

THE EASTERN CARIBBEAN SUPREME COURT  
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE  
(CIVIL DIVISION)

Case Number: SLUHCV2022/0089

BETWEEN:

DR. CLAUDIA FEVRIER

Claimant

and

SAINT LUCIA MISSION OF SEVENTH DAY ADVENTISTS

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mrs. Kimberley Roheman for the Claimant

Mr. Dexter Theodore KC for the Defendant

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|----------------------|-----------------------|
| 2023: February 8, 9; | (Trial)               |
| July 12;             | (Trial)               |
| September 8, 29;     | (Written Submissions) |
| 2026: April 10.      | (Decision)            |

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**JUDGMENT**

*Employment/Labour Law – Wrongful dismissal – Division 10 of the Saint Lucia Labour Act Cap. 16:04 – Summary dismissal – Unsatisfactory performance – Serious misconduct – Ground for summary dismissal not contained in letter of termination – Application of common law principles in light of Labour Act*

- [1] **CENAC-PHULGENCE J:** This judgment concerns a claim for wrongful dismissal brought by the claimant, Dr. Claudia Fevrier (“Dr. Fevrier”) against the defendant, her former employer, the Saint Lucia Mission of Seventh Day Adventists (“the SLMSDA”). The SLMSDA resists the claim on the basis that it was entitled to summarily dismiss Dr. Fevrier for unsatisfactory performance and serious misconduct. The ground(s) advanced in support of the dismissal, as well as the

applicability of Division 10 of the Labour Act<sup>1</sup> (“the Act”) are contested. These issues require careful consideration before turning to the substantive matters arising for determination.

- [2] I wish to state from the outset, that it is evident the employment relationship was marred by personality conflicts, poor communication, and power struggles between Dr. Fevrier and certain members of the SLMSDA Executive Committee. The parties’ respective accounts of the incidents largely represent differing perspectives on the same events, rendering this a matter well suited for settlement. It is regrettable that the parties were unable to resolve this matter through mediation, notwithstanding that the proceedings were stayed for that purpose.

### **Brief Statement of Pleadings**

- [3] Dr. Fevrier was appointed principal of the St. Lucia Seventh-Day Adventist Academy (“the Academy”) effective 1<sup>st</sup> May 2017 for a period of 2 years (actually 2 years and 2 months) from 1<sup>st</sup> May 2017 to July 2019 (“the contractual period”). The terms and conditions were set out in her letter of appointment dated 6<sup>th</sup> June 2017 (“letter of appointment”).<sup>2</sup> The letter of appointment provided for early termination of the contractual period as follows:

“The Education Director and the Administration of the Saint Lucia Mission would evaluate performance on a regular basis. Should your performance be deemed unsatisfactory, the Executive Committee reserves the right to terminate the contract before the end of the two-year period.”

The letter of appointment provided for early termination on the ground of unsatisfactory performance but was silent on the question of notice.

- [4] The letter of appointment further stated that Dr. Fevrier was expected to comply with the philosophy of the Seventh-day Adventist Church and the guiding policies of the organisation as outlined in the working policy of the Inter-American Division (“the

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<sup>1</sup> Cap 16.04, Revised Laws of Saint Lucia, 2020.

<sup>2</sup> Exhibit C to the Statement of Claim filed 11<sup>th</sup> February 2019 at p 21 of Core Bundle No. 1. Note: All page references are to the electronic bundles.

Working Policy”)<sup>3</sup> and the Employee’s Handbook of the SLMSDA (“the Handbook”). The principal’s job description, signed by both parties on 7<sup>th</sup> June 2017, was attached to the letter of appointment.

- [5] By letter dated 4<sup>th</sup> May 2018 (“the termination letter”), the SLMSDA summarily dismissed Dr. Fevrier on the ground that her performance as principal for the preceding year was assessed as unsatisfactory or below standard. The termination letter referred to a letter of appointment dated 5<sup>th</sup> May 2017 (actually dated 26<sup>th</sup> May 2017), which provided that her performance would be appraised at the end of the first year and that the Executive Committee reserved the right to terminate the contract before the expiration of the two-year period if the evaluation was deemed unsatisfactory. A cheque in the sum of \$4,744.30 accompanied the termination letter, comprising one week’s notice (\$1,342.72), two weeks’ vacation pay (\$2,685.45), and payment for four days worked in May 2018 (\$716.12).
- [6] Dr. Fevrier alleges that on 4<sup>th</sup> May 2018, she was dismissed in full view of staff members, students, and teachers and was escorted from the Academy by police, causing her much stress and embarrassment. The SLMSDA disputes this account, contending that the dismissal occurred on 5<sup>th</sup> May 2018 and was conducted discreetly. The SLMSDA maintains that the termination letter was handed to Dr. Fevrier in the corridor near the annex building, after which she went directly to her office, and that she was not dismissed in the presence of staff, students or teachers.
- [7] According to the SLMSDA, Dr. Fevrier refused to accept the termination letter without her lawyer and placed it on the reception desk, thereby drawing attention to its delivery. Following her refusal and ensuing outbursts, the Executive Secretary, Pastor Roger Stephen (“Pastor Stephen”), contacted the police. A plain-clothes officer arrived in an unmarked vehicle, entered Dr. Fevrier’s office, and privately read the termination letter to her. She was advised that while she was entitled to seek legal advice, she was required to leave the office. After Dr. Fevrier began to

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<sup>3</sup> The letter of appointment did not specify which version of the Working Policy was applicable.

pack her belongings, the officer proceeded to sit in his vehicle in the parking lot until Dr. Fevrier left the office.

[8] Dr. Fevrier alleges that her performance appraisal was falsified to justify her termination, although no performance appraisal was annexed to her claim. The SLMSDA for its part annexed an “Evaluation Instrument” dated 18<sup>th</sup> April 2018<sup>4</sup> to its defence, which it relies on to demonstrate that Dr. Fevrier’s performance was unsatisfactory. The SLMSDA denies that the appraisals were falsified. It further states that there was no implied term that valid reasons would be provided for termination given the express contractual provision permitting termination of Dr. Fevrier’s services if her performance was deemed unsatisfactory. In reply, Dr. Fevrier disputes the accuracy of the appraisal, maintaining that it was falsified and contained generalised particulars.

[9] The SLMSDA accepts that the ground for termination stated in the termination letter was unsatisfactory performance but contends that this was not the only reason for Dr. Fevrier’s dismissal. It asserts that, for what it characterised as ‘charitable reasons’ and to avoid affecting Dr. Fevrier’s future employment prospects, it elected not to particularise her alleged acts of serious misconduct in the termination letter.<sup>5</sup> The SLMSDA therefore maintains that Dr. Fevrier was not wrongfully dismissed, but was guilty of serious misconduct inconsistent with the terms of her employment, including gross acts of insubordination on several occasions during meetings with her supervisors and in the presence of members of staff.<sup>6</sup> It further states that particulars of this misconduct were set out in its letter dated 21<sup>st</sup> October 2018 to Dr. Fevrier’s Attorney-at-Law<sup>7</sup>.

[10] The SLMSDA asserts that Dr. Fevrier was issued several warning letters<sup>8</sup> and subjected to disciplinary proceedings prior to her dismissal. Dr. Fevrier disputes that

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<sup>4</sup> Exhibit “SLM5” at pp 63-65 of Core Bundle No. 1.

<sup>5</sup> [10] of the defence at pp 36-37 of Core Bundle No. 1.

<sup>6</sup> [8.b] of the defence at p 35 of Core Bundle No. 1.

<sup>7</sup> Exhibit “SLM4” at pp 59-62 of Core Bundle No. 1.

<sup>8</sup> Exhibits “SLM3A-SLM3E” at pp 54-58 of Core Bundle No 1.

all such correspondence constituted warning letters or that disciplinary proceedings were held. Consequently, the SLMSDA's defence is that it summarily dismissed Dr. Fevrier not only for unsatisfactory performance but also for serious misconduct.

[11] The SLMSDA details deficiencies in Dr. Fevrier's performance: failure to carry out and submit timely reports to the Board, prepare her work plan within the required timeframe, produce board minutes from May to November 2017, and organise orientation activities for new teachers prior to the commencement of the new term. The SLMSDA further alleges acts of insubordination arising from her delay or refusal to comply with a directive to issue correspondence to two members of staff communicating a board decision. Dr. Fevrier denies these allegations.

[12] In reply, Dr. Fevrier is adamant that she relies on her termination letter for the true ground of her dismissal: unsatisfactory/below standard performance.<sup>9</sup> While acknowledging that the Handbook provides specified grounds for summary dismissal including, insubordinate behaviour, breach of confidentiality or untruthfulness, Dr. Fevrier denies that her dismissal was based on any of these grounds and further denies having engaged in conduct warranting immediate dismissal. She denies having received the Working Policy and annexes a document labelled "School Board Manual for Secondary Schools Inter American Division July 2002" to her reply which she says is the applicable Working Policy.<sup>10</sup> She also denies the SLMSDA's complaints regarding her performance. Dr. Fevrier also took the opportunity, in her reply, to respond to each of the twenty-seven (27) paragraphs of Exhibit SLM4<sup>11</sup>.

[13] Dr. Fevrier also makes reference to other grounds for dismissal, which were not referred to in the termination letter and which do not constitute grounds for wrongful dismissal: attempts to silence her as principal and spokesperson for the Academy;

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<sup>9</sup> At paras [2.1.2], [4] and [6] of the reply at pp 67, 68 and 70 of Core Bundle No. 1 respectively.

<sup>10</sup> Exhibit G at p 73 of Core Bundle No. 1. To its defence, the SLMSDA annexed excerpts of "Working Policy Inter American Division of the General Seventh-day Adventists 2016-2017 edition": Exhibit "SLM1" at pp 41-50 of Core Bundle No. 1.

<sup>11</sup> Para [4] of Reply at pp 68-70 of Core Bundle No. 1.

deduction of tithe from her salary (subsequently re-instated); and attempts to victimise, threaten, and intimidate her. The SLMSDA denies that these matters formed any part of the reason for Dr. Fevrier's dismissal.

- [14] Dr. Fevrier claims that because of her wrongful dismissal, she suffered loss of salary and benefits, as well as anxiety and medical illnesses associated with her dismissal. She claims special damages in the sum of \$83,317.83, damages inclusive of exemplary damages and interest. The SLMSDA denies that Dr. Fevrier suffered any loss or damage or that she is entitled to the relief sought.

### **Evidence**

- [15] Witness statements were filed for the claimant by Dr. Fevrier, Yeneca Howell ("Ms. Howell"), Maria Mc Lawrence ("Ms. Mc Lawrence") and Corporal Ann Joseph ("Corporal Joseph"). For the SLMSDA, witness statements were filed by Pastor Stephen and Rose Mary Desir ("Ms. Desir") (Treasurer for the SLMSDA), and witness summaries for Pastor Alexander Biscette (President of the SLMSDA and Chairman of the School Board) ("Pastor Biscette") and Elsie Samuel (Education Director for SDA schools) ("Ms. Samuel"). Ms. Mc Lawrence, Pastor Biscette and Ms. Samuel did not attend the trial for cross-examination, and their witness statements/summaries are accordingly struck out.

- [16] Although extensive evidence was adduced by the parties, I am of the view that much of it added little to the determination of the issues. I therefore consider it appropriate to address the evidence only in so far as it bears directly in relation to the matters to be determined. This approach should not be taken to suggest that I have not considered all the evidence before me.

### **Dr. Claudia Fevrier**

- [17] Dr. Fevrier's witness statement was replete with hearsay and contained a considerable amount of inadmissible, scandalous and irrelevant evidence. It consisted of a forty-five (45) page dissertation recounting in miniscule detail every

incident since her commencement of employment with the SLMSDA and a commentary on the exhibits in these proceedings.

- [18] There are aspects of her evidence that I do not accept which will be discussed below. During cross-examination, I found that Dr. Fevrier's tone, and by extension her responses to the questions posed to her, came across as being somewhat curt.

### **Corporal Ann Joseph**

- [19] Corporal Joseph's (now Sergeant) evidence during cross-examination was consistent with the evidence contained in her witness statement. Her evidence was specific to a meeting held on 19<sup>th</sup> December 2017, where she spoke to teachers and principals of the SDA schools on the topic of correct procedures in handling sensitive issues and more particularly sexual abuse. She recalled Dr. Fevrier posing the same question to her numerous times during the session, on what she should do if she as the principal became aware of sexual abuse against a student and whether she should report it to the police.

- [20] After the session, Dr. Fevrier approached her and asked what she should do if she was given a letter by her supervisor indicating that she (Dr. Fevrier) should not make a report or speak to anyone on the matter. Corporal Joseph said that Dr. Fevrier did not provide the details of the letter, but she drew the inference that the letter Dr. Fevrier received was to the effect that she should not speak to the police. Dr. Fevrier never mentioned anyone's name to the officer or said that she received instructions that queries be referred to Pastor Stephen on the matter. I found Corporal Joseph to be a straightforward witness.

### **Yeneca Howell**

- [21] I do not find Ms. Howell's evidence to be of assistance to the issues to be determined. She was not present at any of the meetings Dr. Fevrier had with the SLMSDA and could not speak to the interactions Dr. Fevrier had with members of the Board, the Executive Committee or the administrators of the SLMSDA. She was

only able to speak to her personal interactions with Dr. Fevrier, which she said were pleasant, as well as the policies she says were undertaken by Dr. Fevrier which benefitted the Academy.

**Pastor Roger Stephen**

- [22] During cross-examination, Pastor Stephen explained that his role as Executive Secretary (which he was at the time but was now the President of the SLMSDA) included writing on behalf of the SLMSDA; being the secretary of the Executive Committee; fulfilling the role of human resources; addressing the public in situations where the President (Pastor Biscette) did not deem it necessary to speak; primary responsibility for the Head Office and staff; and being the liaison between the President and the directors [of the Board].
- [23] Pastor Stephen clarified during cross-examination that there were two letters issued to Dr. Fevrier in relation to her appointment. He said the letter issued 26<sup>th</sup> May 2017<sup>12</sup> was to indicate that Dr. Fevrier was appointed and the second, dated 6<sup>th</sup> June 2017, was the official letter of appointment.
- [24] Pastor Stephen explained that whilst the letter dated 26<sup>th</sup> May 2017 speaks to Dr. Fevrier's performance being appraised and the letter dated 6<sup>th</sup> June 2017 to evaluation of her performance, they were not conflicting. Evaluations were ongoing throughout the year while appraisals were done once yearly.
- [25] In his witness statement Pastor Stephen states that since Dr. Fevrier began her term in 2017, the applicable working policy was the 2016-2017 Working Policy. He maintained that the persons responsible for the investigations into the complaints against Dr. Fevrier were Ms. Samuel and Pastor Biscette. From his evidence given during cross-examination, it became clear that whilst he was an administrator of the SLMSDA and a member of the Executive Committee, there were many aspects he was not knowledgeable about.

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<sup>12</sup> At p 30 of Core Bundle No. 3.



[26] Pastor Stephen denied having made up his mind based on only Ms. Samuel's allegations against Dr. Fevrier. He also denied having received some of the documents annexed to Dr. Fevrier's witness statement which I shall discuss below. He also admitted that at the time, there was no system where incoming letters to the SLMSDA were signed for by the person at reception. He admitted that he did not examine in detail, the documents annexed to Dr. Fevrier's witness statement nor did he go through them meticulously. He stated that he did not only miss the response letters of Dr. Fevrier but other documents as well.

[27] I found Pastor Stephen to be a truthful witness who could have only spoken to what he knew.

### **Rose Mary Desir**

[28] Like Pastor Stephen, it became evident that Ms. Desir was not one of the main decision makers of the Executive Committee and therefore, could not speak to certain matters. Despite this, I found Ms. Desir to be a direct and truthful witness.

### **Issues**

- [29] The following issues arise for the Court's determination:
- A. Whether an employer can rely on the common law right to summarily dismiss an employee for gross misconduct in light of the enactment of the Labour Act?
  - B. Whether the SLMSDA can rely on the ground of serious misconduct if the said ground was not contained in the letter of termination as the ground for summary dismissal of Dr. Fevrier?
  - C. Whether the SLMSDA's defence that notwithstanding the contents of the termination letter, it summarily dismissed Dr. Fevrier on the ground of serious misconduct, can succeed?
  - D. Whether Dr. Fevrier was wrongfully dismissed?
  - E. What measure of damages, if any, is Dr. Fevrier entitled to?

## Law, Submissions and Analysis

### A. Whether an employer can rely on the common law right to summarily dismiss an employee for gross misconduct in light of the enactment of the Labour Act?

- [30] The applicability of the common law in light of the enactment of the Act has sparked much confusion and discussion in the Commonwealth Caribbean.
- [31] Counsel for the SLMSDA, Mr. Dexter Theodore KC (“Mr. Theodore KC”), raises the question of whether section 140 of the Act removes the employer’s right at common law to summarily dismiss an employee for gross misconduct. I found it more useful to frame the question more broadly since the discussion is not limited to the application of section 140 of the Act.

### Submissions of the Parties

- [32] Mr. Theodore KC, submits firstly that section 140<sup>13</sup> of the Act does not apply in the circumstances of this case since Dr. Fevrier did not claim breach of a statutory duty, but brought a private law action. As a result, if there is a breach of section 140, the Act provides a statutory remedy in the forms of sections 410<sup>14</sup>, 415<sup>15</sup>, 416<sup>16</sup>, 419<sup>17</sup>, 420<sup>18</sup>, 442<sup>19</sup> and 450<sup>20</sup> and Dr. Fevrier cannot then submit that there was a breach of natural justice principles. He relies on the decision of **Samanthia Charms Joseph v Digicel (St. Lucia) Ltd**<sup>21</sup> to support this argument.
- [33] Mr. Theodore KC’s second submission is that the power of summary dismissal at common law is not removed by the Act but specifically endorsed by section 133. He relies on **Halsbury’s Laws of England**<sup>22</sup> which states as follows:

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<sup>13</sup> Natural justice safeguards.

<sup>14</sup> Individual complaints.

<sup>15</sup> Time limit for determination.

<sup>16</sup> Time limit for a review.

<sup>17</sup> Powers of labour commissioner to recommend remedies.

<sup>18</sup> Recommended remedy.

<sup>19</sup> Awards.

<sup>20</sup> Decision to be filed in Court.

<sup>21</sup> SLUHCv2015/0637 (delivered 2<sup>nd</sup> August 2019), unreported at [18].

<sup>22</sup> At para 750 Volume 41 (2021).

**“750. Employer's right of summary dismissal.**

An employer has a common law right to dismiss an employee without notice on the grounds of the employee's gross misconduct, and such a dismissal is not wrongful. Originally this right was explained as a legal incident of the status of master and servant but, in line with the modern contractual analysis of the employment relationship, it is now explained in contractual terms, as the acceptance by the employer of a repudiation of the contract by the employee. Alternatively, gross misconduct justifying summary dismissal may be seen as conduct so undermining the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in his employment.

**The power of summary dismissal is not removed or directly altered by the modern employment protection legislation, either as to minimum periods of notice or as to the statutory claim for unfair dismissal** (emphasis added). For the purposes of a claim for unfair dismissal, the factor of summary dismissal can be considered only in the context of whether or not it was reasonable to dismiss at all; if the decision was reasonable, the dismissal may not be unfair but may nevertheless be wrongful if the misconduct was not actually gross and no notice was given.”

[34] Mr. Theodore KC submits that section 140 does not apply since the SLMSDA's case is one of dismissal for serious misconduct. He draws a distinction between serious misconduct and misconduct *simpliciter*. It is the SLMSDA's position that it was an implied term of Dr. Fevrier's contract that on occasions when she was accused only of the latter, she would be entitled to have the principles of natural justice applied to her case.<sup>23</sup>

[35] On the other hand, Counsel for Dr. Fevrier, Mrs. Kimberley Roheman (“Mrs. Roheman”), submits that where an employee is accused of misconduct, he/she is entitled to have natural justice principles applied to his/her case. She submits that this is both a common law principle and a principle under the Act. Notably, she did not submit that there was a breach of section 140 of the Act as this is not Dr. Fevrier's claim.

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<sup>23</sup>See para [6b] of defence at p 34 of Core Bundle No. 1.

## Law and Analysis

- [36] I will firstly deal with Mr. Theodore KC's second submission as it informs my discussion on his other submission. Having read the provisions of the Act, I cannot agree that there is any such distinction as it relates to the applicability of section 140 of the Act.
- [37] In the recent Court of Appeal decision of **Golden Years Home for the Elderly v Ingrid Branford Hughes**,<sup>24</sup> the Court considered the definition of gross misconduct provided for in the Labour Code of Montserrat ("the Montserrat Code")<sup>25</sup>, which allowed an employer to summarily dismiss an employee who was found guilty of the gross misconduct alleged. The Court of Appeal made a distinction like Mr. Theodore KC has, between gross misconduct which was conduct of a "serious nature" and what they termed 'conduct which is not of such a serious nature'. On a reading of paragraph 36 of the judgment, the Court of Appeal was clear that the added requirement of taking steps to bring the dissatisfaction to the employee's notice and allowing the employee an opportunity to correct the deficiencies, was not applicable to situations of serious misconduct leading to summary dismissal but would apply to circumstances where the employee's conduct was not of such a serious nature as to warrant summary dismissal. As a result, the Tribunal erred in law by stating that the test to be applied to summary dismissal on the basis of gross misconduct included, in addition to the conduct being serious, an obligation on the company to take steps to bring the dissatisfaction to the employee's notice and allow the employee an opportunity to correct the deficiencies.
- [38] That being said, the Court recognised that the added steps would be applicable where statute required or in situations where the employer has to decide if the allegations against the employee are serious enough to constitute gross misconduct.

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<sup>24</sup> MNIHCVAP2024/0001 (delivered 14<sup>th</sup> January 2026 and re-issued on 22<sup>nd</sup> January 2026), unreported.

<sup>25</sup> No. 20 of 2012.

[39] In my opinion, the Act specifically states in section 140 that 'where an employee is accused of misconduct he or she is entitled to have the principles of natural justice applied, including but not limited to the right to a fair hearing, to make representations, to have notice of the accusation and full particulars of the misconduct and the right to legal representation'. Section 140 uses the term misconduct, which I understand serious misconduct to be a sub-set of. To say that section 140 of the Act does not apply to serious misconduct would be inconsistent with the ethos of the Act and its attempt to ensure that employees are treated fairly. I also note that the Montserrat Code does not have a similar section to section 140 and therefore **Golden Years** did not address the applicability of a similar section. Thus, it is my view that the Act statutorily requires the employer to apply natural justice principles in situations where the employee is accused of serious misconduct.

[40] Section 133 of the Act addresses summary dismissal for serious misconduct. Section 133(1) allows the employer to dismiss, summarily without notice, an employee who is guilty of serious misconduct of such a nature that it would be unreasonable to require the employer to continue the employment relationship. According to section 133 serious misconduct includes but is not limited to wilful disobedience of lawful orders given by the employer;<sup>26</sup> repeated substantial neglect of duties;<sup>27</sup> repeated absence from work without the permission of the employer or without reasonable excuse;<sup>28</sup> refusing to follow health and safety measures instituted at work thereby endangering the health and safety of employees or members of the public;<sup>29</sup> theft or wilful damages of property of the employer or another employee at the workplace;<sup>30</sup> or conduct inconsistent with the fulfilment of the expressed or implied terms of the employee's contract of employment.<sup>31</sup> What the section makes clear is that the serious misconduct referred to is restricted to

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<sup>26</sup> Section 133(2)(a).

<sup>27</sup> Section 133(2)(b).

<sup>28</sup> Section 133(2)(c).

<sup>29</sup> Section 133(2)(d).

<sup>30</sup> Section 133(2)(e).

<sup>31</sup> Section 133(2)(f).

conduct which is directly related to the employment relationship or has a detrimental effect on the business of the employer or the work relationship.<sup>32</sup>

[41] In **Dwayne Chidi Tobias v Saint Lucia Air and Sea Ports Authority**,<sup>33</sup> this Court held the view that the statutory bases for summary dismissal not only codified the common law but expanded it<sup>34</sup> since it addressed entitlement to remuneration upon summary dismissal;<sup>35</sup> provides for warnings and termination for misconduct;<sup>36</sup> and provides for unsatisfactory performance<sup>37</sup>. Based on this expansion, this Court in **Dwayne Chidi Tobias** did not accept the submission that a claim for breach of contract transcended the ambit of the Act. The decision recognises that the common law right of summary dismissal has not only been codified but has been modified by the Act.

[42] Whilst it is accepted at common law that the employer is not required to follow a particular procedure in summarily dismissing an employee, or that there is a general requirement for the rules of natural justice to be observed (contrary to Mrs. Roheman's submission), section 140 of the Act has altered that position.

[43] In addressing Mr. Theordore KC's second submission, a prudent starting point is to look at the applicability of the provisions of the Act. The preamble of the Act states that it is:

“AN ACT to consolidate and reform legislation applicable to labour and industrial relations in Saint Lucia taking into account existing local standards and international labour law standards and to provide for related matters.”

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<sup>32</sup> Section 133(3).

<sup>33</sup> SLUHCv2017/0028 (delivered 25<sup>th</sup> November 2019), unreported.

<sup>34</sup> Ibid at para [32].

<sup>35</sup> Section 134.

<sup>36</sup> Section 135.

<sup>37</sup> Section 136.

[44] Section 3 provides:

**“Application**

3.— (1) **Subject to subsection (2) and except where otherwise expressly excluded, this Act applies to all employees** including domestic workers, homeworkers and people employed at all workplaces.

(2) This Act shall not apply to the Crown or to a public servant except where expressly stated in this section or in any other provision of this Act.

(3) Division 1 of Part 5 binds the Crown.

(4) The benefits and protections granted under this Act shall not be denied to employees merely because such employees are homeworkers where such employees are employed under contracts of employment.”**(my emphasis)**

[45] There is no question that the provisions of the Act apply in the circumstances of this case as Dr. Fevrier does not fall within the class of persons recognised by section 3(2) and is caught by section 3(1). Furthermore, section 4 of the Act provides that any provision in any agreement or established custom that seeks to exclude or in any way limit the operation of any provision of this Act, shall be void, except where such provision or custom seeks to provide greater or higher benefits than those set out under the Act. As such, an employer cannot contract out of the protections afforded by the Act, unless the provision of the agreement or custom provides the employee with higher benefits than those set out in the Act.

[46] It has been settled that the absence of wrongful dismissal from the Act did not abolish the common law right not to be wrongfully dismissed.<sup>38</sup> It continues to co-exist alongside the statutory right to bring an action for unfair dismissal. The question is whether this absence means, as Mr. Theodore KC suggests, that because Dr. Fevrier has brought a private law action for wrongful dismissal (at common law), she cannot refer to the requirement for natural justice principles to be exercised by the employer where the employee is accused of misconduct, as it is a statutory right. I would think not.

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<sup>38</sup> See *St. Kitts Marriott Resort v Deborah Stevens* [2020] ECSCJ No. 359 discussion at [28]-[36] and [26]-[28] of fn 41.

[47] Given the applicability of sections 3(1) and 4, the SLMSDA cannot contract out of the protections afforded to Dr. Fevrier by the Act, namely, her entitlement to natural justice safeguards where, as in this case, she has been accused of serious misconduct. The protection afforded by section 140 accrues upon the basis of her contract of employment, into which the provisions of the Act are implied. Consequently, a breach of the provisions of the Act is ultimately a breach of the contract of employment. Thus, in this case where a claim for wrongful dismissal has been met with the defence of summary dismissal on the ground of serious misconduct, the natural justice safeguards afforded by section 140 would undoubtedly apply. I am of the opinion that the paragraph referred to by Mr. Theodore KC in **Samanthia Charms Joseph** is therefore not applicable.

[48] In conclusion on this issue, summary dismissal as it exists today is summary dismissal as provided for by the Act. Under the Act, summary dismissal looks different than at common law, as the Act provides for procedures which ensure that natural justice principles are observed where an employee is accused of misconduct, which includes serious misconduct. Even with these requirements, summary dismissal remains dismissal without notice albeit, with a few additional steps. Its core component (the without notice aspect) is not altered by the Act. In addition, given that the provisions of the Act apply to all employees except where expressly excluded, these provisions are implied into an employee's contract of employment, and it cannot be that an employer can choose to ignore the Act and declare that it is employing summary dismissal at common law without reference to natural justice .

**B. Whether the SLMSDA can rely on the ground of serious misconduct if the said ground was not contained in the letter of termination as the ground for summary dismissal?**

[49] It is not disputed that by letter dated 4<sup>th</sup> May 2018 (the termination letter) signed by Pastor Stephen, the SLMSDA terminated the employment of Dr. Fevrier on the ground of unsatisfactory performance. The termination letter states as follows:



“ ...

At a duly called meeting of the Executive Committee of the Saint Lucia Mission of Seventh-day Adventists dated May 4 2018, it was voted that your employment with the organization is hereby terminated with immediate effect.

As was stated in your letter of appointment dated May 5 2017, “at the end of the first year of the contract your performance will be appraised by the education director and the administration of the Saint Lucia Mission of Seventh-day Adventists. If your evaluation is unsatisfactory the Executive Committee reserves the right to terminate the contract before the end of the two years.”

Dr. Fevrier, the result of your appraisal has shown that your performance as the principal for the past year has been unsatisfactory/below standard. As a result your services/post as principal of the St. Lucia SDA Academy is hereby terminated with immediate effect.

Please find enclosed Royal Bank cheque #03540 for \$4,744.30 which represents;

|                                           |                   |
|-------------------------------------------|-------------------|
| 1. One week Notice .....                  | \$1,342.72        |
| 2. Two weeks' Vacation .....              | \$2,685.45        |
| 3. Four days of work in May in 2018 ..... | <u>\$716.12</u>   |
|                                           | <u>\$4,744.30</u> |

We wish you God's blessings in your future endeavours.”

[50] To reiterate, the SLMSDA’s defence is that Dr. Fevrier’s dismissal was grounded not only on unsatisfactory performance as stated in the termination letter, but also on serious misconduct. SLMSDA asserts that it chose not to detail the acts of misconduct so as not to prejudice Dr. Fevrier’s future employment prospects. In reply, Dr. Fevrier says that the SLMSDA is estopped from relying on an alternative ground for dismissal. Neither party has referred the Court to authorities on the point.

[51] At common law, an employee has no right to be given reasons for dismissal<sup>39</sup>. However, that is not the position here. In this case, the SLMSDA expressly identified ‘unsatisfactory performance’ as the basis for dismissal in the termination letter, but

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<sup>39</sup> Halsbury’s Laws of England Volume 41 (2021), para 751. Factors giving rise to summary dismissal.

now asserts before the Court that the dismissal was grounded on both unsatisfactory performance and serious misconduct.

[52] The cases of **Baillie v Kell and Hogg**<sup>40</sup> and **Cussons v Skinner**<sup>41</sup> provide guidance regarding situations where the conduct was known by the employer prior to termination.

[53] In **Baillie**, the plaintiff brought the action to recover damages for his dismissal and for arrears of salary. The defendants pleaded that the plaintiff received money for which he did not account; made improper payments with defendants' money; made false entries and representations; and refused to obey his employers' commands. However, they were only able to prove that the plaintiff made false entries and representations. The jury found that that act was sufficient to dismiss the plaintiff although the defendants were unable to prove the other acts in the plea.

[54] However, the facts were that the plaintiff was not dismissed upon the act proven before the jury, but for disrespect in refusing to abandon his claim to salary. Tindal CJ in determining whether a new trial was necessary on the ground that the verdict on certain of the defendants' pleas were against the evidence, had to consider whether the verdict stood given the fact that the ground proved was not the actual grounds for dismissal.

[55] Tindal CJ stated the following in **Baillie**:

“But I am not prepared to say that when a party is discharged on good ground, and a reason is assigned at the time, another reason may not afterwards be proved; as in *Crowther v Ramsbottom* (7 TR 654), where in trespass for breaking and entering the plaintiff's close and taking his goods, it was held that the Defendant might justify under a sufficient legal process if he had it in fact at the time, although he declared then that he entered for another cause.

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<sup>40</sup> (1838) 132 ER 934.

<sup>41</sup> 1843 11 M & W 162.

And looking at the whole of the proceedings of this company, I am not prepared to state that the jury were not justified in ascribing the Plaintiff's discharge, not to the formal reason assigned at the time, but to the general nature of the Plaintiff's transactions.

It appears that, in September 1836, an enquiry had been made into the affairs of the company, the result of which was, that the Plaintiff's co-operation in the transactions of December 1835 and February 1836 was communicated to the Defendants: that must have filled their minds with the impression that the Plaintiff was an improper person to discharge the duties of accountant; and though they instruct their secretary to communicate to the Plaintiff that he had been guilty of disrespect, and that his services were no longer required, they do not put his dismissal on that ground alone, or indicate an intention to waive all other objections. I cannot say, therefore, that there was not sufficient evidence to establish the sixth plea.”<sup>42</sup>

[56] Park J concurring with Tindal CJ had the following to say on the issue:

“But it is said the Defendants did not, in fact, discharge the Plaintiff for any one of the grounds alleged. That was entirely a question for the jury, who might well have thought that the Defendants, without waiving the objection, kindly abstained from sending the Plaintiff forth from their service with a stigma on his character.”<sup>43</sup>

[57] Vaughan J, also concurring with Tindal CJ said:

“The false entry of February 1836 appears to me a sufficient ground of discharge; and though the Plaintiff was ostensibly dismissed for disrespect, the Defendants are not precluded from shewing the entire ground of dismissal. *Crowther v. Ramsbottom* establishes that a party who has distrained for one cause is not precluded from relying for his defence on another.”<sup>44</sup>

[58] In **Cussons**, Lord Abinger J says as follows:

“Now, I am aware it has been decided, and I am satisfied with that decision, that if there were disobedience, or an act of misconduct by a servant, known to the master at the time he discharges him, although he does not insist on that as being the precise ground of the discharge, he may afterwards, by shewing that the fact existed, and that he knew it, justify such discharge. That has been decided by the Court of Queen's Bench in the case of

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<sup>42</sup> At pp 650 and 651-652.

<sup>43</sup> At p 653.

<sup>44</sup> At p 654.

Ridgway v. The Hungerford Market Company (3 A. & Ell. 171; 4 Nev. & M. 797).<sup>45</sup>

[59] At common law, there is case law to suggest that the SLMSDA can bring a defence on the ground of serious misconduct although it was not contained in the termination letter. I will now consider whether this position has been altered by the Act.

[60] Section 129 of the Act provides:

**“Valid reason for dismissal**

129. The employment of an employee —

- (a) without reference to limit of time;
- (b) for a specific task where that task is not completed; or
- (c) for a time period where that time period is not completed;

shall not be terminated by an employer, unless there is a valid reason for such termination connected to the capacity, performance or conduct of the employee or for reasons of redundancy and, unless in accordance with the principles and procedures under this Division.”

[61] To my mind what section 129 does, is to remove the ability of an employer to dismiss an employee without cause. I do not think it is correct to say that the SLMSDA is estopped from defending the claim on the ground of serious misconduct as Mrs. Roheman has submitted. The legislation certainly does not prevent the SLMSDA from doing so. It simply provides that there must be a valid reason for termination.

[62] Upon reading section 129, the Act has not changed the common law in this respect and the case law referred to above is still applicable. What the Act does do however, is provide for certain procedures to be followed based on the reason(s) provided for dismissal. Therefore, it is prudent for an employer, when dismissing an employee, to state the reason for dismissal so as to make it clear its reason for adopting the procedure it has under the Act.

[63] In conclusion, section 129 of the Act has removed the ability of the employer to dismiss without cause as he had been able to do at common law. Despite this,

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<sup>45</sup> At p 767.

section 129 does not prevent the SLMSDA from relying on the ground of serious misconduct to defend its dismissal of Dr. Fevrier although it was not the ground stated in the termination letter.

**C. Whether the SLMSDA's defence that notwithstanding the contents of the termination letter, it summarily dismissed Dr. Fevrier on the ground of serious misconduct, can succeed?**

- [64] Given the SLMSDA's defence, I find it more prudent to deal with this issue before making a finding on whether Dr. Fevrier was wrongfully dismissed, since a finding in the SLMSDA's favour would mean that Dr. Fevrier was not wrongfully dismissed.
- [65] Before going into this issue, I will look at sections of the SLMSDA Handbook<sup>46</sup> which are relevant to the analysis. The Handbook<sup>47</sup> provides that all SLMSDA employees would be subject to at least an annual performance appraisal conducted by their supervisors. The reviews would focus on job-related strengths and weaknesses, goal achievement and alignment with the SLMSDA's objectives. Goals and improvements plans are to be set for each review period with progress assessed at the subsequent appraisal. Employees would be afforded the opportunity to thoroughly review their performance appraisals and provide written comments.
- [66] There is a section headed "Disciplinary Policies".<sup>48</sup> It states that employees who have a problem with a supervisor should first go to the supervisor and state the problem. If a resolution cannot be agreed upon, the employee should present his or her problem in writing to the Corporate Secretary or the President whose decision will be final.
- [67] The Handbook provides that disciplinary action in respect of performance deficiencies or errors is to be determined by the SLMSDA based on the facts and circumstances of each case. The range of disciplinary measures includes among

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<sup>46</sup> Supplemental Core Bundle No. 3.

<sup>47</sup> pp 8-9 of the Handbook under the heading "Performance Reviews": Supplemental Core Bundle No. 3.

<sup>48</sup> p 26 of the Handbook.

other things, oral or written warnings, probation, suspension without pay or immediate dismissal. In determining the appropriate measure, the SLMSDA should consider factors such as the seriousness of the situation, the employee's past conduct and length of service, and prior performance or incidents. Details of this process are outlined in the Corrective Action Section.

[68] According to the corrective action section,<sup>49</sup> corrective action usually begins with a verbal warning, followed by a written warning. If more serious corrective action is required, the employee may be put on probation, or have his or her employment terminated. There are some grounds listed for immediate dismissal, including, but not limited to, insubordinate behaviour; theft; destruction of company property; breach of confidentiality agreement; untruthfulness; drug or alcohol abuse; threats of violence, apostasy; and falsification of records.

[69] The Handbook also provides a disciplinary procedure under the corrective action section.<sup>50</sup> The Handbook provides that termination can result from corrective action measures, layoffs, and involuntary dismissal which may include poor performance reviews or failure to demonstrate an acceptable attitude in the workplace.<sup>51</sup>

[70] It is the SLMSDA's defence that on the date of her dismissal, it was entitled to summarily dismiss Dr. Fevrier for serious misconduct. In particular, the SLMSDA pleaded that Dr. Fevrier was guilty of gross insubordination as follows: (a) on several occasions during meetings with her supervisors and in the presence of staff;<sup>52</sup> (b) by delaying/refusing to follow a directive to write letters to two members of staff informing them of a board decision; (c) Dr. Fevrier's attitude towards members of staff and her immediate supervisors;<sup>53</sup> and (d) Dr. Fevrier was insulting and levelled

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<sup>49</sup> Ibid.

<sup>50</sup> p 28 of the Handbook.

<sup>51</sup> p 29 of the Handbook.

<sup>52</sup> [8.b] of the defence at p 35 of Core Bundle No. 1.

<sup>53</sup> [8.c] of the defence at p 35 of Core Bundle No. 1.

false accusations against her superiors and by extension the SLMSDA as an organisation on several occasions.

[71] The SLMSDA also pleaded that Dr. Fevrier wilfully disobeyed lawful orders. She (a) failed to prepare her work plan within the requisite time frame; (b) failed to produce board minutes from May to November 2017, which was one of her duties as secretary of the school board; (c) failed to log entries in the allocated logbook; and (d) failed to engage in the organisation of orientation activities for new teachers prior to the commencement of the school term as required.

[72] Dr. Fevrier pleaded that it was an implied term of her contract that, when accused of misconduct she would be afforded the principles of natural justice. The SLMSDA contends that she was informed of the acts of insubordination through correspondence and various meetings, and there were procedures which Dr. Fevrier was required to follow.

[73] In her pleadings, Dr. Fevrier denied that all the letters relied upon constituted warning letters and that any disciplinary proceedings were conducted. She further denies being grossly insubordinate, asserting that she merely spoke out against what she perceived to be ill treatment, intimidation and threats against her. She further maintained in her evidence that her dismissal was not grounded in poor performance or conduct as alleged, but rather in unsuccessful attempts to silence her.

[74] It is important to note that Dr. Fevrier's claim is one of wrongful dismissal. She did not advance claims for constructive dismissal or breach of contract. Accordingly, Dr. Fevrier's evidence concerning the conduct of the SLMSDA will be assessed within that limited framework.

- [75] I will first consider the documents which outlines Dr. Fevrier's roles and obligations at the Academy and the SLMSDA. The vacancy notice for the position of principal<sup>54</sup> outlines the main duties and responsibilities, including spiritual and institutional leadership of the school; improvement of the educational programme; maintenance of order and discipline according to Christian standards; implementation of administrative policies of the executive committee and board of management; teacher training; financial management within the approved budget and the development and implementation of a strategic plan.
- [76] Dr. Fevrier's letter of appointment identified Ms. Samuel as her immediate supervisor. She was accountable to the Administration<sup>55</sup> of the SLMSDA, the Saint Lucia SDA Academy School Board of Management and the Island Church Constituency and was expected to comply with the philosophy of the Seventh-Day Adventist Church and the guiding policies of the organisation as outlined on the working policy of the Inter-American Division and the SLMSDA Employee's Handbook.<sup>56</sup> Her job description,<sup>57</sup> further detailed her reporting structure<sup>58</sup> and also sets out in great detail the job function and responsibilities.
- [77] Given the volume of evidence in this matter, I find it appropriate to address the alleged acts of misconduct through an analysis of the letters issued by the SLMSDA, in which the complaints are largely recorded. Dr. Fevrier admits receiving seven (7) letters from the SLMSDA<sup>59</sup> and claims to have responded in writing to each ("letters in response"). Those letters in response, annexed to her witness statement, require some discussion.

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<sup>54</sup> See p 68 of Core Bundle No. 2 Bundle A.

<sup>55</sup> The Administration comprised Pastor Biscette, Pastor Stephen and Ms. Desir.

<sup>56</sup> See letter of appointment at p 75 of Core Bundle No. 2 Bundle A.

<sup>57</sup> At p 76 of Core Bundle No. 2 Bundle A.

<sup>58</sup> Education Director, Board of Management, Church Constituency

<sup>59</sup> See witness statement at p 10 of Core Bundle No. 2 Bundle A.



### Letters in response

- [78] The letters in response which are all written on the Academy's letterhead, are dated 4<sup>th</sup> July 2017 (to Ms. Samuel),<sup>60</sup> 17<sup>th</sup> July 2017<sup>61</sup> (to Pastor Biscette), 25<sup>th</sup> August 2017<sup>62</sup> (to Pastor Stephen), 4<sup>th</sup> October 2017<sup>63</sup> (to Pastor Stephen), 16<sup>th</sup> October 2017<sup>64</sup> (to Pastor Emmanuel), 27<sup>th</sup> November 2017<sup>65</sup> (to Pastor Biscette) and two letters dated 29<sup>th</sup> November 2017 (to Ms. Samuel<sup>66</sup> and Pastor Biscette<sup>67</sup>).
- [79] On the second day of the trial, Mr. Theodore KC, indicated that he had been instructed by the SLMSDA that the two (2) letters in response allegedly written by Dr. Fevrier to Pastor Stephen were fabricated, as Pastor Stephen denied ever receiving them.
- [80] Pastor Stephen does not address these letters in his witness statement. During cross-examination,<sup>68</sup> he admitted that he had not paid close attention to the documents during the disclosure process and missed not only the letters in response, but other documents as well. He also acknowledged that, at the relevant time, there was no system in place for marking incoming correspondence as received. It is therefore possible that the letters were sent by Dr. Fevrier but not received by him.
- [81] The letters in response were not referred to or annexed to Dr. Fevrier's pleadings. They do however appear in her List of Documents filed on 7<sup>th</sup> August 2020 and were agreed to by the SLMSDA without qualification. Although Dr. Fevrier refers to the letters in her witness statement, she provided no evidence as to their delivery to or receipt by the intended persons.

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<sup>60</sup> See Exhibit 9 at p 88 of Core Bundle No. 2 Bundle A.

<sup>61</sup> See Exhibit 12 at p 98 of Core Bundle No. 2 Bundle A.

<sup>62</sup> See Exhibit 15 at p 114 of Core Bundle No. 2 Bundle A.

<sup>63</sup> See Exhibit 23 at p 142-144 of Core Bundle No. 2 Bundle A.

<sup>64</sup> See Exhibit 25 at p 146-149 of Core Bundle No. 2 Bundle A.

<sup>65</sup> See Exhibit 26 at p 150 of Core Bundle No. 2 Bundle A.

<sup>66</sup> See Exhibit 29 at p 157-161 of Core Bundle No. 2 Bundle A.

<sup>67</sup> See Exhibit 30 at p 162-164 of Core Bundle No. 2 Bundle A.

<sup>68</sup> Ms. Desir was not asked about the letters during her cross-examination.

[82] I accept Pastor Stephen's evidence that he did not receive the two (2) letters in response addressed to him. However, I cannot accept the submission that the letters were fabricated since these documents were agreed to by the SLMSDA during the disclosure process and their authenticity was never challenged under CPR 28.

[83] I further note that none of the contemporaneous documents or correspondence issued to Dr. Fevrier during her employment, refer to the letters in response. They are absent from the SLMSDA's pleadings and witness statements. It is also passing strange that Dr. Fevrier did not send follow-up letters or make enquiries given the clear lack of response by the SLMSDA to these letters. Given, the lack of reference to these letters in the contemporaneous documents, I have formed the view that it is quite possible that none of the letters in response reached the intended recipients.

[84] To avoid repetition below, I observe that the tone of the letters in response was in my view, at times disrespectful to her employers. Dr. Fevrier employed emotive language and many rhetorical questions, repeatedly asserting that her authority as principal was being undermined by the identified members of the Executive Committee of the SLMSDA. Her repeated emphasis that she "is the principal", leads the Court to form the opinion that Dr. Fevrier viewed herself as an institution unto herself and not accountable to anyone.

[85] I also do not accept several of Dr. Fevrier's accounts of the incidents as set out in the letters in response. In many instances, I found the contents to be exaggerated, and I find the evidence of the SLMSDA to be more credible.

[86] I now turn to the letters written to Dr. Fevrier.

**(i) Letter dated 3<sup>rd</sup> July 2017 (the first letter)<sup>69</sup>**

[87] In this letter Ms. Samuel cited, two incidents. The first concerned Dr. Fevrier's reaction to the non-selection of an unsuccessful applicant, who was her nephew, during which she was accused of displaying inappropriate behaviour. The second involved an alleged verbal attack on Ms. Samuel in the presence of the Board of Management.<sup>70</sup>

[88] Dr. Fevrier annexed a five (5) page document purporting to be a response letter dated 4<sup>th</sup> July 2017 to the first letter written on the Academy's letterhead. In it, she addressed both incidents and denied that they occurred as described by Ms. Samuel. Dr. Fevrier asserted that she made several attempts to recuse herself from the selection process and accused Ms. Samuel of bias in favour of the Academy's secretary, whom she herself characterised as insubordinate, amongst other things.

[89] I do not consider or believe that the SLMSDA intended the first letter to constitute a warning letter. Its concluding paragraph merely called for the maintenance of a respectful and cordial working relationship, and it contained no express warning or stated consequences.

**(ii) Letter of 10<sup>th</sup> July 2017 (the second letter)<sup>71</sup>**

[90] In this letter, Pastor Biscette refers to a meeting held on 3<sup>rd</sup> July 2017, at which the administrators of the SLMSDA expressed concerns about Dr. Fevrier's attitude and behaviour towards them. It was stated that Dr. Fevrier refused to respond to questions about complaints raised by Ms. Samuel. The letter goes on to say that the administrators spoke to Dr. Fevrier about her behaviour at a school board meeting on 4<sup>th</sup> July 2017, where Dr. Fevrier accused them of trying to intimidate her.

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<sup>69</sup> p 34 of Core Bundle No. 3.

<sup>70</sup> Consisting of 18 persons including the administrators of the SLMSDA, Ms. Samuel, and Dr. Fevrier.

<sup>71</sup> p 36 of Core Bundle No. 3.

- [91] Reference was also made to a meeting held on 10<sup>th</sup> July 2017, at which Dr. Fevrier was advised that, if she was willing to respect and co-operate with the relevant persons, the SLMSDA was prepared to work with her going forward.
- [92] The letter further explained the governance structure of the SLMSDA, emphasising that the principal executes the mandate of the Executive Committee, the Board of Education, and the School Board, under the supervision of the Education Director and the administrators. It concluded with a statement that failure to work within that framework would result in termination of employment. In my view, this constituted a clear warning, and the letter amounted to a warning letter. Dr. Fevrier responded by a seven (7) page letter dated 17<sup>th</sup> July 2017 in which she set out her version of the events.
- [93] In cross-examination Dr. Fevrier maintained that she was told that she needed to conform or leave and agreed that she was required to improve in certain areas or face termination.
- [94] Pastor Stephen testified during cross-examination, that at a board meeting in July 2017, Dr. Fevrier accused him of participating with other senior officers in intimidation, threats, harassment, and covering up misconduct relating to the secretary.
- [95] In cross-examination, Ms. Desir confirmed that at a board meeting on 4<sup>th</sup> July 2017, Dr. Fevrier accused members of attempting to cover up for the secretary and demanded the secretary's immediate dismissal. She stated that the board favoured due process and that Dr. Fevrier was told to "leave it" while appointed persons investigated the matter. Dr. Fevrier, during cross-examination, admitted that she was dissatisfied with how the secretary issue was handled.
- [96] In cross-examination, Ms. Desir disagreed that Dr. Fevrier did not accuse the SLMSDA of interrogating her. She admitted that these accusations did not appear

in the minutes supplied and prepared by Dr. Fevrier and stated that she could not confirm the accuracy of those minutes.

[97] Having regard to the tone of the letters and the oral evidence, I accept the evidence of Pastor Stephen and Ms. Desir that Dr. Fevrier levelled allegations against her superiors, and by extension the SLMSDA, on several occasions in these meetings. She was certainly not a passive participant.

[98] In relation to these complaints, the evidence shows that the SLMSDA substantially adhered to its disciplinary procedure: the matter was initially addressed first discussed with Ms. Samuel; escalated to Pastor Biscette; a meeting was convened; and a warning letter was issued with no further action being taken. Natural justice safeguards were in my opinion employed in relation to these specific allegations of misconduct.

**(iii) Letter of 23<sup>rd</sup> August 2017 (the third letter)<sup>72</sup>**

[99] In this letter (an agreed document), written by Pastor Stephen, reference is made to the first and second letters which addressed substantial disrespect, unwillingness to perform duties assigned by Ms. Samuel, and further disrespectful conduct, including false accusations of unethical behaviour against members of the school board.

[100] The letter also refers to an incident in which confidential information was disclosed to the Voice Newspaper. Pastor Stephen states that in discussions with the newspaper, they were informed that the information originated from a source on behalf of the principal.

[101] The letter further states that at a meeting held on 22<sup>nd</sup> August 2017, Dr. Fevrier denied being the source of the disclosure but investigations into the matter were continuing. The letter states that if established, such conduct would amount to a

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<sup>72</sup> p 113 of Core Bundle No. 2 Bundle A.

breach of trust undermining confidence in the leadership of the Academy. It concludes with a warning that any incidence of insubordination, or betrayal of trust would result in immediate dismissal. In my view, this third letter constituted a warning letter.

[102] Dr. Fevrier issued a six (6) page letter in response dated 25<sup>th</sup> August 2017.<sup>73</sup> In cross examination, Pastor Stephen denied receiving that response.

[103] In her witness statement, relating to a separate matter, Dr. Fevrier admits that an employee from the Star Newspaper contacted her about matters of concern at the Academy. She states that, as spokesperson, she was mindful of the nature and extent of information disclosed, thereby acknowledging that she did provide information to the media on that occasion. Notably, despite the detail of her statement, she did not specify what information she conveyed to the newspaper.

[104] It is important to note that in the Saint Lucia Mission of the SDA Office of Education Incident Reporting and Recording Form (the first report),<sup>74</sup> Ms. Samuel detailed that on 18<sup>th</sup> August 2017, she, Pastor Emmanuel and another individual visited the Voice Newspaper following a prior visit to the Star Newspaper the same week. The first report recorded that the source of the information conveyed, among other matters, allegations of insubordination and misappropriation of funds involving the Academy's secretary; unauthorised deductions of tithes; staff dismissals allegedly linked to the secretary; defamatory character references; parental dissatisfaction; and concerns that complaints raised with the executive were being disregarded. It further stated that the press possessed salary slips and correspondence relating to

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<sup>73</sup> Ibid, n 62.

<sup>74</sup> See p 37 of Core Bundle No. 3. In this report (an agreed document), Ms. Samuel details incidents from 5<sup>th</sup> May 2017 to 18<sup>th</sup> August 2017, involving Dr. Fevrier. It states in the section "Actions taken", that the Executive Secretary, the President and herself met with Dr. Fevrier to discuss the matters detailed but that Dr. Fevrier was uncooperative and even said that she was not comfortable speaking without her lawyers. The meetings seemed not to resolve anything. Dr. Fevrier was written to on many occasions and on several occasions, Ms. Samuel spoke to Dr. Fevrier about her expectations. The report recommended that Dr. Fevrier be released from her position as principal *if she continues* to display the behaviours detailed.

allegations against the secretary, and that a member of the press confirmed discussions with the principal, who had previously indicated an intention to expose alleged corruption. One article, with the potential to harm the school, had already been published.

[105] During cross-examination, Pastor Stephen accepted that, at the time the third letter was sent to Dr. Fevrier, investigations were ongoing and had not concluded. While this is the case, Dr. Fevrier was afforded the opportunity to respond to the allegations which she denied.

[106] By her own account, Dr. Fevrier acknowledged speaking to the Star Newspaper. Having regard to the investigations recorded in the first report, there was evidence suggesting that the source of the information provided to the Voice Newspaper was acting on behalf of the principal (Dr. Fevrier). On a balance of probabilities, I accept the SLMSDA's evidence that Dr. Fevrier or a person acting on her behalf was the source of the information leaked to the Voice Newspaper.

**(iv) Letter of 3<sup>rd</sup> October 2017 (the fourth letter)<sup>75</sup>**

[107] In this letter, Pastor Stephen advised Dr. Fevrier of a very sensitive matter (allegations of rape against a teacher) and directed that neither she nor staff of the Academy should speak to the media or any other persons. He stated that the only authorised spokesperson for the SLMSDA was the Executive Secretary and that any media enquiries should be directed to him.

[108] Dr. Fevrier's evidence is that she perceived this letter as an attempt to silence her as the principal and spokesperson for the school. In her response dated 4<sup>th</sup> October 2017,<sup>76</sup> she says that Pastor Stephen's directive placed her on the same level as her staff, and "stripped" her of her authority. She interpreted the word "anyone" as including the police and stated that it was her responsibility to engage with the police

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<sup>75</sup> Exhibit 22 at p 141 of Core Bundle No. 2 Bundle A.

<sup>76</sup> Exhibit 23 at p 142 Core Bundle No. 2 Bundle A.

in that regard. She relies on the School Board Manual for Secondary Schools: Inter-American Division July 2002 which states that the principal shall represent the school as its official spokesperson.

- [109] She further states that the letter was read to her in an authoritative and intimidating manner saying at the end, "Dr. Fevrier! do you understand that?" Pastor Stephen denied this account and stated that he read the letter to Dr. Fevrier and asked whether she understood its seriousness. It was not done in an authoritative or demanding tone.
- [110] During cross-examination, Dr. Fevrier denied that she believed she was being asked to cover-up any matter by the administrators but agreed that she raised the issue of the letter to the attention of Corporal Joseph. She admitted that her objection stemmed from a belief that the directive undermined her authority as the principal and put her on the same level as other staff of the Academy.
- [111] Dr. Fevrier admitted raising the same question with Corporal Joseph on more than one occasion. She denied that she was implying that she was being asked to withhold information but said she was instead trying to safeguard herself and her position. This evidence was contradicted by Corporal Joseph however, who said she understood Dr. Fevrier's comments to suggest that she believed she was being asked to do so.
- [112] Pastor Stephen stated that no letter was written to him referencing the 2002 policy. He explained that given the nature of the allegation, the matter extended beyond the school and was already before the police. He did not consider the directive to diminish the principal's authority noting that the principal operated under the supervision of the SLMSDA and that ultimate authority rested with the Executive Committee. I accept his explanation



[113] I also note, that around this time, investigations were ongoing into allegations that Dr. Fevrier had leaked information to the media, and she admitted speaking to a representative from the Star Newspaper. In that context, I do not interpret the term “anyone” in the letter as including the police, nor do I find that Dr. Fevrier was being asked to withhold information from law enforcement. Viewed contextually, the letter was intended to prevent further disclosures to the press.

[114] In the circumstances, I do not find that Pastor Stephen or members of the Executive Committee sought to silence or curtail Dr. Fevrier’s authority as she has suggested. Nor do I find that the letter was intended to operate as a warning. It was, in my view, advisory in nature. Additionally, the situation does support the SLMSDA’s allegation that Dr. Fevrier levelled false accusations against them.

**(v) Letter of 11<sup>th</sup> October 2017 (the fifth letter)<sup>77</sup>**

[115] In this unsigned letter purportedly written by Pastor Emmanuel to Dr. Fevrier (an agreed document), Dr. Fevrier was directed to write to two teachers, in her capacity as Secretary of the Board, no later than 17<sup>th</sup> October 2017.

[116] By letter dated 16<sup>th</sup> October 2017,<sup>78</sup> Dr. Fevrier responded by asserting her position as principal of the Academy. She accuses Pastor Emmanuel of undermining her authority by addressing her as secretary and requiring her to act in that capacity. She characterised the use of the term “secretary” as antagonistic and referred to board minutes of 26<sup>th</sup> September 2017, in which she stated she had been subjected to ridicule by being so described.

[117] Having considered the correspondence and Dr. Fevrier’s role as Secretary of the Board, I do not consider that she was being spoken down to. The purpose of the letter was to communicate that, as the matter concerned a board decision, the correspondence should properly be issued in her capacity as secretary rather than

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<sup>77</sup> Exhibit 24 at p 145 Core Bundle No. 2 Bundle A.

<sup>78</sup> See fn 82.

principal. While I accept that Dr. Fevrier internalised the directive negatively and disagreed with it, the tone of the letter does not support the contention that Pastor Emmanuel intended to strip her of her authority as principal. I do not find that this fifth letter constituted a warning letter. However, it raised matters which the SLMSDA relies upon in support of its allegation of gross insubordination. I therefore turn to consider the allegations arising from this letter and Dr. Fevrier's response.

***Allegations of failure to produce board minutes from May to November 2017***

- [118] The job description states that the principal is responsible for developing and maintaining an adequate and orderly record keeping system for *inter alia*, minutes of the school board and sub-committee meetings,<sup>79</sup> school board agenda in counsel with the chairman of the school board and the Education Director, and forwarding copies of the school board minutes in a timely manner.<sup>80</sup> The principal is to serve as the secretary of the school board.<sup>81</sup>
- [119] Dr. Fevrier annexed to her witness statement the agenda and minutes of the school board of management meetings held on: (a) 27 June 2017,<sup>82</sup> (b) 4<sup>th</sup> July 2017,<sup>83</sup> (c) 30<sup>th</sup> August 2017,<sup>84</sup> (d) 6<sup>th</sup> September 2017,<sup>85</sup> (e) 16<sup>th</sup> January 2018,<sup>86</sup> (f) 20<sup>th</sup> February 2018.<sup>87</sup>
- [120] Dr. Fevrier also exhibited an email exchange between 21<sup>st</sup> and 26<sup>th</sup> January 2018<sup>88</sup> between herself and Pastor Biscette, in which he requested minutes from the school board meeting held on 26<sup>th</sup> September 2017. He further raises concern that a decision had not been communicated to a teacher after almost four months. Pastor

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<sup>79</sup> Exhibit 6 at p 82 of Core Bundle No. 2 Bundle A.

<sup>80</sup> Exhibit 6 at p 80 of Core Bundle No. 2 Bundle A.

<sup>81</sup> Exhibit 6 at p 81 of Core Bundle No. 2 Bundle A.

<sup>82</sup> Exhibit 7 at pp 83-86 of Core Bundle No. 2 Bundle A.

<sup>83</sup> Exhibit 10 at pp 93-96 of Core Bundle No. 2 Bundle A.

<sup>84</sup> Exhibit 18 at pp 123-126 of Core Bundle No. 2 Bundle A.

<sup>85</sup> Exhibit 20 pp 129-132 of Core Bundle No. 2 Bundle A.

<sup>86</sup> Exhibit 64 at pp 566-569 of Core Bundle No. 2 Bundle A. These minutes were prepared by the Vice Principal and not Dr. Fevrier.

<sup>87</sup> Exhibit 65 at pp 572-575 of Core Bundle No. 2 Bundle A.

<sup>88</sup> Exhibits 33 to 35 at pp 167-169 of Core Bundle No. 2 Bundle A.

Biscette stated that the minutes were not available in the secretary's office, that he was told Dr. Fevrier had taken them home, and that when he attended the school to view them, Dr. Fevrier was absent, and no minutes were produced. He requested the return of all board minutes by 22<sup>nd</sup> January 2018. Dr. Fevrier responded that she would send the requested minutes. Pastor Biscette replied that they had not been received and again requested their return. In her email dated 26<sup>th</sup> January 2018, Dr. Fevrier cited several reasons for the delay, including caring for her sick father, an inability to locate the minutes on a flash drive, and illness. Although the email stated that the minutes were attached, there is no attachment shown.

- [121] In cross-examination, Dr. Fevrier initially denied objecting to taking the minutes and she denied feeling that the task was below her. She stated, however, that emphasis on her designation as secretary caused her to feel ridiculed, though she accepted that her role at meetings was that of secretary. She later agreed that she resisted taking notes because, in her view, a secretary was not the same as a note-taker.
- [122] Mrs. Roheman submits that the email thread referred to above explains the delay in production of the minutes, which were all reasonable and that the minutes were eventually supplied on 26<sup>th</sup> June 2018, more than a month after Dr. Fevrier was dismissed. This assertion is not supported by the evidence.
- [123] There is no dispute that it was the principal's responsibility to maintain an orderly system of records and to act as secretary of the School Board, which included the taking and production of minutes for board meetings.
- [124] Despite the explanations advanced by Dr. Fevrier, the fact remains that the requested minutes were not produced in January 2018. The email of 26<sup>th</sup> January 2018 shows no attachment thumbnail, nor were the alleged minutes exhibited. On a balance of probabilities, I find that no minutes were attached to that email.

[125] Although Dr. Fevrier refers to minutes prepared in her letter dated 16<sup>th</sup> October 2017, I do not accept that such minutes were available for inspection by Pastor Biscette. If they had existed and been properly stored, there would have been no reason for their non-production or renewed request in January 2018 by Pastor Biscette. This conclusion is reinforced by the School Professional Visit Report, which recorded that no board minutes were located after inspection of multiple folders.

[126] I therefore attach no weight to the minutes exhibited to Dr. Fevrier's witness statement. On a balance of probabilities, the minutes were not provided to the SLMSDA when requested, and, if supplied at all, were produced after the fact.

[127] I find that Dr. Fevrier failed, during her employment, to produce the requested minutes within the requested time. I do not accept her explanation for the delay and conclude that she did not intend to produce them, as she regarded the task as beneath her.

***Delay/refusal to follow a directive to write letters to two members of staff informing them of a board decision.***

[128] The SLMSDA's evidence is that Dr. Fevrier was asked by Pastor Emmanuel to write two apology letters to two teachers at the Academy. Dr. Fevrier accepted that such a directive was given. The apology letters to be written were to two teachers who she had accused of being insubordinate and disrespectful to her.

[129] In her letter dated 16<sup>th</sup> October 2017, Dr. Fevrier states that a motion was carried, which she and another teacher opposed, prior to the directive being issued. In cross-examination, she asserted that it was agreed at the board meeting that the other teacher would write the apology letters. However, the letter dated 16<sup>th</sup> October 2017, and the minutes dated 26<sup>th</sup> September 2017, show that the Board decided, after deliberation, that Dr. Fevrier would issue the letters on behalf of the Board and

amend their wording as required. There is no record of the task being reassigned to another individual.

- [130] Dr. Fevrier's evidence is conflicting, and I do not accept it. On a balance of probabilities, I accept the evidence of SLMSDA, that Dr. Fevrier refused to comply with the directive to write two apology letters.

***School Professional Visit Report (the second report)***<sup>89</sup>

- [131] In this report dated 16<sup>th</sup> November 2017 done by Ms. Samuel, in answer to the questions of whether the logbook was not kept up to-date and if there was a workplan/development plan for the school year, it says no. The comments made are that: "performance fails to meet the job requirements", "improvement needed", "lacks experience in the leadership roles", "has difficulty respecting authority", "needs to demonstrate a co-operative spirit". It also states that there are "many areas of weakness and much work needs to be done to meet the requirements". It reflects that the principal walked out, sucked her teeth and behaved in a very unprofessional manner and that a follow up report would be prepared. It further states that the process was incomplete due to the behaviour of the principal who walked out and said she was not going to pray with Ms. Samuel. The recommendation section says, "see attached report".<sup>90</sup> The report is signed by Ms. Samuel only.

***The Work Plan***

- [132] In its defence, the SLMSDA alleges that Dr. Fevrier failed to submit her work plan within the requisite time.<sup>91</sup> In her reply to paragraph 5 of the SLMSDA's defence, Dr. Fevrier states that Ms. Samuel was informed that the work plan was nearly complete save for departmental plans outstanding from two heads of department.<sup>92</sup> She denies any failure to submit timely reports, maintaining that there was no fixed

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<sup>89</sup> Exhibit 27 at pp 152-155 of Core Bundle No. 2 Bundle A.

<sup>90</sup> At pp 50-52 of Core Bundle No. 3.

<sup>91</sup> Para [11.d] of the defence at p 37 of Core Bundle No. 1

<sup>92</sup> See [4.5] of reply at p 69 of Core Bundle No. 1

deadline and that the work was being completed within reasonable time, having regard to the responsibilities of the principal. In her pleadings, her case was that the work plan remained incomplete due to the outstanding departmental submissions. No completed work plan was pleaded or exhibited.

[133] In evidence, however, the position changed. Dr. Fevrier exhibits an undated work plan (Exhibit 3<sup>93</sup>) to her witness statement which she says was provided by Ms. Samuel as a guide, and a letter dated 27<sup>th</sup> October 2017 to Pastor Biscette in which she asserts that she had handed a complete workplan to Ms Samuel on 25<sup>th</sup> October 2017 but Ms. Samuel failed to accept it.<sup>94</sup> She says that it was available at her office for his viewing.

[134] The evidence contained in this response letter I do not accept. It is inconsistent with her own pleadings and the contemporaneous documents indicate that the work plan was not completed in time. The only shred of evidence to the contrary is the response letter, which I have already expressed doubts as to whether it was received. In any event, on a balance of probabilities, I do not believe that Dr. Fevrier was truthful in stating the workplan was completed, refused by Ms. Samuel, and available for viewing by Pastor Biscette at the relevant time.

**(vi) Letter of 22<sup>nd</sup> November 2017 (the sixth letter)<sup>95</sup>**

[135] In this letter written by Ms. Samuel to Dr. Fevrier, she states that she is issuing “this letter of warning” and refers to the disrespectful behaviour exhibited by Dr. Fevrier on the date of the school professional visit. She says that Dr. Fevrier was informed of the visit beforehand and agreed to the date. It states that when she attempted to address the matter related to the lack of entries in the logbook over the past six months, Dr. Fevrier demonstrated unprofessionalism and gross disrespect to authority. It details that Dr. Fevrier tried to share with the Vice Principal a few papers

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<sup>93</sup> At p 71 of Core Bundle No. 2 Bundle A. She also refers to Exhibit 60 which she said was given by her by Ms. Samuel to formulate her own work plan.

<sup>94</sup> Exhibit 61 at pp 363-401 of Core Bundle No. 2 Bundle A.

<sup>95</sup> p 56 of Core Bundle No. 3.

with her reflections which she did not accept from Dr. Fevrier. Shortly after, Dr. Fevrier sucked her teeth, left the meeting, came back in the room, and did not sit with them. Instead, she went to her desk and showed no interest in the meeting. Ms. Samuel cautioned Dr. Fevrier that it was distasteful to be at her desk while the meeting was going on. Dr. Fevrier told Ms. Samuel that she was doing the school's business then she added and repeated, "I must be your child".

- [136] It contains a paragraph about prior warnings and a reminder of the requirement of professionalism. It ends saying that a failure to comply with established standards will leave the organisation with no choice but to act consistent with the organisation's policies.
- [137] Dr. Fevrier wrote a response letter dated 27<sup>th</sup> November 2017<sup>96</sup> to Ms. Samuel, addressing the allegations contained in the sixth letter. She also wrote a letter dated 29<sup>th</sup> November 2017 to Pastor Biscette<sup>97</sup> about the incident.
- [138] I will address the issue of the logbook as it arises in the sixth letter.

### ***The logbook***

- [139] During cross-examination, Dr. Fevrier was questioned about references in her pleadings to a personal logbook. She said that she could not recall, and it was put to her that the first mention of such a logbook appeared in her witness statement, which she denied. She referred instead to her letter dated 27<sup>th</sup> November 2017. In that letter, she stated that Ms. Samuel did not accept her "notebook" containing the entries. It is therefore inaccurate to say that the logbook was raised for the first time in evidence.
- [140] Dr. Fevrier explained that she recorded entries in her personal notebook rather than the allocated logbook because it was her intention to later transfer them. She

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<sup>96</sup> p 157 of Core Bundle No. 3.

<sup>97</sup> p 162 of Core Bundle 2 No. 3.

admitted, however, that she never transferred the entries into the assigned logbook, save for one week.

[141] Dr. Fevrier states that she attempted to produce her personal logbook<sup>98</sup> to Ms. Samuel who refused it, having provided a designated notebook to be used as the school's official logbook. Whatever the explanation, it is undisputed that Dr. Fevrier did not utilise the allocated logbook, that is, she did not comply with the direction given to her by Ms. Samuel to make the entries in the allocated logbook. Her recognition that she did have to transfer the entries, to my mind, also solidifies my view that she recognised that a direction was given to her to make the entries in the allocated logbook and that she did not comply with the direction given to her.

[142] I do agree with Mrs. Roheman's submission that this in and of itself was not a ground for termination. However, this was not the only allegation made against Dr. Fevrier during her tenure.

### ***Sucking her teeth***

[143] In her evidence, Dr. Fevrier denies having sucked her teeth during the visit meeting. In her letter in response dated 27<sup>th</sup> November 2017, she says that she let out a sigh of relief as Ms. Samuel had her in a stressful environment. I do not find Dr. Fevrier's evidence on this credible and on the balance of probabilities, accept the SLMSDA's evidence that Dr. Fevrier did suck her teeth during the meeting.

### **(vii) Letter of 9<sup>th</sup> January 2018<sup>99</sup> (the seventh letter)**

[144] This letter written by Pastor Stephen, addressed an incident which occurred on 19<sup>th</sup> December 2017, where the teachers and principals of the four schools met and were addressed by police about sensitive issues. It suggests that Dr. Fevrier insinuated that the church was engaged in a cover-up. The letter stated that disciplinary action

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<sup>98</sup> Exhibit 63 at pp 406-565 of Core Bundle No. 2 Bundle A.

<sup>99</sup> Exhibit 31 at p 165 of Core Bundle No. 2 Bundle A.



was being instituted for conduct alleged to breach the implied duty of fidelity and/or to bring the employer into disrepute. In accordance with due process, Dr. Fevrier was invited to make written representations by 17<sup>th</sup> January 2018, and the letter indicated that all relevant documents and reports were enclosed.

- [145] Dr. Fevrier annexed a letter from Pierre, Mondesir & Associates, dated 10<sup>th</sup> January 2018,<sup>100</sup> stating that no reports or documents were enclosed to the seventh letter and requested same. Pastor Stephen commented that he never received this letter from Pierre, Mondesir & Associates. During cross-examination, Dr. Fevrier confirmed that no further action was taken in relation to that letter. The evidence of SLMSDA is that a special committee was to have investigated the matter, but no further action was taken.

***Failure to engage in the organisation of orientation activities for new teachers prior to the commencement of the school term as required***

- [146] The allegation of Dr. Fevrier's failure to engage in the organisation of orientation activities for new teachers on the basis that the department had already held orientation sessions was contained in an email to Dr. Fevrier dated 28<sup>th</sup> August 2017 from Ms. Samuel<sup>101</sup> but did not appear in any of the letters written to Dr. Fevrier.
- [147] In her response of 29<sup>th</sup> August 2017,<sup>102</sup> Dr. Fevrier denied having ever decided not to have orientation with the teachers and asserted that she was merely enquiring whether it was still required in the circumstances.
- [148] The specific allegation was that Dr. Fevrier failed to engage in the organisation of orientation activities prior to the commencement of the school term. Ms. Howell's evidence indicated that orientation and guidance were channelled through Dr. Fevrier; however, her evidence did not establish whether this occurred before the start of the term. Nor was there evidence as to whether the scheduled orientation

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<sup>100</sup> Exhibit 32 at p 166 of Core Bundle No. 2 Bundle A.

<sup>101</sup> See Exhibit 16/1 at p 120 of Core Bundle No. 2 Bundle A.

<sup>102</sup> Exhibit 16/2 at p 121 of Core Bundle No. 2 Bundle A.

session ultimately took place. In the circumstances, I find that there was insufficient evidence to support the allegation that Dr. Fevrier failed to engage in the organisation of orientation activities prior to the commencement of the school term.

**Letter of 4<sup>th</sup> May 2018 (termination letter)**

- [149] The SLMSDA alleges that, at a meeting on 4<sup>th</sup> May 2018, convened to discuss Dr. Fevrier's appraisal, she behaved in a grossly insubordinate manner.
- [150] Whilst the accounts from the parties varies, it is not disputed that (i) a meeting was called on the morning of 4<sup>th</sup> May 2018 to discuss the appraisal; (ii) Dr. Fevrier was given notice of the meeting the day before; (iii) Dr. Fevrier failed to sign the appraisal at the meeting; (iv) the administrators returned with the termination letter after the meeting; (v) a plain clothes police officer was present.
- [151] In her pleadings, Dr. Fevrier denied the substance of the allegations set out at paragraphs 15 to 18 of the letter from SLMSDA's Counsel dated 21<sup>st</sup> October 2018, without advancing her version of events. It was a bare denial. This changes by the filing of witness statements, where she asserts that only after receiving the termination letter she spoke forcefully to the administrators, accusing them of hypocrisy and ill-treatment, and quoting biblical passages. She said she felt distressed and victimised.<sup>103</sup>
- [152] Although Dr. Fevrier accepted that she spoke after receiving the termination letter, she did not recall uttering the statements attributed to her, which included insults, allegations of corruption, assertions of superiority, and highly derogatory remarks directed at members of the administration.<sup>104</sup> Examples of such expressions given were<sup>105</sup>: "You people are not concerned about the school and the children in this school. The only thing you are concerned about is finding ways to suck up the

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<sup>103</sup> Para 8 of Dr Fevrier's witness statement at p 19 of Core Bundle No. 2 Bundle A.

<sup>104</sup> See p 16 of Dr. Fevrier's witness statement: Core Bundle No. 2 Bundle A.

<sup>105</sup> See paras 45-51 of Pastor Stephen's witness statement at pp 37-38 of Core Bundle No. 2 Bundle B.

society for your pockets.”; “Who are you to evaluate me. I am more qualified than all of you in every way. I am marketable. I do not need this organisation.”; “Elsie Samuel, your sin will find you out and when your sin finds you out, you will be as a dog on the street and I will kick you.”, “I have had enough of the four of you. I am more qualified than all of you. You are no match for me. I’m not afraid of you. You stand in the pulpit and preach every Sabbath, but you are whitened sepulchres filled with dead men’s bone, pharisees, hypocrites, generation of vipers, tax collectors. Your hearts are wicked.”

- [153] In cross-examination, Dr. Fevrier denied being disrespectful, denied refusing to engage with the appraisal, and denied making statements asserting her superiority or marketability. She maintained that she respected her supervisors and would not have used derogatory language as the principal.
- [154] Dr. Fevrier said that it was only after she received the letter, she quoted bible verses but could not remember the exact verse, but it was a verse which spoke to when people ill-treat their fellow men, God is not pleased with them. She was asked whether that was the same verse she quoted when she said the alleged words. She responded that it was after they fired her, she said those things. She spoke her mind and told them the way they treated her was unfair.
- [155] Pastor Stephen, during cross-examination, stated that it was not standard procedure for the entire administration to be present to discuss the appraisal, but they deemed it necessary “especially with the climate”, to accompany Ms. Samuel. He testified that the meeting was convened solely to discuss the performance appraisal and not to compel Dr. Fevrier to sign the appraisal. At the relevant time, he was informed that Dr. Fevrier’s performance was unsatisfactory but did not know the contents of the appraisal. It was only at the meeting that the Chairman presented everyone with a copy of the appraisal which Dr. Fevrier rejected.

- [156] There was an issue of the existence of two appraisals of even date. Dr. Fevrier says that it is the second appraisal which was given to the Labour Officer. The second appraisal speaks better of Dr. Fevrier, but to me, it maintained the same ethos as the first: unsatisfactory performance and behavioural/attitude complaints. The tone did not shift. It was evident from cross-examination that Pastor Stephen did not appreciate that there were two appraisals of the same date.
- [157] Pastor Stephen denied that the administration descended on Dr. Fevrier or that she did make the statements attributed to her. He maintained that it was only after Dr. Fevrier made certain comments during the meeting that the emergency meeting of the administrators was convened. He stated that, although the termination letter reflected unsatisfactory performance as the reason for dismissal, Dr. Fevrier was also dismissed for misconduct arising from her behaviour at that meeting. While unsatisfactory performance was the substantive basis for termination, her grossly disrespectful conduct towards the administration, including Ms. Samuel, rendered the continuation of the employment relationship untenable.
- [158] Pastor Stephen's evidence on the termination process remained consistent under cross-examination.
- [159] Ms. Desir similarly testified that Dr. Fevrier refused to engage with the appraisal, behaved disrespectfully during the meeting, and made the impugned statements. She confirmed that this conduct was consistent with prior behaviour and that, following the meeting, the Executive Committee decided to terminate Dr. Fevrier's employment.
- [160] Ms. Desir's evidence differed from Pastor Stephen's in one respect in that she stated that she attended the meeting with the intention of securing Dr. Fevrier's signature on the appraisal. She denied that the administrators left the meeting when Dr. Fevrier refused to sign and stated that a meeting of the executive committee was convened thereafter.

[161] Ms. Desir said that Pastor Stephen delivered the termination letter to Dr. Fevrier in her presence, and informed Dr. Fevrier that it was a termination letter. They both followed Dr. Fevrier to her office with the intention of remaining while she cleared her desk. Ms. Desir denied that Dr. Fevrier complained of being followed, although she accepted that Dr. Fevrier was aware of their presence. She stated that Dr. Fevrier took the letter, placed it on a table in the waiting area, and indicated that she would not accept it without her lawyer. It was at that point that Pastor Stephen left the office and summoned a police officer, whose role, she maintained, was limited to handing Dr. Fevrier the letter.

[162] Ms. Desir denied any knowledge of, or participation in, discussions prior to 4<sup>th</sup> May 2018 concerning Dr. Fevrier's termination. She stated that the administrators had intended to work with Dr. Fevrier to improve the relationship and that no decision to terminate her employment had been made before that date. She considered, however, that Dr. Fevrier's conduct ultimately warranted dismissal, and that prior meetings were held solely to raise the administrators' concerns.

### **Conclusion**

[163] Having considered the evidence, I accept on a balance of probabilities, that the meeting on 4<sup>th</sup> May 2018 occurred as described by the SLMSDA. Although the two SLMSDA witnesses differed on the intention behind the meeting, I do not find that this undermines their credibility, nor does it support Dr. Fevrier's account that she was coerced to sign the appraisal or that she did not behave as alleged prior to her dismissal.

[164] I viewed Dr. Fevrier's repeated tendency to explain everything away in a negative light as detrimental to her credibility. Examples include her characterisation of "sucking her teeth" as sighing in relief, and her evidence that biblical quotations were cited only after receipt of the termination letter. Similarly, her interpretation of the term "anyone" in her 4<sup>th</sup> October 2017 letter in response to "undoubtedly" include the police and her reliance on the 2002 policy appeared convenient. I found material

inconsistencies between her pleadings and her evidence and did not consider her to be a reliable witness in several respects.

[165] I do not accept Dr. Fevrier's evidence that she was intimidated or harassed at the meetings held by the administrators of the SLMSDA. She characterised meetings convened on short notice as ambushes; however, I find that she perceived such meetings as inconvenient to her and interpreted the administrators' actions through that lens. While she viewed the meetings and correspondence as attempts to force conformity, the SLMSDA viewed them as efforts to address performance concerns and her behaviour which she was not receptive to.

[166] I do not believe that the evidence shows that the administrators "twisted her arm" to solicit this co-operation from her. Although she was dissatisfied with how certain grievances were handled, her manner of communicating those grievances was, in my view, combative and disrespectful.

[167] From cross-examination, it was evident that Dr. Fevrier felt undermined by the administrators and Ms. Samuel which made her upset. I find she had difficulty respecting the authority of those to whom she was accountable and from the tone of her correspondence, appeared to regard them as inferior based on her educational standing.

[168] SLMSDA's evidence is that on 4<sup>th</sup> May 2018, Dr. Fevrier was so disrespectful that they had no other choice but to dismiss her summarily. Section 133 of the Act provides that serious misconduct includes gross insubordination and wilful disobedience of lawful orders given by the employer, allegations which were advanced against Dr. Fevrier. I have found the allegations proven, save for the claims relating to her alleged failure to organise orientation activities for new teachers and make entries in the assigned log book.

[169] I further find that Dr. Fevrier's conduct on 4<sup>th</sup> May 2018, prior to her dismissal was directly related to the employment relationship and had a detrimental effect on the work relationship. As the members of SLMSDA have said, after that occurrence, they formed the opinion that the working relationship with Dr. Fevrier was no longer sustainable. The SLMSDA has therefore proven that the conduct complained of amounted to serious misconduct. This, however, is only one element of proving that the SLMSDA was entitled to summarily dismiss Dr. Fevrier for serious misconduct. It must also show that the dismissal was done in accordance with the Act.

[170] Having considered all the evidence, I find that prior to 4<sup>th</sup> May 2018, the SLMSDA issued verbal and written warnings and convened meetings affording Dr. Fevrier the opportunity to be heard only on some incidents. I find that the second, third and sixth letters constituted warning letters. There are also incidents where the evidence shows that the investigations were incomplete or the intended disciplinary actions were not pursued.

[171] Despite the above, the evidence of both parties is that on 4<sup>th</sup> May 2018, a decision was taken by the SLMSDA to terminate Dr. Fevrier in response to her behaviour at the meeting on that day. The undisputed evidence is that Dr. Fevrier was not afforded any natural justice procedures in relation to her behaviour at that meeting. Accordingly, although the SLMSDA did have sufficient cause to dismiss Dr. Fevrier for serious misconduct, its failure to comply with natural justice safeguards to be afforded to an employee when accused of misconduct as set out in section 140 of the Act, (the right to make representations; notice of the accusation of misconduct and full particulars of the misconduct; a right to legal representation) results in the SLMSDA failing to prove that it would have been entitled to summarily dismiss Dr. Fevrier for serious misconduct in accordance with the Act. In light of the foregoing, I find that the SLMSDA's defence fails.

#### D. Whether Dr. Fevrier was wrongfully dismissed?

[172] According to **Halsbury's Laws of England**:<sup>106</sup>

“A wrongful dismissal is a breach of the relevant provision in the contract of employment relating to the expiration of the term for which the employee is engaged. To entitle the employee to sue for damages, two conditions must normally be fulfilled, namely:

- (1) The employee must have been engaged for a fixed period, or for a period terminable by notice, and dismissed either before the expiration of that fixed period or without the requisite notice, as the case may be; and
- (2) His dismissal must have been without sufficient cause to permit his employer to dismiss him summarily.

In addition, there may be cases where the contract of employment limits the grounds on which the employee may be dismissed, or makes dismissal subject to a contractual condition of observing a particular procedure, in which case it may be argued that, on a proper construction of the contract, a dismissal for an extraneous reason or without observance of the procedure is a wrongful dismissal on that ground.”

[173] From the pleadings, the basis for Dr. Fevrier's claim in wrongful dismissal is the inadequate notice period given to her and the absence of natural justice principles related to her dismissal for unsatisfactory performance.

#### Notice period

[174] In the present circumstances, it is not disputed that the contract did not contain a notice period and that Dr. Fevrier was paid one week's notice upon her dismissal. The evidence of the SLMSDA, in particular Ms. Desir, is that she was advised by the Labour Department that the SLMSDA was obligated to pay Dr. Fevrier one week's notice under the Act.

[175] Mrs. Roheman submits that the requisite notice period is the balance of the contractual period and has relied primarily on the authority of **Howard v Benson Group Inc.**<sup>107</sup> On the other hand, Mr. Theodore KC submits that Dr. Fevrier is

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<sup>106</sup> Volume 41 (2021) para 832.

<sup>107</sup> 2016 ONCA 256.



entitled to reasonable notice which would depend on the circumstances of each case. He says that section 153(1)(b) of the Act provides useful guidance of a notice period of one week if the employee's continuous employment was more than 12 weeks but less than two years. Based on the Act, a reasonable notice period in the circumstances would be one week. He relies on **Julie Saunders and another v St. Kitts Sugar Manufacturing Corporation**<sup>108</sup> to say that the line of authorities will show that because of the exceedingly short period for which Dr. Fevrier's employment lasted, there is no reason to lengthen the reasonable notice period.

[176] I will first deal with Mrs. Roheman's submission. In **Howard**, the appellant was terminated without cause twenty-three (23) months into his five-year contract. B.W. Miller JA had to consider whether an employer who terminates without cause a fixed term contract that does not include an enforceable provision for early termination without cause is liable for damages according to the common law of reasonable notice, or for wages for the unexpired term of the contract. Given the circumstances of the case, the Court of Appeal held that the motion judge erred in holding that the appellant was entitled to common law damages and that a duty to mitigate applied in the circumstances.

[177] B.W. Miller JA recognised that there is a common law presumption that every employment contract includes an implied term that an employer must provide reasonable notice to an employee prior to termination of employment. Absent a contrary agreement, an employee is entitled to common law damages because of the breach of that implied term. The presumption can only be rebutted if the employment contract clearly specifies some other period of notice whether expressly or impliedly.<sup>109</sup>

[178] Miller JA found that since the motion judge excised clause 8.1 from the contract which provided for early termination without cause, the contract remained a fixed

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<sup>108</sup> [1995] ECSCJ No. 25.

<sup>109</sup> Ibid at para [20].

term contract that did not provide for early termination without cause, and which ousted the common law presumption of reasonable notice on termination.<sup>110</sup>

[179] It is important to highlight two distinguishing factors between the present circumstances and **Howard**. In **Howard**, the appellant brought an action for breach of contract and not for wrongful dismissal as Dr. Fevrier has. Secondly, Dr. Fevrier's dismissal was not one without cause. That being said, the principle was applied in **Starry Benjamin v Caribbean Commercial Bank (Anguilla) Limited**<sup>111</sup> where Mathurin J stated as follows:

“In *Reda & Anor v Flag Ltd (Bermuda)* (2002) UKPC 38 the Privy Council rejected the argument that all contracts of employment are, as a matter of law, subject to an implied term that they are terminable on reasonable notice and that such a term can only be displaced only by clear words stating;

“The true rule, which is not confined to contracts of employment but applies to contracts generally, is that a contract which contains no express provision for its determination (emphasis provided) is generally (though not invariably) subject to an implied term that it is determinable by reasonable notice; see *Chitty on Contracts* (28th Ed.) at para 13-025. The implication is made as a matter of law as a necessary incident of a class of contract which would otherwise be incapable of being determined at all. Most contracts of employment are of indefinite duration and are accordingly terminable by reasonable notice in the absence of express provision to the contrary. *Lefebvre v HOJ Industries Ltd* was such a contract. **But there is no need for the law to imply such a requirement in a case where the contract is for a fixed term.** (My emphasis)”

**Starry Benjamin** demonstrates that the principle can be applied in wrongful dismissal claims.<sup>112</sup>

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<sup>110</sup> The appellant argued that the motion judge erred in finding that he was only entitled to common law damages for reasonable notice, rather than contractual damages for the unexpired part of the contract. He submitted that although clause 8.1 was found to be unenforceable, the remainder of the contractual provisions with respect to term and termination remained in effect, and the employment remain a fixed term contract. With the unenforceability of clause 8.1, the employer had no right to terminate without cause and as such, the contract remained a fixed term contract and should be interpreted as any fixed term contract without a provision allowing for early termination without cause.

<sup>111</sup> [2014] ECSCJ No. 220 at para [20].

<sup>112</sup> At para [32].

[180] Following these authorities, since Dr. Fevrier's fixed term contract does not provide for early termination, her contract is sufficiently clear to oust the common presumption of reasonable notice on termination.

[181] I accept Mrs. Roheman's submission that the principle enunciated in **Howard v Benson Group Inc.**<sup>113</sup> is the correct notice period to be applied to a fixed term contract containing no notice period; in the absence of a clear early termination clause, the notice period is the unexpired portion of the fixed term contract. Consequently, Dr. Fevrier was given inadequate notice before being dismissed.

### **Termination for unsatisfactory performance**

[182] According to the SLMSDA, upon evaluation of Dr. Fevrier's performance, it was deemed unsatisfactory.<sup>114</sup> Her appraisals revealed that her performance fell below the acceptable standards.

[183] Dr. Fevrier alleges that it was an implied term of her contract of employment that she would be given written warnings and appropriate opportunity to correct unsatisfactory performance and says there was only one letter in which she was written about her performance and that was in relation to her logbook (the sixth letter).<sup>115</sup>

[184] It is the SLMSDA's position as stated in the termination letter, that it was entitled to summarily dismiss Dr. Fevrier for unsatisfactory performance based on the outcome of the performance appraisal. In its pleadings, the SLMSDA states that there was no implied term that Dr. Fevrier would be given a written warning as it was an express term of the contract of employment that it was entitled to terminate her services if her performance was deemed unsatisfactory.

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<sup>113</sup> 2016 ONCA 256.

<sup>114</sup> [8.d] of defence at p 35 of Core Bundle No. 1.

<sup>115</sup> p 56 of Core Bundle No. 3.

- [185] Section 136 of the Act requires an employer to issue a written warning and appropriate instructions to correct the unsatisfactory performance. If the employee, after being warned a further two times does not during the following one month demonstrate that he or she is able to perform and has performed her duties in a satisfactory manner, the employer may dismiss the employee. This is a mandatory provision to be complied with by the employer with respect to unsatisfactory performance.
- [186] Both the Act and the Handbook contemplate that the employee must be given appropriate instructions to correct the unsatisfactory performance. Where the Act does deviate from the Handbook, is that it requires warnings, three of them, to also be given to the employee regarding the performance whereas the Handbook leaves the disciplinary action taken in relation to poor performance in the hands of the SLMSDA. It must be remembered that an employee's contract may provide provisions other than what the Act provides, but they must not provide less protection to the employee than the Act would.
- [187] What is clear from the evidence, is that in the intervening period when the performance appraisal was done (18<sup>th</sup> April 2018) and the meeting was held on 4<sup>th</sup> May 2018, two things were not done: the SLMSDA did not give Dr. Fevrier (i) the requisite written warnings concerning her unsatisfactory performance as assessed by the performance appraisal, nor (ii) appropriate instructions to correct the unsatisfactory performance.
- [188] As such, whilst the Handbook may provide for other actions to be taken regarding unsatisfactory performance, including summary dismissal without a specified procedure, it is not in keeping with section 136 of the Act. Section 136 of the Act removes the discretion of the SLMSDA to choose how the disciplinary process is to be done regarding dismissal for unsatisfactory performance.

[189] The SLMSDA therefore did not comply with its mandatory obligations under section 136 of the Act or the provisions of its own Handbook, before summarily dismissing Dr. Fevrier on the ground of unsatisfactory performance. As such, it can be said that Dr. Fevrier was wrongfully dismissed on this ground as well.

**E. What measure of damages, if any, is Dr. Fevrier entitled to?**

[190] Having found that the SLMSDA wrongfully dismissed Dr. Fevrier, the question arises as to what measure of damages is she entitled to.

[191] Dr. Fevrier has claimed special damages in the amount of \$83,317.83 consisting of the balance of her salary for May 2018 (\$4,654.78), loss of earnings from 1<sup>st</sup> June 2018 to 31<sup>st</sup> July 2019 (\$75,192.60) and 14 days working days pay (\$3,470.45).

[192] Following **Howard**, Dr. Fevrier is entitled to the compensation she would have earned to the end of the employment contract. The authority also establishes that if compensation is awarded on this basis, there is no duty to mitigate.

[193] As discussed above, the notice period Dr. Fevrier was entitled to should have been the balance of her contractual period, that is, from 5<sup>th</sup> May 2018 to 31<sup>st</sup> July 2019. It is noted that the appointment letter did not state a date in July for the end of the contract. Dr. Fevrier claims this to be 31<sup>st</sup> July 2019 and this was not challenged by the SLMSDA, and I accordingly accept it.

[194] It is not disputed that Dr. Fevrier was paid the sum of \$991.55 (\$716.12 and \$275.43)<sup>116</sup> for her days worked in May (1<sup>st</sup> to 4<sup>th</sup> May 2018).<sup>117</sup> Her monthly salary being \$5,370.90, she is therefore entitled to the sum of \$4,379.35 as the balance of her salary for May 2018. From 1<sup>st</sup> June 2018 to 31<sup>st</sup> July 2019, the sum calculated as her earnings is \$75,192.60 (14 x \$5370.90).

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<sup>116</sup> Pursuant to the cheque issued together with the termination letter and the additional payment made after the meeting with the Labour Officer: see Exhibit 47 at p 189 of Core Bundle No. 2 Bundle A.

<sup>117</sup> See Dr. Fevrier's Witness Statement at p 44 of Core Bundle 2 Bundle A.

- [195] Dr. Fevrier claims \$3,740.45 as 14 working days' pay which is equivalent to the sum paid as vacation pay as per the letter dated 6<sup>th</sup> June 2018. This sum has been paid, and I decline to award it. I have also considered the fact that Dr. Fevrier has received the sum of \$1,342.72 from SLMSDA representing one week's notice. I think it is only fair in the circumstances that this amount be deducted from the sum awarded.
- [196] Mr. Theodore KC has submitted that the sum awarded should be subject to taxation at 33%. However, Dr. Fevrier has not provided any evidence of deductions for income tax or NIC<sup>118</sup> payments. The case of **Peterson Cheddi v Regis Martyr et al**<sup>119</sup> makes it clear that it is for the claimant to prove the quantum of tax or any other deductions, if such is to be deducted from his earnings. Given the absence of this evidence, the Court is prepared to apply a discount of 30% to take into account tax and NIC deductions. Consequently, the total sum awarded is \$54,760.46.
- [197] Dr. Fevrier has also claimed exemplary damages based on her manner of dismissal. However, having rejected Dr. Fevrier's evidence surrounding her dismissal, it is not necessary to decide whether exemplary damages can be awarded given the circumstances of her dismissal.

### **Costs**

- [198] The SLMSDA, being the unsuccessful party, will bear the costs of the proceedings.

### **Order**

- [199] In light of the foregoing discussion, I make the following Order:
1. Judgment is entered for the claimant.
  2. The claimant is awarded the sum of \$54,760.46 as damages for wrongful dismissal with interest thereon at the rate of 3% per annum from the filing of the claim, 11<sup>th</sup> February 2019 to the date of this judgment, and 6% from the date of judgment to the date of payment.

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<sup>118</sup> National Insurance Corporation deductions which are social security payments.

<sup>119</sup> SLUHCv1996/0715, delivered 29<sup>th</sup> January 2004, unreported.

3. The defendant shall pay the claimant prescribed costs in accordance with CPR 65.5.

[200] I thank Counsel and the parties for their patience in awaiting this judgment and for any inconvenience caused.

**Kimberly Cenac-Phulgence**  
**High Court Judge**

**By The Court**

**Registrar**

