

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: SLUHCV2019/0595

**IN THE MATTER of the Salaries Review Commission Act
Chapter 1.15 of the Revised Laws of Saint Lucia.**

And

**IN THE MATTER of Section 6 of the Constitution Order of
Saint Lucia 1979.**

And

**IN THE MATTER of Claim by the Claimant that Sections 1 and
6 of the Constitution have been breached in relation to him
and for relief in accordance with Section 16 of the
Constitution.**

BETWEEN:

RICHARD FREDRICK

Claimant

And

ATTORNEY GENERAL OF SAINT LUCIA

Defendant

APPEARANCES:

Mr Horace Fraser for the Claimant

Mr Dexter Theodore, QC and with him, Mr Rene Williams, Senior Crown Counsel for the Defendant

2021: March 15

2023: September 8.

JUDGMENT

[1] **PHILLIP, J.:** On 9th December 2019, the claimant filed this originating motion and his supporting affidavit with exhibits, seeking the following declarations, interest and costs. That:

1. The Reports of the Salaries Review Commission ("the Reports") are legally binding and enforceable in that the Reports were accepted by the Cabinet and laid before the House of Assembly and the Senate on 7th and 24th July 2015 as required by section 16 (2) of the Salaries Review Commission Act¹ ("the Act").

¹ Cap. 1.15 of the Revised Laws of Saint Lucia

2. Once the Reports were laid in Parliament as prescribed by section 16 (2) of the Act,
 - (1) The Cabinet is not required to approve further the Reports containing the recommendations.
 - (2) Neither the Minister of Finance nor the Cabinet has the authority to select which recommendations should be implemented.
 - (3) The Minister of Finance has a resulting legal obligation to honour and implement the recommendations of the Salaries Review Commission (“the Commission”).
3. The claimant is entitled to ALL the benefits derived from the Reports, including a duty-free vehicle up to CIF\$100,000.00.
4. The benefits due and payable to the claimant under and in respect of the recommendations contained in the Reports constitute property within the meaning of section 6 of the Constitution of Saint Lucia² (“the Constitution”).
5. The failure and refusal of Cabinet and, more specifically, the Minister of Finance to pay the claimant the benefits as conferred unto him by the Reports is in breach of the obligations created by section 16 (4) of the Act and is unreasonable, irrational, and an act of bad faith.
6. The claimant, having been paid part of the legal entitlement under the Act, is an acknowledgement by the defendant that the claimant is entitled to all the benefits outlined therein.
7. The claimant is entitled, as of right, to a duty-free vehicle dating back to 2010 following the Commission’s recommendations.
8. The duties paid by the claimant to the Department of Customs and Excise (“Customs”) on the importation of his vehicle in October of 2019 amounts to a deprivation of his legal entitlements to duty-free concessions to which he is entitled by virtue of the period he served as parliamentarian and government Minister.
9. The claimant is entitled to be paid all the emoluments and benefits conferred to him following the recommendations of the Commission.

² Cap. 1.01 of the Revised Laws of Saint Lucia

- [2] By his affidavit filed on 20th August 2020, the defendant opposed the claim, essentially denying that the claimant was entitled to a concession on a vehicle, as he was a former Parliamentarian at the time of the approval of the concession. The claimant replied with another affidavit filed on 17th September 2020; however, the facts in the case were not in dispute. The parties, by consent at the first hearing on 30th September 2020, agreed that their respective affidavits would stand as their witness statements for purposes of the trial. On 23rd February 2021, the parties filed a statement of agreed facts and their written submissions on the 11th and 25th of January 2021 and authorities on 18th January 2021 and 25th February 2021, respectively. Neither party cross-examined the other witness at the trial.

Agreed Facts

- [3] The claimant became a Parliamentarian and District Representative in March 2006 for the Constituency of Castries Central. He remained in that Parliamentarian capacity until June 2016 and was a government Minister from December 2006 until August 2011.
- [4] On 1st November 2009, the Governor General appointed the Commission to review the salaries and other conditions of service of Parliamentarians and top management in the Public Service, for example, the Governor General, Permanent and Deputy Permanent Secretaries, the Parliamentary Commissioner, Chief Elections Officer, and other officers falling within the purview of the Commission.
- [5] During its tenure, the Commission submitted four reports to the Governor General, two of which were 'Interim Reports' and a third styled 'Supplementary Report'. Its fourth and final report was named 'Review of Salaries of Top Management in the Public Service, Parliamentarians and Other Constitutional Posts - Final Report'. The Interim Reports, the Supplementary Report and the Final Report were duly forwarded to Cabinet. By Cabinet Conclusion No. 557 of 2013, dated 14th October 2013, the Cabinet "reaffirmed that the report will be forwarded to Parliament for tabling, at a date to be determined by the Prime Minister".
- [6] The following reports of the Commission were laid in the House of Assembly and the Senate on 7th July 2015 and 24th July 2015, respectively:
- (1) "Review of Salaries of the Political Directorate and Top Management Officers in the Public Service - First Interim Report;"

- (2) "Review of Salaries of Political Directorate and Top Management Officers in the Public Service and other Non- Non-Classified Positions - Second Interim Report;"
- (3) "Review of Salaries of Parliamentarians, Top Management Officers in the Public Service and Other Non- Non-Classified Positions - Supplementary Report;"
- (4) "Review of Top Management in the Public Service, Parliamentarians, and Other Constitutional Posts - Final Report."

[7] The Cabinet approved the implementation of the recommendations of the Commission regarding salaries, allowances and pensions retroactively to 1st April 2007, and by its Conclusions No. 208 of 2016 dated 19th September 2016 and No. 242 (b) dated 4th October 2016, implemented the recommendation of the Commission contained in the Final Report regarding the entitlement of duty-free concessions to Parliamentarians of a duty-free vehicle of 100% waiver of all duties up to a CIF value of \$100,000.00 ("the duty-free concessions").

[8] On 21st October 2019, the claimant attempted to clear a motor vehicle he had imported on the understanding that the vehicle would attract the duty-free concession of Parliamentarians. Customs disputed his claim to the duty-free concessions. They required him to pay the sum of \$189,040.42 as a deposit regarding import duties and taxes to facilitate the release of the vehicle. However, had the duty-free concessions applied, the claimant would have paid about \$99,930.00; therefore, he paid Customs an excess in the region of \$89,210.40.

[9] Based on the Commission's work and the Reports, the claimant became entitled to salary/pension adjustments retroactive payments as a Parliamentarian of \$625,399.07, of which he was paid the sum of \$186,663.21 on the 19th November 2019, when he executed a partial release and partial discharge agreement regarding the said payment.

Issues

[10] Considering the nine declarations sought by the claimant, the ultimate issue is whether he was entitled to the duty-free concessions following the Reports being laid in Parliament. However, this matter begs the following questions:

1. What was the effect of the Reports being laid or tabled before the House of Assembly and the Senate - did they become effective?

2. Was the claimant entitled to the benefit of the recommendation in the Reports, having ceased to be a member of Parliament by September 2016?

Claimant's Case

- [11] The claimant submitted that it is apt to put the role of the Cabinet in the scheme of the salaries review in addressing the first question. The Cabinet has two roles under the Act: to accept the Commission's report or refer it back to the Commission for further consideration (section 16 (3)). It follows that once the Cabinet received the Commission's report and did not refer it back for further consideration, it means that the Cabinet has accepted the Report. Further, once the Cabinet caused the Report to be laid in Parliament, the Cabinet's function in this regard was done. After that, the defendant cannot realistically argue that the Cabinet had not accepted the Reports (sections 16 (2) and (3)).
- [12] Referring to *King (Gladwyn) v Attorney General* (1994)³, the claimant asserted that Parliament, in its law-making power, has the sole jurisdiction to determine salaries and other benefits. Our system of governance operates on the principles of the separation of powers: the Executive, the Legislature and the Judiciary. The fact that the Reports were tabled in the House of Assembly and the Senate signifies that the Reports became law by dint of Parliament's function - the Executive has no power to usurp the function of Parliament and undo what was already done.
- [13] Regarding the second question, the claimant argued that 9th September 2010 was the recommended or reference date⁴ for the duty-free concessions⁵. The retroactive payment of salaries was effective 1st April 2010, with three years back pay⁶. Therefore, the claimant submitted that once the Report was laid before Parliament and became law, he became entitled to the duty-free concession effective from 9th September 2010, when he was still a Parliamentarian. Consequently, the claimant was entitled to the said payment as at law.

³ 45 WIR 50

⁴ See Appendix B of the Final Report (Exhibit RF6) on the recommendations regarding payment eligibility for duty-free concession

⁵ See the Second Interim Report (Exhibit RF4) at clause 8.1.1

⁶ See the Final Report (Exhibit RF6) at clause 3.6.3

Defendant's Case

- [14] The defendant countered and denied the recommendations contained in the Final Report became binding on the State of Saint Lucia as alleged. For this to have occurred, the recommendations in the Final Report must have first been accepted by the Cabinet, according to section 16 (3) of the Act. The recommendations of the Final Report relating to Parliamentarians, including duty-free concessions, were not accepted by the Cabinet when the reports were laid in Parliament. Cabinet Conclusion No. 557 of 2013 merely recorded that the Cabinet had considered the Final Report. It reaffirmed that it would be forwarded to Parliament for tabling.
- [15] The procedure under the Act was that a report was to be presented to the Cabinet by the Prime Minister and, after that, tabled in both the House of Assembly and the Senate. Under the Act, any recommendations of the Commission that the Cabinet accepts were regarded in law as effecting an amendment to existing contracts and legislation concerning the holders of the offices mentioned in the reports. It is acceptance by the Cabinet and not the tabling of the Reports in the House of Assembly and the Senate that gives the recommendation contained in the Reports the force of law.
- [16] When Cabinet approved duty-free concessions to Parliamentarians by Cabinet Conclusion No. 208 of 2016 (as amended by Cabinet Conclusion No. 242 (b) of 2016), there was nothing in the conclusions or the Reports to suggest that they applied retrospectively to persons like the claimant who had ceased to be Parliamentarians before the date of the Cabinet Conclusions.

Legal Framework

- [17] The resolution of the matter calls for the Act's interpretation and/or construction. It was the common position of the parties that section 16 was the relevant provision, so I set it out in full now for ease of reference as follows:

"16. Report of Commission

(1) Where the Commission reviews the salaries and other conditions of service of incumbents, the Commission shall embody its recommendation in a report.

(2) The report, in the case of a review under section 15(1), shall be submitted to the Governor General who shall forward a copy thereof to the Prime Minister, and, in the case of a review under section 15(2), the report shall be submitted to the Prime Minister, and in both these cases the Prime Minister shall present the report to the Cabinet and, subject to subsection (3), the report shall be laid, as soon as possible thereafter, on the table of the House of Assembly and of the Senate.

(3) When a report is presented to the Cabinet, the Cabinet may accept it, or refer it back to the Commission for further consideration.

(4) Any recommendations accepted by Cabinet shall be construed as an amendment to any existing contract or legislation with respect to salaries and other conditions of service of the holders of the offices mentioned in the report and any such existing contract or legislation shall be deemed to be amended accordingly.”

Discussion

Effect of the Reports being laid or tabled before the House of Assembly and the Senate

[18] The nub of the claimant’s submission was that once the Cabinet received the Reports, it did not refer it back for further consideration and, most importantly, laid the Reports on the table of the House of Assembly and the Senate; this means that the Cabinet has accepted the Reports.

[19] The defendant submitted that section 16 (3) is expressed in permissive language. The conjoint effect of sections 16 (2), 16 (3) and 16 (4) is that once the Cabinet is presented with a report, the Cabinet may accept it or may refer the report back to the Commission; however, the report must be laid on the table of the House of Assembly and of the Senate. Further, it is clear that the Cabinet had not accepted the Reports but that the Honourable Prime Minister considered that he was duty-bound to table them in Parliament following section 16 (2) of the Act. He said in the address which he made in the House of Assembly on 7th July 2015 concerning the laying in Parliament of the Reports that:

“I want to make it abundantly clear, Mr. Speaker, that these Reports were commissioned by the former Government, but the law commands me to lay the Reports in Parliament. I must lay the Reports in Parliament. I cannot leave the Reports on the shelves or in a cabinet. The law says that the Reports have to be laid in Parliament. I want to make it clearer, Mr. Speaker, that the Parliamentarians of the Government have no intention to seek increases of salary at this time.”⁷

[20] I cannot accept the defendant’s submission as it contradicts the clear context and scheme of section 16 of the Act, which the court must read as a whole. Subsection (1) requires the Commission to provide its recommendations in a report; then, according to subsection (2), upon the Prime Minister’s receipt of the report (whether from the Governor General or the Commission, as the case may be) the Prime Minister must first present it to the Cabinet, and (following subsection (3)) the Cabinet may accept the report, or refer it back to the Commission for further consideration after that acceptance by the Cabinet (because if it were referred back to the Commission, there would be no report to be laid) the report shall, as soon as possible, be laid on the table of the House

⁷ See the Hansard of the House of Assembly of 7th July 2015 at page 3, (Exhibit SJ1)

of Assembly and of the Senate. Finally, subsection (4) provides, among other things, that any recommendations accepted by the Cabinet shall be construed as an amendment to any existing contract or legislation accordingly. Consequently, the Honourable Prime Minister and the Cabinet's alleged mistaken belief that they were obliged to lay the Reports even before accepting them can not change the import of the law.

[21] The defendant argued that the clear and unambiguous language of section 16 (4) that it is any recommendations **accepted by Cabinet** [the defendant's emphasis] that shall be construed as an amendment to any existing contract or legislation could not be supplanted by the inference that the claimant is seeking to draw from section 16 (3) that if the Cabinet does not refer the report back to the Commission for further consideration that the Cabinet has accepted it. Relying on *The Labour Tribunal v St. Lucia Electricity Services Ltd.*⁸, the defendant continued that the claimant's contention regarding section 16 (3) is similar to the argument advanced by the appellant in that case, where the Court of Appeal explained that section 22 of the Labour Act created two tiers. Section 22 (1) provides that any valid contract that existed before the Labour Act, continues to be valid and enforceable. Subsection (2) then provides that those very valid and enforceable contracts shall, to the extent that they do not conflict with the Labour Act, be deemed to be made under it. The Court of Appeal considered the logical inference as these pre-existing contracts continue to be valid under subsection (1) and that the Legislature, in drafting subsection (2), chose very careful words and deliberately crafted that subsection to protect and preserve the pre-existing contracts. The Court of Appeal rejected the appellants' argument that where a contract is inconsistent with the Labour Act, it is deemed invalid and unenforceable as being unable to stand in the face of the pellucid and unambiguous wording of section 22.

[22] I agree with the defendant that the clear and unambiguous language of section 16 (4) provides that the Cabinet's acceptance of the recommendations makes them have the effect of amending existing contracts and legislation. However, it begs at what stage does the Cabinet give its acceptance. The claimant urged that the Cabinet accept the recommendations before the report is laid in the Parliament; otherwise, it does not make any sense. On the other hand, the defendant

⁸ [2020] ECSCJ No. 120; SLUHCVP2019/0002 (8th April 2020)

suggests from their submissions that since it is for the Cabinet to accept the recommendations, it must do so by the clear language of a Cabinet Conclusion and may do so even after the report was laid in Parliament.

[23] As observed before, to construe section 16 (4) of the Act, as the defendant suggests, would be to ignore the equally clear and unambiguous language of subsections (2) and (3). Only after the Cabinet has complied with subsection (3) to accept the report (which embodies the recommendation) or to refer it back to the Commission can the report be laid on the table of the House of Assembly and of the Senate. Logically, if the Cabinet does not accept the report (which embodies the recommendation), there would be nothing to be laid before the House of Assembly and the Senate as it would have gone back to the Commission for further consideration. Accordingly, I prefer the claimant's submission on this matter, and ***The Labour Tribunal*** case does not assist the defendant.

[24] Further, it cannot be seriously doubted that section 16 (4) of the Act effectively gives the Cabinet delegated power to make legislation by accepting any recommendations, which then amend subsisting legislation on the subject matter. If the defendant's position is correct, Parliament would have little or no control over the amended legislation by the Cabinet's acceptance of recommendations, as that fact would not have come to the Parliament's attention. On the other hand, the claimant's position ensures that the Parliament has knowledge and control of the amended legislation by the reports laid before the House of Assembly and the Senate. This latter view is consonant with the observation of Sir Vincent Floissac, CJ in ***J. Astaphan and Co. (1970) Ltd v the Comptroller of Customs and The Attorney General of the Commonwealth of Dominica***⁹, where he opined:

"I concede that the delegation or transfer of legislative power by the Legislature to the Executive is not per se inconsistent with the principle of separation of powers. There is no such inconsistency if the Legislature retains effective control over the Executive in the latter's exercise of the delegated or transferred legislative power. Such effective control may be retained by circumscribing the power or by prescribing guidelines or a policy for the exercise of the power.

I also concede that the Legislature reserves the right to repeal its own legislation and to revoke any legislative power which it has delegated or transferred to the Executive. To that extent, the Legislature retains ultimate control over the Executive in relation to the exercise by the Executive of delegated or transferred legislative power. But this ultimate control is not

⁹ Civil Appeal No. 8 of 1994 (28th May 1996) at pages 5 - 6

effective after the power has been exercised in an individual case or if and when the power has already been abused by the Executive. If the basic principle of separation of legislative and executive powers is intended to be meaningful and effective, the basic principle should not be deemed to have been observed merely by reason of the existence of an ultimate control which operates ex post facto. There must be some Parliamentary control at the time of the exercise of the power.

For these reasons, I am firmly of the opinion that if the Legislature delegates or transfers its legislative power to the Executive and does so without circumscribing the power or without prescribing guidelines or a policy for its exercise, the Legislature should be deemed to have surrendered or abdicated the power. In that event, the delegation or transfer of legislative power is inconsistent with basic principle of separation of powers.”

Entitlement to the Parliamentarian's Vehicle Duty-Free Concessions

[25] I turn now to deal with the second question. The claimant argues that once the Reports were laid before Parliament and became law, he became entitled to the duty-free concession effective from 9th September 2010, the referenced date of the relevant report, when he was still a Parliamentarian and was entitled to the said payment as at law. On the other hand, the defendant states that when the Cabinet approved duty-free concessions to Parliamentarians by Cabinet Conclusion No. 208 of 2016 (as amended by Cabinet Conclusion No. 242 (b) of 2016), there was nothing in the conclusions or the Reports to suggest that they applied retrospectively to persons like the claimant who had ceased to be Parliamentarians before the date of the Cabinet Conclusions.

[26] Indeed, on a perusal of the Reports¹⁰, unlike the retroactive payment of salaries effective 1st April 2010, with three years back pay expressly provided for in the Reports, there was no express provision dealing with the retrospective operation of the duty-free concession. Further, the reference date, 9th September 2010, is the transmission date of the Second Interim Report to the Governor General. Even on the claimant's interpretation of section 16 of the Act and the most liberal application of the section, this cannot be the date of the Cabinet's acceptance of the report and the earliest effective date of the recommendation. Given the position I held above, the earliest effective date of the recommendations (including the duty-free concession) would be 24th July 2015, when the Reports were laid on the table in the Senate.

[27] Still, even if the claimant was eligible for the concession but did not use it, could he then say he has a right to it after demitting office and ceasing to be a Parliamentarian?

¹⁰ Final Report, Appendix B

- [28] The claimant ceased to be a member of Parliament in June 2016, but not until 21st October 2019 did he seek to clear an imported motor vehicle on the belief that the vehicle would attract the duty-free concession. The Customs disputed his claim to the said duty-free concession. The claimant urged that before importing the said vehicle, he sought to have the position regarding the applicability of the duty-free concession to him confirmed. He spoke to and was subsequently given a letter by the Speaker of the House, a lawyer, confirming his entitlement to the duty-free concessions. He imported the vehicle based on the Speaker's letter, which guaranteed the concessions to him.
- [29] First, the claimant has not provided any basis to substantiate that the Speaker of the House had any authority to confirm or guarantee the grant of duty-free concessions. Without more, I do not believe the Speaker is so authorized. As such, the Speaker's letter cannot be a basis for the claimant to claim a right or entitlement to the duty-free concession.
- [30] Further, the Final Report makes a clear distinction between salary (para 3.6.1) and the duty-free concession of Parliamentarians classified under the caption "Allowances" (para 3.6.7). Duty-free concessions are usually a time-limited privilege, not an entitlement, granted to the qualifying recipients on prescribed conditions. In this case, the recipient had to be an elected member of Parliament and may be eligible every five years for the duty-free concession.
- [31] When the claimant sought to clear the vehicle on 21st October 2019, he was not then a member of Parliament. Consequently, he did not meet the qualifying condition of being an elected Parliamentarian and was not eligible for the duty-free concessions on the said vehicle. It would be untenable, for example, for a Parliamentarian who did not use the duty-free concessions for ten years while in office to say they were now entitled to two duty-free concessions. Equally, having demitted office, a former elected Parliamentarian cannot claim duty-free concessions. The duty-free concessions were not an entitlement or owed to the elected Parliamentarian but a benefit they may enjoy while in office.

Disposal

[32] Having concluded that the claimant did not meet the qualifying condition of being an elected Parliamentarian when he sought to clear the vehicle on 21st October 2019 and was not eligible for the duty-free concessions on the said vehicle, I do not believe it is necessary to consider the various declarations sought. No practical purpose would be achieved in entertaining the declarations that may be permissible in light of this ultimate position. In any event, the grant of declaratory relief is always discretionary, and the court has an overriding power to prevent abuse of its process¹¹.

[33] The claimant is not entitled to any relief sought for the preceding reasons. However, I believe the claimant was not unreasonable in bringing this claim. Following CPR 56.13 (6), there shall be no order as to costs.

**Justice Rohan A Phillip
High Court Judge**

By the Court



Dp. Registrar

¹¹ Randolph B. Russell and John G. Thompson v The Attorney General of St. Vincent and the Grenadines and the Supervisor of Elections, [1997] UKPC 23 (15th May 1997), para 33