

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCv2020/0217

BETWEEN:

WENDEL GLENROY ROBINSON

Claimant

-And-

THE POLICE SERVICE COMMISSION

Defendant

APPEARANCES:

Mr. Wayne Benjamin Marsh of counsel for the Claimant

Dr. David Dorsett of counsel for the Defendant

2023: November 28 ,

2024: December 20.

JUDGMENT

DRYSDALE, J.: This is an administrative law claim concerning the termination of the Claimant from the post of Commissioner of Police.

Background

- [1] This is the latest in a series of legal disputes between the parties, stemming from the Claimant's tenure as Commissioner of Police. The Claimant, a former Commissioner of Police in the Royal Police Force of Antigua and Barbuda, is a career police officer and attorney-at-law. He was previously suspended by the Defendant and initiated two separate judicial review proceedings. The

present claim initiated on 29th June 2020, alleges that the Claimant's termination was unlawful and violated his constitutional rights under Sections 105 and 119 of the Antigua and Barbuda Constitution Order, as well as was violative of the principles of natural justice.

[2] The remedies sought by the Claimant include several declarations to the effect that his termination as the Commissioner of Police was unconstitutional, unlawful, motivated by bad faith, contrary to the rules of natural justice, null and void. Additionally, the Claimant seeks damages, inclusive of accumulated vacation leave, aggravated and exemplary damages and costs. The relief sought are as follows:

- (i) A declaration that the removal and or termination of the Claimant as Commissioner of Police infringes his constitutional rights under section 105 (1) and section 119 of the constitution of Antigua and Barbuda.
- (ii) A declaration that the decision made by the Defendant on 28th November 2019 to terminate the Claimant's services as Commissioner of Police was unlawful null and void.
- (iii) A declaration that the unlawful termination of the Claimant's services as Commissioner of Police Commissioner on 25th November 2019 absent pension rights and gratuity was unlawful and unconstitutional.
- (iv) A declaration that to terminate the Claimant and to remove him as Commissioner of Police was motivated by bad faith or improper purposes.
- (v) A declaration that to terminate the Claimant as a police officer and remove him as Commissioner of Police was in breach of the rules of natural justice.
- (vi) A declaration that to deprive the Claimant of the right to have the appeal heard is unconstitutional and or unlawful null and void.

(vii) A declaration that to terminate the Claimant as a police officer and to remove him Commissioner of Police was unreasonable.

(viii) A declaration that in light of all that has happened the appointment and or confirmation of Mr. Atlee Rodney as Commissioner of Police was unconstitutional or unlawful, ultra vires, null and void.

(ix) Damages, inclusive of accumulative vacation leave, aggravated and exemplary damages.

(x) Assessed costs in accordance with Part 65 of the Civil Procedure Rules.

(xi) Such further and or other orders as the Court may deem just.

[3] The Defendant is the Police Service Commission. The Defendant Commission is vested with the power to appoint persons to hold or act in offices in the Police Force and to remove and exercise disciplinary control over persons holding or acting in such offices.¹ For its part, the Defendant has resisted the Claimant's application and maintains that its termination of the Claimant was reasonable and done in accordance with the law.

The Evidence

The Claimant

[4] The Claimant filed an affidavit in support of his application for administrative orders on 29th June 2020.² In his affidavit the Claimant outlines his background to include his professional qualifications and his career as a police officer and attorney-at-law.

[5] In relation to his matter the Claimant says that on 5th April 2018 he was suspended from his duties as Commissioner of Police amidst allegations of misconduct. Four months thereafter, investigations were commenced by a team of Special Constables empowered to act under the Police Disciplinary

¹ Section 104(1) of the Constitution of Antigua and Barbuda

² Claimant's Hearing Bundle at page 14

Regulations 1967. By this time the Claimant filed judicial review proceedings in the court challenging the legality of the suspension. The judicial review was heard on 5th October 2018 and during the hearing the learned trial judge, Justice Godfrey Smith SC, raised the issue as to whether the Police Disciplinary Regulations applied to the Commissioner of Police.

- [6] Despite the issue of the Regulations being live at trial the Special Constables served the Claimant several disciplinary charges under the said Regulations on 15th October 2018. The judgment of Justice Smith was delivered in the Claimant's favour on 26th October 2018 and the court ruled that the Regulations did not apply to the Commissioner of Police. The court also quashed the Claimant's suspension and ordered his full reinstatement together with costs in accordance with the Civil Procedure Rules.
- [7] Within hours of the court's decision the Claimant was served with another suspension letter on the basis that he was at the time served with disciplinary charges, he was also informed that he would be told of the hearing in due course. The Defendant Commission did not seek a stay of the court's order, nor did it comply with the Justice Smith's decision.
- [8] On 7th November 2018 the Claimant was served with another copy of a disciplinary charge under the Regulations despite the ruling of the High Court on the issue. The Defendant filed a Notice of Appeal challenging the decision of the High Court.
- [9] Within days of the Claimant's second suspension his attorneys wrote to the Defendant's counsel challenging the second suspension and requesting a copy of the investigator's report. There has been no response from the Defendant to date except for an acknowledgment of the letter and a promise to respond. The letter from the Claimant's attorneys made a request from the minutes of the meeting upon which the second submission was grounded, the letter also questioned the legality of the Special Constables authority to lay charges.
- [10] After waiting for six (6) months since the second suspension and hearing nothing from the Defendant Commission, another judicial review application was made to the High Court in April 2019 and leave was granted *ex parte* in early May 2019. Subsequently, a Fixed Date Claim Form with an accompanying affidavit was filed on 26th May, 2019 and served on the Defendant in June 2019. On

the 18th July 2019, during case management, the court granted the Defendant an extension to file its response by 30th September, 2019. The Defendant to date never filed any response to the Fixed Date Claim Form. The court set 11th December 2019 as the return date to see where the parties are in terms of filing before the trial date which was scheduled for some time in February 2020.

- [11] Subsequently, on the 29th September 2019, the Claimant's attorneys applied for interlocutory reliefs, including re-instatement pending the outcome of the claim. This application was served on the Defendant on the 21st October 2019. On the 15th October 2019, by letter, the Defendant informed the Claimant that it made a provisional decision to terminate his services as a police officer and to remove him as Commissioner of Police on the basis that he was ill-temperate, had a fractious relationship with the Minister Responsible for Police and was ill-suited for the post of Commissioner of Police.
- [12] The Defendant Commission, in its letter gave the Claimant two weeks to make representation. The Claimant's attorneys wrote asking for an adjournment as the date would not have been convenient, as both him and counsel would be traveling, but the Defendant Commission initially refused. On the 24th October, 2019 the Claimant's attorneys wrote and, in that letter, sought to respond to the allegations. The letter from the Claimant's attorney also referred to the terms that were suggested to him, which included a transfer/secondment to a similar post of equal status, emoluments and allowances, payment of legal cost and ex-gratia payment or compensation. This the Claimant avers was rejected by the Defendant.
- [13] On the morning of 25th October, 2019, the Claimant attended the doctor and submitted a medical letter, since the doctor examined him and indicated that his pressure was too elevated, and that he must keep away from stressful environments for another three (3) weeks. Attached to that medical certificate was a cover note signed by the Claimant asking for an adjournment, as he wanted to address specific points made in the letter of the 15th October 2019 that was sent to him and because his attorneys would have been off-island. It was then that the matter adjourned to the 14th November, 2019. The Claimant penned his response as he wanted to ensure that he gave a full response to the letter of 15th October. The Claimant also attached a copy of a letter he hand delivered to the Permanent Assistant Secretary in the Ministry of Public Safety seeking a transfer with the necessary other conditions.

- [14] In the Claimant's response to the 15th October 2019 letter from the Defendant, he penned a number of factors or reasons for the Defendant Commission's consideration as to why it should resile from its actions. For example, the Claimant spoke of the tone of the letter with its adverse comments and extreme language used, and that it was clear that the Defendant demonstrated antipathy and bad faith. Additionally, the Claimant gave a historical account of the chronology of events from the date of suspension on 5th April 2018.
- [15] Furthermore, apart from the predetermination under which the Defendant was acting, the Claimant noted the timing and speed in which the Defendant was purporting to act. Its letter of October 15th 2019, was to avert the Interim Application for re-instatement which was due to be heard on 11th December 2019. The Claimant also noted that the two suspensions already suffered amounted to nineteen (19) months.
- [16] Moreover, in the Claimant's said response, he invited the Defendant Commission to have regard to sections 104(2) and 99(13) of the Constitution of Antigua and Barbuda to have an impartial and independent public officer or authority to government properly consider the issue of removal/termination purported by the Defendant Commission itself. The Claimant considered that the issues between the Defendant and himself reached a stage that the Defendant could not adjudicate independently on the issues.
- [17] The difficulty in understanding what precisely the disciplinary offences committed and what legislative authority the Defendant grounded its action were noted. In the same vein the Claimant referred to Section 16(3)(a) of the Police Act, Chapter 330 which specifies the circumstances under which any member of the police force can leave the Force.
- [18] In the Claimant's response to the letter of 15th October 2019 he referred to the fact he made an application to serve in another equal capacity with no loss of emoluments, payment of his legal fees, and damages, allowances in another government department. The Claimant says that he also copied this application to the Defendant Commission. He says he did all this since he received indications of the government's willingness to let him serve in another equivalent capacity.

- [19] Sometime later in 2019 the Claimant's attorney Mr. Andrew O'kola, informed him that a letter was served on his chambers informing of the Claimant's termination from the Police Force and his removal from the position of Commissioner of Police. The Claimant read the letter and was shocked, disappointed and bewildered. Subsequently, he also received an email from his attorney's office, where he saw a Notice from the High Court of Justice that his interlocutory application would be heard on the 11th December 2019 at 11 a.m. and another document, an Application filed by the Defendant Commission, asking that he make a formal application for discontinuance of his claim or that the court dismiss the claim, since he was now removed as Commissioner of Police and the Judicial Review claim was now purely academic.
- [20] From the behaviour of the Defendant Commission the Claimant concluded that it acted out of haste and malice to terminate his services as a police officer and remove him from office before the 11th December 2019, when the court would have heard the interim application. The Defendant Commission did not choose to permit or require the Claimant to retire as this would have necessitated him proceeding on several months' vacation leave leading to retirement.
- [21] The Claimant's dismissal as Commissioner of Police was contrived and was an attempt by the Defendant to avoid any disciplinary proceedings and or to dismiss for cause. It was a decision to deprive the Claimant of the proceedings in the High Court and was unreasonable, irrational and unlawful, and in the Claimant's view done to deprive him of his constitutional and pension rights.
- [22] Before he was initially suspended, the Claimant accumulated some ninety-two days' vacation leave. Furthermore, he accumulated more vacation leave while on suspension for twenty (20) months; more so as his reinstatement was ordered by the High Court on 26th October 2019; which was never complied with. In total the Claimant would have accumulated over seven months leave by which time, he could have legally opted to retire from the Police Force.
- [23] The Claimant filed an affidavit in response to the Defendant's application and on the 1st December, 2019, the court heard legal arguments from the Defendant's and the Claimant's attorneys as to whether his Judicial Review Claim should be discontinued or dismissed. The court further requested legal submissions from the Claimant's attorneys by 17th January 2020; and the Defendant was given a week to respond. The return date was 14th February 2020. On the 14th February 2020, the court

heard further legal oral arguments from Counsel for the parties. The decision of the court was reserved.

- [24] In its letter of October 15th 2019, the Defendant Commission outlined a number of factors, all contained in the Claimant's Affidavit for judicial review against the Defendant in respect of the decision of Justice Smith, the Claimant's second affidavit in respect of his second Judicial Review Application which was pending before the court, and a previous judicial review application filed since in 2016 in an unrelated matter. The Defendant Commission severely criticized the Claimant for exercising his constitutional right to seek redress in the High Court and for bringing an action against the previous Chairman Mr. Nehemiah Isaacs, who the Defendant claimed mentored and prepared the Claimant for the position of Commissioner of Police, ostracized the Claimant for the manner in which his affidavit in his first judicial review was crafted and the contents of same, and used excerpts and references from the Claimant's affidavits, to ground its provisional intention to terminate his services as a police officer and remove him from office as Commissioner of Police.
- [25] The Claimant formed the conclusion, from the tone of the 15th October 2019 letter from the Defendant and from its non-response to his second Judicial review application filed on 29th May 2019 and from his immediate re-suspension on the 26th October 2019 despite the decision of Justice Godfrey Smith SC, that whatever rights he had and however innocent he proclaimed to be that he would never get justice from the Defendant nor return to the police force nor his post as Commissioner of Police.
- [26] The Claimant says that he was not served with a copy of the Investigator's Report. He also says that he believes the Report is a nullity as the terms of reference were crafted by Acting Deputy Commissioner Albert Wade and Acting Commissioner Atlee Rodney as they then were, who have both been appointed to their present posts directly as a result of the Claimant's suspension from duties. The Claimant's conclusion has been re-emphasized by the Prime Minister Gaston Browne who said publicly that he cannot expect to serve as Commissioner in light of all that has happened and his acrimonious relationship with the Minister and others.
- [27] On the 17th December 2019, the Claimant lodged an appeal to the Public Service Board of Appeal in accordance with the relevant provisions of the Public Service Board of Appeal Regulations 1998. However, given the history of the 26th October 2018 decision, and pending Judicial Review Claim before the High Court, the Claimant's present claim for further administrative claims for further

damages and declarations before the High Court, the Claimant is of the view that his best course would be to apply for administrative orders as the Defendant has demonstrated that it has no intention to accord rights to the Claimant fairly and or in accordance with natural justice.

- [28] Furthermore, several areas regarding the construction of certain sections of the Police Act, Chapter 330 and the Constitutional Order, Cap 23, are within the scope and authority of the High Court to determine and apply where applicable. They, to a large extent, are not within the remit of the Public Service Board of Appeal. At the date the Claimant appealed to the Public Service Board of Appeal, the tenure of the Chairman and others on the Appeal Board had come to an end, and the Claimant was made aware of the Board's virtual disfunction for almost two years.
- [29] Up to the date of the filing of this case the Claimant says that he has heard nothing regarding his appeal to the Public Service Board of Appeal. That appeal remains pending and so is the Claimant's second Judicial Review Challenge in the High Court before Justice Robertson. However, in mid-February 2020, it was publicly announced on the media that Mr. Atlee Rodney was appointed and confirmed as Commissioner of Police by the Police Service Commission. The Claimant subsequently saw a Force Standing Order No. 4 of 2020 where Mr. Atlee Rodney and Mr. Albert Wade were appointed and confirmed in the ranks of Commissioner of Police and Deputy Commissioner of Police respectively.
- [30] On Thursday 26th March 2020 the Claimant was served with a copy of a notification from the Chief Establishment Officer, confirming his termination from the post of Commissioner of Police. That document, set out the identical reasons mentioned in the letter of termination by the Police Service Commission on the 25th November, 2019. The Claimant formed the conclusion therefore that his appeal to the Public Service Board of Appeal has been vacated or disposed of, without a hearing and without his notice or knowledge.
- [31] In the circumstances and in light of all the foregoing, the Claimant came to the inescapable conclusion that his services as Commissioner of Police were terminated unconstitutionally and unlawfully and that the actions of the Commission is null and void in that respect. The Claimant was not given the opportunity to benefit from his accumulated vacation leave. Furthermore, the behaviour of the Defendant Commission is not only unreasonable but is in breach of the rules of natural justice.

[32] The Claimant says that their actions are also motivated by bad faith and improper purposes, spiteful and vindictive. The Defendant has shown scant regard to any of the Claimant's legal rights to pension and gratuity but rather has left same to the absolute discretion of the Governor General.

[33] Despite the Claimant's appeal to the Public Service Board of Appeal, challenging his termination, the Defendant nevertheless appointed and confirmed Mr. Atlee Rodney as Commissioner of Police. The Claimant says that he is of the firm conviction that Mr. Rodney's confirmation as Commissioner of Police, was unconstitutional, ultra vires and or otherwise unlawful, null and void.

The Defendant

[34] Mr. Kelvin John filed an affidavit on behalf of the Defendant on 29th June 2022.³ The affidavit is made in response to the Claimant's affidavit in support of his application seeking substantive relief in this matter and in opposition to the Claimant's application filed on 27th June 2022.

[35] Mr. John is an attorney- at- law and the Chairman of the Police Service Commission. He says that the parties have been in much litigation since about 2019 with three cases in the High Court and one in the Court of Appeal. The Defendant Commission determined that it should seek to settle all matters between the parties by way of mediation.

[36] Mediation was held and all litigation activity ceased. As part of the mediation process a proposal was put forward the to Claimant by letter dated 6th May 2022 with the express approval of the Minister for Public Safety. The Claimant responded to the proposal on 6th June 2022, at which time he indicated that he rejected the settlement proposal.

[37] By way of email sent on 7th June 2022, counsel for the Defendant Commission wrote to the Claimant requesting that if he was dissatisfied with the settlement proposal that he put forward a counter proposal. To date no response has been received from the Claimant. The Defendant Commission had hoped that if there was a counterproposal that perhaps agreement could be reached between the parties eliminating the need for the Defendant to respond to the constitutional motion the Claimant has brought. It was in those circumstances that a response by way of affidavit to the constitutional motion had not yet been filed.

³ Claimant's Hearing Bundle at page 144

- [38] Mr. John says that the Defendant Commission maintains that no constitutional rights of the Claimant were breached and that his termination as Commissioner of Police was done for proper reasons and was done lawfully. The reasons for the termination letter are fully stated in the Defendant Commission's letter of 25th November 2019. The factual circumstances leading up to the termination of the Claimant are disclosed in the correspondence between the parties.
- [39] Mr. John addressed the various items of relief sought in the Claimant's constitutional motion. He states that although the Claimant has claimed that his removal as Commissioner of Police infringes his constitutional rights under section 105 (1) and section 119 of the constitution of Antigua and Barbuda, that as a lawyer, having read section 105(1) and section 119 he does not see that these sections of the Constitution vest any constitutional power in the Claimant.
- [40] The Claimant has also asked for "A declaration that the decision made by the Defendant on 28th November 2019 to terminate the Claimant's services as Commissioner of Police was unlawful null and void." Mr. John says that the termination was preceded by a letter to the Claimant dated 15th October 2019. Prior to the decision to terminate, the Defendant afforded the Claimant opportunity to make representation as to why he should not be terminated. His termination was on the ground that the Defendant had formed the view that he did not have the temperament to continue as Commissioner of Police. The reasons for forming this judgment are spelt out in the letter of 15th October 2019. By way of affidavits the Claimant had engaged in unwarranted, wholly unnecessary and irreverent attacks against the Attorney General and a retired Assistant Commissioner of Police. The Claimant exhibited intemperance in both speech and language unbecoming for a Commissioner. The offending statements were made by the Claimant at least twice and High Court judges on two occasions had the offending statements struck out. Madame Justice Henry on one occasion and Justice Godfrey Smith on the other. The Claimant has repeated wholesale the offending paragraphs made before Justice Godfrey Smith in another affidavit.
- [41] Furthermore, the Claimant has stated in very clear terms that his working relationship with the Minister with responsibility for the Police, the Minister of Public Safety and the Attorney General, was very poor. It was simply not tenable for the Claimant to continue as Commissioner of Police. The manner in which the Claimant conducted himself (and which is detailed in the letter of 15th October

2019) gravely affected the Defendant's perception of his ability to carry out his duties and to discharge the functions attaching to the office of Commissioner of Police. To allow the Claimant to continue in office and to perform his duties was viewed by the Defendant Commission as inimical to the interests of good governance of Antigua and Barbuda. The Commissioner formed the view that in the circumstances it was desirable in the public interest that the Claimant be terminated. The Defendant Commission maintains the view that nothing unlawful occurred when it terminated the Claimant.

- [42] The Claimant has sought "A declaration that the unlawful termination of the Claimant's services as Commissioner of Police Commissioner on 25th November, 2019 absent pension rights and gratuity was unlawful and unconstitutional." Mr. John says that the issue of the Claimant's pension rights and gratuity are matters governed by the Pensions Act and therefore is within the Defendant's control.
- [43] Mr. John further says that the Defendant denies that it was motivated by bad faith or that its decision to terminate was for improper reasons.
- [44] The factual situation as disclosed in the letter of 15th October 2019 left the Defendant Commission with little choice but to consider the termination of the Claimant as the proper thing to do in the public interest. It would not have been proper, in the Defendant's view, for the Claimant to continue as Commissioner. His relationship with the Minister for Public Safety was strained. His intemperance was more-than the Defendant had stomach for. The termination was not done with any degree of joy but was something that the Defendant determined necessary to be done in the public interest.
- [45] The Claimant also seeks " A declaration that to terminate the Claimant as a police officer and remove him as Commissioner of Police was in breach of the rules of natural justice." The Defendant's position is that there was no breach of the rules of natural justice. If an allegation of bias is being made the Defendant cannot accept such an allegation as one reasonably or properly made in the circumstances as the Claimant was given ample opportunity to be heard prior to terminating him. The Defendant denies any and every assertion that there was procedural unfairness with respect to the decision to terminate the Claimant.
- [46] The Claimant has sought "A declaration that to deprive the Claimant of the right to have the appeal heard is unconstitutional and or unlawful null and void." In response Mr. John says that the Defendant

has not stood in the way of Claimant making an appeal to the Public Service Board of Appeal, nor has the Defendant deprived the Claimant of a right of appeal.

- [47] The Claimant seeks "A declaration that in light of all that has happened the appointment and or confirmation of Mr. Atlee Rodney as Commissioner of Police was unconstitutional or unlawful, ultra vires, null and void." The Defendant Commission maintains that its termination of the Claimant was in all respects lawful. Mr. John says that given that the Claimant was no longer the Commissioner it was necessary to have another person appointed to the office of Commissioner of Police and that the Defendant stands behind its decision to appoint and confirm the appointment of Mr. Atlee Rodney.
- [48] The Defendant views this third legal action by Mr Robinson relating to him holding the office of Commissioner of Police as most unreasonable and asks that an award of costs be made in favour of the Defendant in this matter.
- [49] In the circumstances the Defendant asks that the constitutional motion brought by the Claimant dismissed with costs.

Submissions

The Claimant's Submissions

- [50] The Claimant submits that his right to protection against unlawful termination or the unlawful or improper exercise of disciplinary control by the Defendant is recognised under sections 107 and 108 of the Constitution and that this right has been breached by the Defendant's termination of his services. The right of appeal to the Public Service Board of Appeal provides a layer of protection of law or means of redress if the disciplinary process or control exercised by the Defendant Commission under section 105 is flawed, wrong or unlawful in any way. It was submitted that while the Board is equipped to provide certain reliefs the Claimant nevertheless has a constitutional right to challenge his termination and removal.
- [51] The Claimant further argues that his rights under sections 107 and 108 have been breached by the Defendant's decision to appoint Mr. Atlee Rodney as Commissioner without him (the Claimant) having had due process and his appeal to the Public Service Board not having been heard. Further

it also breaches his right against arbitrary and unlawful removal from his appointment under section 105 of the Constitution. The Claimant submits that having appealed to the Public Service Board, the Defendant Commission should have awaited the outcome of the appeal before appointing a new Commissioner of Police.

- [52] The Claimant submits that a member of the police force may only leave the organisation in the manner set out in section 16(3)(a) of the Police Act, Cap 300. He argues that his dismissal and removal was not a result of disciplinary proceedings as contemplated by the Act. He says that the court should have no difficulty in concluding that the Defendant has failed to take into account all relevant factors including but not limited the Claimant's application for a transfer to another government department, the questions posed by the Claimant in his letter of response to the letter of 15th October 2019 seeking clarity on the disciplinary offences he was alleged to have committed, failure to consider the punishment resulting from the aggregate 19 months on indefinite suspension in such an important public office, the Claimant's pension entitlements, his accumulated vacation leave, the less draconian possibility of voluntary retirement, the age of the Claimant and his career prospects as well as his reputation and the further damaging effect that a termination will have on his future career prospects and his reputation.
- [53] The Claimant also says that the letter was marred with irrelevant factors and so tainted that it must be unlawful. He argues that in administrative law a public body must take into account all relevant factors and disregard irrelevant factors in coming to its decision, they must not act arbitrarily, with spite or bad faith. He also says that the court is concerned not only with the decision itself but with the process or means by which the Defendant Commission came to its decision.
- [54] The Claimant avers that he did not commit any disciplinary offence within the meaning of the Police Act Cap 330 nor the Police Disciplinary Regulations 1967. He says that the Defendant ignored the offences outlined in the Act and Regulations and set out its own subjective process when dealing with his disciplinary matter. He argues that he was not presented with the precise allegations he had to meet which made it difficult to know the misconduct he had to respond to. Additionally, he says that the Defendant's letter of 15th October 2019 informing him of the Defendant Commission's provisional decision to terminate him was vague. All of this he says amounts to a breach of his natural justice rights.

- [55] The Claimant further argues that his termination was done in a manner which deprived him of his right to pension pursuant to section 109 of the Constitution. He says that the reference to termination pursuant to section 7 of the Pension Act, Cap 311 did not guarantee that he would be given his pension as of right as the Governor General had the discretion under the Pension Act to determine whether he should be granted a pension, gratuity, or allowance.
- [56] He further argues that the letter indicates bad faith and or an improper motive on behalf of the Defendant. He also says that the reasons advanced in the letter suggested that his appointment to the post of Commissioner of Police was contingent on his relationship with the Minister in question. Additionally, the conduct of the Defendant immediately after the termination to seek to have the Claimant's second indefinite suspension challenge struck out on the basis of it being academic shows prejudice and the perverse and ulterior motives of the Defendant Commission.
- [57] The Claimant has invoked the principal of Wednesbury unreasonableness and says that having regard to the conduct of the Defendant Commission the decision made to terminate him was so deceptive, dishonest and bad that no reasonable commission would act in such a manner.

The Defendant's Submissions

- [58] Dr. Dorsett for the Defendant submits that there is no sound or proper basis for granting any of the declarations sought and accordingly no other relief prayed is warranted and none should be granted. He says that the Claimant's application for a declaration that his rights under section 105(1) and section 119 of the Constitution should be dismissed as it is patently clear upon a reading of sections 105 and 119 of the Constitution that either section vests any rights in the Claimant, or any other person similarly situated. Dr. Dorsett says that section 105 of the Constitution establishes the Police Service Commission, and that section 119 simply grants the High Court original jurisdiction to grant relief when there has been contravention of the Constitution (other than a contravention of Part II of the Constitution).
- [59] In relation to the Claimant's termination counsel argues that the grounds outlined in the Claimant's Fixed Date Claim Form do not clearly specify what makes the termination unlawful. He says that the Commission had the lawful power to terminate the Claimant as provided by section 105 of the

Constitution. He also argues that the decision to terminate the Claimant was reasonable having regard to the matters outlined and clearly stated in the Defendant's letters of 15th October and 25th November 2019.

- [60] On the point of pension rights and gratuity, counsel says that the Claimant has not shown that the issue of pension rights and gratuity are matters within the remit of the Defendant Commission. Any issue concerning pension rights and gratuity due to the Claimant is an issue governed by the Pensions Act and the Defendant is not the public body responsible for administering the Pensions Act.
- [61] In response to the Claimant's position that the decision to terminate him was made in bad faith the Defendant says that there is no (or no credible) evidence of bad faith in the sense that its actions were fraudulent, dishonest, vindictive or malicious. Likewise, the Claimant has not provided evidence of improper purposes.
- [62] Counsel also says that the evidence is clear that there was no breach of natural justice and says that the Claimant was given ample opportunity to be heard prior to the decision to terminate him.
- [63] As for the matter of the Claimant's appeal before the Public Service Board counsel says that the Defendant Commission does not have the power to "deprive the Claimant of the right to have the appeal heard" as that right is provided by the Constitution.
- [64] On the issue of the appointment of Atlee Rodney as Commissioner of Police following the Claimant's termination counsel argues that the Claimant has not advanced one ground upon which it can be argued that the appointment of a new Commissioner of Police in his stead was "unconstitutional or unlawful, ultra vires, null and void." He says that for it to have been unconstitutional some specific section of the constitution or some acknowledged unwritten constitutional principle (such as the rule of law or the separation of powers) would have to be identified. If the action of the Defendant Commission was unconstitutional it would of necessity be unlawful. The Defendant Commission has the power to appoint a Commissioner of Police to replace one that has been terminated, so there can be no argument that the appointment of Mr. Rodney was ultra vires. In the circumstance counsel says that it cannot be properly argued that the appointment of Mr. Rodney was null and void.

[65] Counsel has also advanced this these proceedings are an abuse of process, he argues that the Defendant's decision to terminate the Claimant as Commissioner of Police was in all respects lawful and that the Claimant in bringing these proceedings is acting unreasonably, particularly when there is an alternative means of redress. He says that the remedy available to the Claimant and prescribed by the Constitution is an appeal to the Public Service Board of Appeal. The Claimant is apparently pursuing that remedy; but more than that, he is pursuing, by way of the instant proceedings, a parallel remedy. In the circumstances the Defendant submits that the Claimant has engaged in abuse of process and asks for an award of costs against him.

ISSUES

[66] Despite the claimant presenting 11 distinct reliefs in this claim, I have summarised the relevant issues arising from both the claim and the reliefs into six major points. The following are the key issues:

- i. Whether the termination of the Claimant is in breach of sections 105 and 119 of the constitution.
- ii. Whether the decision to terminate the Claimant as Commissioner of Police was unlawful and contravened the principles of natural justice.
- iii. Whether the termination of the Claimant without receiving a pension and gratuity under the circumstances is unlawful and unconstitutional.
- iv. Whether the Claimant was denied the right to have his appeal heard before the PSC Board of Appeal.
- v. Whether the appointment of Atlee Rodney as Commissioner of Police is unconstitutional, unlawful, null and void.
- vi. Whether the Claimant is entitled to damages if successful.

ANALYSIS

Whether there has been a violation of sections 105 and 119 of the constitution in relation to the Claimant.

[67] The relevant constitutional provisions underpinning the Claimant's claim are Sections 105 and 119 of the Antigua and Barbuda Constitution Order, which are as follows:

‘105 (1) Subject to the provision of this section, the power to appoint persons to hold or act in offices in the Police Force (including appointments on promotion and transfer and the confirmation of appointments) and to remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Police Service Commission: Provided that the Commission may, with the approval of the Prime Minister and subject to such conditions as it may think fit, delegate any of its powers under this section to any one or more of its members or to the Commissioner of Police

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- (1) Subject to the provisions of sections 25(2), 47(8) (b), 56(4), 65(5), 123(7) (b) and 124 of this Constitution, any person who alleges that any provisions of this Constitution (other than a provision of Chapter 11) has been or is being contravened may, if he has a relevant interest, apply to the High Court for a declaration and for relief under this section.
- (2) The High Court shall have jurisdiction on an application made under this section to determine whether any provision of this Constitution (other than a provision of Chapter 11) has been or is being contravened and to make a declaration accordingly.
- (3) Where the High Court makes a declaration under this section that a provision of this Constitution has been or is being contravened and the person on whose application the declaration is made has also applied for relief, the High Court

may grant to that person such remedy as it considers appropriate, being a remedy available generally under any law in proceedings in the High Court.

- (4) The Chief Justice may make provision, or authorize the making of provision, with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on the court by or under this section, including provision with respect to the time within which any application under this section may be made.
- (5) A person shall be regarded as having a relevant interest for the purpose of an application under this section only if the contravention of this Constitution alleged by him is such as to affect his interests.
- (6) The rights conferred on a person by this section to apply for a declaration and relief in respect of an alleged contravention of this Constitution shall be in addition to any other action in respect of the same matter that may be available to that person under any other law or any rule of law.
- (7) Nothing in this section shall confer jurisdiction on the High Court to hear or determine any such question as is referred to in section 44 of this Constitution.’

[68] As outlined in Section 105 of the Constitution, the Police Service Commission is established as an independent body vested with the authority to appoint, discipline, and remove police officers. Section 119 of the Constitution provides a mechanism for individuals to seek redress in court if they believe their constitutional rights (excluding those protected under the Bill of Rights) have been violated. It provides that the Court may grant a declaration to rectify the breach.⁴

⁴ The Privy Council in the case of **Attorney General of Antigua and Barbuda v Lake** ruled that the “right to apply for a declaration and relief shall be in addition to any other action in respect of the same matter that may be available to that person under any other law or any rule of law.”

[69] The Court has preliminarily determined that a claim under Sections 105 and 119 of the Constitution may proceed if it can be demonstrated that the authorities acted ultra vires or in breach of natural justice principles. This underscores the fundamental principle that all exercises of public power, whether constitutional or otherwise, must be conducted fairly and in accordance with the rule of law. Therefore, the Claimant must prove that there has been a breach of natural justice principles, which has resulted in a violation of his constitutional rights.

Pending appeal before the Public Service Board of Appeal/right to be heard

[70] The Claimant contends that his termination was unlawful and constituted an improper exercise of disciplinary authority. He argues that the Defendant terminated his position as Commissioner of Police while an appeal was pending before the Police Service Board of Appeal, thereby denying him the opportunity to be heard a fundamental principle of natural justice. However, the Defendant possesses no authority to deprive the Claimant of this constitutional right. Section 107(2) of the Constitution explicitly provides for an appeal to the Police Service Board of Appeal for decisions affecting police officers. It states that “an appeal shall lie to the Board from any decision which this section applies at the instance of the public officer, police officer...in respect of whom the decision is made.” This indicates that the Claimant has a right to have his case heard and determined by the Appeals Board, a higher authority than the Defendant.

[71] The right to appeal, as provided by Section 107(2), is a statutory safeguard. However, the effectiveness of this right depends on the proper functioning of the Police Service Board of Appeal. The Claimant acknowledges that the Board was not functioning at the time of his appeal and continued to be non-operational thereafter.

[72] While the absence of a functioning appeals board constitutes a significant procedural defect, the Claimant cannot directly challenge this issue against the Defendant. Such a challenge would be more appropriately directed against the Board of Appeal or the Attorney General, who represents the Crown. The Defendant, as a separate legal entity, cannot be held responsible for the non-functioning of the Board cannot be held responsible for the delays or inefficiencies of the appeals process.

Disciplinary Charge/Process

- [73] The Claimant was informed that his temperament and strained relationship with the Minister of Police were being considered as potential grounds for termination. However, the Claimant argues that these reasons do not constitute a specific disciplinary charge as outlined in the Police Disciplinary Rules.
- [74] Section 6 of the Police Regulations defines various offences including discreditable conduct and other charges that may warrant disciplinary action. While these offences seem to be more apt for subordinate officers, Section 2 of the Regulations expressly provides that the disciplinary charges apply to all Gazetted Officers, which includes the Commissioner of Police. Therefore, any disciplinary action taken against the Claimant must align with the offences outlined in the regulations.
- [75] In the present case the charges against the Claimant was predicated upon his temperament and a strained relationship with the Minister. Temperament refers to a person's innate disposition, personality traits, and emotional responses. While temperament can influence behaviour, it is not itself considered conduct. However, a strained relationship with a superior, such as the Minister of Police, can lead to difficulties within the organization, potentially resulting in behaviors that could be categorized as "disorderly conduct" or conduct "prejudicial to discipline or likely to bring discredit on the Force," as defined in the relevant regulations. Therefore, while the Defendant may not have explicitly used the exact language of the regulations, the nature of the alleged conduct, including the strained relationship with the Minister and, the underlying concerns about the Claimant's conduct falls within the definition of "discreditable conduct." And was a valid charge within the contemplation of the Regulations. Therefore, there was no procedural irregularity in the formulation of the charge against the Claimant, and the Defendant acted within its authority in bringing the charge.
- [76] The Claimant argues that his dismissal was not a result of disciplinary proceedings as outlined in section 16 of the Police Act. Section 16 of the Police Act outlines various methods for removing a police officer from office, including disciplinary procedures, resignation, and retirement. While the Police Act outlines various methods for removing a police officer, it does not specify procedures for disciplinary actions against the Commissioner of Police. Additionally, as established in previous legal proceedings, the Police Regulations do not apply to the Commissioner of Police. Given the absence of specific regulations governing the disciplinary process for the Commissioner, the principles of

natural justice which include the right to know of the charges, the right to be heard and the right to a fair hearing provide a framework for ensuring that disciplinary proceedings are conducted in a fair and impartial manner.

- [77] The Claimant spent a significant portion of his evidence narrating the history of his interactions with the Defendant, including several suspensions and related court proceedings. While this historical context is relevant, the core issue in this case is the alleged unlawful termination of the Claimant's employment.
- [78] The Claimant acknowledges that the Defendant initially attempted to follow a questionable disciplinary process, which was ultimately abandoned by the Defendant who subsequently adopted a new process to terminate his employment. While the Claimant suggests that the Defendant cannot abandon a questionable disciplinary process mid-stream and adopt a new one, this assertion is incorrect. The Defendant has the authority to rectify errors and adopt a more appropriate course of action, provided it is done in a fair and lawful manner.
- [79] The Court must focus on the specific circumstances surrounding the termination decision and assess whether it was lawful and procedurally fair. The Claimant's allegations of a breach of natural justice and a violation of his constitutional rights are central to this case. In the context of this case the Claimant has specifically argued that the Defendant considered irrelevant factors and failed to take into account relevant factors. Specifically, the Claimant contends that the Defendant failed to consider relevant factors, such as his request for a transfer, his questions regarding the specific disciplinary offenses, and the potential for less severe punishments, such as retirement, given his age, reputation, and career prospects and conversely considered irrelevant factors such as a 2016 unrelated judicial review claim, his responses in previous affidavits against officers who made allegations against him in forming the subjective conclusion that his services should be terminated. However, the Defendant has provided evidence that the Claimant's written representations were received and considered in the decision-making process. The Claimant's extensive responses, submitted personally or through legal counsel, primarily focused on issues such as secondment, outstanding vacation leave, and other entitlements that should be considered in the event of a transfer, which the Claimant suggested as an alternative to termination. Therefore, the Claimant's claim that the Defendant failed to consider relevant factors and is unsubstantiated.

- [80] The Claimant further argues that the Defendant's decision-making process was flawed, as it relied on irrelevant factors. Specifically, the Claimant contends that the Defendant improperly considered statements made by the Claimant in a 2016 administrative claim. It is a well-established principle that public bodies must base their decisions on relevant considerations and avoid relying on irrelevant factors. A decision influenced by irrelevant considerations is considered unlawful.
- [81] However, in the context of this matter the Defendant has utilized these statements to demonstrate the strained relationship with the Minister. Given the nature of the disciplinary charge and the direct relevance of the statements to the Claimant's conduct and relationship with the Minister, it cannot be argued that these considerations were irrelevant to the decision-making process.
- [82] In light of the above, the Claimant has failed to establish a breach of Sections 105 and 119 of the Constitution. The Claimant has not demonstrated that the disciplinary process was unfair or that his constitutional rights were violated.

Whether the decision to terminate the Claimant as Commissioner of Police was unlawful and contravened the principles of natural justice

- [83] The Claimant's arguments regarding a breach of the Constitution and natural justice are inextricably linked. Both lines of argument stem from the core issue of the procedural fairness of the termination process. The Claimant contends that the Defendant's failure to follow proper disciplinary procedures and to consider relevant factors amounts to a breach of both constitutional principles and natural justice. Given the overlap between these arguments, the Court will primarily focus on the aspects of natural justice that were not explicitly addressed in the constitutional arguments as the as the core issues and outcomes are essentially the same. For clarity, the Court affirms that the findings and rulings on natural justice principles, as discussed in the section on constitutional breaches, are equally applicable to this issue and will be treated as binding precedent. Similarly, the findings addressed in this section are applicable to the previous issue, where not explicitly dealt with.

Bias

- [84] The Claimant argues that the Defendant's decision to terminate his employment was pre-determined, as evidenced by a letter indicating a provisional or tentative view to terminate. This, the Claimant contends, demonstrates bias on the part of the Defendant. The established test for apparent bias, as articulated in the landmark case of **Porter v Magill**⁵ requires a court to assess whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias.
- [85] A fundamental principle of natural justice is the requirement of impartiality, which precludes decision-makers from having a pre-determined outcome. It's important to distinguish between a preliminary view and a pre-determined outcome. A preliminary view reflects an initial assessment based on available information, while a pre-determined outcome implies a decision that is not open to change. In this case, the Defendant's letter clearly indicates that the preliminary view was formed based on the evidence available at that time, and that the Defendant was open to considering additional information or arguments from the Claimant. By inviting the Claimant to make representations, the Defendant demonstrated a commitment to a fair and impartial process. This allowed the Claimant to present his perspective and address the concerns raised in the letter. The Defendant's willingness to consider the Claimant's submissions and subsequent confirmation that these submissions were indeed considered as part of the decision making process further underscores the absence of any pre-determination.
- [86] Furthermore, rather than indicating premeditation, the letter informing the Claimant of the preliminary view demonstrates the Defendant's duty to communicate the seriousness of the allegations and their potential consequences. This proactive approach aligns with principles of procedural fairness, ensuring that the Claimant is aware of the issues at stake and has an opportunity to respond. Therefore, viewed objectively the letter does not evidence a pre-determination but rather a predisposition, which is a permissible aspect of the decision-making process.
- [87] The Claimant argues that the tone of the letter was excessive and indicative of bias. However, the letter primarily outlined the reasons for the preliminary view regarding the Claimant's suitability for

⁵ [2002] 2 AC 357

the position of Commissioner of Police. Much of the letter's content was derived from the Claimant's own affidavits, including statements that had been previously struck out by the Court. The letter highlighted the Claimant's repeated use of these previously discredited statements as a key factor in forming the preliminary view. Therefore, the tone of the letter, while perhaps firm, cannot be considered as evidence of bias, as it was based largely on the Claimant's own actions and statements.

Bad Faith/Improper Motive

- [88] The Claimant deposed in his affidavit in support that in his response to the October 15th 2019 letter of the Defendant which indicated a tentative view for his dismissal that he responded by way of letter and 'spoke of the tone of the letter with its adverse comments and extreme language, and that it was clear that the Commission demonstrated antipathy, bad faith and a personal axe to grind.' The Claimant failed to provide specific details to substantiate these allegations, relying solely a letter penned by him.
- [89] Courts have consistently emphasized that the gravity of an allegation directly correlates with the level of specificity required to substantiate it. When serious allegations such as bad faith are made, a detailed and comprehensive explanation and clear and compelling evidence are necessary to ensure fairness and due process. In the absence of such, a presumption arises that the decision-maker acted appropriately and in good faith. In the case of **Richards v Constituency Boundaries Commission**⁶ the court approved of the dicta in Fordam and stated '[j]udicial review will lie where a decision made is shown to have acted in bad faith. This is not something which should not lightly be alleged and is difficult to prove.'
- [90] The Claimant seems to rely heavily on the October 15, 2019 letter as evidence of bad faith and improper motive. However, beyond characterizing the letter's tone as "adverse and extreme," the Claimant has failed to identify specific passages or statements that unequivocally demonstrate malice. It seems rather that the Claimant has identified certain parts of the letter claiming bias and construing that to mean bad faith. While bias and bad faith are related concepts that can both undermine the principles of natural justice, they are distinct legal concepts with different elements.

⁶ KN 2009 HC 19

Although they may overlap in certain circumstances, they should not be used interchangeably. In any event a closer examination reveals that these passages do not, on their own, support such a conclusion. Consequently, in the absence of additional evidence, it is difficult to sustain the claim of bad faith based solely on the language used in the letter. This lack of specificity undermines the credibility of the Claimant's allegations. An allegation of bad faith or improper motive, unsupported by specific evidence, is insufficient to establish such claims. While the Claimant may have subjective beliefs about the Defendant's motivations, these subjective beliefs must be supported by objective evidence to be considered credible. Without concrete evidence to substantiate the allegations, the Court cannot rely on mere speculation or conjecture.

- [91] In support of the allegation of bad faith and or improper motive the Claimant also suggests that the timing of the October 15, 2019 letter, which came two weeks after the service of his reinstatement application and the scheduled hearing of his second judicial review application, is indicative of bad faith or improper motive. The timing of the letter is a factor for consideration as to whether bad faith and or improper motive has been established. The letter was issued while the Claimant's other legal proceedings were ongoing.
- [92] The issuance of the tentative dismissal letter during the pendency of the judicial review proceedings concerning his suspension does not on timing alone amount to evidence of bad faith/improper motive. While clearly the timing raises questions it must be viewed in the context of these proceedings and assessed alongside the evidence. The letter provided the Claimant with a clear opportunity to be heard, which the Claimant availed himself of by submitting detailed and extensive written representations both personally and through counsel. This aligns with the principles of procedural fairness, ensuring that the Claimant had a fair opportunity to present his case.
- [93] Furthermore, the Court has already determined that the process was not tainted by bias, further supporting the legitimacy of the letter's issuance. In the absence of direct evidence, it is unreasonable to presume that the timing of the letter was intended to undermine the Claimant's rights or the integrity of the judicial process. The Court's finding of no bias reinforces the notion that the letter was issued in good faith and as part of a legitimate administrative process.

[94] Additionally, employers unless restrained by the court are not obligated to indefinitely suspend all processes, including disciplinary proceedings, simply because judicial review proceedings are underway, especially when the judicial review pertains to a specific issue, such as a suspension, rather than the overall decision to terminate employment. Furthermore the Court is hesitant to infer bad faith in the absence of clear and compelling evidence that the issuance or timing of the letter was motivated by an ulterior motive or malice especially where it has been found that procedural safeguards have been observed. The mere unfortunate timing of the letter, without additional evidence of bad faith, is insufficient to meet the high threshold required to establish such a claim.

Unreasonableness

[95] Unreasonableness, as a ground for judicial review, refers to a situation where a decision is so absurd or illogical that no reasonable decision-maker, acting reasonably and impartially, could have reached such a conclusion. To establish unreasonableness, the Claimant must demonstrate that the decision-maker failed to consider relevant factors, took into account irrelevant factors, or reached a conclusion that is so illogical or irrational that it defies rational explanation.

[96] The Claimant's claim of unreasonableness is unfounded, as it relies on issues that the Court has already determined against the Claimant. Given that the Court has found the process to be fair, it follows that the decision to terminate the Claimant's employment cannot be categorized as unreasonable, as it was a potential logical outcome of the process.

[97] Given the Claimant's failure to establish a breach of the Constitution or a claim for judicial review based on natural justice, the subsequent issues concerning pension entitlements, other benefits, and the appointment of Atlee Rodney, which were contingent upon a successful outcome of the Claimant's case, are now moot and do not require further consideration.

Order

[98] In light of the above, it is hereby ordered that:

1. The Claimant's claim is hereby dismissed.
2. The Claimant shall pay the Defendant prescribed costs.



Jan Drysdale

High Court Judge

By the Court

Registrar