

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. ANUHCV2025/0286

BETWEEN:

[1] STANSEL ROBERTS
[2] EDWIN WILLIAMS
[3] CARLA BENJAMIN
[4] JOEL GORDON
[5] JUNE SOLOMON-POTTER

Claimants

and

[1] THE CHIEF ESTABLISHMENT OFFICER
[2] THE DIRECTOR OF AUDIT
[3] ATTORNEY GENERAL

Defendants

Appearances:

Mr. Lawrence Daniels and Mr. Jamal Gordon, Counsel for the Claimants
Mrs. Carla Brookes-Harris and Ms. Joy Dublin, Counsel for the Defendants

2025: November 4th;
2026: 11th March.

DECISION

- [1] **MICHEL, M.:** This is an application by the 3rd Defendant for the 1st and 2nd Defendants to be removed as Parties to these proceedings.
- [2] The Claimants are employed as Auditors and Assistant Auditors at the Audit Department of Antigua and Barbuda. The 1st Defendant ("**the Chief Establishment Officer**") is the head of the Establishment Department and carries out such duties as set out in the **Civil Service Act**.¹ The 2nd Defendant, ("**the Director of Audit**"), is the head of the Audit Department responsible for the overall management of the Audit Department and the 3rd Defendant, ("**the Attorney General**"), is the chief legal advisor for Antigua and Barbuda and is responsible for all legal matters brought against the Government of Antigua and Barbuda.

¹ Cap. 87, Laws of Antigua and Barbuda.

- [3] The Claimants have brought these proceedings against the Defendants seeking damages for alleged breaches of their employment contracts and alleged breaches of the Chief Establishment Officer's and Director of Audit's statutory duties. The Claimants allege that there are breaches of their employment contracts owing to a disparity in the payment of duty and travelling allowances between their posts of Auditor and Assistant Auditor at the Audit Department and payment made to persons in similar positions at the Inland Revenue Department.
- [4] The Claimants further allege that their monthly mileage application forms have been submitted to the Director of Audit and he has failed/refused to give approval to and issue the remuneration for the monthly mileage application forms and has therefore acted contrary to the terms and conditions of the Claimants' employment contract, thus breaching the Claimants' employment contract.
- [5] The Claimants further allege that pursuant to sections 69 and 70 of the Civil Service Regulations, 1993,² ("**the Civil Service Regulations**") the Claimants are entitled to receive incremental credit for any recognised qualification above the minimum qualifications specified for a particular post and for any experience in accordance with the policy directions issued in terms of section 100(6) of the Antigua and Barbuda Constitution Order³ ("**the Constitution**").
- [6] The Claimants allege that the Chief Establishment Officer has failed and/or refused to address and pay the Claimants for their recognized qualifications in keeping with the statutory requirements of the law being section 69 of the Civil Service Regulations.
- [7] The Claimants contend that the Chief Establishment Officer has a statutory duty to ensure that in keeping with section 70 of the Civil Service Regulations that the Claimants receive their incremental credit in the sum of \$1,200.00 per annum and that despite the Claimants attaining a recognized qualification above the minimum qualifications specified for a particular post, the Chief Establishment Office breached that statutory duty when she failed and/or refused to grant the increments.
- [8] The Defendants filed a defence to the Claimants' claim on 21st July, 2025 denying the Claimants' claim in its entirety. On the same day, the Attorney General applied to the Court pursuant to rules 26.3(b) and (c) and 19.3 of the Civil Procedure Rules (Revised Edition) 2023 ("**CPR 2023**") for an order dismissing the claim against the Chief Establishment Officer and the Director of Audit and removing them as Parties to these proceedings.

² Statutory Instrument No. 1 of 1993.

³ Statutory Instrument No. 1106 of 1981.

[9] The Attorney General's application is brought on the following six grounds:-

- (1) The 1st Defendant is sued in her capacity as the Chief Establishment Officer and is therefore not a proper party to the suit.
- (2) The 2nd Defendant is sued in his capacity as the Director of Audit and is therefore not a proper party to the suit.
- (3) The proper party to any suit or claim against the Crown/Government is the Attorney General.
- (4) Pursuant to section 13(2) of the **Crown Proceedings Act**⁴ (the CPA") Civil proceedings against the Crown shall be instituted against the Attorney General.
- (5) There is no reasonable ground for bringing the claim against the 1st or 2nd Defendant.
- (6) The Claim against the 1st and 2nd Defendants is an abuse of process of the Court.

[10] The Claimants filed a notice of opposition and affidavit in response to the Attorney General's application, strenuously opposing the application. The Claimants submitted the following 11 grounds of opposition to the Attorney General's application:-

- "1. The Claimants oppose the Defendant's application to strike out the First and Second Defendants as parties to this claim on the firm ground that both Defendants are under clear statutory duties which they have failed to discharge, thereby giving rise to legal consequences that properly justify their continued joinder in these proceedings.
2. Pursuant to section 6(1) of the Civil Service Regulations, 1993 No. 1 of the Laws of Antigua and Barbuda, the Chief Establishment Officer is vested with a statutory duty with respect to the recruitment of civil servants. The section mandates that all applications for entry into the civil service shall be submitted to:
 - (a) the Chief Establishment Officer; or
 - (b) any other authority as may be designated in the Gazette in the case of any department.

This duty is further emphasized at subsection (2), which provides that:

⁴ Cap. 121, Laws of Antigua and Barbuda.

"Upon receipt of any application under paragraph (1)(a), the Chief Establishment Officer shall submit the application to the Commission."

These provisions impose not merely administrative functions but legal obligations which the First Named Defendant is required to discharge.

3. The Minister, acting under the authority of section 28 of the Civil Service Act, No. 24 of 1984 of the laws of Antigua and Barbuda, has delegated powers to the Chief Establishment Officer to oversee recruitment and appointments across the civil service. This delegation reinforces the statutory nature of the First Named Defendant's obligations. In interpreting section 70 of the same Regulations, Parliament's intent is unambiguous. It provides that:

"The Chief Establishment Officer shall be responsible for the grant of increments, provided that he may delegate his authority to a Permanent Secretary. "

4. In the absence of any evidence of a lawful delegation, the Chief Establishment Officer remains solely responsible for his/her actions in office and remains liable. His failure to carry out his statutory duties has materially contributed to the breach of the Claimants' employment contracts, and he/she is therefore a necessary and proper party to this action.
5. To date, there is no legislation or statutory instrument presented to this Honourable Court that lawfully delegates the functions of the First Named Defendant to any other person or authority.
6. The Second Defendant, the Director of Audit, is appointed under section 4(1) of the Office of the Director of Audit Act No. 4 of 2014. Section 9 of the same Act provides that:

"The Director of Audit shall have the power to carry out an audit of the accounts, balance sheets and other financial statements of any enterprise that is owned or controlled by or on behalf of Antigua and Barbuda. "

This power and the corresponding duty is personal to the Director and is nondelegable. Indeed, this position is buttressed by section 102(2) of the Antigua and Barbuda Constitution Order, which provides a limited mechanism for temporary replacement, but only through a formal process involving the Governor-General and the Public Service Commission, with the agreement of the Prime Minister. In his/her absence, he/she must be formally replaced via this procedure because of statutory duty to carry out his functions which are vested in him personally in his capacity as the Director of Audit. It is therefore a constitutional and statutory principle that the Director of Audit must personally discharge his functions unless lawfully substituted through the process prescribed by section 102(2). There is no evidence that such substitution nor any delegation has occurred in the present case and the Second Named Defendant should remain a party to this claim.

7. In light of the failure by the Director of Audit to exercise his statutory functions as required by the aforementioned statutory provisions, and the resulting prejudice suffered by the Claimants, the Second-named Defendant remains a proper and a necessary party to these proceedings.
8. The Claimant's contention is well-supported by common law authority. In *R v Trade Secretary v Lornho plc* [1989] [[1989] 1 WLR 525]] and *R v Secretary of State for the Home Department ex parte Al Fayed* [1997] 1 WLR 763 [[1996] EWCA Civ J1113-9], the courts affirmed that a statutory duty arises when legislation imposes a clear obligation on a public official to act. Where such duty is breached, legal consequences may follow, including personal liability for acts of omission, negligence or maladministration.
9. In accordance with Section 14 of the Crown Proceedings Act Cap 121 of the laws of Antigua and Barbuda and applicable procedural rules, documents in civil proceedings brought in the name of an officer of the Crown may properly be served on that officer directly or on the Attorney-General. This confirms that officers such as the First and Second Named Defendants may be named parties in civil litigation where the cause of action arises from their statutory functions and/or duties.

10. In all the circumstances, and in light of the clear statutory responsibilities borne by both the First and Second Named Defendants, their failure to carry out their statutory duties and the consequential breach of the Claimants' legal rights, it is respectfully submitted that both Defendants are proper and necessary parties to these proceedings.
11. The Claimants therefore humbly pray that this Honourable Court dismisses the First and Second Named Defendants' application in its entirety, with costs of the Application payable to the Claimants, and any such further or other relief as the Court deems just in the circumstances."

The Court's Power to Remove a Party to a Claim

[11] CPR 19.2(4) provides that the Court may order any person to cease to be a party if it considers that it is not desirable for that person to be a party to the proceedings. The power to order a person to cease to be a party is closely linked to the Court's power to strike out a party's statement of case or part thereof pursuant to CPR 26.3(1)(b) on the basis that it discloses no reasonable grounds for bringing the claim against a party.

[12] In **Hon. Markey Brantley (Leader of the Opposition) et al v Hon. Curtis Martin (Speaker of the National Assembly) et al**,⁵ Ramdhani J [Ag.] explained the interplay between the two rules and their effect:-

"[151] The court's power to remove a party from proceedings before the court or to strike out the statement of case as disclosing no cause of action against a party is founded on both the statutory and inherent jurisdiction on the court. CPR 19.2(4) prescribes that the 'court may order any person to cease to be a party if it considers that it is not desirable for that person to be a party to the proceedings.' CPR 19.3(2) permits an existing party to make an application for an order that a party be removed from the proceedings.

[152] In considering whether it is 'desirable' to remove a party on the court's motion, the court should consider whether there is a judicial basis which compels that that party should be removed. The court should not remove a party where that party has a 'true interest to oppose the orders' that are being sought or whether he has some other good reason to remain a party. When the court is proceeding on an application to remove a party, it is usually on the basis that the party is not a proper party in the sense that, as it is being asserted in this

⁵ SKBHCV2013/0090 (delivered 12th February 2014, unreported).

case, there is no reasonable cause of action pleaded against that party in the matter.

[153] The removal of a party from a matter or the striking out of the statement of case has the same effect of bringing the proceedings to an end as against that party so removed. This is a drastic step and the court should only use this power in clear and obvious cases such as where, as is being alleged as in this case, on the face of the pleadings, the claim is obviously unsustainable against the 2nd to the 9th defendants.

[154] An application to strike out a party on the basis that there is no cause of action pleaded against him requires first, an identification of the cause of action against that party, and second, a determination as to whether the pleadings provides the grounding for the maintenance of that cause of action. In this process, the court is to assume the truth of the claimants' case and is not to embark on an assessment of the strength of the case."

[13] With the above in mind, in the present case, to remove the Chief Establishment Officer and the Director of Audit as Parties to these proceedings the Court must be satisfied that there is a proper basis which compels that they should be removed.

The Attorney General's Submissions

[14] Mrs. Carla Brookes-Harris, Deputy Solicitor General, appearing on behalf of the Attorney General, submitted that **section 13(2) of the CPA** provides that 'civil proceedings against the Crown shall be issued against the Attorney General.' As such, she submits, the **CPA**, and more specifically, **section 13(2) of the CPA**, makes it mandatory that the Attorney General is the proper party to be named in any civil proceedings against the Crown and that this applies to the case at bar.

[15] The Deputy Solicitor General on behalf of the Attorney General submitted that the Claimants' claim is an action against the Crown in respect of liability arising from alleged breach of contract. Mrs. Brookes-Harris submitted that the Claimants' claim therefore falls squarely within the ambit of 'civil proceedings' under the **CPA**.

[16] Mrs. Brookes-Harris argued that the Claimants' claim form, statement of claim and notice of opposition all confirm that the actions complained of by the Chief Establishment Officer and the Director of Audit are all matters in relation to their public offices and/or functions and not in their private capacity.

- [17] Relying on the authority of **Richard Frederick et al v The Controller of Customs et al**,⁶ Mrs. Brookes-Harris submitted that the Claimants' claim is not one for judicial review, judicial review proceedings being of the type that they do not fall within the scope of 'civil proceedings' for the purpose of the **CPA**. She submitted that it is not in dispute that the nature of the Claimants' claim is breach of an employment contract which falls within the class of civil proceedings under the **CPA**. Mrs. Brookes-Harris submitted that where a claim is one for judicial review or constitutional relief, the claimant is at liberty to name any public official that has acted in a manner that has aggrieved the claimant, but this is not the case for civil proceedings against the Crown of the type that the Claimants have initiated and as such the Chief Establishment Officer and the Director of Audit ought not to be named as Parties in the claim.
- [18] Mrs. Brookes-Harris submitted that whilst the breaches of duty alleged by the Claimants may be relevant for the substance of the claim, this does not mean that the 1st and 2nd Defendants ought to be named as parties to the claim filed herein. She submitted that the duties alleged to be breached by the 1st and 2nd Defendants do not impose any civil liability on them in the case at bar.

The Claimants' Submissions

- [19] Mr. Lawrence Daniels, learned Counsel for the Claimants, submitted that it is the Claimants' position that the Chief Establishment Officer and the Director of Audit are under a clear statutory duty which they have failed to discharge, thereby giving rise to legal consequences that properly justify them being Parties to these proceedings.
- [20] Learned Counsel for the Claimants submitted that pursuant to section 6(1) of the Civil Service Regulations, the Chief Establishment Officer is vested with a statutory duty with respect to the recruitment of civil servants. He submitted that the section mandates that all applications for entry into the civil service shall be submitted to the Chief Establishment Officer or any other authority as may be designated in the Gazette in the case of any department.
- [21] Commenting on the decision of the Court of Appeal in **The Attorney General v James St. Prix**,⁷ concerning a claim in which the claimant, Mr. St. Prix sought damages from the Crown for the alleged unlawful conduct of a public officer, learned counsel for the Claimants submitted that the pronouncements of the Court of Appeal concerning the joinder of public officers in claims in tort, are clearly distinguishable from the case sub judice, the distinction residing fundamentally in the nature of these present proceedings. Notably, learned counsel for the Claimants submitted that the instant claim does not arise ex

⁶ Saint Lucia High Court Civil Appeal no. 37 of 2008 (delivered 6th July 2009, unreported).

⁷ SLUHC VAP2022/0014 (delivered 28th February 2025, unreported).

delicto, nor does it rest upon any tortious foundation, but is rather anchored in a distinct and independent juridical cause of action.

- [22] In relation to their allegations of breach of contract, learned Counsel for the Claimants contended that there is a continuing breach of the Claimants' employment contracts in that they are and continue to be entitled to their duty and travel allowances and that the Defendants have failed and/or refused to authorize and/or make such payments despite the Claimants travelling to perform their duties as auditors to the various governmental departments. This, learned Counsel for the Claimants submitted, is not disputed by the Defendants and in fact, the Defendants' unsubstantiated contention is that the Claimants submitted incorrect mileage claim forms.
- [23] Learned Counsel for the Claimants submitted that it is clear that section 70 of the Civil Service Regulations imposes a statutory duty upon the Chief Establishment Officer who is responsible for the grant of increments and shall certify the incremental report pursuant to section 71(1) of the Civil Service Regulations. Moreover, learned Counsel for the Claimants submitted that this statutory duty conferred upon the Chief Establishment Officer manifests a contractual obligation to which the Chief Establishment Officer, Director of Audit and the Claimants are privy to. Hence, he submitted, the Chief Establishment Officer must be a party to these proceedings for her breach of a statutory duty which has ultimately breached the employment agreements of the Claimants respectively.
- [24] Learned Counsel for the Claimants submitted that importantly, **section 97(7) of the Constitution** provides that 'the Director of Audit shall exercise such other functions in relation to the accounts of the Government, the accounts of other authorities or bodies established by law for public purposes or the accounts of enterprises that are owned or controlled by or on behalf of Antigua and Barbuda as may be prescribed by or under any law enacted by Parliament.' Inclusive of this duty, learned Counsel for the Claimants submitted, is to ensure that 'public moneys other than those appropriated are dealt with in accordance with the proper authority' in accordance with section 9(2)(1) of the **Office of the Director of Audit Act, 2014**.⁸ Learned Counsel for the Claimants submitted that this would mandate that a recommendation be provided to the Chief Establishment Officer approving incremental credit on behalf of the Claimants.
- [25] Learned Counsel for the Claimants submitted that, as per section 71(4) of the **Civil Regulations Act**, in approving an officer's increment, the Chief Establishment Officer or Permanent Secretary, as the case may be, shall take

⁸ No. of 2014.

into account the recommendation of the officer's immediate superior officer and the Divisional Head. He submitted that the Defendants, whether by their agents or personally, have failed to and/or refused to observe these duties under both statute and the Constitution. Thus, he submitted, the failure to approve and pay same constitutes a flagrant breach of contract and a deprivation of the Claimants' interests without due process.

- [26] Learned Counsel for the Claimants submitted that, in keeping with section 71(4) of the Civil Service Regulations, the Director of Audit remains a necessary and integral party to this claim. He submitted that the Claimants have contended that the Chief Establishment Officer and the Director of Audit have breached their statutory duty to the Claimants thereby resulting in a breach of contract. Learned Counsel for the Claimants submitted that the Civil Service Regulations make no provisions for the Attorney General of Antigua and Barbuda to act. The regulation mandate that the Chief Establishment Officer shall be responsible for the grant of increments, and that the Chief Establishment Officer shall also certify the incremental report and that in approving an officer's incremental report, the Chief Establishment Officer shall take into account the recommendation of the Claimants' immediate superior, the Director of Audit, who is the Divisional Head.
- [27] Learned Counsel for the Claimants submitted that at the trial of this matter, the Head of the Department for the Claimants will be called upon to answer the appropriate questions in relation to any reports and recommendations or lack thereof in support of the Claimants' application. Learned Counsel for the Claimants submitted that the Claimants will also rely on the case of **De Freitas v The Permanent Secretary of Ministry Agriculture, Fisheries, Lands and Housing and others**⁹ as authority that a civil servant may have rights under statute that cannot simply be overridden arbitrarily.
- [28] Learned Counsel for the Claimants relied on several administrative law decisions in support of his submissions to the Court.

Discussion

- [29] I am in agreement with learned Counsel for the Defendants that the **CPA** provides for the institution and maintenance of actions against the Crown in respect of liabilities arising in contract, tort or like actions committed by its servants or officers. The object of the **CPA** was explained by George-Creque JA in **Richard Frederick et al v Comptroller of Customs et al** as follows:-

“In reviewing the legislative framework of the CPA it becomes obvious that the object of the CPA was to provide for the institution and

⁹ [1998] UKPC 30.

maintenance of actions by and against the Crown in much the same way as between subjects (as distinct from as between a subject and the state or the Crown) in respect of liabilities arising in contract, tort or like actions committed by its servants or officers. The purpose was to take away the immunity from suit previously enjoyed to a large degree by the Crown and thereby rendering the Crown liable in respect of the acts of its officers.

- [30] In **Richard Frederick** the distinction was made between ‘civil proceedings’ for the purpose of the **CPA** and public law proceedings such as judicial review which are a peculiar species of civil proceedings falling outside the ambit of ordinary types of ‘civil proceedings’ contemplated by the **CPA**.
- [31] In **Richard Frederick**, it was made plain that a claim seeking constitutional relief must be served on the Attorney General however it does not preclude other persons being joined as defendants. Thus, where the acts complained of concern a public officer, they could be named in a public law claim.
- [32] The Claimants’ present action is presumably a private law claim based on allegations of breach of their contracts of employment with the Government of Antigua and Barbuda and breach of statutory duties by public officers, namely the Chief Establishment Officer and the Director of Audit. I must pause to note that, reading the submissions of learned counsel for the Claimants, one gets the sense that the Claimants are also arguing their claim as an administrative law claim. I will briefly return to this later.
- [33] Having considered the pronouncements of the Court of Appeal in **Richard Frederick**¹⁰ and Webster J in **Monica Ross v Minister of Agriculture, Lands and Fisheries et al**¹¹ (referred to by the Court of Appeal in **Richard Frederick**) when the Claimants’ pleaded case of breach of contract is considered, there is no doubt that the proceedings are civil proceedings as contemplated by the **CPA**.
- [34] As was confirmed by the High Court in **Monica Ross**, in accordance with **section 13 of the CPA**, civil proceedings against the Crown should be instituted against the Attorney-General. The present proceedings being civil proceedings against the Crown within the ambit of the **CPA**, pursuant to **section 13 of the CPA**, the proceedings have rightly been instituted against the Attorney General. The question which remains is whether the Chief Establishment Officer and the Director of Audit have also properly been made parties to the suit.

¹⁰ At paragraphs 21 to 34.

¹¹ Saint Vincent and the Grenadines Civil Appeal No. 255 of 2001 (delivered 31st July 2001, unreported).

- [35] As mentioned above, Pereira CJ in Richard Frderick explained that the **CPA** makes it possible for the maintenance of suit against the Crown in respect of 'liabilities arising in contract, tort or like actions committed by its servants or officers'. Thus, procedurally, in a suit against the Crown in respect of acts of its servants or officers, the authority to be named as a defendant is the Attorney General. However, in my view, there is nothing in the **CPA** that prevents suit being brought against an officer of the Crown in their personal capacity, and there is clear authority from the Court of Appeal to support this view in respect of tortious actions where the named public officer is the principal tortfeasor. As was explained by Ellis JA in The Attorney General v James St. Prix, **section 13 of the CPA** codifies the position that the Crown is vicariously liable for the actions of a public officer as a principal tortfeasor.
- [36] The primary contention by the Claimants on their claim is that there have been a series of breaches of the Claimants' employment contract. The Chief Establishment Officer and the Director of Audit have been named as Defendants in addition to the Attorney General. Whilst the considerations above in relation to commencing suit against a public officer personally may be applicable to a claim in tort where the officer is the alleged tortfeasor, for the reasons set out below, in a claim for breach of contract by the Crown, I do not consider that the public officers whose actions allegedly constituted the breach of contract should properly be named as Defendants to the suit.
- [37] It is not in dispute that the Claimants are employees of the Government of Antigua and Barbuda (the Crown) and that their contracts of employment are with the Government of Antigua and Barbuda (the Crown). It is also not in dispute that the Chief Establishment Officer and the Director of Audit are officers of the Crown. Although the acts complained of by the Claimants are the action or inaction by the Chief Establishment Officer and the Director of Audit resulting in breaches of their employment contract, the Claimants' contracts of employment are as between the Claimants and the Crown, not the Chief Establishment Officer nor the Director of Audit.
- [38] There is no contention or allegation of a contract between the Claimants and the Chief Establishment Officer and the Director of Audit who are public officers. I accept that the relationship between public servants (such as the Claimants) and the government is often considered to be one of status rather than purely contractual, arising from the fact that obligations in such a relationship may be defined not only by the terms agreed upon by the Parties but also by legal provisions and public policy considerations. However, this being a private law claim, I am unable to see how, and no authority has been provided to me to demonstrate that the Chief Establishment Officer or Director of Audit could be liable for breach of contract, even where their action or inaction resulted in a breach of the Claimants contracts of employment. This is

unlike a situation where a claim is brought in tort against the Crown in circumstances where a tortious act is committed by an officer of the Crown and the Crown is vicariously liable for the actions of a public officer, the principal tortfeasor. In the present case, the Crown's liability in contract would arise from the alleged breaches of the employment contracts with the Claimants.

[39] I am fortified in my view having regard to the following passage in Halsbury's Laws of England:¹²

“At common law, servants of the Crown are presumed to contract as agents for the Crown, and a claim cannot be brought against them in their representative capacity on a contract or in respect of torts, or, it seems, crimes alleged to have been committed by them. They may, however, be sued and made personally liable for tortious or criminal acts committed by them in their official capacity, without showing malice or want of probable cause, unless that is of the essence of the tort or crime.”

[40] Thus, in so far as the Claimants' claim is one for breach of contract, it is difficult to see how the Chief Establishment Officer and the Director of Audit are proper parties to the proceedings as they are not contracting parties, but officers of the Crown. I therefore see no basis upon which civil liability for breach of contract could be imposed on the Chief Establishment Officer and the Director of Audit.

[41] Had matters ended here, I would have been minded to order that the Chief Establishment Officer and the Director of Audit be removed as Parties to the proceedings.

Breach of Statutory Duty

[42] The Claimants, however, have also alleged breach of statutory duty by the Chief Establishment Officer and the Director of Audit. In addition to damages for breach of employment contract, the Claimants also seek damages for breach of statutory duty for the Defendants' failure and/or refusal to pay incremental credit respectively owed to the Claimants for any recognised qualification above the minimum qualifications specified for a particular post in accordance with the policy directions issued in terms of section 100 (6) of the Constitution pursuant to Section 69 and 70 of the Civil Service Regulations.

¹² Vol 20 (2023) at para. 519.

- [43] The learned authors of Halsbury's Law of England¹³ state the following in relation to breach of statutory duty:-

"Breach of statutory duty is an independent tort recognised at common law. In order to succeed the claimant must establish a breach of a statutory obligation which, on the proper construction of the statute, was intended to confer private rights of action upon a class of persons of whom he is one; he must establish an injury or damage of a kind against which the statute was designed to give protection; and he must establish that the breach of statutory obligation caused, or materially contributed to, that injury or damage, or (exceptionally) to the risk of that injury or damage.

A defence to such a cause of action may be specially provided by statute. Contributory negligence on the part of the claimant may be established by the defendant as a partial defence. The maxim *volenti non fit injuria*, however, is not generally applicable by way of defence to a claim founded on breach by an employer of his statutory duty."

- [44] In **X (Minors) v Bedfordshire County Council**¹⁴ Lord Browne-Wilkinson explained the cause of action for breach of statutory duty:-

"The principles applicable in determining whether such statutory cause of action exists are now well established, although the application of those principles in any particular case remains difficult. The basic proposition is that in the ordinary case a breach of statutory duty does not, by itself, give rise to any private law cause of action. However a private law cause of action will arise if it can be shown, as a matter of construction of the statute, that the statutory duty was imposed for the protection of a limited class of the public and that Parliament intended to confer on members of that class a private right of action for breach of the duty. There is no general rule by reference to which it can be decided whether a statute does create such a right of action but there are a number of indicators. If the statute provides no other remedy for its breach and the Parliamentary intention to protect a limited class is shown, that indicates that there may be a private right of action since otherwise there is no method of securing the protection the statute was intended to confer. If the statute does provide some other means of enforcing the duty that will normally indicate that the statutory right was intended to be enforceable by those means and not by private right of action: *Cutler v. Wandsworth Stadium Ltd.* [1949] A.C. 398; *Lionel v. Shell Petroleum Co. Ltd.* (No. 2) [1982] A.C. 173.

¹³ Vol. 97A (2021) at para. 99.

¹⁴ [1995] 2 AC 633 at 731.

However, the mere existence of some other statutory remedy is not necessarily decisive. It is still possible to show that on the true construction of the statute the protected class was intended by Parliament to have a private remedy. Thus the specific duties imposed on employers in relation to factory premises are enforceable by an action for damages, notwithstanding the imposition by the statutes of criminal penalties for any breach: see *Groves v. Wimborne* (Lord) [1898] 2 Q.B. 402.”

[45] It is clear from the above authorities that a breach of statutory duty occurs where a person or entity fails to comply with a legal obligation imposed by statute resulting in harm or damage to another. That statutory obligation must be intended to confer private rights of action upon a specific class of person that the breach causes harm and the harm is of a type that the statute was designed to prevent.

[46] Breach of statutory duty in this sense is a tort. **Section 4 of the CPA** provides that:-

“(1) Subject to the provisions of this Act the Crown shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject-

“(a) in respect of torts committed by its servants or agents;

(b) in respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employer; and

(c) in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property:

Provided that no proceedings shall lie against the Crown by virtue of paragraph (a) in respect of any act or omission of a servant or agent of the Crown unless the act or omission would apart from the provisions of this Act have given rise to a cause of action in tort against that servant or agent or his estate.

(2) Where the Crown is bound by a statutory duty which is binding also upon persons other than the Crown and its officers, then, subject to the provisions of this Act, the Crown shall, in respect of a failure to comply with that duty, be subject to all those liabilities in tort (if any) to which it would be so subject if it were a private person of full age and capacity.

(3) Where any functions are conferred or imposed upon an officer of the Crown as such either by any rule of the common law or by any law, and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the Crown in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Crown.

(4) Any enactment which negatives or limits the amount of the liability of the Crown or an officer of the Crown in respect of any tort committed by such officer shall, in case of proceedings against the Crown under this section in respect of a tort committed by such officer, apply in relation to the Crown as it would have applied in relation to such officer if the proceedings against the Crown had been proceedings against the said officer.

(5) No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.

(6) No proceedings shall lie against the Crown by virtue of this section in respect of any act, neglect or default of any officer of the Crown, unless that officer has been directly or indirectly appointed by the Crown and was at the material time paid in respect of his duties as an officer of the Crown wholly out of the general revenue or other government funds of Antigua and Barbuda, or was at the material time holding an office in respect of which the Governor-General certifies that the holder thereof would normally be so paid.”

[47] In **The Attorney General v James St. Prix**, the Court of Appeal discussed **section 4 of the CPA** of Saint Lucia, noting that in 1947, the United Kingdom embarked on major reforms to Crown liability which resulted in **Crown Proceedings Act 1947**. This **Act** was replicated in Saint Lucia in 1956 and subjected the Crown to liability in tort, abolishing the requirement of a royal fiat and eventually eliminated the need to file a petition of right. Similarly, the **Act** was replicated in Antigua and Barbuda.

[48] Ellis JA who authored the judgment of the Court of Appeal explained **section 4 of the CPA** of Saint Lucia as follows:-

- [62] The proviso to section 4(1) of the CPA shows that under that act no right of action exists against the Crown in tort unless the act or omission would, apart from the provisions of the Act, give rise to a cause of action in tort against that servant or agent or his estate in respect of whom it is alleged that vicarious liability arises against the Crown.
- [63] Procedurally, section 13 of the CPA makes clear that in a suit by or against the Crown, the authority to be named as claimant or defendant is the Attorney General. These provisions remain in force today and there are two important factors which must be noted. The first is that section 13 does not prohibit or prevent suit being instituted personally against a public officer who is an alleged principal tortfeasor. Rather, it simply codifies the position that the Crown may be vicariously liable for his actions. This position has been made clear by the Caribbean Court of Justice (CCJ) in the judgment in *Basil Williams v Attorney General of Guyana et al*¹⁹ *[[2023] CCJ 3 (AJ) GY]*.
- [49] In *Vanita Henry v The Superintendent of Public Works (now styled the Director of Public Works, also as the Surveyor of Roads et al)*, the Court of Appeal held that the liability of the Crown to actions in tort for breach of a statutory duty under section 4(2) of the **St. Kitts and Nevis Crown Proceedings Act**¹⁵ (which is equivalent to **section 4(2) of the Antigua and Barbuda CPA**) is only engaged where the Crown is bound by a statutory duty which is also binding on persons other than the Crown and its officers.
- [50] Thus, considering the above, in so far as it could be said that the Claimants are seeking to bring proceedings in tort against the Crown for breach of statutory duty by its officers, the Chief Establishment Officer and the Director of Audit, it is arguable that the **CPA** would not prevent the institution of proceedings against the public officers as alleged principal tortfeasors.
- [51] Thus, in my view, the next question which arises is whether by these proceedings, the Claimants have in fact sought to bring a claim in tort for alleged breach of statutory duty by the Chief Establishment Officer and the Director of Audit, for which the Crown could be liable pursuant to **section 4 of the CPA**.
- [52] Based on the submissions of learned Counsel for the Claimants, it would appear that the Claimants are not alleging any tortious action by the Defendants. As I previously noted, learned Counsel for the Claimants submitted that the present claim does not arise ex delicto, nor does it rest

¹⁵ Cap. 506, Laws of Saint Christopher and Nevis.

upon any tortious foundation, but is rather anchored in a distinct and independent juridical cause of action.

- [53] In such circumstances, given that breach of statutory duty is an independent tort, it is unclear as to the basis of the Claimants' allegation of breach of statutory duty if Counsel for the Claimants' contention is that the Claimants' claim does not rest upon any tortious foundation.
- [54] If the Claimants do seek to maintain a claim in tort for breach of statutory duty, perhaps the better question to pose is whether the Claimants can maintain a claim for breach of statutory duty in the circumstances of this case. Put another way, whether a cause of action for breach of section 70 and 71 of the Civil Service Regulations and section 9 of the **Office of the Director of Audit Act** exists, and whether such a cause of action against the Chief Establishment Officer and the Director of Audit has been made out. These, however, are matters that are not before me to determine as it did not form part of the Attorney General's application and procedural fairness requires that the Parties be heard on the issue.
- [55] I also have lingering questions as to the precise nature of the Claimants' claim for 'breach of statutory duty'. In my view, some of the facts pleaded in the Claimants' statement of claim and the pith of the submissions made by learned Counsel for the Claimants on this application, appear to also support an application for an administrative order. This is also a matter on which the Parties should be heard.
- [56] In light of the foregoing, to my mind, it is necessary for the Parties to be heard on the issues identified above before the Court can consider whether the Chief Establishment Officer and the Director of Audit are proper Parties to these proceedings. If after the above issues are ventilated, and it is found that the only cause of action which properly arises on the Claimants' claim is breach of contract, then given my earlier discussion on the Claimants' claim for breach of contract, it would seem that the Chief Establishment Officer and the Director of Audit ought not to remain as Parties to these proceedings. In my view, any concerns the Claimants have about the Chief Establishment Officer and the Director of Audit giving evidence in these proceedings could adequately be dealt with under CPR 2023 without them being made Defendants to the claim.
- [57] The Court, however, is constrained in making any order to remove the Chief Establishment Officer and the Director of Audit as Parties to these proceedings until the Parties have had an opportunity to be heard on the issue of the nature of the Claimants' claim for breach of statutory duty.

Disposition

[58] In light of the foregoing, at this stage, I would refuse to order that the 1st and 2nd Defendants be removed as Parties to these proceedings and I would direct that the matter be listed for further case management so that the issues identified in this decision can be ventilated.

[59] As it relates to the issue of costs, I consider that circumstances warrant that there be no order as to costs.

[60] In light of the foregoing, I make the following orders:-

1. The Attorney General's application to remove the Chief Establishment Officer and the Director of Audit as parties to these proceedings is refused.
2. There is no order as to costs.
3. The matter shall be listed for further case management on 19th March, 2026.
4. The Attorney General shall have carriage of this Order.

[61] I wish to thank learned Counsel on both sides for their assistance to the Court.

Carlos Cameron Michel
High Court Master

By the Court

Registrar