

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. SLUHCV2023/0319

BETWEEN:

SIXTUS STEPHEN BRETTE

Claimant

and

THE PERMANENT SECRETARY, MINISTRY OF PUBLIC
SERVICE, HOME AFFAIRS, LABOUR AND GENDER
AFFAIRS, DEPARTMENT OF THE PUBLIC SERVICE

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Horace Fraser for the Claimant

Mrs. Antonia Charlemagne with Ms. Tia Austin and Ms. Kimberley Williams for
the Defendant

2024: June 26; (Trial)

2026: March 24. (Decision)

JUDGMENT

[1] **CENAC-PHULGENCE J:** This is a claim for judicial review against the decision of the Permanent Secretary, Ministry of Public Service, Gender Affairs, Labour and Gender Affairs (“the PS-Public Service”) not to renew the contract of employment of the claimant, Mr. Sixtus Stephen Brette (“Mr. Brette”).

[2] In this claim, Mr. Brette seeks the following relief:

Declarations that:

1. the claimant held the office of Deputy Director of Public Prosecutions (“Dep. DPP”) by an instrument of appointment and not by contract;

2. the defendant's decision not to forward the claimant's application for a further appointment to the office of Dep. DPP to the Judicial and Legal Services Commission (JLSC) was not based on any proper foundation or legitimate legal reason/s;
3. the defendant's failure to refer the claimant's application for and further appointment to the Judicial and Legal Services Commission was not based on the exercise of independent judgment;
4. the defendant was in breach of the rules of natural justice and fairness when she failed to afford the claimant an opportunity to address any legitimate concerns the ministry had regarding his discharge of his duties of Dep. DPP before she made the decision not to refer his application for a further appointment;
5. the claimant had a legitimate expectation to an automatic further appointment to the office of Dep. DPP for two (2) years;
6. for the loss of his legitimate expectation the claimant is entitled to damages in the form of salaries and emoluments for a period of two (2) years; and

Orders:

7. directing the Crown to pay to the claimant all salaries and emoluments for the period of two years;
8. for costs and interest.

[3] Mr. Brette is an attorney at law by profession. He last held the position of Dep. DPP, Crown Prosecution Service Unit in the Office of the Director of Public Prosecutions ("the DPP's Office"). The following details Mr. Brette's employment history as can be gleaned from the documents exhibited by both Mr. Brette and the PS-Public Service.

[4] Mr. Brette was appointed as Crown Counsel II in the DPP's Office on contract with effect from 4th April 2011 for a period of two (2) years by the Judicial and Legal Services Commission ("JLSC").¹

¹ Letter dated 13th April 2011 to Mr. Brette from the Permanent Secretary, Ministry of Justice at p. 63 of the Electronic Trial Bundle (ETB) filed 26th June 2024.

- [5] In April 2013, Mr. Brette was appointed by the JLSC to the post of Crown Counsel II in the DPP's Office. That appointment was on contract for a period of two (2) years from 22nd April 2013.²
- [6] It would appear from the evidence of the PS-Public Service that Mr. Brette was appointed to the position of Crown Counsel III in June of 2014. Then in March 2016, the JLSC approved the suspension of Mr. Brette's appointment as Crown Counsel III and appointed him to act as Dep. DPP for the period 11th December 2015 to 30th April 2016.³ It also approved the re-instatement of his contract as Crown Counsel III with effect from 1st May 2016.
- [7] In July 2016, the JLSC approved Mr. Brette's appointment to the post of Dep. DPP on contract for a period of three (3) years with effect from 1st June 2016.⁴ In June 2019, Mr. Brette was appointed by the JLSC to the post of Dep. DPP on contract for a period of two (2) years with effect from 1st June 2019.⁵
- [8] The JLSC appointed Mr. Brette as Dep. DPP on contract for two (2) years with effect from 1st June 2021.⁶ That contract would have expired on 31st May 2023.
- [9] In respect of each of the appointments outlined above, Mr. Brette would have signed an Agreement for Employment with the Government of Saint Lucia ("GOSL") which sets out the position to which Mr. Brette was appointed and the basic remuneration. Attached to the Agreement is a Schedule which sets out the terms and conditions and is stated to 'be read and construed as part of the Agreement'. The Agreement also has an appendix which contains the breakdown of the applicable allowances.
- [10] By letter dated 10th March 2023, Mr. Brette wrote to the Permanent Secretary, Ministry of Justice ("PS-Justice") seeking renewal of his contract as Dep.

² See Agreement for employment dated 24th May 2013 at p 108 of ETB.

³ See letter dated 29th March 2016 at p 64 of ETB.

⁴ See Agreement for employment dated 22nd July 2016 at p 81 of ETB.

⁵ See Agreement for employment dated 1st November 2019 at p 19 of Bundle filed on 8th August 2023.

⁶ See Agreement for employment dated 1st June 2021 at p 91 of ETB.

DPP.⁷ He received a response from the PS-Public Service informing him that his contract would not be renewed.⁸

[11] Mr. Brette challenges this decision not to renew his contract on the following bases:

- (a) The PS-Public Service acted ultra vires in not forwarding his request for renewal to the JLSC as she was obligated to send it with or without the DPP's recommendation;
- (b) He had a legitimate expectation that his contract would have been renewed given that except for one occasion when he made a request for renewal, his contract had been renewed without such request which he termed automatic renewals;
- (c) The principles of natural justice were not applied to him as he should have been given an opportunity to address any concerns.

[12] The following issues were agreed by the parties for the Court's determination:

- A. Whether the claimant, a public officer serving in a public office, held that office by contract executed between himself and the Government of Saint Lucia or by virtue of an instrument of appointment by the JLSC. (Nature of Mr. Brette's appointment)
- B. Whether the defendant was obligated to forward the claimant's request for renewal/further appointment as Dep. DPP to the JLSC with or without the DPP's recommendation and whether she breached that duty by failing to do so thereby arrogating to herself the duty of the JLSC; (Procedure for Applications)
- C. Whether the PS-Public Service being aware of and concerned with the DPP's recommendation ought to have observed the rules of fairness and the principles of natural justice; (Natural Justice)
- D. Whether the claimant had a legitimate expectation to an automatic renewal/further appointment as Dep. DPP and if so whether he is entitled to any damages. (Legitimate expectation)

⁷ p. 83 of ETB.

⁸ See p. 68 of ETB.

A. Nature of Mr. Brette's appointment

- [13] Ms. Janet Barnard ("Ms. Barnard") is the PS-Public Service from March 2023. As the PS-Public Service she is the custodian of all records of employees of the Government of Saint Lucia, both past and present and is in a position to speak to the employment history of the claimant and the procedures which apply when seeking employment as Crown Counsel within the office of DPP or as the Dep. DPP.
- [14] Ms. Barnard in her response states that the office of Dep. DPP is a contractual position and is not a permanent position. The employment status of the claimant during his tenure at the Crown Prosecution Service has always been by virtue of a contractual agreement between the claimant and the GOSL acting through the Department of the Public Service.
- [15] I note that Counsel for the claimant, Mr. Horace Fraser ("Mr. Fraser") has framed this issue in the following way-whether the claimant held the office of DPP by contract or by status. This is different to the issues which were agreed and stated in the Order dated 25th March 2024.⁹ The declaration which Mr. Brette seeks in his claim is to the effect that he was not appointed on contract but by an instrument of appointment. It was not very clear what the claimant meant by 'instrument of appointment' or 'status'. Essentially, I have determined that this issue examines the nature of Mr. Brett's appointment.

Discussion and Analysis

- [16] Section 91(2) of the Constitution of Saint Lucia¹⁰ ("the Constitution") provides that the power to appoint persons to hold or act in the offices including the power to confirm appointments identified in sub-paragraph (1) vests in the JLSC. One of the offices identified is any public office in the department of the Director of Public Prosecutions (DPP).
- [17] It is therefore not disputed that the JLSC by virtue of section 91 has the power to appoint persons to the position of Dep. DPP which is a public office in the

⁹ p. 127 of ETB.

¹⁰ Cap 1.01, Revised Laws of Saint Lucia 2020.

DPP's Office. It is understood that section 91(3) vests the power to exercise disciplinary control or to remove persons who hold the offices identified in section 91(1) in the JLSC.

[18] In his oral submissions, Mr. Fraser agreed that Mr. Brette's position as Dep. DPP was a contractual one. The initial appointment letter from the JLSC dated 4th April 2011 indicated Mr. Brette's appointment to the post of Crown Counsel II *on contract* for two (2) years with effect from 4th April 2011. The letter written to the PS-Justice dated 27th April 2021 indicates that the JLSC approved the appointment of Mr. Brette to the post of Dep. DPP *on contract* for a period of two (2) years with effect from 1st June 2021.

[18] In every case in which an appointment was made by the JLSC in relation to the offices stated in section 91(1), the practice is that the appointee enters into a written agreement for employment with the GOSL which outlines among other things, basic salary, allowances and other terms and conditions including further engagement.

[17] In their submissions both Mr. Fraser and Counsel for the defendant, Mrs. Antonia Charlemagne ("Mrs. Charlemagne") referred to the Privy Council case of **Fraser v The Judicial and Legal Services Commission**.¹¹ This case concerned the termination of Mr. Fraser's contract as magistrate before the expiration of the contract which the Court determined was removal from office. The Privy Council considered section 91(3) of the Constitution and determined that the terms of Mr. Fraser's contract which allowed for termination of the contract by the Government were inconsistent with section 91(3) which expressly provided that the power to remove and discipline magistrates lay in the bosom of the JLSC and therefore when the Department of the Public Service wrote terminating Mr. Fraser's contract albeit on instruction from JLSC, they had acted ultra vires.

[18] The facts of **Fraser** are different to the instant case. However, in **Fraser**, the Privy Council said the following at paragraph 14 which is instructive:

¹¹ [2008] UKPC 25.

“...The Board accepts that there is nothing in the Constitution inconsistent with the agreement of a fixed contractual term of office-in the appellant’s case one year. The permissibility of a fixed term is clear from Hinds: see per Lord Diplock at p.218F-G....”

[19] In **Fraser**, the Board was clear that the expiry in the ordinary course of a fixed term cannot be described as a removal and in the context of the case before them, were of the view that any provisions which allowed for the contract to be brought to an end prior to its natural expiry would fall into a different category.¹² The Board went on to indicate that the terms of the covering agreement in relation to Fraser’s several one-year engagements confirmed that each engagement would run to natural expiry.

[20] The case of **Patricia Yvette Harding v The Attorney General of Anguilla**,¹³ is instructive. In that case the Court of Appeal considered the equivalent section of the Anguilla Constitution to section 91 of the Saint Lucia Constitution.

[21] The salient facts of this case are that Ms. Harding was appointed as Registrar of the High Court by the Governor of Anguilla after consultation with the JLSC and was employed for seven (7) consecutive contractual periods. In 2004, the Government of Anguilla created a policy which stated that all contract positions would be advertised prior to the end of any given contract and included in Ms. Harding’s latter contracts was a clause which contained a term that ‘if the person engaged wishes to be considered for a further period of employment he/she shall submit an updated curriculum vitae, which shall be forwarded to the Governor for consideration in consultation with the JLSC six months prior to the completion of the terms of engagement.’

[22] On 8th July 2011, Ms. Harding wrote indicating her desire to be considered for a further contract with the Government of Anguilla and submitted her updated curriculum vitae. In October 2011, the post of registrar was advertised in accordance with the policy. By letter dated 14th December 2011, Ms. Harding

¹² At para 16.

¹³ AXAHCVP2013/0003, (delivered 23rd November 2015), unreported.

was informed by the Deputy Director of Human Resource that her request for reengagement with the Government of Anguilla did not receive favourable response. Ms. Harding filed a claim against the Government in which she sought several relief including a declaration that the office of Registrar was not subject to termination by effluxion of time. This is the most relevant for the purposes of this discussion.

[23] Whilst the Court of Appeal did not specifically discuss whether Ms. Harding held the office of Registrar by virtue of her contract of employment or her appointment by the Governor, they accepted that she was employed under a contract of employment having been appointed by the Governor in consultation with JLSC. The Court's rejection of Ms. Harding's contention that her tenure as Registrar could not expire by effluxion of time shows clearly that the appointment of Ms. Harding pursuant to the relevant constitutional provision did not in any way preclude her terms and conditions being set out in a contract of employment and applied accordingly.

[24] I agree with the defendant's submission that whilst Mr. Brette was appointed by the JLSC, his terms of employment were set out in the several contracts of employment for fixed terms which he entered into with the Government. Provided that the JLSC retained the power to discipline and remove Mr. Brette, the contracts of employment are not repugnant to the Constitution. Mr. Brette's appointment by the JLSC on contract in accordance with the terms agreed by him with the Government in no way contradicts his status. In conclusion, Mr. Brette's appointment is a contractual appointment made by the JLSC on terms and conditions mutually agreed by the employee and the Government.

B. Procedure for applications

[25] It is Mr. Brette's case that the procedure in place for applying for an appointment to the office of Crown Counsel or Dep. DPP is that an application is made and forwarded to the office of the Permanent Secretary of the Department of Public Service for onward transmission to the Secretary of the JLSC for consideration. The decision of the JLSC regarding the application is channelled to the office of the Permanent Secretary of the Department of

Public Service who in turn will write the applicant informing him/her of the decision of the JLSC.

- [26] He states that when the PS-Public Service wrote him by letter dated 31st May 2023 to advise that his contract would not be renewed for a further period, this was a decision which was taken not to forward his application to the JLSC. The letter stated no reasons for the decision, and neither was he given any opportunity to address any concerns which may have been had with his performance.
- [27] Mr. Brette alleges that the PS-Public Service acted on the DPP's recommendation that his contract should not be renewed, a recommendation which was made out of ill will, malice and in bad faith to deny him a further appointment in the position of Dep. DPP. I note that there are no pleadings of this malice or bad faith alleged on the part of the DPP. Mr. Brette alleges further that the DPP's recommendation was not based on his performance in the job as is required by section 4 of the Government's performance appraisal and developmental Handbook, since the DPP had never assessed his work during his tenure as Dep DPP.
- [28] The PS-Public Service, Mr. Brette says, adopted the DPP's recommendation as her own and made the decision not to forward his application for a further appointment to the post of Dep DPP to the JLSC for consideration and therefore her decision was made in bad faith.
- [29] Essentially, the PS-Public Service adopted the wishes of the DPP and as a result did not exercise any independent judgment on the matter. Her decision was therefore for an improper purpose-to do a favour for the DPP by getting rid of him.
- [30] Mr. Brette contends that the PS-Public Service had no proper or legitimate reason not to forward his application for a further appointment to the JLSC and if she had any such reasons she ought to have stated them.

- [31] Ms. Barnard in her response says the procedure outlined by the claimant at paragraph 21 of his affidavit is incorrect. Applications for appointment to the offices of Crown Counsel or Dep. DPP are made directly to the JLSC and not through the Permanent Secretary in the Department of the Public Service. The decision of the JLSC regarding the application is forwarded to the Department of Justice and thereafter to the Permanent Secretary in the Department of the Public Service.
- [32] According to Ms. Barnard, this procedure applies to an applicant who seeks appointment to a post not previously held by him/her. It does not apply where an officer is seeking a renewal of contract. She explains that what obtains and guides in this case is the procedure provided for at clause 11 of the schedule to the Agreement for Employment.
- [33] On the other hand, Ms. Barnard states that where an officer wishes to have his contract renewed, there is no requirement that this must be communicated or forwarded to the JLSC for consideration. The JLSC appointed Mr. Brette to the post of Dep. DPP but in accordance with the terms contractually agreed to between the claimant and the GOSL. The GOSL is ultimately the employer of and is responsible for the salaries of persons in its employ and the running of all departments of the GOSL. Any decision to renew the claimant's contract can only properly be taken by the GOSL, acting through the holder of the office of the PS-Public Service.
- [34] Ms. Barnard avers that as PS-Public Service she did not have to provide a reason for the non-renewal of Mr. Brette's contract as the contract had come to an end in accordance with the terms of the Agreement for Employment.
- [35] Mrs. Barnard denies that there was any plan to reject Mr. Brette's request for renewal as he suggests. As PS-Public Service, Ms. Barnard says she had no obligation to inform the JLSC that Mr. Brette wished to have his contract renewed. In fact, she says whether Mr. Brette made an application for renewal of his contract or not, the contract would have still come to an end on 31st May

2023, and the Government would still not have been under any obligation to renew that contract.

[36] In relation to this specific matter, Ms. Barnard provides this evidence in relation to the actual relevant process. The PS-Justice who oversees the administrative operations of the Office of the Director of Public Prosecutions wrote to her attaching a recommendation from the DPP concerning Mr. Brette's contract renewal and expressing his support of the recommendation made by the DPP. Ms. Barnard as PS-Public Service acted on that recommendation.

[37] Ms. Barnard states that in determining whether to renew the contract of an officer, the recommendation of the Head of Department is paramount as he/she would make a recommendation after having considered several factors as to whether the services of an officer continues to be required and other general considerations of what is in the best interests of the Department. The decision not to renew Mr. Brette's contract was therefore not that of the DPP, but ultimately that of the Department of the Public Service. She says further that she was under no obligation to give reasons for the decision not to renew the contract. Mr. Brette she states was not dismissed, but rather his contract came to an end, and a decision was taken to not renew same.

[38] According to Ms. Barnard, Mr. Brette by signing the Agreement for Employment in relation to the relevant contract, agreed that the decision whether to renew his contract was within the sole discretion of the GOSL. Whilst the outcome of any appraisals of Mr. Brette during the term of his employment may be considered by the GOSL in considering whether to renew, there is no requirement that an appraisal is required to guide the decision of the GOSL and there is further no requirement that a good appraisal will result in a renewal.

[39] She says she had no personal interest in whether Mr. Brette's contract was renewed or not and acted at all times in her capacity as PS-Public Service.

[40] Ms. Barnard denies ever having had any discussion with the DPP concerning Mr. Brette's renewal of contract. Instead, all communication concerning Mr. Brette's employment was with the PS-Justice. Any decision not to renew Mr. Brette's contract was not taken in bad faith but rather in accordance with the agreed terms of the contractual agreement between Mr. Brette and the GOSL. Mr. Brette's contract of employment came to an end on 31st May 2023, and the GOSL had no obligation to renew that contract or to forward his application for further appointment to the Judicial and Legal Services Commission.

[41] She says at all times she acted within the ambit of the law and in accordance with the claimant's agreement for employment with the GOSL and having considered the recommendation of the PS-Justice. She denies that her decision was based on any improper purpose.

Discussion and Analysis

[42] Mr. Fraser submits that an appointment to the position of Dep. DPP is for the consideration of the JLSC only and the Permanent Secretary is not part of the decision-making process. The PS-Public Service's role he says was simply to act as a conduit of Mr. Brette's letter requesting renewal of his contract to the JLSC. He argues that the PS-Public Service failed to follow the procedure in place by failing to forward Mr. Brette's 'application' to the JLSC. The PS-Public Service therefore arrogated unto herself the power to decide the application which solely vests in the JLSC.

[43] Mrs. Charlemagne on behalf of the defendant submits that the non-renewal of Mr. Brette's contract was based on clause 11 of the Agreement for Employment which he entered into in relation to his last tour of duty which expired on 31st May 2023.

[44] The defendant argues that Mr. Brette's employment with the GOSL was pursuant to the terms of the contract between the parties which included the provision of a fixed term for the duration of the contract. Mrs. Charlemagne submits that neither the Constitution nor any piece of legislation governs Mr. Brette's period of appointment to the post of Dep. DPP. The only provision

governing Mr. Brette's period of appointment was the letter of appointment by the JLSC and the Agreement for Employment both of which provided for appointment for a two-year term.

- [45] Clause 11 of the contract between Mr. Brette and the GOSL expressly states as follows:

“Further employment

Six months prior to the completion of a tour of employment, the person engaged shall give notice in writing to the Government whether he/she desires to remain in its employment, and the Government shall thereupon decide whether it will offer him/her further employment. If the Government offers him/her further employment the re-engagement will be on such terms and such period as may be mutually agreed.”

- [46] From a reading of clause 11, it is clear that it is the GOSL which determines whether a further tour of employment will be extended to the employee. There is nothing which suggests that there is any duty placed on the PS-Public Service to forward a request for renewal of a contract made pursuant to clause 11 to the JLSC if the GOSL has determined that it does not desire to renew an employee's contract on its expiration.

- [47] Mr. Brette having agreed to the terms of his several contracts of which clause 11 was a part of, and pursuant to which he was advised of the favourable response to his requests for renewal of his tours of engagement now seeks to challenge the clause now that his 2023 request has not been favourable. The defendant quite rightly I think says it would be inequitable to allow Mr. Brette to raise this challenge now.

- [48] Mrs. Charlemagne points out that in the case of **Fraser**, the Privy Council alluded to the contract of employment between the appellant, Fraser and the GOSL and remarked that the relevant agreement was ‘in a form which is, it appears in long standing and standard use in East Caribbean countries.’

- [49] Given the terms of Clause 11 of Mr. Brette's contract, he has not shown how the power to appoint given by section 91 of the Constitution has been usurped by the PS-Public Service. Mr. Brette in his affidavit in support of his claim

spoke to the procedure which is in place for applying for an appointment to the office of Crown Counsel or Dep. DPP but he misses one crucial point. The procedure where it is a new appointment to a position is different to where the appointment is to a position on a renewal of contract. The latter must be governed by the terms of the contractual arrangement between the employee and the GOSL.

[50] It must be remembered that the JLSC does not set terms and conditions of employment. It does not set salaries, does not engage with the Government's budget and therefore it would make nonsense of the process, if applications for renewal were sent directly to the JLSC without any indication as to whether in the first place the GOSL desires to renew the contractual arrangement. I accept that the procedure outlined by the PS-Public Service is in keeping with the terms of the Agreement for Employment. Renewal is at the discretion of the employer who is the GOSL.

[51] The PS-Public Service therefore was not obligated to forward Mr. Brette's request for further employment/appointment as Dep. DPP to the JLSC and did not have any duty to so do. The PS-Public Service did not arrogate unto herself any powers vested in the JLSC as she did not seek to appoint, discipline or remove Mr. Brette. In addition, the PS-Public Service was well within her right to have regard to the recommendations of the DPP and PS-Justice in the manner outlined by her in deciding whether a further tour of employment would be extended to Mr. Brette given that Mr. Brette would not have been her direct report.

C. Natural justice

[52] Mr. Brette complains that he was only appraised once by the DPP since his appointment in 2016 and he is not aware that there was any aspect of his work which was being questioned or with which there were concerns. None were brought to his attention.

- [53] Ms. Barnard states that the records of the Public Service reflect that Mr. Brette was appraised on three occasions, for the periods April 2011-September 2011, October 2011-March 2012 and October 2018-March 2019.
- [64] According to Mr. Brette, after 10th March 2023, he was not made aware by the PS-Public Service that there were concerns with his performance as Dep. DPP or in relation to any other matter related to his job. If such concerns existed, he claims that he should have been given an opportunity to address them.
- [65] Mr. Brette states that the PS-Public Service in reaching the decision not to forward his application for reappointment to the post of Dep. DPP to the JLSC failed to observe the rules of fairness because (i) she did not have before her any appraisal form in relation to his performance in the post; (ii) she failed to afford him an opportunity to comment on any concern about his performance and (iii) there was no evidence before her to suggest that the recommendation of the DPP was justified.
- [66] Ms. Barnard in response states that there is no requirement to inform an officer who requests renewal of his contract, of the reasons for the decision not to renew his contract.
- [67] She avers that she had no obligation to forward the request for further employment to the JLSC and neither did she have to give any reasons for the non-renewal of the contract. Ms. Barnard avers that Mr. Brette's contract of employment came to an end, a new offer of employment was not made to him, and the GOSL was not required to justify that decision.

Discussion and Analysis

- [68] Mr. Fraser submits that it is for the Crown to communicate its position on Mr. Brette's request for renewal to the JLSC and it would be for the JLSC to afford Mr. Brette an opportunity to make representation. He relies on the case of **Hugh Wildman v The Judicial and Legal Services Commission**¹⁴ in support of this proposition.

¹⁴ GDAHCVP2006/0009, (delivered 1st March 2007), unreported.

[69] Mrs. Charlemagne submits that Mr. Brette's contract would have expired by effluxion of time. The Agreement for Employment dated 1st June 2021 was for a term of two (2) years from 1st June 2021 to 31st May 2023. Mr. Brette was notified by letter dated 31st May 2023 that his contract would not be extended. Mrs. Charlemagne further submits that the GOSL was under no duty to give any reasons or show cause as to why the contract was not being renewed. Mr. Brette's appointment was for a fixed term on a contractual basis and it came to an end.

[70] Mr. Fraser's reference and reliance on **Hugh Wildman** is misconceived. The facts of that case bear no resemblance to that of Mr. Brette. **Hugh Wildman** concerned a recommendation made to the JLSC where the JLSC chose to employ a procedure inviting the person recommended to answer to allegations and opposition by the Grenada Bar Association to his appointment. In those circumstances the Court was clear that having chosen to employ this method, the JLSC was obligated to have regard to fairness and principles of natural justice.

[71] This is not the case here. There have been no allegations levelled at Mr. Brette. There is nothing for him to answer to. I appreciate that he may have wondered and have had his own reasons why his contract may not have been recommended for renewal. However, his contract came to an end and in keeping with clause 11 the GOSL through the PS-Public Service wrote indicating the GOSL's non-interest in engaging Mr. Brette on a further contract.

[72] The PS-Public Service was not under any duty to give Mr. Brette reasons for not renewing his contract.

D. Legitimate Expectation

[73] It is Mr. Brette's case that from the year 2013 when he got his second appointment to the post of Crown Counsel II to his last appointment as Dep. DPP in 2019, all but two of the said appointments were made automatically without any application being made by him for the said appointments.

According to him, when those appointments came to an end by effluxion of time he held over in office and the reappointments were made later. It was a common practice he says for Crown Counsel in the Crown Prosecution Service to be given automatic re-appointments.

[74] According to Mr. Brette, after not having made applications for reappointments to the post of Crown Counsel or Dep. DPP between 2013 to 2019 save for one time, the DPP in March 2023 insisted that he make an application for a further appointment to the post of Dep DPP, as he wanted to know whether he had to advertise the post or not. Mr. Brette says the DPP's insistence was to ensure that his further appointment would not be automatic as had obtained prior and in the past.

[75] Based on custom and practice established by the receipt of automatic reappointments to the posts of Crown Counsel and Dep. DPP from the JLSC between 2013 and 2019, Mr. Brette claims he had a legitimate expectation in a further appointment for two years in the post of Dep. DPP on the expiration of his contract in May 2023.

[76] Ms. Barnard in her response says she is not aware that it is common practice for the contracts of Crown Counsel in the Office of the DPP or any other employee who are bound by clause 11 to be automatically renewed.

[77] According to her, the Government was not under any obligation to renew Mr. Brett's contract, and neither is the Government under any obligation to give a reason why the claimant's contract is not being renewed, the claimant having agreed by contract that his period of employment was for two years, expiring on 31st May 2023.

[78] According to Ms. Barnard, the records of the Department of the Public Service show that on four occasions, the claimant wrote evincing an interest in having his contract of employment renewed.

[79] Ms. Barnard further states that Mr. Brette was informed on the day that his contract was to end that he would not be offered a new contract. His late notice to the Government of his interest to renew his contract contributed to the delay in informing him of the decision of the Government on his request for renewal.

[80] Ms. Barnard states that Mr. Brette was not in any way led to believe past 31st May 2023, that he would have remained in the employ of the Government of Saint Lucia and neither was any promise or assurance given to him that this contract would have been renewed.

Discussion and Analysis

[81] Clause 11 of the schedule to each of Mr. Brette's Agreements for Employment from 2011 to 2021 states that "six (6) months prior to the completion of a tour of employment service, the person engaged shall give notice in writing to the Government whether he/she desires to remain in its employment and the Government shall thereupon decide whether it will offer him/her further employment ...".

[82] Mr. Brette's case is that from 2013 when he was appointed as Crown Counsel II to his last appointment as Dep. DPP all but two of those appointments were made automatically without any application being made by him for the appointments. He refers to automatic re-appointments which was common practice giving rise to a legitimate expectation. Mr. Fraser in his submissions states that this is undisputed.

[83] In **Patricia Harding**, Ms. Harding asserted that she had a legitimate expectation to have her contract as Registrar of the High Court renewed. Of the law on legitimate expectation the Court of Appeal stated as follows:

"[37] I now consider the law with respect to legitimate expectation. Legitimate expectation is now a well-known public law headline which encompasses two kinds: procedural legitimate expectation and substantive legitimate expectation. As explained by Laws LJ in *R (Bhatt Murphy) v The Independent Assessor*, [2008] EWCA Civ 722, at paras 28-30] legitimate expectation of either kind may arise in circumstances where a public decision-maker changes, or proposes to

change, an existing policy or practice. The doctrine will apply in circumstances where the change or proposed change of policy or practice is held to be unfair or an abuse of power. Unfairness and abuse of power march together and it is notorious that what is fair or unfair depends on the circumstances of the case. Laws LJ explained that a paradigm case of procedural legitimate expectation arises where a public authority has provided an unequivocal assurance, whether by means of an expressed promise or an established practice that it will give notice or embark upon a consultation before it changes an existing substantive policy. In the paradigm case, the court will not allow the decision-maker to effect the proposed change without notice or consultation, unless the want of notice or consultation is justified by the force of an overriding legal duty owed by the decision-maker, or other countervailing public interest such as the imperative of national security.

[38] Laws LJ explained at paragraph 32 that substantive legitimate expectation arises where the court allows a claim to enforce the continued enjoyment of the content -the substance - of an existing practice or policy, in the face of the decision-maker's ambition to change or abolish it. Thus it is to be distinguished from a merely procedural right. ..."

- [84] The Court referred to the case of **Regina (Bibi) v Newham London Borough Council**,¹⁵ where Schiemann LJ said:

"In all legitimate expectation cases, whether substantive or procedural, three practical questions arise. The first question is to what has the public authority, whether by practice or by promise, committed itself; the second is whether the authority has acted or proposes to act unlawfully in relation to its commitment; the third is what the court should do."

- [85] Mr. Brette like the appellant in **Patricia Harding** is claiming substantive legitimate expectation. Therefore, he must show an express promise or an established practice of automatic renewals which he relied on.

- [86] I think it is necessary to assess Mr. Brette's evidence against the documentary evidence before the Court. Mrs. Charlemagne submits quite correctly that Mr. Brette's claim of automatic renewals is not borne out by the evidence as the documentary evidence exhibited shows that when Mr. Brette's contracts expired due to the effluxion of time, he made a request for renewal of his

¹⁵ [2002] 1 WLR 237.

contract, citing the relevant clause in the contract and acknowledging the GOSL's discretion whether or not to renew his contract.

- [97] I will briefly look at the evidence to demonstrate that Mr. Brette's assertion of automatic renewals is not borne out on the evidence.
- [98] Mr. Brette's 2011 contract as Crown Counsel II would have expired on 3rd April 2013. On 19th March 2013, Mr. Brette wrote a letter addressed to the JLSC through the DPP¹⁶ in which he indicated his intention to continue employment and requesting that his 'letter be accepted as an application, subject to your ruling, to have 'his' contract renewed.
- [99] Mr. Brette's 2013 contract as Crown Counsel II would have been due to expire on 21st April 2015. However, in June 2014, according to Ms. Barnard, Mr. Brette was appointed to the position of Crown Counsel III. The letter dated 29th March 2016¹⁷ suggests that the previous Crown Counsel II contract was reduced and the appointment to Crown Counsel III was made. That letter suspended the Crown Counsel III appointment and appointed Mr. Brette to act as Dep. DPP from 11th December 2015 to 30th April 2016 after which he was to resume his Crown Counsel III position.
- [100] Effective 1st June 2016, Mr. Brette was appointed to a new position of Dep. DPP which contract would have expired 31st May 2019. In the memo dated 21st June 2019,¹⁸ Mr. Brette wrote to the Human Resource Department-Ministry of Justice with the subject caption "Review of remuneration for Post of Deputy Director of Public Prosecutions" and refers at paragraph 1 thereof to 'my letter of intention to have contract renewed dated 12th December 2018.' This is evidence of a request for renewal of his contract as Dep. DPP made in relation to the contract due to expire in May 2019.

¹⁶ At p. 120 of ETB.

¹⁷ At p. 64 of ETB.

¹⁸ At p. 87 of ETB.

[101] Effective 1st June 2019, Mr. Brette was appointed for a term of two (2) years to end on 31st May 2021. In a memo dated 8th April 2021 to the PS-Justice,¹⁹ Mr. Brette states:

“Pursuant to the Renewal Clause in my 2019 contract of Employment I hereby give formal notice of my desire to renew my contract of employment as deputy Director of Public Prosecutions for a term of three (3) years subject to your ruling/approval, effective 1st June 2021.”

[102] Mr. Brette was appointed as Dep DPP with effect from 1st June 2021 for two years and not three as he had requested. That contract would have expired on 31st May 2023. By letter dated 10th March 2023 addressed to the PS-Public Service,²⁰ Mr. Brette humbly requested that his contract ‘be extended for a further two years, subject to your ruling’.

[103] The above clearly illustrates that when required and on each occasion when his contracts were due to expire Mr. Brette made requests for further employment, so his assertion that he got automatic renewals without having to apply cannot be correct. Each of Mr. Brette’s letters show that he appreciated that renewal of his contract was not automatic but was subject to the exercise of a discretion.

[104] Mr. Brette has not pointed to any conduct or undertaking by the GOSL, written or otherwise held out to him which could have given him any legitimate expectation of automatic renewals. The fact that previous contracts have been renewed cannot give rise to a legitimate expectation. Clause 11 of Mr. Brette’s various Agreements for Employment which he acknowledged by his own conduct of writing to request renewal is clear and is inconsistent with any legitimate expectation that his contract would have been renewed automatically in 2023.

[105] In the premises, Mr. Brette has failed to show that he had any legitimate expectation to automatic renewal of his contract in 2023.

¹⁹ At p. 84 of ETB.

²⁰ At p. 83 of ETB.

Other Issue-Clause 11

- [106] In supplemental submissions filed on behalf of Mr. Brette, Counsel, Mr. Fraser submits that Clause 11 of the Agreement for Employment which he obviously relied on when he made his letters requesting renewal of his various contracts, is not a genuine term of the contract.
- [107] These supplemental submissions are premised on the 'allegation' which Mr. Fraser says was made by the PS-Public Service that Mr. Brette was in breach of clause 11 by failing to apply for renewal of contract within the time specified in clause 11.
- [108] I am uncertain where on the evidence it shows that the defendant relied on Mr. Brette's late application to base her decision. In the letter dated 31st May 2023 from PS-Public Service, Ms. Barnard to Mr. Brette, it states:
- "By virtue of Clause 11 of your Contract of Employment, this Department wishes to inform you that your contract will not be renewed for a further period."
- [109] It must be remembered that Clause 11 requires the employee to indicate a specified period that he/she wishes to continue in employment and then requires the GOSL to indicate whether it will offer further employment. The reference to Clause 11 in the PS-Public Service's letter simply formed the basis for the indication given that the contract would not be renewed which was in keeping with the procedure required to indicate the GOSL's position in relation to the request.
- [110] In any event, Mr. Brette's pleadings do not foreshadow this issue which he now seeks to raise in the supplemental submissions, that Clause 11 is not a genuine contract term. No relief was sought in this regard. Whilst Counsel had sought leave to file supplemental submissions on Clause 11 and the case of **Patricia Harding**, I am afraid that these submissions introduce a whole new element which I am not minded to address given that it is not part of Mr. Brette's pleaded case and does not flow naturally from the pleadings or the submissions. In any event, the basis for the supplemental submissions is not supported by the evidence.

[111] In the cases where Mr. Brette wrote requesting renewal of his contracts over the years, his applications were almost never made within the period stipulated by clause 11.²¹ Yet on all occasions when he applied, his contracts were renewed even though clause 11 was not strictly complied with. Clause 11 is simply a procedural provision which does not attract a sanction but allows for orderly and timeous consideration of applications for renewal. Ms. Barnard in her evidence alluded to the fact that the reason for the late response to Mr. Brette was because of the late submission of his request but never said that his application was not considered because of its tardiness as suggested by Mr. Fraser in his submissions.

[112] Mrs. Charlemagne in submissions says the supplemental arguments to be filed by the claimant was expected to address the effect of clause 11 on his claim that he had a legitimate expectation that his contract would be renewed and not to introduce a totally new question regarding whether clause 11 formed part of the contract or affected the operation of the contract. The defendant asks that the Court not allow the claimant to raise this issue as he never sought to challenge the enforceability of clause 11.

[113] I agree with the defendant's submission in this regard, and I decline to address this issue belatedly raised.

Conclusion

[114] Based on the foregoing discussion, Mr. Brette is not entitled to any of the declarations or orders which he seeks. The Court has found that Mr. Brette was appointed by the JLSC on contract subject to the terms and conditions set out in his contract with the GOSL. He failed to show that in relation to his request for renewal of his contract that the PS-Public Service was obligated to send his request to the JLSC in light of the very clear provision of clause 11 of his contract. Mr. Brette also failed to plead any particulars of bad faith or ill-will on the part of the DPP and it was not unreasonable for the PS-Public Service

²¹ In 2013-1 month; in 2019-5 months; in 2021-2 months and in 2023-2 months prior to expiration of the respective contracts.

to take into consideration the recommendations or comments of the DPP as the head of the department or the PS-Justice as the head of the Department under which the Office of the DPP falls.

- [115] Given that Mr. Brette's contract was due to end by effluxion of time on 31st May 2023, there was no requirement to provide reasons or afford him any opportunity to be heard. He was not being terminated. The GOSL indicated as they were entitled to do, that they no longer wished to continue the employment engagement with Mr. Brette and they needed to provide no reasons for this indication. Finally, the Court concluded that the evidence does not support Mr. Brette's claim that he had a legitimate expectation to an automatic renewal of his contract.

Order

- [116] In light of the foregoing, the claim is dismissed with no order as to costs in keeping with CPR 56.11(6), as I do not consider that Mr. Brette acted unreasonably in filing or in the conduct of the claim.
- [117] I wish to thank Counsel and the parties for their patience in awaiting the Court's decision and for their submissions.



**Kimberly Cenac-Phulgence
High Court Judge**

By The Court

Registrar