

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2017/0192

BETWEEN:

**ROY HENRY
MERRIT JONES
DONALD GILBERT
JUDE FRANCIS
ANTHONY CALLISTE
DOMINIC DANIEL
LASLYN WILLIAMS
JASON HAGLEY
OSMOND THOMAS**

Claimants

-AND-

THE COMMISSIONER OF POLICE

Defendant

Before: His Lordship The Honourable Justice Ermin Moise

Appearances:

Mr. Alban John of counsel for the Claimant
Ms. Camille Gooding DeSouza of counsel for the Defendant

2023: July, 31;
2024 February, 22

JUDGMENT

- [1] **Moise, J.:** The claimants are all members of the Royal Grenada Police Force. They have each been police officers for in excess of 30 years. They have commenced this action against the Commissioner of Police for various declaratory orders as well as damages for what they perceive to be the Commissioner's breach in failing to recommend them to the Public Service Commission for promotion over a number of years. In summary, the 1st to 7th claimants have pleaded that the failure of the Commissioner of Police to approve their recommendations to the Public Service Commission for promotion was unconstitutional, unlawful, an abuse of power and a breach of their legitimate expectation. They also seek declarations to the effect that they are each entitled to promotion to the rank of Inspector and claim both compensatory and vindicatory damages.
- [2] It is worth noting however, that since the filing of the claim, a number of the claimants have been promoted to the rank of Inspector of Police (Acting). The 8th claimant is no longer pursuing his claim and the 9th claimant has not been in communication with counsel sufficient to ensure that proper instructions are given to pursue this claim to trial. The matter has therefore proceeded to trial on the claim of the first seven claimants. Having assessed the facts of this case and the submissions put forward by counsel for the parties, I have determined that the claims should be dismissed with no order as to costs. These are the reasons for my decision.

The Facts

- [3] Roy Henry first enlisted as a constable with the Royal Grenada Police Force (RGPF) on 16th August, 1991. He was first assigned to general duties at the Grenville Police Station and subsequently to the Traffic Headquarters and Prosecution Department respectively. During the 32 years of his service as a police officer, Mr. Henry was promoted to the rank of Corporal in 1997 and then transferred to Birchgrove Police Station where he served as the officer in charge. Between October 1998 and February 2011, he worked in the Traffic Department in both the Eastern Division and at Traffic Headquarters, then in charge of accidents in Grenada. In October 2006 he was placed in charge of the Bus Terminus Police Station at Melville Street, St. George's. Mr. Henry was subsequently promoted to the rank of Sergeant on 4th December, 2007.

- [4] Mr. Henry was still a Sergeant of police at the time of the filing of his initial claim on 12th May, 2017. That was a total of over 19 years as a police officer without a promotion to a higher rank. Having been promoted to the rank of Sergeant, Mr. Henry was placed in charge of Traffic and Transport in the Eastern Division. He recalled being told at the time by then Superintendent of Police, Michael Francois that he needed someone capable and serious in that capacity due to the fact that an election was approaching. Mr. Henry then returned to Traffic Headquarters in April 2009 and held responsibility for the traffic departments of South St. George and the Bus Terminus Police stations.
- [5] Mr. Henry noted in his witness statement that in 2010 he was going through certain personal challenges which caused him significant stress. He then sought a meeting with the then Commissioner of Police to discuss those issues but did not receive an audience. Out of frustration, Mr. Henry tendered his resignation from the RGPF. In reviewing the documents presented into evidence, it is apparent that Mr. Henry also expressed certain concerns regarding the Commissioner of Police at that time. After reflection, he sought to rescind this resignation. He was however not re-inducted into the RGPF until 2013; at which point he was returned to the rank of Sergeant.
- [6] Mr. Henry states that upon his return to the RGPF he took over from then Inspector of Police 355 Joseph as the officer in charge of operations for both the High Court and the Magistrates' Courts in St. George's. Mr. Henry states that during his years of service, he supervised a number of police officers who were initially junior in rank to him and who have since, as of 9th January, 2017, been promoted over him to the rank of Inspector.
- [7] On 30th December, 2016, Mr. Henry wrote to the then Commissioner of Police enquiring as to why he had persistently been passed over for promotion to a higher rank. His attorneys followed up with a similar letter on 26th January, 2017. The Solicitor General, acting through Crown Counsel, responded to those inquiries with a letter dated 16th February, 2017 by simply stating that “[r]eference is made to the Police (Promotions) Regulations SRO 17 of 1959, 1st June 1959 of CAP 244 of the Laws of Grenada, for your consideration. This piece of legislation should adequately address your concerns.” There was therefore no direct response to the enquiries made on behalf of Mr. Henry.
- [8] Mr. Henry goes on in his witness statement to assert that he had been recommended for promotion by Inspector 598 Stanislaus, officer in charge at Central Police Station. He also states that he had been commended for his work and service by Crown Counsel within the Prosecution Department,

the Registrar of the Supreme Court and by then Commissioner, Mr. Winston James himself. Mr. Henry notes that he had also been cited for award by Woman Inspector 795 Sheila Andall which citation is dated 20th November, 2015. He has undergone training locally in traffic management, supervision, investigation, riot control, and prosecution. As far as Mr. Henry is concerned, his record of service is marred only by one disciplinary charge in 1992 for which he was fined \$4.00. This infraction took place prior to his promotion to the rank of Corporal and could therefore not be a reason to deny him a promotion.

- [9] Merrit Jones first enlisted in the RGPF on 29th October, 1984 as a police constable. He was assigned to general duties at the Gouyave Police station in March 1985. Subsequent to that, in June 1985, he was assigned to the Special Services Unit (SSU) headquartered at Point Salines, St. George's. Mr. Jones states that he spent a total of 28 years with the SSU. At one point he was transferred to Carriacou as the supervisor in charge of the Carriacou contingent of the SSU where he remained for three years. He returned to Point Salines in 1991.
- [10] Mr. Jones goes on in his witness statement to state that during his years at SSU, he was the subject of a number of intra-departmental transfers and participated in many courses; both as facilitator and participant. During this time, he worked as a Weapons Specialist (Armorer), instructor and supervisor. In 1997, he was promoted to the rank of Corporal and then Acting Sergeant in 2004. However, it was not until 2007 was he confirmed in that rank. After a brief transfer as officer in charge of Camp Raymond in Pearls, St. Andrew's, Mr. Jones was transferred back to SSU, Point Salines to act as second in charge to the Commander of the SSU. He continued to serve in that capacity for a number of years under different commanders.
- [11] Mr. Jones states that during the 2007 Cricket World Cup, he was recognised for his outstanding work by international, regional and local military officials. This resulted in the then Commissioner, Mr. Winston James, writing him a letter giving the assurance that he would be promoted to the rank of Inspector.
- [12] In 2007 Mr. Jones was appointed to act as Commander of the SSU. He states that this is a position normally held by a Superintendent or an Assistant Superintendent of Police. Mr. Jones states that whilst acting as Commander of the SSU, he took the opportunity to do the promotion interview and passed. Despite having passed the interview, he was not promoted when the time came for promotion

and suffered the indignity of seeing a number of officers of equal and lower rank being promoted instead. He states that some of these officers were under his charge and some of them had in fact failed the exam.

- [13] Mr. Jones remained as Commander of the SSU until 2008. He states that during this time he had to take difficult decisions against recalcitrant officers. He asserts that some of these officers have since been promoted above him. Mr. Jones states in his witness statement that between 2013 and January 2019, when he was promoted to the rank of Acting Inspector, he was stationed at the Central Police Station. During that time, he held the responsibility of Station Sergeant. Mr. Jones currently holds responsibility for the overall administration of that police station. He argues that this responsibility confirms his ability not only in the field in a slightly more militaristic position as in the SSU, but also in the more reflective position as Station Administrator.
- [14] In 2016, Mr. Jones was recommended by his supervisor for promotion to the rank of Inspector. He states that he was the only one so recommended in his division. Despite this, he did not receive a promotion. This however came off the heels of a Trade Winds Exercise which took place in Grenada in June, 2016. Mr. Jones states that he was assigned to the SSU to act as the Company's Sergeant Major responsible for administration, standards and discipline. He was informed by senior officers within the hierarchy of the RGPF that his participation in this exercise was mandatory because of his expertise and his previous outstanding performance. These expertise were considered necessary in order to ensure the success of the exercise. At the end of the exercise Mr. Jones was again commended for his outstanding work. Despite these commendations and a recommendation for his promotion, he remained at the rank of Sergeant.
- [15] Mr. Jones submits that during this time, there were a number of junior police officers who were promoted ahead of him, despite his performance. He can think of no reason for his tenure in the RGPF to be questioned on the grounds of ill-discipline, illegality or anything untoward. He too, through his attorneys, wrote to the Commissioner of Police and received the same response as Mr. Henry.
- [16] Donald Anthony Gilbert joined the ranks of the RGPF on 12th February, 1988; at which point he was trained at the police training school for six months in Laws and Procedure and one month's military training conducted by the United States Army. In October of that year he was transferred to the SSU and remained attached to that division for nine (9) years. While at SSU Mr. Gilbert undertook several

courses, including a three-month training course in Equipment Record and Spare Parts in the United States of America and at the Regional Security System (RSS).

- [17] In his witness statement, Mr. Gilbert notes that he was eventually transferred to the Police Training School and from there progressed to becoming a member of the instructing staff. He states that as a member of the instructing staff, he was a drill and class instructor. He was involved in training recruits, probationers and supervisors. Mr. Gilbert was the main Drill Instructor for several years, assisting in the preparation of several independence parades, military and state funerals. On 12th May, 1999 Mr. Gilbert was promoted to the rank of Corporal and on 1st December, 2007, to the rank of Sergeant.
- [18] Mr. Gilbert wrote the police promotions examination in 2012 and was successful with a pass grade of 67.79%. The documents presented indicate that Mr. Gilbert was noted to possess outstanding supervisory skills. He states however that since passing the exam, three promotions were effected before he was eventually promoted in 2019. This promotion came subsequent to the filing of this claim. Mr. Gilbert complains that the promotion on 9th January, 2017 took place and he was not even contacted, nor does it appear that he was recommended by the then Commissioner of Police for promotion. Mr. Gilbert laments that this has caused him great anxiety and upset. He states that *“I have been a good police officer and had been recommended for promotion by then Commandant in charge of the Police Training School, Tafawa Pierre now Superintendent of Police.”* It is clear that this has caused him some measure of disappointment.
- [19] After writing the promotion exams in 2012, Mr. Gilbert was transferred to Traffic Department on 6th June, 2016. On 7th November, 2016 he was further transferred to the Bus Terminus Police Station as the officer in charge. He states that in a meeting with the then Commissioner, Mr. Winston James and Mr. Jessmon Prince, Assistant Commissioner of Police, Mr. Prince told him that he was specially chosen to be in charge of the Bus Terminus Police Station because of his background in training and the skill required to police that area. It was stated that thousands of people converge and depart from this Bus Terminus on a daily basis, and it was therefore important to have good officers in control of that area. These sentiments were repeated in the month of December 2016 by then Assistant Commissioner of Police, now Acting Commissioner of Police, Mr. Edwin Martin, who told Mr. Gilbert, in the presence of Corporal Thomas and Assistant Superintendent Linford Kingston, that the upper

echelons of the Force were thinking of the best person to be in charge of the Bus Terminus when they decided on him.

- [20] Mr. Gilbert asserts in his evidence that an assessment of his performance was undertaken by ASP Gregory Mathurine, Commander of the Police Training School on 21st July, 2016. In Police Circular No. 22 of 2016, dated 22nd August, 2016, it was noted that a Promotion Committee under the chairmanship of Deputy Commissioner of Police, Franklyn Redhead, was set up to make recommendations for promotions to fill some of the existing vacancies in the various ranks. It was noted that the selections would be made from officers in the zone of selection and specialized departments. Mr. Gilbert states that at the time he was still in the zone of selection and there are no specialized departments in the RGPF. Yet, he was not recommended for any promotion at that time.
- [21] Mr. Gilbert goes on to state in his witness statement that of the officers promoted in January 2017, only three were senior to him. He lamented the fact that two of the senior officers promoted at that time had not taken the promotions exam and the one senior officer who took and succeeded at the examination scored slightly below him. Of the junior officers who were promoted above Mr. Gilbert in January 2017, only three scored higher than him in the said examination and the rest either scored significantly lower or did not take the exam at all. He stated later on in his evidence, that 3 officers who were junior to him had also failed the exam but were still promoted. Mr. Gilbert goes further to say that seven of all of the officers promoted were out of the zone of selection. Two of those officers being senior to him and five being junior.
- [22] Mr. Gilbert stated that he was summoned to a meeting with the Deputy Commissioner of Police on Thursday 24th January, 2017. The meeting was also attended by Sergeants Dominic Daniel and Anthony Calliste. To the best of Mr. Gilbert's recollection, the Deputy Commissioner told them that, based on the instructions of the Promotions Committee, the following had to be considered in the promotions process:
- (a) officers who were still in the zone of selection;
 - (b) officers recommended by Heads of Departments;
 - (c) general performance;
 - (d) the readiness of individuals to operate at a higher rank; and

(e) trustworthiness.

- [23] According to Mr. Gilbert's evidence, the Deputy Commissioner told the officers that everyone could not be promoted at the same time. He was told that he, among other officers, were considered but not selected and that the committee weighed individuals against individuals to see who were best fit for positions. Mr. Gilbert stated that he then pointed out to Deputy Commissioner Redhead the unfairness of officers junior to him and who had not taken the promotion examination being promoted above him. The Deputy Commissioner's response was that he would not speak to individual issues and circumstances, and that all human decisions were subjective. He did not accept Mr. Gilbert's position that the requirements of seniority and of meeting the examination qualification were objective standards and requirements.
- [24] Mr. Gilbert goes on to state that he sought to advance himself intellectually to the best of his ability by obtaining from T.A. Marryshow Community College in 2011 credits in Modern Management and Administration, and in 2015 an Associate Degree in Police Studies with Education. He knows of no reason for his credibility and honesty as a police officer to be called into question and no reason he should not have been promoted over the years prior to 2019 and certainly before the filing of this claim.
- [25] Mr. Jude Francis enlisted in the RGPF on 29th October, 1984 as a constable and was first assigned to general duties at the Central Police Station. He was later transferred to the SSU in 1985 and thereafter served in different capacities including Non Commissioned Officer (NCO) in charge of the armoury as a small arms specialist. In that position he had responsibility for testing firearms and ammunitions for both the Magistrates and Supreme Courts.
- [26] Mr. Francis states that he has served as both a local and regional instructor and was, from time to time, the Operational Sergeant of the SSU. On three separate occasions Mr. Francis was NCO in charge of SSU Camp Raymond at Pearls, St. Andrew's. While at the SSU, he attended several regional and international training courses which included the following:

a) small arms repairs in the USA;

b) infantry officers (basic), which he states is a course focused on training to be an officer.

This was in the USA;

c) RSS basic, Barbados;

d) RSS leaders, Grenada;

e) Rural Patrol, Dominica;

f) Range Conducting Officer, St Lucia; and

g) Several Trade Winds exercises.

[27] Mr. Francis stated that on four occasions he was assigned to serve as an instructor with the RSS and instructed on Trade Winds exercises. He states that he was an instructor at SSU for 12 years. Mr. Francis was promoted to the rank of Corporal in 1997 and was promoted to that of Sergeant in 2003. He states that he remained a Sergeant between 2003 to January 2019. In this period, he was recommended for promotion on seven (7) different occasions. In the evaluations and reports as well as the recommendations made for his promotion, his superiors speak highly favourably of him. Mr. Francis states that the content of those reports and recommendations, as well as his seniority and standing in the RGPF, clearly speak to his qualification for appointment or promotion to the rank of Inspector. The court has had sight of these recommendations. Mr. Francis believes that had he not brought this claim, his appointment to the rank of Inspector in 2019 may have been further delayed.

[28] Mr. Francis goes on in his witness statement to state that he was transferred to the Eastern Division, stationed at the Grenville Police Station in 2007. He spent a total of five years at that post and served as a desk Sergeant. He was second in charge of operations for that division. During that time Mr. Francis planned and executed security arrangements for major cultural and social events at carnival time as well as sporting events within the Grenville policing area. He also conducted two weapons/range training programs for the Division.

[29] Mr. Francis indicates that he also took the opportunity over the years to develop himself professionally. He undertook a number of training courses including:

(a) the RSS Supervisors Management course;

(b) The Office of Professional Standards course;

(c) Training in Domestic Violence;

(d) Anti-terrorism Capacity Building (China); and

(e) Trade Winds exercise (Grenada) 2016.

- [30] Mr. Francis took the promotion interview in 2007. He was successful and scored 62% in the exam. He complains however, that despite succeeding on the course, several junior officers with lower grades or who lacked his years of experience in station or departmental management were promoted over him. At the time of the filing of this Claim, Mr. Francis was the fifth ranking Sergeant in the RGPF. He states that he felt aggrieved and unfairly treated in being overlooked for promotion in this way.
- [31] On 5th January, 2017, Mr. Francis, like the other claimants, wrote to the Commissioner of Police seeking an explanation for the fact that he had been overlooked for promotion. Mr. Francis was called to a meeting with Deputy Commissioner of Police, Mr. Francis Redhead, who sought to explain why he had not been promoted over the years. Mr. Redhead also referred to the fact that Mr. Francis had not done a promotional exam since 2007. Mr. Francis was of the view that this was a perverse explanation because several junior as well as a few senior officers who did not take the exam were promoted in January 2017.
- [32] Mr. Anthony Calliste joined the RGPF on 9th April, 1984. His first assignment was with the Central Police Station. Shortly thereafter, he was transferred to the SSU. Mr. Calliste was promoted to the rank of Corporal in 1991. On 10th December, 1997, he was appointed as an acting Sergeant and transferred to the Traffic Department. His principal duties in that department included the inspection and licensing of vehicles across the island. After one year in that position he was confirmed in the rank of Sergeant on 9th December, 1998. Mr. Calliste remained at that rank within the RGPF even at the point of the filing of this claim. He also remained in the Traffic Department for the entirety of that period; although he has on occasion acted as Sergeant in charge of the department.
- [33] Mr. Calliste states that he knows of no reason for the stagnation of his career in this way. He has committed no offence and was not subject to any disciplinary procedures; neither has he committed any infraction during his years of service. In his 35 years in the RGPF he undertook a number of supervisor courses and, in his own words, conducted himself *"in a manner that would bring credit to the Force."* Although some of the claimants in this case had been promoted in 2019, Mr. Calliste was not so fortunate. He has remained at the rank of Sergeant; a rank he has held for in excess of 25 years. Mr. Calliste also met with the Deputy Commissioner of Police after having written to the

Commissioner in similar fashion to the other claimants. His account of that meeting was similar to that which I have already outlined.

- [34] Dominic Daniel joined the RGPF on 4th September, 1988. He was first assigned to perform general duties at the Gouyave and Union Police Stations respectively. In 1992, Mr. Daniel was transferred to the Criminal Records Office (CRO) and was trained in Crime Scene Investigation. Also in 1992, Mr. Daniel was transferred back to the Gouyave Police Station where he worked as the Crime Scene Technician within the Western Division. In August 1993, Mr. Daniel was transferred to the Carriacou Police Station where he was assigned as the Crime Scene Technician and Criminal Investigator in that district. In the year 2000, he was transferred to the CRO. While still a Constable at the CRO, in 2001, Mr. Daniel wrote and passed the promotion examination and was subsequently promoted to the rank of Corporal.
- [35] In 2003, Mr. Daniel was transferred to the Grenville Police Station to work as the Crime Scene Technician throughout the Eastern Division. In 2006, he was again transferred to the CRO. He states that he remained in that position until he was appointed to the post of Acting Inspector in 2019. In 2007, Mr. Daniel was promoted to the rank of Sergeant. Mr. Daniel states in his evidence that in July 2012, he again wrote and passed the promotion examination. He was thereafter interviewed in relation to the said promotion process. Despite this, there were three occasions of promotion within the RGPF during which time Mr. Daniel was overlooked until January 2019.
- [36] Mr. Daniel goes on in his witness statement to note that in 1997 he was recognised by the Independence Committee of the Ministry of Carriacou and Petit Martinique Affairs for his dedication to duty in solving a number of crimes during the year 1996. In 1998, he was again recognised and commended for the leading role played in planning field operations that resulted in the eradication of a total of about 5700 marijuana plants from various locations in the mountainous regions on the island. He states that to date, this remains the most marijuana plants ever eradicated on the island of Carriacou in any given year. Mr. Daniel states that he was also commended by Operation Summer Storm, along with other officers, for his work. He claims to have been very instrumental in drafting out the plan for the introduction of one way traffic in the town of Hillsborough. According to Mr. Daniel, this demonstrates his commitment to work across duty lines to contribute to every area of policing, as needed.

- [37] Mr. Daniel states that over the years he took a number of courses in order to improve himself. This included a course in Microsoft Access at the Innovative Computer Centre in 2011. He paid for this course himself. Mr. Daniel also successfully completed an Advanced Fingerprint Science and Computer course at the National Crime Records Bureau in India in March 2013.
- [38] On Mr. Daniel's return from India, he began examination and comparison of fingerprints for evidence presentation in court. Sometime in 2014, he was deemed a fingerprint expert in the St. George's number two Magistrates Court. Mr. Daniel states that he began using internet technology to prepare fingerprint charts for court presentation using the Microsoft Word program. He states that this method of chart preparation is intended to reduce the time and cost in this area of the work of the RGPF. It will also make it very easy to provide copies of these fingerprint charts to the parties involved in a trial where disclosure of evidence is required.
- [39] Mr. Daniel states that his work has been evaluated on a number of occasions in the 8 year period between September 1998 and September 2016. He submits that he has been consistently assessed as either an effective or outstanding police officer. Mr. Daniel also referred to the promotions committee which had been set up in 2016. It is Mr. Daniel's belief that he was in the zone of selection and that his duties were in a specialist area of operations. Despite this, on the 9th January, 2017, a number of Sergeants were promoted to the rank of Inspector and Mr. Daniel was not one of them. Like the other claimants, Mr. Daniel wrote to the Commissioner of Police in January, 2017 and met with the Deputy Commissioner. His account of those facts is similar to that which has already been outlined earlier in this judgment.
- [40] Laslyn Williams joined the RGPF on 7th April, 1983 and was then assigned to general police duties at the Central Police Station. By 1984 she had been transferred twice. Once to the Traffic Department and once to the Immigration Department. Her responsibilities at the Immigration Department included, but were not limited to, processing and profiling of outgoing and incoming passengers and the preparation of all travel documents.
- [41] Ms. Williams was transferred from Immigration to the Radio Room in May 2003 and was there assigned to duties as a 911 dispatcher and supervisor. She states in her evidence that she executed her duties with pride. It was her evidence that when the head of the unit, then an Inspector, was sent

home for various reasons, no replacement was provided and she was asked, albeit verbally, to hold on in the position until filled. Ms. Williams states that she readily accepted the challenge and did the job effectively and efficiently until she was transferred in June 2008 to the Human Resource Department at Police Headquarters. Her main function at that department was the proper maintenance of personnel records, preparing letters and other documents and supervision. She remained at Police Headquarters until she was transferred to the Central Police Station on 13th February, 2017.

- [42] Ms. Williams states that since joining the RGPF she undertook a number of training courses, locally as well as internationally. In addition to job-related training, Ms. Williams had obtained a diploma in Personnel Management and Industrial Relations. She also took courses in business administration as a means of self-development and advancement with the Cambridge International College in the UK.
- [43] Ms. Williams noted in her witness statement that in her years in the RGPF she had never been accused of or charged with any offence or conduct requiring disciplinary action by the RGPF or otherwise. She has never been suspended from active duty. She states further that in July 2016 she was recommended for promotion by Woman Inspector Lester-Ann Parkes. Ms. Williams complains that despite her record of service and self-development, she learned towards the close of 2016 that several officers of the RGPF of equal rank but junior to her in terms of years of service, were to be promoted. She was however overlooked for any promotion in that year.
- [44] Ms. Williams makes a similar complaint to that of her colleagues as it relates to the Promotions Committee which was constituted in 2016. She also wrote to the Commissioner of Police in 2017 in similar fashion. The responses to her enquiries were the same as I have already outlined.
- [45] In response to the evidence led by the claimants, the defendant called two witnesses. They are Mr. Edwin Martin, who is the current Acting Commissioner of Police in Grenada and Mr. Franklin Redhead who is the Deputy Commissioner of Police. Insofar as Mr. Martin's evidence is concerned, it addresses a number of issues of the law which regulate the police promotions process. I will address the law in detail later on in this judgment. There is therefore no need to go into any detail regarding this aspect of Mr. Martin's evidence.

- [46] Mr. Martin also addresses certain general facts relating to the nature of the police force and issues surrounding the promotions process. He states that there are 186 Corporals, 52 Inspectors, 24 Assistant Superintendents, 22 Superintendents, 3 Assistant Commissioners, 1 Deputy Commissioner (there are two confirmed Deputy Commissioners of Police but at present, one is acting as the Commissioner of Police) and 1 Commissioner of Police, within the RGPF. Mr. Martin goes on to state that at the higher ranks of the Police Force there are always fewer vacancies. The various offices are split for the entirety of the Police Force which includes the Immigration Department, Special Services Unit (SSU), Fire Department, Coast Guard, Criminal Investigation Department and the Financial Intelligence Unit; amongst others.
- [47] Mr. Martin goes on to state that the issue of promotions is a significant one within the RGPF. There are a finite number of vacancies in any instance. Vacancies are spread across various departments and units in the Police Force and the exigencies of the departments, units and the general operations of the Police Force must be balanced to ensure that the Police Force functions at the highest standard possible. He states for example, that a vacancy in the Coast Guard for an Inspector which requires an individual to know about sea navigation, engineering, seamanship and managing boats cannot be filled by a Sergeant who has no experience in those areas, despite the length of his service. Mr. Martin is of the view that an officer's suitability and training for that vacancy must be considered and one who is best equipped for that position has to be given priority in selection. Mr. Martin states that this does not mean the officer in question is not suitable to be an Inspector. It simply means that he is not suitable to be an Inspector in that unit where the vacancy arose.
- [48] Mr. Martin therefore goes on to state that at times, in the discretion of the Commissioner of Police, individuals in the zone of selection may not be promoted to a vacancy not because he or she is not a good police officer worthy of promotion, but because the exigencies of the Police Force at the material time was not such that that individual's skills set would be best utilised at a higher rank which requires a different skill set. At times, the special case procedure needs to be used to fill vacancies so that the Police Force has who it needs in the right position.
- [49] Mr. Martin also makes the general point that several of the positions the various claimants assert should be filled by them are mid-management positions within the RGPF. He expressed the view that holding such positions would mean that most of those officers were moving from being frontline

staff police officers to middle management as supervisors. That pool of individuals comprises those who will eventually become the senior managers in the police force. Mr. Martin therefore stated that he could not stress enough the importance of ensuring that each promotion is decided on merit and how it will positively impact the exigencies of the RGPF at present and in the future.

- [50] As it relates to Mr. Roy Henry, Mr. Martin states that on 15th December, 2009, Mr. Henry applied for early retirement from the RGPF. By letter dated 29th December, 2009, Mr. Henry was deemed to have resigned from the Police Force effective 25th April, 2010. Mr. Martin states that although Mr. Henry requested to be retired, his request was instead treated as a resignation. Mr. Martin goes on to state that the personal file for Mr. Henry shows that in October 2009, just prior to his resignation from the RGPF, there was a pending charge against him. The charge stated as follows:

"For that the Defendant on Sunday the 25th day of October 2009 on the Pearls Public Road in the parish of St. Andrew's within Eastern Magisterial District being the Owner of Motor Vehicle to wit car registration number PX120 did remove a Traffic sign to wit a no entry lawfully placed contrary to Section 80(6) of the Road Traffic Act Chapter 5 of Volume 1 of the 1994 Revised Laws of Grenada

- [51] It was Mr. Martin's evidence that the disciplinary charge against Mr. Henry did not proceed due to the fact that he had resigned from the force. There was also mention in Mr. Franklin Redhead's statement of some complaints being made against Mr. Henry regarding his behaviour as the driver of a public bus. Despite this, however, Mr. Henry applied to be readmitted into the RGPF on 26th August, 2010. It is not clear from the evidence as to whether there was ever a response to that application. However, almost two years later, by letter dated 6th March, 2012, Mr. Henry applied again to reenlist in the Police Force. There is evidence to suggest that the Deputy Commissioner of Police was opposed to Mr. Henry's re-admission into the RGPF. However, his application was accepted and on 2nd September, 2013, Mr. Henry was readmitted. He was however admitted to his previous rank at the time of his resignation. That was the rank of Sergeant.

- [52] Mr. Martin goes on in his evidence to state that it was within the discretion of the Commissioner of police to decide which rank Mr. Henry would be permitted to reenlist at in the Police Force. He expressed the view that Mr. Henry's three year absence from the Police Force placed him three

years behind his peers and in fact junior to each of them. This was because his reinstatement to the Police Force does not equate to him being deemed to have picked up where he left off. He may have been reappointed as a Sergeant, but he had to be judged for the purposes of promotions on his performance since his re-appointment to the Police Force.

[53] Mr. Martin however makes the point that there have been no promotions examinations since Mr. Henry reenlisted in the RGPF in 2013. This means that he is not in the zone of selection for the purposes of being selected by the Promotions Selection Board to be recommended for promotion. For Mr. Henry to be promoted, the Commissioner of Police must deem it appropriate to recommend him using the special case procedure. Mr. Martin stated therefore that his predecessor Commissioners of Police did not recommend Mr. Henry for promotion using the special case procedure in 2014. He was of the view that this indicates that based on the exigencies of the Police Force at those times, Mr. Henry was not then deemed suitable for promotion. Mr. Martin also notes that in 2014, Mr. Henry would not yet have returned to the Police Force for two years, meaning he also did not fall within the field of promotion.

[54] In his witness statement, Mr. Martin noted that on 13th September 2017, then Commissioner of Police Mr. Winston James recommended Mr. Henry as an officer to be promoted to the rank of Inspector to the Permanent Secretary in the Ministry of National Security for transmission to the Public Service Commission. As such, it is incorrect for Mr. Henry to assert that he was not recommended by the Commissioner of Police for promotion to the Public Service Commission in 2017. I must note though that this recommendation would have been subsequent to the filing of this claim. However, Mr. Martin expressed his own view, as the current Acting Commissioner of Police, that he does not think Mr. Henry presents as an officer who he would wish to recommend at this time as a special case procedure promotion. As such, Mr. Henry was not put forward by him in 2019 for promotion. He will be able to sit future promotions examinations to be eligible for promotion. Further, Mr. Martin was of the view that, based on performance, Mr. Henry may be promoted, or he may be given consideration under the special case procedure at a subsequent time once the exigencies of the Police Force warrants that he is the better officer then for promotion.

[55] As it relates to Mr. Merrit Jones, Mr. Martin states that Mr. Jones was appointed as an acting Sergeant in 2006. As such, although he had been recommended for promotion in 2007 he was not

eligible for promotion as he had not been in the rank of Sergeant for the requisite two year period. Mr. Martin went on to note that in the 2012 Promotions Examination, Mr. Jones sat the exam to move from Sergeant to Inspector. He scored 17 on the Essay, 13.16 on the Objective, 14.4 on the Subjective and had an overall percentage score of 44.56. Based on the overall score obtained by Mr. Jones in the 2012 Promotions Examination, it is evident that he did not pass. Mr. Martin therefore states that Mr. Jones having failed to pass the Promotions Examination, was not placed in the zone of selection in 2012. Additionally, he was not treated as a special case procedure by the then Commissioner of Police.

[56] Mr. Martin states that in January 2019, he recommended to the Public Service Commission that Mr. Jones be promoted to act in the position of Inspector of Police. He states that his decision to recommend Mr. Jones for promotion was based on several exigencies affecting the RGPF. These included the number of police officers being reduced due to retirement, resignations, dismissals and secondments. As a result, it became urgent to recruit more persons to serve in the Police Force, particularly at the rank of Constable and Corporal. To facilitate such a recruitment drive, promotions were needed to fill higher ranking vacancies, so that vacancies at the rank of Corporal and Constable could be created.

[57] As a result of these exigencies, there were vacancies at the rank of Inspector. Having noted the vacancies and that those vacancies had to be filled, Mr. Martin considered Mr. Jones using the special case procedure, given his experience and skill set as at 2019 to act as an Inspector. Mr. Martin expressed the view that, though in exercising his discretion he made the decision to recommend the promotion of Mr. Jones, he had absolutely no reason to doubt the decision of any former Commissioner of Police to not recommend Mr. Jones to the Public Service Commission for promotion before. He states that each Commissioner of Police is required to examine the exigencies of the police force at the time vacancies are available and look for officers serving at that time to determine who is best suited then for promotion.

[58] Mr. Martin took some time in his witness statement to address Mr. Jones' assertion that a number of more junior officers than him were promoted over him. Mr. Martin sought to highlight the special skill sets and reasons for the promotion of each of those police officers and also denied that they were all junior to Mr. Jones. I do not find it necessary to repeat that evidence in any detail, except to say

that some of those officers have since retired from the RGPF. Others have moved up the ranks to Superintendent positions and others have specific skill sets such as accounting and qualifications in music, making them suitable for supervisory positions in the accounts department and the Police Band.

[59] Mr. Redhead, in his own affidavit indicated that he met with Mr. Jones on 1st October, 2017 in order to speak with him regarding the promotions process. During that meeting Mr. Jones pointed out that a number of officers who were junior to him during his time at the SSU were promoted. Mr. Redhead indicated that Mr. Jones had in fact been transferred from the SSU many years prior to that. That was a transfer from a specialist area of policing to routine police work. At the time of promotions Mr. Jones was not a standout officer in the SSU and could not be considered for a promotion within that division.

[60] Insofar as it relates to Donald Gilbert, Mr. Martin acknowledges that he passed the promotion exam in 2012 and was therefore in the zone of promotion. However, Mr. Martin was of the view that whilst Mr. Gilbert is known as a good officer who does his assigned duties well, he was not a stand out performer in comparison to several of his peers promoted ahead of him. Despite what has been asserted by Mr. Gilbert, Mr. Martin indicated that the then Commissioner of Police, Mr. Winston James, did recommend that Mr. Gilbert be promoted to the rank of Inspector in 2017. That recommendation was contained in a memo dated 13th September, 2017. It is apparent that this recommendation was not accepted by the Public Service Commission.

[61] Mr. Martin goes on to state that in 2019 he decided to recommend Mr. Gilbert to the Public Service Commission to act as Inspector of Police for various reasons. Firstly, Mr. Gilbert was in the zone of selection and there were suitable vacancies in the rank of Inspector that he could fill. He states however, that the Public Service Commission may not have accepted this recommendation.

[62] For his part, Mr. Redhead raised a number of issues regarding Mr. Gilbert. He accused Mr. Gilbert of being a known political activist. Mr. Redhead states that there had been concerns about Mr. Gilbert's political will and bias which he states puts into question his ability to provide the impartial and independent service needed in the RGPF. Mr. Redhead also accused Mr. Gilbert of lacking professional maturity and being prone to irrational outbursts. There were allegedly also complaints of insubordination and disrespectful behaviour on Mr. Gilbert's part. Although Mr. Gilbert had been

recommended for promotion in 2012, by his commanding officer, he was placed third in line on the list of potential individuals eligible for promotion in that year.

- [63] As it relates to Jude Francis, I note that he was first recommended for promotion in 2006. Mr. Martin states that he did not register for the 2012 Promotions Examination. Having failed or refused to register, Mr. Francis automatically eliminated himself from being in the zone of selection for the purpose of promotions. As a result of this, at the material time the former Commissioner of Police could have only considered whether Mr. Francis' performance warranted a special case consideration for promotion. This was obviously not done. Mr. Martin was of the view that whilst Mr. Francis has generally been a good police officer, when compared with his peers he is not an outstanding officer. He is described as an officer who does the job required of him and does it well but nothing above that. Several of his Sergeant peers sat the 2012 Promotions Examination to move from the rank of Sergeant to Inspector. Having failed to sit the examination, Mr. Francis put himself at a disadvantage as persons in the zone of selection were clearly given preference to individuals who are not.
- [64] Mr. Martin states in his witness statement that he decided to recommend Mr. Francis to the Public Service Commission to act as Inspector of Police for various reasons in 2019. He states firstly, that there were vacancies at the rank of Inspector. Having noted the vacancies and that those vacancies had to be filled, Mr. Martin considered Mr. Francis as a special case, given his experience and skill set as at 2019 to act as an Inspector. Mr. Martin however states that he has no reason to doubt the decision of any former Commissioner of Police who did not recommend to the Public Service Commission that Mr. Francis be promoted. Though he made his own recommendation, it was within the discretion of the Public Service Commission to decide whether or not to accept it.
- [65] In relation to the claim of Anthony Calliste, Mr. Martin states that the fact that he has not been promoted since 1998 is a major part of the reason for him not being promoted further. Mr. Martin states that Mr. Calliste performs the tasks assigned to him and is not known to show initiative, or to have excelled in any particularly noteworthy manner. Having failed the 2012 Promotions Examination, Mr. Calliste can only be promoted using the special case procedure. Mr. Martin was of the opinion that there is no special circumstance or special employment that justifies or warrants Mr. Calliste's promotion via that method. In Mr. Martin's opinion, and noting that no prior Commissioner

utilised that procedure, it is evident that none of them thought the exigencies of the Police Force required that he be promoted. Whilst Mr. Martin appreciates and respects Mr. Calliste's longevity in the RGPF, he was of the view that to move from Sergeant to Inspector requires an officer to have good leadership ability and the temperament of a leader and Mr. Calliste, in his view, is not yet at that stage in his career.

[66] Mr. Martin went on to acknowledge that Mr. Calliste's performance reviews noted he is a good police officer. That much is not in doubt. However, the reports also state that he needs more experience in supervision, and taking initiative which are all indicators that he lacks the leadership qualities and or qualifications at this time to be an Inspector of Police. Further, there is also on Mr. Calliste's personal file a reported incident of sexual harassment of a female at the Police Garage where it is alleged that he engaged in inappropriate touching.

[67] Regarding Dominic Daniel, Mr. Martin acknowledges that he sat and passed the 2012 Promotions Examination with an overall score of 66.84%. In his interview with the Selections Board he scored B. He was therefore within the zone of selection. Mr. Martin describes Mr. Daniel as an intelligent and good police officer who works in a specialised area. He is a crime scene technician. His commanding officer at the time recommended him third in line for promotion. Further, in 2014 Mr. Daniel's commanding officer gave a performance review recommending that he not be promoted and stated that this was because Dominic Daniel *"lacks initiative and will pass on decision making to other sergeants of the department. He is not decisive in his approach. His performance as a sergeant is wanting in areas. He doesn't take charge."* I note that there was also a concern expressed in one of the appraisals that Mr. Daniel *"needs to take control of officers under his supervision"*.

[68] Mr. Martin states that whilst he was not the Commissioner of the Police for the periods complained about by Mr. Daniel, he has no reason to doubt that based on the exigencies of the RGPF at the time and available vacancies, likewise Mr. Daniel's skills set, there was no suitable vacancy for which he could have been promoted at the time. However, in 2019, Mr. Martin did recommend Mr. Daniel for promotion to the rank of Inspector. At that time Mr. Daniel was in the zone of selection and there were suitable vacancies at the rank of Inspector that he could fill. Having noted the vacancies and Mr. Daniel's experience and skill set as at 2019 to act as an Inspector, Mr. Martin was therefore able to justify his recommendation to the Public Service Commission.

[69] Mr. Redhead in his affidavit noted that in 2012 Mr. Daniel's commanding officer had recommended two other officers ahead of him for promotions. In 2014 he was not recommended for promotion by his commanding officer. Mr. Redhead indicated that he sat on the promotions boards in 2017 and was aware that the then Commissioner of Police did make a recommendation to the Public Service Commission for Mr. Daniel to be promoted.

[70] Mr. Martin states that Laslyn Williams passed the promotions examination in 2006 but was not then promoted. She sat the exam again in 2012 and failed. As such she was not then in the zone of selection. Mr. Martin also notes that she was not the best or better candidate to be promoted at the time. The seniority of this particular police officer alone was an insufficient basis on which she ought to have been promoted. Mr. Martin expressed the view that although Ms. Williams is a good police officer, her skill set does not warrant a special procedure case promotion at this time based on the exigencies of the RGPF.

[71] That was the extent of the evidence contained in the affidavits of Mr. Martin and Mr. Redhead regarding the issues relating to each individual claimant and their desire for promotion.

The Law

[72] The law governing promotions within the RGPF spans a number of constitutional and regulatory provisions. Section 89(2) and (3) of the Constitution of Grenada states that:

(2) Subject to the provisions of section 91 of this Constitution, the power to appoint persons to hold or act in offices in the Police Force below the rank of Chief of Police but above the rank of Sergeant (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission.

(3) Subject to the provisions of section 91 of this Constitution, the power to appoint persons to hold or act in offices in the Police Force of or below the rank of Sergeant (including the power to confirm appointments), the power to exercise disciplinary

control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Chief of Police.

[73] This section in the constitution does not necessarily guide the process of appointments insofar as it relates to the criteria set for promotions. It does however establish the authority to grant promotions in Public Service Commission (The Commission) above the rank of Sergeant and in the Commissioner of Police up to that rank. Given the role of the Commissioner of Police and that of the Commission in the process of promotions within the RGPF, there is an inevitable overlap between the provisions of the ***Public Service Commission Regulations***¹ and the ***Police Regulations***². The ***Public Service Commission Regulations*** states the following in section 19 in relation to the process of promotion within the public service in general:

"(1) In considering the eligibility of officers for promotion, the Commission shall take into account the seniority, experience, educational qualifications, merit and ability, together with the relative efficiency of such officers, and, in the event of an equality of efficiency of two or more officers, the Commission shall give consideration to the relative seniority of the officers available for promotion to the vacancy.

(2) The Commission, in considering the eligibility of officers under paragraph (1) for an appointment on promotion, shall attach greater weight to-

(a) seniority, where promotion is to an office that involves work of a routine nature, or

(b) merit and ability when promotion is to an office that involves work of progressively greater and higher responsibility and initiative that is required for an office specified in sub-paragraph (a) .. . "

[74] It is important to note that this section seeks to place some measure of emphasis on seniority, in certain circumstances, when consideration is being given for promotions to vacancies which exist

¹ SRO 27 of 1969

² SRO 26 of 1960 as Amended

within the public service. Based on submissions made by counsel for the parties in this case, this is an issue to which I will return later on in this judgment. However, this section must be read in light of the specific provisions of the regulations which govern the police force and what it provides in relation to promotions. In section 199 of the **Police Regulations** the following is stated:

"As every meritorious member of the Force may look forward to eventual promotion, it is necessary to state the principles upon which it will be regulated. While due regard will always be paid to long service and respectability of conduct, the efficiency of the Force requires something more than this in making selections for promotion, and preference will always be given to those who have manifested superior intelligence, zeal and energy in the discharge of their duties. Non-commissioned officers and constables ought therefore to understand distinctly that there will be no hesitation in selecting the meritorious and efficient for promotion, however low down on the seniority list they appear. Promotion examinations will be held in accordance with the Police (Promotions) Regulations."

[75] This section in the **Police Regulations** is important for a number of reasons. Firstly, it underscores that there is an expectation on the part of every meritorious police officer that he or she may be promoted within the ranks of the police force. Whether this gives rise to a legitimate expectation in public law is a separate issue to consider. Secondly, like the **Public Service Commission Regulations**, the section acknowledges that seniority is a factor which can be taken into account when considering promotions within the RGPF. The section specifically states that due regard will be paid to long service and respectability of conduct. However, the section goes on to state that something more is required when the efficiencies of the police force are taken into account. The regulations therefore state that preference will always be given to those who have manifested superior intelligence, zeal and energy in the discharge of their duties.

[76] There is also a specific regulation for the process of promotion within the RGPF. In those regulations section 3 establishes a field of promotion as well as a zone of selection and states that candidates

for promotion up to and including the rank of Inspector shall first pass through those two stages. The **Police (Promotions) Regulation**³ states the following in sections 4 and 5:

Field of Promotion

4. This shall include-

- (a) Constables of not less than four years continuous service; and***
- (b) Subordinate officers of not less than two years' service in their rank, who shall be recommended as suitable for promotion by the Inspector or officer in charge of their Division, hold the First Aid Certificate of the Saint John's Ambulance Association, and who shall be approved by the Chief of Police.***

Zone of Selection

5. (1) Candidates who qualify in the appropriate promotion examination shall enter the corresponding zone of selection and shall remain therein for a period of not more than four years from the date of passing the examination.

(2) If at the expiration of such period of four years as aforesaid a candidate has not been promoted, he or she shall be required to pass the appropriate promotion examination before re-entering the Zone of Selection.

[77] In accordance with these provisions therefore, an officer is placed on the field of promotion based on the number of years he has been a police constable or a subordinate officer of a particular rank. The only additional qualification to be placed in the field of promotion is the need to hold the First Aid Certificate of the Saint John's Ambulance Association. Once these qualifications are met, a recommendation for promotion can be made by the Inspector or officer in charge of that police officer's division. In the case of the claimants, having obtained the rank of Sergeant and held the first aid certificate, they would have all been placed in the field of promotion after having served for two years in that rank. A recommendation for promotion by the supervising Inspector must be approved

³ SRO17 of 1959 as Amended

by the Commissioner of Police. However, to be placed in the zone of selection an officer must sit and pass the promotions examination. If he or she has done so then he or she remains in the zone of selection for a period of 4 years if an actual promotion is not made in relation to that officer.

[78] Section 6 of the **Promotions Regulations** establishes 6 grades for promotional examination based on the various ranks in the RGPF. Section 7 goes on to state that promotion examinations will be based on:

- (a) knowledge of general Police duties;
- (b) knowledge of local laws which particularly concern the Police;
- (c) knowledge of Police procedure; and
- (d) an essay.

[79] In order to pass the exam, an officer must gain at least 50% of the total marks for the entire examination. The **Promotions Regulations** go on to establish a Promotions Selection Board which, in accordance with section 8, has a duty to compile a Promotions List in order of merit which shall remain in force until a new list shall have been compiled. In order to fulfill this mandate, section 8 requires that all subordinate officers and constables in the zone of selection appear each year before the Promotions Selection Board.

[80] It is also important to note the provisions of section 14 of these regulations, which states that “[i]n **cases of special employment or in special circumstances the Chief of Police may recommend for promotion any subordinate officer or Constable without requiring him or her to qualify under these Regulations.**” Therefore, despite the requirements for each police officer to be placed in the field of promotion and zone of selection in order to be eligible for promotion, the Commissioner of Police may exempt a specific officer from those requirements in cases of special employment or in special circumstances. That, however, does not take away the powers of the Public Service Commission in actually making the appointments if so recommended by the Commissioner of Police.

[81] In order to address certain submissions made by counsel for both parties in this case, it is also important to briefly mention various principles of public law.

Legitimate Expectation

[82] Counsel for the defendant referred to the decision of the court of appeal in the case of **Gary Nelson v The Attorney General and others**⁴ where the following was noted in relation to the doctrine of legitimate expectation:

"It is trite law that in order for a claimant to successfully assert that he or she had a legitimate expectation he or she must prove that he had an expectation which, although not amounting to an enforceable legal right, is founded on a reasonable basis that his claim would be dealt with in a particular way."

"It is noteworthy that the appellant is asserting that he had a substantive legitimate expectation to the benefit of a two year contract. Substantive legitimate expectation only arises where there are no legal rights, but there exist circumstances in which promises were made or held and resulting in the other party having relied on those promises and acting thereupon and ... would now be unfair to allow the first party to change its position to the detriment of the other. Simply put a legitimate expectation to a contract cannot coexist with a legal right to being employed pursuant to a contract. The court will protect an expectation which arises from a representation that is made by a public body or authority and from which it would be an abuse of power to resile. The relevant representation must be unequivocal and lack any relevant qualification. The principle of good administration prima facie requires adherence by public bodies to their promises. It is the law that legitimate expectation can arise in relation to substantive matters. A claimant's right to substantive legitimate expectation will only be found to be established when there is a clear and unambiguous representation upon which it was reasonable for him to rely. Then the administration or other public body will be bound in fairness by the representation."

[83] The principles of legitimate expectation were also outlined in **Halsbury's Laws of England**⁵ as follows:

⁴ [2014] ECSCJ No. 107

⁵ (5th edition, 2010)

A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though there is no other legal basis upon which he can claim such treatment. The expectation may arise either from a representation or a promise made by the authority, including an implied representation, or from consistent past practice. In all instances the expectation arises by reason of the conduct of the decision maker, and is protected by the courts on the basis that principles of fairness, predictability and certainty should not be disregarded.

Natural Justice, Fairness and Abuse of Power

[84] In making the link between the doctrine of legitimate expectation and natural justice, counsel for the claimants referred the court to the case of ***Lloyd David Elcock v. AG***⁶ where Dean-Armorer J stated the following:

"The doctrine of legitimate expectation is rooted in fairness and the holder of such an expectation holds a right to be treated fairly. In the Attorney General v. K.C. Confectionery Ltd., Justice of Appeal Persaud recounted the case history of the doctrine of legitimate expectation and said at p. 409:

"I have taken the trouble to deal at some length with the expression "legitimate expectation ... " and the meaning given to it if only to demonstrate that the concept is inextricably bound up with the rules of natural justice particularly with the right of the citizen to be heard and the obligation of a Government or other authority to act fairly ... "

[85] Fairness would dictate that, in certain circumstances, a person who may be affected by the decision of a public authority would have a legitimate expectation to be consulted prior to the decision being made. Counsel for the claimants have also raised the issue of abuse of power. Insofar as it relates a claim grounded in public law, it is important to be reminded of the courts' general refusal to

⁶ Case No. 3308 of 2004

countenance “arbitrary power and unfettered discretion”. It is a very important principle in public law that the courts can interfere with a decision of a public authority if the decision is “... ***found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, “Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires.”***”⁷

- [86] Reference was also made to the case of ***R v Commission for Racial Equality, ex parte Hillingdon London Borough Council***⁸ where it was stated that ***“Parliament can never be taken to have intended to give any statutory body a power to act in bad faith or a power to abuse its powers.”*** Insofar as it relates to abuse of power and bad faith, counsel for the claimants referred the court to ***Wade and Forsyth on Administrative Law*** which stated that ***“[s]tatutory power conferred for public purposes is conferred as it were upon trust, not absolutely - that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended.”*** Parliament is therefore taken to have never intended for the power granted to a public authority to be abused, used for an improper purpose or acted upon in bad faith. If there is evidence of such misuse of statutory or regulatory authority, the court would interfere to give effect to the true intentions of parliament.

Illegality and Procedural Impropriety

- [87] Counsel for the defendants has referred the court to the case of ***Brian Samuel v. The Public Service Commission***⁹ where Phulgence J noted the following at paragraph 10:

“Illegality arises where a decision-maker who must understand correctly the law that regulates his or her decision-making power and must give effect to it fails to do so. Illegality also includes ultra vires acts and errors of law. An action or decision is said to be tainted with illegality if: (a) It was purportedly taken under legislation which does

⁷ *Kruse v Johnson*

⁸ [1982] QB 276

⁹ SLUHCV2018/0167

not contain the requisite power; or (b) It was purportedly taken under legislation which contains precise limits on the circumstances in which a power or duty can be used, and the action or 2 [1985] AC 374. 5 decision in question either exceeds these limits or fails to perform the power or duty in a proper way.”

[88] Phulgence J goes on to describe procedural impropriety in the following manner at paragraph 12:

Procedural impropriety is said to be concerned with the procedure by which a decision is reached, not the ultimate outcome. In order to prove procedural impropriety, the applicant must show that the decision was reached in an unfair manner. If there is no statutory framework which expressly stipulates the relevant procedural requirements, there are two applicable common law rules under this head, namely: (a) The rule against bias; and (b) The right to a fair hearing whereby those affected by a decision of a public body are entitled to know what the case is against them and to have a proper opportunity to put their case forward.

[89] This exposition on the doctrine of illegality and procedural impropriety in public law hardly needs any further elaboration. These are principles now well known to the law. With these broad principles in mind, I turn now to address the specific submissions made by counsel for the parties.

Submissions

[90] Insofar as it relates to the regulations governing promotions within the RGPF and the wider public service, counsel for the claimants argues that section 19(1) of the **Public Service Commission Regulations** makes it clear that seniority is an overriding criterion whenever the Public Service Commission comes to consider the promotion of officers. Counsel argues that “*the leading factor for consideration under these regulations is seniority and experience. Educational qualifications, merit and ability come after.*” Counsel goes on to argue that “*whereas the Police Regulations allow room for the Commissioner to waive the taking and passing of the promotion exams as a condition for promotion, seniority is the primary factor when the PSC is considering candidates for promotion.*”

- [91] Within the context of the current case, it is argued that all of the claimants were senior officers to a number of police officers who were promoted ahead of them. Counsel asks of this court to consider that the Commissioner of Police had made it clear in his own evidence that seniority is not in fact a priority in his own consideration for the promotion of police officers. It is contended that the Commissioner was duty bound to consider the issue of seniority when making a recommendation to the PSC.
- [92] As it relates to the balance between section 19(1) of the **Public Service Commission Regulations** and section 199 of the **Police Regulations**, counsel argues that the Police Regulations are not specific to the issue of promotions. Nonetheless it is accepted that the regulation states that preference in relation to promotion would be given to officers who display superior intelligence, zeal and energy in the discharge of their duties. Counsel argues however, that there is no allegation that any of the claimants are lazy or lack zeal. The contrary appears to be true from their evaluation records presented into evidence. It is submitted that as it relates to Meritt Jones in particular, his performance was outstanding enough for a previous Commissioner of Police to promise him a promotion which was never granted.
- [93] Counsel goes on to argue that there is evidence to prove that Dominic Daniel had a specific skill set for which he could have been promoted in the very department in which he operated, or in any other department which the Commissioner of Police deemed appropriate. It is submitted that officers junior to him, who did not even bother to take the exam, were promoted ahead of him despite this skill set. Counsel argues therefore that if the defendant's arguments relating to superior intellect and skill set were to be the dominant criteria, then persons such as the claimants may spend years in the Police Force without a promotion, despite having passed the exams and qualify for promotions.
- [94] It is submitted on behalf of the claimants that the manner in which they were treated amounts to a breach of natural justice and inequality. Reference is made to the case of ***Police Service Commission (PSC) v Dennis Graham and Dennis Graham v PSC and AG of TT***¹⁰ where the court of appeal of Trinidad and Tobago noted the following:

¹⁰ Civil Appeal No. 143 of 2006 and No. 8 of 2008

“A person who alleges that his right under section 4 (d) has been breached by the administrative action of a public authority must ordinarily establish that he has been or would be treated differently from some other similarly circumstanced person or persons described as actual or hypothetical comparators...”

- [95] Counsel for the claimants submits that Officer Gilbert has proven that he has been treated less favourably than officers similarly circumstanced as himself, but who nevertheless were promoted ahead of him. Counsel also submits that Officer Gilbert had been accused of being a known political activist and that this fact was used against him in determining whether he ought to have been promoted. Further, allegations of criminal conduct had also been leveled against Officers Roy Henry and Anthony Calliste. In response to those allegations, counsel refers to the following passage from the case of ***Police Service Commission (PSC) v Dennis Graham and Dennis Graham v PSC and AG of TT***:

"The Judge proceeded to hear the substantive application and in a reserved judgment stated that he was of the view that Graham's "problem" started with his promotion to the rank of Superintendent with effect from July 23rd, 1997. He was satisfied that had it not been for the charge of indecent assault, Graham would have been promoted to the rank of Superintendent with effect from December 23rd, 1996. The Judge was of the view that the Commission was entitled to look at the notes of evidence of the proceedings with respect to the criminal charge and take them into account in deciding whether or not to promote Graham. It was however not entitled to do so without giving Graham the opportunity to be heard. This was not done. Graham was therefore denied his right to natural justice."

- [96] In the circumstances of that case, the police officer, Mr. Denis Graham, was the defendant in a criminal case before the magistrate. He was suspended for a period of time pending the trial of the charges against him. Mr. Graham was, however, subsequently acquitted and reinstated to the position of Acting Superintendent of Police. He complained that, subsequent to his reinstatement, a number of junior officers were promoted ahead of him on multiple occasions. Although he had been subsequently promoted, he was adamant that this promotion ought to have been backdated as he should have been promoted much earlier. He therefore commenced judicial review proceedings. It

was found at trial, as a matter of fact, that Mr. Graham had been recommended for promotion. However, prior to making a decision on Mr. Graham's promotion, the Commission took a decision to review the notes of evidence in the proceedings pertaining to the charge of indecent assault which had been lodged against him. Having assessed the notes of evidence, the Commission decided that Mr. Graham should not be promoted. It was also decided that consideration for promotion would have been made on a later occasion.

[97] It was against this backdrop that the trial judge came to determine that the rules of natural justice had been breached and that Mr. Graham had not been treated fairly. Although the notes of evidence from his criminal trial were considered by the Commission, he was not given an opportunity to be heard and to provide his own views on whether the charges for which he had been acquitted ought to have been held against him in this way. I note here that the claimants have relied on the judgment of the court of appeal in this matter. The matter was however appealed to the Privy Council on various points which do not interfere with the substance of the decision of the court of appeal which has been referenced here. Counsel's submission therefore is that allegations had been made against Officers Roy Henry, and Anthony Calliste and used against them in determining whether they ought to have been promoted. This ought not to have been done without giving them an opportunity to be heard.

[98] It was also submitted on behalf of the claimants that the reference to various allegations of criminal conduct or political activity against a number of the claimants, clearly indicates that these allegations operated on the mind of the Commissioner when he failed to recommend the promotion of the particular officer. That, it is submitted, is an abuse of power. Counsel further submitted that the passing over of all of the claimants by junior officers, many of them trained by these claimants, is unjust, inequitable and an abuse of power. When the Commissioner declined to recommend the first to the seventh claimants to the PSC for promotion, he denied them their right to be considered for promotion and presumably a chance at being selected for promotion by the PSC.

[99] Mr. John on behalf of the claimants submits that the fact that a number of the claimants had either not written or passed the promotions examination ought not to have worked against them. He argues that the evidence presented in this case establishes the fact that the passing of the promotions examination was never a priority for the Commissioner of Police, who could have relied on the

discretion afforded to him in section 14 of the **Police (Promotions) Regulations** to make a recommendation regardless of the officer being outside of the zone of selection.

- [100] In submissions in response to this claim, the first point raised by counsel for the defendant is that of the 9 original claimants, only 3 had sat and passed the promotions exams. It is submitted that Roy Henry and Jude Francis, having not sat the promotion examinations, did not take a conscious step which was required to put themselves into consideration for promotion. Counsel further submits that Merrit Jones, Anthony Calliste and Laslyn Williams having failed the examination cannot show that they had the knowledge of what is required for the rank each was seeking to be promoted to.
- [101] As it relates to the candidates who passed the examination, it is submitted that the zone of selection candidates is reduced, in accordance with Regulation 8 of the **Promotions Regulations**, to a Promotions Lists. This list is compiled in order of merit. Counsel submits that whilst an annual consideration should be given for promotion, Regulation 10 of the **Promotions Regulations** gives the defendant a discretion to determine the frequency with which the examinations are held and that promotions are recommended based on the exigencies of the police force at any given point in time.
- [102] Counsel for the defendant also sought to highlight a balance which must be struck between section 19 of the **Public Service Commission Regulations** and section 199 of the **Police Regulations**. Counsel submits that when recommending candidates for promotion, the efficiency of the RGPF is the most important consideration. In light of that, seniority is not a prominent consideration and is therefore not a necessary priority. Counsel argues that the promotion of police officers to higher ranks in the RGPF is a national security issue. It therefore cannot be measured in the same manner as promotion of regular public officers in other sectors whose promotion does not have a direct impact on national security. As a result of this, it is argued that a distinction must be drawn between the promotions of public officers in general and the promotion of police officers to more senior ranks of the force.
- [103] Counsel for the defendant also invites the court to take a closer look at section 19 of the **Public Service Commission Regulations**. The submission is that the language of even that section does not make seniority a priority with regards to promotions within the RGPF. Whilst seniority is a factor to be taken into account, subsection (1) makes it clear that ***in the event of an equality of efficiency of two or more officers, the Commission shall give consideration to the relative seniority of***

the officers available for promotion to the vacancy. Subsection (2) goes on to state that greater weight is placed on seniority, where promotion is to an office that involves work of a routine nature. Under that section, greater weight is to be placed on merit and ability where promotion is to an office which involves work of progressively greater and higher responsibility and initiative. The argument here is that none of these provisions make seniority a priority in all instances where promotion is under consideration. As counsel for the defendant puts it *“seniority is capable of being displaced by other relevant considerations. Seniority is never a conclusive consideration for promotion and may be of limited weight.”*

[104] On the issue of legitimate expectation, counsel argues that a promise made to a police officer on entry to the police force cannot form the basis for a legitimate expectation of promotion. It is submitted that it would be unreasonable for such a promise to give rise to such an expectation as this would mean that every single police officer will be promoted all at the same time without regard to the efficiencies of the Police Force. This is not practical. It is argued further that the alleged promises made to various claimants by their superiors can be viewed as nothing more than bare assertions which have not been proven. Counsel goes on further to submit that there is no precedent that seniority is an overriding factor in the determination of the Commissioner of Police as it relates to promotions. In fact, such a precedent would be contrary to section 199 of the regulations which states that ***“there will be no hesitation in selecting the meritorious and efficient for promotion, however low down on the seniority list they appear”.***

[105] Counsel then submits that there was no procedural impropriety or illegality committed by the Commissioner of Police. It was argued that the Commissioner at all times followed the statutory and regulatory procedures for promotion and/or recommendations for officers for promotion. It was noted that the issue raised in relation to the composition of the Promotions Board is without merit. According to counsel for the defendant, at all material times, the Promotions Board was properly constituted, and the defendant was a part of it. In any event, it is argued that the claimants had not in fact pleaded that the promotions board was not properly constituted. This appeared for the first time in submissions. Therefore, the defendant did not have an opportunity to present evidence to refute this allegation. Counsel argues that there is an assumption of regularity which prevails in these circumstances.

- [106] In relation to the complaint that no reasons were given to the claimants for the failure to promote them over the years, it is argued that this was not accurate. Counsel submits that each of the claimants sought reasons for not being promoted and the defendant ensured that they were each given reasons. The defendant opted to have a representative meet with the various claimants to provide reasons to them and this was done. It is argued that there is absolutely nothing incorrect as a matter of law for reasons to be given orally. It is stated however, that there is no statutory or regulatory obligation to give reasons, but reasons were in fact given and it is disingenuous for the claimants to now assert otherwise.
- [107] As it relates to the allegations of criminal conduct against Roy Henry and Anthony Calliste, counsel for the defendant submits that the evidence was not presented for the purpose of asserting that those were reasons to have denied them promotion. It is argued that this was simply a response to their own evidence where it was stated that they had no disciplinary or other infractions recorded against them. It is repeated that these particular claimants had not sat or passed the exams and were therefore not even in the zone of selection. There was no reason to consider the use of the Commissioner's discretion to recommend promotion under the special measures powers conferred upon him.
- [108] In relation to Donald Gilbert, it was submitted that political activism is not a criminal offence. Counsel sought to make it clear that in the defendant's view, Donald Gilbert lacked the required leadership skills, professional maturity, was prone to irrational outburst and was not a standout performer when compared to those he was competing against at the material times for promotion. That was the basis upon which he was not promoted.
- [109] As it relates to the allegation of inequality of treatment, counsel for the defendant refers the court to the case of *Mohanlal Bhagwandeem v Attorney-General*¹¹ where the following was noted:

“A claimant who alleges inequality of treatment or its synonym discrimination must ordinarily establish that he has been or would be treated differently from some other similarly circumstanced person or persons, described by Lord Hutton in Shamoon v Chief Constable of the (2004) 64 WIR 402 at 409 Royal Ulster Constabulary [2003] UKHL

¹¹ [2004] UKPC 21

11, [2003] 2 All ER 26 (at para [71]) as actual or hypothetical comparators. The phrase which is common to the anti-discrimination provisions in the legislation of the United Kingdom is that the comparison must be such that the relevant circumstances in the one case are the same, or not materially different, in the other ...”

[110] The submission here is that there is a duty on the claimants to present true comparators, which is absent in all of the evidence placed before this court. The claimants have not presented any evidence to show that they had been treated differently to some other person who was in a similar circumstance. Counsel has also argued that the claimants have not presented evidence to prove that long serving officers have historically been promoted without the efficiency of the service being considered.

The Court's Assessment

- Legitimate Expectation

[111] I wish firstly to address the issue of seniority and the role it plays as a factor in determining promotions within the RGPF and whether there is any legitimate expectation which arises from an officer's seniority of tenure within the organization.

[112] Insofar as it relates to the submissions put forward by counsel for the claimants, I do not accept that seniority ranks as an overriding consideration. Firstly, whilst the **Public Service Commission Regulations** govern the process of promotions within the wider public service, one cannot ignore the fact that the **Police Regulations** and **Police (Promotions) Regulations** create their own specific criteria for the promotions process within the police force. If there is an ambiguity between these two sets of regulations, then I am of the view that it must be determined in favour of what is contained in the **Police Regulations** and **Police (Promotions Regulation)**. It is right to say that the RGPF is a peculiar carve out of the public service, with its own exigencies and demands. These regulations are clearly designed to ensure that specific regard is given to certain factors when it comes to promotions within that organization.

[113] Section 199 of the **Police Regulations** makes the position very clear that *“[w]hile due regard will always be paid to long service and respectability of conduct, the efficiency of the Force requires something more than this in making selections for promotion, and preference will always be given to those who have manifested superior intelligence, zeal and energy in the discharge of their duties.”* In light of this, I find it somewhat difficult to accept that, merely because the claimants were long-standing members of the RGPF, this should entitle them to a promotion. I intend in no way to minimize or give scant regard to their years of service, as it is obvious that the stagnation of their tenures within the RGPF has caused them some consternation. However, it does not create a legitimate expectation within the meaning of the law. I appreciate that the claimants’ cases are not reliant solely on the question of seniority, but in light of specific submissions made on that point I do not find that seniority is an overriding factor under the regulations which govern promotion within the RGPF.

[114] However, if one were to consider the provisions of section 19 of the **Public Service Commission Regulations** very carefully, as counsel for the claimants would wish for the court to do, even that section does not generally establish seniority as an overriding consideration when the Commission comes to determine promotions within the public service. Counsel for the defendant is quite right when she argues that what the section establishes from the onset in sub-section (1), is that the Commission should consider the factors of *seniority, experience, educational qualifications, merit and ability, together with the relative efficiency of such officers*. Nothing here suggests that in this initial process any one of these factors should override the other. In fact, it is difficult to accept that seniority should trump efficiency, merit, ability and actual educational qualifications for promotion to positions higher up the ranks of the public service. What the sub-section goes on to state, however, is that *in the event of an equality of efficiency of two or more officers, the Commission shall give consideration to the relative seniority of the officers available for promotion to the vacancy*. What the section suggests is that it is only if all the factors are equally measured, should the most senior officer be given greater consideration.

[115] Sub-section (2) goes on to state that if the promotion is to a post of a routine nature, then seniority is to be weighed more heavily. On the other hand, when promotion is to an office that involves work of progressively greater and higher responsibility and initiative, merit and ability are to carry greater weight. Therefore, I agree with the submissions of counsel for the defendant where it is stated that

giving due regard to a police force, the higher up the ranks one is promoted to, the less routine the job becomes, and the more reliance ought to be placed on merit and ability. Mr. Martin in his own evidence underscores the fact that the rank of Inspector is one which takes an officer to middle management levels and closer to the higher ranks of the police force and should not be considered as a mere routine job. In fact, something must be said about the fact that even the Constitution appears to have recognized this elevation in status. Whilst the Commissioner of Police is empowered to promote officers below the rank of Inspector, that task falls to the Public Service Commission from the rank of Inspector upwards. This underscores the fact that such positions within the RGPF are not merely routine and independent scrutiny and approval of the recommendations of the Commissioner of Police is entrenched in the Constitution.

[116] In light of this, I do not find the provisions of section 19 of the **Public Service Commission Regulations** and section 199 of the **Police Regulations** to be incompatible. Neither provision naturally places seniority as an overriding factor, except in the circumstance where the candidates for promotions are equally comparable or the promotion is to a job which is routine. That must, of necessity, also take into account the nature of the vacancy which is available in the first place and the skills and capacity which is necessary to be effective in that post. Therefore, even if the **Public Service Commission Regulations** are taken into account, seniority in and of itself is not an overriding factor in general. That however cannot detract from the specific wording of the **Police Regulations** and its applicability. The purpose of section 199 was to make it clear that the peculiar nature of the RGPF required distinct considerations when promotions are to take place. There can therefore be no legitimate expectation of promotion as a matter of course on the grounds of seniority.

[117] The second issue which I wish to address is the need for officers who wish to be promoted to register for and sit the promotion examinations when they are available. As has been noted earlier in this judgment, an officer enters the field of promotion for various ranks in the RGPF based on his number of years of service in his current rank. However, to be placed in the zone of selection he or she must sit and pass the exam. To my mind, this underscores the importance of ensuring that officers acquire the necessary skill set and knowledge during their years of service in order to be selected for promotion. The exam is one way of assessing this. The regulations establish specific areas which an officer must be examined on, in order to be placed in the zone of selection. It is my view that this procedure ought not to be taken lightly. I am in agreement with the submission of counsel for the

defendant where it is argued that an officer who does not, without good reason, bother to register for the exam after being placed in the field of promotion, cannot have a legitimate expectation to be promoted within the normal process. If the supervising officer recommends an officer for promotion in circumstances where the officer is in the field of promotion, it would be proper for that officer, if he or she wishes to be promoted, to register for the examination when it next becomes available.

[118] Something must also be said about the circumstance where an officer sits and fails the exam. The regulations set out the various areas on which the officer is to be tested. It goes on to establish specific areas based on the rank which the officer desires to be promoted to. This, to my mind, is yet another issue which cannot be taken lightly. The areas of testing are not discretionary but are specifically regulated for. It cannot therefore be taken for granted that an officer who fails the exam will remain in contention for a promotion. Again, it is difficult to accept a proposition that a court can interfere with the exercise of the discretion of the Commissioner of Police when an officer is unsuccessful in an exam which is an essential part of the promotions process. I appreciate that counsel for the claimants has argued that other officers have failed the exam and were still promoted. However, the extent to which this creates a legitimate expectation, without more, is doubtful. I am of the view that there is limited information before me to make a comparable analysis as to why the Commissioner chose to exercise his discretion in some circumstances and not in relation to the claimants. However, the information available to the court does give some indication that particular skills and qualifications such as music and accounting have been taken into account in some cases where the powers under section 14 have been invoked.

[119] I therefore agree with the submissions of counsel for the defendant here. Those of the claimants who did not sit, and those who sat but did not pass the exams, would have a tall order to convince the court that they had a legitimate expectation which was breached here. Certainly, the Commissioner of Police was not duty bound to recommend them for promotion in the normal process. The question therefore is whether there are grounds upon which a legitimate expectation can arise and which the court can be moved to mandate that the Commissioner of Police use the special measures provision to recommend these claimants for promotion.

[120] I do however note that the last examination for promotions was in 2012. Given that a police officer who passes the exam remains in the zone of selection for 4 years, it would therefore mean that the

promotions from 2017 onward would not have had the benefit of any officer's performance on the examination, nor would there have been an opportunity for the various claimants to have been tested at that point. However, as it relates to promotions prior to 2017, failure to sit or pass the exam would undermine any notion of an expectation for a promotion in the normal process. I would also add that I do not accept that a police officer, without more, can have a legitimate expectation that a Commissioner of Police would exercise the special measures in favour of a promotion in circumstances where they have failed to sit or pass the exam. In my view, there is nothing in the evidence which satisfies me that he would be duty bound by way of any clear and unambiguous promise to exercise his discretion in any particular way. However, if the Commissioner chooses to exercise this discretion then he must ensure that he does so in a manner which is fair and in good faith.

- [121] As it relates to the officers who sat and passed the exam and were therefore in the zone of selection for a period of time, I find that there would be an expectation to be considered for recommendation for promotion. As I have indicated before, seniority is not an overriding issue, and it would be within the discretion of the Commissioner of Police to approve a recommendation by a superior officer and to ensure that a list of qualified candidates is put forward. However, once there has been this consideration, it is within the discretion of the Commissioner of Police to make such recommendations to the PSC. In doing so the Commissioner is bound to act in good faith and in a manner which is fair when balanced against the exigencies of the police force and the vacancies which are up for consideration.

- **Inequality of Treatment and Bad Faith**

- [122] Notwithstanding the fact that some of the claimants had not sat or passed the exam, closer consideration should be given to the Police Commissioner's powers under section 14 of the **Promotions Regulations**. This section does not establish any criteria upon which the Commissioner is to exercise the discretion. In my view therefore, the court should be slow to interfere with that discretion unless it can be shown that the Commissioner acted in bad faith or used this discretion for an improper purpose. No doubt, as counsel for the claimants have argued, a breach of the rules of natural justice and overall unfairness may give rise to a finding of bad faith and improper motive. The courts have pointed out that a decision of a public authority may be subject to scrutiny in order to

determine whether his or her actions can be found “... ***to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men.***”

- [123] The issue raised by the claimants is that there is evidence to suggest that past Commissioners of Police did recommend the promotion of officers, some of whom were junior to them, even though these officers did not sit or pass the exam. It was further submitted that the officers were treated unfairly in comparison to those junior officers and that there were various breaches of the rules of natural justices and fairness in the manner in which the various Commissioners of Police had treated the claimants on the issue of promotion. However, having assessed the evidence presented to the court, I am not satisfied that the claimants have proven this element of the case.
- [124] Counsel for the claimants has hinged much of his submissions in relation to officers Roy Henry and Anthony Calliste on the grounds of the allegations of criminal conduct levelled at them in the evidence of Mr. Martin and, more particularly that of Mr. Redhead. It is also submitted that reference to Mr. Gilbert being a known political activist also proves that point. Reliance was placed on the case of ***Police Service Commission (PSC) v Dennis Graham and Dennis Graham v PSC and AG of TT.*** However, I am of the view that there are a number of distinguishing elements between that case and the one before me.
- [125] As I have already noted, it was found in the Graham case that the Police Service Commission did in fact consider Mr. Graham’s promotion and called for the notes of evidence in a case file involving a charge for which he had been acquitted. The evidence suggested that, having considered the case file, it was determined that Mr. Graham would not be promoted at that point in time. What was found in that case was that although the Commission was entitled to consider the evidence in the criminal case, it ought not to have come to a conclusion without giving Mr. Graham an opportunity to be heard. The evidence suggested that although Mr. Graham had been subsequently promoted, this breach on the part of the Commission meant that he would have likely been promoted much earlier had it not taken place. That was the basis upon which a retroactive appointment was ordered.

[126] In the circumstances of the present case however, I do not find that the evidence establishes that the allegations of criminal conduct of the various claimants and Mr. Gilbert's alleged political activism was used as a means of denying them a promotion. I place on record my own criticism of Mr. Redhead's reference to some of those issues and the tone of his evidence in particular. Castigating Mr. Gilbert as a known political activist was not a proper response to the issues raised in this case. Despite the notion of the need for impartiality within the RGPF insofar as partisan politics is concerned, the evidence suggests that Mr. Gilbert had been promoted up the ranks of the police force before. He moved from constable to corporal and then on to sergeant and had been given commendations for his performance at various intervals during his career. If Mr. Gilbert's activism was such a problem for the RGPF then he certainly should have been confronted about it before. Mr. Gilbert was subsequently recommended for promotion in 2017 and 2019. It cannot therefore be taken lightly that his career should be criticized in this way in this claim on the grounds of political activism.

[127] However, what the evidence suggests is that although Mr. Gilbert had passed the promotions examination in 2012, he was recommended third in line for promotions by his commanding officer. There is not much by way of evidence to determine whether the Commissioner of Police then had given consideration to this recommendation. However, on balance, it cannot be said that there is evidence to prove that Mr. Gilbert was not recommended for promotion, whether in the normal or special measures procedures of the regulations, on account of political activism. The evidence goes on to suggest, however, that he was recommended by the Commissioner of Police in September, 2017. It is apparent that the Public Service Commission either did not consider or did not accept that recommendation. As counsel for the defendant points out, the Commission is not a party to these proceedings and no allegations have been made against it. Mr. Gilbert was subsequently recommended for promotion by the current Commissioner of Police in 2019. There is therefore insufficient evidence here of bad faith or any impropriety when it comes to dealing with the prospect of promotion of Mr. Gilbert prior to 2019.

[128] In addition to that, when compared to the circumstances of the Graham case, it cannot be said that on a balance of probabilities Mr. Gilbert would have been promoted at an earlier date had it not been for the allegations now being levelled against him. The PSC either rejected the recommendation for

his promotion in 2017 or perhaps had not considered the issue. The evidence of this is unclear. However, I find that there is no evidence to suggest that a different conclusion would have been arrived at earlier in relation to his promotion within the RGPF.

[129] When it comes to the allegations of criminal conduct against Roy Henry and Anthony Calliste, I express a similar sentiment. Raising those issues in the course of these proceedings cannot work against them. I appreciate that counsel for the defendant has argued that this was done solely for the purpose of casting doubt on their own evidence as it relates to their records of service. However, it cannot serve the purpose of negating the substance of their claim. Notwithstanding this, there are other aspects of the evidence to consider.

[130] When Mr. Roy Henry resigned from the RGPF in 2010 it did place him at a disadvantage. During that time there was a promotions examination which Mr. Henry obviously did not take; as he was not a member of the RGPF then. He returned to the RGPF in 2013 and had therefore fairly recently re-enlisted when promotions were recommended in 2014. In taking these facts into consideration, I am unable to find that this court should demand that a Commissioner of Police in such circumstances ought to have considered special measures to promote Mr. Henry at that point. What the evidence suggests however, is that by memo dated 13th September, 2017 Mr. Henry was recommended by the Commissioner for promotion. As to why the Public Service Commission rejected that recommendation, that issue is not before this court. Whilst I appreciate that this recommendation was made after the filing of this claim I also observe that within 4 years of Mr. Henry's re-enlistment into the RGPF, he was recommended for promotion. It cannot therefore be said that throughout this period Mr. Henry was denied an opportunity to be considered by the PSC.

[131] Mr. Martin states in his evidence before this court that he would not recommend Mr. Henry for promotion at this stage. I have carefully considered the evidence of Mr. Henry himself and what he had to say about his years of service in the RGPF. However, I see no evidence of bad faith here or any breach of the rules of natural justice enough to suggest that there ought to be a retroactive appointment, neither should there be an order demanding that the Commissioner of Police exercise the discretion he has under the regulations.

[132] With regard to Anthony Calliste, I make a similar observation that, if any allegation of criminal conduct were to be used as a reason to deny him a promotion, then it would certainly have been wrong to do

so without giving him an opportunity to be heard. However, the evidence suggests to me that there were other factors for consideration. Firstly, Mr. Calliste did not pass the examination in 2012. Therefore, when promotions came up in 2014 there would have been little to justify his promotion when one considers the concerns raised by his supervisors. There was evidence to suggest that Mr. Calliste had been assessed as one who was not known to show initiative and didn't particularly stand out to the Commissioner as one who ought to have been promoted by the use of special measures. I see no reason, on the facts of the case, to suggest that there was bad faith or an improper motive for coming to that conclusion. I also do not find that the criminal conduct complained of by the Commissioner was an actual reason for denying Mr. Calliste a recommendation for promotion.

[133] I find therefore that on balance, although there were allegations of criminal conduct and political activism against 3 of the police officers who are claimants to this case, those allegations were not used to deny them a promotion. Two of these police officers were actually recommended for promotion in 2017 and were perhaps not accepted by the Public Service Commission. Anthony Calliste had failed the exam in 2012 and was not recommended for promotion in 2017 on grounds other than allegations of criminal conduct.

[134] As it relates to the remaining claimants, much emphasis was placed in closing submissions on Mr. Meritt Jones and his entitlement to promotion over the years. Mr. Jones had in fact been promised a promotion by a former Commissioner of Police. During the course of the trial, I expressed some doubt as to whether this was even the proper approach for the Commissioner to take. The task of promoting an officer to the rank of Inspector is within the ambit of the Public Service Commission and not the Commissioner. The most the Commissioner can do is recommend a promotion. I would be slow to endorse an approach of making direct promises of promotions in a competitive environment in this way. That would not be the proper approach to take. This is compounded by the fact that the claim was filed some years after this promise was allegedly made. For the court to demand a promotion of a police officer on the basis of an alleged direct representation made by a Commissioner, would be a step too far in the exercise of the court's discretion.

[135] I note that Mr. Jones had been recommended for promotion by his immediate supervisor in 2016. The evidence is that when he last took the promotions examination in 2012 he was unsuccessful. That was 4 years prior and there had not been examinations since then. One cannot doubt that the

evidence presented in this case is enough to show that Mr. Jones had been a good police officer and had been commended for his work over the years. However, on balance I do not find that the evidence presented in this case is enough to suggest that Mr. Jones was treated unfairly and that there was a legitimate expectation which had been breached in relation to his desire for promotion.

[136] As counsel for the defendant has submitted, the fact that officers junior to Mr. Jones were promoted ahead of him is not enough to prove that he had been treated in a manner which was unfair when compared to other officers who were similarly circumstanced. Ultimately there must be something more in order to move the court to interfere with the discretion of the Commissioner of Police in ensuring that recommendations for promotion are done in a manner which best suits the exigencies of the police force. The court is not best suited to make that determination. In any event, the current Commissioner of Police provided some details regarding some of the officers who Mr. Jones referred to as having been promoted ahead of him. That evidence shows that there were specific vacancies which needed particular skills such as accounting and music. Clearly Mr. Jones would not have qualified for those promotions.

[137] Mr. Jones had also been given an opportunity to meet with the Deputy Commissioner of Police to discuss the reasons he had not been promoted. I find that overall, there has no breach of a legitimate expectation and there is no evidence of bad faith or an improper motive in the exercise of the discretion of the various Commissioners of Police over the years when it comes to recommending Mr. Jones for promotion.

[138] As it relates to Mr. Jude Francis, I note that although he had passed the examination in 2007, he did not sit the 2012 exam and was therefore not in the zone of selection thereafter. There is not much evidence presented to this court in relation to the round of promotions which took place after 2007 and between 2012. However, the current Commissioner of Police expressed the view that although Mr. Francis was a good police officer he was not outstanding enough to rise above his peers. Having sat out the 2012 examinations he was not considered for promotion until 2019 when a recommendation was made. I have taken into account Mr. Francis' record as presented in evidence. However, I do not find that the evidence establishes that there was bad faith or an improper motive in promoting other police officers ahead of him. There is not that much comparable information in

relation to other officers to suggest that he had been treated unfairly in the process. He met with the Deputy Commissioner of Police who had explained the reasons he was not promoted to him.

[139] Mr. Dominic Daniel was an officer with a specific skill set. The evidence presented in his favour shows that he had been a useful asset to the RGPF over the years. However, there were disparities in his appraisals over the years. There was a concern expressed at one point that he was not one to take initiative and that he *“needs to take control of officers under his supervision”*. Although he had passed the exam in 2012, those aspects of his appraisal certainly show that there were concerns about his leadership abilities. I can see no reason to interfere with the discretion of the various Commissioners of Police over the years in failing to recommend Mr. Daniel for promotion. I see no breach of a legitimate expectation nor any bad faith in relation to him.

[140] As it relates to Ms. Laslyn Williams, I note that she was not in the zone of selection after having failed the exam in 2012. I have taken note of her evidence in relation to her performance over the years. However, I find no reason to contradict the assessment of the Commissioner of Police as has been presented in this case. He was of the view that, based on the exigencies of the police force, he was not willing to exercise his discretion to recommend her for promotion. Given that this is a discretion afforded to the Commissioner and not the court, on balance I see no reason to interfere with that discretion as there is no evidence of bad faith or an improper motive for doing so.

[141] Insofar as it relates to the issues of bad faith and unequal treatment therefore, I find that in general the claimants have failed to make out their case. The Commissioner of Police in his own evidence sought to highlight his own assessment of the various claimants. He also gave an explanation as to why some of the junior officers or those who had not sat or failed the exams had been promoted ahead of some of the claimants. As I have stated before, those are considerations which must be made by the Commissioner of Police in recommending a police officer for promotion. The court's role, as outlined in public law, is supervisory in nature and does not allow for the interference with the exercise of that discretion unless the legal tests have been established. I am not satisfied that this is an appropriate case in which that discretion should be interfered with.

Illegality

- [142] I wish to briefly address the issue of illegality as raised by the parties in this case. Counsel for the defendant points out firstly, that whilst the claimants have all challenged the lawfulness of the recommendations of the Police Commissioner, there was little in the submissions presented by their counsel in relation to this point. There is here an alleged breach of section 89 of the Constitution. However, based on the facts of this case I can see no basis for suggesting that this section has been breached. The section simply outlines the authority of the Public Service Commission to make appointments to promotion from the rank of Inspector upwards in the RGPF. There is nothing here to suggest that this authority was acted upon unlawfully in any way.
- [143] It was pleaded that there was a breach of the **Police Promotions Regulations** and the **Public Service Commission Regulations**. It was not quite clear in the submissions of counsel for the claimants as to exactly why there was a breach of those regulations. As counsel for the defendant points out, that allegation appears to hinge primarily on the fact that officers junior to the claimants were promoted ahead of them. For reasons which I have already outlined, I do not find this to be unlawful. The Regulations grant broad powers to the Police Commissioner to make such recommendations and I see nothing unlawful which was done in the exercise of those powers.
- [144] There was also a submission made that the Promotions Board was not properly constituted. This submission was based on the evidence presented on behalf of the defendant which does not indicate whether the Commissioner of Police was a member of the Board. Counsel for the claimant argues that the regulations specifically state that the Commissioner should be a part of the Board. I understand from the evidence that the Board was chaired by the Deputy Commissioner but there is not much evidence to indicate the full extent of its membership.
- [145] Counsel for the defendant points out however, that the claimants had not pleaded the illegality of the Board and, as such, this was not an issue which the defendant has presented evidence to refute. It was submitted that the claimant should not be allowed to alter their pleadings at this late stage in order to question the legality of the Board. Counsel argues that there is a presumption of regularity in such circumstances.

[146] For my part, I must state that I agree with the submissions of counsel for the defendant on this specific point. The question of the legality of the Promotions Board is one which carries some significant repercussions. The evidence suggests that there have been numerous promotions made by the Public Service Commission since the Board was constituted. If the claimants would have wished to argue for a declaration that the Board was invalid this should have been specifically pleaded so that the court can have the full extent of facts and submissions on the point to consider. I would therefore decline to address this issue in any further detail.

Procedural History of the Case

[147] The final point which I need to address is the procedural history of this case. The parties have both filed submissions on this point. The issue here is that the claim was initially commenced as one for judicial review. It is apparent that leave had not been granted by the court. There was an application by the defendant for the matter to be struck out. The claimants, however, subsequently amended the claim to include constitutional breaches and other relief. Initially there was a pleading that section 13(2) and 89 of the Constitution of Grenada had been breached. The claimants subsequently abandoned their claim for breach of section 13(2) after leave had been granted by the court to further amend the pleadings. In fact, on 2 separate occasions the court had granted leave for an amendment to the claimant's pleadings.

[148] The defendant therefore raised the point that this is in substance a claim for judicial review. The declaratory orders which had been sought by the claimants relate to issues such as legitimate expectation, breach of the rules of natural justice, procedural impropriety and bad faith. There is nothing in the facts of the case to suggest that there had actually been a breach of the constitution. It is therefore argued by counsel for the defendant that leave ought to have been granted before this claim could have been brought and considered.

[149] Counsel for the claimant has responded by raising the procedural history of the case, in that, previous judges had granted leave to amend the claim. Constitutional and other relief was sought which took this claim outside of the realm of judicial review.

[150] I must state that having examined the pleaded case, there is little here to justify the argument that this is anything other than a judicial review of the decisions of various Commissioners of Police over

the years in failing to recommend the claimants for promotion. Leave ought properly to have been sought and granted before the matter was to be pursued. However, I have taken into account that this matter had been case managed by a number of judges, 2 of whom had granted leave to amend the pleadings. The matter had been in the system for over 7 years now. Therefore, in the event that I am wrong on this point, and in the interest of bringing some measure of finality to this litigation, I thought it important to address the substance of the case. Having done so I am satisfied that the claimants have not made out their pleaded case and are not entitled to the redress which they seek for the reasons which I have already outlined.

[151] In the circumstances the case is dismissed with no order as to costs.

**Ermin Moise
High Court Judge**

By the Court

Registrar