

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2022/0196

Formerly CLAIM NO. GDAHCV2013/0554

**IN THE MATTER OF AN APPLICATION BY JUDY BENOIT FOR LEAVE TO APPLY FOR JUDICIAL
REVIEW OF THE DECISION OF HER EXCELLENCY THE GOVERNOR GENERAL DAME CECILE LA
GRENADA TO DISMISS HER AS SUPERVISOR OF ELECTIONS**

and

IN THE MATTER OF SECTIONS 36 AND 101 OF THE CONSTITUTION OF GRENADA

BETWEEN:

JUDY BENOIT

Claimant

and

**[1] HER EXCELLENCY THE GOVERNOR-GENERAL
DAME CECILE LA GRENADA
[2] THE ATTORNEY GENERAL**

Defendants

Before:

The Hon. Mr. Justice Raulston L. A. Glasgow

High Court Judge

Appearances:

Mr. Ruggles Ferguson for the Claimant

Mrs. Karen Reid-Ballantyne, Solicitor General, for the Defendants

2022: June 15;
July 29 (Closing submissions)
October 11

JUDGMENT

- [1] **GLASGOW, J.:** Ms. Judy Benoit, (Ms. Benoit) is a retired public officer. In September 2009, she was appointed to serve as Grenada's Supervisor of Elections. Four years later on 30th September 2013, the Governor-General, Her Excellency Dame Cecile La Grenade made a decision to end Ms. Benoit's services as Supervisor of Elections. Ms. Benoit has filed these proceedings alleging that she was unlawfully removed as Supervisor of Elections.

Background and Ms. Benoit's case

- [2] Mrs. Reid Ballantyne learned Solicitor General has helpfully set out in her written submissions filed on 31st May 2022, a quite fulsome background to this present debate. I will adopt this factual matrix, as far as relevant. The facts reveal that –
- (1) Ms. Benoit was appointed as Supervisor of Elections on 30th September 2009;
 - (2) Sometime in the year 2010 or 2011 Ms. Benoit was made aware that the Government wished to implement what was referred to as the E Government for Regional Integration Project (EGRIP). Ms. Benoit is said to have become aware of EGRIP through the Parliamentary Elections Office (PEO) which was exploring the possibility of commencing a new voter registration system. The system contemplated, among other things, the issuance of a single identification card;
 - (3) There were some difficulties standing in the way of the implementation of aspects of EGRIP including compliance with the requirements of the Representation of the People's Act (the Act). Ms. Benoit, as Supervisor of Elections, could not await the implementation of EGRIP. IN 2012, Ms. Benoit set up a new system for the registration of voters which system was computerised and provided for the issuance of voter identification cards;
 - (4) In 2012 also, Ms. Benoit was contacted by Ms. Alice Bain, country based specialist for EGRIP. Ms. Bain requested that Ms Benoit implement EGRIP through the PEO. Ms. Benoit objected to Ms. Bain's request on the grounds that she did not wish to breach the laws of Grenada or take any steps that could potentially compromise the integrity or security of the

electoral system. Ms. Bain advised Ms. Benoit that Government was contemplating alternative arrangements for the implementation of EGRIP;

- (5) Elections were held on 19th February 2013. The Organisation of American States (OAS) in its post elections report lauded the new registration system;
- (6) In May 2013, Ms. Bain asked to meet with Ms. Benoit with a view to Ms. Benoit facilitating the implementation of EGRIP at 4 PEOs. Ms. Benoit requested that the meeting be held with Ms. Bain, the then Minister responsible for ICT and other relevant persons. At a meeting held on 4th July 2013, Ms. Benoit agreed to assist by permitting EGRIP's implementation at 4 PEOs, the possibility of assistance from the staff at the PEOs and other related matters;
- (7) A promised meeting with the Minister responsible for ICT on 20th August 2013 did not take place. However Ms. Benoit held discussions on that very day with Mr. Eric Nurse, Director of ICT where they discussed the relevant provisions of the Act and the Constitution, Ms. Benoit's concerns about the electoral process and her ideas on the use of other venues for the implementation of EGRIP.
- (8) On 28th August 2013, Ms. Benoit received the following memorandum issued under hand of then Permanent Secretary (PS) Lana McPhail –
 - i. "Please be advised that Cabinet at its Meeting on 29th July 2013 approved the use of the following centres for registration into the MPID System and Issuance of Cards:-
 - St. John's Parliamentary Elections Office
 - St. Patrick's East/West Parliamentary Elections Office
 - St. Andrew's Southeast Parliamentary Elections Office
 - St. David's Parliamentary Elections Office
 - St. Mark's Parliamentary Elections Office
 - Carriacou Parliamentary Elections Office
 - St. George's Parliamentary Elections Office
 - St. George's Health Centre
 - i. Cabinet also directed that the staff of the Electoral offices work with the MPID System for registration and issuance of cards.
 - ii. Further, Cabinet also authorized the installation of internet services at all the sites. Please note that the Ministry has instructed LIME to undertake the installation as a matter of urgency.
 - iii. The Ministry shall be grateful if your staff is advised accordingly".
- (9) By way of explanation, EGRIP was a brainchild of the sub regional grouping, the Organisation of Eastern Caribbean States (OECS). EGRIP was funded by the World Bank.

MPID, referenced in the PS' memorandum to Ms. Benoit was crafted as part of Grenada's effort to implement EGRIP and largely entailed a national identification system where citizens would be issued with "a unique identification number and a national identification card."¹ Ms. Benoit responded to the PS by way of memorandum dated 30th August 2013 wherein she informed the PS that moving forward with EGRIP in accordance with the advice of Cabinet was premature and raised a number of questions in respect of how the PEO and its staff would be involved in the exercise having regard to the legislative role of the office.

(10) Ms. Benoit was summoned to a meeting with the Governor General on 30th September 2013. At that meeting, Ms. Benoit alleges that the Governor-General informed her that she was summoned to address complaints made against her in her capacity as Supervisor of Elections. Ms. Benoit alleges that the Governor-General stated: "*Miss Benoit, I called you as head of the Electoral Office to hold a discussion with you because I had two complaints.*" With respect to the complaints, Ms. Benoit further alleges at paragraphs 13-15 of her first affidavit² that the Governor-General said:

- i. "One has to do with Mrs. Glynis Roberts and a mail she was to receive and did not receive. The other one has to do withthe EGRIP project. It is an OECS project and we have the money for it from the World Bank and if we don't do it soon we are going to lose the money. So I am dismissing you with immediate effect."

[3] Ms. Benoit contends at paragraph 20 of her affidavit that she was unjustifiably dismissed and that the Governor-General acted unreasonably, irrationally and against the principles of natural justice. At paragraph 22 of the affidavit she explains that "*when called to the hereinbefore meeting with Her Excellency I was not informed of the nature and purpose of the same. I was never informed in advance of any allegation made against me so as to give me an update and reasonable opportunity to respond.*"

[4] Ms. Benoit seeks the following relief:

- (1) A declaration that the decision of the Governor-General to dismiss Ms. Benoit by way of letter dated 30th September 2013 was in all circumstances, unreasonable, irrational, procedurally improper and in breach of the principles of natural justice;

¹ First affidavit of Eric Nurse filed on 16th June, 2021 at page 65-67 of the Trial Bundle

² Judy Benoit's affidavit filed on 14th November, 2013

- (2) A declaration that the decision of the Governor-General to summarily dismiss Ms. Benoit be and is hereby quashed; and
- (3) Costs.

Defendants' case

[5] The defendants filed a defence and affidavits in opposition to Ms. Benoit's claim which state that –

- (1) the PEO is a creature of statute and department of government;
- (2) The PEO has its own budgetary vote and is staffed by public officers and person on contract;
- (3) It is a normal function of Cabinet to identify the PEO, as a department of government, to assist with the rollout of the MPID and to be provided with internet access to do so;
- (4) Cabinet's decision of 29th July 2013 approved the use of the PEO and its staff to assist with the rollout of MPID and requested the Ministry to hold discussions with the PEO for use of the constituency offices to facilitate MPID registration and the issuance of voter identification cards;
- (5) Following Ms. Benoit's objections to the use of the PEOs for this purpose and discussions with her and other stakeholders, alternative locations were identified and ultimately utilised;
- (6) The Constitution grants the Governor General the power, in her own deliberate judgment, to determine which public officer should be designated to perform functions of Supervisor of Elections;

- (7) The Governor General acted reasonably and rationally in exercise of that power to determine that Ms. Benoit should cease to perform the functions of Supervisor of Elections;
- (8) The OAS post elections report outlined a number of complaints regarding the use of party symbols. In particular, four of the political parties contesting the 2013 elections complained that they were unable to use their advertised party symbols on the election ballot paper. These parties were assigned random symbols mere days before the February 2013 elections despite having received prior approval of the use of their symbols from the PEO. The PEO failed to have those approved symbols gazetted in accordance with the law;
- (9) In fact, Ms. Benoit sent correspondence to the Governor General on 11th February 2013 mere days before the elections asking for the symbols to be gazetted ;
- (10) In addition the Governor General received correspondence from one political party, the National United Front (NUF), wherein that party outlined complaints about Ms. Benoit forcing the party to change its symbol. The NUF complained that it only acceded to the forced change in order to avoid jeopardising the elections process.
- [6] Ms. Benoit filed a reply to the defence and refuted the several contentions of the defendants. Of particular significance to this discourse is Ms. Benoit's reply that she did not actually see the contents of the Cabinet's decision referenced above until this claim was filed. She was only aware of the contents of PS McPhail's memorandum recited above.

The arguments

Ms. Benoit's arguments

- [7] Before embarking on a recital of the arguments, it may assist this discourse to recite the terms of section 35 of the Constitution –

“35.-(1) There shall be a Supervisor of Elections whose duty it shall be to exercise general supervision over the registration of voters in elections of the members of the House of Representatives and over the conduct of such elections.

(2) The functions of the office of Supervisor of Elections shall be exercised by the person holding or acting in such public office as may for the time being be designated in that behalf by the Governor-General acting in his own deliberate judgment.

(4) A person shall not enter upon the duties of the office of Supervisor of Elections until he has taken and subscribed the oath of allegiance and the oath of office.

(5) For the purposes of the exercise of his functions under subsection (1) of this section, the Supervisor of Elections may give such directions as he considers necessary or expedient to any registering officer; presiding officer or returning officer relating to the exercise by that officer of his functions under any law regulating the registration of voters or the conduct of elections, and any officer to whom directions are given under this subsection shall comply with those directions.

(6) The Supervisor of Elections may, whenever he considers it necessary or expedient so to do, report to the House of Representatives on the exercise of his functions under the foregoing provisions of this section ; he shall submit every such report to the Minister for the time being responsible for matters relating to the election of members of the House of Representatives and that Minister shall, not later than seven days after the House first meets after he has received the report, lay it before the House.

(6) In the exercise of his functions under the foregoing provisions of this section, the Supervisor of Elections shall not be subject to the direction or control of any other person or authority.

(7) The Supervisor of Elections shall exercise such other functions in relation to elections (whether to the House of Representatives or to local government authorities) as may be prescribed by or under any law enacted by Parliament.

General Provisions”

[8] At paragraph 17 of written submissions filed on the 29th July 2022, after the trial, counsel for Ms. Benoit, Mr. Ruggles Ferguson, noted Ms. Benoit’s acceptance of the law that, in the context of this case, the Governor General had the authority to relieve Ms. Benoit of her duties as Supervisor of Elections without cause and without giving her notice. For reasons which will emerge later in this

discourse, I am of the view that this is a correct concession from Ms. Benoit on the law. However, Ms. Benoit argues that because a number of specific charges were presented as the basis for her removal from office, the principles of fairness enjoined the Governor General to afford her an opportunity to answer those allegations made against her before removing her from office.

[9] Counsel present the following cases to support Ms. Benoit's contention that the Governor General was duty bound to give her a hearing before relieving her of her duties –

- (1) **Permanent Secretary, Ministry of Foreign Affairs and Prime Minister Patrick Manning v Feroza Ramjohn et al**³;
- (2) **Elizabeth Darius-Clarke v The Attorney General of Saint Lucia**⁴;
- (3) **Frazer v The Attorney General of Saint Lucia**⁵;
- (4) **R v London Borough of Camden ex parte Simon Paddock**⁶;

[10] Counsel notes that in **Feroza Ramjohn**, the Prime Minister sought to revoke an appointment of Ms. Ramjohn to a diplomatic post after receiving complaints of allegedly serious misconduct by the appointee. The Prime Minister revoked the appointment without giving the appointee an opportunity to refute the charges. The Privy Council ruled that the Prime Minister unfairly exercised his power to revoke the appointment without giving the appointee an opportunity to be heard on the allegations of impropriety.

[11] With respect to **Elizabeth Darius-Clarke**, Mr. Ferguson states that the issue centred on the claimant's appointment as ambassador. In that case the ambassador was a political appointee who was not a public officer at the time of her appointment. Counsel submits that both the High Court and

³ [2011] UKPC 20

⁴ SLUHCVP2020/0002

⁵ [2008] UKPC 57

⁶ [1994] EWHC J0908-2 (Delivered on 8th September 1994 by Sedley J)

Court of Appeal ruled that since she was not a public officer at the time of her appointment as ambassador, she was not afforded the constitutional safeguards extended to public officers and as such she could be removed from office without cause. Counsel however highlights the parts of the High Court's ruling that stated *"I am of the considered opinion that such exercise of the powers in section 87 would still be subject to the rules of fairness, so that where a person is being removed from office for a specific reason or where a specific allegation of misconduct is levelled at such an individual, that the rules of fairness would dictate that that individual be given the right to make representations in relation to the allegation before a decision is made"*⁷.

- [12] With respect to the **Fraser** case, counsel notes that in **Fraser**, the magistrate was removed from office by virtue of contractual terms on the grounds of alleged incompetence which specified that he could be dismissed on 3 months' notice or in lieu of notice, on payment of one month's salary. In that case, the Privy Council ruled that where there were specific allegations of misconduct, the provisions of section 91 of the Saint Lucia Constitution would have to be engaged before the contractual term for termination could be enforced. In that context, the constitutional safeguards would have afforded Mr. Fraser with a hearing of the allegations made against him before his removal from office.
- [13] Counsel submits that the rulings in **Fraser** and **Ramjohn** establish the legal principle that *"where a public authority decides to take a decision or course of action adverse to a person based on specific adverse allegations the affected person must be provided with an adequate opportunity to defend himself or herself before a decision is made even if there is an alternative means of achieving the same adverse outcome where no cause existed."*⁸
- [14] With respect to **R v Camden**, counsel notes that in that case, the claimants were blacklisted from applying for temporary licences at a marketplace operated by the defendant. The blacklisting decision followed the defendant's consideration of a "detailed investigatory report" outlining a case

⁷ SLUHCVP2020/0002 at para.49

⁸ Closing submission on behalf of the claimant filed on 29th July 2022 at para. 25

against the claimants. It was found that the defendants were obliged to allow the claimants an opportunity to “defend themselves” before the defendants made a decision based on the investigatory report.

[15] Applying the foregoing authorities to the facts of this case, counsel argues that once the Governor General made the decision to relieve Ms. Benoit of the functions of Supervisor of Elections based on the complaints made against her, it was incumbent on the Governor General to provide with Ms. Benoit with an opportunity to “*defend herself before arriving at a decision.*” Counsel further posits that “[I]t mattered not that it was open to the First Defendant to achieve the same result (removal of the Claimant from the post of Supervisor of Elections) without relying on the complaints or providing her with notice.”⁹

[16] Counsel concludes that even if it could be said that the Governor General did not have the duty to afford Ms. Benoit with a hearing, once the Governor General called Ms. Benoit to her office and put the complaints to her, fairness dictated that the Governor General should have allowed Ms. Benoit “*an opportunity to defend herself before a decision was made.*” The fact that this was not done, counsel says that Ms. Benoit’s rights were infringed and that she is entitled to the relief that she seeks.

Defendants’ submissions

[17] The defendants filed lengthy submissions both on 31st May 2022 and on 10th June 2022. The defendants’ submissions fall under a number of categories.

⁹ Supra, note 8

[18] Firstly, whether the Governor General was entitled to determine that the functions of the Supervisor of Elections should no longer be performed by Ms. Benoit. Under this heading, the defendants, after reciting section 35, posit that the section reflects a post of Supervisor of Elections that is different to other posts created by the constitution or in the public service. Particularly the defendants argue that

—

- (1) the post is not a post in the public service “...*but a collection of functions that are to be performed by whichever public officer the Governor General may designate from time to time.*”¹⁰;
- (2) since the post is not a substantive post in the public service, there is no appointment to a post;
- (3) The public officer performing the functions of Supervisor of Elections is required to continue performing his or her substantive duties as public officer;
- (4) The public officer is not seconded to the office of Supervisor of Elections on a contract with other or different terms and conditions or otherwise;
- (5) The designation is not for a particular or fixed duration; and
- (6) The Governor General may in his or her own deliberate judgment determine which public officer performs the functions of Supervisor of Elections from time to time.

[19] The defendants argue that the foregoing distinct features of the office of Supervisor of Elections are contrasted with those of the offices of, for instance, the Clerk of Parliament, Permanent Secretaries

¹⁰ Defendant’s submissions filed on 31st May 2022 at para. 14

and others who are specifically referred to as public officers. Counsel is of the view that all these distinctions indicate that the office of Supervisor of Elections *"is more in the nature of an assignment of an additional portfolio by the Governor General to a public officer and not a substantive appointment to an office in the public service."*¹¹

[20] Counsel for the defendants, learned Solicitor General, Mrs. Reid Ballantyne then set out the provisions of sections 84(1) and 111 of the Constitution which read –

"84.-(1) Subject to the provisions of section 91 of this Constitution, the power to appoint persons to hold or act in offices in the public service (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 and the power to grant leave shall vest in the Public Service Commission.

111.-(1) "public office " means any office of emolument in the public service ; " public officer" means a person holding or acting in any public office ; " 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 Grenada"

[21] Counsel relies on the Court of Appeal ruling in **Darius Clarke** wherein the court recites 4 factors suggesting what constitutes a public office in the public service as articulated in the case of **Yaw v Correia**¹² delivered by the Court of Appeal of Guyana as follows¹³ –

"In order to determine, therefore, whether a 'public office' has been constituted under arts 125(1) and 96(1) of the Constitution a useful method of ascertainment might be to examine the question in this way. (1) Is there an 'office' established in this sense afore described with

¹¹ Supra, note 10 at para. 17

¹² (1975) 65 WIR 144

¹³ Ibid at page 152

a sufficient degree of permanence and continuity, and which exists apart from the holder? If so, (2) has an appointment made to that office in accordance with art 96(1)? If so, (3) is it an office of emolument? If so, (4) is an office which involves service with the Government of Guyana in a civil capacity?”

[22] Applying the foregoing to the facts of this case, the learned Solicitor General argues that the absence of any of these factors means that the office is not a public office in the public service. In this regard counsel submits that the office is neither an office of emoluments nor does it involve an appointment by the Public Service Commission (PSC). The significance of this is that although the Governor General designates a public officer to perform the functions of Supervisor of Elections, “... *the reassignment of that role, is incapable of being a dismissal*”¹⁴ *as the same neither removes a public officer from “office” nor affects the public officer’s emoluments.*”¹⁵

[23] Learned Solicitor General, Mrs. Reid Ballantyne then points out the following –

- (1) The Governor General's determination that someone else other than Ms. Benoit should carry out the functions of Supervisor of Elections had no impact on Ms. Benoit's office as a public officer and did not in any way affect her employment relationship with the Government of Grenada;
- (2) After the Governor General relieved her of the functions of Supervisor of Elections, Ms. Benoit continued to receive her full emoluments and the benefits attendant to her office in the public service. Counsel points out that Ms. Benoit retired as a public officer. The “re-designation” of the functions of Supervisor of Elections had no impact on her public service otherwise;
- (3) Ms. Benoit has not pleaded any terms and conditions of her service that entitled her to continue to serve as Supervisor of Elections. In that regard, she has not adduced any evidence that the

¹⁴ Supra, note 10 at para.21

¹⁵ Ibid

designation was for a defined period which was reduced by the “re-designation” or that any representation was made to her that the designation would not be altered or terminated.;

(4) Ms. Benoit did not provide any evidence of any recruitment or selection process by which she was designated as the public officer tasked with performing the functions of Supervisor of Elections;

(5) There are no regulations, rules, process or otherwise regulating how such designations are made or altered so as to ground Ms. Benoit’s claim of procedural impropriety.

[24] Counsel submits that section 35 empowers the Governor General to act in his or her own deliberate judgment to designate a public officer to perform the functions of Supervisor of Elections from time to time. An appointee cannot insist on continued designation whether in contract or otherwise. The public officer who is assigned these functions performs the functions of the office at the pleasure of the Governor General. The Governor General may designate another public officer at any time to hold the office. The officer who is relieved of the functions of the office of Supervisor of Elections cannot therefore complain when the Governor General designates another officer to perform the functions of Supervisor of Elections. For this proposition, counsel relies on the case of **Michael Blackburn v Liat (1974) Limited**¹⁶. In **Blackburn**, the learning in **Norbega v Attorney-General of Guyana**¹⁷ and **Worthington v Robinson**¹⁸ was considered. In **Blackburn**, the complaint that the public officer has been reduced in status was immaterial since it was entirely within the power of the appointer to change the appointee’s designation as the appointer saw fit. Instructively, **Worthington**¹⁹ ruled that-

“But, in my opinion, the plaintiff has failed to show that he has any cause of action. The plaintiff and the defendants are both servants of the Crown. His claim is that they gave him an order which he was not bound to obey, and that upon refusing to obey it they reduced him from the office he had to an inferior position, and he also alleges that they did this

¹⁶ ANUHCVP2004/031

¹⁷ (1967) 10 WIR 187

¹⁸ (1896) 75 L.T. 446

¹⁹ Ibid at page 447

wilfully and maliciously for the purpose of injuring him in his office. Now, it has been pointed out by the Solicitor General that, by the commission under which the plaintiff held the office from which he was reduced, he was appointed “to hold the said office during the pleasure of the Commissioners of Inland Revenue”. The plaintiff contends that this document was only a warrant to be used by him for the purpose of showing it to strangers as evidence of his authority. But it is abundantly clear from the words of sect. 4 of the Inland Revenue Regulation Act 1890 that the document describes correctly the plaintiff’s tenure of office, and it is quite impossible to argue in the face of the commission and of the statute, that he did not hold office at the pleasure of the Commissioners of Inland Revenue. Those being the terms of his appointment, and the commissioners having the powers given by sect. 4, sub-sect. 3, of the Act, it is quite immaterial whether or not they exercised those powers maliciously or wilfully as the plaintiff alleges. If they acted within their powers, their acting wilfully or maliciously would not give the plaintiff any cause of action. The plaintiff has not made out any plausible or possible cause of action, and therefore I think that the order of my brother Bruce must be upheld.”

[25] Secondly, the defendants examine whether the Governor General was entitled to summarily determine that Ms. Benoit should cease to perform the functions of Supervisor of Elections. On this score the defendants reiterate that it was entirely within the purview of the powers of the Governor General to designate Ms. Benoit to perform the functions of Supervisor of Elections and to remove the designation as the Governor General deemed fit. In view of this posture, it is the case for the defendants that the Governor General did not have to “afford the Claimant an opportunity to be heard before...” removing her from the performance of the functions of the office of Supervisor of Elections. For this proposition, the defendants rely on the case of **Hosford v Minister for Social Protection** where it was said that –

“[19] The Applicant accepts that he was and remains liable to transfer at the sole discretion of the Respondent. It could not realistically be suggested that every decision to reassign a civil servant to different duties engages the full panoply of Constitutional and Convention rights and that the party thereby affected must be afforded fair procedures including for example the right to make submissions or be given reasons. That would be evidently absurd. There is clearly a range of decisions in the context of employment that may be taken which are merely administrative or managerial in nature and do not give rise to such rights or which are amenable to judicial review. The position may be different where the decision complained of is disciplinary in nature and involves the imposition of a penalty or perhaps dismissal. On occasion, a civil servant may not like being transferred from one role to another

but that is an incident of the job and not a matter for judicial review. It is debatable whether there is any public law element arising in such circumstances.”

[26] Applying the reasoning in **Hosford** to this case, the defendants insist that there was no disciplinary process engaged when the Governor General removed Ms. Benoit from performing the functions of Supervisor of Elections. There was no imposition of a penalty or a dismissal and as such the occasion *“did not give rise to any rights which were amenable to judicial review.”*²⁰

[27] The defendants further argue that even where substantive appointments are made to particular offices under the Constitution, the courts have recognised instances *“in which removal from office or dismissal from office may be done summarily without the officer being afforded a right to be heard.”*²¹ The defendants rely on the following passage from **Darius-Clarke**²² -

“[41] The Judge referred to both of these cases and found, correctly at paragraph 41 of her judgment, that “What is clear is that both cases involved offices where a service commission was a part of the appointment process and therefore are not entirely applicable to the case at bar.” I agree with this distinction. Both Mr. Fraser and Ms. Inniss, and Mr. Endell Thomas, held positions that had security of tenure by virtue of their appointment by the commissions, and they could only be dismissed on the advice of or by the relevant commission and with cause.

[42] In *Bain-Thomas v Attorney General and another*, the appellant held the position of secretary to the cabinet and head of the public service of Grenada. Appointments to the position were made by the Governor General on the advice of the Public Service Commission. The Governor General, acting on the advice of the Public Service Commission, transferred the appellant to the post of Executive Director of the Anti-Money Laundering and Counter Terrorism and Finance Commission without consulting her. The Court of Appeal confirmed that the appellant held a position that was protected from improper actions and unfairness by the Public Service Commission by adding another layer of insulation, namely, the Governor General, who was required to be independent and to act fairly and objectively. He was not a mere “rubber stamp”. The Court of Appeal held that the transfer was unconstitutional and awarded damages to the appellant.

²⁰ Supra, note 10 at para. 30

²¹ Ibid at para. 31

²² SLUHCVP2020/0002 at para. 41 to 47

[43] This case is also distinguishable. Ambassadors are not appointed by the Governor General on the advice of or in consultation with any commission. The Prime Minister is the sole judge of who is appointed to and removed from the position. For the reasons set out in paragraphs 17-18 above the Governor General is bound to act on the advice tendered by the Prime Minister. Blenman JA referred to this aspect of the matter in paragraph 72 of Bain-Thomas when she stated:

“Similarly, where the Head of State is clothed with the power to appoint or remove public officers, on the advice of the PSC, this is expected to be done lawfully and removal could only be for cause. The Head of State is not expected to act whimsically or capriciously in removing or appointing public officers.” [Emphasis added]

I agree with this statement. When the Head of State is acting on the advice of a commission or other body, he must consider the advice that has been tendered before making a decision. However, when the Head of State is acting on the advice of the Prime Minister regarding an ambassador, he is not required to consult with any commission or other body before tendering his advice, and the Head of State must act on the advice. The Constitution provides in section 87(2)(c) in clear and mandatory terms that the Governor General shall act on the advice of the Prime Minister. This clear provision leaves no room for implying into the language of section 87(2)(c) an independent discretion to be exercised by the Governor General once he is advised by the Prime Minister. The decision in Bain-Thomas does not assist Mrs. Clarke.

...

[46] What is clear is that the cases that were cited to this Court in support of Mrs. Clarke's position involve public servants who were appointed on the recommendation of a commission and enjoyed security of tenure and insulation from the political influence. Ambassadors do not enjoy such tenure and insulation for the reasons set out above and I am satisfied that the doctrine of dismissal at pleasure still obtains for such persons and they can be dismissed at pleasure.

[47] To sum up on ground 1, I find that section 87(2)(c) applies to Mrs. Clarke's employment. She was appointed by the Governor General acting on the advice of the Prime Minister and dismissible without cause by the same process. Endell Thomas made great strides in abolishing the doctrine of dismissal at pleasure but the case did not go as far as to abolish the doctrine in the case of ambassadors who are not appointed or dismissed in consultation with anybody or person, and the Governor General must act on the advice tendered to him by the Prime Minister. Mrs. Clarke's dismissal did not breach the provisions of 87(2) of the Constitution nor any of her natural justice rights. I would dismiss ground 1 of the appeal.”

- [28] In this case, the defendants say, there has no appointment to a particular office. The distinction with other appointments is critical. In this case, the office of Supervisor of Elections is treated differently in that it is meant to be treated in the sole discretion of the Governor General and with “absolutely no fetter being placed thereon.” In the circumstances, it will be improper for the courts to “infer a fetter on that power...” Consequently, it must be concluded that Ms. Benoit had no right to be heard before the Governor designated another public officer to perform the functions of Supervisor of Elections.
- [29] The defendants then address the question as to whether the decision to designate another officer to perform the functions of Supervisor of Elections was unreasonable, irrational or unlawful. On this score, the defendants dismiss the charge that the MPID programme formed part of the Governor General’s decision to designate another officer to perform the functions of Supervisor of Elections. For one thing, the defendants charge, the Governor General’s office had nothing to do with the implementation of the programme. In addition, the defendants continue, once Ms. Benoit made objections to the use of the PEOs, the Government found alternative sites for the implementation of the project.
- [30] The defendants suggest that the singular issue for consideration involved Ms. Benoit’s competence to perform the functions of the office of Supervisor of Elections. On this issue, the defendants recite extensively the details of the allegations about inefficiencies in the conduct of the 2013 elections. On the facts about Ms. Benoit’s alleged incompetence, the defendants urge the court to find that there was nothing unreasonable or irrational about the Governor General determining in her own deliberate judgment that someone else ought to perform the functions of Supervisor of Elections. The discretion is said to be unfettered to the extent that the exercise of this power “...*is not subject to any rule or regulations or following any consultations or advice of any person.*” The defendants rely on dicta cited from the cases of **Sir Gerald Watt v Prime Minister and Juno Samuel**²³, **Attorney General**

²³ [2013] ECSCJ No. 142

v Kenny Anthony²⁴ and Global Education Providers v The Honourable Peter Saint Jean, Minister of Education and Attorney General²⁵.

- [31] The parameters of the court's jurisdiction when reviewing the exercise of discretion by a public official is stated thusly in the **Sir Gerald Watt** case –

“The court is required to carry out a function of bringing fairness to the process of administration by devising the means to control the exercise of discretion by public bodies and officials and to provide an efficient scheme of legal remedies to rein in the abuse of power. In addition to the conventional challenges to the exercise by an official of a discretion conferred by a statute of 'illegality', 'irrationality', and 'procedural impropriety', we now add 'unconstitutionality'. A public functionary must not stray from the confines of a power conferred on him. He must factor into the exercise of his discretion only those considerations which are relevant and material for that purpose. Any seemingly wide power in a public authority must be tied down to the discharge of the authority's functions. A discretion conferred upon a public authority must be exercised reasonably and in accordance with the law. An abuse of discretion is a wrongful exercise of the discretion conferred, and may be held to have been ultra vires.”

- [32] In respect of the approach that the court would take to determining whether the exercise of the public official's discretion was reasonable, the **Kenny Anthony** decision said this –

“But it has to be expressed in terms that confine the jurisdiction exercised by the judiciary to a supervisory, as opposed to an appellate, jurisdiction. Where Parliament has given to a minister or other person or body discretion, the court's jurisdiction is limited, in the absence of a statutory right of appeal, to the supervision of the exercise of that discretionary power, so as to ensure that it has been exercised lawfully. It would be a wrongful usurpation of power by the judiciary to substitute its view, the judicial view, on the merits and on that basis to quash the decision. If no reasonable minister properly directing himself would have reached the impugned decision, the minister has exceeded his powers and thus acted unlawfully and the court, in the exercise of its supervisory role, will quash that decision. Such a decision is correctly, though unattractively, described as a 'perverse' decision. To seek the court's intervention on the basis that the correct or objectively

²⁴ [2010] ECSCJ No. 166

²⁵ [2018] ECSCJ No. 124

reasonable decision is other than the decision which the minister has made, is to invite the court to adjudicate as if Parliament had provided a right of appeal against the decision, that is to invite an abuse of power by the judiciary.”

[33] The **Peter Saint Jean** decision had this to say about the matter –

“[46] The Court cannot encroach on the legislative function of Parliament by reading in some limitation which might be thought could be included in the wording of the sub-section in the face of the clear and unambiguous words of the statute.

...

[50] Accordingly, the Minister acted within the confines of section 96(g) and Global’s ultra vires challenge fails. I am of the opinion that the statutory construction/interpretation section of section 96(g) of the Act is inextricably linked to Global’s “illegality” “irrationality” and “unreasonableness” argument. In fact, I have no doubt that the determination of the statutory construction point effectively disposes of the appeal since it is clear that the exercise upon which the Minister embarked is precisely what he was mandated by the Parliament to do. It is evident therefore, based on the conclusion as foreshadowed, that there can be no proper contention that the Minister took into account irrelevant matters or that he acted ‘unreasonably’ in arriving at his decision.

[51] It is therefore unnecessary to address the issues of irrationality, unreasonableness and illegality in any great detail, suffice it to say that a finding that the Minister did exactly what he was required to do amounts to a conclusion that he acted intra vires the Act. I have already discussed the relevant statutory framework in deciding whether the Minister’s decision was reasonable or rational. The starting point is that the Court needs to act with great caution before making a finding of irrationality and unreasonableness in relation to the Minister’s exercise of his discretion. The reasons for this are obvious. In any event, it would be impossible to establish illegality or irrationality on the part of the Minister for doing precisely what he was enjoined to do. Neither is there any basis for concluding that the Minister’s decision was *Wednesbury* unreasonable.”

48. In the present case the decision is the same. The First Defendant did precisely what she was enjoined to do under the Constitution. The First Defendant, in her own deliberate judgment, determined that another public officer ought to be designated to perform the functions of Supervisor of Elections and advised the Claimant accordingly. It was evident that the Claimant was not up to the task and the First Defendant was entitled to designate

someone else to perform those functions. The Claimant has no ground to complain otherwise. “

[34] The defendants posit that the foregoing decisions require the court to examine whether the decision was one that no reasonable decision maker, properly directed, would have made or whether the decision maker exceeded his or her authority. In this case, the defendants conclude there is no evidence to show that the Governor General’s decision “*was so outrageous in its defiance of logic that no sensible person who had applied his mind could have so decided.*”²⁶ Nor that the decision was illegal or irrational in that the Governor General “*...strayed outside the powers granted to her under section 35 (2) of the Constitution or that there were irrelevant or immaterial considerations...*”²⁷

[35] The final limb of the defendants’ submissions addresses the question of whether Ms. Benoit’s claims in respect of the Cabinet of Ministers are viable in light of Cabinet’s actual conclusion. I will refrain from reciting the arguments on this limb for 2 reasons –

(1) Ms Benoit at the hearing and on closing submissions did not pursue this issue and she refrained from so doing, in my view, with good reason. This leads me to my second reason;

(2) It is quite apparent from a cursory reading of the Cabinet Conclusion dated 29th July 2013 that what Cabinet directed is in some significant respects dissimilar to what the PS wrote to Ms. Benoit in the August 2013 memorandum. That Cabinet Conclusion stated –

““Electronic Government for Regional Integration Project, Multipurpose Identification System.

990. Cabinet considered this Submission by the Minister for Communications, Works, Physical Development, Public Utilities, Information Communication Technology and Community Development and granted approval for: -

²⁶ Supra, note 10 at para. 46

²⁷ *ibid*

1. The use of the following locations for Registration into the MPID System and Issuance of Card:

- St. John's Parliamentary Elections Office
- St. Patrick's East/West Parliamentary Elections Office
- St. Andrew's Southeast Parliamentary Elections Office
- St. David's Parliamentary Elections Office
- St. Mark's Parliamentary Elections Office
- Carriacou Parliamentary Elections Office
- St. George's Parliamentary Elections Office
- St. George's Health Centre

2. To locate the primary server at the Ministry of Finance Server Room

3. To locate the backup server at the Server Room at the Ministerial Complex

4. The Ministry of ICT to be responsible for verification and validation and to recruit two data entry clerks at the rate of \$1,500 per month to do same

5. The use of staff of the Electoral Offices to work with the MPID System for registration and issuance of cards

6. To negotiate and purchase approximately 100,000 MPID cards under EGRIP project using funds under the EGRIP project

7. To purchase additional equipment at a cost of US\$15,050

8. To install internet services at all centres at a cost of EC\$3,600

monthly Cabinet noted that there was no budgetary provision for the expenditure but that it was necessary for the completion of the project before the end of the year and approved the raising of the special warrant. Cabinet requested the Ministry of Communications, Works, Physical Development, Public Utilities, Information Communication Technology and Community Development to hold further discussions with the Parliamentary Elections Office for the use of all fifteen Constituency Offices to facilitate the Multipurpose Identification System (MPID) registration and the issuance of cards."

[36] Admittedly, Ms. Benoit states that she did not see the actual Cabinet Conclusion until after her claim was filed. But having seen it, it ought to be clear that her claim against the Cabinet could not be maintained. It is regrettable that the PS did not include or communicate the last part of the Cabinet Conclusion to Ms. Benoit. But I think the words of Cabinet's directives are critical to the determination of whether it acted unlawfully or ultra vires the Constitution as claimed by Ms. Benoit. The words of the Cabinet Conclusion are indeed critical because one must bear in mind that section 35(6) of the Constitution mandates that "(6) *In the exercise of his functions under the foregoing provisions of this*

section, the Supervisor of Elections shall not be subject to the direction or control of any other person or authority.”

- [37] After setting out details on the manner in which it desired to see the MPID programme to be implemented in Grenada, Cabinet directed the following which was omitted from the PS’s memorandum to Ms. Benoit –

Cabinet requested the Ministry of Communications, Works, Physical Development, Public Utilities, Information Communication Technology and Community Development to hold further discussions with the Parliamentary Elections Office for the use of all fifteen Constituency Offices to facilitate the Multipurpose Identification System (MPID) registration and the issuance of cards.”

- [38] I do not see anywhere in those omitted words that Cabinet issued a directive to Ms. Benoit to take any action as Supervisor of Elections. Rather, it is more than apparent that Cabinet instructed the relevant Ministry officials to embark on discourses with the PEOs in respect of Cabinet’s wishes. Ms. Benoit as the person in charge of the PEOs would, of necessity, have had to be engaged. The long and short of it is that there is nothing in the Cabinet Conclusion directing either Ms. Benoit or any PEO to do anything. The Ministry officials were required, further to the orders of the Cabinet, to “hold further discussions...” with those stakeholders in order to advance Cabinet’s wishes. I find on this issue that the Cabinet directive to “...hold... discussions...” was in patent recognition of the section 35(6) independence of the office of Supervisor of Elections. In other words, notwithstanding its wishes to have MPID implemented before the end of the year 2013, the Cabinet Conclusion acknowledged that Cabinet could not direct or mandate the Supervisor of Elections or the PEOs to do anything with respect to its desire to have MPID thus implemented. The Cabinet could only direct, not the Supervisor of Elections or the PEOs, but the relevant Ministry officials to ‘hold further discussions...” The claim against the Cabinet of Ministers was correctly abandoned.

Discussion on the claim against the Governor-General

[39] Mr. Ferguson, counsel for Ms. Benoit, conceded at trial and in his closing submissions that “*the parties based on their written and oral submissions at the trial are agreed that it was open to the First Named Defendant to relieve the Claimant of the post of Supervisor of Elections without cause and without giving her notice*”²⁸. The defendants have nonetheless addressed this issue fulsomely and in deference to the arguments advanced and in view of the importance of the office of Supervisor of Elections, I will address this issue. I will divide this part of the discussion into (2) sections – (1) was the Governor-General empowered to remove Ms. Benoit from her functions as Supervisor of Elections without cause? Some other articulation of this question suggest that it would more properly be termed the dismissal at pleasure question; and (2) if the answer to question (1) is yes, was the Governor General enjoined on the facts of this case, in any event, to give Ms. Benoit a hearing before removing her from her functions as Supervisor of Elections? Or as Mr. Ferguson puts it, on the facts of this case, the Governor General was duty bound to permit Ms. Benoit to defend herself before removing her from the functions of Supervisor of Elections.

Was the Governor General empowered to remove Ms. Benoit from her functions as Supervisor of Elections without cause?

[40] As I have indicated above, Ms. Benoit did not pursue this issue at the trial and on closing submissions. In fact, on filing for permission to file these proceedings, Ms. Benoit stated in her submissions filed then that her “... *case is not premised upon the office of Supervisor of Elections being a tenured office.*”²⁹ I believe that this was the correct approach. As the learned Solicitor General stated the resolution of this issue turns on the nature of the office in question; the manner in which persons are appointed to the office; and the manner in which they are removed therefrom.

²⁸ Supra, note 8 at para. 17

²⁹ Ms. Benoit’s submissions filed on 6th December 2016

[41] The defendants argue that the post is not a post in the public service “...but a collection of functions that are to be performed by whichever public officer the Governor General may designate from time to time”³⁰. This statement may be putting the case too high. When one looks at section 35, there is no specific declaration that the office of Supervisor of Elections is a public office within the public service. See the distinction for instance with the office of Clerks to the Houses of Parliament (section 36 of the Constitution); Permanent Secretaries (section 67 of the Constitution); Director of Public Prosecutions (section 70 of the Constitution). In contradistinction, the defendants say that the office of Supervisor of Elections is a mere collection of functions assigned to whichever public officer the Governor General sees fit in her own deliberate judgment. While I agree that section 35 does not declare the office to be a public office, I do not believe that it is a mere collection of functions to be performed by whichever public officer the Governor General sees fit. Section 35(3) speaks of the “duties of the **office of Supervisor of Elections...**” (Bold emphasis mine). So it is not debatable that the Constitution itself speaks of an office of Supervisor of Elections.

[42] I am of the view that in spite of the cogent and forceful arguments of the defendants, the answer to the question under this part of the discussion lies in whether, as was succinctly stated by her Ladyship Cenac-Phulgence J in **Darius-Clarke** in respect of the office of ambassador, the Supervisor of Elections is a public officer subject to all the constitutional protections accorded public officers against dismissal at pleasure? Ms. Benoit alludes to this distinction when she submitted that her “... case is not premised upon the office of Supervisor of Elections being a tenured office.”³¹ So was Ms. Benoit or the person serving as Supervisor of Elections serving as a public officer to whom the safeguard against dismissal against dismissal at pleasure is afforded?

[43] Section 111 of the Constitution defines public office as

“Public office ” means any office of emolument in the public service;
Public officer” means a person holding or acting in any public office;
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 Grenada”

³⁰ Supra, note 10 at para. 14

³¹ Ms. Benoit’s submissions filed on 6th December 2013 at para. 7

[44] Cases such as **Yaw** offer helpful guidance in arriving whether an office is a public office in the public service. As was said in that case,

“And so it could, with truth, be said that whilst every public officer may be a public servant, not every public servant is necessarily a public officer. In the same way, although every public officer may be in the public service, not everyone in the public service is the holder of a public office.”³²

And further,

“In determining whether a 'public office' has been constituted for these purposes it is necessary to question: (1) whether there is an 'office' established with sufficient degree of permanence and continuity and which exists apart from the holder; if there is, (2) whether an appointment has been made to that office in accordance with art 96(1); if it has, (3) whether it is an office of emolument; and, if it is, (4) whether it is an office which involves service with the Government in a civil capacity.”³³

[45] The defendants have argued that the office of Supervisor of Elections is not an office of emoluments. As Luckhoo C pointed out in **Yaw**, the question whether a public office is created is a mixed question of fact and law. The defendants have not developed or pursued the contention that the office of Supervisor of Elections is not an office of emoluments by presenting evidence to support it. However, there is one feature that is apparent to me on this case from the factors set out in **Yaw** and it is that where an appointment is made to the office of Supervisor of Elections, it is not done by the PSC in accordance with section 84 of the Constitution. The framers of the Constitution dictated that the appointment to the office of Supervisor of Elections is to be made not by the PSC but by the Governor General in his or her own deliberate judgment. It is not done on the advice of, or in consultation with any other person or entity. More significantly, even though the person who is eventually appointed to the office of Supervisor of Elections holds other office as a public officer who, in all likelihood, may have been appointed by the PSC or with the involvement of the PSC, that entity has no part in the appointment to the office of Supervisor of Elections.

³² (1975) 65 WIR 144 at 149

³³ (1975) 65 WIR 144 at 144

- [46] This distinction is critical. For one thing, taking the factors set out in **Yaw** as a guide, one can surmise that the fact there is no appointment by the PSC in this case that the holder of the office of Supervisor of Elections is not a public officer in the strict sense. Even more significant to this discourse is the fact that it is by now clear that holders of public offices to which appointments are made by the PSC are clothed with safeguards against dismissal at pleasure.

Section 84 of the constitution reads –

“84.-(1) Subject to the provisions of section 91 of this Constitution, the power to appoint persons to hold or act in offices in the public service (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 and the power to grant leave shall vest in the Public Service Commission.”

- [47] With respect to provisions in the Trinidad and Tobago constitution similar to Grenada’s section 84(1), the Privy Council in **Endell Thomas v The Attorney General** ³⁴ opined on the autonomy of the commissions tasked with appointing and removing public officers from office that -

“The whole purpose of chapter VIII of the Constitution which bears the rubric “The Public Service” is to insulate members of the civil service, the teaching service and the police service in Trinidad and Tobago from political influence exercised directly upon them by the government of the day. The means adopted for doing this was to vest in autonomous commissions, to the exclusion of any other person or authority, power to make appointments to the relevant service, promotions and transfers within the service and power to remove and exercise disciplinary control over members of the service. These autonomous commissions, although public authorities, are excluded by section 105 (4) (c) from forming part of the service of the Crown. Subject to the approval of the Prime Minister they may delegate any of their powers to any of their members or to a person holding some public office (limited in the case of the Police Service Commission to an officer of the police force); but the right to delegate, though its exercise requires the approval of the Prime Minister, is

³⁴ (1981) 32 WIR 375 at pages 381-382

theirs alone and any power so delegated is exercised under the control of the commission and on its behalf and not on behalf of the Crown or of any other person or authority.”

- [48] The autonomy of the commissions ensures, among other things, that public officers, who fall under the purview of the commissions, are not removed from office at the pleasure of the appointer.

Thomas v AG³⁵ instructs that –

“In their Lordships' view there are overwhelming reasons why "remove" in the context of "to remove and exercise disciplinary control over" police officers in section 99 (1) and in the corresponding sections relating to the other public services must be understood as meaning "remove for reasonable cause" of which the commission is constituted the sole judge, and not as embracing any power to remove at the commission's whim. To construe it otherwise would frustrate the whole constitutional purpose of chapter VIII of the Constitution which their Lordships have described. It would also conflict with one of the human rights recognised and entrenched by section 1 (d) of the Constitution, viz. "the right of the individual to equality of treatment from any public authority in the exercise of any functions." Dismissal of individual members of a public service at whim is the negation of equality of treatment.”

- [49] The dicta in **Thomas** can therefore be said to apply to all public officers who are appointed to public offices by the commission. The concept of dismissal at pleasure does not apply in those cases and the holders thereof must be removed for cause. See for instance, **Fraser, Innis and Bain-Thomas**. Is the proscription against dismissal at pleasure applicable in other instances of appointments to public offices under the constitution? This question was confronted by the High Court and Court of Appeal in **Darius-Clarke**. In that case, the claimant was appointed to the office of ambassador by the Governor General acting on the advice of the Prime Minister in accordance with section 87(2) of the Saint Lucia Constitution which reads –

“87.- (1) This section applies to the offices of Secretary to the Cabinet, permanent secretary, head of a department of government, deputy head of a department of government, any office for the time being designated by the Public Service Commission as an office of a chief professional adviser to a department of government and any office for the time being

³⁵ Ibid at pages 384-385

designated by the Commission, after consultation with the Prime Minister, as an office the holders of which are required to reside outside Saint Lucia for the proper discharge of their functions or as an office in Saint Lucia whose functions relate to external affairs.

(2) The power to appoint person to hold or to act in offices to which this section applies (including the power to confirm appointments) and, subject to the provisions of section 96 of this Constitution, 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 Governor-General, acting in accordance with the advice of the Public Service Commission:

Provided that-

a) the power to appoint a person to hold or act in an office of permanent secretary on transfer from another such office carrying the same salary shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister;

b) before the Public Service Commission tenders advice to the Governor-General with respect to the appointment of any person to hold an office to which this section applies (other than an appointment to an office of permanent secretary on transfer from another such office carrying the same salary) it shall consult with the Prime Minister and if the Prime Minister signifies his objection to the appointment of any person to the office, the Commission shall not advise the Governor-General to appoint that person;

c) in relation to any office of Ambassador, High Commissioner or other principal representative of Saint Lucia in any other country or accredited to any international organization the Governor-General shall act in accordance with the advice of the Prime Minister, who shall, before tendering any such advice in respect of any person who holds

any public office to which appointments are made by the Governor-General on the advice of or after consultation with some other person or authority, consult that person or authority.

(7) References in this section to a department of government shall not include the office of the Governor-General, the department of the Attorney-General, the department of the Director of Public Prosecutions, the department of the Director of Audit, the department of the Parliamentary Commissioner, the department of the Chief Elections Officer or the Police Force.”

[50] In interpreting section 87(2) (c) of the Saint Lucia Constitution it is apparent that the section permits the Governor General to make appointments to the office of ambassador on the advice of the Prime Minister. However in cases where the Prime Minister seeks to tender his or her advice in respect of a person who holds an office to which appointment had been made by the Governor General on the advice of or in consultation with any other person or entity, the Prime Minister is required to consult with that other person or entity. Both the High Court and Court of Appeal in **Darius Clarke** explained that in the instance where the Prime Minister was required to consult with or seek the advice of a commission, the ambassador was clothed with the safeguards against dismissal at pleasure and could only be removed for cause. Mrs. Darius Clarke had not held any public office at the time of her appointment far less a public office to which she was appointed by a commission or on the advice of or in consultation with a commission. As such the Governor General could have removed her from office at pleasure. His Lordship Webster JA made the distinction for instance with **Endell Thomas, Fraser, Innis** and **Bain-Thomas** where his Lordship observed that “*Mr. Fraser and Ms. Inniss, and Mr. Endell Thomas, held positions that had security of tenure by virtue of their appointment by the commissions, and they could only be dismissed on the advice of or by the relevant commission and with cause*”³⁶ and that these cases “*involve public servants who were appointed on the*

³⁶ Elizabeth Darius-Clarke v The Attorney General of Saint Lucia SLUHCVP2020/0002 at para. 41

*recommendation of a commission and enjoyed security of tenure and insulation from the political influence.”*³⁷.

- [51] In terms of dismissal at pleasure therefore, the consensus from the case law seems to be that there is a distinction between (1) officers appointed by a commission including those persons appointed by other functionaries on the advice or in consultation with the commission(s); and (2) those who are not thus appointed. It would seem that those falling into the first category are protected from removal from office in the sense stated in **Thomas**. In **Darius-Clarke**, his Lordship Webster elucidated that

—

“[44] The effect of the decision in **Endell Thomas** on the doctrine of dismissal at pleasure is clear, police officers and other public servants cannot be dismissed at pleasure and the state must show reasonable cause for the dismissal. Academic writers in the Caribbean undoubtedly agree with this position but have not gone as far as to say that **Endell Thomas** has completely abolished the doctrine of dismissal at pleasure. Dr. Anthony left the issue open and opined that issues relating to the retention of the doctrine are for public policy and appropriately belong in the political or administrative sphere.”

“[45] The doctrine was applied by the Court of Appeal of Trinidad and Tobago in 1976 in **Attorney General of Trinidad and Tobago v Richard Toby** and by the Court of Appeal of Guyana in 1974 in **Yaw**. These decisions have not been overruled although Dr. Anthony has expressed doubt whether Toby was correctly decided. The Court’s attention was not drawn to any recent cases where the doctrine was applied.”

“[47] **Endell Thomas** made great strides in abolishing the doctrine of dismissal at pleasure but the case did not go as far as to abolish the doctrine in the case of ambassadors who are not appointed or dismissed in consultation with anybody or person, and the Governor General must act on the advice tendered to him by the Prime Minister. Mrs. Clarke’s dismissal did not breach the provisions of 87(2) of the Constitution nor any of her natural justice rights.”

³⁷ Ibid at para. 46

[52] As Luckhoo C in **Yaw** opined, it remains to determine whether as a matter of mixed law and fact, Ms. Benoit's case falls into the class of appointee's to public offices whose tenure is secured from dismissal at pleasure. I do not agree that the holder of the office of Supervisor of Elections is afforded such security. As correctly pointed out by the learned Solicitor General, the appointment is done by the Governor-General acting in her own deliberate judgment. It is not done by a commission or on the advice of or in consultation with a commission or more properly the PSC in this case. We have already seen from **Thomas** and the learning in other cases applying that case, that security of tenure or dismissal for cause is specifically afforded to those persons appointed by a commission or on the advice or in consultation with the commission(s). Ms. Benoit's instrument of appointment reads –

“...In exercise of the powers vested in me by Section 35 of the Constitution of Grenada and acting in my own deliberate judgment I hereby designate the person holding the public office of Health Promotion Officer, Ministry of Health, namely **JUDY BENOIT**, to exercise the function of the office of Supervisor of Elections...”³⁸

[53] In all the circumstances the conclusion must be that a person holding the office of Supervisor of Elections and in this case, Ms. Benoit, is not holding the office in the capacity of or any capacity as a public officer clothed with the protection against dismissal at pleasure. Ms. Benoit was therefore subject to be removed from the office of Supervisor of Elections at the pleasure of the Governor General.

Was the Governor-General enjoined on the facts of this case, in any event, to give Ms. Benoit a hearing before removing her from her functions as Supervisor of Elections?

[54] Mr. Ferguson for Ms. Benoit argues that even though the law provides that Ms. Benoit could be removed from the office of Supervisor of Elections without cause, fairness suggests that since specific allegations were made against her, she should have been afforded a hearing before

³⁸ See page 158 of the Trial Bundle

removing her from office. Mrs. Reid Ballantyne disagrees. The learned Solicitor General argues that an employer can summarily dismiss an employee for cause in cases of gross misconduct. Mrs. Reid Ballantyne submits that the facts of this case suggest gross misconduct by Ms. Benoit that justifies summary dismissal. I think that the authorities indicate the converse of the defendants' position. In their submissions, the defendants argue that, even if Ms. Benoit had a right to a hearing based on the complaints against her, the authorities have held that the right to be heard does not require any specific type of hearing. In other words, the rules of natural justice are adaptive based on the specific circumstance. Counsel relies on the House of Lords decision in **Lloyd v McMahon**³⁹ to support her submissions, where Lord Bridge stated:

"My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when anybody, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well-established that when a statute has conferred on anybody the power to make decisions affecting individuals the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.⁴⁰"

- [55] The above authority seems to suggest that with respect to natural justice, the requirements of fairness are based on the nature of the decision-maker, the kind of decision it has to make and the statutory framework under which it operates. The decision in **McMahon** is not an authority for saying that the right to a hearing is dispensed with in cases where there is a specific allegation of misconduct and there is no specified procedure for a hearing before dismissal.

³⁹ [1987] A.C. 625

⁴⁰ [1987] A.C. 625 at pages 702-703

[56] On the contrary, the authorities seem to be clear as to what is required where a decision to terminate the services of an office holder is based on a specific allegation. Webster JA in **Darius-Clarke**⁴¹ noted that –

“The duty to act fairly would have arisen if the decision to terminate Mrs. Clarke’s appointment was based on a specific allegation made against her. In that situation, she would have been entitled to respond to the allegation. On the facts, there was no evidence of the advice given by the Prime Minister to the Deputy Governor General. In the absence of evidence of allegations against Mrs. Clarke in the termination process the principle of fairness did not apply to her and there was no requirement that she be heard before her termination. **Ministry of Foreign Affairs & Prime Minister Patrick Manning v Feroza Ramjohn and Ganga Persad Kissoon**” (My emphasis)

[57] In essence, his Lordship recognises that while the Prime Minister in that case had the right to advise the Governor-General to revoke Mrs. Darius Clarke’s appointment as ambassador without cause, the duty to act with fairness may have dictated that the Governor General permitted her an opportunity to be heard where a specific allegation was made or where the decision was taken based on a complaint. In support of this **Darius-Clarke** relied on the decision of the Privy Council in **Ministry of Foreign Affairs et al v Feroza Ramjohn et al**⁴². Webster JA summarised the facts of the **Feroza Ramjohn** case and stated:

“The Board found that the veto power allowed the Prime Minister to object to an appointment on general grounds without advance notice to the affected person, but where there is an allegation against the affected person that is considered in the decision making process the person should, as a matter of fairness, be given an opportunity to be heard. The evidence in the case was that the Prime Minister considered a letter from the Minister of Agriculture about Mr. Kissoon. Mr. Kissoon was not given an opportunity to respond to the contents of the letter and the Board found in his favour on the facts applying the fairness principle.⁴³” (My emphasis)

⁴¹ SLUHCVP2020/0002

⁴² *Lloyd v McMahon* [2011] UKPC 20

⁴³ SLUHCVP2020/0002 at para. 26

[58] Additionally, I refer to the defendants' extraction from **Hosford v Minister for Social Protection**⁴⁴, where the court at paragraph 19 stated that:

"[19] The Applicant accepts that he was and remains liable to transfer at the sole discretion of the Respondent. It could not realistically be suggested that every decision to reassign a civil servant to different duties engages the full panoply of Constitutional and Convention rights and that the party thereby affected must be afforded fair procedures including for example the right to make submissions or be given reasons. That would be evidently absurd. There is clearly a range of decisions in the context of employment that may be taken which are merely administrative or managerial in nature and do not give rise to such rights or which are amenable to judicial review. **The position may be different where the decision complained of is disciplinary in nature and involves the imposition of a penalty or perhaps dismissal.** On occasion, a civil servant may not like being transferred from one role to another but that is an incident of the job and not a matter for judicial review. It is debatable whether there is any public law element arising in such circumstances." (My emphasis)

[59] The **Hosford** case, in my view, recognises that while a public servant is liable to be transferred or reassigned within the public service at the sole discretion of the respondent, the position may be different where the decision to transfer is based on a complaint or is as a result of the imposition of penalty.

[60] There is a long line of cases on decisions being taken by public bodies without affording the affected person an opportunity to address the charges or complaints against them, such as the **Council of Civil Service Unions v Minister of Civil Service**⁴⁵ which formulated the term "procedural impropriety" that is grounded on principles of fairness and the rules of natural justice.

[61] Further, the words of Byron CJ in **Corporal Philbert Bertrand v The Secretary, PSC**⁴⁶, are apt in the circumstances, where his Lordship summarised the rules of natural justice –

⁴⁴ [2015] IEHC 59

⁴⁵ [1984] 3 All ER 935

⁴⁶ Dominica Civil Appeal No. 10 of 1999

“However, it seems clear from this case that three essential elements of the rule require restatement. One is the duty to disclose the information on which judgment is likely to be based **in order to give an opportunity to controvert, correct and comment on it. Another is the necessity to give particulars of the charges on which judgment will be based. The third is the elementary and obvious imperative that judgment should not be reached until the parties have had an opportunity to be heard**⁴⁷.” (My emphasis)

[62] With respect to the issue of fairness, the House of Lords in the case of **Doody v Secretary of State for the Home Department and other appeals**⁴⁸, Lord Mustill stated at page 106 of the judgment that:

“What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive the following. **(1) Where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2)** The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. **(3)** The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. **(4)** An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. **(5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result, or after it is taken, with a view to procuring its modification, or both. (6)** Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.” (My emphasis)

[63] The above authorities reveal that where public authorities like the Governor General are conferred with administrative powers, those powers must be exercised in accordance with principles of

⁴⁷ Ibid at para. 11

⁴⁸ [1993] 3 All ER 92

fairness. In particular, the power to remove a person from office where there are complaints or allegations against the affected person enjoins the decision-maker to afford that person with an opportunity to be heard before the decision is taken to remove them from office. It would further appear from the authorities that where the Governor General is exercising the powers given to her by the constitution, the courts will not normally investigate the exercise of those functions except where there is a patent breach of the law or as put in one case, where there is a “manifest, glaring and capricious exercise...” of those powers⁴⁹. I would venture to say that a removal from office by the Governor General that violates the principles of fairness would justify a departure from the rule that the court will not normally interrogate the exercise of the powers granted to the Governor General by the Constitution.

[64] In this case, the defendants do not deny or contradict Ms. Benoit’s allegations that the Governor-General grounded the decision to remove her from the office of Supervisor of Elections with immediate effect based on the complaints received. Notwithstanding, the defendants at paragraph 3(g) of their defence plead, simpliciter, that those facts, even if accepted, do not render the Governor General’s decision irrational or unreasonable.

[65] I disagree with the defendants’ posture on those facts and I am of the view that their position cannot be maintained in light of the above stated authorities. For one thing, it is clear from the Governor-General’s communication to Ms. Benoit that the reasons for her termination were based on complaints with respect to her performance in the office of Supervisor of Elections. The first complaint was with respect of a complaint from one Glynis Roberts and the other complaint concerned the implementation of the MPID under the EGRIP project.

[66] Further, Ms. Benoit’s uncontroverted evidence is that the Governor-General handed her a written document outlining the termination of her services as Supervisor of Elections after informing her of the nature of the complaints against her and the reasons for the termination. This act, in my view,

⁴⁹ Richardson v The AG of Anguilla, Knowles v Superintendent of Fox Hill Prisons and Re the Office of the Prime Minister [2005] UKPC 17

further compounds the unreasonableness of the decision, in that it suggests that the Governor-General had already taken the decision to remove Ms. Benoit as Supervisor of Elections and had previously prepared the termination letter without first giving Ms. Benoit an opportunity to address the charges against her. This suggests to me that the meeting was in essence a formal communication of the decision to terminate her position as Supervisor of Elections.

[67] The principles of fairness dictated that Ms. Benoit ought to have been afforded a reasonable opportunity to address those complaints or allegations prior to the decision being taken to remove as Supervisor of Elections. It is for this reason that I find the Governor-General's decision to be in breach of the rules of natural justice. I find that the decision taken by the Governor-General on 30th September 2013 to terminate Ms. Benoit's appointment as Supervisor of Elections was unlawful, null and void.

Relief

[68] I have stated above that at trial, Mr. Ferguson indicated that Ms. Benoit abandons her entire claim against the Attorney-General for declarations, damages and costs in respect of the actions of the Cabinet. I do not think that Ms. Benoit acted unreasonably in bringing that claim and in accordance with CPR 56.13(6) I make no order as to costs of the claim against the Attorney-General. However, Ms. Benoit is successful in her claim against the Governor General and is entitled to costs in that claim assessed in the sum of \$5000.00.

Conclusion

[69] It is hereby ordered that:

- (1) The application for judicial review filed by Judy Benoit (Ms. Benoit) on 18th December, 2013 against the first defendant is granted.

- (2) The decision of the Governor-General to terminate Ms. Benoit's appointment as Supervisor of Elections with effect from 1st October 2013 was in breach of natural justice, principles of fairness and was unlawful, null and void.
- (3) The claim against the second defendant, the Attorney-General, in respect of the actions of the Cabinet is dismissed with no order as costs.
- (4) Ms. Benoit is granted costs in the sum of \$5000.00 in respect of her claim against the First Defendant.

Raulston L.A.Glasgow
High Court Judge

BY THE REGISTRAR