied admissibility in evidence solely on the ground that it is in electronic form, and it sets out express criteria for determining the evidential weight to be given to such communications, including the reliability of the manner in which the communication was generated, stored, or transmitted, and the reliability of the manner in which the integrity of the information was maintained. Section 12(3) preserves the continued application of sections 61 and 67 of the Evidence Act, which relate to the admissibility of documents produced by computers.

Conclusion

In view of the continuing advancements in technology and the increasing prevalence of electronic communications in all facets of commerce and daily life, Mr. Eneas projected that the Electronic Communications Act will assume greater importance in everyday legal practice, both in transactional work and in litigation.



HAPPY INTERNATIONAL Women's Day

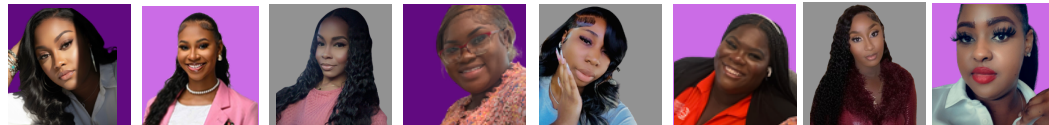
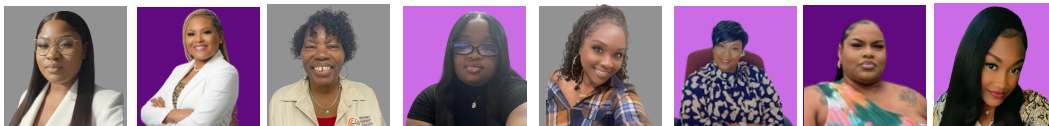
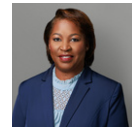
THIS INTERNATIONAL WOMEN'S DAY

We Salute All Women — Especially Our Very Own.



Give to Gain

We acknowledge that when women support, mentor, and uplift one another, we all move forward together. We remain committed to fostering an inclusive environment where talent is supported, contributions are valued, and opportunities are accessible to all.



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