

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

CLAIM NO. ANUHCv2023/0096

**In the Matter of Section 3(a), 5, 7, 8, and 18 of The Antigua and Barbuda Constitution.
Order, Cap 23 of The Laws of Antigua, and Barbuda. In the Matter of an Application of a Writ of
Habeas Corpus pursuant to CPR 57(2) and**

Administrative Order pursuant to 56. Of CPR 2000.

In the Matter of the Criminal Prosecutions Service Act No. 28 of 2017

In the Matter of an Application for an interim remedy pursuant to 17.3.

BETWEEN:

WAYNE WORRELL

Applicant

and

**THE COMMISSIONER OF POLICE
THE ATTORNEY GENERAL
THE SUPERINTENDENT OF PRISONS**

Respondents

Appearances:

Mr. Wendel Alexander, Counsel for the Applicant

Mrs. Shannon Jones-Gittens, Counsel for the Respondents

2023: April 13th

RULING ON HABEUS CORPUS APPLICATION

Background

- [1] **SMITH, J.:** On 19th March, 2023, the Applicant filed a habeas corpus application on the basis that his detention at His Majesty's Prison, stemming from a complaint filed by the Police for the offence of unlawful sexual intercourse, is unlawful having regard to section 27(2) of the **Criminal Prosecutions Act, 2017** (the "CPSA").
- [2] The main contention by the Applicant is that the absence of the authorization by the Director of Public Prosecutions in the present matter nullifies the charge and any subsequent proceedings.

Interpretation of Statute in Light of Constitutional Background

[3] Critical to this application is the interpretation of the term “*public officer*” used in the **CPSA**. The contention of Counsel for the Applicant essentially is that police officers are included in the term “*public officer*” in keeping with section 127 of the Constitution of Antigua and Barbuda. Crown Counsel on the other hand contends that such an interpretation is incorrect and would lead to an absurdity as the Director of Public Prosecutions would be required to consent to the prosecution of all persons charged with any criminal offense in Antigua and Barbuda.

[4] For context the relevant sections of legislation are reproduced below.

[5] Section 27 of the **CPSA** states:

“(1) At the coming into force of this Act —

(a) any criminal case commenced in any Magistrate Court prior to the commencement of this Act shall continue and be deemed to have been authorised in writing by the DPP;

(b) any police prosecutor assigned to prosecute any criminal case, prior to the commencement of this Act, shall continue to prosecute the case assigned to him and be deemed to have been authorised, in writing, by the DPP; and

(c) any public officer, who is authorised by any law to prosecute offences against that law, shall continue to prosecute any such offence commenced prior to the commencement of this Act.

(2) Despite the provisions of any law in force in Antigua and Barbuda, and subject to subsection (1), no public officer shall, after the commencement of this Act, institute any criminal proceedings or undertake the prosecution of any criminal case in any court, unless he is authorised so to do, in writing by the DPP.”

[6] Section 127 of the Constitution of Antigua states that “*public officer means a person holding or acting in any public office and includes an officer or member of the Police Force,*”

[7] While the construction of section 27(1) of the **CPSA** may lead one to the conclusion that the term “*public officer*” excludes police officers it is submitted that this interpretation can only be held if one ignores the definition of “*public officer*” provided in the Constitution.

[8] In **Marbury v. Madison 5 U.S. 137 Per Marshall J., at 176 – 180** the Court stated that:

“The Constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act contrary to the Constitution is not law; if the latter part be true, then written Constitutions are absurd attempts on the part of the people to limit a power in its own nature illimitable.

Certainly, all those who have framed written Constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be that an act of the Legislature repugnant to the Constitution is void.”

- [9] The logical extension of this statement is that any interpretation of an act of the Legislature that is repugnant to the Constitution must be rejected by the Court.
- [10] This point is further supported by the Privy Council case of **The Bahamas District of the Methodist Church v Symonette [2000] 5 LRC 196, (2000) 59 WIR 1** where the court in speaking of the Bahamas Constitution stated that *“The courts have the right and duty to interpret and apply the Constitution as the supreme law of The Bahamas.”*
- [11] Section 3 of the **Criminal Prosecutions Service Act** No. 28 of 2017 states that *“The purpose of this Act is to give effect to section 88 of the Constitution by establishing an institutional framework in which is vested the power to institute and undertake all criminal proceedings in any court, except a court martial, in respect of an offence against any law in force in Antigua and Barbuda; and to secure the protection of the law to persons charged with criminal offences by ensuring that such offenders receive a fair hearing within a reasonable time.”*
- [12] The **Act** is therefore seeking to make section 88 of the Constitution workable; it is submitted that the **Act** must therefore be read in conjunction with the Constitution. This would include the interpretation section (section 127) of the Constitution which outlines that the term *“public officer”* includes *“an officer or member of the Police Force”*.
- [13] The **CPSA** provides no definition of the term *“public officer”*. To ignore the definition of the term contained in section 127 of the Constitution and to treat the term *“public officer”* as excluding police officers would result in an interpretation of the **CPSA** which is contrary to the definition outlined in section 127.
- [14] In **Charles Savarin v John Williams Civil Appeal No. 3 of 1995** the Court of Appeal was tasked with interpreting the term *“the public service”* which appeared in the **Disqualification Act**. The Court acknowledged that the interpretation of every word or phrase of a statutory provision is derived from the legislative intention in regard to the meaning which that word or phrase should bear. The Court said that the legislative intention is an inference drawn from the primary meaning of the word or phrase with such modifications as to that meaning as may be necessary to make it concordant with the statutory context. The Court considered that there were seven factors which may be regarded as possible components of the statutory context and as indications of the legislative intention in regard

to the meanings of the ambiguous phrase and the words, this included the constitutional background against which the **Act** was enacted. The Court stated as follows:

“Unlike the phrase “public service” (which is a reference to a function), the phrase “the public service” (with the definite article) is clearly a reference to an institution established legally or conventionally. In section 5(1)(a) of the Disqualification Act, the phrase “the Public Service” is capitalized. Having regard to the Constitutional background against which the Disqualification Act was enacted, the capitalisation is neither accidental nor meaningless. It signifies a legislative intention to use the phrase in the technical sense in which it was used in the 1967 Constitution which authorised the Disqualification Act.

According to section 110(1) of the 1967 Constitution and section 121(1) of the existing 1978 Constitution of Dominica, the phrase “the public service” means “subject to the provisions of this section, the service (of the Crown) in a civil capacity in respect of the government of Dominica.” These Constitutional sections also define the phrases “public office” and “public officer”. According to those Constitutional definitions. “public office” means “any office of emolument in the public service” and “public officer” means “a person holding or acting in any public office.”

By Constitutional definitions, the phrases “public Office” “public officers” and “the public service” are correlative terms. The scope of the Constitutional meanings of those phrases is necessarily circumscribed by the Constitutional context of those phrases. An important ingredient of that context is Chapter VI (sections 76 to 87 inclusive) of the 1967 Constitution which deals specifically with the Public Service and which has been reproduced in Chapter VI (sections 84 to 96 inclusive) of the 1978 Constitution.

I refrain from reciting the elaborate provisions of Chapter VI of the 1967 and 1978 Constitutions. Suffice it to say that Chapter VI provides for the appointment of persons to hold or act in offices in the Public Service and for the removal of such public officers from their public offices. It provides for such appointment and removal by or in accordance with the advice of the appropriate Constitutional Commission (namely the Public Service Commission or the Judicial and Legal Services Commission as the case may be). It confers on such public officers a right of appeal to the Public Service Board of Appeal.

The Constitutional definition of the phrase “the public service” was clearly intended to be read and interpreted in the light and context of Chapter VI. So read and interpreted in the light and context of Chapter VI. So read and interpreted, the phrase must be confined to the institution service governed and protected by Chapter VI.

In my judgment, the Constitutional background against which the Disqualification Act was enacted indicates (1) that the legislative intention was that the phrase “the Public Service” appearing in section 5(1)(a) of the Disqualification Act should bear its Constitutional meaning (2) that the Constitutional meaning is circumscribed by Part VI of the 1967 and 1978 Constitutions and (3) that by virtue of the Constitutional meaning so circumscribed, a person

cannot be said to be holding or acting in an office or appointment in a branch of the Public Service of Dominica unless he was appointed to hold the office and is removable therefrom by or in accordance with the advice of the appropriate Constitutional Commission (namely the Public Service Commission or the Judicial and Legal Services Commission as the case may be)."

- [15] The **Savarin case (supra)** establishes that the constitutional background must be considered when interpreting the term "public officer" in the present matter. The interpretation of the **CPSA** put forward by the learned DPP is in contradiction with the definition provided by the interpretation section of the Constitution, as a result I am in agreement with the submission of learned Counsel for the Applicant regarding the definition of the term "*public officer*".

Implied Repeal

- [16] The doctrine of implied repeal is described in Halsbury's Laws of England, Statutes and Legislative Process (Volume 96 (2018)) at paragraphs 301 as follows:

"An intention to repeal an Act or enactment may be inferred from the nature of the provision made by the later enactment. Repeal by implication cannot be prohibited, but such an implication is found by the courts with reluctance because the precision of modern drafting means that necessary repeals are usually effected expressly.

The rule is, therefore, that one provision repeals another by implication if, but only if, it is so inconsistent with or repugnant to that other that the two are incapable of standing together. The courts are particularly reluctant to hold that constitutional enactments have been impliedly repealed.

The principles relating to implied repeal of an enactment apply equally to the abrogation by statute of a rule of common law."

- [17] Counsel for the Applicant contends that section 27(2) of the **CPSA** No. 28 of 2017 repeals all statutes in Antigua and Barbuda that give any public officer or public authority the right to institute criminal proceedings. I am in agreement with this submission by Counsel for the Applicant in light of my earlier conclusion regarding the meaning of the term "public officer".

The Power of the DPP

- [18] In her submissions the learned DPP states "*...the CPS Act has not sought to repeal the powers vested in the Police by the Police Act to institute proceedings. The only power which was repealed*

by the Act was their authority to prosecute matters in the Magistrates' courts. However, they have since been given authorization to do so by the DPP exercising his constitutional powers..."

- [19] This raises the question of why the same cannot be done for prosecutions at the High Court level in light of the provisions of the **CPSA** requiring the consent of the DPP before criminal proceedings are instituted. If this were done, then the absurdity referred to by the DPP in her submissions would be avoided without the Court's intervention. The learned DPP also went on to argue that *"in the instant case, if the court were to adopt the interpretation suggested by the applicant, an absurdity would be created. It would mean that for every single offence which is committed in Antigua and on the sister isle of Barbuda, before any charge is laid, the arresting officer would have to obtain written authorization from the DPP. This would range from the most serious right down to the pettiest of offences such as using indecent language. It would be unworkable and impractical as demonstrated by paragraph 17 of the affidavit of Inspector Bontiff and paragraph 15 of the affidavit of Crown Counsel Cornelius". The Court finds no merit in this argument.*

The Privy Council Decision Referred to by Mr. Alexander

- [20] I believe the case Mr. Alexander is referring to in his email is the COA judgment of **Steadroy CO Benjamin v The Commissioner of Police and The Attorney General of Antigua and Barbuda HCVAP2009/023.**
- [21] The COA decision has since been overturned by **Commissioner of Police and Another v Steadroy CO Benjamin [2014] UKPC 8.** The Privy Counsel in this judgment answered no to the question *"Does the Director of Public Prosecutions have a general power to prevent the police from instituting criminal proceedings?"*
- [22] The JCPC judgment predates the enacted of the Criminal Proceedings Act No 24 of 2017 and in my view provides no assistance in the interpretation of the **Act**.

Conclusion

- [23] The charges against the Applicant were not brought in conformity with the provisions of the **CPSA** in that the consent of the DPP was not obtained prior to the initiation of criminal proceedings and are therefore null and void. As a result, the habeas corpus application should be granted. Counsel for the Applicant to draft and serve the relevant Order forthwith. *I would invite the learned DPP to obtain further clarification on this issue by way of appeal.* This is the order of the Court.

Ann-Marie Smith
High Court Judge

By the Court

Registrar