

IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO: DOMHCV2021/1049

IN THE MATTER OF THE CONSTITUTION OF DOMINICA SECTION 72(2)(C)
AND
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW (PART 56 OF CPR 2023)

BETWEEN:

JEFF FRANK	-	Claimant
V		
THE DIRECTOR OF PUBLIC PROSECUTIONS	-	Defendant

BEFORE: HONOURABLE MR JUSTICE COLIN WILLIAMS

APPEARANCES:

Mrs Dawn Yearwood-Stewart for the Claimant
Mr Jason Lawrence for the Defendant

2025: March 19th,
July 24th

JUDGMENT

1. **WILLIAMS J:** Mr Jeff Frank, ('the Claimant'), is seeking judicial review of a decision by the Director of Public Prosecutions, ('the Defendant'), in December 2020 to enter a *nolle prosequi*¹ in a matter in which Mr Frank was the virtual complainant.
2. In March 2025 when this matter was heard the holder of the Office of Director of Public Prosecutions, (DPP) was Ms Sherma Dalrymple. She was not the DPP in December 2020 when the *nolle prosequi* which gave rise to this judicial review proceeding was entered. The Claimant was the virtual complainant in the matter which the Defendant discontinued.

¹ See Trial Bundle No 3, at page 185

The documents

3. The Claimant filed a Fixed Date Claim Form² supported by an affidavit³ seeking judicial review of the DPP's decision. Both the Claim Form and the affidavit were filed on the 11th of November 2021.
4. The Claimant exhibited four documents to his affidavit. The exhibits were:
 - 1) The committal of Darrel Maximea by the District G Magistrate and dated the 11th of October 2018;⁴
 - 2) The indictment of Darrel Maximea signed by the DPP and dated the 10th of April 2019;⁵
 - 3) The recognizance of Darrel Maximea which was signed by Mr Maximea before the Registrar of the High Court on the 30th of April 2019;⁶
 - 4) The notice of discontinuance in relation to Darrel Maximea signed by the DPP and dated the 3rd of December 2020.⁷
5. The DPP, Ms Dalrymple, swore to an affidavit on behalf of the Defendant⁸ in opposition to the Claimant's application for a grant of judicial review.
6. The Claimant then filed an affidavit in reply to the Defendant's affidavit.⁹
7. According to the Fixed Date Claim Form, the Claimant sought:
 - a) "A declaration that the decision of the Defendant to *nolle prosequi*¹⁰ the Indictment of **The State v Darrel Maximea**,¹¹ dated and filed on the 3rd December, 2020 is **Wednesbury**¹² unreasonable having regard to the evidence.
 - b) "An order of *certiorari* to quash the decision to *nolle prosequi* the indictment of **The State v Darrel Maximea**.

² Form 2, pursuant to rule 8.1(4) of the Civil Procedure Rules, Trial Bundle No 1, at pages 1 to 4

³ Trial Bundle No 1, at pages 5 to 9

⁴ Trial Bundle No 3, pages 182 and 183

⁵ Trial Bundle No 3, pages 179-181

⁶ Trial Bundle No 3, page 184

⁷ Trial Bundle No 3, page 185

⁸ Trial Bundle No 1, pages 12 to 14. Taken before Commissioner for Oaths, Mr Conley Frederick, on the 6th day of May 2022 and filed on the 9th of May 2022

⁹ Trial Bundle No 1, pages 15 to 17

¹⁰ Notice of Discontinuance signed and filed 3rd December 2020

¹¹ DOMHCR: 2018/0023

¹² Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223

- c) "An order of mandamus compelling the Defendant the said Darrel Maximea (sic) for the offence of grievous bodily harm against the Claimant, or in the alternative:
- d) "The Defendant pay damages to the Claimant for his special damages, general damages and costs associated with the injuries at the hands of Darrel Maximea.
- e) "Such further of (sic) other relief as may be just.
- f) "Costs."¹³

8. Two witnesses testified at the March 2025 hearing of this matter. They were:

- The Claimant who testified on his own behalf. He was cross examined by the Respondent's counsel, Mr Jason Lawrence; and
- The DPP who testified for the Defendant. She was cross examined by the Claimant's counsel, Mrs Dawn Yearwood-Stewart.

Underlying matter

- 9. The Claimant exhibited the deposition¹⁴ from Mr Maximea's Preliminary Inquiry.
- 10. The deposition revealed that there was an incident, on the 19th of November 2017, at Zicack, Portsmouth, in the Commonwealth of Dominica, during which the Claimant sustained an injury to his right hand.
- 11. On the 29th of November 2017, ten days after the incident during which the Claimant was injured, Mr Darrel Maximea was taken before the District G Magistrate and charged for the offence of "unlawfully and maliciously wound[ing] Jeff Frank with intent to do the said Jeff Frank Grievous Bodily Harm contrary to the provisions of section 20 of [the **Offenses Against the Person Act**] Chapter 10:31"¹⁵ of the Laws of Dominica, Revised Edition 1990.
- 12. Almost a year passed before the preliminary inquiry was held at the Magistrates Court in Saint John, and which was presided over by the District G Magistrate, Ms Gail Royer, between the 14th of August 2018 and the 9th of October 2018.

¹³ Fixed Date Claim Form, page 2 of Trial Bundle No 1 and paragraph 19 of the Claimant's Affidavit at page 8 of the Trial Bundle No 1

¹⁴ Trial Bundle No 3, pages 205 to 230

¹⁵ Trial Bundle No 3, at page 186

13. On the 11th of October 2018, the District G Magistrate committed Mr Maximea to stand trial at the High Court¹⁶ for the unlawful and malicious wounding of the Claimant with intent to cause him Grievous Bodily Harm.
14. Following Mr Maximea's committal, the Learned DPP filed a two-count indictment¹⁷ against Mr Maximea on the 10th day of April 2019 – seventeen months after the incident. Mr Maximea was indicted for:
- 1) Count one: Causing grievous bodily harm with intent, contrary to section 20 of the **Offences Against the Person Act**; and
 - 2) Count two: Unlawful wounding contrary to section 22 of the **Offences Against the Person Act**.
15. The counts on the indictment were in the alternative, in that Mr Maximea could only have been convicted for one of the offences, not both.
16. In order to prove an offence at count one of causing grievous bodily harm, the State was required to prove an "intent to maim, disfigure or disable any person, or to do some other grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person."¹⁸ There is an evidential burden on the prosecution to prove the intent of the accused person.
17. An offence at count two is established where: "Any person... unlawfully and maliciously wounds or inflicts grievous bodily harm upon another person, either with or without any weapon or instrument."¹⁹
18. On count one, the maximum penalty imposable was ten years imprisonment; and on count two, the maximum penalty imposable was two years imprisonment.
19. The five witnesses who gave evidence at the preliminary inquiry were listed on the back of the indictment²⁰ to testify at the trial. They were:
- the virtual complainant (who is the Claimant in this matter);
 - two civilians who said they were in the vicinity where the incident occurred, one of whom said he saw what happened;
 - the surgeon who attended to the Claimant at the hospital; and
 - the Investigating Officer.

¹⁶ Trial Bundle No 3, at page 182

¹⁷ High Court Criminal Case No 23 of 2018, Trial Bundle No 3, pages 179 and 180

¹⁸ Section 20 of the Offences Against the Person Act

¹⁹ Section 22 of the Offences Against the Person Act

²⁰ Trial Bundle No 3, at page 181

20. Mr Maximea was arraigned on the 30th of April 2019 and entered a plea of not guilty to both counts on the indictment. The matter was adjourned for Case Management. The case came up at the High Court on about four occasions between May and December 2019.²¹ Then the *nolle prosequi* was filed in December 2020.
21. The Claimant said that he was not notified when the matter was discontinued. He said that it was not until April 2021 that the investigating officer in the matter told him that a *nolle prosequi* was entered in the matter since December 2020.
22. The Claimant stated that he was informed by the investigating officer, that the reason for the *nolle prosequi* was because he, the investigating officer, was interdicted from duty and would not be able to testify in Court.²²
23. In the Claimant's view: "A successful prosecution of the case could be had whether the Investigating Officer testified or not."²³ In other words, the Claimant's position was: if the evidence of the Investigating Officer was excised from the State's case against Mr Maximea, a successful prosecution could still be obtained.

The deposition

24. It is helpful to summarise the highlights of the evidence that was adduced at the preliminary inquiry against Mr Maximea – the defendant in the wounding matter.
25. The Claimant's testimony before the Learned Magistrate²⁴ was that "in the early hours of the evening" of Sunday the 19th of November 2017 he was at Femma's Bar in Portsmouth playing dominoes and drinking beers. He said that Darrel 'Dappa' Maximea came to the bar "in the early hours of that said night... with a very aggressive manner and was slamming his hand"²⁵ on the counter in the bar. The Claimant's domino partner was one Leon 'Ziggy' Irish. The Claimant said he got up from the table to give someone else a chance to play with 'Ziggy' Irish and went outside to have a beer. While outside, he heard and saw an argument between 'Dappa' Maximea and 'Ziggy' Irish. It was a heated argument and the two men who were arguing ended up outside. The Claimant said he separated the men and he asked 'Ziggy' Irish to go home. Afterwards, 'Dappa' Maximea approached the Claimant in an aggressive manner and made statements. The Claimant pushed 'Dappa' Maximea and 'Dappa' Maximea in turn pushed the Claimant. The Claimant ran into the bar for an empty case of beer bottles. An individual took away the case of bottles and told the Claimant to behave and go home. The Claimant left for his home. While the Claimant was on his way home, the same individual who took away the case of beer bottles, telephoned the Claimant. The

²¹ The Claimant at paragraph 7 of his affidavit, page 6 of Trial Bundle No 1, said that the matter came up on the 7th of May 2019, 25th of June 2019, 23rd of September 2019 and the 13th of December 2019

²² Paragraph 9 of the Claimant's Affidavit, page 6 of Trial Bundle No 1

²³ Paragraph 12 of the Claimant's Affidavit, page 7 of Trial Bundle No 1

²⁴ See Trial Bundle No 3, pages 213 - 217

²⁵ Trial Bundle No 3, at page 213

Claimant looked back and he saw 'Dapper' Maximea about 150 feet away with a cutlass. The Claimant continued walking home and he spoke with persons along the way and one of the persons went with the Claimant to the Claimant's house. When the Claimant got home, he could not find the keys to get into his house. He remembered he left the keys in his vehicle, a blue passenger bus. The Claimant and the friend who accompanied him home went to the bus. When the Claimant was opening the bus, 'Ziggy' Irish then came by on a motorcycle and spoke to the Claimant. The Claimant and the friend who was with him then got in the Claimant's bus and went to 'Ziggy' Irish father's house, at Middle Street, Portsmouth, where they grilled fish and drank beers. While the Claimant was at 'Ziggy' Irish father's house, Mr Marcus Charles who lived opposite Mr Irish, called the Claimant. The Claimant said that he still had fish eating and he went to the road and spoke with Mr Charles. The Claimant said after speaking with Mr Charles and while heading back to Mr Irish's yard, "I felt a blow on my right hand. I looked back, grabbed my right hand with my left and started running into Mervin Irish yard. When I looked back, I saw Darrel Maximea. I could recognise Darrel Maximea because there was light coming from Marcus' porch."²⁶ He ran back into the yard and told 'Ziggy' Irish: "Look what Darrel Maximea did to me."²⁷ The Claimant lost consciousness and when he gained consciousness he was at the hospital. He underwent surgery and was discharged from the hospital on the 24th of November 2017. Prior to the incident he had no issue with 'Dappa' Maximea as they were friends and they both were drinking at Charlo's bar the day before the incident.

26. The witness Mr Marcus Charles²⁸ said that he was on his porch in Portsmouth sitting "sometime after 8:00 p.m." on Sunday the 19th of November 2019 when the Claimant parallel parked his bus next to a pickup nearby to Mr Charles' home, blocking the road. The Claimant and another person exited the vehicle and went to Mervin Irish's home, which was opposite where Mr Charles lived. On a couple of occasions, drivers of vehicles who could not pass, including Mr Charles' wife, came and honked their horns; those drivers reversed when they could not pass. Mr Charles shouted to the Claimant. The Claimant came from the neighbour's yard "out to the street and we had a conversation. This conversation lasted for no more than fifteen seconds."²⁹ Mr Charles said that when the Claimant turned to go back to the neighbour's yard "I saw a person came from a dark area on Middle Street, ran up to Mr Frank and struck him twice with an object and then the person turned and ran away on Middle Street in the direction of Roosevelt Douglas Primary School. Mr Jeff Frank ran into the yard of Mervin Irish... I recognised the individual who struck Jeff Frank to be Darrel Maximea; because of the lights in the area I was able to recognise the object to be a cutlass."³⁰ Mr Charles said that he saw the Claimant's friends attending to him and that the Claimant was placed at the back of a pickup truck which was driven away. Mr Charles said that he "went

²⁶ Trial Bundle No 3, at page 216

²⁷ As above

²⁸ See Trial Bundle No 3, at page 205

²⁹ Trial Bundle No 3, at page 206

³⁰ Trial Bundle No 3, at page 207

unto the public road to explain to the rest of Jeff friends that had remained what happened, what I had seen. All Jeff friends were angry with me.”³¹

27. Another witness was Ms Candia Etienne.³² She was ‘Ziggy’ Irish’s common law partner. She said that at about 9:00 p.m. on Sunday the 19th of November 2017 she was at the Irish’s residence. The Claimant, ‘Ziggy’ Irish and other friends came to the house and were having drinks. Ms Etienne said that she served the Claimant and others grilled fish and salad. She saw the Claimant leave the porch and went near the road. Then the Claimant returned and handed an empty plate to her and she went to the kitchen and the Claimant went to the porch where his friends were. She heard the neighbor, Mr Charles speaking to the Claimant. The Claimant left the yard and “went in the direction of where the vehicle was parked. A few minutes later, I saw Jeff Frank running into the yard. I could also see that he was holding his right hand.... Jeff went in the direction of the pipe which is directly outside the porch of Mervin Irish residence.”³³
28. There was also testimony from the Consultant Orthopedic Surgeon, Dr Julian De Armas, who was based at the then Princess Margaret Hospital. The doctor said that he treated the Claimant on the 20th of November 2017. The Claimant had “a laceration to his right wrist with a fracture to the right distal radial... all extensor tendons were cut. I performed surgery... fixture of the fracture with two ‘wires’.... Repairs of the extensor tendons and sutured back the skin. The laceration was eight centimeters long... [The Claimant’s] right hand was kept in a cast.... Despite the severity of the injuries... [The Claimant] regained seventy five percent use of his right hand... he will never regain the remaining twenty five percent use of his hand. The injuries I saw could have been caused by a sharp instrument, for example a saw, axe, machete, cutlass, Japanese sword.”
29. According to the Claimant, even if the Investigating Officer’s testimony was not adduced at trial, there was still sufficient evidence to go before a jury. He said that all the other witnesses who testified at the Preliminary Inquiry were available for the High Court trial. There was a civilian, whom the Claimant said was an eyewitness as well as another witness who could provide circumstantial evidence in support of the case against Mr Maximea.
30. The Claimant’s submission in seeking judicial review was that given the state of the evidence disclosed in the deposition from those four witnesses, the decision by the Learned Director of Public Prosecutions to file a Notice of Discontinuance was **Wednesbury** unreasonable.

Notice of discontinuance

31. The ‘Notice of Discontinuance’ which the Claimant complained about was exhibited to his affidavit. The document bore the signature of the DPP at the time, Ms Evelina E.M. Baptiste. It was stamped as being received at the High Court on the 3rd of December 2020 at 2:24

³¹ Trial Bundle No 3, at page 208

³² See Trial Bundle No 3, at page 210

³³ Trial Bundle No 3, pages 210 - 211

pm.³⁴ The Notice was addressed to the Registrar of the High Court, Roseau, and the Honourable Madam Justice Victoria Charles-Clarke. It stated:

“WHEREAS, DARREL MAXIMEA was charged, for that he, on the 19th day of November 2017 at Zicack, Portsmouth, in the Parish of St John, in the Commonwealth of Dominica, did unlawfully and maliciously cause Grievous Bodily Harm to Jeff Frank.

“NOW TAKE NOTICE that in accordance with the provisions of section 72(2)(c) of the Constitution of the Commonwealth of Dominica, I do hereby discontinue the above mentioned proceedings against the said, DARREL MAXIMEA.

“Dated the 3rd day of December 2020.”³⁵

32. It is noted that Darrel Maximea was originally committed to stand trial for “unlawfully and maliciously wound[ing] Jeff Frank with intent to do the said Jeff Frank Grievous Bodily Harm.”³⁶ When he was indicted, the Learned DPP indicted Darrel Maximea not just for the offence of causing Grievous Bodily Harm with intent, contrary to section 20 of the **Offences Against the Person Act**,³⁷ but also for the lesser charge of unlawful wounding, at section 22 of the **Offences Against the Person Act**.³⁸ The Notice of Discontinuance used the phrase “unlawfully and maliciously cause Grievous Bodily Harm to Jeff Frank” which appears in the particulars in count one of the indictment. It does not however recite the words “with intent to cause Grievous Bodily Harm” which is the critical distinction between an offence contrary to section 20 of the Act and one contrary to section 22. The principal legislation, the **Offences Against the Person Act**, uses the terms “unlawfully and maliciously wound” and “Grievous Bodily Harm” for both the section 20 and section 22 offences; but with section 20 stating “or causes” while section 22 stating “or inflicts” before going on to say “any grievous bodily harm.” If the term “cause Grievous Bodily Harm” was used to denote count one on the indictment, should the Notice of Discontinuance also have stated “and unlawfully and maliciously wound Jeff Frank,” which wording was used in the particulars of the indictment in the alternative charge at count two (for unlawful wounding)? However, no issue was taken by any of the parties that the Notice of Discontinuance may have referred to only one count on the indictment and not both counts.

Constitutional authority

33. When the Director of Public Prosecutions filed the Notice of Discontinuance on the 3rd of December 2020, it was recited on the face of the document that the action was being done “pursuant to section 72(2)(c) of the Constitution of the Commonwealth of Dominica.”³⁹

³⁴ Trial Bundle No 3, at page 185

³⁵ As above

³⁶ Trial Bundle No 3, at page 182

³⁷ Trial Bundle No 3, at page 179

³⁸ Trial Bundle No 3, page 180

³⁹ See the final paragraph of the Notice of Discontinuance

34. The headnote to section 72 of **The Constitution of Dominica** states that the section deals with: "Control of public prosecutions."

35. Section 72(2)(c) provides that:

"The Director of Public Prosecutions shall have power in any case which he considers it desirable so to do—to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority."

36. There are other provisions in section 72 of **The Constitution** which refer to the power and authority of the DPP in discontinuing matters pursuant to section 72(2)(c). In particular, it is stated that:

"In the exercise of the powers vested in him by subsection (2) of this section, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority:

"Provided that the powers vested in him by paragraph (c) of that subsection (2) shall be exercised by him in accordance with such general or special directions (if any) as the Attorney General may give him."⁴⁰

37. The **Constitution of Dominica** therefore provides that a DPP in discontinuing a matter, although mandated to act in his or her deliberate judgment, generally free from any external influence, shall consider any "general or special directions" which the Attorney General may have given.

Claimant's case

38. The Claimant's case is that he was injured by Mr Maximea on the 19th of November 2017. He testified on the 16th of August 2018 at the preliminary inquiry. He knows that the matter was committed to the High Court on the 11th of October 2018. He is aware that Mr Maximea was arraigned at the High Court on the 30th of April 2019 in relation to the offence, that Mr Maximea pleaded not guilty, received bail and the matter was fixed for (an unspecified date in) May 2019. The Claimant said that he was aware that the case was being case managed ahead of trial and that Mr Maximea attended court on four occasions subsequent to the arraignment for case management. He was not formally notified by the DPP that the matter was discontinued, and in his view, any such discontinuance was unreasonable. Also, he expected to be compensated for his injury upon conclusion of the trial once Mr Maximea was convicted.

⁴⁰ Section 72(6)

39. According to the Claimant he had “always been making enquiries on the matter as I intended to claim compensation from the criminal court for the injuries... I was convinced he would have been found guilty.”⁴¹

40. The Claimant said that he was advised by his Solicitor (on a date which he did not state), that he “had three years after the incident to file a civil claim against the said Darrel Maximea for compensation”⁴² for his injuries.

41. He went on to state:

“Further, that since the said Defendant took the decision to *nolle prosequi* the matter, she should have advised me in a timely manner to file a civil suit against the said Darrel Maximea for the injuries I sustained from him before so doing.”⁴³

42. The Claimant deponed that he had been “directly affected by the decision of the Defendant as I do not have any means of redress from the wrong suffered at the hands of the said Darrel Maximea.”⁴⁴

43. The issue of an opportunity to receive compensation appears to be a major factor with the Claimant in seeking judicial review of the DPP’s decision.

44. The Claimant said that he first learned on the *nolle prosequi* in April 2021, when he met the Investigating Officer in the matter, Mr Mervin Adams. The Claimant said that he was:

“advised by him [Mr Adams] and verily believe to be true that the matter was *nolle prosequi* by the Defendant since December 2020 on the basis that he the said Investigating Officer, by reason of his interdiction from duty would not be able to testify in court. I was distressed.”⁴⁵

45. The Claimant said that based on the advice he received, the DPP’s decision to *nolle prosequi* the matter for the reason that he was told by the interdicted officer was **Wednesbury**⁴⁶ unreasonable. Also, he was of the view that “a successful prosecution of the case could be had whether the Investigating Officer testified or not.”⁴⁷

⁴¹ Paragraph 8 of his affidavit, Trial Bundle No 1, page 6

⁴² Paragraph 10, Trial Bundle No 1, at page 7

⁴³ Paragraph 11, Trial Bundle No 1, at page 7

⁴⁴ Paragraph 18, Trial Bundle No 1, at page 8

⁴⁵ Paragraph 9, Trial Bundle No 1, at page 6

⁴⁶ Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223, [1947] 2 All ER 680, CA

⁴⁷ Paragraph 12, Trial Bundle No 1, at page 7

46. In the Claimant's affidavit in reply⁴⁸ to the Defendant's defence, the Claimant reiterated that the DPP's decision was **Wednesbury** unreasonable.⁴⁹

47. The Claimant made it clear that he was not alleging that the DPP:

- a) Acted in excess of her power; or
- b) Acted in bad faith; or
- c) Was influenced by any person or acted under the control, direction or instruction of any person; or
- d) Fettered her discretion by any policy.⁵⁰

48. The Claimant stated that based on legal advice, there was –

“legal authority which states *inter-alia* that the Director of Public Prosecutions in entering a *nolle prosequi* is not a law unto herself. That she cannot do whatever she wishes without regard to the rights of the citizen or the laws of the country and that in any such review the Court is obliged to consider her reasons.”⁵¹

Cross examination of the Claimant

49. The Claimant said that he had been a businessman for several years before the incident with Mr Maximea.

50. The Claimant said that it was always his intention to make a claim for compensation. However, he did not consult any lawyer until after he learned that the matter was discontinued.

51. The Claimant stated that he was “always making inquiries about the case.” He indicated that prior to the matter being discontinued, he was informed via a telephone call from the Office of the DPP that he would be summoned to go to court. However he was never summoned.

52. According to the Claimant, it was when he met the Investigating Officer on the street in April 2021 that he was informed that the matter was discontinued months before, in December 2020.

⁴⁸ Trial bundle No 1, at page 15 filed on the 12th of May 2022

⁴⁹ See paragraph 3 and 4 of Trial Bundle No 1, at page 16

⁵⁰ See paragraph 6 of the Claimant's reply, Trial Bundle No 1, at page 16 where the Claimant states: “With regard to paragraph 5 (b) – (e) of the Respondent's Affidavit I am advised by my said Legal practitioner and I verily believe to be true that no reliance is being placed on the matters herein in the prosecution of the case at bar.”

⁵¹ Trial Bundle No 1, paragraph 7 at page 16

53. In April 2024, the Claimant pursuant to Part 33.3 of the **Civil Procedure Rules (Revised Edition) 2023** obtained a Witness Summons for Ms Evelina Baptiste,⁵² who was the DPP who signed the Notice of Discontinuance. The Defendant subsequently applied for an Order to cross examine Ms Baptiste.⁵³ Ms Baptiste sadly died some months prior to trial.

Defendant's case

54. The present DPP in her affidavit in opposition to the judicial review application noted:

- i. She was not the DPP at the time the decision to discontinue the matter was made;
- ii. Having read the Fixed Date Claim Form and the affidavit in support of the application, she opposes the application because the Claimant does not have an arguable ground for judicial review;
- iii. The DPP is vested with the constitutional power to discontinue any criminal proceeding at any stage before judgment;
- iv. No public interest element arose in favour of the Claimant;
- v. Personal injuries matters, (regarding compensation), are best dealt with in civil litigation;
- vi. The Claimant was at fault in not seeking legal advice;
- vii. The DPP's decision cannot be faulted with regard to procedural irregularity, or being *ultra vires* in any way, or irrational, or unconstitutional.

Cross examination of DPP

55. The Learned DPP indicated that while she was at the Office of the DPP since May 2011, she has been the DPP since the 27th of February 2020. She said that she did not work on the Darrel Maximea matter, which was handled by her predecessor and another State Attorney. She found no documentation in relation to the matter.

⁵² Trial Bundle No 2, at page 33

⁵³ Trial Bundle No 1, page 26

56. The DPP agreed that the actions of a DPP were subject to judicial review. She went on to say that the Office of the DPP in the judicial review proceedings did not advance any reason for the discontinuance. The DPP later indicated that prior to the 27th of February 2020 there were no legal opinions or directives on file regarding matters that were discontinued.
57. According to the DPP, in discontinuing the matter, there was an evidential burden and one of the considerations would be the sufficiency of the evidence.
58. The DPP accepted that in her affidavit, she did not specifically respond to the Claimant's allegation that the decision was **Wednesbury** unreasonable, neither did she state anything in her affidavit addressing the Claimant's allegation about the sufficiency of the evidence.
59. The DPP said that she did not know what her predecessors reasons were for filing the Notice of Discontinuance. Neither did she carry out a separate evaluation of the case against Mr Maximea.
60. Ms Dalrymple said that there were "certain factors laid out in my affidavit to support the actions of the previous DPP as not being unreasonable. Also, the sufficiency of the evidence is not the only factor in determining whether the DPP's actions were unreasonable."

Witness charter?

61. The Office of the Director of Public Prosecutions in the Commonwealth of Dominica does not have a witness charter. Some of Dominica's counterparts in the Eastern Caribbean Supreme Court jurisdiction have a 'Prosecution Witness Charter'⁵⁴ which informs witnesses and victims how they can expect to be treated when they are asked to give evidence for the prosecution in a criminal court.
62. Although a witness charter is not set out in law and therefore is not legally enforceable, it nevertheless outlines standards of conduct and informs all witnesses as to what help and/or support a witness may receive at every stage of the trial process from the police investigators and the prosecutors.
63. Among the matters that are addressed in a witness charter with regard to the stage following committal of the accused up to the trial, are: taking account of the availability of the witness (so that appropriate trial dates can be asked for), notifying witnesses of the particular trial date to minimize their attendance at court (including providing information regarding any reason for an adjournment); being informed of any result (for example where the accused has entered a guilty plea and the sentence imposed).⁵⁵

⁵⁴ See for example the Office of the Director of Public Prosecutions/National Prosecution Service of Saint Vincent and the Grenadines Prosecution Witness Charter of 2013

⁵⁵ See the Prosecution Witness Charter above

64. Witness and victim care management would ensure that those involved in the trial process would be informed of the progress of their case, but also there would be timely notification of matters such as when a notice of discontinuance is entered. There was no such stated commitment by the Office of the Director of Public Prosecutions to the Claimant in a witness charter.
65. However, even in the absence of any witness charter, the Office of the Director of Public Prosecutions in Dominica has stated the general principles that victims and witnesses of crime in the criminal justice system are to be: "Treated with courtesy and compassion; and with respect for their dignity and privacy."⁵⁶

"The key means of observing these principles is through the provision of information to ensure that victims and witnesses understand the process and know what is happening at each stage. So far as possible, the victim and witness should have explained to them the court processes and procedures, and victims should be kept informed of what is happening during the course of the proceedings."⁵⁷

Code for Prosecutors

66. The Office of the Director of Public Prosecutions in the Commonwealth of Dominica has a Code for Prosecutors.⁵⁸ Among the matters addressed in the Code for Prosecutors is the 'Full Code Test.'⁵⁹ The Full Code Test is what prosecutors ought to apply in determining whether or not to prosecute a matter. It is a two-stage test, comprising:

- 1) The Evidential Stage; followed by
- 2) The Public Interest Stage.

67. According to the Code:

"Prosecutors must only start or continue a prosecution when the case has passed both stages of the Full Code Test [the Evidential Stage then the Public Interest Stage]. When considering the institution or continuation of criminal proceedings the first question to be determined is the sufficiency of evidence. A prosecution should not be started or continued unless the prosecutor is satisfied that there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by an identifiable person. The proper test is whether there is a reasonable prospect of a conviction. This decision requires an evaluation of how

⁵⁶ See Code for Prosecutors at 17.1

⁵⁷ See Code for Prosecutors 17.2

⁵⁸ The Dominica Code for Prosecutors is modeled on the Saint Vincent and the Grenadines Code for Prosecutors, which was developed in collaboration with the British Government's Criminal Justice Adviser to the Eastern Caribbean, Mr Dan Suter. The SVG Code for Prosecutors entered into force on the 1st of October 2010.

⁵⁹ See Part 7 of the Code

strong the case is likely to be when presented at trial. When reaching this decision, the prosecutor will wish as a first step to be satisfied that there is no reasonable expectation of an ordered acquittal or a successful submission of no case to answer.”⁶⁰

“Review is a continuing process and prosecutors must take account of any change in circumstances that occurs as the case develops...”⁶¹

68. Two things are apparent from the Full Code Test:

- 1) The assessment of a case is an on-going process. Even where there is a decision to commence a prosecution, a decision can be later made based on the on-going assessment to discontinue the matter.
- 2) Even though there is evidence to justify a prosecution, there must be an evaluation of the public interest merits to determine if a prosecution is required in the public interest.

69. The Defendant, as a minister of justice and the guardian at the gate of the criminal justice system, was mandated to keep those considerations in mind as she navigated the case management process.

70. In applying the public interest test, the Code points to evaluating the importance of factors which favour a prosecution against those factors which may not favour prosecution.

- Factors which may favour a prosecution include matters such as the seriousness of the offence; whether the offence involved the use of a weapon; or whether it was premeditated.
- Factors tending to show that a prosecution may not be needed include: if the court is likely to impose a nominal penalty; the offence was committed as a result of a genuine mistake or misunderstanding; the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgment; and delay.⁶²

The learning and application

71. How do the authorities assist in determining this matter?

⁶⁰ Paragraph 6.5 of the Code

⁶¹ Paragraph 6.7 of the Code

⁶² These are just random examples drawn from the Code for Prosecutors and are not intended in any way to suggest that they were the ones that were considered and applied by the Respondent in *The State v Darrel Maximea*

72. The case of **Associated Provincial Picture Houses Ltd v Wednesbury Corporation**⁶³ sets out the standard of unreasonableness in the decision of a public body or authority like the DPP, which would make the decision liable to be quashed on judicial review. In a summary form, **Wednesbury** unreasonableness can be described this way: if the decision was so illogical, or irrational, or morally indefensible, that no reasonable person could have arrived at it, it will be considered to be **Wednesbury** unreasonable. The principles limit judicial review of administrative decisions to conditions of illegality, consideration of irrelevant factors or a decision no reasonable person would make.
73. An early Caribbean case which looked at the plenitude of the powers of the DPP and the wide discretion vested by the Constitution in the office was **Gladys Tappin v Francis Lucas**.⁶⁴ In that matter, the Guyana Court of Appeal had before it a matter in which the DPP decided to take over and discontinue a private criminal complaint. The DPP sent a letter to the Magistrate, which was read in open court, which stated that pursuant to the **Constitution of Guyana**, the DPP was taking over and discontinuing the matter. The Court of Appeal in a decision delivered by Chief Justice Bollers said:

“The Director of Public Prosecutions then, while subject to the rule of law like any other public authority or official, under the Constitution enjoys a very wide discretion in instituting, undertaking, carrying on, and discontinuing criminal proceedings. Parliament, in conferring those powers upon him, would expect him to exercise them fairly, reasonably, and in good faith. However, as long as he keeps within the statutory limits of those powers his decisions cannot be the subject of judicial review.

“Learned authors have concluded that discretionary power should not mean arbitrary power, but that limits of discretion may be so wide that almost anything may be ordered; this comes close to arbitrariness, and the Director of Public Prosecutions under the Constitution appears not to be too distant from that position.”⁶⁵

74. The Guyana Court of Appeal in **Tappin v Lucas** referred extensively to the decision in **Anisimic v Foreign Compensation Commission and another**,⁶⁶ as well as **British Oxygen Co. v Board of Trade**.⁶⁷ Bollers, CJ, noted:

“In the exercise of his powers under art. 47 [of the Guyana Constitution] of discontinuing a prosecution, the Director of Public Prosecutions is in effect performing an administrative act in nature akin to the exercise of a quasi-judicial function, which it must be presumed will be exercised fairly and honestly within the

⁶³ [1948] KB 2223

⁶⁴ (1973) 20 WIR 229

⁶⁵ At page 237 paragraphs E and F

⁶⁶ [1969] 1 All E.R. 208; [1969] 2 A.C. 147; [1969] 2 W.L.R. 163; 113 Sol. Jo. 55, (HL)

⁶⁷ [1968] 2 All E.R. 177

ambit of the wide discretion bestowed on him by the Constitution, but he must keep within the legal limits of the exercise of his powers as laid down by the Constitution.

“As long as the Director of Public Prosecutions then proceeds within his legal powers and acts *intra vires*, this court will be powerless to interfere.”⁶⁸

75. Two appeals in common law jurisdictions at the beginning of the millennium have done much to shine a light on the intertwined issues of the powers of the DPP, the duty to give reasons and the scope of judicial review of the DPP’s actions.

76. In **Matalulu and Another v Director of Public Prosecutions**,⁶⁹ the Supreme Court of Fiji had before it for consideration, *inter alia*, to what extent the decision of the DPP to enter a *nolle prosequi* was susceptible to judicial review. The Court held that “a purported exercise of power would be reviewable if it were made:

“1. In excess of the DPP’s constitutional or statutory grants of power – such as an attempt to institute proceedings in a court established by a disciplinary law....

“2. When contrary to the provisions of the Constitution the DPP could be shown to have acted under the direction or control of another person or authority and to have failed to exercise his or her own independent discretion – if the DPP were to act upon a political instruction....

“3. In bad faith, for example dishonesty. An example would arise if a prosecution were commenced or discontinued in consideration of payment of a bribe.

“4. In abuse of the process of the court in which it was instituted, although the proper forum for review would ordinarily be the court involved.

“5. Where the DPP has fettered his or her discretion by a rigid policy – e.g. one that precludes prosecution of a specific class of cases.

“There may be other circumstances not precisely covered by the above in which judicial review of a prosecutorial discretion would be available. But contentions that the power has been exercised for improper purposes not amounting to bad faith, by reference to irrelevant considerations or without regard to relevant considerations or otherwise unreasonably, are unlikely to be vindicated because of the width of the considerations to which the DPP may properly have regard in instituting or discontinuing proceedings. Nor is it easy to conceive of situations in which such decisions would be reviewable for want of natural justice.”⁷⁰

⁶⁸ At page 235 paragraphs G and I

⁶⁹ [2003] 4 LRC 712

⁷⁰ At pages 735-736

77. Then there was **Mohit v The Director of Public Prosecutions of Mauritius**.⁷¹ This matter went on appeal to the Law Lords at the Privy Council. The issue to be determined was whether a decision by the DPP, in the exercise of constitutional powers, was in principle susceptible to review by the courts. The Board, in a decision delivered by Lord Bingham of Cornhill determined that: "There is nothing to displace the ordinary assumption that a public officer exercising statutory functions is amenable to judicial review on grounds such as those listed in **Matalulu**."⁷²

78. The Law Lords stated:

"Like any other public officer, he [the DPP] must exercise his powers in accordance with the Constitution and other relevant laws, doing so independently of any other person or authority. Again like any other public officer, he must exercise his powers lawfully, properly and rationally, and an exercise of power that does not meet those criteria is open to challenge and review in the courts. The grounds of potential challenge certainly include those listed in **Matalulu**, but need not necessarily be limited to those listed. But the establishment in the Constitution of the office of DPP and the assignment to him and him alone of the powers listed in section 72(3) of the Constitution [of Mauritius]; the wide range of factors relating to available evidence, the public interest and perhaps other matters which he may properly take into account; and, in some cases, the difficulty or undesirability of explaining his decisions; these factors necessarily mean that the threshold of a successful challenge is a high one. It is, however, one thing to conclude that the courts must be very sparing in their grant of relief to those seeking to challenge the DPP's decisions not to prosecute or to discontinue a prosecution, and quite another to hold that such decisions are immune from any review at all...."⁷³

79. In **Leonie Marshall v The Director of Public Prosecutions**,⁷⁴ the Privy Council had before it an appeal from Jamaica where the DPP decided not to prosecute any of the three police officers implicated in the shooting death of a male adult. A jury following an inquest returned a verdict of "person or persons criminally responsible."⁷⁵ The mother of the deceased sought judicial review of the DPP's decision. The Law Lords cited authorities which note that while the decision of the DPP not to prosecute is susceptible to judicial review "the decided cases also make clear, the power of review is one to be sparingly exercised."⁷⁶

80. The Law Lords reiterated what the Board said in **Sharma v Brown-Antoine**,⁷⁷ an appeal from the Republic of Trinidad and Tobago:

⁷¹ [2006] UKPC 20 (delivered on the 25th of April 2006)

⁷² At paragraph 21

⁷³ Paragraph 18

⁷⁴ [2007] UKPC 4 (delivered on the 24th of January 2007)

⁷⁵ Paragraph 1.

⁷⁶ Paragraph 18, quoting Lord Bingham in *R v Director of Public Prosecutions ex Parte Manning* [2003] 3 WLR 463

⁷⁷ [2006] UKPC 57, para 14

“The position and functions of the DPP are such that judicial review of his decisions, though available in principle, is a ‘highly exceptional remedy’.”⁷⁸

81. It was argued on behalf of the Appellant in **Leonie Marshall** that the insufficiency of reasons ought to favour judicial review. Counsel for the Appellant posited that without proper reasons the court’s proper functioning was frustrated by the absence of reasons for or explanation of the decision not to prosecute. Their Lordships however noted that:

“The sufficiency of reasons is not in their Lordships’ opinion determinative of this appeal. If they should be regarded as deficient, the court can and should, as McCalla JA held, weigh up the evidence for itself and ascertain whether the DPP could sensibly decide as he did on that evidence.”⁷⁹

“Where the decision is based on an assessment of the evidence and the prospect of securing a conviction, the courts will still accord great weight to the judgment of experienced prosecutors on whether a jury is likely to convict.”⁸⁰

82. All the case extracts referred to earlier tend to support the Defendant.

Conclusion

83. In 2020, the Learned DPP did not provide any reviewable reasons for her decision. In the course of these proceedings, the current DPP did not provide an assessment of the matter that was before her predecessor. The DPP stated that while the sufficiency of the evidence was a factor to be considered, it was not the only factor. There may have been things known to the prosecution but not disclosed. However, there can be no speculation whatsoever about the existence of any such factors.
84. The Defendant’s decision to enter a notice of discontinuance occurred after several case management conferences were held in May, June, September and December of 2019. The discontinuance came almost a year to the day following the last case management conference. Nothing was placed before the Court in this matter as to what concessions, agreements, decisions, or orders were made at those case management sittings. Again, it would not be just to speculate as to what happened at those case management conferences. But what is clear is that for a year, from the 13th of December 2019, until the Notice of Discontinuance was filed on the 3rd of December 2020, nothing happened with regard to the trial of the matter.
85. The Claimant’s view is that even though the Investigating Officer was on suspension, there was probative evidence independent of his testimony. But on examination of the deposition,

⁷⁸ Paragraph 17 of *Leonie Marshall*

⁷⁹ Paragraph 16

⁸⁰ Paragraph 18

there were instances of the evidence requiring further and better detail. Whom did the DPP have, given the absence of the Investigating Officer who was interdicted, to gather the additional evidence she may have required? There was clearly a need to clarify time lines and get specifics; also there was a need to reduce the conflicts and contradictions between the different prosecution witnesses by obtaining further statements; aspects of the evidence needed for the **Turnbull**⁸¹ directions were missing from the statements. Those are examples of deficiencies on the face of the deposition.

86. More than two years had elapsed since the committal proceedings and the prosecution appeared to not be in a position to proceed.
87. The Defendant, being an experienced prosecutor and having before her the Full Code Test was well-placed to assess and evaluated the case.
88. There was no suggestion of any *mala fides* on the part of the Learned DPP. Can it be said that the decision arrived at is not one which any reasonable, rational person would make? The consideration was not whether some other person may not have discontinued the matter, but rather if the decision was egregiously bad to be considered **Wednesbury** unreasonable. That clearly was not the case. By December 2020, given all the circumstances including the public interest factors, it was just, fair and reasonable for the Defendant to evaluate the matter and form an opinion regarding the exercise of the discretion and Constitutional power that was vested in the Office of the DPP.
89. Having considered the facts and circumstances of this case, the decision of the Defendant to discontinue the case does not appear to be irrational and one that a reasonable person could not make.
90. It is determined that:
 - 1) No declaration is made that the decision of the Director of Public Prosecutions on the 3rd of December 2020 to *nolle prosequi* the indictment of **The State v Darrel Maximea** as being **Wednesbury** unreasonable.
 - 2) No order of certiorari will issue to quash the Learned DPP's decision to *nolle prosequi* Indictment No 2018/0023, **The State v Darrel Maximea**.
 - 3) No order of mandamus is issued.
 - 4) The Respondent is not required to pay any damages, whether special, general or aggravated, to the Claimant.
 - 5) There is no order as to costs.

⁸¹ [1977] QB 224 (CA)

6) No further or other relief is deemed necessary.

91. The Claimants application for judicial review is therefore dismissed.

**Colin Williams
Judge**

By the Court

Registrar