

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF ST CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
A.D. 2022

CLAIM NO. NEVHCV2022/0080/0081/0082

BETWEEN:

THE INTEGRITY COMMISSION (NEVIS)

And

DARON SUTTON
JERVAN SWANSTON
ROMA MERCHANT

BEFORE: His Lordship, the Honourable Justice Patrick Thompson Jr.

APPEARANCES: Mrs. Dollrita Camilla-Cato for the Integrity Commission
Ms. Kurlyn Merchant counsel for the Defendants
Mr. Victor Elliott-Hamilton for the St Kitts and Nevis Bar Association
Mrs. Simone Bullen-Thompson for the Attorney General
Ms. Shyra Wattley for the Nevis Island Administration

2023: May 16, December 4

JUDGMENT

- 1) **Thompson Jr J:** Under the Integrity in Public Life Ordinance (as amended), a person in public life means among other things, 'chairmen and managers of majority government owned or controlled banks or other financial institutions or statutory corporations or companies.'
- 2) The Integrity Commission filed these proceedings on June 23rd, 2022, seeking among other things, orders that Mr. Sutton, Mr. Swanston and Ms. Merchant are persons in public life and are thus required to file declarations of their income, assets and liabilities with the Integrity Commission.

- 3) It is important to note that from the outset, the Defendants indicated that they were not opposed to filing the relevant declarations but simply sought this Court's opinion on whether they were in fact persons in public life since the failure to file the declarations without reasonable excuse carried penal and/or possible financial sanctions [a fine of \$50,000- or 5-years imprisonment or both].
- 4) Out of an abundance of caution this Court was of the view that it would be helpful to solicit and receive submissions, both orally and in writing from the Bar Association for St Christopher and Nevis, the Attorney General and the Nevis Island Administration together with those from counsel for the Claimant and Defendants. Moreover, the Integrity in Public Life Ordinance is a relatively young statute (coming into force on June 20th, 2018) and no Court in the Federation had been asked to interpret its provisions prior to this matter.
- 5) Therefore, it was imperative that the matter be fully heard and argued, and any judgment would only be delivered after careful consideration of the arguments and evidence. It is important to note that during the hearing, this Court received evidence from the Defendants who were cross examined by some of the counsel that appeared in this matter so that the matter was fully and comprehensively addressed and argued by all sides.
- 6) This court has set out the following table which summarizes the evidence given by the Defendants at the hearing of this matter on their respective responsibilities.

Defendant	Job Title	Responsibilities & Functions
Daron Sutton	Airport Manager, Vance Amory International Airport ("the Airport")	• Ensures that the airport is compliant with international standards. • Identifies training opportunities for staff. • Supervises a staff of 20 people comprising maintenance, air traffic controllers, cashiers, cleaners, technicians. • Reports to the general manager of the Nevis Air and Seaport Authority (NASPA)
Jervan Swanston	Planning Manager, NEVLEC	• Reports to NEVLEC's Chief Engineer. • Forecasts the future electricity needs of the island and plans accordingly. • Operates largely as a one-man unit
Roma Merchant	Financial Comptroller, NEVLEC	• Reports to the General Manager of NEVLEC • Manages a staff of 7 subordinates.

		• Authorized to make purchases up to a maximum of \$500.00 without the General Manager's accompanying signature. • Job function can be apportioned as follows: 50% - accounting, 35% - finance & purchasing, 15% - budgeting and budgetary management
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- 7) The narrow issue that had to be determined in these proceedings was whether the Defendants are chairmen and managers for the purpose of the Act. Everyone agreed that NEVLEC and NASPA are statutory corporations. Everyone also agreed that the Defendants are not chairmen of these statutory corporations.
- 8) The issue of whether they were managers for the purpose of the Act was the only issue and required an analysis of the relevant rules and principles of statutory interpretation. The man on the streets of Charlestown, Nevis can be forgiven for thinking that these proceedings were much ado about nothing since the Defendant's job titles either included the express term manager or they appeared to be exercising managerial roles or both.
- 9) Everyone agrees that the word 'manager' is not defined in the Integrity Ordinance. It is trite law that words in a statute must be interpreted and given effect in keeping with their natural and ordinary meaning. See paragraph 38 of BVIHCVAP 2020/0006 - Novel Blaze v Chance Talent. How does one arrive at the natural and ordinary meaning of a word? Counsel for the Nevis Island Administration and Attorney General's Chambers argued that the Court should look to the Oxford English Dictionary and/or the Black's Law Dictionary to see how the word manager is defined therein. The Oxford English Dictionary definition succinctly defines a manager as "a person who manages (a department of) a business, organization, institution etc; a person with an executive or supervisory function within an organization".
- 10) Counsel for the Defendants and for the Bar Association drew this court's attention to the definition of manager as articulated by the late Lord Blackburn in Gibson v Burton (1875) L.R. 10 QB 329 in the following terms:
- "A manager would be in ordinary talk, a person who has management of the whole of the affairs of the company; not an agent who is to do a particular thing or a servant who is to obey orders, but a person who is trusted with power to transact the whole of the affairs of the company."
- 11) It is easy to see why the Defendants argued for the definition in Gibson v Burton. That definition would limit the scope of manager to only the person vested with ultimate authority in a company or organization. If this court were to accede to such a narrow definition of manager, the number of chairmen and managers who would be required to file declarations would be significantly circumscribed. Counsel for the Bar Association trenchantly argued that this was precisely the point of the Integrity Ordinance in that it was directed at zooming in on the exact holders of

executive authority as opposed to capturing all persons who performed managerial roles under the Integrity Ordinance.

- 12) Counsel for the Nevis Island Administration argued that the rule *noscitur a sociis* provided a complete answer to the argument by counsel for the Bar Association. Ms. Wattley reminded the court that the Latin maxim *noscitur a sociis* means that words cannot be read in isolation and must derive their color and content from their context. Therefore, chairman meant the singular while managers meant the plural and thus Parliament in their wisdom contemplated one chairman and multiple managers thus capturing multiple managers.
- 13) In this Court's view, Ms. Wattley's attractively argued and persuasive submission on this point must carry the day. The application of the *noscitur a sociis* rule provides a complete answer to the point raised by counsel for the Bar Association. Moreover, the narrow definition of manager appears to be at odds with the expressed focus of the Integrity Ordinance on public officials 'at any levels of its hierarchy. It is important to note that the preamble to the Integrity Ordinance expressly states that it is intended to give effect to the InterAmerican Convention Against Corruption. Public officials or persons exercising public functions, at any level of their hierarchy would thus attract greater scrutiny and be required to provide greater transparency and accountability than had been the case.
- 14) Finally, Ms. Wattley helpfully pointed out that the 2019 amendment to the Integrity Ordinance replaced the words 'directors and managers' to chairman and managers. In her view, this recent amendment confirms that Parliament chose not to modify the word manager to general manager (the narrow position argued for by the Bar Association). In her view, this decision (presumably a deliberate one) underscores the fact that Parliament wished to include all managers and not just focus on general managers. This court is inclined to agree and finds that the broad definition of manager accords with both the natural and ordinary definition of the word manager and that the purposive rule of statutory interpretation would lead to the same result.
- 15) This Court's task is to assess whether each of the Defendants manages any executive and supervisory functions within their respective organizations.

Jervan Swanston

- 16) This Court has little difficulty in finding that Mr. Swanston is not a manager and thus is not a person in public life. The evidence indicated that Mr. Swanston had no managerial responsibilities as he did not appear to have a subordinate. Mr. Swanston reports exclusively to the Chief Engineer. Mr. Swanston's role in forecasting the electrical needs of the network and keeping abreast of developments in the field confirmed that he performed no executive functions. He cannot enter into contracts on behalf of NEVLEC. Mr. Swanston's role was purely technical and not managerial and if his title were Deputy Chief Engineer it is unlikely that anyone would have suggested that Mr. Swanston's responsibilities meant that he was a person in public life for the purpose of the Act. It is accepted that Mr. Swanston has exercised a supervisory role as he supervises the planning aspect of NEVLEC's business, but this role does not include any executive functions.

- 17) Therefore, this court finds that Mr. Swanston is not a person in public life and as such NEVHCV 2022/0081 is dismissed.

Daron Sutton

- 18) This Court has little difficulty in finding that Mr. Sutton is a manager and thus a person in public life. Mr. Sutton supervises a staff of 20 and reports directly to the general manager of NASPA. Mr. Sutton accepts that he is one of several managers who all report to the General Manager. See the diagram below.



- 19) Mr. Sutton manages the maintenance, administrative, air traffic control and fuel technicians at the airport. He can approve purchases up to \$500.00 without any accompanying approval and has executive responsibility for organizing and identifying training opportunities for the staff under his supervision. Mr. Sutton accepts that he cannot enter contracts on behalf of NASPA and confirms that NASPA's budget and accounting procedures are managed by NASPA's general manager.
- 20) Supervision of others is not determinative of the question of whether a person is a manager or not but supervising a staff of 20 vests considerable responsibility and authority in Mr. Sutton. The clearest indicator of Mr. Sutton's considerable executive authority lies in the fact that responsibility for the airport is shared between Mr. Sutton and the Security Manager at the Airport. This is to be contrasted with the fact that there are operations and human resources managers for other aspects of NASPA who all report to NASPA's general manager. The inescapable inference is that Mr. Sutton's role at the Airport means that his job encompasses human resources and operations management. Therefore, Mr. Sutton is a person in public life in view of the significant supervisory and executive authority he exercises. The fact that he cannot authorize expenditure above \$500 is a welcome check and balance but does not reduce the potential scope of his responsibilities.

Roma Merchant

- 21) The Court is satisfied that Ms. Merchant is a person in public life. On the one hand, Ms. Merchant, the Financial Comptroller of NEVLEC supervises a staff of 7 (4 in the accounting department and 3 in purchasing (a purchasing supervisor and 2 clerks. Her responsibilities can be divided as follows, 50% accounting, 35%, finance and 15%, purchasing. Ms. Merchant is a trained accountant, and her finance responsibilities are largely directed at preparing the budget (as submitted by the various departments) and then in conjunction with the General Manager presenting the budget to the Board.
- 22) Therefore, while Ms. Merchant exercises some supervisory responsibilities, she exercises very little, if any, in the way of executive functions. She cannot enter into contracts on behalf of NEVLEC. She can only approve purchases up to a maximum of \$500.00 without approval. She does not monitor NEVLEC's Information Technology Department, nor does she have responsibility for hiring, although she does review HR matters. Essentially, Ms. Merchant co-ordinates the financial activities of NEVLEC while having little authority or input on how those resources are allocated.
- 23) Ultimately, Ms. Merchant's role is analogous to that of a Chief Financial Officer ("CFO"). There is a strong presumption that the CFO of a company is a high-level executive exercising significant supervisory and executive responsibilities. In this case, NEVLEC appears to have split the role of CFO between Ms. Merchant and the General Manager. Ms. Merchant's executive roles and functions appear limited, but there is no reason why she cannot be required to take on additional responsibilities in the future. There was no evidence that Ms. Merchant has acted or is willing to act as General Manager but there is no real reason why she would be unable to do so. It is accepted that accounting is half of her responsibility but the fact that budgeting/finance and purchasing encompasses the other 50% of her role confirms that Ms. Merchant can exercise significant executive authority. This Court is minded to err on the side of caution and finds that Ms. Merchant is a person in public life. A larger accounting role with less budget/financial experience may well have tilted the balance in the opposite direction but Ms. Merchant's own assessment of her role was telling.

Costs

- 24) Both sides have enjoyed partial success and in any event this Court is not satisfied that the Defendants have acted unreasonably in defending these proceedings. The Defendants did not mount a defence in the classical sense since they made it clear that they were not objecting to compliance but reasonably sought this court's opinion on the matter. The court's need for opinions from the Bar Association and Attorney General's Chambers and Nevis Island Administration's legal department confirms that the answer to the question posed in this litigation was not an easy one.
- 25) The Defendants should not be penalized in costs for politely asking the Claimant to justify their position. It is telling that Ms. Merchant wrote to the Claimant seeking clarification on the same question raised by these proceedings but did not receive a response. Citizens should be commended for reasonably asking questions which the High Court is empowered to hear and resolve. The test is not just whether the Claimant acted reasonably but also whether the

Defendants acted unreasonably in defending these proceedings. The points of law raised, and their partial success, confirm that the Defendants were acting reasonably and that the appropriate order in all three proceedings is that of no order as to costs.

- 26) This Court wishes to put on record its gratitude to all counsel for their submissions and assistance in this matter. This matter serves as a timely reminder of the value of receiving and assessing oral evidence. The viva voce evidence in chief and cross examination of each defendant was of considerable assistance to this Court in deciding the roles, functions and responsibilities of each defendant in a way that their affidavits could not have provided.
- 27) This Court notes in passing that the Hansard of the debate in the Nevis Island Assembly relating to the passage of the Integrity Ordinance was provided to this Court. Hansard was of little assistance in determining what the Assembly intended because the debate descended into political theatre. Legislators are reminded that debates in the House of Assembly are for the purpose of focused and constructive consideration of legislation. Political theatre has no place in any modern house of representatives.
- 28) Finally, this court apologizes for the delay in the delivery of judgment in this matter. The Code of Judicial Conduct speaks to a 90 to 120-day maximum period for the delivery of reserved judgments. The judgment was prepared since late September, but a combination of illness and other commitments meant that delivery was unavoidably delayed until today's date. All the same, this court unreservedly apologizes for the delay in the delivery of this judgment.

Patrick Thompson Jr.
Resident High Court Judge

BY THE COURT

REGISTRAR