

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

MONTSERRAT

CLAIM NO. MNIHCV2022/0020

BETWEEN:

[1] STEPHEN MOLYNEAUX

Claimant

and

[1] SUPERINTENDANT OF PRISON

[2] VAUGHN RYAN, HEAD OF FUNCTION

[3] OSWALD WEST, HEAD OF FUNCTION

[4] BERTLEY CUMBERBATCH, HEAD OF FUNCTION

[5] THE GOVERNOR OF MONTSERRAT

Defendants

Appearances:

Mr. Stephen Molyneaux, Litigant in Person

Ms. Cedricia Shiell, for the Defendants

2024: April 24

2024: June 6

RULING

FITZPATRICK [AG.]:

The Court considered the following.

[1] Mr. Molyneaux is an individual who at all material times was and remains in custody at His Majesty's Prison here in Montserrat (the "Prison").

[2] The Defendants hold various positions of authority within and over the Prison.

- [3] In or about May, 2020, Mr. Molyneaux informed prison authorities of contraband in the possession of fellow inmates. This disclosure resulted in a search and recovery of cell phones and other prohibited items.
- [4] Mr. Molyneaux became the target of threats from other inmates who seemed to be aware of his having provided information to prison authorities. These fellow inmates threatened Mr. Molyneaux who reported his concerns.
- [5] On May 10, 2020, Mr. Molyneaux says he was struck in the face by a fellow inmate, Quincy Isaac, while inside the Prison and knocked unconscious sustaining injuries. Mr. Molyneaux filed his Claim on August 29, 2022 (the "Claim") seeking compensation from the Defendants flowing from this physical attack.
- [6] The Claim includes the following references:
- a) At paragraph 5 – "At all material times, the Claimant was in the custody and care of the defendants who were responsible for my safety and welfare by virtue of section 10(1) of the *Prison Act*";
 - b) At paragraph 25 – "The Claimant suffered injuries to the head and body as a result of prisoner Isaac's assault. The attack and assault was a result of the defendant's negligence and breach of statutory duty"; and,
 - c) At paragraphs 26-30 both inclusive – The Claimant alleges breaches of Rule 37(2) of the Prison Rules and Rules 2, 9, 11 and 22 of the Code of Conduct for Prison Officers. Both the Prison Rules and the Code of Conduct for Prison Officers are contained within and form part of the *Prison Act*.
- [7] The Defendants filed their joint Defence on October 28, 2022 (the "Defence").
- [8] Paragraph 1 of the Defence states:

The Defendants state that the Claim and Statement of Claim are barred by section 2 of the Public Authorities Protection Act.

[9] Section 2(a) of the *Public Authorities Protection Act* (“PAPA”) provides:

Where any action is commenced against any person for any act done in execution or intended execution of any Act, or of any public duty or authority or of any alleged neglect or default in the execution of any such act, duty or authority, the action shall not lie or be instituted unless it is commenced within six months after the act, neglect or default complained of.

[10] The single issue of whether the Claimant’s Claim was statute barred by PAPA was before this Court on January 22, 2024. On that date and with the consent of all parties, the Court set aside ninety minutes on March 21, 2024 to argue the PAPA issue. The March 21st date for argument was adjourned to April 9th and then again to April 24th for reasons not germane to this ruling.

[11] The Claimant, for the first time, raised a challenge to the PAPA argument proceeding on the April 24th date. He submitted that no written application had been made by the Defendants for the PAPA issue to be properly before the Court as required by the Civil Procedure Rules.

[12] In response to the Claimants challenge during the April 24th hearing, the Court reviewed the C.P.R. Rule 1 objective to deal with cases justly and expeditiously. The Court also referenced the Rule 11.6(2)(a) discretion for the Court to dispense with the requirement for a written application in favour of an oral application, which counsel for the Defendants confirmed was then being made. After a brief exchange with the Court, the Claimant withdrew his challenge and asked that the PAPA argument proceed to be argued on the merits without further delay.

[13] The Court directed that the PAPA issue be argued and determined on the basis of the Defendants’ oral application especially given the issue had been scheduled for argument on two prior dates without objection and that the parties had both filed written materials with case law on the PAPA issue merits. In other words, there was

no suggested or actual prejudice to either party proceeding to argue the PAPA issue on April 24th.

[14] The Claimant's fundamental argument is that the relationship between himself and the prison, including all prison officers and duties owed, is a private one such that PAPA does not apply. In other words, the duties owed to him were private duties as contrasted with duties owed to the public generally. The Claimant relies on the Privy Council decision in *Alves v Attorney General of the Virgin Islands* [2018] All ER (D) 136 (Jan).

[15] The position of the Court in *Alves* is summarized at paragraph 37 as follows:

"Despite the potentially wide words of PAPA, it must, as has consistently been held, be construed restrictively. It only applies to public authorities, and not to all persons acting under statutory authority. It does not apply to all actions performed by public authorities, but only to those where the obligation sued upon is owed generally to the public or to a section of it. Where the obligation sued upon arises simply out of a relationship with the claimant which would be the same for any non-public person or body, and where there is no question of a public law challenge, the Act has no application."

[16] The Privy Council in *Alves* undertook a comprehensive review of how PAPA has been applied over time. There is no doubt that it has proven difficult to achieve a red line definition of what relationships fall within PAPA. It is a case by case determination often involving nuance that this Court finds some challenge in always divining.

[17] The starting point is to acknowledge that directive from the Court in *Alves* to interpret PAPA restrictively. That said and by necessity, the application of PAPA is contextual.

[18] In this case, the following factors are instructive:

- a) Mr. Molyneaux was charged by the state with a serious criminal offence;
- b) Mr. Molyneaux was prosecuted by the state for that offence;

- c) Mr. Molyneaux was convicted by the state for that offence;
- d) Mr. Molyneaux was sentenced to custody by the state for that offence; and,
- e) Mr. Molyneaux was placed into the physical custody of the state to serve his state imposed sentence.

[19] Also instructive are the following provisions of the *Prison Act*, including the Schedule (Regulation 41) Code of Conduct for Prisons Officers:

- a) *Prison Act Section 7:*
 - (1) *The Governor shall appoint an officer with such title as she may approve, who shall be in charge of the prison and who shall superintend and manage same.*
 - (2) *The Governor shall appoint such officers as may be necessary for the efficient management of the prison.*
 - (3) *The duties of the officers appointed shall be such as may prescribed by the Rules made under section 21.*
- b) *Prison Act Section 8: Every prisons officer while acting as such shall have all the powers, authority, protection and privileges of a constable.*
- c) *Prison Act Section 10(1): Every prisoner shall be deemed to be in the legal custody of the officer in charge of the prison.*
- d) *Prison Act Section 21(1): The Governor may make rules for the regulation and management of prisons, the conduct, discipline and duties of the officers employed therein, and the classification, treatment, employment, discipline and control of prisoners.*
- e) *Code of Conduct for Prisons Officers Section 3: An officer, while acting as such, by virtue of his appointment and without being sworn in before any Justice, shall be deemed to be a constable and to have all such powers, authorities, protection and privileges for the purpose of the execution of his duty as a Prisons Officer as any constable duly appointed by common law, statute or custom, and shall act accordingly.*

- [20] Prison officers and management are statutory creations. They are appointed by statute and thereby gain authority and duties only and entirely defined by statute. They operate a public custodial facility. By statute, they have physical custody of convicted persons (i.e. prisoners). They serve that section of the public who come into their custody through operation of the state criminal justice system. There is nothing in this construct that can reasonably be described as being private.
- [21] Despite his best efforts, Mr. Molyneaux failed to articulate how his relationship as a prisoner with the Prison officers and management was a private one. He says that the breaches he alleges are breaches of a private duty but cannot tell me on what basis that is so.
- [22] One need only look at the Claimant's Claim to understand that his relationship with the Prison, officers and management is not a private one.
- [23] Mr. Molyneaux's allegations are entirely premised on his being "in the custody and care of the defendants". Again, the Claimant is in the custody of the state at a state operated institution where he is serving a sentence imposed by the state criminal justice system. His entire Claim is founded upon this custody and breaches he alleges by Prison officers and management of their statutorily imposed duties, namely that they "were responsible for my safety and welfare by virtue of section 10(1) of the *Prison Act*".
- [24] As noted above, the cases reviewed by the Privy Council in *Alves* present some difficulty in defining a red line for when PAPA applies or does not. Here, the red line radiates. The Defendants were undoubtedly engaged in statutorily prescribed "public duties owed generally to the world or to a section of the public" and not "private duty incurred in the course of acting under statutory enabling" (see: *Alves* at paragraphs 35 and 36).

Conclusion

[25] In conclusion, the six month timeline for the filing set forth in PAPA applies to the Claimant's Claim. The subject injury occurred on May 10, 2020. The Claimant had until November 10, 2020 to initiate his Claim. The Claimant filed his Claim on August 29, 2022 being more than twenty-one months past the PAPA deadline. Accordingly, the Claimant's Claim is statute barred and hereby dismissed.

It is hereby ordered that:

- (1) The Claimant's Claim is statute barred pursuant to section 2(a) of the *Public Authorities Protection Act* and hereby dismissed.
- (2) If costs are sought then either party may contact the Court to have this matter returned on a date to be scheduled to speak to the issue of the costs of this action.

The Hon. Dale Fitzpatrick
High Court Judge

By the Court

Registrar